REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MACARIO LIM GAW, JR.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8502

Members:

DEL ROSARIO, *P.J.,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

FEB 08 2017 : 11:00 a.m.

x - x

RESOLUTION

MINDARO-GRULLA, *J.*:

For this Court's resolution is respondent's **Motion for Reconsideration**, filed through registered mail on September 21, 2016 and received by this Court September 28, 2016, with petitioner's **Opposition (Re: Respondent's *Motion for Reconsideration* dated 21 September 2016)**, filed on November 2, 2016, pursuant to the Order dated November 3, 2016.

Respondent seeks reconsideration of the Court's Decision dated September 2, 2016 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax assessment for taxable year 2007,

amounting to ₱1,295,855,151.89 as found in FDDA No. 2012-0001, is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED."

In the assailed Decision, the Court found that the Letter of Authority (LOA) No. 2009-00044669 dated August 25, 2010, allowing respondent to investigate and ascertain the internal revenue taxes of petitioner, is invalid since it indicated the period taxable year 2008 and unverified prior years, in violation of Section C of RMO No. 43-90. The Court held that the assessment for taxable year 2007 is void for being issued without a valid authority.[1]

Respondent submits that the Court erred in granting the petition considering the following grounds:

a. The Letter of Authority issued is valid pursuant to the Run After Tax Evaders (RATE) Program of the Bureau of Internal Revenue;
b. In the alternative, the Letter of Authority is not indispensable in the assessment of petitioner, as none of petitioner's financial books or records were examined;
c. Petitioner is estopped from attacking the validity of the Letter of Authority.

Petitioner opposes the motion contending that the Court correctly cancelled the deficiency income tax assessment against it for taxable year 2007. It contends that considering that LOA No. 2009-00044669 covers "Unverified Prior Years", respondent, acting through his agents, went beyond the scope of his authority.

Moreover, petitioner contends that when respondent chose to assess petitioner via a LOA, he bound himself to comply with the requirements in the issuance of a Letter of Authority. Thus, petitioner avers that respondent's claim that the LOA is not "indispensable" in the assessment of petitioner is merely an afterthought after being shown the patent invalidity of the LOA.

Furthermore, petitioner claims that respondent's invocation of the doctrine of estoppel is misplaced. He argues that his availment

[1] Assailed Decision, p. 35.

of the remedies provided by law cannot estop him from assailing the validity of the LOA. Petitioner also alleges that it is respondent whose is estopped from disregarding the LOA.

The Motion for Reconsideration is bereft of merit.

The issuance of a Letter of Authority under the RATE program is provided for in Revenue Memorandum Order 27-2010[2], to wit:

II. POLICIES AND PROCEDURES

xxx xxx xxx

B. Issuance of Letters of Authority for RATE Cases

xxx xxx xxx

7. The issuance of LAs shall cover only the taxable year(s) for which *prima facie* evidence of tax fraud or of violations of the Tax Code, was established through the appropriate preliminary investigation, unless the investigation of prior or subsequent years is necessary in order to:

    - Determine or trace continuing transactions entered in the covered year and concluded thereafter, or those transactions concluded in the covered year that were commenced in prior years; or

    - Establish that the same scheme was utilized for prior or subsequent years.

Based on the foregoing, generally, Letters of Authority for RATE cases shall cover only the taxable year for which *prima facie* evidence of tax fraud or of violations of the Tax Code is established through the appropriate preliminary investigation. Investigation of prior or subsequent years is only allowed in the exceptional cases enumerated above.

[2] Re-invigorating the Run After Tax Evaders (RATE) Program, and Amending Certain Portions of RMO No. 24-2008, March 15, 2010.

In this case, respondent failed to prove the necessity for investigation of prior years' tax liability. Petitioner's witness testified that the subject LOA covers unverified prior years in order to determine if the income of petitioner as declared in his Income Tax Return is sufficient to cover the purchase of six (6) real estate properties amounting to ₱1,957,422,000.00. However, this is not sufficient to prove that an investigation of prior years is necessary. Thus, the inclusion of "unverified prior years" in the LOA rendered it invalid. Consequently, the assessment for taxable year 2007 is void.

Moreover, if respondent had wanted to investigate petitioner for taxable year 2007, it should have clearly indicated the period in the Letter of Authority. The vague phrasing of the taxable period "2008 and unverified prior years", indicates that respondent is unsure of what taxable period petitioner should be examined and assessed.

It must be noted that in the case of *Bureau of Internal Revenue vs. Court of Appeals*[3], the Supreme Court held that "[tax officials] should not abuse their investigative powers, instead they should exercise the same within the bounds of the law. They must properly observe the guidelines in making assessments and investigative procedures to ensure that the constitutional rights of the taxpayers are well protected as we cannot allow the floodgates to be opened for frivolous and malicious tax suits."

Furthermore, contrary to respondent's assertion, a Letter of Authority is indispensable in assessing petitioner. This was emphasized by the Court in the assailed Decision, to wit:

> It must be emphasized that before any revenue officer can conduct an examination or assessment, there must be a valid Letter of Authority.
>
> Section 6 (A) of the NIRC of 1997, as amended, vests the Commissioner of Internal Revenue the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, to wit:
>
> > "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional*

[3] G.R. No. 197590, November 24, 2014.

> *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." (*Emphasis supplied*)

In relation thereto, Section 13 of the NIRC of 1997, as amended, provides that a Letter of Authority 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. Section 13 provides:

> "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*)

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.[4]

Lastly, there is also no basis in respondent's contention that petitioner is estopped from attacking the validity of the Letter of Authority.

Estoppel is based on public policy, fair dealing, good faith and justice. Its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one who reasonably relied thereon. The doctrine springs from equitable principles and the equities in the case, and is designed to aid the law in the administration of justice where without its aid injustice might result.[5]

The elements of estoppel are: first, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[6]

In this case, respondent failed to establish each of the said elements. Thus, respondent's allegation that petitioner is estopped from attacking the validity of the Letter of Authority is bereft of merit.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on September 2, 2016.

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

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[4] Assailed Decision, pp. 32-34.

[5] *Grace Borgona Insigne, et al. vs. Abra Valley Colleges, Inc.*, G.R. No. 204089, July 29, 2015.

[6] *British American Tobacco vs. Camacho, et al.*, G.R. No. 163583, August 20, 2008.

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SO ORDERED.

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

WE CONCUR:

INHIBITED
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice