REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SELLERY PHILS. ENTERPRISES INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10049

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

Promulgated:

NOV 13 2023 11:15 AM

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RESOLUTION

For resolution is respondent's *Motion for Reconsideration (Notice of Decision promulgated on May 24, 2022) [sic]* filed on September 21, 2023, with petitioner's *Comment (To Respondent's Motion for Reconsideration dated 18 September 2023)* filed on October 11, 2023. Respondent assails the Decision dated September 6, 2023 (assailed Decision), which disposed of the case as follows:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**. Accordingly, the Warrant of Distraint and/or Levy dated December 18, 2018, the Formal Letter of Demand, and the Assessment Notice both issued on December 6, 2017, assessing petitioner for deficiency Value-Added Tax in the amount of ₱1,676,905.88 for taxable year 2014, are **CANCELLED** and **SET ASIDE** for being null and void.
>
> Further, respondent Commissioner of Internal Revenue, his authorized representatives, agents, or any person acting on his behalf are **ENJOINED** from taking any further action against petitioner Sellery Phils. Enterprises Inc. and from enforcing the collection of the foregoing assessment. This Order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.
>
> **SO ORDERED**.

Respondent argues that the assessment should be accorded with the presumption of regularity since no allegations were made or evidence presented that Revenue Officer (RO) Cristina Yu failed to perform her duty or she committed abuses in the course of the performance of her duty during the audit process.

Respondent adds that canceling the assessment due to technicalities will add up to the already big revenue losses of the government.

Respondent claims that the assigned RO exerted efforts to serve the assessment to another known address of petitioner but to no avail. If petitioner is willing to pay what is due from it, it must also inform the BIR where they can be found after they abandoned their registered address. Otherwise, it makes it physically impossible for the assigned RO to serve the assessment personally. Since petitioner cannot be found at its registered address, respondent served the assessment by substituted service through registered mail.

In contrast, petitioner contends that RO Yu, who assessed petitioner, was not armed with an LOA. The MOA issued to her is not the same as a valid LOA. Petitioner argues that an assessment without a valid LOA is not a mere technicality as it violates the taxpayer's right to due process.

Petitioner further argues that its denial of receipt of the PAN and the FLD/FAN shifted to respondent the burden of proof to establish the contrary. However, respondent failed to establish by competent evidence that petitioner received the assessment notices. Respondent cannot insist that the assessment was accorded with the presumption of regularity. As a mere presumption, it cannot be made to rest on another presumption. Hence, petitioner's non-receipt of the PAN and the FLD/FAN leads to the conclusion that the assessment never attained finality and would render it and the resulting WDL void.

Respondent's motion is without merit.

As discussed by this Court in the assailed Decision, the lack of a valid LOA designating RO Yu to examine petitioner's books of accounts renders the assessment void for violation of petitioner's right to due process.[1] Likewise, respondent failed to prove that petitioner received the assessment notices.

Given the foregoing, the Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premised considered, respondent's *Motion for Reconsideration (Notice of Decision promulgated on May 24, 2022), [sic]* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[1] *Republic v. Robiegie Corporation*, G.R. No. 260261, October 3, 2022; *Himlayang Filipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021; *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021; *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017; *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.