REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

GLOBAL FRESH PRODUCTS INC.,
Respondent.

CTA EB NO. **2392**
(CTA Case No. 9718)

Present:

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

Promulgated: DEC 15 2022 4:15pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration (RE: Decision Promulgated on June 30, 2022)"[1] (**MR**) filed on 21 July 2022[2], with respondent Global Fresh Products Inc.'s (**respondent**'s/**GFPI**'s) "Comment (to Petitioner's Motion for Reconsideration)"[3] (**Comment**), filed on 08 September 2022.

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1 *Rollo*, pp. 124-136.
2 Received by the Court on 02 August 2022.
3 *Rollo*, pp. 142-148.

Petitioner seeks the reversal of the Court *En Banc*'s Decision in the above-captioned case dated 30 June 2022[4] (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 30 June 2020 and 30 October 2020, respectively, in CTA Case No. 9718, entitled *Global Fresh Products Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.
>
> Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** from collecting or taking further action on the subject deficiency taxes assessed against respondent Global Fresh Products Inc. as provided in the Assessment Notices and the Formal Assessment Notice, all dated 13 January 2017, in the aggregate amount of ₱91,625,615.90 for the taxable year 2013.
>
> **SO ORDERED.**
>
> ...

In the present MR, petitioner insists that the Court *En Banc* erred in upholding the Third Division's ruling that the subject assessment for deficiency taxes is void because Revenue Officer (**RO**) Villaflor A. Lagundi (**Lagundi**), who conducted the audit of respondent's books of accounts, was not duly authorized through a Letter of Authority (**LOA**).

Petitioner once again argues that RO Lagundi was validly authorized through a Memorandum of Assignment (**MOA**) pursuant to the guidelines and procedures under Item D(1), Part IV (Guidelines) of Revenue Memorandum Order (**RMO**) No. 8-2006[5], which states that "[o]nly one (1) LA shall be issued to the same taxpayer, for the same tax type and period", and Item 8 of RMO No. 69-2010[6], which states that a manual serially-numbered MOA shall be issued for "[r]eassignment for the continuation of the audit/investigation of a case to another RO due to resignation/retirement/transfer of the original RO".

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4 Id., pp. 81-110, with Associate Justice Ma. Belen M. Ringpis-Liban's Separate Concurring Opinion.

5 *Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).*

6 *Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.*

According to petitioner, the foregoing should be construed to mean that there is no need for the issuance of a subsequent LOA authorizing RO Lagundi. Since a valid LOA has already been issued for the audit of respondent's books of accounts and other accounting records for the taxable year (**TY**) 2013, the issuance of an MOA authorizing RO Lagundi and referring to the said LOA should suffice.

Petitioner further maintains that respondent's right to due process was not violated as it was given notice and the opportunity to present its side when it was able to protest the Formal Assessment Notice[7] (**FAN**) and submit additional documents in support thereof. Respondent should thus be considered to have waived its right to file a protest to the Preliminary Assessment Notice[8] (**PAN**) when it opted to just file a protest to the FAN.

Respondent, in its Comment[9], points out that the Court *En Banc* has already extensively and categorically passed upon petitioner's issues in the assailed Decision. Moreover, even the Court's Third Division has resolved these similar issues in its Decision and Resolution dated 30 June 2020[10] and 30 October 2020[11], respectively.

We rule below.

A reading of the subject MR reveals that petitioner raised no new issues or arguments that the Court, either in Division or sitting *En Banc*, did not consider or resolve. Accordingly, there is no compelling reason for the Court *En Banc* to modify, much more, to reverse the assailed Decision.

Nonetheless, for emphasis, the Court *En Banc* shall briefly discuss and reiterate its reasons for the denial of petitioner's Petition for Review[12] and the consequent affirmation of the Third Division's Decision and Resolution dated 30 June 2020[13] and 30 October 2020[14], respectively.

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7 Exhibit "P-38" to "P-38-A", Division Docket, pp. 246-250.
8 Exhibit "P-32", id., pp. 234-240.
9 Supra at note 3.
10 Division Docket, pp. 353-377, with Associate Justice Ma. Belen M. Ringpis-Liban's Separate Concurring Opinion.
11 Id., pp. 401-402.
12 Filed on 18 December 2020, *Rollo*, pp. 7-60, with annexes.
13 Supra at note 10.

In this case, it was found that the RO named under LOA SN: eLA201200036576[15] dated 08 December 2015 was different from the one who actually examined respondent's books of account and other accounting records for TY 2013. Petitioner, however, rests the authority of RO Lagundi, who audited respondent's books of accounts, on MOA No. MOA0442015LOA-00136[16], which was issued by then Revenue District Officer Florante R. Aninag (**RDO Aninag**) of RDO No. 044 – Taguig-Pateros.

As explained in the assailed Decision, RMO No. 43-90[17], which is still a valid administrative issuance despite its issuance seven (7) years prior to the enactment of the National Internal Revenue Code (**NIRC**) of 1997, as amended, clearly requires the issuance of a new LOA in cases of reassignment/transfer of cases to another RO. RMO No. 43-90 was not impliedly repealed by the passage of the NIRC of 1997, as amended, as there exists no irreconcilable inconsistency between their respective provisions, such that they cannot be reconciled or harmonized without nullifying one of them. In fact, the NIRC of 1997, as amended, codifies the LOA requirement in RMO No. 43-90.

The fact that RMO No. 43-90[18] is still a valid rule is further evident from the recent Supreme Court decisions[19] guided by RMO No. 43-90.

On another point, while We agree with petitioner that RMO No. 8-2006[20] authorizes the head of the investigating office to issue a MOA in case of reassignment, still, We are not prepared to hold that said MOA validly clothes RO Lagundi with authority to conduct the audit or investigation of respondent's books of account and other accounting records in the absence of an LOA, as required by law.

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14 Supra at note 11.

15 Exhibit "R-2", BIR Records, p. 112.

16 Exhibit "R-1", id., p. 118.

17 *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated 20 September 1990.*

18 Id.

19 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue,* G.R. No. 241848, 14 May 2021; *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, 10 May 2021; *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017; *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. No. 196596, 09 November 2016; and, *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

20 Supra at note 5.

It bears to emphasize that RMO No. 8-2006[21] does not state that such MOA would be a substitute for the LOA required under Section 13[22] of the NIRC of 1997, as amended. As aptly held in *Commissioner of Internal Revenue v. Composite Materials, Inc.*:[23]

> ...
>
> **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 an LOA, the assessment or examination is a nullity.**
>
> Here, the CTA en banc found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> **Moreover, the Court agrees with the CTA en banc that the 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.
>
> ...

Aside from the fact that no LOA was issued in favor of RO Lagundi, who actually conducted the audit, the MOA subject of this case was only signed by then RDO Aninag of RDO No. 044 – Taguig-Pateros, which is *not* compliant with the requirements of Sections 6(A)[24], 10(C)[25] and 13[26] of the NIRC of 1997, as amended, in relation to

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21 Supra at note 5.

22 **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.

23 G.R. No. 238352, 12 September 2018 (Resolution); Citations omitted and emphasis supplied.

24 **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -

Item D.4[27] of RMO No. 43-90. The latter RMO effectively provides that only the Regional Directors, the Deputy Commissioners, petitioner (as the CIR), and other officials (but only upon prior authorization by the CIR) are authorized to issue and sign LOAs.

Here, RO Lagundi was not authorized by a new LOA to conduct an audit of respondent's books of accounts for TY 2013. The importance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the RO is tantamount to the absence of an LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.

With respect to petitioner's contention that respondent should be considered to have waived its right to file a protest to the PAN[28] when it opted to just file a protest to the FAN[29], the same is likewise untenable. In so arguing, petitioner would have us overlook the fact that the FAN[30] was issued prematurely, *i.e.*, prior to respondent's receipt of the PAN[31] and the lapse of the fifteen (15)-day period for respondent to file a protest against the PAN.

(A) 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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

...

25 **SEC. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...

(c) Issue Letters of Authority for the examination of taxpayers within the region[.]

...

26 **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.

27 D. Preparation and issuance of L/As.

...

4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

28 Supra at note 8.

29 Supra at note 7.

30 Supra at note 7.

31 Supra at note 8.

To reiterate, the issuance of the PAN, as well as giving the taxpayer 15 days from receipt of such PAN to respond thereto, is part of due process in the issuance of tax assessments. The CIR or his/her duly authorized representative is duty-bound to wait for the expiration of the 15-day period from receipt of the PAN before issuing the FAN.

In this case, records show that petitioner issued the FAN[32] on **13 January 2017** prior to respondent's receipt of the PAN (dated 28 December 2016)[33] on **17 January 2017** and the lapse of the mandatory 15-day period granted to respondent to reply to the PAN. Even as respondent was able to file a protest against the FAN, the fact remains that respondent was deprived of the opportunity to be heard on the PAN, in clear violation of the due process requirement in the issuance of tax assessments laid down under Section 3[34] of Revenue Regulations (**RR**) No. 12-99[35], as amended by RR No. 18-2013.[36]

In sum, the Court *En Banc* finds no cogent reason to modify or disturb the assailed Decision.

WHEREFORE, with the foregoing, petitioner's "Motion for Reconsideration (RE: Decision Promulgated on June 30, 2022)", filed on 21 July 2022, is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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32 Supra at note 7.
33 Supra at note 8.
34 **SEC. 3.** *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —*
35 *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.*
36 *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice