REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

STEPAN PHILIPPINES QUATERNARIES, INC., *Petitioner,*	**CTA CASE NO. 9862**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 29 2024 2:00 p.m.

x---x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For Resolution is respondent's *Motion for Reconsideration (Re: Decision dated 28 February 2024)* filed on March 19, 2024, with petitioner's *Comment (Re: Motion for Reconsideration dated 19 March 2024)* filed by registered on April 8, 2024.

In assailing the decision voiding the assessment, respondent contends that the Court *erred* since petitioner was able to participate in the administrative proceedings and was, thus, accorded due process. Respondent further adds that petitioner was informed of the identity of the revenue officers (ROs) who continued its investigation/audit through the Memorandum of Assignment (MOA). Thus, although the ROs named in the Letter of Authority (LOA) may not have been the same ROs who eventually concluded the investigation/audit, this occurrence is a matter of "feasibility" that is justified because "there is no statutory requirement that ROs be named in the LOA itself."[1]

First, respondent's contention that "there is no statutory requirement that ROs be named in the LOA itself" is *misleading.*

It stretches the rules of statutory construction when viewed against Section 13 of the National Internal Revenue Code of 1997 (NIRC). The text of

[1] Docket, Vol. 2, p. 720.

Section 13 alone clearly provides that the ROs who are assigned to examine a taxpayer must be *sanctioned by an LOA*:

> "**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." (*Underscoring supplied*)

Second, if this provision were not plain enough to respondent's reading, the holding of the Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* (McDonald's)[2] should dispel any doubt on the necessity of *naming* the ROs in the LOA. Incidentally, respondent's arguments mirror the arguments raised by the Commissioner of Internal Revenue in *McDonald's*:

> "The petitioner [CIR] claims that once an LOA had issued, the revenue officer originally named in the LOA may be substituted or replaced by another revenue officer in case the original revenue officer is reassigned or transferred to another case, without the need to amend the said LOA or to issue a separate and new LOA in the name of the substitute or replacement revenue officer.
>
> To support this claim, the petitioner argues: (i) that the LOA is not in fact issued to the revenue officer, but to the taxpayer, and thus 'any' revenue officer may act under the validly issued LOA during the period of audit or investigation; (ii) that Revenue Memorandum Order (RMO) No. 43-90 dated September 20, 1990, entitled 'Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit,' which requires the issuance of a new and separate LOA in case of reassignment or transfer of cases of revenue officers, is no longer in effect, considering that it was issued prior to the National Internal Revenue Code; (iii) that assuming RMO No. 43-90 dated September 20, 1990 is still in effect, nothing in the said issuance provides that the effect of a lack of LOA results in the nullity of the assessment; (iv) that *Commissioner of Internal Revenue v. Sony Philippines, Inc.* and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, where We held that an LOA must authorize a revenue officer to examine taxpayer's books of accounts, which are not squarely applicable to this case; (v) that there is no requirement that a revenue officer should be identified in the LOA itself; (vi) that the LOA at the time Marcellano conducted the audit was not yet ineffective for lack of revalidation; and (vii) that the BIR's General Audit Procedures and Documentation, which provides the standard operating procedures in examining books of accounts of taxpayers, is not applicable." (*Underscoring supplied; citations omitted*)

[2] G.R. No. 242670, May 10, 2021.

In *McDonald's*, which have similar facts to this case, the Supreme Court affirmed the Court's decision that invalidated the assessment. Furthermore, it ruled that, while the taxpayer may have been notified of the change in ROs, the lack of authority of the new ROs is still tantamount to violation of due process and justifies voiding the assessment:

> "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 of revenue officers. 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 [CIR] 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.
>
> 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.
>
> xxx xxx xxx
>
> 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

N

> 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 takpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990."

All told, respondent's arguments have been addressed by the assailed decision and do not raise any new matter that would merit a reexamination by the Court.

WHEREFORE, in view of the foregoing, respondent's *Motion for Reconsideration (Re: Decision dated 28 February 2024)* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice