REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

RED RIBBON BAKESHOP, INC., *Petitioner,*	**CTA CASE NO. 9121**
	Members:
-versus-	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 03 2021 2:22 pm

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is respondent's ***Motion for Reconsideration (Re: Decision dated January 07, 2021) (hereinafter referred to as "Motion")***, filed on 29 January 2021,[1] with petitioner's ***Comment/Opposition (Re: Motion for Reconsideration dated January 29, 2021) (hereinafter referred to as "Comment")***, filed on 1 March 2021.

In his Motion, respondent contends that the Court erred in invalidating the assessments for want of authority of the revenue officers who conducted petitioner's audit.

Respondent insists that the revenue officers were duly authorized pursuant to three (3) Memoranda of Assignment ("MOA"). He explains that the practice of conferring authority through MOAs in cases of resignation, retirement, or transfer of office of the original handling revenue officer (hereinafter referred to as "reassignment of audit cases") is allowed under ***Revenue Memorandum Order ("RMO") No. 8-2006.***[2]

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[1] Respondent filed his Motion within 15 days from his receipt of the assailed Decision on 14 January 2021. Hence, this Motion was timely filed.

[2] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), 1 February 2006.

He contends that the view of the Court requiring the issuance of an LOA every time an audit is reassigned runs counter to the "one LOA per taxable year rule" and would cause jeopardy to the collection efforts of the Bureau of Internal Revenue ("BIR").

Respondent points out that the LOA is not an "authorization letter" granting authority to revenue officers. He posits that it is only an issuance to inform the taxpayer that it will be the subject of an audit investigation. He contends that once the LOA is served, any duly authorized revenue officer may conduct the audit. He alleges that the revenue officer need not be identified in the LOA since its authority may be conferred in another document.

Finally, he argues that the Court erred in not ruling on the other issues raised in the case, including the invalidity of the waiver and the propriety of the income tax and value-added tax assessments. He stresses that since the assessments enjoy the presumption of correctness, the Court should have upheld the same.

As for petitioner's Comment, it contends that the Motion should be denied for lack of merit. It avers that respondent failed to address the crux of the controversy, which is the invalidity of the MOAs on the ground that they were not signed by the Commissioner of Internal Revenue ("CIR") or any of his authorized representatives. Nonetheless, it argues that the contentions of respondent are mistaken.

It counters that under ***RMO No. 43-90,***[3] the issuance of an LOA is required in all audit and assessment cases even in reassignment of audit cases. It emphasizes that ***RMO No. 8-2006*** did not amend or supplant ***RMO No. 43-90*** and argues that the latter is still a valid and subsisting regulation. It explains that a close reading of ***RMO No. 8-2006*** will prove that it did not forego the need for an LOA but only required the issuance of a memorandum for purposes of notifying the taxpayer of the said change.

Likewise, it belies respondent's argument that the issuance of an LOA in reassignment of audit cases runs counter to the "one LOA per taxable year" rule. Petitioner points out that the rule only applies in instances when multiple LOAs are issued for one single year. It explains that unlike in reassignment of audit cases, the LOA is merely reissued and not duplicated.

Petitioner also finds respondent's contention stating that the LOA is not considered as the authority granted to the revenue officers erroneous. It avers that respondent's argument runs contrary to the mandate of ***Section 13 of the Tax Code***. Nevertheless, should respondent be correct, petitioner opines that

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[3] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

he still was not able to present any issuance validly conferring authority to the revenue officers who conducted its audit and assessment.

Finally, petitioner states that the Court was correct not to rule on the propriety of the waiver and assessments. It explains that since the Court had already ruled on the invalidity of the assessments for lack of authority of the investigating revenue officers, then it follows that the Court need no longer belabor on the other remaining issues consistent with the rule that a void assessment bears no valid fruit. It also argues that the presumption of correctness does not apply in this case.

After a careful review of the foregoing points raised by the parties, the Court finds respondent's contentions bereft of merit.

Contrary to respondent's viewpoint, the LOA is not a mere issuance used in informing the taxpayer that it will be the subject of an audit investigation. Corollary, it is the authority given by the CIR or his duly authorized representative to the revenue officer designating him/her to perform the audit and assessment of a taxpayer. This is the very mandate of ***Section 13 of the Tax Code*** as interpreted by the Supreme Court in the case of ***Commissioner of Internal Revenue v. Sony Philippines, Inc. (hereinafter referred to as "Sony Case")***,[4] to wit:

> Based on Section 13 of the Tax Code, **<u>a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.</u> It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer**.
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> xxx xxx xxx
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> **Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.** Equally important is that 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.[5]

The importance of the LOA cannot be discounted. It is an essential prerequisite before a revenue officer can proceed with the audit and assessment of a taxpayer. This is so since these powers are only explicitly given to the CIR and his duly authorized representatives. Considering the same, it is imperative that the revenue officers must first be conferred with authority through the LOA before they can audit and assess a taxpayer.

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[4] G.R. No. 178697, 17 November 2010.
[5] Emphasis supplied.

Reassignment of audit cases due to the resignation, retirement, or transfer of a revenue officer is no exception to this rule. This is clear under ***RMO No. 43-90,*** which provides:

> "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.
>
> 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 the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.**"[6]

The aforementioned rule of requiring an LOA even in reassignment of audit cases does not run contrary to the "one LOA per taxable year" rule. A close reading of ***RMO No. 8-2006*** proves that what the rule seeks to prevent is a situation where two (2) existing LOAs issued to one taxpayer, for the same tax type and period, will subsist at the same time. The situation is not the same in reassignment of audit cases where the reissued and updated LOA will just supersede the old LOA. Clearly, the rule in this instance is not violated.

Likewise, the Court disagrees with respondent's argument that the revenue officer need not be indicated in the LOA. This contention had already been addressed by the Supreme Court in ***CIR v. Opulent Landowners, Inc.***,[7] where it was ruled that only the revenue officer named in the LOA has the requisite authority to audit and assess a taxpayer. It also added that an assessment made by an unauthorized revenue officer is for all intents and purposes considered void. The pertinent provision is hereby quoted, to wit:

> "xxx **a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers.** It is axiomatic that **only the revenue officers actually named under the LOA are authorized to examine the taxpayer.** This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90, which provides that any re-assignment/transfer of cases to another revenue officer(s), and revalidation of a LOA which had already expired, shall require the issuance of a new LOA**. In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.**"[8]

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[6] Emphasis supplied.
[7] G.R. Nos. 249883-84, 27 January 2020.
[8] Emphasis supplied.

Given the foregoing discussions, the Court cannot stress enough the importance of the CIR or his duly authorized representative's conferment of authority to the revenue officers through an LOA. The Tax Code is clear that the LOA is the authority given by the CIR or his authorized representative to the revenue officer to conduct the audit and assessment of a taxpayer. Hence, any change in the terms of the LOA including the reassignment of the audit to another revenue officer necessitates the issuance of a new LOA.

Conversely, the appreciation of this Court of what a LOA should be, in reassignment of audit cases, is not restricted to the title of the instrument. In the case of ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[9] the Court *En Banc* ruled that a written document which signifies the intention of the CIR or his duly authorized representative to reassign a taxpayer's audit and assessment to a new revenue officer may be considered as an equivalent of an LOA.

In other words, a document such as an MOA may be construed as an equivalent of an LOA validly conferring authority to the newly assigned revenue officer to continue the audit of a taxpayer, provided that it contains all the elements of a valid LOA. However, the MOAs, in this case, failed to satisfy this requirement.

As discussed in the assailed Decision, the MOAs in this case were only signed by the Chief of the BIR Regular Large Taxpayer Audit Division ("RLTAD"), who is not the CIR, Revenue Regional Director, or an Assistant Commissioner/Head Revenue Executive Assistant and, therefore, is not one of the authorized representatives of the respondent to issue an LOA. In fact, the findings of this Court is consistent with the Court *En Banc's* Decision in ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[10] to wit:

> "**In the instant case, the Memorandum of Assignment was only signed by Cesar D. Escalada, Chief, Regular LT Audit Division 1. Therefore, RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña were without authority to continue the audit**."[11]

Since the MOAs failed to meet all the elements of an LOA, the revenue officers were not validly conferred authority to audit petitioner. As such, the audit performed and assessments issued by the said revenue officers were rightfully considered invalid.

Unfortunately for respondent, he did not advance any argument that would disprove the aforementioned findings. On this basis, the Court is constrained to uphold the Decision.

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[9] CTA EB No. 1880, 6 August 2019.

[10] *Ibid.*

[11] Emphasis supplied.

Considering the aforementioned pronouncements, the Court sees no reason to rule on the other remaining issues since to do so would render the same superfluous. Respondent is reminded that since the assessments were already found void, the presumption of correctness can no longer stand, consistent with the doctrine that a void assessment bears no valid fruit.

In view of the foregoing disquisitions, the Court finds no justifiable reason to reverse or modify the conclusions reached in the assailed Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated January 07, 2021) is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice