REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GOLDEN DONUTS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **9676**

Members:

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

Promulgated:
JAN 2 4 2024 10:25 AM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Reconsideration (of the Decision dated 30 August 2023)"[1] (**MR**) filed by petitioner Golden Donuts, Inc. (**petitioner/GDI**) on 19 September 2023, with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Comment (Re: Motion for Reconsideration dated 19 September 2023)" filed on 17 October 2023.[2]

The MR seeks the reversal of the Decision dated 30 August 2023[3] (**assailed Decision**) denying petitioner's Petition for *Certiorari*[4] for lack of merit. The dispositive portion thereof states:

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1 Division Docket, Volume III, pp. 1717-1738.
2 Id., pp. 1743-1747.
3 Id., pp. 1690-1716.
4 Pursuant to the Supreme Court Resolution in G.R. No. 252816, 03 February 2021. *Per* the Supreme Court's directive, the case shall be treated as a Petition for *Certiorari* under Rule 65 of the Rules of Court, as amended.

> ...
>
> **WHEREFORE,** in view of the foregoing, the Petition for *Certiorari* filed by petitioner Golden Donuts, Inc. on 31 August 2017 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In the MR, petitioner argues that respondent violated his or her own procedural rules in conducting the assessment covered by Letter of Authority No. 2007 00016170 dated 17 June 2008 (**LOA 2008**). It points out that the non-issuance of the Final Decision on Disputed Assessment (**FDDA**), Termination Letter and Authority to Cancel Assessment (**ATCA**) (which the Court determined to be lacking in the previous assessment) were all within respondent's power and authority. Thus, any omission or negligence on the part of the latter in the assessment of LOA 2008 should not prejudice petitioner.

Petitioner also avers that although there were irregular transfers of the tax case docket between respondent's offices, it never failed to participate in the conduct of the assessment of the assigned revenue officers (**ROs**) of Revenue District Office (**RDO**) No. 41. According to petitioner, it should not be faulted for considering the case closed and terminated when respondent, through Revenue District Officer Isabel A. Paulino (**RDOr Paulino**) and with the *conforme* of RO Stanley Ong (**Ong**) and Group Supervisor Gregorio Tumanguil (**GS Tumanguil**) of RDO No. 41, accepted the payment of the deficiency tax liabilities of ₱4,003,081.30 (based on the results of RDO No. 41's reinvestigation) and as evidenced by the signed Agreement Form.

Moreover, petitioner asserts that respondent should not have been allowed to issue LOA-211-2017-00000037 dated 27 April 2017 (referred hereinafter as Run After Tax Evader [**RATE**] **LOA**) after he or she failed to act on its Protest to the Formal Letter of Demand (**Protest to the FLD**). Hence, with the latter's failure to issue the required FDDA, coupled with the acceptance of its payment of its deficiency tax liabilities, respondent's subsequent issuance of the RATE LOA on the same taxable year (**TY**) already violated its constitutional right to due process.

Petitioner further posits that this Court erred in declaring that a preliminary investigation was conducted and that there was a *prima facie* fraud based solely on the National Investigation Division's (**NID**'s) Memorandum. It claims that a review and evaluation of the reinvestigation documents are not considered a preliminary investigation that will justify the issuance of a RATE LOA.

Petitioner also insists that respondent should not have based his or her findings of *prima facie* fraud on the uncorroborated allegations of the previous handling RO, Othello E. Dalanon (**Dalanon**). Dalanon is biased and unreasonably hostile against it even after he had already separated from the government service. Moreover, the issues that Dalanon raised were already addressed and answered in its Protest to the Preliminary Assessment Notice (**PAN**), Protest to the FLD, and in the reinvestigation memorandum of RO Ong and GS Tumanguil.

Lastly, petitioner alleges that respondent failed to adduce evidence for the application of the 10-year period to assess under Section 222[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Since the RATE LOA was issued beyond the three (3)-year period to assess under Section 203[6] of the NIRC of 1997, as amended, the same should be cancelled.

Respondent, on the other hand, counters that petitioner's arguments in its MR are a mere rehash of the arguments laid down in its prior Petition for Review[7] which were already resolved in the assailed Decision. He or she claims that the issuance of the RATE LOA is sanctioned under Section 235[8] of the NIRC of 1997, as amended, thus, there was no violation of petitioner's right to due process.

Respondent adds that under Revenue Memorandum Order (**RMO**) No. 27-2010[9], he or she conducted the necessary preliminary investigation that led to the issuance of the RATE LOA. After evaluating the available records of the case, it was deemed that petitioner's arguments and submissions could not overturn the findings of *prima*

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5 **SEC. 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*

6 **SEC. 203**. *Period of Limitation Upon Assessment and Collection.*

7 Division Docket, Volume I, pp. 8-46.

8 **SEC. 235**. *Preservation of Books of Accounts and Other Accounting Records.*

9 Re-invigorating the Run After Tax Evaders (RATE) Program, and Amending Certain Portions of RMO No. 24-2008.

facie fraud, hence the issuance of another LOA (even on the same period covered by the LOA 2008) was proper.

As regards petitioner's allegation that he or she merely relied on Dalanon's baseless findings, respondent explains that there were material and relevant documents in the tax case docket that support the existence of *prima facie* fraud. Petitioner itself failed to negate this.

We resolve.

A careful review of the present MR and the parties' arguments still fails to convince Us that respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when he or she issued the RATE LOA.

RESPONDENT CONDUCTED A PRELIMINARY INVESTIGATION IN ACCORDANCE WITH REVENUE MEMORANDUM ORDER (RMO) NO. 27-2010.

We do not share petitioner's position that respondent failed to conduct the preliminary investigation prior to the issuance of the RATE LOA. The pertinent portions of RMO No. 27-2010, which govern the issuance of RATE LOA, provide:

> ...
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> B. *Issuance of Letters of Authority for RATE Cases*
>
> 1. **In all RATE cases, a preliminary investigation must first be conducted to establish *prima facie* evidence of fraud or tax evasion. Such investigation shall include the verification and determination of the schemes employed and the extent of fraud perpetrated by the subject taxpayer.**
>
> 2. **In the event that, following the conduct of the required preliminary investigation, the NID/SIDs should determine that there is *prima facie* evidence of tax fraud, it shall submit the case, together with a memorandum justifying the issuance of a Letter of Authority (LA) to the Deputy Commissioner-Legal and Inspection Group (DCIR-LIG), through the Assistant Commissioner (Enforcement Service)/the concerned Regional Director, for evaluation.**

...

6. Should the Commissioner approve a request for issuance of an LA, such approval will be communicated to the DCIR-LIG, for the preparation and issuance of the requested LA by the latter. **All LAs issued for RATE cases shall be signed by the DCIR-LIG.**

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**[.] ...

...

Applying the foregoing, based on the records, respondent followed the above-mentioned procedures:

1. Through the NID, respondent conducted a preliminary investigation that led to the findings of *prima facie* fraud. The relevant parts of the NID Memorandum state:

> ...
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> The GL was contained in a compact disk (CD) submitted to the RO originally assigned in this case and **duly validated per entries and/or adjustments made by the auditor.** ... Quite evidently, **the Company's internal accountant and external auditors should have knowledge on the existence of mathematical errors of the Company's CAS in the course of preparing the quarterly and annual financial statements covering the TY 2007**. The allegations of GDI that its internal accountants and/or external auditors confined and/or made used (*sic*) of the figures reflected in the source documents is (*sic*) unacceptable and is (*sic*) bereft of merit. Accountants are bound to validate and support by a sub-schedule for every figures (*sic*) they reported and/or reflected in the financial statements they have prepared unless it maintained two (2) set of books of accounts. **It is therefore not possible for internal accountants and external auditors to have not checked and validated the monthly account balances and year-end totals** which are very material in amount and obvious **especially the external auditors whose responsibility is to note unexplained and/or material changes** of the real and nominal accounts in the financial statements.
>
> ...

2. From the said findings, respondent submitted the NID Memorandum for the CIR's approval;

3. After the CIR approved the NID's recommendation of issuing a LOA, the CIR signed and issued the RATE LOA against petitioner; and,

4. The RATE LOA covers TY 2007 wherein the *prima facie* fraud was established preliminarily.

Thus, We deemed that the RATE LOA was validly issued with respondent's compliance of the procedural requirements under RMO No. 27-2010.

THE IRREGULARITIES IN THE PREVIOUS ASSESSMENT COVERED WITH LETTER OF AUTHORITY DATED 17 JUNE 2008 (LOA 2008) DOES NOT BAR THE ISSUANCE OF THE LETTER OF AUTHORITY DATED 27 APRIL 2017 (RATE LOA).

We also do not share petitioner's view that respondent is barred from issuing a second LOA because the previous assessment has already been closed and terminated.

As stated in the assailed Decision[10], there were irregularities in the conduct of the assessment under LOA 2008, to wit: (1) the non-issuance of the FDDA; and, (2) the absence of Termination Letter and/or ATCA to prove the cancellation of the assessment. These irregularities have highlighted the dubious nature of the prior assessment and did not at all help in overturning the findings of *prima facie* fraud for TY 2007.

At the risk of being repetitive, in the assailed Decision, We quoted Section 235 of the NIRC of 1997, as amended, which provides that irregularity is one of the exceptions to the one-LOA *per* year rule:

> ...
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> SEC. 235. *Preservation of Books and Accounts and Other Accounting Records.* - All the books of accounts, including the subsidiary books and other accounting records of corporations, partnerships, or persons, shall be preserved by them for a period

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[10] Supra at note 3, p. 1702.

> beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment. The said books and records shall be subject to examination and inspection by internal revenue officers: *Provided*, **That for income tax purposes, such examination and inspection shall be made only once in a taxable year, <u>except</u> in the following cases**:
>
> **(a)** Fraud, **irregularity or** mistakes, **as determined by the Commissioner**[.][11]
>
> ...

In sum, We find that respondent did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when he or she issued the RATE LOA for the investigation of petitioner's books and accounting records for TY 2007.

WHEREFORE, premises considered, the "Motion for Reconsideration (of the Decision dated 30 August 2023)" is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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[11] Emphasis supplied.