REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ERLINDA ABACAN, doing business under the firm name BRISTOL SHOES,
Respondent.

CTA *EB* NO. 2296
(CTA Case No. 8814)

Present:

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.*

Promulgated:
FEB 0 1 2024 11:38 am

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RESOLUTION

Before the Court is a Motion for Reconsideration[1] filed by petitioner Commissioner of Internal Revenue against the Resolution,[2] dated 19 January 2021 ("Assailed Resolution"), dismissing the instant Petition.

In his Motion, petitioner faults the Court for dismissing his Petition on mere technicality. He cites the 1999 case of ***United Airlines v. Willie Uy***,[3] the 2011 case of ***City of Dumaguete v. Philippine Ports Authority***,[4] and the 2014 case of ***City of Dagupan v. Ester F. Maramba***[5] in support of his plea to relax the procedural rules.

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1 *EB* Records, pp. 83-88.
2 *Id.*, pp. 73-74.
3 G.R. No. 127768, 19 November 1999.
4 G.R. No. 168973, 24 August 2011.
5 G.R. No. 17441, 2 July 2014.

Our Courts are constantly faced with the opposing dogmas of liberality and relaxation of procedural rules on one hand, as relied upon by petitioner, and strict adherence to the rules to facilitate adjudication of cases on the other.

Here, the Court finds that relaxation of the rules is not in order.

To begin with, the questioned dismissal involves petitioner's appeal from the Decision of the Court's former Second Division. It was, thus, petitioner's duty to comply with the requirements set for such an appeal. This was emphasized in the case of ***Agravante v. Commission on Elections***,[6] promulgated on August of 2023, where the Supreme Court, through Chief Justice Gesmundo, upheld the Comelec *En Banc*'s dismissal of an appeal which was not perfected in accordance with law. It stressed, therein, as follows –

> "Their strict adherence to the rules cannot be deemed grave abuse of discretion nor even mere abuse of discretion. In fact, it is the inverse that holds true; the manifest disregard of basic rules and procedures is precisely what constitutes grave abuse of discretion. Time and again, this Court has held that procedural rules are tools designed to facilitate adjudication of cases, deliberately set in place to prevent arbitrariness in the administration of justice. **<u>Since the right to appeal is not a constitutional right but a mere statutory privilege, anyone who seeks to invoke such privilege must comply with the applicable rules; otherwise, the right to appeal is forfeited</u>**."
> (Citations omitted, emphasis and underscoring supplied.)

Further guided by ***Agravante***, the Court finds that even if the procedural errors committed by petitioner were set aside, the Petition remains bereft of merit, and to allow it to proceed would be an exercise in futility.

Indeed, the Decision appealed from canceled and set aside petitioner's assessment against respondent, as contained in the subject FLD and FAN, based on the finding that "Revenue Officer Espejo and Group Supervisor Abilgos were not authorized, through an LOA, to examine petitioner".[7]

In its Petition, petitioner insists that a Memorandum of Assignment gives the officers named therein the authority to continue an audit which was already previously authorized under a Letter of Authority.

The Court notes that his arguments on this score, including his other arguments in the instant Petition, were already raised in his Motion for Reconsideration against the questioned Decision. The same were also

6 G.R. No. 264029, 8 August 2023.
7 See Decision, CTA Case No. 8814, p. 13; Records, p. 46.

addressed and found of no merit in the Resolution, dated 15 June 2020, of the Court's then Second Division. On this ground, alone, the instant Petition is dismissible.

More importantly, petitioner's main argument respecting the authority conferred by the Memorandum of Assignment fails in light of the clear ruling in ***Commissioner of Internal Revenue v. Wellington Investment & Manufacturing Corp.***,[8] which held as follows –

> "We recently ruled in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* that (1) the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation; (2) the use of a memorandum of assignment, referral memorandum, or such equivalent document, directing the continuation of audit or investigation by an unauthorized RO usurps the functions of the LOA; and (3) Revenue Memorandum Order (RMO) No. 43-90 expressly and specifically requires the issuance of a new LOA if ROs are reassigned or transferred. We declared:
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>> The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (LOA) and substituting or replacing 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 Commissioner of Internal Revenue (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 Bureau of Internal Revenue (BIR) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.
>
> In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, the examination of the taxpayer's books of accounts was reassigned to another RO sans issuance of a new LOA; the authority of the subsequent RO therein was anchored only upon the MOA signed by the revenue district officer. We thus declared void the assessments against the taxpayer for having been issued without an LOA by the CIR or his duly authorized representative.
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> The RMOs cited by petitioner, namely RMO Nos. 08-2006 and 69-2010, merely provide additional regulations in case of reassignment of revenue officers and should not be interpreted to remove the requirement of an LOA. Rather, the MOA, referral memorandum, or any equivalent document are issued for the purpose of reassignment and transfer of cases of revenue officers, and not for the purpose of vesting authority on an RO to examine a taxpayer's books of accounts, which is the function of an LOA. As stated in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*:

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[8] G.R. No. 249795 (Notice), 29 November 2022.

> 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.**
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> 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.
>
> 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.**

We find no reason to depart from these sound rulings, which have similar circumstances as the instant case. We thus affirm the assailed decision and resolution of the CTA *En Banc*, declaring void the subject assessments for having been issued without an LOA by petitioner or his duly authorized representative.
(Citations omitted, emphasis and underscoring supplied.)

In view of all the foregoing, the Motion for Reconsideration of petitioner is clearly without merit.

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice