REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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REPUBLIC OF THE PHILIPPINES,
Plaintiff,

- versus -

ROBIEGIE CORPORATION,
Defendant.

CTA OC No. 024
For: Tax Collection Suit on Deficiency Income Tax, Value Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation for Taxable Year 2007

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

AUG 09 2019
2:40 p.m.

x - x

RESOLUTION

For resolution is defendant's **Demurrer to Evidence**, filed on April 15, 2019,[1] with plaintiff's **Opposition (Re: Demurrer to Evidence dated April 12, 2019)**, filed on May 20, 2019.[2]

On July 7, 2017, plaintiff filed a *Complaint*[3] against defendant for the collection of the latter's alleged deficiency income tax, value-added tax (VAT), increments for late payments of expanded withholding tax (EWT), increments for late payments of withholding tax on compensation (WTC), and compromise penalties for taxable year (TY) 2007 in the amount of ₱13,439,085.49, ₱10,588,871.77, ₱10,907.30, ₱13,217.69, and ₱23,000.00, respectively, plus 20% deficiency and delinquency interest per annum.

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[1] Docket, p. 480 to 482.
[2] Docket, p. 485 to 488.
[3] Docket, pp. 6-15.

On July 23, 2017, the Court issued a *Summons*,[4] ordering defendant to file an *Answer to the Complaint* within fifteen (15) days from notice. However, the *Return of Summons* dated August 4, 2017[5] stated that defendant already moved out from the given address. Thus, the Court ordered plaintiff to furnish the correct address of defendant.[6] Upon plaintiff's compliance[7], the Court directed that Summons be served at the correct address of defendant.[8]

Consequently, the Court issued another *Summons* on October 5, 2017[9] but the same was not served on the ground that the defendant already moved out.[10] Thereafter, in the Resolution dated January 29, 2018,[11] the Court gave plaintiff a last chance to take appropriate action to serve *Summons* upon defendant. Plaintiff filed a Manifestation stating the present address of defendant.[12] Thus, *Summons* was duly served to defendant on March 6, 2018.[13]

Defendant thereafter filed its *Answer to Complaint* on March 20, 2018,[14] alleging among others that on September 10, 2010, its accountant submitted documents to contest the deficiency tax for taxable year ending December 2007, and thereafter on December 29, 2010, its accountant wrote a written Protest on Pre-Assessment Notice. Subsequently, it allegedly applied for Retirement of Business with the City of Manila and was approved on February 4, 2016; and that it also filed a permanent closure of Business using BIR Form 1905. Hence, defendant prays that the instant Complaint, after due hearing, be dismissed.

After the Pre-trial conference held on June 21, 2018,[15] the parties submitted their *Joint Stipulation of Facts and Issues (JSFI)*[16] on July 6, 2018. The JSFI was approved by the Court in the Resolution dated July 25, 2018 and pre-trial was deemed

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[4] Docket, p. 80.
[5] Docket, p. 81.
[6] Order dated September 19, 2017, Docket, p. 82.
[7] Compliance, Docket, pp. 84 to 85.
[8] Order dated October 3, 2017, Docket, p. 86
[9] Docket, p. 88.
[10] Return of Summons, Docket, p. 89.
[11] Docket, pp. 97 to 98.
[12] Manifestation, Docket, pp. 99 to 100.
[13] Docket, p. 102.
[14] Docket, pp. 103 to 104.
[15] Minutes of the Hearing and Order dated June 21, 2018, Docket, pp. 299 to 301 and 302 to 304, respectively.
[16] Docket, pp. 313 to 318.

terminated.[17] Accordingly, the Court issued the Pre-Trial Order on August 15, 2018.[18]

The factual antecedents of the instant case as stipulated by the parties are the following:[19]

> "1. Plaintiff is the REPUBLIC OF THE PHILIPPINES, a political entity to whom all citizens and persons deriving income within its territory have the obligation to pay taxes. The power of taxation is exercised by plaintiff the Bureau of Internal Revenue (BIR). The BIR is represented by the Commissioner of Internal Revenue who is empowered to perform the duties of said office including, among others, the power to assess and collect all national internal revenue taxes, fees and other charges and to enforce all forfeitures, penalties, and fines connected therewith, with office address at BIR National Office Building, BIR Road, Diliman Quezon City. xxx;
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> 2. Defendant ROBIEGIE CORPORATION is a corporation registered with the Securities and Exchange Corporation and is engaged in the business of operating a drugstore with business address at **No. 1614 Rizal Ave., Sta. Cruz, Manila**. xxx;
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> xxx xxx xxx
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> 4. On April 15, 2008, defendant filed its Annual Income Return and Audited Financial Statements for December 31, 2007 and 2006 at Equitable PCI Bank Ronquillo Branch;
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> 5. On September 10, 2010, defendant submitted its documents to contest the deficiency taxes as reflected in the Notice for Informal Conference with Computation of Deficiency Taxes and Details of Discrepancies;
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> 6. On December 30, 2011, defendant filed a Letter Protest dated December 29, 2010 to the Preliminary Assessment Notice with Details of Discrepancies dated December 13, 2010 and the same was given due course;

