REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

R.A. OBEN HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1454
(CTA Case No. 8723)

Present:
Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

APR 11 2018 11:37 a.m.

x--x

RESOLUTION

CASTAÑEDA, JR., *J.*:

This resolves petitioner's "Motion for Reconsideration [OF THE DECISION DATED 18 SEPTEMBER 2017],"[1] which was filed on October 18, 2017.

The dispositive portion of the Decision dated September 18, 2017 states:

> **WHEREFORE,** premises considered, the Petition for Review is **DENIED** for lack of merit. The January 6, 2016

[1] *Rollo*, pp. 314-358..

Decision and April 7, 2016 Resolution of the CTA Third Division in CTA Case No. 8723 are **AFFIRMED**.

SO ORDERED.

Petitioner enumerates the grounds of its motion, as follows:

I. The Honorable Court has erred in not adjudging that the VAT assessment against the petitioner is void for lack of a valid Letter of Authority ("LOA").

II. The Honorable Court has misconstrued the material records of the case in not finding that the VAT assessment against the petitioner is already barred by prescription.

III. The Honorable Court has misapplied existing jurisprudence in affirming the finding that the testimony of petitioner's witness, Angelina L. Esteves, was self-serving and that the petitioner failed to present other pieces of evidence in support of its defenses against the VAT assessment.

IV. The Honorable Court has misappreciated the evidence on record in upholding that the presumption of correctness of the present VAT assessment was not refuted by petitioner's evidence and that the assessment is supported by actual facts.

V. The Honorable Court has erred in affirming the imposition of the fifty percent (50%) surcharge and both the deficiency and delinquency interests for lack of legal basis.

Respondent, by counsels, filed his "Comment (To Petitioner's Motion for Reconsideration of the Decision dated 18 September 2017)" on December 27, 2017, through registered mail and received by the Court on January 4, 2018.

On January 12, 2018, petitioner's motion was submitted for resolution.

After a careful review of the grounds raised and arguments presented by petitioner, We find no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated September 18, 2017, thus, the motion is denied.

This Court will only limit the discussion on the first ground raised in this motion. The other arguments were already considered in the Decision dated September 18, 2017.

As regards the first ground, the contentions of petitioner is bereft of merit. The rulings in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc. ("Lancaster case"),*[2] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue ("Medicard case),*[3] and *Commissioner of Internal Revenue v. Sony Philippines, Inc. ("Sony case")*[4] are not applicable in this case. The factual milieu in the cases cited differ from the instant case.

In the *Lancaster case,* the Supreme Court (SC) agreed with CTA's finding and conclusion that the revenue examiners had exceeded their authority when they issued the assessment against Lancaster and, consequently, declared such assessment to be without force and effect. The Letter of Authority (LOA) that was issued by the Bureau of Internal Revenue (BIR) authorized its revenue officers to examine Lancaster's books of accounts and other accounting records for all internal revenue taxes due from ***taxable year 1998 to an unspecified date.*** However, the deficiency income tax assessment which the BIR eventually issued against Lancaster was based on the disallowance of expenses reported in FY 1999, or for the period 1 April 1998 to 31 March 1999.

In the *Medicard case*, the SC found that "there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution."

In the *Sony case*, "LOA 19734 covered 'the period 1997 and unverified prior years.' For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998." Also,

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[2] G.R. No. 183408, July 12, 2017.
[3] G.R. No. 222743, April 5, 2017.
[4] G.R. No. 178697, November 17, 2010, 635 SCRA 234.

the coverage of LOA 19734, particularly the phrase "and unverified prior years," violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, which states that, "3. A Letter of Authority should cover a taxable period not exceeding one taxable year."

To sum it up, the circumstances in the cited cases are not present in this case, thus, the rulings in the *Medicard case*, the *Lancaster case*, and the *Sony case* are not applicable. In the *Medicard case*, no LOA was issued, whereas an LOA was issued in this case. In the *Lancaster case* and in the *Sony case,* the revenue officers exceeded their authority in examining the book of accounts of the taxpayer because the assessment was based on records beyond the period stated in the LOA, whereas in the instant case, the revenue officers complied with the LOA covering the period from January 1, 2008 to December 31, 2008 and the assessment was based on the records for the same period.

We emphasize that this case emanates from a validly issued LOA, which was subsequently revalidated by the Regional Director and the reasons for the revalidation were the lapse of the period and re-assignment of R.O., as stamped on the upper right side of the LOA. [5]

Pertinent to this is the revalidation procedure of the LOA (referred as LA in RMO cited herein) as stated in RMO No. 019-09,[6] as follows;

> May 28, 2009
>
> REVENUE MEMORANDUM ORDER NO. 019-09
>
> SUBJECT : 2009 Audit Program for Revenue District Offices
>
> TO : All Regional Directors, Revenue District Officers, Chiefs of the Assessment Divisions of Regional Offices, Other Revenue Officers and Others Concerned `
>
> I. OBJECTIVES
>
> 1. To prescribe uniform policies, guidelines and procedures in the audit of **2008 tax returns** by Revenue District Offices (RDOs); and
>
> xxx xxx xxx

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[5] Exhibit "R-2", BIR Records, p. 27.

[6] Revenue Memorandum Order No. 019-09, SUBJECT: *2009 Audit Program for Revenue District Offices*, May 28, 2009, signed by Commissioner of Internal Revenue Sixto S. Esquivias IV.

II. COVERAGE

The 2009 Audit Program shall cover the audit/investigation of 2008 internal revenue tax returns, including tax returns of fiscal period taxpayers whose taxable year ended on July 31, 2008 up to June 30, 2009.

III. Selection Criteria

A. Letters of Authority (LAs) shall be issued to cover the audit/investigation of taxpayers falling under the following selection criteria:

xxx xxx xxx

IV. POLICIES AND PROCEDURES

xxx xxx xxx

25. In case the report of investigation cannot be rendered within the aforementioned time frame due to constraints attributable to the taxpayer, the RO may request for the revalidation of the LA by preparing a progress report with a valid reason for the request for revalidation, duly noted by the Group Supervisor and approved by the Revenue District Officer. The Revenue District Officer shall transmit the entire docket of the case, including all notices with checklist of documentary requirements served to the taxpayer, to the Regional Director for revalidation of the LA. **The previously issued LA shall be stamped "Revalidated on ______________" and shall be signed by the Regional Director.**

The revalidation of LA shall give rise to the extension of the period within which the concerned RO shall submit the required report of investigation to higher authorities for review and approval without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuance. Failure on the part of the RO to request for revalidation or the expiration of the "revalidation period" does not nullify the LA; thus, the investigation shall be pursued by the RO and shall render a report on the investigation as required in this Order. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO. (Emphases Supplied).

RMO No. 019-09 pertains to audit of 2008 tax returns by Revenue District Offices (RDOs). The instant case involves 2008 tax returns, thus, RMO No. 019-09 is applicable.

The RO who continued the investigation was specifically named in the Memorandum of Assignment.[7] Based on the foregoing, the RO was authorized to conduct the investigation, thus, the assessment issued was valid.

We reiterate that "petitioner failed to present evidence to overturn the presumption of correctness of respondent's assessment."[8]

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration [OF THE DECISION DATED 18 SEPTEMBER 2017]" is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

I maintain my Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(With due respect, I join PJ's Dissenting Opinion.)
ERLINDA P. UY
Associate Justice

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[7] Exhibit "R-31", Dockets, p. 393.
[8] *Rollo*, p. 59.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

With due respect, I join PJ's Dissenting Opinion.

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I maintain my DO (Dissenting Opinion)
dated Sept. 18, 2017.

CATHERINE T. MANAHAN
Associate Justice