22-000036-0087

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10746

FIRST TELECOM PHILS. INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. MARVEEN B. DE LA PAZ
ATTY. MARK JOEY S. LUCERO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diiman, Quezon City

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Sts.
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **August 28, 2025,**a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **September 2, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FIRST TELECOM PHILS., INC.,[1] Petitioner,	**CTA CASE NO. 10746**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 2 8 2025; 9:45AM

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **Motion for Reconsideration (Re: Decision dated 15 April 2025)**[2] filed personally on May 7, 2025 and via email on May 8, 2025, with petitioner's **Comment (on Respondent's Motion for Reconsideration dated May 7, 2025)**[3] filed personally on June 9, 2025 and via email on June 10, 2025.

Respondent moves for the reversal of the Decision dated April 15, 2025[4] (assailed Decision) and prays that a new one be rendered ordering petitioner to pay its tax liabilities to the Government in the total amount of ₱1,373,843,258.62 representing the alleged deficiency income tax, value-added tax, expanded withholding tax, improperly accumulated earnings tax, and compromise penalties for taxable year 2014, inclusive of surcharges and interest.

The dispositive portion of the assailed Decision reads:

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[1] Petitioner's name in the title of the case per Petition for Review is "First Telecom Philippines, Inc.", while petitioner's name in its Exhibit "P-1" is "First Telecom Phils., Inc.".
[2] CTA Docket, Volume III, pp. 1377-1396.
[3] CTA Docket, Volume III, unpaginated.
[4] CTA Docket, Volume III, pp. 1359-1376.

"**WHEREFORE,** premises considered, the Petition for Review filed on February 2, 2022 by petitioner First Telecom Phils., Inc. is **GRANTED**. Accordingly, the undated Formal Letter of Demand with Details of Discrepancies and Assessment Notices, and the Final Decision on Disputed Assessment with Audit Results/Assessment Notices, all dated November 3, 2021 assessing petitioner in the total amount of ₱1,373,843,258.62, inclusive of interest and penalties, representing the alleged deficiency income tax, improperly accumulated earnings tax, value-added tax, expanded withholding tax, and compromise penalties for taxable year 2014, are **CANCELLED** and **SET ASIDE** for being void *ab initio*.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed alleged deficiency tax assessments subject of the undated Formal Letter of Demand with Details of Discrepancies and Assessment Notices and the Final Decision on Disputed Assessment with Audit Results/Assessment Notices, all dated November 3, 2021, assessing petitioner of deficiency income tax, improperly accumulated earnings tax, value-added tax, expanded withholding tax, and compromise penalties in the total amount of ₱1,373,843,258.62, inclusive of interest and penalties, for taxable year 2014. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED."

In his Motion for Reconsideration, respondent raises the following arguments:

1. The Court erred when it ruled on an issue not raised by petitioner in the administrative level;

2. The Court erred when it misapplied the case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corporation (McDonald's),*[5] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[6] and *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,*[7] which were based on an outdated Revenue Memorandum Order (RMO) No. 43-90,[8] an issuance that has been superseded due to subsequent amendments in tax regulations and applicable laws;

3. RMO No. 8-2006 and RMO No. 44-2010 were overlooked, even though they are clearly relevant and applicable; and,

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[5] G.R. No. 242670, May 10, 2021.
[6] G.R. No. 222743, April 5, 2017.
[7] G.R. No. 178697, November 17, 2010.
[8] Re: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

4. Even assuming, for the sake of argument, that RMO 43-90 constituted a valid implementing issuance, it is evident that upon the issuance of RMO No. 8-2006 and RMO No. 44-2010, the former was already suspended.

Petitioner prays for the denial of respondent's Motion and raises the following arguments:

1. Respondent failed to present any new matter or arguments in the Motion for Reconsideration;

2. Petitioner was not estopped from raising the issue of the lack of authority of the Revenue Officers (ROs) who assisted in the conduct of the audit; and,

3. Respondent's defenses do not justify the glaring violations of petitioner's right to due process.

THE COURT'S RULING

After careful evaluation of the parties' arguments, the Court resolves to deny respondent's Motion for Reconsideration.

Anent respondent's argument that the Court erred when it ruled on an issue not raised by petitioner in the administrative level, the same deserves scant consideration.

The Court reiterates that it is not precluded from considering issues and arguments raised by the parties in the petition and answer, albeit the same were not raised before the administrative level specially when said issues and arguments delve into the intrinsic validity of the assessment itself.[9]

With regard to respondent's position that the applicable issuances in determining authority of the ROs to conduct the audit are RMO No. 8-2006 dated February 1, 2006[10] and RMO No. 44-2010 dated May 12, 2010,[11] the Court finds the same bereft of merit.

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[9] *Commissioner of Internal Revenue vs. Geniographics Incorporated*, G.R. No. 264572, July 26, 2023; *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[10] SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)
[11] SUBJECT: Electronic Issuance of Letters of Authority.

In *McDonald's*, which involves an assessment pertaining to taxable year 2006, the Supreme Court categorically held that RMO No. 43-90 – expressly and specifically requiring the issuance of a new Letter of Authority (LOA) in cases of reassignment or transfer of revenue officer – remains applicable as it is not inconsistent with the provisions of the NIRC of 1997, notwithstanding the latter's subsequent enactment, to wit:

> "**C. Revenue Memorandum Order No. 43-90 dated September 20, 1990 Expressly and Specifically Requires the Issuance of a New LOA if Revenue Officers are Reassigned or Transferred**
>
> Section D(5) of RMO No. 43-90 dated September 20, 1990 provides:
>
> Any re-assignment/transfer of cases to another RO(s)[64], and revalidation of L/As[65] 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.
>
> **The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases.** The provision involves the following two separate phrases: "re-assignment/transfer of cases to another RO(s)", on the one hand, and "revalidation of LIAs which have already expired", on the other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA. The new LOA must then have a corresponding relevant notation, including the previous LOA number and date of issue of the said LOAs.
>
> **The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the law it supposedly implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.**
>
> **The petitioner is mistaken.** Section 291 of the NIRC states:
>
> SECTION 291. In General. - All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.
>
> **Section D(5) of RMO No. 43-90 dated September 20, 1990 is not contrary to or inconsistent with the NIRC. In fact, the NIRC codifies the LOA requirement in RMO No. 43-90. While RMO No. 43-90 was issued under the old tax code, nothing in Section D(5) RMO No. 43-90 is repugnant to Sections 6(A), 10 and 13 of the**

> **NIRC. Hence, pursuant to Section 291 of the NIRC, RMO No. 43-90 remains effective and applicable.**
>
> Even the Operations Group of the BIR now recognizes that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate LOA, is no longer tenable. Thus, in Operations Memorandum No. 2018-02-03 dated February 9, 2018, the Operations Group has decided that 'the issuance of a MOA for reassignment of cases in the aforementioned instances [i.e., the original revenue officer's transfer to another office, resignation, retirement, etc.] shall be discontinued.'" *(Boldfacing supplied.)*

Similarly, in *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*[12] and *Commissioner of Internal Revenue vs. Robigie Corporation*,[13] the Supreme Court affirmed the necessity of issuing a new LOA in cases of reassignment or transfer of revenue officers, even though the taxable year involved in both cases was 2008, albeit RMO No. 8-2006 dated February 1, 2006 (which mandates that only one LOA per taxable year can be issued to a taxpayer) was already in effect.

Respondent likewise argues that RMO No. 8-2006 mandates that only one LOA per taxable year can be issued to a taxpayer.

The Supreme Court already clarified in *Robigie* that RMO No. 8-2006 does not prohibit the issuance of a new LOA in cases of reassignment or transfer of revenue officers, to wit:

> "Clearly, the 'one LOA per taxable year' rule is not as ironclad as the Republic portrays it to be. Part IV.D., Item 2 of RMO No. 8-2006 authorizes the issuance of duplicate LOAs, subject to the CIR's discretion to determine which of the two LOAs shall prevail. Obviously, when a tax investigation is reassigned to a different RO pursuant to the mandatory "rotation" of assessment officers under Section 17 of the NIRC, or for any other legally justified reason, the CIR or his/her duly authorized representatives may issue a new LOA to the newly assigned RO, and such LOA can be made to prevail over the LOA issued to the previous investigating officer. Since the CIR's power to issue a LOA is delegable, the concomitant power to uphold the validity of a subsequently issued duplicate LOA is likewise delegable to the CIR's duly authorized representatives, as enumerated in RMO No. 43-90. **Stated differently, RMO No. 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is necessitated by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation.** The BIR official who will issue the

[12] G.R. No. 255473, February 13, 2023.
[13] G.R. No. 260261, October 3, 2022.

new LOA also has the power to make it prevail over the old, previously issued LOA, subject of course to the control and regulation of the CIR as the statutorily designated tax investigator. It must be noted that Section 13 of the NIRC, in providing for the LOA as the mode of delegation of the CIR's investigatory powers to the ROs, likewise gave the CIR the power to regulate and define the parameters for the issuance of LOAs. The "one LOA per taxable year" rule under RMO Nos. 8-2006 and 43-90 is an example of such a regulation; and such regulation is only valid insofar as it is consistent with the provisions of the NIRC." *(Boldfacing supplied.)*

All told, the Court finds no compelling justification to warrant a modification or reversal of the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated 15 April 2025)** is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice