REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ROYAL CLASS TRADING AND TRANSPORT CORPORATION, Petitioner,	CTA CASE NO. 8844
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE and the BUREAU OF INTERNAL REVENUE, Respondents.	Promulgated: NOV 16 2017 3:30 p.m.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review filed on July 4, 2014, petitioner Royal Class Trading and Transport Corporation seeks to reverse and set aside the Final Decision of respondent Commissioner of Internal Revenue (CIR) dated May 27, 2014, affirming the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) issued for its alleged deficiency Income Tax (IT) and Value-added Tax (VAT), plus compromise penalty in the total amount of ₱151,339,624.78 for the calendar year (CY) ending December 31, 2007.

THE FACTS

Petitioner is a domestic corporation, engaged in the trading of petroleum products supplied by Pilipinas Shell Petroleum Corporation (Shell) and Petron Corporation

(Petron). Its gas station and office are located at Reina Mercedes, Isabela.[1]

On the other hand, respondent CIR is the head of the other respondent Bureau of Internal Revenue (BIR), the government agency responsible with the assessment and collection of national internal revenue taxes. Respondent CIR has the power to decide or act on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. Both may be served with summons and court processes at their office located at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return (AITR) for CY 2007[2] on April 14, 2008, and its Quarterly VAT Returns for the 1st, 2nd, 3rd, and 4th quarters of CY 2007 on April 20, 2007[3], July 20, 2007[4], October 22, 2007[5], and January 22, 2008[6], respectively.

On October 16, 2008, respondent CIR issued a Letter of Authority[7] (LOA) authorizing Revenue Officer (RO) Ma. Elisa F. Batalla to examine petitioner's books of accounts and other accounting records for the period January 1, 2007 to December 31, 2007.

On November 22, 2010, respondent CIR issued the Preliminary Assessment Notice (PAN)[8], assessing petitioner the amounts ₱104,433,417.36 and ₱44,999,772.16, as deficiency IT and VAT, respectively, inclusive of interests, and recommending a compromise penalty of ₱50,000.00. The PAN was served to petitioner via registered mail which the latter received on December 3, 2010[9].

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[1] The Parties, Petition for Review, docket, vol. 1, p. 8.
[2] Exhibit "P-19".
[3] Exhibit "P-33".
[4] Exhibit "P-34".
[5] Exhibit "P-35".
[6] Exhibit "P-36".
[7] Exhibit "R-1".
[8] Exhibit "R-16".
[9] Exhibit "R-17".

Subsequently, respondent CIR issued against petitioner a Final Assessment Notice (FAN)[10] and a Formal Letter of Demand (FLD)[11], both dated December 22, 2010, assessing it for the following liabilities inclusive of legal increments:

TAX TYPE	AMOUNT
Income Tax	₱ 105,810,621.81
Value-added Tax	45,479,002.97
Compromise Penalties	50,000.00
TOTAL	**₱151,339,624.78**

Both the FAN and FLD were sent to petitioner, who received them through registered mail on January 10, 2011.

On June 7, 2014, petitioner received the assailed Final Decision[12] issued by respondent CIR dated May 27, 2014.

On July 4, 2014, petitioner filed the instant Petition for Review[13] with this Court.

On November 3, 2014, respondent filed an Answer[14] challenging the jurisdiction of the Court over the Petition depriving the Court of competence to entertain the same. Respondent explained that the assailed assessment has become final, executory and demandable as petitioner, despite receipt of the FAN and FLD on January 10, 2011, failed to protest the assessment within the period prescribed under Section 228 of the NIRC, as amended, warranting the dismissal of the case.

Further, the LOA, PAN, FLD and FAN were all in order and issued in accordance with law, rules and jurisprudence. Thus, the finding of deficiency tax liabilities against petitioner is proper in all aspects.

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[10] Exhibit "R-18".
[11] Exhibit "R-19".
[12] Exhibit "P-1".
[13] Docket, vol. 1, pp. 7-25.
[14] Docket, vol. 2, pp. 661-671.

Lastly, tax assessments by tax examiners are presumed correct and made in good faith and therefore, the taxpayer has the burden of proving the contrary.

On April 15, 2015, the Pre-Trial Conference was terminated with the issuance of a Pre-Trial Order.[15]

In support of its case, petitioner presented Jose Emmanuel P. Guillermo, Maria Theresa G. Ibarra, Jaime L. Nabua, Jovencio N. Daroya Jr., and Arvin L. Celino, as its witnesses.

Petitioner's President, **Jose Emmanuel P. Guillermo**, testified[16] that petitioner is a diligent taxpayer and compliant with all the legal, administrative and reportorial requirements of the BIR. In view thereof, the assessment for deficiency IT and VAT issued by the BIR against it is harsh, cruel, unjust, illegal and unconstitutional.

The audit against petitioner commenced with the issuance of LOA No. 00053080 dated October 16, 2008[17] by OIC-Regional Director (RD) for Revenue Region No. 3, Conrado D. Soriano. But he learned about it only in March 2009 when petitioner's gasoline boy informed him about a document he found at the doorstep of the office on November 21, 2008. The gasoline boy claimed that he placed the said document inside a desk outside the office and forgot to advise his superior about it.

With the said information, he immediately went to the office of RO Ma. Elisa Batalla in Ilagan, Isabella, but failed to see her as she was not in her office. Thus, he left a message requesting her to visit petitioner's office given that the Audit Checklist of Requirements[18] demanded submission of voluminous documents.

RO Batalla however, failed to visit petitioner's office, thus, petitioner's Vice President, Ma. Theresa G. Ibarra, communicated with RDO No. 15 regarding petitioner's

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[15] Docket, vol. 2, pp. 852-861.
[16] Exhibit "P-70".
[17] Exhibit "P-38".
[18] Exhibit "P-39".

submission of documents required in the LOA. She also paid the amount of ₱10,000.00[19] for the subpoena duces tecum on December 23, 2009.

On December 29, 2010, witness Guillermo allegedly received the PAN dated November 22, 2010[20] signed by RD Thelma S. Milabao, which petitioner's janitor allegedly found at the doorsteps of the office on November 30, 2010. The said janitor placed the PAN on top of one of the secretary's table and was only discovered on December 29, 2010.

He was surprised upon reading the PAN as petitioner was neither advised by the BIR Audit Team about its findings nor was it invited to an Informal Conference to explain its side. Further, the PAN was issued only on November 22, 2010, or long after he learned about LOA in March 2009.

On January 11, 2011, the FAN dated December 22, 2010[21], with the 3rd Indorsement dated February 11, 2010[22], was given to him by a subordinate. The FAN citing the L0A No. 0087257 dated October 16, 2008 indicated that RO Rene C. Tangonan shall continue petitioner's audit and that the 2nd Indorsement of the Chief, Legal Division was issued for the continuation of audit based on the best evidence obtainable. Notwithstanding the said Indorsements, petitioner was neither summoned nor visited at its office.

On January 12, 2011, he instructed petitioner's CPA/Bookkeeper Jaime Nabua to prepare a protest letter to the FAN[23]. Eight (8) months thereafter, RD Nerissa Agraam issued several Warrants of Distraint & Levy (WDLs)[24] against him and petitioner.

On September 30, 2011, he wrote to Revenue Region No. 3 RD Thelma Milabao[25] requesting to set aside the WDLs issued against him and petitioner. As there was no response

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[19] Payment Form, Exhibit "P-40"; Payment Slip, Exhibit "P-41".
[20] Exhibit "P-44".
[21] Exhibit "P-45".
[22] Exhibit "P-43".
[23] Exhibit "P-46".
[24] Exhibits "P-47" to "P-52".
[25] Exhibit "P-53".

to his letter, he filed a petition on October 14, 2011[26], which RD Milabao denied on October 18, 2011,[27] ruling that petitioner failed to timely file a protest, consequently, its Petition was filed out of time rendering the FAN final, executory and demandable. The witness however claimed the contrary, saying that petitioner filed its Letter Protest as early as January 22, 2011.

On October 28, 2011, petitioner filed a similar petition[28] which RD Milabao also denied on November 9, 2011[29].

On December 15, 2011[30], petitioner filed a Petition with the Office of respondent CIR praying for the reversal of the Decision of RD Milabao.

On August 31, 2012, petitioner filed with respondent CIR a Motion for Speedy Resolution[31] of its petition with information about the issuance of an Amended PAN dated March 15, 2012[32] and FAN dated March 15, 2012[33].

On June 7, 2014, respondent CIR denied petitioner's Petition ratiocinating that its Letter dated January 12, 2011 could not be considered as a valid Protest Letter because it was signed by Jaime L. Nabua, who was not a BIR accredited tax practitioner. In any event, petitioner should have been informed about such requirement and allowed the opportunity to be compliant, said the witness.

In the aspect of substantiation, the witness declared that petitioner had difficulty producing supporting documents of its purchases from Petron and Shell[34] and its operating expenses[35] as they were damaged during the onslaught of super typhoon Juan on October 18, 2010 and previous typhoons that struck the province of Isabela in 2008 and 2009. Nevertheless, petitioner's Vice-President

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[26] Exhibit "P-54".
[27] Exhibit "P-55".
[28] Exhibit "P-56".
[29] Exhibit "P-57".
[30] Exhibit "P-58".
[31] Exhibit "P-59".
[32] Exhibit "P-60".
[33] Exhibit "P-61".
[34] Exhibits "P-62" to "P-62-3".
[35] Exhibits "P-63" to "P-63-3".

was able to retrieve supporting documents but was advised to keep them in the meantime.

When recalled to the witness stand, the same witness presented several pictures[36] and reports from PAG-ASA[37], to prove that the Province of Isabela had been seriously hit by tropical cyclones in 2009 and 2010, which damaged petitioner's pertinent documents.

Petitioner's Vice-President, **Maria Theresa G. Ibarra**, corroborated[38] the testimony of witness Guillermo. In addition, she testified that she was in custody of petitioner's supporting documents, which RD Milabao instructed her to keep in the meantime. RD Milabao also asked her how much she could give to settle petitioner's tax liabilities. For petitioner's failure to comply with the *subpoena,* she paid the amount of ₱10,000.00 and submitted the required documents to RO Milabao, but she had no proof of such submission. She further testified that petitioner filed a Protest Letter dated January 11, 2011, through its Bookkeeper, Jaime Nabua, but again petitioner has no proof to back it up.

Witness **Jaime L. Nabua** testified[39] that he is petitioner's bookkeeper since the 1990s. He records all of its purchases, sales and cash disbursements and prepares its monthly financial statements. As petitioner's CPA/Bookkeeper, he prepared a Protest Letter against the subject FAN using his accounting office's letter head and personally filed it for petitioner on January 12, 2011. In the said Protest Letter, he requested the BIR for a re-investigation and re-examination of the subject assessment and in relation thereto, submitted to BIR Revenue Region No. 3 petitioner's 2007 Summary of Sales Invoice from Petron and Shell, Summary of Invoices reflecting petitioner's operating expenses and the actual invoices. He also submitted petitioner's Financial Statements audited by an accredited Tax Practitioner, Jovencio N. Doroya, Jr. However, it was only on October 18, 2011 that RD Milabao informed petitioner about the invalidity of the said Protest

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[36] Exhibits "P-68-a" to "P-68-g"
[37] Exhibits "P-68-I" to "P-68-j".
[38] Exhibits "P-42" to "P-42-a".
[39] Exhibits "P-72" to "P-72-a".

Letter on the ground that he was not a BIR accredited tax practitioner.

Finally, witness Naboa admitted that he could no longer locate petitioner's books of accounts for the year 2007 which could have been lost or washed away during the several floods that occurred in the province of Isabela in 2009 and 2010.

Independent Certified Public Accountant **Jovencio N. Daroya, Jr.** declared [40] that he prepared an Independent Auditor's Report, together with petitioner's Audited Balance Sheet as of December 31, 2007[41] and Audited Income Statement for the year ended December 31, 2007[42] to comply with the requirement in the NIRC, as amended, for big companies to have its financial statements audited by an independent auditor. In the process, he examined petitioner's supporting documents such as invoices for its purchases of petroleum products from Petron and Shell, for the operating expenses and for its sales. He conducted the audit examination of petitioner's documents during the 1st quarter of 2008 and issued the Auditor's Report on March 31, 2008.

The Court-commissioned Independent Certified Public Accountant (ICPA) **Arvin L. Celino** testified[43] that he audited petitioner's allowable cost of goods sold and allowable operating expenses for the period January 1 to December 31, 2007, in connection with its claim that it is not liable to pay the subject assessment for deficiency IT and VAT for 2007.

In his Audit Report dated June 18, 2015[44], he was able to ascertain that petitioner has total allowable purchases indicated as Cost of Goods Sold for the year 2007, in the amount of ₱232,378,688.32, and total allowable operating expenses for the year 2007, in the amount of ₱3,166,972.43.

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[40] Exhibits "P-73" to "P-73-a".
[41] Exhibit "P-65".
[42] Exhibit "P-66".
[43] Exhibits "P-74" to "P-74-a".
[44] Exhibit "P-62".

The witness explained that "allowable" purchases and expenses mean that the said purchases and expenses were supported by original copies of the suppliers' sales invoices and BIR-issued official receipts. His audit was conducted at petitioner's office in Baler Street, Quezon City. He was able to examine all the originals of the invoices and noticed the usual wear and tear of the same.

Per his examination, the IT assessment against petitioner should be reduced by the amount of the cost of goods sold times the corporate income tax.

For his part, respondent presented Revenue Officers Elizabeth C. Soriano and Ma. Elisa F. Batalla.

RO **Elizabeth C. Soriano** testified[45] that she is currently the OIC-Chief of Assessment at Revenue District Office No. 15, Naguilian, Isabela. She reviewed the reports and recommendations of the RO assigned to conduct petitioner's audit for taxable year 2007. The said audit was originally assigned to RO Batalla under LOA No. 00053080 dated October 16, 2008[46]. The said LOA together with the Audit Checklist of Requirements[47] were personally served to petitioner. Thereafter, a Second Notice for Presentation of Documents[48] and a Final Notice for Presentation of Documents[49] were issued to petitioner.

To continue with the audit and investigation and upon request of RO Batalla, LOA No. 00053080 was revalidated on April 30, 2009[50] by RD Milabao.

Despite several notices, petitioner failed to submit the requested documents. Thus, a letter request dated October 1, 2009 was sent to the BIR's Legal Division for the region, for the issuance of a *Subpoena Duces Tecum*[51]. The two

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[45] Exhibits "R-22" to "R-22-a".
[46] Exhibit "R-1".
[47] Exhibit "R-2".
[48] Exhibit "R-3".
[49] Exhibit "R-4".
[50] Exhibit "R-5".
[51] Exhibit "R-6".

Subpoenas Duces Tecum[52] were served personally to petitioner.

Thereafter, an indorsement was issued by the OIC-Chief of the Legal Division, Regional Office, dated February 5, 2010[53], informing the RDO that petitioner paid the compromise penalty of ₱10,000.00 in lieu of the criminal prosecution for failure to obey summons; and that the audit should be continued based on best evidence obtainable. Through Indorsement dated February 11, 2010[54], the whole tax docket was referred to RO Rene C. Tangonan, who conducted the audit based on the best evidence obtainable.

On February 25, 2010, a Notice of Informal Conference[55] was issued and personally served to petitioner. Thereafter, RO Tangonan, in a letter dated March 15, 2010[56], recommended the issuance of a PAN to petitioner.

On June 28, 2010, OIC-RD Milabao issued a Memorandum[57] to RDO No. 15, recommending the issuance of an Amended Notice of Informal Conference and emphasized that pursuant to Revenue Memorandum Circular (RMC) No. 23-2000, the 50% disallowance shall apply only to the deductions claimed by the taxpayer considered as expenses in the determination of taxable income, excluding the cost of sales. According to RD Milabao, total purchases amounting to ₱232,912,249.36 should be disallowed. As a result, the Amended Notice of Informal Conference dated September 22, 2010[58] was issued to petitioner.

In a letter dated October 5, 2010[59], RO Tangonan again recommended the issuance of a PAN against petitioner. Hence, a PAN dated November 22, 2010[60] was issued and served to petitioner through registered mail on December 3, 2010[61].

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[52] Exhibits "R-7" to "R-8".
[53] Exhibit "R-9".
[54] Exhibit "R-10".
[55] Exhibit "R-11".
[56] Exhibit "R-12".
[57] Exhibit "R-13".
[58] Exhibit "R-14".
[59] Exhibit "R-15".
[60] Exhibit "R-16".
[61] Exhibit "R-17".

On December 22, 2010, the FAN and FLD[62] were issued and served to petitioner through registered mail on January 10, 2011[63].

The witness further declared that based on the itinerary of travel, a copy of which she could not present at the time of her presentation, RO Batalla personally served the LOA dated October 16, 2008 to petitioner within the prescribed 30-day period, specifically on the 28th day from issuance thereof, or on November 14, 2008. It was received by petitioner through a certain Sharlefel Ramos. The witness claimed that service of an LOA is deemed valid as long as someone representing the office received it. Further, ROs are mandated to submit a progress report within 120 days from the taxpayer's receipt of the LOA. In this case, RO Batalla submitted her Progress Report on April 7, 2009, or within the period provided since the subject LOA was revalidated by RD Milabao on April 30, 2009. The witness opined that when LOA is revalidated, issuance of a new LOA is unnecessary. She however admitted that under RMO No. 38-2008, a new LOA is necessary to continue the audit if the investigating officer is different from the one named in the original LOA. Admittedly, RO Tangonan was appointed by RD Milabao vice RO Batalla. To justify such action, the witness claimed that per an undated BIR memorandum issued in 2009, a new LOA is not necessary under the circumstances and a mere re-assignment of the case would suffice.

In addition, the witness confirmed that reckoning from the date of revalidation of the LOA on April 30, 2009, the audit of petitioner's books of accounts should have been completed on August 30, 2009. On October 1, 2009, RO Batalla submitted another Progress Report.

On October 20, 2009, upon return of petitioner's docket by the Legal Division to RDO No. 15, the case was reassigned to RO Tangonan. Thereafter, RO Tangonan requested petitioner to submit additional documents for him to continue the audit and determine its correct tax liabilities. Petitioner however failed to comply, hence, pursuant to RMC

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[62] Exhibit "R-18" to "R-19".
[63] Exhibit "R-20".

No. 23-2000, they assessed petitioner based on the best evidence obtainable.

Witness further explained that RO Tangonan disallowed 100% of petitioner's cost of sales amounting to ₱232,866,984.86 as the latter failed to submit its purchase invoices to support the input taxes claim.

OIC-Assistant Revenue District Officer **Ma. Elisa F. Batalla** testified[64] that she was authorized to audit petitioner for taxable year 2008 under LOA No. 00053080 dated October 16, 2008. She personally served a copy of the said LOA together with the Audit Checklist of Requirements to petitioner. Thereafter, a Second Notice for Presentation of Documents and a Final Notice for Presentation of Documents were issued against petitioner. To continue the audit and per her own request, the LOA was revalidated on April 30, 2009 by RD Milabao. But since petitioner failed to submit the requested documents, she requested the Legal Division of the Regional Office to issue a *Subpoena Duces Tecum* to petitioner. Soon, she was reassigned to RDO No. 13-Tuguegarao City.

RO Batalla confirmed that she was the RO named in LOA No. 00053080 dated October 16, 2008. Upon service of the said LOA, she was told that the person authorized to receive it in behalf of petitioner was Mrs. Ibarra but she was told a certain Ms. Ramos could do it for her. By virtue of a Revenue Regulation, there was no need for a new LOA and revalidation of the original would suffice. Thus, with the revalidation of the LOA on April 30, 2009, she had another 120 days to complete the audit. But since petitioner failed to submit the requested documents and there was lack of record on petitioner, she was not able to proceed with the audit and make a valid assessment.

After the filing of respondent's Memorandum[65] on October 21, 2016 and petitioner's Memorandum[66] on October 25, 2016, the case was deemed submitted for decision on November 15, 2016[67].

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[64] Exhibits "R-23" to "R-23-a".
[65] Docket, vol. 3, pp. 1713-1727.
[66] Docket, vol. 3, pp. 1729-1738.
[67] Resolution dated November 15, 2016, docket, vol. 3, p. 1742.

THE ISSUES

The issues as defined by the Court for failure of the parties to stipulate any:

1. Whether the Honorable Court has jurisdiction over the instant petition; and

2. Whether petitioner is liable to pay the total amount of Php151,339,624.78 as deficiency income tax, value-added tax and compromise penalty for the calendar year ending December 31, 2007.

Petitioner's arguments:

Petitioner claims that respondent violated procedural due process insofar as the issuance of LOA No. 00053080 dated October 16, 2008. Allegedly, the said LOA was improperly delivered two days before it expired to a person who was not even required to produce his Identification Card. LOA No. 00053080 dated October 16, 2008 was merely revalidated and no new LOA was issued in violation of RMO No. 38-88[68]. The audit was re-assigned to RO Tangonan vice RO Batalla on February 11, 2010 through a mere indorsement, in violation of RMO No. 43-90.[69]

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[68] SUBJECT: Guidelines on Revalidation of Letters of Authority
TO: All Concerned

This Order aims to set the guidelines on the revalidation of Letters of Authority (LAs) for a more effective and efficient investigation and reporting on cases:

The following are henceforth prescribed:

1. Revalidation of Letters of Authority shall be limited to only once in the regional offices and twice in the National Office after issuance of the original LA.

2. **A revalidation shall be covered by the issuance of a new Letter of Authority under the name(s) of the same investigating officer(s), and the superseded LA(s) shall be attached to the new LA issued.** (emphasis supplied)

[69] C. Other policies for issuance of L/As

1. All audits/ investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

Petitioner also finds flaw in the service of the Notice of Informal Conference and Amended Notice of Informal Conference. Precisely, petitioner was surprised when it received through registered mail the PAN issued against it by respondent on December 3, 2010.

Finally, petitioner deems the subject assessment arbitrary, harsh, cruel, unjust, unfair, illegal and unconstitutional since respondent merely assumed that it had no purchases and disregarded other best evidence available to prove otherwise.

Respondent's arguments:

Respondent on the other hand questions the jurisdiction of the Court to entertain the present Petition for Review saying that there is no disputed assessment for appeal since petitioner failed to file a valid protest to the FAN. Further, the assailed LOA, PAN, FLD and FAN were all issued in accordance with law, rules and jurisprudence.

THE COURT'S RULING

The crux of the present controversy lies in the validity of the LOA and the corresponding authority of the assigned Revenue Officers, or lack of it, to conduct the subject audit, as its absence makes the questioned assessment a nullity.

Under Section 6(A) of the NIRC of 1997, as amended, the power to authorize examination of a taxpayer and issue assessments is primarily lodged with respondent CIR, thus:

> SECTION 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —

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xxx xxx xxx

5. **Any re-assignment/transfer of cases to another RO(s) and revalidation of L/as which have already expired, shall require the issuance of a new L/A, with corresponding notation thereto, including the previous L/A number and date of issue of said L/As.** (emphasis supplied)

> (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/her] 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 xxxx

The said power may be delegated as expressly authorized under Section 7, in relation to Sections 10 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 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:"
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> "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:
>
> xxx xxx xxx
>
> (c) Issue Letters of Authority for the examination of taxpayers within the region;"
>
> "SECTION 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 addition, under said RMO No. 38-88, an LOA is valid only for a period of 120 days and will be invalidated thereafter unless revalidated after submission of a Progress Report. Further, a revalidation shall be covered by the issuance of a new LOA under the name(s) of the same investigating officer(s), and the superseded LOA(s) shall be attached to the new LOA issued.

To implement Section 13 of the NIRC of 1997, as amended, respondent CIR issued RMC No. 43-90[70], which significantly provides as follows:

> "**Any reassignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." (emphasis supplied)

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[71] the Supreme Court held that there must be a grant of authority before any revenue officer can conduct an examination or assessment and that the said authorized revenue officer must not go beyond the authority granted. In the absence of such an authority, the assessment or examination is a nullity.

In the instant case, it is undisputed that the examination of petitioner's books of accounts and other accounting records for internal revenue taxes for CY 2007 was authorized under LOA No. 00053080 dated October 16, 2008, which specifically named RO Ma. Elisa F. Batalla of RDO No. 15, Naguilian, Isabela, as the RO to conduct the examination. However, RO Batalla was unable to complete the audit as she was re-assigned to RDO No. 13-Tuguegarao. With her transfer, the audit of petitioner's record was re-assigned through an Indorsement dated February 11, 2010, to RO Rene C. Tangonan, who continued the audit based on the best evidence obtainable.

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[70] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, Dated September 20, 1990.
[71] G.R. No. 178697, November 17, 2010, 635 SCRA 234.

Thereafter, RO Tangonan recommended the issuance of the PAN, FAN and FLD.

Moreover, respondent's witnesses, namely, ROs Soriano and Batalla, admitted that LOA No. 00053080 dated October 16, 2008, was merely revalidated by RD Milabao and that no new LOA was issued despite the re-assignment of the examination/audit of petitioner's tax docket to a new tax examiner, RO Tangonan, thus:

Cross-examination of witness RO Elizabeth C. Soriano[72]*:*

"ATTY. VALERA:

Q. Did you request for revalidation on this Letter of Authority?

MS. SORIANO:

A. Yes, sir.

ATTY. VALERA:

Q. What is your proof that it has been revalidated?

MS. SORIANO:

A. The Progress Report before the revalidation of the letter of authority there should be a progress report.

ATTY. VALERA:

Q. What is your proof that this letter of authority was revalidated?

MS. SORIANO:

A. It was revalidated on April 30, 2009 by our Regional Director, Thelma S. Millabao (*sic)*

ATTY. VALERA:

Q. You are referring to this Letter of Authority issued on October 16, 2008?

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[72] Transcript of Stenographic Notes (TSN), February 29, 2016, pp. 7-13.

MS. SORIANO:

A. Yes, sir.

ATTY. VALERA:

Q. And on the left dorsal portion of this letter of authority, there is a stamp of the name Thelma S. Millabao and a signature of Thelma Millabao and there is a stamp on the date April 2009, is it not?

MS. SORIANO:

A. Yes, sir.

ATTY. VALERA:

Q. In your training as well as in the instructions given to you by the senior officials of the BIR, do you agree with me that when there is a revalidation of the letter of authority, there should be a new letter of authority that will be issued by the Regional Director of the BIR?

MS. SORIANO:

A. I do not agree with you, sir, as long as the revalidation was stamped on the letter of authority no need to issue a new letter of authority.

JUSTICE VICTORINO:

Q. There is no need for the issuance of another letter of authority, it is sufficient that a revalidation be stamped on the original letter of authority issued by the BIR?

MS. SORIANO:

A. Yes, your Honor.

ATTY. VALERA:

Q. I am showing to you a copy of the Revenue Memorandum Order No. 38-88 issued on August 24, 2988 (*sic*) in no. 2 of this RMO, it says that a new letter of authority under the name of the new investigating officer and that the superseded letter of authority shall be attached to the new letter of authority issued, what can you say about this RMO?

MS. SORIANO:

A. Yes, pursuant to RMO 38-2008 there is a need for revalidation and a new issuance of the letter of authority if the investigating officer is different from that original letter of authority for the continuance of audit.

JUSTICE VICTORINO:

Q. To what Revenue Memorandum Order are you referring to?

MS. SORIANO:

A. RMO 38-88.

JUSTICE VICTORINO:

Q. So, it is the same RMO cited by counsel?

MS. SORIANO:

A. Yes, Your Honors.

JUSTICE VICTORINO:

Q. It is stated in the RMO that a new Letter of Authority shall be issued if the investigating officer will be a different revenue officer?

MS. SORIANO:

A. Yes, Your Honor.

ATTY. VALERA:

Q. In this case, was there a new revenue officer that was appointed to continue the conduct of the examination of records of the taxpayer?

MS. SORIANO:

A. Ma. Eliza Batalla has conducted, has referred this docket to the regional office for the issuance of the *subpoena duces tecum* and then the taxpayer failed...

ATTY. VALERA:

Q. I am just asking you, Madam Witness, whether there was a new person appointed by the regional director to take the place of revenue officer Maria Eliza Batalla?

MS. SORIANO:

A. Yes, the revenue officer.

ATTY. VALERA:

Q. Who is this new revenue officer?

MS. SORIANO:

A. Revenue Officer Rene Tangonan.

JUSTICE VICTORINO:

Q. What is the name?

MS. SORIANO:

A. Revenue Officer Rene Tangonan, Your Honor.

ATTY. VALERA:

Q. And you were telling me a while ago, Madam Witness, that if there is a new revenue officer taking the place of the first appointed revenue officer, there is a need for the issuance of a new letter of authority, yes or no? The question is answerable by yes or no? *(sic)*

MS. SORIANO:

A. In addition to my answer a while ago, there is an undated memorandum for taxable year 2009 that there is no need to issue a new letter of authority but re-assignment of the case is enough to continue the audit.
ATTY. VALERA:

Q. Do you have a copy of this undated, what is that?

MS. SORIANO:

A. Undated unnumbered memorandum.

ATTY. VALERA:

w/

Q. Do you have a copy of that unnumbered memorandum?

MS. SORIANO:

A. As of today, we cannot present it. Can we present next hearing?"

<u>*Cross-examination of witness RO Ma. Elisa F. Batalla[73]:*</u>

"ATTY. VALERA:

Q. And who was the one who referred it to Mr. Tangonan?

MS. BATALLA:

A. After the second and final notice and the revalidation, I endorsed the docket to the legal division for the issuance of the *subpoena duces tecum.*

ATTY. VALERA:

Q. But you were saying that it was referred to Mr. Tangonan so you knew that the whole docket filed that you were trying to examine was referred to a new Revenue Officer, is it not?

MS. BATALLA:

A. By reading this docket, sir, I have seen it, I saw it that it was referred to Mr. Rene Tangonan.

ATTY. VALERA:

Q. Would you know if a new letter of authority was issued when a new revenue officer was assigned to investigate Royal Class? Would you know?

MS. BATALLA:

A. Yes, sir.

ATTY. VALERA:

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[73] TSN, August 1, 2016, pp. 24-26.

Q. So, from the record you cannot see any new letter of authority when Revenue Officer Rene Tangonan took over from you as revenue examiner, is it not?

MS. BATALLA:

A. Yes, sir.

ATTY. VALERA:

Q. So, from the record you cannot see any new letter of authority when Revenue Officer Rene Tangonan took over from you as revenue examiner, is it not?

MS. BATALLA:

A. Yes, sir.

ATTY. VALERA:

Q. And do you know that there is a Memorandum Order No. 43-90 that says that if there is a new Revenue Officer to take over the examination, a mew Letter of Authority has to be issued is it not? Would you know that Revenue Memorandum Order No. 43-90?

MS. BATALLA:

A. That was repealed already.

ATTY. VALERA:

Q. By what?

MS. BATALLA:

A. Under the new regulation.

ATTY. VALERA:

Q. What new regulation? You mean to say that this new Revenue Regulation even there is an officer taken over there is no need to have a new Letter of Authority to be issued by the BIR?

MS. BATALLA:

A. Yes, sir.

w/

ATTY. VALERA:

Q. May I see that Revenue Memorandum Order?

MS. BATALLA:

A. I did not bring with me the revenue regulation but as I know, sir when a revenue officer was assigned or transferred to another district, the group supervisor or the revenue district officer may transfer, may issue a memorandum to continue the audit to the examiner."

As admitted by respondent's own witness, the continuation of the examination of petitioner's tax records was conducted by a new RO, who was not the one explicitly named in LOA No. 00053080 dated October 16, 2008, without a new LOA issued in his name.

Applying the cited provisions, rules and jurisprudence, the absence of a new LOA naming RO Tangonan as the new RO rendered him without authority to continue the examination/audit of petitioner's internal revenue tax liability for taxable year 2007. Consequently, RO Tangonan acted without authority when he continued the audit of petitioner and recommended issuance of the assailed assessment, hence, the assessment for deficiency IT and VAT subsequently is a nullity.

Time and again, the Court reminds respondent that the LOA is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit, it is an express grant of authority for that purpose. Thus, absent the necessary new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation per RMO No. 43-90, there is no authority to conduct the investigation/audit. Consequently, the subject assessment is null and void, and as such it bears no valid fruit.[74]

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[74] Commissioner of Internal Revenue v. Azucena T. Reyes, Azucena T. Reyes v. Commissioner of Internal Revenue, G.R. Nos. 159694 and 163581, respectively, January 27, 2006, 480 SCRA 382.

Since the subject deficiency tax assessments are clearly void for lack of authority of the examining RO, discussion on the other issues raised becomes unnecessary.

WHEREFORE, the instant Petition for Review filed by petitioner Royal Class Trading and Transport Corporation on July 4, 2014, is hereby **GRANTED**. Accordingly, the Final Decision of respondent Commissioner of Internal Revenue dated May 27, 2014, affirming the Formal Letter of Demand and Final Assessment Notice issued against petitioner, for alleged deficiency Income Tax and Value-added Tax plus compromise penalty in the total amount of ₱151,339,624.78 for the calendar year ending December 31, 2007, as well as all the Warrants of Distraints and/or Levy issued against petitioner on various dates resulting from the subject assessment, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(Took no part)
LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice