REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

ZENOREX MARKETING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10175**

Members:

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

Promulgated:
JAN 2 4 2024 10:20 AM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s) "Motion for Reconsideration"[1] (**MR**) filed *via* registered mail on 25 July 2023[2], with petitioner Zenorex Marketing Corporation's (**petitioner**'s) "Opposition (Re: Respondent Commissioner of Internal Revenue's Motion for Reconsideration dated July 25, 2023)" (**Opposition**) filed on 14 August 2023.[3]

In the MR, respondent seeks to reverse the Court's ruling in the Decision dated 10 July 2023[4] (**assailed Decision**) which cancelled and set aside the deficiency assessments against petitioner, *viz*:

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1 Division Docket, Volume II, pp. 719-727.
2 Received by the Court on 01 August 2023.
3 Division Docket, Volume II, pp. 732-741.
4 Id., pp. 692-718.

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> **WHEREFORE,** in view of all the foregoing, the Petition for Review filed by petitioner Zenorex Marketing Corporation on 01 October 2019 is hereby **GRANTED**. Accordingly, the Final Decision of respondent Commissioner of Internal Revenue dated 15 August 2019 upholding the deficiency Expanded Withholding Tax (**EWT**) and Withholding Tax on Compensation (**WTC**) assessments against petitioner for taxable year 2007 in the aggregate amount of ₱5,366,351.19 is hereby **REVERSED** and **SET ASIDE**. Consequently, respondent or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes arising therefrom.
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> **SO ORDERED.**
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> ...

Respondent's main arguments revolve on the authority of the revenue officers (**ROs**) who conducted the audit. He or she claims that a Letter of Authority (**LOA**) creates a contract of agency between the issuing authorities. In this case, the Regional Director (**RD**) and the ROs named in the LOA. According to respondent, the said contract may be an implied agency where the principal ratifies the agent's acts to become his or her own authorized actions as held in the case of *Benjamin Coronel, et al. v. Florentino Constantino, et al.*[5]

Banking on the said principle, respondent alleges that the authority of RO Raul M. Aquino (**RO Aquino**) and Group Supervisor Celestino Viernes (**GS Viernes**) to conduct an examination of petitioner's books of account for taxable year (**TY**) 2007 was issued pursuant to the original LOA No. 200700048222 dated 25 July 2008.[6] In so declaring, respondent posits that when the RD (who issued the LOA) approved the Memorandum Report[7] of RO Aquino and GS Viernes, an implied agency was created and the ratified acts of the latter are now considered as the RD's own actions. Given the said scenario, respondent maintains that the assessment is valid and thus, petitioner is liable to pay the deficiency tax assessments of ₱5,366,351.19.

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5 G.R. No. 121069, 07 February 2003.
6 Exhibit "R-1", BIR Records, p. 1.
7 Exhibit "R-2", id., pp. 115-116.

Petitioner, on the other hand, insists that the Court did not err in setting aside the assessment on the ground that RO Aquino and GS Viernes had no valid authority to continue the investigation on its books of account for TY 2007.

As to the allegation of agency, petitioner explains that the RD cannot ratify void actions, *i.e.*, RO Aquino and GS Viernes's examinations as they are prohibited by law for lack of a valid LOA. Citing *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[8] (**McDonald's**) and *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*[9] (**Manila Doctors Hospital**), petitioner insists that the Supreme Court requires the issuance of a new LOA for cases of reassignment or transfer of ROs who are not originally named in the LOA. Hence, for respondent's failure to comply with the said requirement, the assessment is void and ineffectual.

We resolve.

An examination of the MR shows that respondent failed to raise any material arguments that would warrant the reversal of Our previous ruling.

At the outset, respondent's allegation that the assessment is valid despite the absence of a new LOA was already passed upon and discussed in the assailed Decision. We cannot emphasize enough the importance of the issuance of a new LOA in cases of reassignment or transfer of the previously assigned ROs in the original LOA. The Supreme Court itself declared rather consistently –

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> In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* (**McDonald's**), the Supreme Court highlighted the importance of issuing a substitute or amended LOA upon transfer or reassignment of ROs in this wise:
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>> ...
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>> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of**

8 G.R. No. 242670, 10 May 2021.

9 G.R. No. 255473, 13 February 2023.

> **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 memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document 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 for the purpose of reassignment and transfer of cases of revenue officers.**
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> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.
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> **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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> ...

Also, in *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*, the Supreme Court further reiterated that only the ROs **actually named** in the LOA are authorized to examine the taxpayer, to wit:

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> ... Likewise, the CTA *EB* correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe [the] revenue officers with authority to examine taxpayers. It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer... In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.
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> ...

Furthermore, as most recently reiterated in *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*:

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> Evidently, contrary to the CIR's argument, if the revenue officers that were previously indicated in a LOA were reassigned or transferred to another case and as such, a new revenue officer will handle the case that was previously assigned to them, the issuance of a new LOA in favor of the new handling revenue officer is required. Therefore, without the new LOA, RO Evangelista was not authorized to conduct the examination and assessment of the tax liabilities of MMS because LOA No. 2007-0034491, dated July 14, 2009, was issued to "RO E. Demadura/J. Macuha and Group Supervisor J. Tabor of the Special Investigation and Division," and not to her.
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> To emphasize, the Court has consistently held that in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual. Hence, as a result of RO Evangelista's lack of authority, the assessment against MMS was therefore void.
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> ...

Applying the above principles to the case at bar, a mere referral letter and an MOA issued by an RDO do not and could not confer authority to RO Aquino and GS Viernes, who were not named in the LOA, to continue the audit or investigation of petitioner's books of accounts for TY 2007. As both are neither authorized through an LOA nor the subordinate official who conferred authority upon them are authorized to do so, their investigation and subsequent assessment of petitioner's tax deficiency could not be sanctioned.

...

With the above, respondent's invocation of implied agency cannot stand against the clear requirement laid down in the rulings afore-cited. As it is, absent a new LOA, the assessment against petitioner is inescapably void.

ACCORDINGLY, respondent Commissioner of Internal Revenue's "Motion for Reconsideration" filed on 25 July 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice