REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

EDS MANUFACTURING, INC., Petitioner,	**CTA CASE NO. 8913**
	Members:
- versus -	**UY**, *Chairperson*, **RINGPIS-LIBAN**,*and* **MODESTO-SAN PEDRO**, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 05 2021 7:47 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is respondent's **Motion Reconsideration [Re: Decision dated June 25, 2020]**, filed through registered mail on August 20, 2020 and received by the Court on September 1, 2020, with petitioner's **Opposition (To Respondent's Motion for Reconsideration dated 18 August 2020)**, filed on September 7, 2020.

On June 25, 2020, this Court promulgated a Decision cancelling respondent's deficiency assessments against petitioner for lack of a valid letter of authority (LOA), the dispositive portion of which is reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, FDDA dated September 22, 2014 and the Assessment made by respondent against petitioner for deficiency taxes of ₱228,909,376.19, inclusive of interest and penalties, for fiscal year ending March 2010, are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

In his Motion, respondent primarily claims that the Court erred in cancelling the subject tax assessments made by his revenue officers for want of valid authority in conducting the audit of petitioner's internal revenue tax liabilities for fiscal year (FY) ending March 2010.

Respondent claims that under Revenue Memorandum Order (RMO) No. 8-2006, the Head of the investigating office is duly authorized to issue and sign a Memorandum of Assignment (MOA) to continue the audit examination in cases where originally named ROs in the Letter of Authority (LOA) have resigned/retired or transferred to another Revenue Region. More so, respondent further claims that it is also categorically provided in RMO No. 62-2010 *(Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures)* that the Commissioner of Internal Revenue (CIR) expressly delegates to the Head of investigating office the authority to sign the MOA in case of changes in the composition of the revenue officers due to resignation, retirement or reassignment, pursuant to an existing LOA.

Accordingly, respondent insists that in the present case, Ms. Edralin M. Silario and Mr. Cesar D. Escalada, being the Head of the investigating office, validly issued the MOAs dated April 26, 2012 and January 23, 2014, respectively. As such, the MOA dated January 23, 2014 validly vested RO Reynante DP. Martinez and GS Roland M. Balbido to continue with the audit in view of the transfer/reassignment of the ROs named in LOA No. LOA-116-2010-00000137.

Lastly, respondent argues that since the MOAs in question are part of the Bureau of Internal Revenue (BIR) Records that was submitted to this Court on March 6, 2015, he asserts that even though said MOAs was not identified by a competent witness, this Court is not constrained to recognize and reconsider the same.

On the other hand, in its Opposition, petitioner points out that the MOA dated April 26, 2012 issued by Edralin M. Silario, OIC-Chief, LT Regular Audit Division I, and the MOA dated January 23, 2014 issued by Cesar D. Escalada, Chief, Regular LT Audit Division 1, relied upon heavily by the respondent in his Motion were both denied admission into evidence pursuant to the Resolution dated October 19, 2017, due to respondent's failure to have them identified. Therefore, it avers that these documents are mere scraps of paper with no evidentiary value in this proceeding.

Nonetheless, assuming that the said MOAs may be treated as LOA, petitioner contends that the MOAs are still defective as they were signed not by the Head of the investigating office as prescribed under the RMOs cited by the respondent but only by the OIC-Chief and Chief, respectively, of one of the Audit Divisions of the investigating office. More importantly, petitioner further points out that under RMO No. 44-2010, the "Investigating Office" refers to the Large Taxpayers Service (LTS) and its Divisions as a collective Office-not just one of its Divisions; and the "Head of the Investigating Office" is the Assistant Commissioner" (ACIR) – LTS , and not the Chief of one or any of its Divisions.

This Court finds respondent's Motion for Reconsideration bereft of merit.

Time and again, this Court has consistently declared that, being a court of record, cases filed before it are litigated *de novo*, party-litigants must prove every minute aspect of their cases.[1] Indubitably, no evidentiary value can be given to any documentary evidence that is merely attached to the BIR Records, as the rules on documentary evidence require that such documents must be formally offered before the Court. Pertinent is Section 34, Rule 132 of the Rules of Court which reads:

> "Section 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Also, in the case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*,[2] the Supreme Court held that the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party, to wit:

> "x x x We had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
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> **The Rule on this matter is patent that even documents which are identified and marked as exhibits cannot be considered into evidence when the same have not been formally offered as part of the evidence, <u>but more so if the same were not identified and marked as exhibits</u>, such as in the present case**. An assay of the records reveals that the subject Memorandum dated 2 February 2001 was neither identified nor offered in evidence by respondent during the entire proceedings

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[1] Section 8 of R.A. No. 1125, as amended.
[2] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, December 5, 2016, citing *Interpacific Transit, Inc. v. Rufo Aviles, et al.*, G.R. No. 86062 June 6, 1990.

before the CTA in Division. Consequently, this is fatal to respondent's cause in establishing the existence of fraud committed by petitioner since the burden of proof to establish the same lies with the former alone.

As a matter of fact, **even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court, this does not permit the trial court to consider the same in view of the fact that the Rules prohibit it**. The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. **Unless any of the party formally offered in evidence said Memorandum, and <u>accordingly, admitted by the court a quo</u>, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it**." *(Emphases and underscoring supplied)*

That having been settled, the Court shall now discuss respondent's main argument. Again, respondent claims that the Head of an investigating office is considered as duly authorized by the CIR to issue and sign MOA in case of changes in the composition of the revenue officers due to resignation, retirement or reassignment in lieu of issuing an LOA.

Unfortunately, this Court does not agree.

At the onset, the power to authorize the examination of a taxpayer's books of accounts and to issue assessments is primarily lodged with respondent or his duly authorized representative, pursuant to Section 6(A)[3] of the NIRC of 1997, as amended. Furthermore, respondent's power to delegate to his duly authorized representative is elucidated under Section 7, in relation to Sections 10(c) and 13 of the same Tax Code, to wit:

"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 <u>equivalent to a division chief or higher</u>**, subject to such limitations and restrictions as

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[3] "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)* may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: x x x."

"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

(c) **Issue Letters of Authority for the examination of taxpayers within the region;**"

"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."

As clearly seen above, the rank of a Division Chief – specifically that of the RLTAD I, is not among those mentioned as duly authorized representative of respondent delegated with such power. In fact, under RMO No. 44-2010[4], the approving official in the Large Taxpayers Service and its Division is not the Division Chief but rather the Assistant Commissioner for the Large Taxpayers Service, to wit:

"III. *FEATURES OF THE ELECTRONIC LA*

1. The electronic LA (Annex 'A' hereof) shall bear the name, designation and electronic signature of the approving BIR officials, as follows:

Investigating office	*Approving Official*
• Revenue District Office	Regional Director
• **LTS and its Divisions**	**Assistant Commissioner (ACIR) – LTS**

[4] "SUBJECT: Electronic Issuance of Letters of Authority", dated May 12, 2010.

x x x." *(Emphasis supplied)*

As to the RMO No. 62-2010[5] cited by respondent, nowhere in that RMO does expressly grant the Chief of the RLTAD I the authority to issue an LOA or effect modifications to a validly issued LOA through the issuance of a MOA. The said RMO is issued primarily as guidelines for the smooth transition from the use of manually prepared LOA to electronic LOA (eLOA) commencing July 1, 2010 onwards. As a matter of fact, the only time it mentioned the rank of Chiefs of LTAD was for the surrender of all unused LOA and Tax Verification Notice (TVN) forms.

To reiterate, the issuance of the subject tax assessment was a result of the tax audit investigation conducted by ROs that have no valid authority to conduct the same against petitioner. As such, respondent's deficiency tax assessment is likewise invalid, as the same was based on a void tax audit conducted without authority.

Accordingly, from the foregoing disquisition, this Court finds no cogent reason to modify or reverse the assailed Decision.

WHEREFORE, premises considered, respondent's Motion Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[5] "SUBJECT: Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures", dated June 28, 2010.