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[17] Docket, p. 325.
[18] Docket, pp. 346 to 356.
[19] Par. I, *Joint Stipulation of Facts and Issues* (JSFI), Docket, pp. 313 to 315.

7. On March 02, 2011, letter dated March 02, 2011 was issued, served to, and received by defendant at its registered address at 1614 Rizal Ave., Sta. Cruz, Manila, informing the latter that its protest was assigned to RO Ricona C. Pielago and Group Supervisor Gerardo N. Guido. In the same letter, ROBIEGIE was invited to appear before Revenue District Office (RDO) No. 31 and required to submit its supporting documents to dispute the assessments;

8. On March 30, 2011, defendant, in a letter dated March 29, 2011 addressed to the BIR, requested that it be given time to attend the Protest letter on 2007 deficiency tax after the tax season;

9. Warrant of Distraint and/or Levy dated October 21, 2013 was issued, and served to the defendant at its registered address at 1614 Rizal Ave., Sta. Cruz, Manila, but no property could be located that may be distraint or levied upon for the satisfaction of its tax liabilities.

10. Defendant did not acquire any property during its existence and had no existing bank account.

11. On various dates, Warrants of Garnishment were issued to different banks but it has no existing bank deposits that could be garnished.

12. It must be noted that the Final Assessment Notices and Corresponding Formal Letter of Demand with Details of Discrepancies were sent to ROBIGIE on January 14, 2011. Thus, the BIR's right to collect the subject taxes may be enforced within five (5) years therefrom or until January 14, 2016."

During trial, plaintiff presented its witnesses, Revenue Officers (ROs) Andres B. Bisares, John Paul A. Leonardo, Ma. Paz L. Arcilla, Benhur C. Nacorda, Ricona C. Pielago, Benedicto Augusto M. Cruz, and Maricol O. Domingo.

Thereafter, plaintiff formally offered its documentary exhibits[20] and the Court admitted the following exhibits, except Exhibit "P-31",[21] to wit:

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[20] Plaintiff's Formal Offer of Evidence, Docket, pp. 373 to 390.
[21] Resolution dated March 15, 2019, docket, pp. 475 to 476.

Exhibits	*Description of document in the Formal Offer of Evidence*
P-1	Annual Income Tax Return & Audited Financial Statements for taxable year 2007
P-2	Letter of Authority No. LOA dated October 14, 2008
P-3	First Request for Presentation of Records dated October 15, 2008
P-4	Second Request for Presentation of Records dated November 03, 2008
P-5	Final Notice dated November 14, 2008
P-6	Memorandum of Assignment dated February 02, 2010
P-7	Letter to Defendant dated February 03, 2010
P-8	Notice for Informal Conference with Computation of Deficiency Taxes and Details of Discrepancies dated July 15, 2010
P-9	Letter of Defendant dated September 10, 2010
P-10	Letter with Revised Computation of Deficiency Taxes dated September 30, 2010
P-11	Assignment Slip
P-12	Preliminary Assessment Notice
P-15	Letter Protest of Defendant dated December 29, 2010
P-16	Assessment Notice No. 31-07-IT-833, Assessment Notice No. 31-07-VT-834, Assessment Notice No. 31-07-MC-835, Assessment Notice No. 31-07-MC-836, Assessment Notice No. 31-07-MC-837 and Formal Letter of Demand with Details of Discrepancies dated January 14, 2011
P-17	Registry Receipt No. 900707 dated January 14, 2011
P-19	Memorandum of Assignment dated February 28, 2011
P-20	Letter dated March 02, 2011
P-21	Follow-Up Letter dated March 23, 2011
P-22	Letter dated March 29, 2011
P-23	Memorandum dated April 25, 2011
P-24	Final Decision on Disputed Assessment dated May 16, 2011
P-25	Letter dated June 08, 2011
P-26	Memorandum of Assignment dated June 22, 2011
P-27	Preliminary Collection Letter dated July 04, 2011
P-28	Final Notice Before Seizure dated August 29, 2011
P-29	Warrant of Distraint and/or Levy dated October 21, 2013
P-30	Access Letter dated February 10, 2015
P-32	Warrant of Garnishment - Philippine National
P-33	Warrant of Garnishment - China Bank
P-34	Warrant of Garnishment - Banco De Oro
P-35	Warrant of Garnishment - PBCom
P-36	Warrant of Garnishment - Union Bank
P-37	Warrant of Garnishment - BPI
P-38	Warrant of Garnishment - Philtrust Bank
P-39	Warrant of Garnishment - Phil. Savings Bank
P-40	Warrant of Garnishment - DBP
P-41	Warrant of Garnishment - Security Bank
P-42	Warrant of Garnishment - Land Bank of the Philippines
P-43	Warrant of Garnishment - Metrobank
P-44	Warrant of Garnishment - Bank of Commerce
P-45	Warrant of Garnishment - UCPB
P-48	Memorandum of Assignment dated July 01, 2009
P-49	Letter dated July 10, 2009
P-51	Judicial Affidavit of Andres B. Bisares

P-51-a	Name and signature of Andres B. Bisares on the middle right portion of the eight page of his Judicial Affidavit
P-52	Judicial Affidavit of John Paulo A. Leonardo
P-52-a	Name and signature of John Paulo A. Leonardo on the lower right portion of the seventh page of his Judicial Affidavit
P-53	Judicial Affidavit of Ma. Paz L. Arcilla
P-53-a	Name and signature of Ma. Paz. L. Arcilla on the lower right portion of the third page of her Judicial Affidavit
P-54	Judicial Affidavit of Benhur C. Nacorda
P-54-a	Name and signature of Benhur C. Nacorda on the lower right portion of the third page of his Judicial Affidavit
P-55	Judicial Affidavit of Ricona C. Pielago
P-55-a	Name and signature of Ricona C. Pielago on the lower right portion of the fourth page of her Judicial Affidavit
P-56	Judicial Affidavit of Benedicto Augusto M. Cruz
P-56-a	Name and signature of Benedicto Augusto M. Cruz on the upper right portion of the fourth page of his Judicial Affidavit
P-57	Judicial Affidavit of Maricol O. Domingo
P-57-a	Name and signature of Maricol O. Domingo on the lower right portion of the fourth page of her Judicial Affidavit

On February 12, 2019, defendant filed a *Motion for Leave of Court to File Demurrer to Evidence*,[22] which the Court granted in its Resolution dated April 1, 2019.[23]

Defendant subsequently filed the *Demurrer to Evidence* on April 15, 2019,[24] and plaintiff filed its *Opposition* on May 20, 2019.[25]

In its *Demurrer To Evidence*, defendant contends that plaintiff's witness, RO Andres B. Bisares, testified on August 16, 2018 that the Letter of Authority (LOA) was originally issued to RO Ragelyn N. Roma Cruz. Allegedly, the tax investigation against defendant was reassigned to other revenue officers through the issuance of *Memorandum*. Defendant claims that the authority of RO Bisares to conduct tax audit against the defendant emanated from a *Memorandum* and not a LOA. According to defendant, the *Memorandum* issued to RO Bisares was merely signed by a Revenue District Officer and not by a Revenue Regional Director. Defendant submits that the Revenue Memorandum Order (RMO) requires the issuance of a new LOA in case of reassignment and transfer of cases to another revenue officer. Defendant insists that the said requirement was not complied with in this case. Hence, defendant

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[22] Docket, pp. 471 to 472.
[23] Docket, p. 479.
[24] Docket, pp. 480 to 482.
[25] Docket, pp. 485 to 488.

prays that its *Demurrer to Evidence* be granted, and the instant *Complaint* be dismissed.

In its *Opposition*, plaintiff stresses that a LOA is not the only authority given to a revenue officer to empower the same to examine the books of accounts and other accounting records of a taxpayer. Allegedly, a *Memorandum of Assignment* (MOA) will suffice pursuant to Paragraph IV(F)(2) of RMO No. 8-2006 and Paragraph III(8) (8.1) of RMO No. 69-2010.

THE ISSUE

The issue in this Demurrer to Evidence is whether or not on the basis of the evidence presented by plaintiff in this case, it was able to establish a *prima facie* case of tax collection against defendant.

THE COURT'S RULING

Section 1, Rule 33 of the 1997 Rules of Civil Procedure:

> "**SECTION 1.** *Demurrer to evidence.* – After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence."

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.[26] Hence, what is crucial is the determination as to whether the plaintiff's evidence entitles it to the relief sought.[27]

In the *Complaint*, plaintiff prays for the collection of defendant's deficiency income tax, VAT, increments for late payments of EWT,

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[26] *Republic of the Philippines vs. Alfredo R. De Borja*, G.R. No. 187448, January 9, 2017, citing *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 323 (2007).
[27] *Republic of the Philippines vs. Alfredo R. De Borja*, supra.

increments for late payments of WTC, and compromise penalties for TY 2007 considering that the *Final Assessment Notice* (FAN) and *Formal Letter of Demand* (FLD) have allegedly become final, executory and demandable under Sections 203, 222, and 223 of the NIRC of 1997, as amended.

After a careful scrutiny and evaluation of the evidence submitted by the plaintiff, the Court finds that plaintiff failed to show that the procedural requirements under the law were duly complied with.

It must be emphasized that the issuance of a valid formal assessment is a substantive prerequisite to tax collection.[28] In this case, the subject tax assessments are not valid because the ROs who conducted the audit/examination of defendant's books of accounts and other accounting records for TY 2007 were not validly authorized, through an LOA.

The concerned ROs must be authorized through a Letter Of Authority, otherwise, the resulting tax assessments are void.

Section 6(A) of the NIRC of 1997 lays down the power of the Commissioner of Internal Revenue (Commissioner) or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, 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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

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28 *Commissioner of Internal Revenue vs. Menguito*, G.R. No. 167560, September 17, 2008.

Based on the foregoing provision, an authority emanating from the Commissioner or his duly authorized representative is required before an examination and an assessment may be made.

Relative thereto, Section 13 of the NIRC of 1997 provides that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> "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</u> 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 and underscoring supplied.)*

Thus, a grant of authority, through an LOA, must be issued assigning an RO to perform tax assessment functions, in order that such officer may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due against the concerned taxpayer.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[29] the Supreme Court expounded on the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "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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[29] G.R. No. 222743, April 5, 2017.

> 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 may authorize the examination of any taxpayer</u>** 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 **<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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> xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[30] 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,</u>**

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[30] 649 Phil. 519 (2010).

> **<u>the assessment or examination is a nullity</u>**.
> (Emphasis and underlining ours)
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> xxx xxx xxx
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> 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.**
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> xxx xxx xxx
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> 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. <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, ROs must be authorized, through an LOA, in order that said officers may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

In this case, records show that pursuant to LOA No. 2007 00014831 dated October 14, 2008,[31] only RO Ragelyn N. Roma Cruz was authorized to examine defendant's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2007 to December 31, 2007.

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[31] Exhibit "P-2", Docket, p. 398

In the *Memorandum* dated July 1, 2009,[32] the BIR through Revenue District Officer (RDO) Conrado D. Soriano referred the tax docket of defendant to RO Roberto P. Enguerra, Jr. due to the transfer of office of RO Roma Cruz.[33]

Subsequently, a *Memorandum* dated February 2, 2010 was issued by RDO Teodoro A. Huelva,[34] transferring defendant's tax case to RO Andres B. Bisares for the continuation of audit due to the transfer of RO Roberto P. Enguerra, Jr.[35] Upon RO Bisares' investigation, he found tax deficiencies against defendant and informed the latter of such deficiency through the *Notice of Informal Conference* dated July 15, 2010.[36]

Thereafter, based on an *Assignment Slip*,[37] RO John Paulo Leonardo took over defendant's tax case on October 27, 2010, and he prepared the *Preliminary Assessment Notice* (PAN) dated December 13, 2010 directed against defendant.[38] Subsequently, the FAN/FLD dated January 14, 2011 was likewise issued to the defendant.[39] The computations of the assessed taxes, as indicated in the FAN/FLD, were done by RO John Paulo Leonardo.[40]

A MOA dated February 28, 2011 was later issued by RDO Hueva,[41] assigning the case of defendant to RO Ricona C. Pielago for reinvestigation.

Clearly, the supposed authority of ROs Enguerra, Bisares, and Pielago, to conduct the audit/investigation of defendant was based on the various *Memorandum*/MOA issued by the RDOs; while the authority of RO Leonardo was merely based on an *Assignment Slip*. There is nothing in the records which would show that a new LOA was issued specifically authorizing the said ROs to continue the audit

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[32] Exhibit "P-48", Docket, p. 464.
[33] Exhibit "P-51" (*Judicial Affidavit of Andres Bisares* at Q22, A), Docket, pp. 158 to 159
[34] Exhibit "P-6", Docket, p. 402.
[35] Exhibit "P-51" (*Judicial Affidavit of Andres Bisares* at Q26,A), Docket, pp. 159 to 160.
[36] Exhibit "P-8", Docket, pp. 404 to 408; Exhibit "P-51" (*Judicial Affidavit of Andres Bisares* at Q30,A and Q31,A), Docket, p. 160.
[37] Exhibit "P-11", Docket, p. 414; Exhibit "P-52" (*Judicial Affidavit of John Paulo A. Leonardo* at Q7,A and Q8,A), Docket, p. 278.
[38] Exhibit "P-12", Docket, pp. 415 to 416; Exhibit "P-52" (*Judicial Affidavit of John Paulo A. Leonardo* at Q10,A), Docket, p. 278.
[39] Exhibit "P-16", Docket, pp. 418 to 426
[40] Exhibit "P-52" (*Judicial Affidavit of John Paulo A. Leonardo* at Q15,A to Q19,A), Docket, pp. 279 to 280.
[41] Exhibit "P-19", Docket, p. 428; Exhibit "P-55" (*Judicial Affidavit of Ricona Pielago* at Q7,A), Docket, p. 265.

investigation of defendant, following the reassignment of the pertinent RO, and transfer of the case.

It must be noted that the failure to issue a new LOA runs counter to RMO No. 43-90 dated September 20, 1990,[42] which lays down the guidelines for the audit/investigation and issuance of LOA (*hereinbelow referred to as L/A*), pertinent portions of which state:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> xxx xxx xxx
>
> 5. **<u>Any re-assignment/transfer of cases to another RO(s)</u>**, <u>and revalidation of L/As which have already expired</u>, **shall require the issuance of a new <u>L/A</u>**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." *(Emphases and underscoring supplied.)*

It is explicit from the foregoing that all audit investigations must be conducted by a duly designated RO authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA. In case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA be issued with the corresponding notation thereon.

In the present case, no new LOA was issued, and the only basis for the ROs' authority were the various *Memorandum, MOA and Assignment Slip*, respectively, issued to them.

Moreover, it must be emphasized that the issuance of referral memoranda or any other similar orders for the purpose of audit examination are prohibited, pursuant Paragraph IV(17) of RMO No. 12-2007[43], to wit:

> "IV. Policies and Procedures

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[42] SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

[43] SUBJECT: 2007 Audit Program for Revenue District Offices

> 17. The **practice of issuing** mission orders, correspondence letters, **referral memoranda or any other similar orders for the purpose of audit examination and assessment of internal revenue taxes is hereby strictly prohibited.** For purposes of surveillance, stocktaking, TCVD or any similar purpose, the issuance of mission orders shall be governed by the pertinent revenue issuances issued for that purpose." (*Emphasis supplied.*)

Based on the foregoing, the BIR strictly prohibited the practice of issuing referral memoranda or any other similar order for purpose of audit examination and assessment of internal revenue taxes.

Thus, the *Memorandum*, MOA and *Assignment Slip* cannot be considered as valid source of authority for the ROs to examine the books of accounts and other accounting records of defendant.

RMO No. 8-2006 and RMO No. 69-2010 may not be validly invoked to dispense with the issuance of an LOA.

Plaintiff's reliance on RMO No. 8-2006 dated February 1, 2006[44] and RMO No. 69-2010[45] dated August 11, 2010, deserves scant consideration.

Pertinent portions of RMO No. 8-2006 read as follows:

"IV. GUIDELINES

To ensure uniformity in the handling of LAs, the following guidelines are given:

xxx xxx xxx

F. **On Disposition of Dockets**

xxx xxx xxx

2. In case the report of investigation submitted for review was returned to the investigating

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

[45] SUBJECT: Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.

office for compliance with additional requirements and the original investigating Revenue Office (RO) and/or the Group Supervisor (GS) has been transferred, resigned or retired:

a. where the RO has resigned/retired or transferred but not the GS, the case shall be reassigned to another RO under the supervision of the same GS

b. where the GS has resigned / retired or transferred but not the RO, the case shall be continued by the same RO

c. where the GS has resigned/retired or transferred and the RO has also been transferred to another RDO but within the same RR, the case shall be remanded to the same RO, thru the previous RDO, by the AD. Updating of the status of the case shall be made by the same RO through authorized access given to the previous RDO

d. where the RO has resigned/retired or transferred to another RR but the GS is still assigned within the same RR, the case shall be remanded to the same GS, thru the previous RDO, by the AD. Updating of the status of the case shall be made by the same GS based on authorized access given by the previous RDO

e. where both the RO and the GS have resigned/retired or transferred to another RR, the case shall be reassigned to another RO under the supervision of another GS within the same RDO

<u>In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS</u>." *(Emphasis and underscoring supplied.)*

It is evident from the foregoing that Section IV, F(2) of RMO No. 8-2006 merely provides the procedure for the disposition of the docket of a case in the event of a reassignment of the concerned BIR personnel, through the issuance of a memorandum to that effect to the concerned taxpayer and the concerned RO and/or GS. Notably, the last paragraph pertaining to the issuance of a "memorandum to that effect" falls under the subheading "On Disposition of Dockets". Hence, the scope of the issuance of a memorandum should be taken to pertain only to the "disposition of dockets" of a reassigned or transferred case to another RO.

Definitely, it cannot be taken to mean that the issuance of a memorandum is tantamount to the issuance of an LOA which thereby grants authority to the new RO to continue the audit/investigation of taxpayers.

Correspondingly, Section IV, F(2) of RMO No. 8-2006 could not have amended or repealed the requirement under the aforequoted provision of RMO No. 43-90 for the issuance of a new LOA in case of reassignment/transfer of cases to another RO.

Furthermore, pertinent portions of RMO No. 69-2010, read as follows:

> "III. Policies and Guidelines
>
> **8. Manual serially-numbered MOA shall be issued for the following cases:**
>
> > **8.1 Reassignment for the continuation of the audit/investigation of a case to another RO due to resignation/retirement/transfer of the original RO;"**

While a reading of the said RMO shows that a MOA is required to be issued in case of reassignment for the continuation of the audit/investigation of a case to another RO, just as in RMO No. 8-2006, there is nothing therein however which dispenses with the mandatory issuance of LOA for purposes of granting authority to a RO to continue the investigation.

Similar to RMO No. 8-2006, RMO No. 69-2010, cannot have revoked the requirements laid down under RMO No. 43-90. As such, plaintiff may not validly invoke the said RMO as basis for the non-issuance of a new LOA.

But even granting that the earlier quoted provisions of RMO Nos. 8-2006 and 69-2010 are to the effect that in case of reassignment/ transfer of a case to another RO, the issuance of an LOA can be dispensed with, the same is of no moment.

This is simply because said issuances would run counter to the aforequoted Section 6(A) of the NIRC of 1997, which is the substantive law on the matter. It is well-settled that a mere administrative issuance cannot amend the law; the former cannot purport to do any more than implement the latter.[46] Hence, the said provisions of RMO Nos. 8-2006 and 69-2010 cannot be considered as valid,[47] and must not be adhered to, as the same are not legally binding.

Relative thereto, it must be emphasized that the CIR, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018[48], recognized the ruling in the *Medicard* case, in this wise:

> "The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, <u>through an LOA</u>. The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
>
> xxx xxx xxx
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." *(Emphasis and underscoring supplied)*

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[46] *Secretary of Finance Cesar V. Purisima, et al. vs. Philippine Tobacco Institute, Inc.*, G.R. No. 210251, April 17, 2017.

[47] Administrative or executive acts, orders or regulations shall be valid only when they are not contrary to the laws or the Constitution. [Article 7 *(last paragraph)*, Civil Code of the Philippines]

[48] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

Thus, We see no reason not to apply the said ruling in the *Medicard* case to the instant case.

Accordingly, without any new LOA authorizing the subsequent ROs to conduct the reinvestigation of defendant's books of accounts and accounting records for TY 2007, the assessment arising from such investigation is a nullity. Being so, plaintiff has no right to collect from the defendant the subject deficiency taxes.

An invalid assessment bears no valid fruit.[49] It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[50]

In sum, the Court finds the evidence presented in this case by plaintiff insufficient to establish that it is entitled to the relief sought.

WHEREFORE, in light of the foregoing considerations, defendant's **Demurrer to Evidence** is **GRANTED.** Accordingly, the instant case is **DISMISSED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[49] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phil.*, Inc., G.R. No. 198677, November 26, 2014.
[50] *Ibid.*