REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JOPAUEN REALTY CORPORATION, Petitioner,	**CTA CASE NO. 8943**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 02 2019 10:45 am

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RESOLUTION

***MINDARO-GRULLA, J.*:**

Submitted before this Court is respondent's **Motion for Reconsideration**, filed on October 1, 2019, with petitioner's **Comment/Opposition (to the Respondent's Motion for Reconsideration)**, filed on November 7, 2019.

On September 13, 2019, a Decision was promulgated by this Court cancelling respondent's deficiency assessments against petitioner due to the respondent's failure to observe petitioner's right to due process of law, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed by petitioner Jopauen Realty Corporation is hereby **GRANTED**. Accordingly, the assessment notices issued by respondent Commissioner of Internal Revenue against the petitioner for the taxable year 2008, particularly, the Preliminary Assessment Notice dated December 22, 2011, Formal Letter of Demand dated January 12, 2012, Amended Preliminary Assessment Notice received by petitioner on February 10, 2014 and Final Decision on

Disputed Assessment dated September 25, 2014 are **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In his Motion, respondent moves for the reconsideration of the above decision, claiming that petitioner failed to refute the presumption that the Formal Letter of Demand/Final Assessment Notices (FLD/FAN) was received in the regular course of the mail and that official duty has been regularly performed. He continues that petitioner cannot simply allege that it did not receive the assessment notices, without discharging the heavy burden to prove, during trial, of the fact of non-receipt thereof.

More so, as to the issue of a void Letter of Authority (LOA), respondent claims that under Revenue Memorandum Order (RMO) No. 8-2006[1], in the event that both the Revenue Officer (RO) and Group Supervisor (GS) initially assigned to audit a taxpayer's books of accounts have resigned/retired or transferred to another revenue region, the case shall be reassigned to another RO, under the supervision of another GS, within the same Revenue District Office (RDO) through a memorandum issued by the head of the investigating office to the concerned taxpayer. As such, considering that the Memorandum of Assignment (MOA) was issued by Revenue District Officer Honorata S. Aguila, the Head of the investigating office, respondent insists that the said MOA directing RO Teresita Tibayan to continue the audit/examination of petitioner for taxable year 2009 is proper and therefore valid.

Lastly, respondent asserts that the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[2] *("Sony case")*, is not applicable in the present case since the facts and issues raised in the *Sony case* are different from the present case as follows:

Sony Case	**Present Case**
• Sony was issued an LOA for 1997 and unverified prior years (UPY); • after examination, Sony was assessed for taxes outside the period of the LOA; and,	• petitioner received a valid LOA authorizing examination for 2008; • a MOA was issued to RO Teresita Tibayan; and,

[1] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring Systems (LAMS).
[2] G.R. No. 178697, November 17, 2010.

• the issue is whether the assessment for 1998 and the LOA for UPY is valid.	• the issue is whether the MOA properly authorized RO Tibayan to continue the audit.

On the other hand, in its comment, petitioner primarily claims that respondent's Motion for Reconsideration should be denied for being *pro forma* since the issues therein were reiterations of the issues previously raised and have been passed upon in this Court's Decision. Further, it insists that respondent did not raise any new argument to merit the review of the assailed Decision.

After due consideration, this Court finds no merit in respondent's Motion. As correctly pointed out by petitioner, the arguments raised by the respondent are mere rehashes of the same facts and issues which have already been thoroughly discussed in this Court's decision.

Again, at the risk of being repetitive, the case of *Republic of the Philippines vs. The Court of Appeals and Nielson & Co., Inc.*[3] and in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[4], provides that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

Applying the foregoing to the present case, by categorically denying receipt of the preliminary assessment notice (PAN) and final assessment notice (FAN), the burden of proof shifts to respondent to prove that the said notices were indeed received by the petitioner.

It is worthy to emphasize that it is a requirement of due process that the taxpayer must actually receive the assessment.[5] Otherwise, the assessment is void. Accordingly, based on the testimonial and documentary evidence presented, respondent failed to establish with sufficient evidence that the PAN and FAN were received by the petitioner. Hence, the assessment issued against the petitioner is void.

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[3] G.R. No. L-38540, April 30, 1987.
[4] G.R. No. 157064, August 7, 2006.
[5] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et. al.,* G.R. No. 128315. June 29, 1999

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With regard to the issue of LOA, respondent insists that pursuant to a MOA, RO Tibayan was clothed with authority to continue the audit/examination of petitioner's books of accounts, and thereafter issue the necessary assessment notices thereto.

Unfortunately, this Court is not convinced.

Sections 6 and 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, clearly provides that a valid grant of authority, in the form of an LOA, from the CIR or his duly authorized representative is required before a revenue officer can conduct an examination or issue an assessment notice, thus:

> "**SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*
>
> 1. *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)*
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> "**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 and underscoring supplied)*

Evidently, nowhere in the above-cited provisions allow the issuance of a memorandum or any form of document, other than an

LOA, granting authority to a revenue officer to conduct an audit/examination.

A cardinal rule in statutory construction is that, where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application.[6] Hence, the revenue officer must have valid grant of authority in the form of an LOA to conduct an audit/examination or assess the taxpayer, whether the case was originally assigned to him or was re-assigned/transferred to him.

Moreover, in case of re-assignment/transfer of cases, Sections C(1) and (5) of RMO No. 43-90[7], still requires the issuance of a LOA, *viz.*:

> "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**.
>
> x x x
>
> 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**." *(Emphases supplied)*

Based on the aforementioned provision, a new LOA is to be issued, with the corresponding notation indicating the previous LOA number and date of issue of the LOA, authorizing the new revenue officer to continue the audit/examination. Notably, only one LOA is issued to the taxpayer since the previously issued LOA is deemed cancelled with the issuance of a new LOA. Hence, the issuance of a

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[6] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 175707, 180035, 181092, November 19, 2014, 740 SCRA 640.

[7] Amendment of Revenue Memorandum Order No. 37-90, prescribing revised policy guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

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MOA cannot be considered as a substitute to an LOA in cases of re-assignment/transfer of cases to another revenue officer.

Also, in implementing Section 13 of the NIRC of 1997, as amended, Sections D(2) and (3) of RMO No. 43-90 and Section V.A.1 of RMO No. 8-2006 requires the names of the revenue officers and group supervisor to be indicated in the new LOA, to wit:

RMO No. 43-90

"D. Preparation and issuance of L/As.

x x x

2. The Regional Director shall prepare and sign the L/As for returns recommended by the RDO for assignment to the ROs, indicating therein the name and address of the taxpayer, **the name of the RO(s) to whom the L/A is assigned**, the taxable period and kind of tax; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.

3. **The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the procedures in the preceding paragraph**, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue."

RMO No. 08-2006

"V. PROCEDURES

A. LTAID I and II/LTDO/RDO

1. Prepare a "List of Selected Taxpayers for Issuance of LA" (Annex "A") **indicating therein the names of**

> **the GS and ROs** in accordance with the criteria to be provided under a separate revenue issuance."

From the foregoing, an LOA grants authority to specific ROs and GS that are named therein. Stated, otherwise, revenue officers or group supervisors not indicated in the LOA are not duly authorized to conduct an audit/examination.

Applying the same in the present case, only the RO and GS indicated in LOA No. 2008-000236926[8] dated December 29, 2009, specifically, Revenue Officer Norma Siscar and Group Supervisor Elizabeth Abello, are the ones authorized to conduct the audit/examination or issue an assessment of petitioner's internal revenue taxes for the taxable year 2009. However, as found by this Court, based on testimonial and documentary evidence presented during trial, the PAN and FAN were issued by RO Teresita Tibayan pursuant to an Assignment Slip and MOA. Accordingly, the subsequent assessments issued by RO Tibayan are void for having no of authority to do so.

Also, assuming *arguendo*, that Revenue District Officer Aguilar, as the Head of the Investigating Office, is authorized to sign the MOA, the fact remains that no new LOA was subsequently issued when the case was re-assigned or transferred to RO Tibayan

Lastly, as to the contention that the *Sony case* is not applicable herein, this Court finds the same untenable.

While, it is true that in the *Sony case*, the revenue officer went beyond its authority when it assessed the taxpayer beyond the period indicated in the LOA. The Supreme Court, however, took the opportunity to emphasize the requirement of an LOA in order for a revenue officer to have the authority to conduct an audit/examination, and the absence thereof voids the assessment.

In view of the foregoing discussions, this Court finds no cogent reason to reverse or modify the conclusions reached in the assailed Decision.

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[8] Exhibit "P-8"; Exhibit "R-15", BIR Records, p. 18.

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

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice