REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BASIC HOUSING SOLUTIONS, INC.,
Petitioner,

- versus -

COMMISSIONER, BUREAU OF INTERNAL REVENUE, represented by OIC-Regional Director, **MARIDUR V. ROSARIO,** Revenue Region No. 9A – CaBaMiRo, Sto. Tomas, Batangas,
Respondent.

CTA Case No. **9905**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated: DEC 05 2022 1:25 pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner, Bureau of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision dated 28 June 2022)"[1] (**MR**) filed on 20 July 2022, with petitioner Basic Housing Solutions, Inc.'s (**petitioner**'s/**BHSI**'s) "Comment/Opposition (To Motion for Reconsideration dated July 20, 2022)"[2] filed on 22 August 2022.

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[1] Division Docket, Volume II, pp. 830-840.
[2] Id., pp. 844-852.

The MR assails the Court's Decision promulgated on 28 June 2022 (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, in view of the foregoing, the Petition for Review filed on 10 August 2018 by petitioner Basic Housing Solutions, Inc. is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancies and Assessment Notice Nos. RR9A-54B-eLA-14-IT-051 and RR9A-54B-eLA-14-MC-051, all dated 07 December 2017, issued against petitioner for the taxable year 2014, are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes arising therefrom.
>
> **SO ORDERED.**
>
> ...

In the MR, respondent disagrees with the Court's finding that for the examination to be valid, a Letter of Authority (**LOA**) must be issued by the CIR himself or herself or his or her duly authorized representative. Respondent avers that under Revenue Memorandum Order (**RMO**) No. 8-2006[3], in the event that both the Revenue Officer (**RO**) and the Group Supervisor (**GS**) have resigned, retired or transferred to another Revenue Region, the case shall be reassigned to another RO and GS. To implement the said reassignment, a memorandum to that effect shall be issued by the head of the investigating office.

Applying the foregoing rule by analogy and considering that petitioner's case was merely reassigned to another RO and GS, respondent maintains that the issued Memorandum of Assignment (**MOA**) No. 16-094 dated 22 September 2016[4] should have been sufficient to confer authority upon RO Layna A. Magpantay (**RO Magpantay**) and GS Romanito P. Guiuan (**GS Guiuan**) to conduct the audit.

Respondent also contends that both due process components (procedural and substantive) were observed in issuing the subject

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[3] Prescribing the Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

[4] Exhibit "R-1", BIR Records, p. 238.

assessment as petitioner was informed of the factual and legal bases thereof.

Respondent insists that the deficiency income tax (**IT**) was discovered pursuant to Section 5[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended[6], providing for the power of the CIR to ascertain the correctness of the return filed in order to determine any internal revenue tax liability. As such, there is no need to issue an LOA because the deficiency assessment did not emanate from the examination of petitioner's books of account and other accounting records but from the letter of the Board of Investments (**BOI**) to the Bureau of Internal Revenue (**BIR**) informing the latter of the denial of petitioner's Income Tax Holiday (**ITH**) availment.

Respondent further argues that finding of discrepancies with the aid of matching of computer data with other information or returns filed by the taxpayer or by third parties is deemed sufficient to initiate assessment. In other words, it is not necessary to issue an LOA in this case because there was no physical examination of petitioner's books of account and other accounting records.

As to the merits, respondent posits that petitioner cannot claim exemption prior to the approval of its application for ITH incentive. Since there was no such prior approval, all of petitioner's sales are taxable unless otherwise proven to be exempt.

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5 SEC. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

(B) To Obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members[.]

...

6 But prior to the amendments brought about by Republic Act No. 10963 otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN).

Lastly, respondent adds that the Court erred in enjoining petitioner from collecting the assessed deficiency taxes as the assailed Decision has yet to attain finality. According to respondent, the issuance of an injunction is exceptional in nature and petitioner has not proved its clear and legal right to the injunctive relief.

On the other hand, petitioner maintains that it is not liable for deficiency IT. Petitioner argues that the BOI has the exclusive power to determine whether a registered activity is entitled to ITH. In this case, the BOI has determined that petitioner's sales in its registered activities in Tierra Vista Pampanga Phase 1 (**Tierra Vista**) and The Veraneo (**The Veraneo**) are entitled to 100% ITH. Thus, the deficiency IT assessment based on the 03 March 2016 letters[7] no longer had any basis after the BOI superseded the same in its 06 March 2018 letter.[8]

Furthermore, petitioner maintains that in the absence of an LOA, petitioner's right to due process was violated.

Petitioner claims that respondent's witness, GS Guiuan, testified on cross-examination, among others, that he first learned of the case when he was issued the 22 September 2016 MOA; and, his recommendation for the issuance of the Preliminary Assessment Notice (**PAN**) was based on the BOI's disallowance.[9] Since RO Guiuan merely relied on the MOA instead of an LOA, petitioner's due process rights was violated resulting to the invalidity of the assessment.

We resolve.

It is undisputed that no LOA was issued to petitioner. Respondent only argues that no LOA is necessary since petitioner's books of account and other accounting records were not examined and that the issuance of the 22 September 2016 MOA[10] suffices to confer authority upon RO Magpantay and GS Guiuan to evaluate petitioner's ITH incentive availment.

We do not agree.

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7 Exhibits "P-7" and "P-8", Division Docket, Volume II, pp. 568-569.
8 Exhibits "P-14" and "P-15", id., pp. 608-609.
9 TSN dated 29 January 2020, pp. 9-10.
10 Supra at note 4.

Section 13 of the NIRC of 1997, as amended, is quite clear that an LOA is required before an RO may be authorized to perform assessment functions such as: (1) examining the taxpayers; or, (2) recommending the assessment of any deficiency tax, *viz*:

> ...
>
> **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.[11]
>
> ...

Thus, a plain reading of the said provision instructs that requirement of the issuance of an LOA is not limited to the instance whereby the RO would physically examine the taxpayer's books of account and other accounting records. LOA is likewise required before an RO would recommend the assessment of any deficiency tax due.

In this case, by virtue of a mere MOA, RO Magpantay and GS Guiuan not only conducted the examination of petitioner's ITH availment but also recommended the issuance of the PAN, as evidenced by their Memorandum to the Regional Director dated 26 October 2016.[12] Hence, it is clear that Section 13 of the NIRC of 1997, as amended, applies and as such, the prior issuance of an LOA in their favor is required.

We thus reiterate the following disquisition in the assailed Decision:

> ...
>
> Thus, for the examination to be valid, an LOA must be issued either by the CIR himself or herself or by his or her duly authorized representative. Pursuant to the aforementioned Section 13, in relation to Section 10(c) of the NIRC of 1997, as amended, as well as Revenue Memorandum Order (**RMO**) Nos. 43-90 and 29-2007, the

[11] Emphasis supplied.
[12] Exhibit "R-3", BIR Records, p. 242.

CIR's duly authorized representatives are: (1) Regional Directors; (2) Deputy Commissioners; (3) Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and, (4) other officials but only upon prior authorization by the CIR himself or herself.

In this case, aside from the fact that no LOA was issued, the MOAs relied upon by respondent were executed by a mere RDO, a subordinate official who is not authorized to issue LOAs.

...

Applying the above principles to the case at bar, a mere MOA signed by an RDO, a subordinate official, does not and cannot confer authority upon RO Magpantay and GS Guiuan to conduct the audit or investigation of petitioner's ITH incentive availment. As both RO Magpantay and GS Guiuan are not authorized to conduct such investigation, the resulting assessment against petitioner is inescapably void.

Well-entrenched are the principles that in the absence of such an authority, the assessment or examination is a nullity and a void assessment bears no fruit.[13]

...

As to respondent's claim that the Court erred in enjoining petitioner from collecting the assessed deficiency taxes as the assailed Decision has yet to attain finality, We likewise do not find same meritorious.

Section 5(c), Rule 135 of the Rules of Court provides:

...

Sec. 5. *Inherent powers of court.* — Every court shall have power:

...

(c) To compel obedience to its judgments, orders and processes, and to the lawful orders of a judge out of court, in a case pending therein;

...

From the foregoing, it is clear that the Court may enjoin respondent from collecting the assessed deficiency taxes, as a necessary consequence of its judgment declaring the subject assessments void.

[13] Division Docket, Volume II, pp. 826-827; Citations omitted.

In sum, the Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, in view of the foregoing, respondent's "Motion for Reconsideration (Re: Decision dated 28 June 2022)" filed on 20 July 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice