REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

VMC FARMERS MULTI-PURPOSE COOPERATIVE,
Respondent.

CTA EB No. 2856
(CTA Case No. 9859)

Present:

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

Promulgated:
DEC 10 2025 1:50 pm

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DECISION

FERRER-FLORES, J.:

The **Petition for Review**[1] filed by **Commissioner of Internal Revenue (CIR)** on February 19, 2024 seeks the nullification of the Decision promulgated on October 4, 2023 (assailed Decision),[2] and the Resolution dated January 9, 2024 (assailed Resolution)[3] in CTA Case No. 9859, whereby the Special Second Division of this Court (Court in Division) granted respondent's *Petition for Review* and ordered the setting aside of the Decision dated May 9, 2018 issued by petitioner and the cancellation and withdrawal of Assessment Notices and Final Decision on Disputed Assessment for taxable year (TY) 2006 for being null and void. The Court in Division further

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[1] *Rollo*, pp. 7 to 20.

[2] *Id. at* 28 to 59. Penned by Associate Justice Lanee S. Cui-David and concurred in by Associate Justice Jean Marie A. Bacorro-Villena.

[3] *Rollo*, pp. 61 to 64.

enjoined petitioner, his representatives, agents, or any person acting on his behalf from proceeding with the collection of the deficiency taxes against respondent.

The dispositive portions of the assailed Decision and the assailed Resolution read as follows:

Assailed Decision:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**. The Decision dated May 9, 2018 issued by the Commissioner of Internal Revenue is **SET ASIDE**. Accordingly, the (a) Assessment Notices with Nos. FDDA-00014-2018, FDDA-00015-2018, and FDDA-00016-2018, all dated June 28, 2018; and the (b) Assessment Notices with Nos. 00035-2011, 00036-2011, 00037-2011, and 00038-2011, all dated January 14, 2011, both for taxable year 2006, are **CANCELLED** and **WITHDRAWN** for being null and void.
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> Further, respondent Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are **ENJOINED** from proceeding with the collection of the said deficiency taxes against petitioner during the pendency of the instant case.
>
> **SO ORDERED**.

Assailed Resolution:

> **WHEREFORE**, respondent's *Motion for Reconsideration (Re: Decision dated 4 October 2023)* is **DENIED** for lack of merit.
>
> **SO ORDERED**.

PARTIES OF THE CASE[4]

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.

Respondent **VMC Famers Multi-Purpose Cooperative** is a duly organized multi-purpose cooperative registered with the Cooperative Development Authority (CDA).

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[4] Parties, *Petition for Review*, *Rollo*, p. 8.

FACTUAL ANTECEDENTS

The facts as narrated by the Court in Division are as follows: [5]

A Letter of Authority (LOA) No. 2007-00029059 dated June 13, 2008 was issued authorizing Revenue Officer (RO) Cecil Rey F. Panelo (RO Panelo) and Group Supervisor (GS) Ma. Theresa P. Eltanal (GS Eltanal) of Revenue District Office No. 77-Bacolod City (RDO No. 77) to examine petitioner's [herein respondent's] books of accounts and other accounting records for income and all other internal revenue taxes for the period from January 1, 2006 to December 31, 2006. The LOA was received by petitioner's [herein respondent's] General Manager Emilio B. Monfort on June 17, 2008.

A Notice of Informal Conference dated March 2, 2009 was issued and served to petitioner [herein respondent]. Thereafter, an Amended Notice of Informal Conference dated January 15, 2010 was issued.

On August 25, 2009, a Memorandum of Assignment (MOA) was issued to RO Rowela B. Alacapa (RO Alacapa) by Revenue District Officer of RDO No. 77, Lilivic Minguez-Gatdula (RDO Minguez-Gatdula) for the investigation of internal tax liabilities of petitioner [herein respondent] for TY 2006 under LOA No. 2007-00029059 in view of RO Panelo's transfer to RDO No. 74-Iloilo City.

In an undated Memorandum addressed to the Regional Director of Revenue Region (RR) No. 12, RO Alacapa forwarded her findings to the Assessment Division for appropriate action.

On December 15, 2010, a Preliminary Assessment Notice (PAN) with Details of Discrepancies prepared by RO Guia Marie J. Desuyo (RO Desuyo) was issued against petitioner [herein respondent] for TY 2006.

The Formal Letter of Demand (FLD) with attached Details of Discrepancies prepared by RO Desuyo, and Audit Results/Assessment Notices (FAN), all dated January 14, 2011, were issued against petitioner [herein respondent] for deficiency VAT, EWT and compromise penalties. Petitioner [herein respondent] received the FLD/FAN on February 11, 2011.

On March 4, 2011, petitioner [herein respondent] filed with the Office of the Regional Director of RR No. 12 a letter of protest dated March 2, 2011 assailing the FLD/FAN on the grounds that it is exempt from payment of all internal revenue taxes, including VAT, on the sale of its refined sugar; that there is no provision in the National Internal Revenue Code (NIRC) of 1997, as amended, imposing tax before the sale of refined sugar; and, that the Director's fee has not been approved nor released by the Board of Directors during TY 2006.

On October 3, 2013, petitioner [herein respondent] received the letter dated September 24, 2013 issued by the Regional Director of RR No. 12, Perfecto L. Aranas denying petitioner's [herein respondent's] protest and

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[5] The Facts and the Proceedings, Decision dated October 4, 2023, *Rollo*, pp. 29 to 39. Citations and italics omitted.

stating that petitioner [herein respondent] was liable to pay advance VAT for the following reasons:

> a. BIR Ruling No. ECCP-012-2001, granting petitioner [herein respondent] tax exempt status, is null and void due to misinterpretation committed by petitioner [herein respondent] that it was transacting business with members only.
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> b. Petitioner [herein respondent] is not the owner/producer of the sugar as shown by the sugar quedans which are not in the name of the cooperative in violation of RR No. 29-2002, as amended.
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> c. On withholding taxes, petitioner [herein respondent] failed to submit supporting documents within 60 days, as provided under Section 3.15 of Revenue Regulations No. 12-99, dated September 6, 1999.

On October 24, 2013, petitioner [herein respondent] filed an Administrative Appeal before respondent [herein petitioner] on the grounds that petitioner [herein respondent] is a duly registered cooperative exempt from paying VAT, and that the assessment made was null and void for having been issued beyond the three-year prescriptive period as provided in Section 203 of the NIRC of 1997, as amended.

On May 9, 2018, respondent [herein petitioner] issued the assailed Decision, which petitioner [herein respondent] received on May 22, 2018, the dispositive portion of which reads:

> IN VIEW THEREOF, the assailed Final Decision on the Disputed Assessment with respect to the amounts of P164,268,558.59, P18,440,663.40, P484,385.23 and P80,000.00 representing advance VAT on Sale of Refined Sugar, VAT on Sale of General Merchandise and Diesel Fuel, EWT and Compromise Penalty, respectively, including its corresponding compromise penalties for the taxable year 2006, is hereby CANCELLED and MODIFIED.
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> The assessment in the amount of P18,440,663.40 representing VAT on Sale of General Merchandise and Diesel Fuel including the corresponding compromise penalty in the amount of P25,000.00 is CANCELLED and WITHDRAWN. The assessment for expanded withholding tax, except those pertaining to Director's Fee, including the corresponding compromise penalties in the total amount of P30,000.00 is likewise CANCELLED as VMCFMPC already paid the same. Consequently, the Assistant Commissioner, Collection Service, is hereby ordered to issue the corresponding Authority to Cancel Assessment (ATCA) covering the above deficiency assessment against VMCFMPC.

> However, the assessment in the amount of P164,268,558.59, P182,790.00, P25,000.00 representing advance VAT on Sale of Refined Sugar, EWT on Director's Fee, and Compromise Penalty for failure to pay VAT due on the sale of refined sugar is hereby AFFIRMED. Consequently, VMC FARMERS MULTI-PURPOSE COOPERATIVE is hereby ordered to pay the aforestated amounts, plus increments that have been accrued thereon until the actual date of payment, to the Collection Service, BIR National Office, Diliman, Quezon City; otherwise, collection thereof will be effected through the summary remedies provided by law.
>
> This constitutes the Final Decision of this Office on the matter.

Respondent filed its *Petition for Review* on June 20, 2018. The Court in Division promulgated the assailed Decision on October 4, 2023. On October 24, 2023, petitioner filed a *Motion for Reconsideration (Re: Decision dated 4 October 2023)*, to which respondent filed its *Comment /Opposition (Re: Respondent's Motion for Reconsideration)* on November 20, 2023.

The Court *a quo* promulgated the assailed Resolution on January 9, 2024.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On February 2, 2024, petitioner filed a *Motion for Extension to File Petition for Review*.[6]

The instant *Petition for Review* was filed on February 19, 2024.[7] Respondent filed its *Comment to the Petition for Review* on May 20, 2024.[8]

On July 5, 2024, the instant case was referred to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation.[9] The parties, however, decided not to have their case mediated by the PMC-CTA.[10]

Thus, on November 19, 2024, the instant case was submitted for decision.[11]

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[6] *Rollo*, pp. 1 to 4.
[7] *Id.* at 7 to 21.
[8] *Id.* at 69 to 97.
[9] *Id.* at 100.
[10] *Id.* at 103.
[11] *Id.* at 104.

ISSUES[12]

Petitioner raised the following assignment of errors:

1. The Honorable Court in Division erred in ruling that the assessments are void because the Revenue Officers (ROs) who continued the conduct of the audit were allegedly not authorized through a Letter of Authority (LOA).

2. The Honorable Court in Division erred in ruling that petitioner's assessment lacks factual and legal bases and respondent is not liable for the assessed deficiency taxes.

3. The Honorable Court in Division erred in ruling that petitioner's right to assess has prescribed.

ARGUMENTS

Petitioner submits that the RO who continued the conduct of the assessment is authorized pursuant to the LOA issued. He argues that, pursuant to Revenue Memorandum Order (RMO) No. 8-2006, which prescribes the guidelines and procedures in the implementation of the Letter of Authority Monitoring Systems (LAMS), in cases of reassignment, a memorandum shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or Group Supervisor (GS). Petitioner reiterates that the Memorandum of Assignment (MOA) issued to the new RO to continue the audit of respondent's books derived its authority from the original LOA initially issued. Regardless of the transfer of the RO, the jurisdiction to conduct the audit remains with the office having jurisdiction over the subject taxpayer.

Petitioner likewise contends that his assessment has legal and factual bases, and respondent is liable for the assessed deficiency taxes. He alleges that respondent was sufficiently informed of the factual and legal bases of the assessment and due process was dutifully observed. Petitioner avers that respondent is not the owner/producer of the sugar quedans, which is in violation of Revenue Regulations (RR) No. 29-2002, as amended. Allegedly, some of the quedans were in the name of the individual member-planter while others are in the name of respondent but show different Plantation Audit Numbers (PLANs) and Taxpayer Identification Numbers (TINs). For petitioner, this only proves that these quedans are not owned by respondent but by its members. Hence, it posits that respondent must prove that the quedans were under its name.

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[12] *Id.* at 10.

Finally, petitioner asserts that his right to assess respondent for deficiency taxes for TY 2006 has not yet prescribed because it did not file a single Value-Added Tax (VAT) return. Thus, the reckoning point for prescription of assessment shall be at the time of discovery of respondent's failure to file a return and assessment may be issued within 10 years from said discovery.

Respondent, on the other hand, maintains that the assessments are void because the ROs who continued the conduct of the audit were allegedly not authorized through an LOA. Respondent claims that the assessment also lacks legal and factual bases; thus, it is not liable for the assessed deficiency taxes. Respondent highlights petitioner's failure to show proof that the quedans are owned by the member-planters and merely relied on the BIR Records without presenting to the Court any single quedan. Respondent rather insists that it presented evidence to prove that the quedans are in the name of the cooperative and it was issued the corresponding Authorization Allowing the Release of Refined Sugar (AARRS), without the need of paying the VAT, which are public records and were submitted to and approved by petitioner through the Regional Director, Revenue District Officer and the RO.

Respondent emphasizes that its non-filing of a VAT return is not sufficient proof of any intention to defraud the government, which will warrant the application of the 10-year prescriptive period for the BIR to assess. Thus, considering that the FLD/FAN was issued by petitioner only on January 11, 2011, the BIR's right to assess respondent had already lapsed.

Lastly, respondent asseverates that it is not liable for advance VAT and ultimately to VAT. As it was not disputed that respondent is a farmer's cooperative with a certificate of good standing from the CDA and a holder of an approved ruling ECP-012-2001 stating that it is tax exempt and that it is not liable for payment of VAT, the withdrawal of sugar by respondent from the mill is exempt from the payment of advance VAT and ultimately VAT in accordance with Section 109(L) of the National Internal Revenue Code (NIRC) of 1997, as amended.

RULING OF THE COURT IN DIVISION

In granting the *Petition for Review*, the Court in Division held that the RO who continued the audit was not authorized by a valid LOA to perform the assessment function; hence, the resulting tax assessment is void *ab initio*. Further, the Court a quo ruled that the assessment lacks legal and factual bases, citing the rulings of the Supreme Court in the case of *Commissioner of Internal Revenue vs. VMC Farmers Multi-Purpose Cooperatives* and

Commissioner of Internal Revenue vs. Negros Consolidate Famers Multi-Purpose Cooperative, which declared that respondent is exempted from payment of VAT including the payment of "advance VAT" upon withdrawal of the refined sugar from the sugar mill. It likewise highlighted petitioner's failure to offer the sugar quedans in evidence which he claims to be not under respondent's name. The Court in Division did not give credit to petitioner's reliance upon the report of the Regional Office, whose concerned officer was not presented to the Court to testify as to the allegations that the quedans were not in the name of respondent.

The Court in Division concluded that the quedans were in respondent's name considering that it submitted request letters to withdraw the refined sugar, attaching thereto the quedans in its name and Sworn Statements, to the Regional Special Task Force - Sugar of Revenue Region No. 12, which led to the issuance of the AARRs.

Finally, the Court *a quo* held that petitioner's right to assess respondent for TY 2006 had already prescribed as the FLD/FAN was issued only on January 11, 2011, which was already beyond the three-year prescriptive period.

Petitioner filed a *Motion for Reconsideration* of the assailed Decision, but was denied for lack of merit.

RULING OF THE COURT *EN BANC*

The Court *En Banc* denies the instant *Petition for Review*.

Timeliness of the Petition for Review

Court records show that petitioner received the assailed Resolution on January 25, 2025. Counting 15 days therefrom, petitioner had until February 9, 2024 within which to file his *Petition for Review* before the Court *En Banc*. On February 2, 2024, petitioner filed a *Motion for Extension to File Petition for Review*[13] requesting for an additional period of 15 days from February 2, 2024, or until February 17, 2024within which to file his *Petition for Review*, which was granted by this Court in a Minute Resolution dated February 6, 2024.[14] On February 19, 2024, petitioner timely filed his *Petition for Review*.[15]

[13] *Rollo*, pp. 1 to 4.
[14] *Id.* at 6.
[15] February 17, 2024 is a Saturday. Supra note 1.

An LOA is required in order for RO Rowela B. Alcapa to continue the audit investigation of books of accounts and other accounting records, and eventually assess respondent.

Petitioner asserts that the RO indicated in the original LOA would not always be able to complete their audit investigation; thus, in instances like this, a MOA is issued to other ROs to complete the audit, and their authority is not derived from the MOA, but from the original LOA. The MOA is merely for the continuation of the audit which was already authorized under the LOA.

The Court *En Banc* disagrees.

The Court in Division, in the assailed Decision, extensively discussed the necessity of issuing a separate LOA to the ROs who will continue the investigation, citing the case of *Commissioner of Internal Revenue vs. Mcdonald's Philippines Realty Corp.,* (McDonald's case).[16]

In the said case, the Supreme Court already comprehensively conferred that a new or separate LOA is required to be issued to the substitute RO when reassigning or transferring the case to another RO, to wit:

> **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.
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> C. Revenue Memorandum Order No.
> 43-90 dated September 20, 1990
> Expressly and Specifically Requires the
> Issuance of a New LOA if Revenue
> Officers are Reassigned or Transferred

[16] G.R. No. 242670, May 10, 2021.

Section D (5) of RMO No. 43-90 dated September 20, 1990 provides:

> **Any re-assignment/transfer of cases to another RO(s), 64(64) and revalidation of L/As 65(65) 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.**

The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases. The provision involves the following two separate phrases: "re-assignment/transfer of cases to another RO(s)," on the one hand, and "revalidation of L/As which have already expired," on the other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA. The new LOA must then have a corresponding relevant notation, including the previous LOA number and date of issue of the said LOAs.

The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the law it supposedly implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.

The petitioner is mistaken. Section 291 of the NIRC states:

> SECTION 291. In General. —All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.

Section D (5) of RMO No. 43-90 dated September 20, 1990 is not contrary to or inconsistent with the NIRC. In fact, the NIRC codifies the LOA requirement in RMO No. 43-90. While RMO No. 43-90 was issued under the old tax code, nothing in Section D (5) of RMO No. 43-90 is repugnant to Sections 6 (A), 10 and 13 of the NIRC. Hence, pursuant to Section 291 of the NIRC, RMO No. 43-90 remains effective and applicable.

Even the Operations Group of the BIR now recognizes that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate LOA, is no longer tenable. Thus, in Operations Memorandum No. 2018-02-03 dated February 9, 2018, the Operations Group has decided that "the issuance of a MOA for reassignment of cases in the aforementioned instances [i.e., the original revenue officer's transfer to another office, resignation, retirement, etc.] shall be discontinued." (*Boldfacing ours*)

In this case, RO Alcapa continued the investigation of respondent solely by virtue of the MOA issued by the Revenue District Officer of Revenue

District Office No. 77, Lilivic Minguez-Gatdula for the investigation of respondent's books of accounts for TY 2006 under LOA No. 2001-00029059, in view of RO Cecil Rey F. Panelo's transfer to RDO No. 74-Iloilo City.

Since no new LOA was issued to RO Alcapa, the assessments were issued pursuant to the audit investigation of an unauthorized RO. As a result, the tax assessments are void *ab initio* and, thus, bear no valid fruit. Accordingly, the FLD/FAN is null and void and the FDDA is without force and effect. Consequently, the Court in Division did not err in granting respondent's *Petition for Review* and thereby cancelling the assessment of petitioner for TY 2006.

The Court in Division correctly held that the assessment lacks factual and legal bases and petitioner's right to assess respondent of deficiency VAT had already prescribed.

Petitioner insists that respondent is not the owner/producer of the sugar because the quedans were not under its name, rather in the name of the individual members of the cooperative. Petitioner argues that the Court cannot shift the burden to him to prove such allegations as there is presumption of regularity in the assessment proceedings and the performance of official duties.

The Court in Division has sufficiently addressed said issue. Quoting the case of *Commissioner of Internal Revenue vs. VMC Farmers Multi-Purpose Cooperatives*,[17] the Court *a quo* adopted the ruling of the Supreme Court that respondent is exempted from the payment of VAT including the payment of "advance VAT" upon withdrawal of the refined sugar from the sugar mill.

The Court in Division found that petitioner failed to offer the alleged sugar quedans that are not under the name of respondent. Instead, petitioner merely relied on the alleged findings of the concerned officer from the Regional Office. The alleged sugar quedans not under the name of respondent were not found in the BIR Records submitted to the Court. Further, the concerned officer who investigated respondent was not presented as witness.

Finally, the Court gives credit to the ruling of the Court in Division that the fact that respondent was issued AARRs under its name, establishes that it requested said document and presented supporting documents under its name

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[17] G.R. No. 225239 (Notice), February 12, 2020.

and not under the names of its members. Clearly, there is no basis for petitioner to assess respondent for deficiency VAT when it is clearly exempted.

As fittingly found by the Court in Division, petitioner only had three years from the last day of the filing of the VAT return or even from the issuance of the AARRs in 2006 to assess petitioner, yet, the FLD/FAN was only issued on January 11, 2011.

Consequently, this Court finds no reason to grant the instant *Petition for Review*.

WHEREFORE, in view of the foregoing, the **Petition for Review** filed on February 19, 2024 is **DENIED** for lack of merit. Accordingly, the assailed Decision and the assailed Resolution are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

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
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice