22-000081-0085

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10783

ZAMBALES DIVERSIFIED METALS CORPORATION,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. FELIX PAUL R. VELASCO III
ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **August 20, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 29, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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ZAMBALES DIVERSIFIED METALS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10783

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

AUG 2 0 2025; 11:30AM

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **Motion for Reconsideration Re: Decision dated 04 April 2025**[1] posted on April 23, 2025 and filed via email on April 24, 2025, with respondent's **Comment (on Respondent's Motion for Reconsideration dated April 23, 2025)**[2] filed personally on June 9, 2025 and via email on June 10, 2025.

Respondent moves for the reversal and setting aside of the Decision dated April 4, 2025[3] (assailed Decision) and prays that a new one be entered denying the petition for lack of merit and ordering petitioner to pay the amount of ₱1,862,746,515.18 representing the alleged deficiency income tax, value-added tax, excise tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, and administrative penalties, surcharges and interest for taxable year 2014, plus 25% surcharge and 20% deficiency and delinquency interest for late payment, pursuant to Section 249(C) of the National Internal Revenue Code (NIRC) of 1997, as amended; and delinquency interest at the rate of 12% per annum from January 1, 2018 until the

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[1] CTA Docket, Volume IV, pp. 2224-2245.
[2] CTA Docket, Volume IV, unpaginated.
[3] CTA Docket, Volume IV, pp. 2203-2223.

amount is fully paid pursuant to Section 249(C) of the NIRC of 1997, in relation to Section 249(A) of the NIRC of 1997, as amended by the Tax Reform for Acceleration and Inclusion (TRAIN) Law.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE,** premises considered, the Petition for Review filed on February 23, 2022 by petitioner Zambales Diversified Metals Corporation is **GRANTED**. Accordingly, the undated Formal Letter of Demand with Details of Discrepancies and Assessment Notices, all dated June 27, 2019, and the Final Decision on Disputed Assessment with Audit Results/Assessment Notices, all dated January 24, 2022 assessing petitioner in the total amount of ₱1,862,746,515.18 representing the alleged deficiency income tax, value-added tax, excise tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, and administrative penalties, surcharges and interest for taxable year 2014, are **CANCELLED** and **SET ASIDE** for being void *ab initio*.
>
> The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed alleged deficiency tax assessments subject of the undated Formal Letter of Demand with Details of Discrepancies and Assessment Notices, all dated June 27, 2019, and the Final Decision on Disputed Assessment with Audit Results/Assessment Notices, all dated January 24, 2022, assessing petitioner of deficiency income tax, value-added tax, excise tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, and administrative penalties, surcharges and interest in the aggregate amount of ₱1,862,746,515.18, for taxable year 2014. This decree of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.
>
> **SO ORDERED.**"

In his Motion for Reconsideration, respondent alleges that the Court erred: (i) when it relied on *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corporation,*[4] which was erroneously based on an outdated issuance, specifically Revenue Memorandum Order (RMO) No. 43-90,[5] which predates the provisions of the NIRC of 1997; (ii) in ruling that respondent violated petitioner's right to due process; and, (ii) in addressing a matter that was never raised nor passed upon at the administrative level thereby violating the doctrine of exhaustion of administrative remedies.

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[4] G.R. No. 242670, May 10, 2021.
[5] Re: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

Petitioner submits that the arguments raised by respondent in his Motion are mere reiteration of issues that have already been thoroughly addressed, considered, and definitively resolved by the Court. It prays for the denial of respondent's Motion and raises the following arguments in support of its prayer:

1. RMO No. 43-90, despite its issuance seven (7) years prior to the enactment of the NIRC of 1997, as amended, is still a valid administrative issuance;

2. Petitioner's right to due process was violated by respondent; and,

3. The Court has the power to rule on a related issue even though the same was not raised in the administrative level.

THE COURT'S RULING

After careful evaluation of the parties' arguments, the Court resolves to deny respondent's Motion.

With regard to respondent's position that the applicable issuances in determining authority of the ROs to conduct the audit are RMO No. 8-2006 dated February 1, 2006[6] and RMO No. 44-2010 dated May 12, 2010,[7] the Court finds the same bereft of merit.

In *McDonald's*, which involves an assessment pertaining to taxable year 2006, the Supreme Court categorically held that RMO No. 43-90 – expressly and specifically requiring the issuance of a new Letter of Authority (LOA) in cases of reassignment or transfer of revenue officer (RO) – remains applicable as it is not inconsistent with the provisions of the NIRC of 1997, notwithstanding the latter's subsequent enactment, to wit:

> "**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**
>
> Section D(5) of RMO No. 43-90 dated September 20, 1990 provides:
>
> Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the

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[6] SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)

[7] SUBJECT: Electronic Issuance of Letters of Authority.

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) 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 supplied.)*

Similarly, in *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*[8] and *Commissioner*

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[8] G.R. No. 255473, February 13, 2023.

of Internal Revenue vs. Robigie Corporation,[9] the Supreme Court affirmed the necessity of issuing a new LOA in cases of reassignment or transfer of revenue officers, even though the taxable year involved in both cases was 2008, albeit RMO No. 8-2006 dated February 1, 2006 (which mandates that only one LOA per taxable year can be issued to a taxpayer) was already in effect.

The Supreme Court already clarified in *Robigie* that RMO No. 8-2006 does not prohibit the issuance of a new LOA in cases of reassignment or transfer of ROs, to wit:

> "Clearly, the 'one LOA per taxable year' rule is not as ironclad as the Republic portrays it to be. Part IV.D., Item 2 of RMO No. 8-2006 authorizes the issuance of duplicate LOAs, subject to the CIR's discretion to determine which of the two LOAs shall prevail. Obviously, when a tax investigation is reassigned to a different RO pursuant to the mandatory "rotation" of assessment officers under Section 17 of the NIRC, or for any other legally justified reason, the CIR or his/her duly authorized representatives may issue a new LOA to the newly assigned RO, and such LOA can be made to prevail over the LOA issued to the previous investigating officer. Since the CIR's power to issue a LOA is delegable, the concomitant power to uphold the validity of a subsequently issued duplicate LOA is likewise delegable to the CIR's duly authorized representatives, as enumerated in RMO No. 43-90. **Stated differently, RMO No. 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is necessitated by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation.** The BIR official who will issue the new LOA also has the power to make it prevail over the old, previously issued LOA, subject of course to the control and regulation of the CIR as the statutorily designated tax investigator. It must be noted that Section 13 of the NIRC, in providing for the LOA as the mode of delegation of the CIR's investigatory powers to the ROs, likewise gave the CIR the power to regulate and define the parameters for the issuance of LOAs. The "one LOA per taxable year" rule under RMO Nos. 8-2006 and 43-90 is an example of such a regulation; and such regulation is only valid insofar as it is consistent with the provisions of the NIRC." *(Boldfacing supplied.)*

In sum, absent a compelling justification demonstrating the inapplicability of the clear and categorical ruling in *McDonald's* to the present case, the Court finds no cogent reason why the requirement for the issuance of a valid LOA should not be equally upheld in the present case.

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[9] G.R. No. 260261, October 3, 2022.

Additionally, with respect to the requirement of a valid LOA, respondent argues that petitioner was informed of the identity of the ROs who will continue the audit/ investigation.

Contrary to respondent's assertion, informing petitioner of the identity of the ROs who will continue the audit/ investigation does not dispense with the requirement of an LOA for ROs to be authorized to conduct the audit/ investigation on petitioner. As found in the assailed Decision, no LOA was issued authorizing RO Edalyn Naty T. Dayacap and Group Supervisor Evangeline M. Casipe to conduct the audit/ investigation on petitioner. Thus, the audit/ investigation was legally flawed and the assessments issued are void.

Respondent likewise argues that petitioner was accorded due process since it was: (i) able to participate in the administrative proceedings; and, (ii) afforded real opportunity to refute the assessment.

The violation of petitioner's right to due process was exhaustively addressed and discussed in the assailed Decision.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., and Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*,[10] the Supreme Court held that due process in tax assessments encompasses two (2) fundamental elements: (1) providing taxpayers with a fair and reasonable opportunity to present their case; and, (2) ensuring that the Bureau of Internal Revenue (BIR) gives due consideration to the arguments and evidence submitted by taxpayers.

Failure to comply with the second element renders any explanation ineffective and may lead to wasted time and resources for all parties involved. Thus, it is essential for the BIR to carefully consider the taxpayer's response to the Preliminary Assessment Notice (PAN) before issuing a final assessment rather than proceeding without adequately evaluating those arguments.

As found in the assailed Decision, the Formal Letter of Demand[11] neither referred to petitioner's Reply to the PAN[12] nor addressed the arguments therein. There is also nothing on record which would show

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[10] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[11] Exhibit "P-8", CTA Docket Vol. II, pp. 1251-1254; Exhibit "R-7", BIR Records Folder 1, pp. 579-582.
[12] Exhibit "P-7", CTA Docket Vol. II, pp. 817-832.

that respondent informed petitioner of the reasons for the apparent rejection of its arguments in the Reply to the PAN. Clearly, respondent failed to give due consideration to petitioner's arguments, violating its right to due process.

Anent respondent's argument that the Court erred by addressing a matter that was never raised nor passed upon at the administrative level, in violation of the doctrine of exhaustion of administrative remedies, the same deserves scant consideration.

The Court reiterates that it is not precluded from considering issues and arguments raised by the parties in the petition and answer, albeit the same were not raised before the administrative level specially when said issues and arguments delve into the intrinsic validity of the assessment itself.[13]

All told, the Court finds no cogent reason to warrant a modification or reversal of the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision dated 04 April 2025** is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[13] *Commissioner of Internal Revenue vs. Geniographics Incorporated*, G.R. No. 264572, July 26, 2023; *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.