REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Plaintiff,

- versus -

RYAN NEIL ERASMO ALVEZ,
Defendant.

CTA OC No. 020

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
NOV 0 8 2018 1:49 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Complaint for the collection of alleged final and executory assessments filed by plaintiff, Commissioner of Internal Revenue, against defendant, Ryan Neil Erasmo Alvez, on January 29, 2016, seeking that judgment be rendered holding defendant liable to pay deficiency Income Tax, Value Added Tax, Expanded Withholding Tax, inclusive of interests, surcharges and penalties in the aggregate amount of Four Million Two Hundred Ninety Five Thousand Eight Hundred Thirty Nine Pesos and Sixty Two Centavos (₱4,295,839.62)[1] for taxable year 2009.

THE PARTIES

Plaintiff is the duly appointed Commissioner of Internal Revenue ("CIR") vested under appropriate laws with the authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to make assessments, collect taxes, decide, approve

[1] Complaint, CTA Docket, pp. 6 and 13. *m*

and grant tax protests. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

Defendant, Ryan Neil Erasmo Alvez, is of legal age, Filipino and is doing business under the name of Alvera Builders and Construction Supply, which is registered with the Department of Trade and Industry and holds office at Luray 1, Toledo City, Cebu, where he may be served with summons and other court processes.[3]

THE FACTS

A Letter of Authority ("LOA") No. LOA-2000-00025791[4] dated June 25, 2010 was issued by the Bureau of Internal Revenue ("BIR") and was received by defendant on July 27, 2010.[5] The LOA was issued by the Revenue Regional Director of Cebu City, Jose N. Tan, authorizing Revenue Officer Alben Zabala and Group Supervisor Mary Nizalani Arnoco to examine the books of accounts and other accounting records of defendant for taxable year 2009.[6]

Thereafter, an electronic LOA No. eLA201000021108 dated June 30, 2011 was issued by BIR to replace LOA No. LOA-2000-00025781.[7]

On September 23, 2011, Revenue District Officer ("RDO") Rogelio T. Balaga issued a Reassignment Notice authorizing RO Jennifer S. Tenio to continue the examination of plaintiff's books of accounts and other accounting records, which was received by defendant on September 29, 2011.[8]

On October 17, 2011, RDO Rogelio T. Balaga of Revenue District No. 83, Revenue Region No. 13 of the BIR issued a Notice For Informal Conference informing defendant of his tax liabilities for deficiency Income Tax, Expanded Withholding Tax ("EWT"), and Value-Added Tax ("VAT") and requesting him to appear in an informal conference.[9]

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[2] Joint Stipulation of Facts and Issues (JSFI), CTA Docket, p. 130.
[3] Complaint, CTA Docket, p. 7.
[4] Per Exhibit "P-1", it is in fact Letter of Authority No. LOA-2009-00025791.
[5] JSFI, CTA Docket, p. 130; Exhibit "P-1", BIR Records, p. 62.
[6] Exhibit "P-1", BIR Records, p. 62.
[7] JSFI, CTA Docket, p. 131; Exhibit "P-3", BIR Records, p. 65; Per Exhibit "P-1", it is in fact Letter of Authority No. LOA-2009-00025791.
[8] Exhibit "P-5", BIR Records, p. 67.
[9] Exhibit "P-6", BIR Records, p. 82.

On February 28, 2012, Assistant Regional Director Conrado C. Lee issued a Preliminary Assessment Notice ("PAN") and Details of Discrepancies, assessing defendant for deficiency Income Tax, VAT, EWT, and compromise penalties in the total amount of Four Million One Hundred Sixty One Thousand Four Hundred Seventy Eight Pesos and Fifty Eight Centavos (₱4,161,478.58).[10] The PAN with attached Details of Discrepancies were served to defendant via registered mail on March 8, 2012 and received by a certain Carmen Tomarong on March 15, 2012, as evidenced by Registry Receipt No. 12-494.[11]

On May 14, 2012, Assistant Regional Director Conrado C. Lee issued a Formal Letter of Demand ("FLD") together with Details of Discrepancies and Assessment Notices Nos. 83-it-13-2009-2012-05-152, 83-vt-13-2009-2012-05-153, and 83-we-13-2009-2012-05-154, assessing defendant for deficiency Income Tax, VAT, EWT, inclusive of interests, surcharges and penalties in the total amount of Four Million Two Hundred Eighty Thousand Four Hundred Twenty Pesos and Forty Two Centavos (₱4,280,420.42).[12] BIR served the FLD via registered mail and was received by a certain Carmen Tomarong on June 4, 2012, as evidenced by Registry Receipt No. 12-891.[13]

RDO Rogelio T. Balaga proceeded to issue a Preliminary Collection Letter on October 10, 2012 demanding payment of the unpaid tax liabilities within ten (10) days from receipt thereof, with a warning that if the assessed deficiency taxes remain unpaid, BIR shall be constrained to enforce the collection through administrative remedies provided by law.[14] The same was served to defendant via registered mail on October 18, 2012, as evidenced by Registry Receipt No. 595.[15]

RDO Rogelio T. Balaga then issued a Final Notice Before Issuance of Warrant dated October 23, 2012, demanding payment of defendant's deficiency taxes in the total amount of Four Million Two Hundred Ninety Five Thousand Eight Hundred Thirty Nine Pesos and

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[10] Exhibit "P-8", BIR Records, p. 100.
[11] Exhibit "P-8-a", BIR Records, p. 101; offered and admitted as Exhibit "9", CTA Docket, pp. 188 and 231.
[12] Exhibit "P-9", BIR Records, pp. 103-108; offered and admitted as Exhibit "10", CTA Docket, pp. 188 and 231.
[13] Exhibit "P-9-a", BIR Records, p. 103; offered and admitted as Exhibit "11", CTA Docket, pp.189 and 231.
[14] Exhibit "P10", BIR Records, p. 113; offered and admitted as Exhibit "12", CTA Docket pp. 189 and 259.
[15] Exhibit "P-10-a", BIR Records, p. 113; offered and admitted as Exhibit "13", CTA Docket, pp. 189 and 259.

Sixty Two Centavos (₱4,295,839.62), inclusive of interests, surcharges and penalties.[16] The same was served to defendant via registered mail on October 23, 2012, as evidenced by Registry Receipt No. 635.[17]

Plaintiff filed the subject Complaint on January 29, 2016.[18]

On May 17, 2016, defendant filed his Answer claiming that: (i) LOA No. LOA-2009-00025791 dated June 25, 2010 was null and void for having been served to him more than thirty (30) days from the date of its issuance or only on July 27, 2010; (ii) the electronically issued LOA was void as the manual LOA that it sought to replace was void; (iii) the electronically issued LOA was served and received more than thirty (30) days from its issuance; and, (iv) since the LOAs are void, plaintiff's tax assessments are also void.[19]

On August 22, 2016, defendant filed his Pre-Trial Brief,[20] while plaintiff filed his Pre-Trial Brief on November 16, 2016.[21]

On December 27, 2016, the parties filed a Joint Stipulation of Facts and Issues,[22] which was approved by the Court in a Resolution promulgated on January 6, 2017.[23] The Court terminated the Pre-Trial and issued a Pre-Trial Order on February 13, 2017.[24]

During trial, plaintiff presented his evidence. On August 4, 2017, plaintiff filed his "Formal Offer of Evidence",[25] with defendant's "Comments/Objections to the Formal Offer of Evidence" filed on August 31, 2017.[26] Plaintiff's formally offered pieces of evidence were admitted in the Court's Resolution dated February 1, 2018,[27] except for the following:

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[16] Exhibit "P-11", BIR Records, p. 114; offered and admitted as Exhibit "14", CTA Docket, pp. 190 and 259.
[17] Exhibit "P-11-a", BIR Records, p. 114; offered and admitted as Exhibit "15", CTA Docket, pp. 190 & 259.
[18] Complaint, CTA Docket, pp. 6-15.
[19] CTA Docket, pp. 54-55.
[20] CTA Docket, pp. 61-64.
[21] CTA Docket, pp. 81-86.
[22] CTA Docket, pp. 130-133.
[23] CTA Docket, p. 137.
[24] CTA Docket, pp. 153-158.
[25] CTA Docket, pp. 184-194.
[26] CTA Docket, pp. 203-205.
[27] CTA Docket, pp. 231-232.

1. Exhibits "P-17", "P-17-a", "P-19", "P-19-a" for failure to comply with the Judicial Affidavit Rule;

2. Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-12", "P-13", "P-14", "P-15" for failure to identify the same; and,

3. Exhibit "P-16" for failure to specifically describe and identify the exhibit.

On February 20, 2018, plaintiff filed a "Motion for Reconsideration (Re: Resolution dated February 1, 2018)",[28] with defendant's "Opposition to the Motion for Reconsideration (Re: Resolution dated February 1, 2018)" filed on March 26, 2018.[29] In said Opposition, defendant likewise manifested that he was waiving his right to present evidence on his behalf.

On May 21, 2018, the Court promulgated a Resolution granting plaintiff's Motion for Reconsideration and thereby admitting Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-12", "P-13", "P-14", "P-15", "P-17", "P-17-a", "P-19", and "P-19-a."[30]

On July 23, 2018, plaintiff filed his "Memorandum",[31] while the "Memorandum of the Defendant" was filed on September 10, 2018.[32]

The case was submitted for decision on September 18, 2018,[33] hence this decision.

THE ISSUE

In their Joint Stipulation of Facts and Issues,[34] the parties submitted for resolution the **main issue** of whether defendant is liable for deficiency Income Tax, VAT and EWT in the aggregate amount of Four Million Two Hundred Ninety Five Thousand Eight Hundred Thirty Nine Pesos and Sixty Two Centavos (₱4,295,839.62) plus 25% surcharge and 20% deficiency and delinquency interests until fully

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[28] CTA Docket, pp. 234-241.
[29] CTA Docket, pp. 247-250.
[30] CTA Docket, pp. 257-260.
[31] CTA Docket, pp. 281-290.
[32] CTA Docket, pp. 296-311.
[33] CTA Docket, p. 314.
[34] JSFI and Pre-Trial Order, pp. 131 and 154.

paid, pursuant to Sections 248 and 249 of the National Internal Revenue Code ("NIRC") of 1997, as amended and costs suit.[35]

The parties also submitted for resolution the **sub-issue** of whether LOA No. LOA-2009-00025791 dated June 25, 2010 and electronic LOA No. eLA201000021108 dated June 30, 2011 were validly issued.[36]

THE PARTIES' ARGUMENTS

Plaintiff argues that the deficiency tax assessments issued against defendant have already become final, executory and demandable, for failure of defendant to file a protest against the FLD and FAN.[37] Plaintiff claims that the BIR is now empowered to collect delinquent taxes through a civil action pursuant to Section 205 of the NIRC of 1997, as amended.[38]

On the other hand, defendant insists that LOA No. LOA-2009-00025791 dated June 25, 2010, which was issued for the purpose of examining his books of accounts and other accounting records for the year 2009, was null and void for having been served to him beyond the thirty (30)-day period, as provided in the rules. As a consequence thereof, all proceedings and examinations made on the subject account of the defendant are also void.[39]

THE COURT'S RULING

While the Letter of Authority dated June 25, 2010 is void, subsequently issued electronic Letter of Authority dated June 30, 2011 is valid

Defendant argues that the LOA-2009-00025791 dated 25 June 2010 was served to him by the plaintiff beyond the thirty (30)-day period, making the same null and void. Therefore, all proceedings and examinations made thereafter are also void.

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[35] CTA Docket, p. 131.
[36] CTA Docket, p. 154.
[37] CTA Docket, pp. 285-286.
[38] CTA Docket, p. 287.
[39] CTA Docket, pp. 296-311.

Section 13 of the NIRC of 1997, as amended, states that 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.

This was confirmed in Revenue Memorandum Order ("RMO") No. 43-90 dated September 20, 1990, which states that all audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

On March 17, 2000, the BIR issued Revenue Audit Memorandum Order ("RAMO") No. 1-00 which updated the Handbook on Audit Procedures and Techniques. RAMO No. 1-00 illustrates how a revenue officer should conduct his examination:

> "C. Serving of Letter of Authority
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> 2.1 **On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA)** together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else. He should have the proper identification card and should be in proper attire.
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> 2.2 **A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period**.
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> 2.3 **A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated.** The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. **Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on ____ '** on the face of the copy of the Letter of Authority issued." (Emphases supplied)

Pursuant to the afore-mentioned provisions, an LOA must be served to the subject taxpayer within thirty (30) days from the date of issuance, otherwise said LOA will be null and void. The terms "must" and "should", applying the principle of statutory construction, must be given a compulsory meaning and are imperative and mandatory in character.

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In this case, as can be gleaned from the records and as admitted by both parties in their Joint Stipulation of Facts and Issues,[40] **LOA No. LOA-2009-00025791 dated June 25, 2010** was issued by the BIR and was **received by defendant only on July 27, 2010**. This was beyond the thirty (30)-day deadline on July 26, 2010 (July 25, 2010 being a Sunday). Upon confirmation, July 26, 2010 was not declared a holiday despite this being former President Benigno Aquino III's first State of the Nation Address (SONA). **Therefore, LOA No. LOA-2009-00025791 dated June 25, 2010 was void for having been served to defendant beyond the thirty (30)-day period, as mandated by RAMO No. 1-00.**

It must be noted, however, that Revenue Regional Director Jose N. Tan of BIR Revenue Region No. 13 subsequently issued another electronic Letter of Authority No. eLA201000021108 dated June 30, 2011 to replace the Letter of Authority numbered LOA No. LOA-2009-00025791, as admitted by the parties in their Joint Stipulation of Facts and Issues.[41]

Although defendant claims to have received the electronic LOA on September 29, 2011,[42] records show that the electronic LOA was signed and received by defendant's authorized representative, his secretary, Ms. Fe R. Lozada, on July 22, 2011. The Court notes that Ms. Lozada also signed and received other mail matters for defendant such as the Notice for Informal Conference[43] and the Warrant of Distraint and/or Levy.[44]

In fine, the electronic Letter of Authority No. eLA201000021108 dated June 30, 2011, which was issued to replace the Letter of Authority numbered LOA No. LOA-2009-00025791, having been served to defendant within the thirty-day period, is valid.

Revenue Officer who conducted audit of defendant was not authorized by a valid Letter of Authority

While the electronic Letter of Authority No. eLA201000021108 dated June 30, 2011 is valid, the revenue officer who conducted the

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[40] Joint Stipulation of Facts and Issues, CTA Docket, p. 130.
[41] CTA Docket, p. 131.
[42] Judicial Affidavit of Ryan Neil E. Alvez, CTA Docket, p. 146.
[43] BIR Records, p. 82.
[44] BIR Records, pp. 115-117.

audit and examined defendant's books of accounts and records was not the revenue officer named therein.

Records show that the electronic Letter of Authority No. eLA201000021108 dated June 30, 2011 issued by Jose N. Tan in his capacity as Revenue Regional Director, specifically authorized **Revenue Officer ("RO") Alben Zabala and Group Supervisor ("GS") Mary Nizalani Arnoco**, to examine the books of accounts and other accounting records of defendant for all internal revenue taxes for the period January 1, 2009 to December 31, 2009.[45]

On September 23, 2011, a **Reassignment Notice signed by RDO Rogelio T. Balaga**, was sent to defendant informing him that the examination of his internal revenue tax liabilities for the period January 1, 2009 to December 31, 2009 was reassigned to **RO Jennifer S. Tenio**.[46]

The resulting disputed assessment arose from the said Reassignment Notice dated September 23, 2011 issued by plaintiff, through RDO Rogelio T. Balaga. It was RO Tenio who recommended the issuance of the PAN against defendant in her Memorandum dated February 3, 2012, with recommending approval by GS Cathrina D. Laurente.[47] Subsequently, Assistant Regional Director Conrado C. Lee issued a PAN on February 28, 2011, and FLD and Assessment Notices on May 14, 2012.[48]

It is apparent, however, that the authority of RO Tenio to audit defendant's pertinent records for taxable year 2009 emanated, **not from a Letter of Authority issued by plaintiff or the concerned Revenue Regional Director**, but from the **Reassignment Notice issued by RDO Balaga.** As hereafter discussed, an RDO is not vested with authority to issue an LOA.

The importance of an LOA issued by the **CIR or his duly authorized representative** authorizing an RO to conduct the audit cannot be overemphasized as it goes into the issue of the validity of the assessment. In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[49] the Supreme Court declared an assessment void for want of a valid LOA:

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[45] Exhibit "P-3", BIR Records, p. 65.
[46] Exhibit "P-5", BIR Records, p. 67.
[47] Exhibit "P-7", BIR Records, pp. 90-92.
[48] Exhibit "P-9", BIR Records, pp. 103-108.
[49] G.R. No. 183408, July 12, 2017.

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID II IT-98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. **The assessment is void for being issued without valid authority.** Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 1998." (Emphasis supplied)

The Supreme Court's pronouncement in *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[50] on the significance of an LOA on the audit and examination of the taxpayer is also instructive, *viz.*:

> "***The absence of an LOA violated MEDICARD's right to due process***
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> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
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>> 'SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —
>>
>> (A) *Examination of Return 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: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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>> xxx xxx xxx' (Emphasis and underlining ours)
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> **Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory taking, or surveillance

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

among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

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In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:

"Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**." (Emphasis and underlining ours)

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xxx xxx xxx In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void." (Emphases supplied)

To be sure, a BIR officer cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

"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**

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> **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." (Emphases supplied)

RMO No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.
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> xxx xxx xxx
>
> 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**." (Emphases supplied)

RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, requires the issuance of a new LOA:

> "C. Other policies for issuance of L/As.
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> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority.**
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> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As 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**." (Emphases supplied)

Had the Reassignment Notice been accorded the same legal effect as an LOA itself, then RMO No. 43-90 would not have categorically stated that *"revalidation of L/As ... shall require the issuance of a new L/A."* The use of the phrase "*shall require the issuance of new L/A"* emphasizes the mandatory nature of the said requirement. Needless to say, the BIR has the duty of exacting compliance therewith as it has the burden of ensuring that the right of the government to assess and collect tax deficiencies would not be defeated by its failure to comply with its own rules.

In the present case, while the Reassignment Notice cannot be treated as an LOA as precisely, any re-assignment of cases requires the issuance of a new LOA, its fatal infirmity is further highlighted by the fact that it was signed and issued by an RDO and not by the Revenue Regional Director.

The issuance of LOAs is not just a plain ministerial act but calls for the exercise of discretion by the Revenue Regional Director. The authority to issue LOAs which was delegated by the NIRC to the Revenue Regional Director cannot be further delegated to an RDO. Indeed, **there is nothing in the NIRC which gives the Revenue Regional Director the power to delegate his duty of issuing LOAs or substitute another in his place.** On this point, the pronouncement in *NPC Drivers and Mechanics Association (NPC DAMA)* vs. *The National Power Corporation*[51] is instructive, *viz.*:

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. **Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility.**
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> xxx, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:
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>> **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another.**
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> xxx xxx xxx." (Emphases supplied)

[51] G.R. No. 156208, September 26, 2006.

In fine, the necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and consequently, to the validity of the assessments that may be issued after said audit. Here, the absence of a new LOA issued by the Revenue Regional Director authorizing RO Tenio to continue the audit of defendant for taxable year 2009 rendered the assessment void. Being a void assessment, the same bears no fruit[52] and must be slain at sight.

A void ab initio assessment may not be the subject of a lawful execution

In his Complaint, plaintiff alleges that defendant failed to file a timely protest against the PAN, FLD and Assessment Notices, which allegation was not refuted by defendant.

The failure to contest the validity and correctness of a final assessment within the period and in the manner prescribed by law is **generally** fatal. In *Ferdinand R. Marcos II vs. Court of Appeals,*[53] the Supreme Court clarified the consequence of a taxpayer's failure to timely protest an assessment:

> "**Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax.** Any objection against the assessment should have been pursued following the avenue paved in Section 229 (now 228) of the NIRC on protests on assessments of internal revenue taxes." (Boldfacing supplied)

In *Protector's Services, Inc. vs. Court of Appeals,*[54] the Supreme Court upheld the dismissal by the Court of Tax Appeals (CTA) of the taxpayer's appeal for lack of jurisdiction after noting that the latter failed to file a timely protest against the assessment notices. It further clarified the consequence of a taxpayer's failure to timely protest an assessment:

> "We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for a reinvestigation. **From December 10, 1987 to January 12, 1988, thirty-three days had lapsed. Thereafter petitioner may no longer dispute the correctness of the**

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[52] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.
[53] G.R. No. 120880, June 5, 1997.
[54] G.R. No. 118176, April 12, 2000.

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> **assessments. Hence, in our view, the CTA correctly dismissed the appeal for lack of jurisdiction**." (Boldfacing supplied)

The foregoing, notwithstanding, an assessment **may not be the subject of a lawful execution in situations where such assessment was issued without authority.** Thus, in *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*,[55] the Supreme Court did not **"belabor to discuss the matter of Metro Star's failure to file its protest"** on the ground that **"a void assessment bears no fruit."**

In the present case, the FLD and Assessment Notices issued against defendant are void *ab initio* and without legal effect, as the same have been issued pursuant to an audit conducted by an RO who was not duly authorized to do so through a valid LOA. Despite defendant's failure to protest the **void FLD and Assessment Notices** within thirty (30) days from receipt thereof, **the same does not give rise to an enforceable tax liability against defendant**.

WHEREFORE, premises considered, the subject Complaint is hereby **DENIED**. Accordingly, the Formal Letter of Demand dated May 14, 2012 together with Details of Discrepancies and Formal Assessment Notices Nos. 83-it-13-2009-2012-05-152, 83-vt-13-2009-2012-05-153, and 83-we-13-2009-2012-05-154, assessing defendant for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, inclusive of interests, surcharges and penalties in the total amount of ₱4,280,420.42, and the Final Notice Before Issuance of Warrant dated October 23, 2012, are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[55] G.R. No. 185371, December 8, 2010.

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.

ROMAN G. DEL ROSARIO
Presiding Justice