REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

NANOX PHILIPPINES, INC., Petitioner,	**CTA EB No. 1629** (CTA Case No. 8433)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** OCT 11 2018 4:12 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed by the Nanox Philippines, Inc. on April 24, 2017 against the Commissioner of Internal Revenue,[1] appealing the Decision dated November 24, 2016[2] and the Resolution dated March 2, 2017[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8433, entitled *"Nanox Philippines, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read as follows:

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[1] EB Docket, pp. 9 to 41.

[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred by Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino; EB Docket, pp. 43 to 58.

[3] *Ibid*; EB Docket, pp. 60 to 62.

Decision dated November 24, 2016:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

Resolution dated March 2, 2017:

> "**WHEREFORE**, finding no compelling reason to reverse the ruling of the Court in the assailed Decision, petitioner's Motion for Reconsideration (Re: 24 November 2016 Decision of the Honorable Court of Tax Appeals – Third Division) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Nanox Philippines, Inc. is a corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. A199909352 dated June 15, 1999, the primary purpose of which is to manufacture, process, sell on wholesale basis and export, Liquid Crystal Display (LCD) and fiber optics. It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 202-964-165-000. Petitioner is also a duly registered Clark Special Economic Zone (CSEZ) enterprise and governed by Clark Development Corporation (CDC) rules and regulations.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested under appropriate laws with authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 22, 2007, petitioner received Letter of Authority (LOA) No. 00003651 dated October 4, 2007 from respondent authorizing Revenue Officer (RO) Erlinda M. De Leon and Group

Supervisor Lope N. Tubera to examine its books of accounts and other accounting records for the FY ended March 31, 2007.

Petitioner received a *Notice of Informal Conference* from the Revenue District Office (RDO) No. 21 of the BIR on June 2, 2009, inviting petitioner or its duly authorized representative to an informal conference to discuss the preliminary results of the tax audit.

In reply thereto, petitioner submitted various supporting documents through its letters dated June 8, 2009, June 29, 2009, July 17, 2009, and July 24, 2009 to RDO No. 21, to support its position relative to the cancellation of the findings contained in the attached preliminary report of investigation.

On November 9, 2009, respondent issued a letter informing petitioner that he will reiterate the assessment since the documents submitted by petitioner were found to be insufficient. Respondent likewise requested petitioner to attend an informal conference within fifteen (15) days upon receipt of the said letter.

Petitioner requested respondent, through its letter dated November 23, 2009, for clarification of the specific issues mentioned in respondent's letter dated November 9, 2009.

On February 11, 2010, respondent issued a *Preliminary Assessment Notice* (PAN), a copy of which was received by petitioner on March 15, 2010. The PAN assessed petitioner for deficiency value-added tax (VAT) on sales of scrap, expanded withholding tax (EWT), final withholding tax (FWT) on royalty payments, and fringe benefits tax (FBT) in the total amount of ₱21,564,547.66.

In reply to the PAN, petitioner filed the letter dated March 31, 2010, seeking further clarification on the specific issues contained in the said PAN.

Thereafter, on April 22, 2010, petitioner received from respondent the *Formal Letter of Demand* (FLD), covering *Assessment Notice* (FAN) No. 021-120700001710346 dated March 24, 2010, which reiterated the same findings and amount of assessment with updated interest contained in the PAN. The details of the alleged deficiencies in the total amount of ₱22,029,943.91 are as follows:

EWT	₱ 20,014,912.71
VAT	621,776.43
FWT on royalties	13,498.19
FBT	1,379,756.58
Total	**₱ 22,029,943.91**

On May 17, 2010, petitioner received from BIR Revenue Region No. 4, a *Tax Verification Notice* (TVN) dated May 12, 2010, informing petitioner that RO James Suarez has been authorized to verify the supporting documents and/or pertinent records relative to petitioner's internal revenue taxes for the taxable period April 1, 2006 to March 31, 2007, and also requesting the submission of certain documents stated therein.

In response to the TVN, petitioner filed the letter dated May 17, 2010, requesting for an extension period of at least one (1) month within which to prepare and submit the documents requested in the TVN. The BIR RDO denied the request for extension, through its letter dated June 8, 2010, a copy of which was received by petitioner on June 23, 2010.

Respondent then issued the *Final Decision on Disputed Assessment* (FDDA) dated August 17, 2010, which was received by petitioner on September 1, 2010. It stated that the FLD dated March 24, 2010 has become final in view of petitioner's failure to submit the necessary supporting documents to refute the findings of the previous examiner.

On October 1, 2010, petitioner then elevated the matter to the Office of the Commissioner by filing a *Request for Reconsideration* with said Office.

While the matter was pending before the Office of the Commissioner, the Collection Division of BIR Revenue Region No. 4 issued the *Preliminary Collection Letter* dated October 26, 2010, a copy of which was received by petitioner on November 11, 2010, requesting payment of the assessed deficiency taxes for FY 2007.

In response thereto, petitioner filed a reply letter on November 18, 2010, requesting for the suspension of the proceedings for the enforcement of the payment of the disputed assessment pending respondent's resolution of petitioner's October 1, 2010 *Request for Reconsideration*.

Thereafter, respondent issued a *Final Notice Before Seizure* (FNBS) on November 9, 2010, a copy of which was received by petitioner on February 9, 2011.

On February 16, 2011, petitioner filed a letter, requesting that the FNBS be held in abeyance and that no collection through summary remedies of *Warrant of Distraint and Levy and/or Garnishment* be enforced until respondent Commissioner has finally resolved the request for reconsideration dated October 1, 2010.

However, on January 26, 2012, petitioner received a copy of the *Final Decision* dated December 15, 2011 issued by respondent, denying its *Request for Reconsideration* and reiterating the arguments, as well as, the details of the assessment stated in the FDDA.

Consequently, petitioner filed a *Petition for Review* before the Court in Division on February 27, 2012. The case was docketed as CTA Case No. 8433.

Within the extension period granted by the Court in Division, respondent filed his *Answer* on April 30, 2012, and interposed as his main defense that the Court in Division lack of jurisdiction to take cognizance of the *Petition for Review*, considering that the assessment has become final, executory and demandable for failure of petitioner to validly protest the assessment.

During trial, petitioner presented the following witnesses: Elsa B. Gueco, its Finance Senior Supervisor; Annalyn B. Artuz, the Court-commissioned Independent CPA; and Ruby Chavez-Mandria, its General Manager for Human Resource and Finance.

On the other hand, respondent presented Revenue Officers Rey K. Lugtu, Ma. Luisa R. San Antonio, and James Suarez, as his witnesses.

Thereafter, the Court in Division issued the assailed Decision,[4] dismissing petitioner's *Petition for Review* in CTA Case No. 8433 for lack of jurisdiction.

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[4] EB Docket, pp. 43 to 58; Division Docket (CTA Case No. 8433) – Vol. 3, pp. 1140 to 1155.

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Undaunted, petitioner filed its *Motion for Reconsideration (Re: 24 November 2016 Decision of the Honorable Court of Tax Appeals –* Third Division*)* on December 14, 2016,[5] without comment from respondent, despite due notice.

Thereafter, the Court in Division issued the assailed Resolution dated March 2, 2017,[6] denying petitioner's *Motion for Reconsideration* for lack of merit.

On April 7, 2017, petitioner filed its *Urgent Motion For Time To File An Appeal to the Court of Tax Appeals* En Banc *(RE: Decision dated 24 November 2016 and 2 March 2017 Resolution)* before the Court *En Banc,*[7] praying that it be granted an additional fifteen (15) days from April 7, 2017 or until April 24, 2017 (since the 15th day falls on a Saturday), within which to file the necessary *Petition for Review* before the Court *En Banc.*

Acting on the said *Urgent Motion*, the Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from April 7, 2017, or until April 22, 2017, within which to file its *Petition for Review.*[8]

Thus, petitioner filed the instant *Petition for Review* on April 24, 2017.

In the Resolution dated May 26, 2017,[9] the Court *En Banc* ordered respondent to file his *Comment*, within ten (10) days from receipt thereof. Respondent, however, failed to file the said *Comment.*[10] Subsequently, in the Resolution dated July 20, 2017,[11] the Court *En Banc* gave due course to the instant *Petition for Review*, and required the parties to submit their respective memoranda.

On September 8, 2017, respondent filed a *Motion for Extension of Time to File Memorandum,*[12] praying for an additional period of

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[5] Division Docket (CTA Case No. 8433) – Vol. 3, pp. 1156 to 1163.
[6] EB Docket, pp. 60 to 62; Division Docket (CTA Case No. 8433) – Vol. 3, pp. 1168 to 1170.
[7] EB Docket, pp. 1 to 7.
[8] Minute Resolution dated April 17, 2017, EB Docket, p. 8.
[9] EB Docket, pp. 143 to 144.
[10] Records Verification Report dated July 6, 2017 issued by the Judicial Records of this Court, EB Docket, p. 145.
[11] EB Docket, pp. 147 to 148.
[12] EB Docket, pp. 149 to 151.

thirty (30) days from the said date, or until October 8, 2017 within which to file his *Memorandum*. The Court *En Banc* granted respondent the period prayed for.[13] However, only petitioner filed its *Memorandum* on September 21, 2017;[14] while respondent failed to file his *Memorandum*.[15]

On December 11, 2017, the instant case was deemed submitted for decision.[16]

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for the Court *En Banc*'s resolution, to wit:

> "a. Whether or not the CTA – 3rd Division erred when it considered the FLD/FAN as final, executory and demandable due to Petitioner's failure to timely file its protest.
>
> b. Whether or not the CTA – 3rd Division erred when it dismissed the Petitioner's appeal (and request) for the cancellation and nullification of the said FLD/FAN on the ground of lack of jurisdiction.
>
> c. Whether or not the CTA – 3rd Division erred when it confirmed that the Petitioner is liable to pay the assessed deficiency VAT, EWT, FWT on royalties, and FBT in the aggregate amount of Pesos: Twenty Two Million Twenty Nine Thousand Nine Hundred Forty Three & 91/100 (₱22,029,943.91)."

The crux of the controversy in the instant case lies on the validity of the subject tax assessments. As a corollary, a void assessment bears no fruit.[17] In other words, if the said tax

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[13] Minute Resolution dated September 13, 2017, EB Docket, p. 153.
[14] EB Docket, pp. 154 to 183.
[15] Records Verification Report dated November 15, 2017 issued by the Judicial Records of this Court, EB Docket, p. 186.
[16] Resolution dated December 11, 2017, EB Docket, pp. 188 to 189.
[17] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

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assessments are void, they could not attain finality. Thus, the following issue shall be resolved first and foremost in this case, to wit:

"Whether or not the subject tax assessments are valid."

Petitioner's arguments:

Petitioner argues that the Court in Division has jurisdiction over the appeal (request) filed by petitioner relative to the nullification/ cancellation of the FLD/FAN.

Allegedly, the Court in Division erred when it confirmed petitioner's liability for three reasons: *first*, there is no factual and legal basis for the alleged deficiency EWT, VAT, FWT on royalties and FBT assessed by respondent; *second*, petitioner's sale of scrap materials is considered as "technical importation" in which case, the 12% VAT thereon is paid by the third-party buyer/importer upon importation; and *third*, the assessment for deficiency FBT also lacks legal and factual basis considering that the fringe benefits paid by petitioner were purely business in character and are therefore not subject to FBT.

THE COURT *EN BANC*'S RULING

We rule in favor of petitioner.

The subject tax assessments are not valid because the revenue officer who conducted the investigation of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007 was not authorized to do so. Thus, the said tax assessments could not have attained finality.

Section 6(A) of the NIRC of 1997 provides, in part, as follows:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (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:** *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis supplied)*

The audit process normally commences with the issuance by the respondent of an LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated Revenue Officer (RO) to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[18]

In addition, Section 13 of the NIRC of 1997 provides as follows:

> "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, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, 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.**" *(Emphasis and underscoring supplied)*

Thus, the law requires that an LOA must have been issued in favor of an RO, in order for such an RO to examine taxpayers and to perform tax assessment and collection functions.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[19] the Supreme Court explains the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers, to wit:

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[18] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[19] G.R. No. 222743, April 5, 2017.

n/s

"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:

> 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, **<u>the Commissioner or his duly authorized representative</u> 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.
>
> x x x x (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that <u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, 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 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 v. Sony Philippines, Inc.*,[20] 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. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>** (Emphasis and underlining ours)
>
> xxx xxx xxx
>
> Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**
>
> xxx xxx xxx
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority is 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. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>**" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, ROs must be authorized, through an LOA, to examine the books of accounts and other accounting records of a taxpayer; in the absence

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[20] 649 Phil. 519 (2010).

thereof, the tax assessments issued by the BIR against such taxpayer is a nullity.

In this case, records show that it was RO Erlinda M. De Leon who was *initially* authorized to examine petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007 under LOA No. LOA 2007 00003651 dated October 4, 2007.[21] It was only through an undated *Re-Assignment Notice* where RO Rey K. Lugtu was "authorized" to continue the examination of the petitioner's books and accounting records.[22] Thereafter, invoking the very same LOA, RO Lugtu recommended the issuance of a PAN against petitioner.[23]

Thus, RO Lugtu cannot be considered as validly authorized to examine petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007. This must be so because his authority to examine did not spring from, or was not made pursuant to, an LOA, as required by law and jurisprudence.

Furthermore, the issuance of the said *Re-Assignment Notice* in favor of RO Lugtu is inconsequential, since it is not an LOA. In addition, Revenue Memorandum Order (RMO) No. 12-2007 provides, in part, as follows:

> "IV. Policies and Procedures
>
> xxx xxx xxx
>
> 5. **All LAs[24]/ANs shall be prepared, approved and signed by the RD for 2006 tax returns, unless otherwise directed by the Commissioner.**
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> xxx xxx xxx
>
> 17. **<u>The practice of issuing</u> mission orders, correspondence letters, referral memoranda or <u>any other similar orders for the purpose of audit examination and assessment of internal revenue taxes is hereby strictly prohibited</u>.** For purposes of surveillance, stocktaking, TCVD or any similar purpose,

[21] BIR Records, p. 1.
[22] BIR Records, p. 720.
[23] Exhibit "R-3", BIR Records, pp. 1051 to 1052.
[24] That is, "Letters of Authority" or LOA.

the issuance of mission orders shall be governed by the pertinent revenue issuances issued for that purpose." *(Emphases and underscoring supplied)*

Parenthetically, while it may be true that RMO No. 12-2007 covers only *"the audit/investigation of 2006 internal revenue tax returns, including those of fiscal period taxpayers whose taxable year ended on any month after June 30, 2006 but before December 31, 2006"*, the above-quoted paragraphs of the said RMO may still be applied to cases whose fiscal periods end in 2007, such as the instant case, pursuant to paragraph no. 9 of RMO No. 20-08[25], which provides as follows:

> "9. **For Revenue District Offices, the other audit policies and reporting requirements prescribed in RMO No. 12-2007 that are not inconsistent herewith shall be observed by the concerned Revenue Officers and Officials** until amended through another revenue issuance." *(Emphasis supplied)*

Pursuant to the foregoing provisions then, the issuance of *Re-Assignment Notice* for purposes of audit examination and tax assessment is strictly prohibited. As a corollary, the said *Re-Assignment Notice* cannot be a source of authority for an RO to examine the books of accounts and other accounting records of taxpayers.

Correspondingly, since RO Lugtu was not authorized, through an LOA, the subject tax assessments, which came about as a result of the said RO's examination of petitioner's books of accounts and accounting records for fiscal year ending March 31, 2007, are void.

Considering now that the subject tax assessments are void, due to the lack of authority of the revenue officer concerned to conduct an examination of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007, it becomes unnecessary to address the other issues raised by petitioner in the instant *Petition for Review*.

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[25] SUBJECT: Prescribing the Guidelines for the Preliminary Analysis and Audit/Verification of **2007 Internal Revenue Tax Returns** and the Corresponding Tax Payments for Taxpayers under the Large Taxpayers Service and Revenue Regions/Revenue District Offices. *(Emphasis and underscoring supplied)*

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.

Accordingly, the Decision dated November 24, 2016 and the Resolution dated March 2, 2017, both rendered by the Court in Division in CTA Case No. 8433 are **REVERSED** and **SET ASIDE**.

For being void, the FLD, covering FAN No. 021-120700001710346 dated March 24, 2010, assessing petitioner of deficiency VAT, EWT, FWT on royalty payments, and FBT for fiscal year ended March 31, 2007, are **CANCELLED** and **SET ASIDE.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(With Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I join Justice Castañeda's Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(I join Justice Castañeda's Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

NANOX PHILIPPINES, INC.,
Petitioner,

CTA EB NO. 1629
(CTA Case No. 8433)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENU,
Respondent.

Promulgated:

OCT 11 2018
4:12 p.m.

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DISSENTING OPINION

CASTAÑEDA, JR., *J.:*

I disagree with the *ponencia* of my esteemed colleague, Associate Justice Erlinda P. Uy in granting petitioner Nanox Philippines, Inc.'s Petition for Review and which, in turn, reversed and set aside the Decision dated November 24, 2016 and the Resolution dated March 2, 2017 rendered by the Third Division of this Court in CTA Case No. 8433. The majority ruled that the subject assessments in the present case are not valid because the revenue officer who conducted the investigation of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007 was not authorized to do so. Thus, the majority held that the said tax assessments could not have attained finality.

A review of the records revealed that Letter of Authority (LOA) No. 2007 00003651 dated October 4, 2007[1] was issued by Zenaida G. Garcia, OIC-Regional Director, Revenue Region (RR) No. 4 – City of San Fernando, Pampanga authorizing Revenue Officer Erlinda M. De Leon (RO De Leon) and Group Supervisor Lope N. Tubera (GS Tubera) of Revenue District Office (RDO) No. 21 – City of San Fernando, Pampanga to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from April 1, 2006 to March 31, 2007.

Through Re-Assignment Notice[2] issued by Romulo L. Aguila, Jr., OIC-Regional Director of RR No. 4 – City of San Fernando, Pampanga, with reference to LOA No. LOA 2007 00003651 dated October 4, 2007, the audit investigation of petitioner's books of accounts and other accounting records for the period from April 1, 2006 to March 31, 2007 was re-assigned to Revenue Officer Rey Lugtu (RO Lugtu) as supervised by GS Tubera, in view of the transfer of RO De Leon from RDO No. 21 – City of San Fernando, Pampanga to RDO No. 23-B – South Cabanatuan.[3]

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (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**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize gc

[1] Exhibit "D", Division Docket Vol. I, p. 706.
[2] BIR Records, p. 720.
[3] *Id.*

other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "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**:
>
> x x x x x x x x x
>
> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "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." *(Emphasis supplied)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
>
> x x x x x x x x x
>
> 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 <u>Regional Directors</u>, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, only the CIR or his duly authorized representatives who can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[4]

As stated earlier, the majority held that the subject assessments in the present case are not valid because RO Lugtu, the revenue officer who conducted the investigation of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007, was not authorized to do so. This is because, in the majority's view, the authority of RO Lugtu to examine did not spring from, or was not made pursuant to an LOA. The majority also held that the issuance of the Re-Assignment Notice in favor of RO Lugtu is inconsequential since it is not an LOA and also because the issuance thereof is strictly prohibited under RMO No. 12-2007.

I beg to differ.

It must be noted that the Re-Assignment Notice which effected the transfer of the audit examination to RO Lugtu was issued by one of the CIR's duly authorized representatives, *i.e.*, an OIC-Regional Director. The said Re-Assignment Notice even referred to LOA No. 2007 00003651 dated October 4, 2007, likewise issued by an OIC-Regional Director. These, in my view, are enough to clothe RO Lugtu with sufficient authority to conduct the audit examination of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007. In issuing the Re-Assignment

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[4] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

Notice, the OIC-Regional Director merely modified or amended the LOA previously issued by his office in order to proceed with the audit investigation of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007. Verily, there is nothing in the law that prohibits the CIR or its duly authorized representatives from amending or modifying a previously-issued LOA instead of just issuing a new one in order for the assessment of a taxpayer to validly proceed. Corollarily, a duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be re-assigned or transferred. To hold otherwise would be tantamount to placing more importance to form over substance.

As regards RMO No. 12-2007, it is my opinion that the same is inapplicable in the present case because it covers only the audit/investigation of 2006 internal revenue tax returns, including those of fiscal period taxpayers whose taxable year ended on any month after June 30, 2006 but before Dec. 31, 2006.[5] And even assuming that it applies, such issuance cannot be invoked to negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of just issuing a new one in order for the assessment of a taxpayer to validly proceed. To construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[6] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[7]

In view of the foregoing, I vote to **DENY** the present Petition for Review.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

[5] Item II, RMO No. 12-2007 dated July 3, 2007.
[6] Revenue Administrative Order No. 001-12 dated April 2, 2012.
[7] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.