REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FIRST LIFE FINANCIAL CO., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9029

Members:

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

Promulgated:

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is respondent's **Motion for Reconsideration**, filed on December 20, 2019, with petitioner's **Comment and Opposition (to the Motion for Reconsideration dated December 20, 2019)**, filed on January 15, 2020.

In his Motion, respondent seeks reconsideration of the Decision promulgated on December 4, 2019, finding the deficiency assessments against petitioner void for lack of authority of the revenue officer to conduct the examination, the dispositive portion of which reads as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency Income Tax, Value-Added Tax, Premium Tax, Withholding Tax on Compensation, Fringe Benefits Tax, Expanded Withholding Tax and Documentary Stamp Tax for taxable year 2007 in the total amount of ₱123,199,421.56, inclusive of interests and penalties, are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

Respondent assigned the following errors in support of his Motion:

> THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT FAILURE OF THE REASSIGNED REVENUE OFFICER (RO) TO SECURE A NEW LETTER OF AUTHORITY (LOA), AS PROVIDED IN REVENUE MEMORANDUM ORDER (RMO) NO. 43-90 RESULTS IN LACK OF AUTHORITY ON THE REVENUE OFFICER OR RENDERS THE ASSESSMENT INVALID.
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> THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT A NEW LOA MUST BE ISSUED TO THE REASSIGNED RO.
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> THE HONORABLE COURT SECOND DIVISION ERRED IN APPLYING THE CASES OF SONY AND MEDICARD IN DECIDING THE INSTANT CASE; SONY AND MEDICARD ARE INAPPLICABLE.

Regarding the first assigned error, respondent argues that prior to the enactment of the 1997 National Internal Revenue Code (NIRC), the issuance of a Letter of Authority (LOA) was not a statutory requirement as the same was merely an administrative tool for audit activities under audit program. As such, respondent claims that this Court reliance on the provisions of Revenue Memorandum Order (RMO) No. 43-90[1], which was promulgated more than seven (7) years prior to the law it supposedly implemented, is a repugnant error. *gr*

[1] "SUBJECT: Amendment to Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuances of Letters of Authority to Audit", dated September 20, 1990.

As the second assigned error, respondent opines that it is absurd to require RO Susan L. Salcedo and Group Supervisor Marivic P. Bautista to obtain a new LOA before they can validly join the previously assigned audit team in examining petitioner's books of accounts and other accounting records. He continues that the requirement of LOA is not a statutory requirement, but only an internal procedure.

Lastly, as to the third assigned error, respondent claims that this Court's reliance on the cases of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[2] (*"Sony case"* hereinafter) and *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[3] (*"Medicard case"* hereinafter) is inaccurate considering that the foregoing cases are not on all-fours with the present case.

On the other hand, by way of opposition, petitioner counter-argues that: (i) the issues raised in the respondent's Motion were already rule upon by this Court; (ii) failure of the reassigned RO to secure a new LOA will result to the invalidity of assessment for lack of authority; and, (iii) that the cases of *Sony* and *Medicard* can be both applied to the instant case.

After due consideration, the Court finds respondent's Motion without merit.

Since the first and second assigned errors are intertwined, this Court shall discuss them jointly.

While it is true that RMO No. 43-90 was issued 7 years prior to the issuance of the NIRC of 1997, as amended, the fact still remains that the prescribed guidelines therein for the audit/investigation and issuance of a new letter of authority in case of reassignment/transfer of cases to another RO have not yet been repealed or revoked by any of the recent issuances of the Bureau of Internal Revenue (BIR).

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

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[2] G.R. No. 178697, November 17, 2010.
[3] G.R No. 222743, April 5, 2017.

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional 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, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided,*

> *however,* That the following powers of the Commissioner shall not be delegated:
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> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
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> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:
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> x x x x x x x x x

> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
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> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "SEC. 13. *Authority of a Revenue Officer.* — 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." *(Emphasis supplied)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that a Chief of the Regular Large Taxpayers Audit Division 1 is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
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> x x x x x x x x x
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> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority** ✓

> **but only upon prior authorization by the Commissioner himself**." *(Emphasis and underscoring supplied)*

To reiterate, it is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[4]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Guided by the foregoing disquisition, the Memorandum of Assignment issued by Mr. Escalada cannot validly grant RO Salcedo and GS Bautista with the requisite authority to continue the audit commenced by Revenue Officer Wilfredo S. Reyes. Stated simply, as Chief of Regular Large Taxpayers Audit Division 1, Mr. Escalada does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[5] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

Finally, as to respondent's contention that neither the *Sony* or *Medicard* case may be applied for not being on all fours with the present case, this Court does not agree.

A more careful reading of the foregoing would reveal that the Supreme Court has specifically interpreted Sections 13 and 6(A) of the NIRC of 1997, in this wise: (1) an LOA is the authority given to

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[4] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[5] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

the appropriate RO assigned to perform assessment functions, and it empowers or enables said RO to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax; (2) there must be a grant of such authority before any RO can conduct an examination or assessment; and (3) in the absence of such authority, the assessment or examination is a nullity.

It must be remembered that judicial decisions (such the *Medicard* and *Sony* cases) applying the laws, such as Sections 13 and 6(A) of the NIRC of 1997, or the Constitution shall form part of the legal system of the Philippines. These decisions, although in themselves not laws, constitute evidence of what the laws mean. The application or interpretation placed by the Supreme Court upon a law is part of the law as of the date of the enactment of the said law since the Supreme Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect. In other words, judicial decisions of the Supreme Court assume the same authority as the statute itself. This means that the above-stated interpretation of the Supreme Court of Sections 13 and 6(A) of the NIRC of 1997 formed part of the said provisions as of the date of the law's enactment.

Henceforth, finding no cogent argument that would justify the reversal or modification of the assailed Decision, this Court maintains its findings in the Assailed Decision.

WHEREFORE, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice