REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PGA SOMPO INSURANCE CORPORATION,
Respondent.

CTA EB NO. 2203
(CTA Case No. 9394)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

Promulgated:

MAR 17 2022 3:49pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* is petitioner's Motion for Reconsideration [Decision dated September 15, 2021] filed on October 25, 2021, with respondent's Comment and Opposition (to the Motion for Reconsideration dated October 12, 2021) filed on December 6, 2021.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED."[1]

In his motion, petitioner asserts that the Court in Division may not rule on an issue that was not raised during the hearing below. Further, petitioner asserts that a Letter of Authority (LOA) is not necessary when the audit investigation is conducted under the Office of the Commissioner of Internal Revenue (OCIR). Finally, petitioner argues that the audit investigation was conducted pursuant to a valid LOA.

On the other hand, respondent generally counters that petitioner merely rehashed his arguments.

After careful consideration of the arguments of the parties, the Court *En Banc* finds petitioner's arguments unmeritorious.

The CTA may rule upon related issues necessary to achieve an orderly disposition of the case

In this regard, petitioner cites the case of *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*,[2] where this Court relied upon the presumption of regularity in the performance of official duties *vis-à-vis* the failure of the taxpayer to raise the issue on lack of LOA.

However, the *Prime Steel* case is not on all fours with the instant case. In *Prime Steel*, no LOA was presented as evidence during the hearing. This fact was exacerbated due to the taxpayer's failure to allege the same. Thus, in the absence of any evidence with respect to the CIR's performance of duties, the presumption of regularity will operate in his favor.

Here, records show that the subject LOA was presented as evidence during the hearing. Moreover, the Memorandum of Assignment (MOA) issued in favor of the concerned Revenue Officers (RO) directly contradicts the presumption of regularity enjoyed by petitioner. Hence, the *Prime Steel* case is not applicable in the instant case.

As such, the Court *En Banc* finds no error when it ruled that:

> "Section 1, Rule 14 of Revised Rules of the CTA pertinently provides:

[1] Decision, Court *En Banc* Docket, p. 94.
[2] CTA EB Nos. 1678 & 1680, January 3, 2019, penned by Associate Justice Catherine T. Manahan.

> '**SECTION 1.** *Rendition of judgment.* – xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.'

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, the Supreme Court explained the above provision, as follows:

> 'On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> SECTION 1. *Rendition of judgment.* – xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.'

Here, while the issue on lack of an LOA was never raised in the proceedings below, the pronouncement of the Supreme Court in *Lancaster* dictates that the CTA may also rule upon related issues necessary to achieve an orderly disposition of the case. Considering that the case involves deficiency tax assessment, it is imperative for the Court in Division to first determine the validity of the assessment before it can proceed to determine the merits of the case."[3] *gr*

[3] Please see Note 1, pp. 88-89.

Considering the foregoing, the Court *En Banc* finds petitioner's arguments unmeritorious.

The practice of reassigning or transferring revenue officers originally named in the LOA and substituting or replacing them with new revenue officers: (1) violates the taxpayer's due process rights; (2) usurps the statutory power of the CIR; and (3) is non-compliant with existing BIR rules and regulations.

Petitioner argues that since the LOA was issued by the Assistant Commissioner for Large Taxpayers Service, the issuance of an LOA is not a statutory requirement. Moreover, LOAs are issued to taxpayers and not to ROs.

Petitioner's arguments are wrong.

These issues were squarely addressed in the assailed Decision, as follows:

> "In ruling against petitioner, the Court in Division found that:
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> > 'In the instant case, the LOA dated November 10, 2010 that was issued to petitioner authorized RO Saidamen Marohombsar and GS Adora Alberto of LT Regular Audit Division 2. The said LOA was signed by Assistant Commissioner Nestor S. Valeroso.
> >
> > During the course of the audit investigation, on April 5, 2013, a MOA addressed to RO Luzviminda A. Pedrosa and GS Fe F. Caling was issued and signed by Mr. Edwin T. Guzman, OIC-Chief, RLTAD 2. Notably, the change in revenue officer and group supervisor occurred prior to the issuance of the assessment. Undoubtedly, RO Pedrosa and GS Caling completed the audit and recommended for the issuance of the assessment.'
>
> 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'

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 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.'

As to the powers of a Revenue Regional Director, Section 10 of the 1997 NIRC pertinently provides:

'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.'

On the other hand, as to the authority of an RO, Section 13 of the 1997 NIRC pertinently provides:

'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.'

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 an LOA. It may be noted that an OIC-Chief of the Regular Large Taxpayers Audit Division II is not included therein. 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 Regional Directors, 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>**.'

To reiterate, only the CIR or his duly authorized representatives can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated otherwise, 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.

Considering that **only** the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another RO shall require the issuance of a new LOA. In any event, the same does not negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, 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 just 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. 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.

As mentioned earlier, OIC-Chief of LTS-RLTAD II Mr. Edwin T. Guzman issued a MOA to the concerned ROs. Not being one of the officials authorized to issue an LOA, the subject LOA is invalid for purposes of determining the validity of the assessment.

> Consequently, a void assessment bears no fruit. As such, the Court *En Banc* finds no reason to deviate from the ruling of the Court in Division."[4]

Here, it is clear that the audit/investigation was reassigned or transferred to RO Pedrosa and GS Caling through the subject MOAs. The validity of the audit/investigation through this reassignment or transfer is the *crux* of the controversy in the present case.

In the most recent case of *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*,[5] the Supreme Court categorically pronounced that:

> "The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (LOA) and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue (CTR) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (BIR) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.
>
> xxx xxx xxx
>
> Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. 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. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. 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."

Applying the ruling of the Supreme Court in the *Mcdonald's* case, the audit examinations conducted by RO Pedrosa and GS Caling are void considering that their authority did not emanate from a valid grant of authority in the form of an LOA.

[4] Please see Note 1, pp. 89-94.
[5] G.R. No. 242670, May 16, 2021.

To conclude, petitioner failed to present valid arguments to warrant the reconsideration of the assailed Decision. Hence, the denial of the instant motion is in order.

WHEREFORE, the instant Motion for Reconsideration [Decision dated September 15, 2021] is **DENIED**, for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice