REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

OMYA CHEMICALS MERCHANTS, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9047

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:
OCT 21 2020 1:16pm

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R E S O L U T I O N

MANAHAN, *J.*:

This resolves respondent's **Motion for Reconsideration (of the Amended Decision dated June 29, 2020)** filed on July 20, 2020 with petitioner's **Comment (Re: Respondent's Motion for Reconsideration dated 20 July 2020)** filed on September 18, 2020.

On June 29, 2020, an Amended Decision was promulgated by this Court cancelling and setting aside the Formal Assessment Notice dated July 25, 2014, with attached Details of Discrepancies, issued by respondent, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, respondent's *Motion for Reconsideration (of the Decision dated October 14, 2019)* is hereby **DENIED** for lack of merit. On the other hand, petitioner's *Motion for Partial Reconsideration (Re: Decision dated 14 October 2019)* is **GRANTED** and the assailed Decision dated October 14, 2019 is **MODIFIED**. Accordingly, the Formal Assessment Notice dated July 25, 2014, with attached Details of Discrepancies, is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

Respondent, in his motion, prays that said Amended Decision dated June 29, 2020 be reconsidered and set aside, and that a new decision be rendered instead denying petitioner's Petition for Review and declaring the assessment for deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax (EWT) for taxable year 2010 valid.

Respondent argues that under Revenue Memorandum Order (RMO) No. 69-2010, there is no requirement for the issuance of a new Letter of Authority (LOA) or electronic LOA (eLA) as to reassignment or transfer of cases to another Revenue Officer (RO) and that under RMO No. 69-2010, the Revenue District Officer is authorized to sign the Memorandum of Assignment (MOA).

Respondent further argues that the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[1] is not applicable in the instant case since it concerned a Letter Notice (LN) in contrast with this case, and that petitioner was already estopped from assailing said MOA since it had all the opportunities to raise the issue as to the validity of the MOA but failed to do so.

Petitioner, on the other hand, argues that it is a well-settled rule that the assessment arising from the audit performed by an RO who is not authorized by an LOA is void due to lack of authority, and that respondent failed to provide any argument or identify errors from the Amended Decision to warrant reconsideration.

It is true that, under RMO No. 69-2010, there is no requirement for the issuance of a new LOA on reassigned or transferred tax audit or investigation because the first and foremost objective of said rules and regulations is to supersede Revenue Memorandum Circular (RMC) No. 61-2010 and amend certain provisions of RMO Nos. 62-2010 and 64-2010.

RMC No. 61-2010 pertains to suspension of generations of eLA among others, while RMO Nos. 62-2010 and 64-2010, pertain to the Supplemental Guidelines on the issuance of eLAs.

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[1] G.R. No. 222743, April 05, 2017.

The fact is that the law and respondent's own rules and regulations require the issuance of a new LOA in cases where there is a reassignment or transfer by the previous RO as cited in the assailed Amended Decision, to wit:

> "Sections 6(A) and 13 of the 1997 National Internal Revenue Code (NIRC), as amended, provides:
>
> > **SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional 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, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u> 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.
> >
> > xxx xxx xxx
> >
> > **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, <u>a Revenue Officer assigned to perform assessment functions</u> in any district may, <u>pursuant to a Letter of Authority</u> issued by the Revenue Regional Director, <u>examine taxpayers</u> 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. (*Underscore ours*)
>
> The above provisions of the 1997 NIRC, as amended, are implemented under Revenue Memorandum Order (RMO) No. 43-90 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." The specific provisions of said RMO that govern the issuance of an LOA and the procedure to be followed when there is a transfer or reassignment of tax cases to another RO are found in paragraph C(1) and (5), to wit:
>
> > "C. Other policies for issuance of L/As.
> >
> > 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
> >
> > xxx xxx xxx
> >
> > 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have

> already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." (*Emphasis supplied*)
>
> As shown in the above-provisions, the execution of an LOA is a must in every conduct of an audit or investigation. Such requirement is of equal importance when the RO originally assigned in the conduct of a particular audit/investigation is transferred and a new RO takes over the tax audit that has been conducted by the former RO.
>
> Thus, respondent is totally mistaken in its claim that a mere memorandum of assignment will suffice as the legal basis for the succeeding ROs to take over the audit/ investigation earlier conducted by those ROs originally-named in the LOA."

Nowhere in RMC No. 61-2010, RMO Nos. 62-2010, 64-2010, and 69-2010 is there a provision repealing or amending RMO No. 43-90 particularly its paragraphs C(1) and (5) which require the issuance of LOA in the conduct of tax audit or investigation as well as the re-assignment or transfer of cases to another RO. Hence, the requirement for the issuance of a new LOA in cases of reassignment of the previous RO to a succeeding RO still stands.

As to the applicability of the *Medicard* case in the instant case, it is true that an LN was the subject in that case while in the instant case, it is a MOA. However, in a recent decision by the Supreme Court, as cited in the assailed Amended Decision, the issuance of a MOA to the succeeding RO is not equivalent to a new LOA, to wit:

> The above discussion was elucidated in the latest case of *Commissioner of Internal Revenue v. Composite Materials, Inc.*, when it ruled that the issuance of a referral memorandum is not equivalent to an LOA and not a cure to RO's lack of authority to conduct audit investigation, to wit:
>
> > "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of a LOA, the assessment or examination is a nullity.
> >
> > xxx xxx xxx

> Moreover, the Court agrees with the CTA en banc that **Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**" (*Emphasis supplied*)

In the said case of *Commissioner of Internal Revenue v. Composite Materials, Inc.* [2] (*Composite Materials*), the Supreme Court highlighted the applicability of the *Medicard* case in conducting an audit or tax investigation. It emphasized that anything other than the required LOA will not suffice to vest authority on any RO in conducting a tax audit or investigation. There is no substitute for the issuance of such LOA.

As to respondent's argument that petitioner was already estopped from assailing such MOA, he is totally mistaken. The *Composite Materials* case explicitly ruled that the MOA is not equivalent to an LOA nor does it cure the RO's lack of authority.

Even if such MOA was not assailed by petitioner, the fact that the conduct of the tax audit was unauthorized remains, hence, the Court will not be estopped from considering this vital piece of evidence in resolving the merits of the case.

There being no other new issues or matters raised by the respondent in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed Decision.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (of the Amended Decision dated June 29, 2020)* is hereby **DENIED** for lack of merit. Accordingly, the assailed Amended Decision dated June 29, 2020 is hereby **AFFIRMED**.

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[2] G.R. No. 238352, September 12, 2018.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice