REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

METRO RAIL TRANSIT CORPORATION, *Petitioner,*	**CTA CASE NO. 9651**
	Members:
- versus -	**RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 04 2024 4:10 p.m.

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<u>**R E S O L U T I O N**</u>

***MODESTO-SAN PEDRO, J.*:**

For the Court's resolution is respondent's *Motion for Reconsideration [re: Decision dated 23 March 2023]*, filed on April 27, 2023,[1] with petitioner's *Comment (on Respondent's Motion for Reconsideration Re: Decision dated 23 March 2023)* filed on 31 May 2023.[2]

Against this Court's *Decision*, dated 23 March 2023 ("Assailed Decision"), which cancelled respondent's Final Decision on Disputed Assessment ("FDDA") for lack of authority of the tax agents who audited petitioner's records, respondent primarily argues that the cases of ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.***[3] ("***McDonald's case***") and ***Republic of the Philippines v. Robiegie Corporation***[4] ("***Robiegie case***") do not apply here as the reassignment of the audit in both cases to a new set of revenue officers happened prior to the issuance of the Preliminary Assessment Notice ("PAN") and/or Final Assessment Notice ("FAN")/Formal Letter of Demand ("FLD"). This is in

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[1] Docket – Vol. 27, pp. 13175 to 13182.
[2] *Id.*
[3] G.R. No. 242670, 10 May 2021.
[4] G.R. No. 260261, 3 October 2022.

contrast with this case, where the reassignment took place after the revenue officers (ROs) named in the Letter of Authority ("LOA") had finished their investigation and audit. Instead, respondent invokes the Court *En Banc*'s ruling in ***Commissioner of Internal Revenue vs. Titanium Corporation***[5] ("***Titanium case***") where the issuance of an LOA is not required when an assessment notice had already been issued.

Further, respondent asserts that the ***McDonald's*** and ***Robiegie cases*** should be applied prospectively. Prior to said cases, there was no jurisprudence dictating that the ROs must be authorized only by means of an LOA. Respondent hence relied in good faith on the prevailing laws and regulations at the time the assessment was issued, which was that the Memoranda of Assignment (MOA) were [sufficient] in case the revenue officer named in the LOA was reassigned.

On the other hand, in its Comment, petitioner points out that the ***Titanium*** case is not applicable here because the investigation and audit of petitioner's books and accounting records were not yet finished when the matter was reassigned to Revenue Officer Ma. Catalina G. Benedicto (RO Benedicto) and Group Supervisor Joseph Christian B. Santos (GS Santos). Further, the MOA itself states that the case/docket was referred to RO Benedicto for "continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned".

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

As thoroughly discussed in the assailed Decision, primarily anchored on ***Medicard Philippines, Inc. vs. Commissioner of Internal Revenue***[6] (***Medicard case***), a valid examination of a taxpayer's books and accounting records must be based on a valid LOA, and the absence of such LOA violates the taxpayer's right to due process thereby rendering the entire assessment void.

More importantly, following the pronouncement in the ***McDonald's case***, due process requires the identification of tax agents authorized **to continue** the tax audit or investigation through an LOA.

Respondent's reliance on the ***Titanium*** case is misplaced as the Court *En Banc*'s ruling therein emphasizes that the requirement for the issuance of an LOA does not contemplate a situation where assessment notices had already been issued and a **reinvestigation** was being conducted to recommend the issuance of a FDDA.

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[5] CTA E.B. Case No. 2502 (CTA Case No. 9644), 13 February 2023.
[6] G.R. No. 222743, 5 April 2017.

However, the circumstances in the *Titanium* case are in stark contrast with the present case, where the tenor of the referral to RO Benedicto and GS Santos under the MOA No. TVN-125-2017-20 is for the **continuation** of the audit/investigation and not the reinvestigation thereof. A perusal of the said MOA shows the following objectives of the referral:[7]

> "Referred to you is the subject case/docket for:
>
> [X] **Continuation** of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned
>
> [ ] Continuation of the audit/investigation due to referral of the case by (indicate the previous investigating office that handled the case) per (indicate the revenue issuance/memorandum issued by concerned revenue official as basis for the referral of the case).
>
> [ ] Compliance with the review/reporting requirements of (indicate the reviewing office, e.g. Regional Assessment Division, Office of the Regional Director, Assessment Service, etc.)
>
> [ ] Compliance with the review/reporting requirements of (indicate the reviewing office, e.g. Regional Assessment Division, Office of the Regional Director, Assessment Service, etc.) to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office.
>
> [ ] Reinvestigation per protest letter/request for reinvestigation filed by the subject taxpayer.
>
> [X] Others (specify) LOA No. 125-2013-00000137 dtd January 19, 2014 / AIRT TY 2012. This supersedes MOA TVN-125-2015-63 dtd August 6, 2015"
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> (Underlining and emphasis supplied.)

As can be observed, among the foregoing objectives of the referral, what was marked for action is for the "*continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned*". Crucially, there exists another objective, which is for the "*reinvestigation per protest letter/request for reinvestigation filed by the subject taxpayer*", but the same was not marked for action.

Had the intention of MOA No. TVN-125-2017-20 be for the reinvestigation of the case/docket, the objective "*reinvestigation per protest letter/request for reinvestigation filed by the subject taxpayer*" should have been marked for action. Instead, what is clearly marked for action is for the "*continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned*". It can be deduced therefore that at the time the MOA was issued, the audit/investigation of petitioner's books was not yet finished and still required continuation.

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7 Exhibit "R-11", BIR Records, p. 1194.

Thus, with the audit/investigation of petitioner's books needing continuation, respondent or his duly authorize representative was then required to issue a new LOA to authorize RO Benedicto and GS Santos, pursuant to ***Section 6[8] of the National Internal Revenue Code of 1997, as amended*** ("***NIRC***"), and as elucidated in the ***McDonald's case***. However, respondent fatally failed to do so, thereby rendering the assessments issued against petitioner void.

To reiterate and summarize from the assailed Decision, following the ***Medicard case***, unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of an LOA, before any revenue officer can conduct an examination or assessment. 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.

Further, to be sure, the facts of the present case are on all squares with ***Commissioner of Internal Revenue vs. Wellington Investment and Manufacturing Corporation***[9] (***Wellington case***), where the MOA, authorizing new ROs for the **continuation** of audit investigation, was made after the FLD/FAN had already been issued and letter-protest against the FLD/FAN had already been filed. In voiding the assessments in said case, the Court *En Banc*, again relying on the *Medicard* case, stated that absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation per Revenue Memorandum Order (RMO) No. 43-90, there is no authority to conduct the investigation/audit.

In fact, the Court *En Banc*'s ruling in the ***Wellington case*** was later affirmed by the Supreme Court, stating that the lack of an LOA authorizing [the new ROs] **to continue** the audit of [Wellington's] books of account still rendered the resulting assessments void.[10]

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[8] SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) *Examination of Return 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. (*Emphasis supplied*)

[9] CTA E.B. Case No. 1773 (CTA Case No. 8726), 11 April 2019.

[10] Commissioner of Internal Revenue vs. Wellington Investment and Manufacturing Corporation, G.R. No. 249795 (Notice), 29 November 2022.

Anent respondent's assertion that the ***McDonald's*** and ***Robiegie cases*** should be applied prospectively, the same likewise has no merit. The ***McDonald's*** and ***Robiegie cases*** merely interpreted ***Sections 6, 10(c)***[11] ***and 13***[12] ***of the NIRC.***

Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Supreme Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law but consists merely in the construction or interpretation of a pre-existing one.[13] This is only subject to the qualification that when a doctrine of Supreme Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.[14]

What the ***McDonald's case*** did is to highlight and concretize the fact that the authority of the RO to conduct the examination of any taxpayer and the assessment of the correct amount of tax only emanates from respondent CIR or his duly authorized representative through the issuance of an LOA, pursuant to ***Sections 6, 10(c), and 13 of the NIRC.*** In relation thereto, 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. Hence, the issuance of such MOA, and its subsequent use as proof of authority to continue the audit or investigation, in effect supplants the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.

The promulgation of the ***McDonald's case*** neither overruled any previous jurisprudence nor introduced a new interpretation. Consequently, the interpretation laid down in the said case became part of the ***NIRC*** from the

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11 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:

xxx xxx xxx

(c) **Issue Letters of Authority** for the examination of taxpayers within the region[.] (*Emphasis supplied*)

12 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*)

13 Columbia Pictures, Inc., et. al. vs. Court of Appeals, et. al., G.R. No. 110318, 28 August 1996.

14 *Ibid.*

date it was originally passed. As such, it cannot be limited to prospective application.

The same principle applies to the ***Robigie case*** which merely reinforced the ruling in the ***McDonald's case***, adding that the investigatory powers of the ROs flow from the LOA, which is the statutorily designated means by which the CIR delegates its investigative powers to the BIR revenue officers.

Interestingly, the cases of ***McDonald's***, ***Robigie***, and ***Wellington***, as in the present case, primarily relied on the ***Medicard case***, all of which consistently point out (a) the indispensable requirement of the issuance of an LOA for each RO who will conduct and/or continue the audit/investigation of the taxpayer's books; and (b) the fact that the absence of such a valid LOA renders the resulting assessment null and void for violation of the taxpayer's right to due process.

Respondent thus failed to impress the Court with cogent arguments to justify the reversal, amendment, or modification of the Court's Decision, dated 23 March 2023. The same shall therefore not be disturbed.

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Reconsideration [re: Decision dated 23 March 2023]* is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice