REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

LOYOLA PLANS CONSOLIDATED, INC.,
Respondent.

CTA *EB* NO. 2324
(CTA Case No. 9216)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 05 2022 1:24

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RESOLUTION

MANAHAN, J.:

This resolves petitioner's **Motion for Reconsideration**[1] posted on November 25, 2021 and received by this Court on January 3, 2022, praying that this Court grants his motion for reconsideration and issues a new judgment for the reversal and setting aside of the Court in Division's December 3, 2019 *Decision* (Assailed Decision) and Resolution dated June 29, 2020 (Assailed Resolution).

The instant motion is actually assailing this Court's *Decision* dated November 11, 2021 where the dispositive portion reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

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[1] *Rollo*, CTA EB No. 2247, pp. 98-104.

Accordingly, the *Decision* dated December 3, 2019 and the *Resolution* dated June 29, 2020 are hereby **AFFIRMED.**

Petitioner, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from collecting the deficiency IT, VAT, EWT, DST and IAET for CY 2010 against respondent.

SO ORDERED."

Petitioner argues that the Letter of Authority (LOA) is issued to the taxpayer and not to the Revenue Officer (RO), hence, it is not akin to a sheriff's badge which a re-assigned RO must hold and not just join the audit team examining the taxpayer pursuant to an existing and validly issued LOA.

Petitioner also avers that Revenue Memorandum Order (RMO) No. 43-90 or the "Amendment of Revenue Memorandum Order No. 37-90, Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit" was already repealed by RMO No. 62-2010 or the "Supplemental Guidelines on the Electronic Issuance of Letter of Authority and Related Audit Policies and Procedures", which allegedly states that in case of the original RO's resignation/retirement/transfer, the issuance of a new LOA to the succeeding RO is not mandatory.[2] Petitioner insists that the Memorandum of Assignment (MOA) did not amend nor modify the original LOA but it only assigned new RO whose authority to continue the tax examination is covered by the earlier LOA issued.[3]

On the other hand, respondent, in its **Comment (Re: Motion for Reconsideration dated November 25, 2021)**[4] filed on February 28, 2022, counters that the instant motion failed to raise new matters that will warrant reconsideration of the Assailed Decision.

Respondent argues that an LOA is the authority given to the appropriate RO assigned to perform assessment functions. In the absence of such an authority, the assessment or examination is a nullity, and that RMO No. 43-90 was not repealed by RMO No. 62-2010 and is still a valid issuance.

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[2] Paragraph 7.1, Item II, RMO No. 62-2010.
[3] *Id.*
[4] *Rollo*, pp. 112-123.

Respondent posits that the issuance of a MOA by unauthorized revenue officials in lieu of an LOA usurps the power of the petitioner or his duly authorized representative to conduct a tax audit.

The Court finds petitioner's motion unmeritorious.

An LOA and not a MOA empowers an RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax as held in the latest case of *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*,[5] and we hereby quote:

> "A 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.
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> In *Commissioner of Internal Revenue v. Sony Philippines, Inc.* the Court nullified the deficiency VAT assessment made against Sony Philippines because the revenue officers went beyond their authority when they based the assessment on records from January to March 1998 or using the fiscal year which ended in March 31, 1998 when the LOA covered only "the period 1997 and unverified prior years". According to the Court:
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> > 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**. (Emphasis supplied)
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> In *Medicard Philippines, Inc. v. CIR*, the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. The Letter of Notice earlier sent to Medi card Philippines was not validly converted into a LOA. According to the Court in Medicard Philippines:
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> > What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having**

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[5] G.R. No. 241848, May 14, 2021.

> **authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.** (Emphasis supplied)
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> Here, as comprehensively discussed, there was no new LOA issued by the CIR or his duly authorized representative giving revenue officer Bagauisan the power to conduct an audit on petitioner's books of accounts for taxable year 2009. The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit."

The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[6] Equally important is that the RO so authorized under the LOA must not go beyond the authority given. In the absence of such authority, the assessment or examination is a nullity.[7]

The relevance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the ROs is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.[8]

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[9] the Supreme Court held:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer*' and issue an assessment against him.
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> That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which 'empowers a

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[6] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[7] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[8] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, supra.
[9] G.R. No. 222133, November 4, 2020.

> designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.
>
> **In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.** xxx." *(Emphasis and underscoring added)*

Moreover, in the recent case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.* (*McDonald's*)[10] the Supreme Court held that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayers right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representatives to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representatives to examine the taxpayer's books of accounts, to wit:

> "This **practice of reassigning or transferring revenue officers**, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been subject of several CTA decisions, including *Ithiel Corporation v. CIR*,[11] *Strawberry Foods Corporation v. CIR*,[12] *Sugar Crafts Inc. v. CIR*,[13] *CIR v. Marketing Convergence, Inc.*,[14] *Exclusive Networks-PH Inc. v. CIR*,[15] and the decision in the court *a quo*.[16]
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> **The Court hereby puts an end to this practice.**
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> **I. The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer**

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[10] G.R. No. 242670, May 10, 2021.
[11] CTA Case No. 8689, dated July 4, 2016.
[12] CTA Case No. 8569, dated January 7, 2016.
[13] CTA Case No. 8738, August 16, 2017.
[14] CTA EB Case No. 2109 (CTA Case No. 9301), December 3, 2020.
[15] CTA Case No. 9689, February 23, 2021.
[16] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, CTA EB Case No. 1535 (CTA Case No. 8655), dated January 4, 2018.

to Continue the Audit or Investigation

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of 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.

xxx xxx xxx

Pursuant to the above provisions, only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.

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B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. **The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts.** It is issued by the **revenue district officer** or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of

> revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.
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> **The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative.** The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.
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> xxx xxx xxx
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> **In summary, We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990."** *(Emphases and underscoring added)*

There being no other new issues or matters raised by the petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the Assailed Decision.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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