REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MISAMIS ORIENTAL RURAL ELECTRIC SERVICE COOPERATIVE I, INC. (MORESCO-1),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9700

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:
JUN 04 2020 8:53 AM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**CIR's**) Motion for Reconsideration (**MR**) filed on 20 November 2019, without comment from petitioner Misamis Oriental Rural Electric Service Cooperative I, Inc. (**MORESCO-1**). The motion seeks to reverse this Court's Decision dated 04 November 2019 cancelling respondent's tax deficiency assessment against petitioner. The dispositive portion of the assailed Decision reads:

> ...
> **WHEREFORE,** the foregoing considered, the Petition for Review filed by petitioner Misamis Oriental Rural Electric Service Cooperative I, Inc. is **GRANTED**. Accordingly, the Preliminary Assessment Notice dated 12 January 2017 and Assessment Notice with Final Letter of Demand dated 22 February 2017 issued against petitioner are **CANCELLED** and **SET ASIDE**.
> ...

x - x

In sum, the Court nullified respondent's assessment against petitioner on the ground that the revenue officers (**ROs**) who conducted the investigation and assessment of petitioner were not authorized officers pursuant to the Letter of Authority[1] (**LOA**) issued against the latter. A perusal of the LOA shows that the LOA authorized RO Ahmad Yadhari Bantuas (**Bantuas**) of Revenue District Office (**RDO**) No. 98, Cagayan De Oro City, to examine petitioner's books of accounts and records for verification of its tax liabilities for 2012, under the supervision of Group Supervisor Benjamin Conding. However, during the trial, respondent presented a certain RO Maricel Arthur[2] (**Arthur**) and RO Regine Macas[3] (**Macas**), who both testified about conducting petitioner's audit.

As this Court found in the assailed Decision, the reassignment of petitioner's case from RO Bantuas to RO Arthur *via* Memorandum of Assignment (**MOA**) No. 0982014LOA8032[4], signed by a certain Venerando B. Homez (**Homez**), was an ineffective means of transferring authority. Relying on the doctrines laid down by the Supreme Court in the cases of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[5] and *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[6], the Court ultimately cancelled the assessment stating that:

> ...
> To reiterate, the LOA is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit, it is an express grant of authority. Without the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation per RMO No. 43-90,

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1 SN: eLA201000061842/LOA-098-2014-00000353 dated 27 November 2014, Exhibit "P-3".

2 Order dated 21 January 2019, Division Docket, p. 189.

3 Order dated 19 November 2018, id., p. 187.

4 Exhibit "R-7", BIR Records, Folder 2, p. 1669.

5 G.R. No. 222743, 05 April 2017.

...
An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives...

6 G.R. No. 178697, 17 November 2010.

...
Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.
...

x - x

> there can be no perceived authority to conduct the investigation/audit.
>
> ...

Aggrieved by the Court's 20 November 2019 Decision, respondent filed the instant motion wherein he raises issues which the Court already resolved in detail in the assailed Decision. Therefore, the Court will no longer belabor itself with a discussion of these issues and instead focus on a new argument propounded by respondent regarding what the phrase "pursuant to" means in the context of Section 13 of the National Internal Revenue Code (**NIRC**), as amended, when it states:

> ...
>
> **SEC. 13.** ***Authority of a Revenue Office[r].*** - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority** issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[7]
>
> ...

According to respondent, "pursuant to" simply means "in conformity with". In his seeming oversimplification of the aforementioned provision's interpretation, respondent maintains that all that is needed for the validity of petitioner's audit is that the succeeding ROs (RO Arthur and RO Macas) conduct their investigation in conformity with the LOA. He further stresses that the transfer of authority to RO Arthur was validly done through the MOA which Homez executed since the LOA itself states that "[i]n case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS".

We are unconvinced.

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[7] Emphasis and underscoring supplied.

A reading of the cited portion of the LOA obligates the head of the investigating office to issue a MOA to the taxpayer and the ROs concerned "in case of a reassignment". By no means does this *proviso* grant authority unto the head of the investigating office to reassign a revenue officer to a taxpayer's case; only that if reassignment would occur, it would be the former's ministerial duty to inform the parties concerned. There is thus a big difference between the "authority to make a reassignment" and the "duty to give notice in case of reassignment".

The question that then lingers is - who is the person with the authority to order the reassignment?

In response to the query, we need not look further than Section 13 of the NIRC, as amended, which clearly states that it is none other than a Revenue Regional Director (**RRD**) of the Bureau of Internal Revenue (**BIR**) upon the recommendation of respondent himself. Since it is an RRD who is by law authorized to issue a LOA, it only follows that he has the power to amend the same as well (unless of course superseded by respondent's order). Therefore, it would be illogical to maintain that the RRD's grant of authority to RO Bantuas could easily be overridden by a subordinate officer assigning RO Arthur through a mere MOA.

To be clear, the Court did not invalidate the subject assessment just because the authority granted to RO Arthur was through a MOA. Surely, the Court would have decided differently if it were the RRD or the CIR himself who issued the reassignment pursuant to the authority under Section 6 of the NIRC, as amended, to wit:

> ...
> **SEC. 6**. *Power of the Commissioner to Make [A]ssessments and Prescribe [A]dditional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: Provided, however, That failure to file

x - x

a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[8]

...

However, in this case, it was Homez as the head of the investigating office, who issued the reassignment. Clearly, he was not legally clothed with any authority to do the same. With that said, the Court finds no cogent reason to abandon its previous Decision.

WHEREFORE, with the foregoing, respondent's Motion for Reconsideration filed on 20 November 2019 is **DENIED**. Accordingly, the Court's Decision on 04 November 2019 is hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[8] Emphasis and underscoring supplied.