REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SUGAR CRAFTS, INC., *Petitioner,*	**CTA CASE NO. 8738**
-*versus*-	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 04 2017 10:00 a.m.

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RESOLUTION

BAUTISTA, J.:

For resolution is respondent's Motion for Reconsideration (on the Decision of the Honorable Court dated 16 August 2017) ("Motion for Reconsideration") filed on September 6, 2017; with Comment on Respondent's Motion for Reconsideration ("Comment") from petitioner filed on October 20, 2017.

On August 16, 2017, the Court promulgated a Decision[1] ("Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of Php7,393,456.66, for value-added tax in the amount of Php10,792,064.60, for expanded withholding tax in the amount of Php394,763.77, for improperly accumulated earnings tax in the amount of Php1,162,893.82, all inclusive of interest and surcharges for taxable year 2009; and the compromise penalty in the amount of Php20,000.00; are **CANCELLED** and **SET ASIDE**.

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[1] *Records, CTA Case No. 8738, Vol. 3, Decision,* pp. 1281-1310.
[2] *Id.,* pp. 1309-1310.

SO ORDERED.[3]

In his Motion for Reconsideration, respondent insists that Revenue Officer ("RO") Delfin Sunga ("RO Sunga") had the necessary authority to investigate petitioner's books of accounts and other accounting records. Respondent reasons that RO Sunga's authority actually emanated from the Letter of Authority ("LOA") previously issued to petitioner, and not necessarily from Memorandum of Assignment No. 43A-0000559 dated December 7, 2011 ("MOA") signed by Revenue District Officer ("RDO") Florante Aninag ("RDO Aninag"). Respondent continues that the MOA was only issued pursuant to *paragraph 7.3*[4] *of Revenue Memorandum Order ("RMO") No. 62-2010*[5] following the transfer of petitioner to Revenue District Office No. 43A ("RDO No. 43A").

Respondent claims that the MOA issued by RDO Aninag is valid. Relying on the format of a MOA attached as Annex A of *RMO No. 62-2010*, respondent avers that the power to issue the same has been delegated to the RDO. This is apparent, according to respondent, by the fact that the header of the formatted document indicates "INVESTIGATING OFFICE", which in the instant case, is RDO No. 43A; and the prescribed signatory indicates "HEAD OF AUTHORIZED REVENUE OFFICIAL/HEAD, INVESTIGATING OFFICE", which during that time, is RDO Aninag.

Respondent further claims that the authority to conduct audit investigation should not be limited to the ROs named in the LOA. Respondent explains there are cases when the ROs originally assigned to investigate a taxpayer may not be able to complete the audit investigation because of unforeseen circumstances or natural occurrence of things, such as resignation, retirement, re-assignment, sickness, or death; thus, there is a need to issue referral memoranda or MOAs for the continuation of the audit. To rule then that only those ROs indicated in the LOA are authorized to continue the audit investigation of taxpayers will be, according to respondent, detrimental to the government.

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[3] Emphases retained.

[4] 7. A Memorandum of Assignment (MOA) (Annex "A") with a system-generated number shall be issued through the LAMS under the following instances:

xxx xxx xxx

7.3 Reassignment to another RO due to referral of the case to another investigating office (e.g., cases referred to SID by the RDO); and

[5] Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures, July 1, 2010.

Respondent asserts that there is no conflict between *Section 13*[6] *of the 1997 National Internal Revenue Code*[7], *as amended ("1997 NIRC")* and *RMO No. 62-2010*. While *Section 13 of the 1997 NIRC* mentions that the RO may conduct the audit investigation pursuant to an LOA issued by the Regional Director, said provision also takes into consideration other rules and regulations issued by the Bureau of Internal Revenue ("BIR"), such as *RMO No. 62-2010*. Respondent thus submits that there should be no question on the power of the RDO to issue the MOA which has been validly delegated to him, as head of the investigating office.

Finally, respondent allege that petitioner is already estopped from questioning the authority of RO Sunga to conduct the audit investigation considering that in the course of the investigation, petitioner actively participated in all stages of the audit and did not question RO Sunga's authority. Respondent insists in upholding the validity of the assessment as this would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government.

In its Comment, petitioner counters that RO Sunga had no authority to conduct the audit investigation of its books of accounts because of the absence of a new LOA naming him as the RO to whom the case was re-assigned. Petitioner asserts that *RMO No. 62-2010* is merely a supplemental guideline on the electronic issuances of LOAs, and it does not provide that a MOA is equivalent to a grant of authority under an LOA. Anent Annex A of *RMO No. 62-2010*, petitioner avers that the same cannot bolster respondent's claim that RO Sunga was empowered to continue the audit investigation because, according to petitioner, the assignment of an RO to conduct audit through a MOA does not dispense with the requirement that the examiner must have been granted power *via* an LOA duly signed by the Regional Director. Accordingly, petitioner submits that a mere MOA cannot be the source of RO Sunga's authority. Petitioner continues that to say that a MOA is tantamount to a delegation of

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[6] 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.

[7] *Republic Act No. 8424*, January 1, 1998.

power to assess, as if it was an LOA, is contrary to law and established jurisprudence.

Lastly, petitioner submits that the allegation of estoppel is without basis because estoppel cannot validate an act that contravenes law or is against public policy.

The Court will now resolve respondent's Motion for Reconsideration.

After a careful consideration and evaluation of the parties' respective arguments, the Court finds no new or substantial matter, or any compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision. Consequently, the Court finds respondent's Motion for Reconsideration devoid of merit.

Respondent's arguments revolve upon the issue on whether RO Sunga had the necessary authority to conduct the audit investigation of petitioner's books of accounts and other accounting records for the period from January 1, 2009 to December 31, 2009. Respondent is of the view that in cases of re-assignment arising from the transfer of a taxpayer to another RDO, as in the instant case, a MOA is sufficient to confer authority to a new RO to continue the audit investigation. Besides, according to respondent, to require the issuance of a new LOA or to subscribe to the view that only those ROs originally indicated in the LOA are authorized to conduct the audit investigation, will be detrimental to the government who will be made to suffer for the natural occurrence of things, such as resignation, re-assignment, or death of the BIR's employees.

The Court is not convinced.

No less than the Supreme Court has held in the case of in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[8] *("Sony Philippines")* that it is the LOA which empowers an RO to examine the books of accounts and accounting records of the taxpayer. Accordingly, all acts of an RO who is not armed with an LOA specifically designating him/her to conduct the audit investigation are void.

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[8] G.R. No. 178697, November 17, 2010, 635 SCRA 234.

> Based on Section 13 of the Tax Code, a Letter of Authority or 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...
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> xxx xxx xxx
>
> 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.[9]

In the instant case, no LOA was ever issued in favor of RO Sunga. In fact, his authority was merely based on Memorandum of Assignment No. 043A-0000559[10]. Accordingly, pursuant to *Section 13[11] of the 1997 NIRC*, in relation to the above *Sony Philippines* case, RO Sunga's examination of petitioner's books of accounts and other accounting records for the period from January 1, 2009 to December 31, 2009 and the resulting assessment for deficiency taxes are a nullity.

Anent the issue on estoppel, it bears to note that this issue was raised for the first time in this Motion for Reconsideration before the Court. The said issue was never raised by respondent in his Answer[12] or in any of the proceedings before this Court. The rule is well-settled that points of law, theories, issues and arguments not previously ventilated cannot be raised for the first time on appeal,[13] much more

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[9] Underscoring ours.
[10] *BIR Records, Folder 1, Exhibit "R-1," Memorandum of Assignment dated December 7, 2011,* p. 258.
[11] 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.
[12] *Records, Vol. 1, Answer,* pp. 59-62.
[13] *Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation,* G.R. No. 146726, June 16, 2006, 491 SCRA 9, 23; *Philippine Basketball Association v. Court of Appeals,* G.R. No. 119122, August 8, 2000, 297 SCRA 402; *Ruby Industrial Corporation v. Court of Appeals,* G.R. Nos. 124185-87, January 20, 1998, 284 SCRA 445; *Salao v. Court of Appeals,* G.R. No. 107725, January 22, 1998, 284 SCRA 493; *Heirs of Pascasio Uriarte v. Court of Appeals,* G.R. No. 116775, January 22, 1998, 284 SCRA 511.

in a motion for reconsideration, as in this case, because this would be offensive to the basic rules of fair play, justice and due process.[14]

Having said the foregoing, the Court finds no cogent reason to reverse or modify the conclusions reached in the Assailed Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (on the Decision of the Honorable Court dated 16 August 2017) is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated August 16, 2017 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[14] *Sta. Rosa Realty Development Corporation v. Amante,* G.R. No. 112526, March 16, 2005, 453 SCRA 432, 478.