REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEMISPHERE-LEO BURNETT, INC., Petitioner,	**CTA Case No. 9749** Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, CAESAR R. DULAY, OIC-ASSISTANT COMMISSIONER OF LARGE TAXPAYERS SERVICE, TERESITA M. ANGELES, and the BUREAU OF INTERNAL REVENUE, Respondents.	Promulgated: OCT 06 2020 8:47 AM

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is petitioner's **Motion for Reconsideration**, filed on June 15, 2010, with respondents' **Opposition (Re: Motion for Reconsideration of the Decision dated 3 June 2020)**, posted on July 16, 2020 and received by the Court on July 28, 2020.

On June 3, 2020, the Court promulgated a Decision, denying petitioner's Petition for Prohibition on the ground that there was no grave abuse of discretion on the part of respondents in issuing a Letter of Authority (LOA), the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* is

> **DENIED** for lack of merit. The assailed LOA No. SN: eLA 201500089752 dated November 21, 2017 issued by the BIR is **VALID**.
>
> The Resolution dated August 20, 2019 issued by this Court, insofar as it enjoined respondents from collecting tax by whatever means pursuant to the said LOA, is **LIFTED**, without prejudice to the availment by petitioner of the remedies provided by law against tax assessments and collection
>
> **SO ORDERED**."

In its Motion, petitioner assails the above Decision anchoring its arguments on the following grounds, *viz.*:

> A. The Court erred when it held that what is involved in the instant case is a purely legal issue;
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> B. The Court erred when it ruled that the issuance of a Letter of Authority (LOA) is not governed by the prescriptive periods under Sections 203 and 222 of the NIRC of 1997; and
>
> C. The Court erred when it ruled that the petitioner is not entitled to the issuance of a Writ of Prohibition permanently enjoining respondents from implementing the subject LOA No. SN: eLA 201500089752 dated November 21, 2017, pursuant to Rule 65, Sections 2 and 7 and Rule 58 of the Revised Rules of Court and Section 3(a) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA).

As to the first ground, petitioner claims that it has always manifested that the present case involves both factual and legal issues. In fact, as stated in its Manifestation and Motion dated October 7, 2019, there are attendant factual matters that need to be considered in resolving the said issue which includes the issue of validity of the subject LOA. Petitioner also maintains that the subject LOA is null and void for having been issued beyond the three (3)-year prescriptive period as required under Sections 203 of the National Internal Revenue Code (NIRC) of 1997, as amended. As testified by its witness, Ms. Maria Ellen H. Gonzaga, respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the LOA on November 21, 2017, to examine petitioner's books of accounts covering the period of January 1, 2012 to December 31, 2012. Clearly then, the LOA was issued beyond the 3-year prescriptive period without falling within the exceptions mentioned in Section 222 of the NIRC of 1997, as amended.

With regard to the second ground, petitioner claims that provisions Section 203, entitled *Period of Limitation Upon Assessment and Collection*, and Section 222, entitled *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*, are both under Title VIII, Chapter I of the NIRC of 1997 regarding the remedies which are available to taxpayers in cases of assessments and collections of taxes made by the Bureau of Internal Revenue (BIR) against them. As such, petitioner disagrees with the Court's conclusion that the period for the Statute of Limitations regarding tax assessments referred to under Sections 203 and 222 of the NIRC of 1997, as amended, pertains only to the written notice and demand made by the BIR on the taxpayer of a tax liability due, which does not include the LOA.

More so, petitioner posits that the usage of the words "assessment" or "assess" denote that there is an action, an ongoing process or procedure, ongoing evaluation, examination and ascertainment of the correctness of any tax return. The said words covers not merely the issuance of the written notice and demand made by the BIR on the taxpayer, but also includes the BIR's procedure of assessing and auditing, which embraces the issuance of a valid LOA within the three-year prescriptive period under Section 203, with the exceptions of those enumerated under Section 222 of the NIRC of 1997, as amended.

As to the last ground, petitioner asserts that the subject LOA expressly stated that petitioner's books of accounts and other accounting records were being examined for all internal revenue taxes for taxable year (TY) 2012; thus, the said LOA has already indicated the specific taxes of the assessment. Considering that the internal revenue taxes are already determined, the right of respondents to assess and collect taxes against petitioner for TY 2012 had already prescribed. Evidently, petitioner insists that it is entitled to the issuance of a Writ of Prohibition to permanently enjoin respondents from implementing the subject LOA No. SN: eLA201500089752 dated November 21, 2017, and to restrain the illegal exercise of the respondents' power to examine petitioner's books of accounts based on an LOA which was issued with grave abuse of discretion amounting to lack or excess of jurisdiction under Rule 65 of the Revised Rules of Court. The LOA being a patent nullity, Certiorari and Prohibition lies in the present case since petitioner has no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.

On the other hand, in its comment, respondents oppose petitioner's Motion for Reconsideration pointing out that the arguments raised therein were already discussed and resolved by the Court in the Decision dated June 3, 2020.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

As correctly observed by respondents, the arguments in the instant Motion for Reconsideration are mere rehashes of the same facts and issues which have already been considered and discussed extensively in the assailed Decision dated June 3, 2020. Perforce, the Court maintains that Sections 203 and 222 of the NIRC of 1997, as amended, pertains to the issuance of a tax assessment and not to the issuance of an LOA.

In the case of *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*,[1] the Supreme Court held that:

> "The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period**, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer." (*Emphasis supplied*)

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[1] G.R. No. 197515, July 2, 2014.

Again, as held in the Decision assailed, an LOA commences the audit process and informs the taxpayer that it is under audit for a *possible* deficiency tax assessment, however, it is entirely different from an assessment *per se*, thus:

> "The issuance of an LOA is not governed by the prescriptive periods under Sections 203 and 222 of the NIRC of 1997.
>
> x x x
>
> A careful reading of the foregoing provisions would reveal that what is being governed therein is the issuance of a tax assessment or the filing of an action in court without an assessment for the collection of taxes, within a certain period of time. Specifically, Section 203 mandates the BIR **to assess** internal revenue taxes or **to commence a proceeding in court** for tax collection without an assessment, within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.
>
> On the other hand, Section 222(a) prescribes that **the assessment of tax or commencement of a proceeding in court**, in case of a false or fraudulent return with intent to evade tax, or in case of failure to file a return, should be done within a period of ten (10) years from the discovery of the falsity, fraud or omission. And as regards Section 222(b), **the assessment of tax** may be made beyond the expiration of the three (3)-year prescriptive period, so long as respondent CIR and the taxpayer agreed, in writing and before such expiration, to its assessment after such time.
>
> In both provisions, nothing has been said about the issuance of an LOA. Thus, the issuance thereof is ***not*** subject to the periods of limitation or prescriptive periods enunciated under Sections 203 and 222 of the NIRC of 1997. To be clear, while under the said provisions, there is a prescriptive period for the issuance of tax assessments, the issuance of an LOA has none.

After all, a tax assessment is totally different from an LOA. In other words, an LOA is not akin to a tax assessment.

In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. It also signals the time when penalties and interests begin to accrue against the taxpayer.

In stark contrast with a tax assessment, 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 to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period. The LOA commences the audit process and informs the taxpayer that it is under audit for ***possible*** deficiency tax assessment.

In view of the foregoing distinction, a tax assessment is always preceded by an LOA, which entails the examination of a taxpayer's books of accounts and other accounting records; and the issuance of an LOA does not necessarily mean the subsequent issuance of a tax assessment. Parenthetically, the BIR is not mandated to make an assessment relative to every return filed with it."[2] *(Citations omitted)*

Lastly, considering the subject LOA is valid, the inevitable conclusion is that there is no grave abuse of discretion in the present case to warrant a Writ of Prohibition. Henceforth, considering that there is no cogent reason to disturb the Decision assailed, the Court is constrained to deny the instant Motion.

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

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[2] Decision, pp. 19 to 21.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice