REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

SCHEMA KONSULT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10041

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

9:08 AM

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RESOLUTION

RINGPIS-LIBAN, J.:

Before the Court is respondent's **Motion for Reconsideration (Decision dated 3 April 2025)** filed *via* accredited courier service on April 29, 2025, and received by the Court on April 30, 2025, with petitioner's **Comment (To Respondent's Motion for Reconsideration)** filed on May 21, 2025.

On April 3, 2025, the Court promulgated a Decision cancelling respondent's deficiency income tax and value-added tax (VAT) assessments against petitioner for violation of its right to due process of law, the dispositive portion of which is quoted hereafter as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
>
> For being void, the *Formal Letter of Demand* and *Assessment Notices* dated November 24, 2017, assessing petitioner for deficiency income tax and VAT for taxable year 2013, in the aggregate amount of Php105,424,185.81, inclusive of surcharges and interests, are **CANCELLED** and **SET ASIDE**.
>
> Moreover, the *Warrant of Distraint and/or Levy* dated January 24, 2019 issued against petitioner for the subject tax assessments is **WITHDRAWN** and **CANCELLED**. Accordingly, respondent is

PROHIBITED and **ENJOINED** from collecting the said amount against petitioner.

SO ORDERED."

In his Motion, respondent asserts that there is no violation of petitioner's right to due process as the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) dated November 24, 2017 was served to petitioner's registered address. He continues that the said FLD/FAN was received by petitioner's authorized representative, Ms. Sheryl Gonzaga, who is the same person that received the Preliminary Assessment Notice (PAN) dated October 13, 2017. As such, respondent submit that it is inconceivable why petitioner denies the receipt of the FLD/FAN while admitting the receipt of the PAN. For the said reason, respondent maintains that the assessments have already attained finality and no inquiry as to the merits or the justness of the judgment relied on can further be made thereof.

Moreover, respondent also insists that the revenue officers (ROs) who conducted the investigation of petitioner's books of accounts are duly authorized to do so. He explains that Revenue Memorandum Order (RMO) No. 8-2006[1] requires the issuance of only one (1) Letter of Authority (LOA) to a taxpayer per taxable year and, thus, a Memorandum of Assignment (MOA) is issued to other ROs to continue the audit under the previously issued LOA in case retirement or transfer of the originally named ROs. Once served, any duly authorized representative may now conduct audit not because of, but rather, "pursuant" to such LOA. Respondent expounds that the authority of the ROs to continue the said audit investigation may be included in the LOA or it may in any other document issued by respondent or his duly authorized representative, *i.e.*, memorandum, referral memorandum and/or MOA. Lastly, respondent emphasizes that an LOA is not an "authorization letter" of the ROs and there is no requirement on law that ROs must be identified in the LOA to have authority.

On the other hand, in its Comment, petitioner points out that respondent's arguments are without merit as it has already been duly established during the presentation of his witness, RO Jesse Ferdinand D. Acenas, on January 18, 2024 that he cannot remember Sheryl Gonzaga's authorization and her authority to act as petitioner's authorized representative does not appear in the list of documents identified by Mr. Acenas. As such, by failing to serve the FLD/FAN, petitioner reiterates that it was deprived of a fair opportunity to be informed of the legal and factual bases of the assessments issued against it and therefore cannot be expected to file an intelligent protest thereon. Lastly, citing the ruling in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[2] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[3] and *Commissioner of Internal Revenue*

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[1] "SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)", dated February 1, 2006.

[2] G.R. No. 178697, November 17, 2010.

[3] G.R. No. 222743, April 5, 2017.

v. McDonald's Realty, Inc.,[4] petitioner submits that the only document that confers authority to respondent's ROs is the duly issued LOA.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

Time and again the Court bears emphasis that Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, explicitly required that the taxpayer must be informed in writing of the law and of the facts on which the assessment is made. This is part of the due process requirement in tax assessments so that taxpayers can be given the opportunity to explain or present their side throughout the process – from tax investigation through tax assessment. Essentially, to comply with the requirements of due process, the Commissioner of Internal Revenue (CIR) is required to inform the taxpayer of the factual and legal bases of the deficiency tax assessment and provide him or her the opportunity to protest such assessment, present his or her case, and adduce supporting evidence.[5]

Apropos, in the event that the taxpayer denies ever having received an assessment notice from the Bureau of Internal Revenue (BIR), it becomes incumbent upon the latter to prove that such notice was, in fact, received by the addressee.[6]

Herein, petitioner denies the receipt of the subject FLD/FAN dated November 24, 2017. In refuting petitioner's denial, respondent presented RO Jesse Ferdinand D. Acenas who testified that the FLD/FAN was personally served to petitioner's registered business address and was received by its representative, Ms. Sheryl Gonzaga on November 24, 2017.[7] Respondent then refers to the *Affidavit of Service of Final Assessment* (Affidavit of Service),[8] which states that a copy of the FLD/FAN was served to petitioner "[b]y leaving a copy of FAN to **Ms. Sheryl V. Gonzaga**, receptionist of the said taxpayer for the reason that the subject addressee is not physically present to personally acknowledge receipt of the FAN".

Considering that it was not petitioner but a certain Ms. Sheryl Gonzaga who received the subject FLD/FAN, there is no doubt that RO Acenas resorted to substituted service. Unfortunately, while the testimony of RO Acenas and the Affidavit of Service showed that the FLD/FAN was indeed served to Ms. Sheryl Gonzaga, the same, however, fell short in proving that RO Acenas complied with the conditions in effectuating substituted service as mandated by Section 3.1.6

[4] G.R. No. 242670, May 10, 2021.
[5] *Commissioner of Internal Revenue v. Unioil Corp.*, G.R. No. 204405, August 4, 2021.
[6] *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*, G.R. No. 249540, February 28, 2024.
[7] Docket, Exhibit "R-37", Q&A Nos. 20 and 23, p. 762.
[8] BIR Records, Exhibit "R-16", p. 144.

(ii) Revenue Regulations (RR) No. 12-99,[9] as amended by RR No. 18-2013,[10] to wit:

> "3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) x x x
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) **Substituted service can be resorted to when the party is not present at the registered or known address** under the following circumstances:
>
> **The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.**" *(Emphases and underscoring added)*

Based above, substituted service may be resorted to when the party is not present at the registered address by leaving the notice at the party's registered address with the clerk or person having charge thereof. In the present case, when RO Acenas was asked clarificatory question if there was any proof of authority of Ms. Sheryl Gonzaga, he answered "As far as I can recall Your Honor, *hindi ko po* ... I cannot remember the authorization".[11] He further confirmed that Ms. Sheryl Gonzaga's authority to act does not appear in the list of documents identified by him.[12]

Moreover, respondent also failed to dispute the testimony of petitioner's witness, Ms. Charmelle I. Panadero,[13] that Ms. Sheryl Gonzaga is not an employee of petitioner, but a receptionist of JMT Corporate Condo. As such, it cannot be concluded with certainty that receiving of papers or communication letters for and in behalf of petitioner is part of Ms. Sheryl Gonzaga's responsibility as receptionist of the entire building. As such, respondent failed to prove that the FLD/FAN was actually or constructively served to petitioner's clerk or person having charge of its office, pursuant to Section 3.1.6 (ii) RR No. 12-99, as amended by RR No. 18-2013. Correspondingly, the assessments were not properly served to petitioner thereby resulting in violation of its right to due process of law.

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9 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

10 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

11 Transcript of Stenographic Notes (TSN) during the hearing held on January 18, 2024, p. 6.

12 *Id.*

13 TSN during the hearing held on October 27, 2021, p. 24.

With regard to respondent's argument that that RMO No. 8-2006 mandates the issuance of only one (1) LOA to the same taxpayer per taxable year, suffice it to state that this matter has already been clarified by no less than the Supreme Court in *Republic of the Philippines v. Robiegie Corporation*,[14] in this wise:

> "**Clearly, the 'one LOA per taxable year' rule is not as ironclad as the Republic portrays it to be**. Part IV.D., Item 2 of RMO No. 8-2006 authorizes the issuance of duplicate LOAs, subject to the CIR's discretion to determine which of the two LOAs shall prevail. **Obviously, when a tax investigation is reassigned to a different RO pursuant to the mandatory 'rotation' of assessment officers under Section 17 of the NIRC, or for any other legally justified reason, the CIR or his/her duly authorized representatives may issue a new LOA to the newly assigned RO, and such LOA can be made to prevail over the LOA issued to the previous investigating officer. Since the CIR's power to issue a LOA is delegable, the concomitant power to uphold the validity of a subsequently issued duplicate LOA is likewise delegable to the CIR's duly authorized representatives, as enumerated in RMO No. 43-90. Stated differently, RMO No. 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is necessitated by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation.** The BIR official who will issue the new LOA also has the power to make it prevail over the old, previously issued LOA, subject of course to the control and regulation of the CIR as statutorily designated tax investigator. It must be noted that Section 13 of the NIRC, in providing for the LOA as the mode of delegation of the CIR's investigatory powers to the ROs, likewise gave the CIR the power to regulate and define the parameters for the issuance of LOAs. The 'one LOA per taxable year' rule under RMO Nos. 8-2006 and 43-90 is an example of such regulation; and such regulation is only valid insofar as it is consistent with the provisions of the NIRC." (*Emphases* supplied)

Evidently, there is no prohibition for the issuance of a new LOA within the same taxable period if such new LOA is necessitated by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation.

Also, in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[15] the Supreme Court settled the issue that the MOA, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer, as the same 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 merely for

[14] G.R. No. 260261, October 3, 2022.
[15] G.R. No. 242670, May 10, 2021.

the purpose of reassignment and transfer of cases of revenue officers. While it is true that the service of a copy of a MOA, 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 practice of reassigning or transferring revenue officers originally named in the LOA and 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 respondent or his duly authorized representative. Consequently, continuing the audit or investigation through a MOA, referral memorandum, or any equivalent document, without a separate or amended LOA, would not only result to non-compliance with existing BIR rules and regulations, but would also violate the taxpayer's right to due process in tax audit or investigation.[16]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to reverse or modify the conclusions reached in the Decision promulgated on April 3, 2025.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision dated 3 April 2025) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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16 *Id.*