REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2671** (CTA Case No. 9018)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
FIRST PHILIPPINE INDUSTRIAL PARK, INC., Respondent.	Promulgated: JUL 17 2024 1:28 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Commissioner of Internal Revenue's (**petitioner's/CIR's**) "Motion for Reconsideration [Re: Decision dated 28 February 2024]"[1] (**MR**) filed on 19 March 2024, with respondent First Philippine Industrial Park, Inc.'s (**respondent's**) "Comment/Opposition (to the Motion for Reconsideration dated March 19, 2024)"[2] (**Comment**) filed on 01 April 2024.

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1 *Rollo*, pp. 109-117.
2 Id., pp. 119-134.

In the MR, petitioner contests the ruling made on the *En Banc* Decision of 28 February 2024[3] (**assailed Decision**) which denied its previous Petition for Review:

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> **WHEREFORE**, with the foregoing, petitioner Commissioner of Internal Revenue's Petition for Review filed on 07 September 2022 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 18 March 2022 and Resolution dated 20 July 2022, of the Third Division in CTA Case No. 9018, entitled *First Philippine Industrial Park, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.
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> Accordingly, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ENJOINED** from pursuing any actions against respondent First Philippine Industrial Park, Inc. relative to herein case.
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> **SO ORDERED.**
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> ...

Prior to setting out its arguments, petitioner alleges that an MR is not considered *pro forma* just because it reiterated its previous defenses. Hence, recycling previous similar contentions, petitioner claims that the investigation made on respondent was duly authorized and the resulting assessments were valid.

Petitioner again points out that Revenue Memorandum Order (**RMO**) No. 8-06[4] and RMO No. 62-10[5] were the prevailing regulations when the audit of respondent's books was made. Thus, the Memorandum of Assignment (**MOA**), which Cesar D. Escalada (then Chief of Regular LT Audit Division 1 [**Chief Escalada**]) signed, is sufficient in vesting authority unto the Bureau of Internal Revenue (**BIR**) officers who actually conducted the investigation.

Moreover, petitioner contends that the MOA was issued pursuant to a Letter of Authority (**LOA**) which permitted the audit of respondent's books. Any change in the BIR officers through an MOA,

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[3] Id., pp. 82-103.

[4] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

[5] Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.

does not invalidate the continuation of the audit of petitioner's books. Relative thereto, the transfer or reshuffling of the Revenue Officers (**ROs**) is provided under Section 17[6] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Therefore, there is the possibility that the indicated BIR Officers in the LOA may not complete the audit.

Petitioner further asserts that this Court erred in relying on RMO No. 43-90[7] considering that it is not an implementing rule of the NIRC of 1997, as amended, as the former rule was issued seven (7) years earlier than the latter statute. He or she adds that an LOA is a mere administrative tool and not a statutory requirement for petitioner's audit activities on a taxpayer's books.

Lastly, petitioner argues that the issuance of a new LOA is not a requirement when it is the Office of the CIR that conducts the audit and/or investigation of taxpayer's books pursuant to Section 6(A)[8] of the NIRC of 1997, as amended. As the original LOA was issued by the Assistant CIR of the Large Taxpayer Service, it is not required to issue a new or amended LOA for the continuation of the audit of respondent's books for taxable year (**TY**) 2009.

In the Comment, respondent counters that reiterating matters which were already threshed out in the assailed Decision is precisely a *pro forma* motion. It claims that these arguments, without any supplemental discussions to explain as to why the rulings in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[9] (**McDonald's**) and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[10] (**Medicard**) must be abandoned, is not adequate to convince this Court to rule on the MR.

Nevertheless, respondent maintains that all of petitioner's arguments still failed to prove that RO Josa C. Gomez (**Gomez**) and Group Supervisor (**GS**) Olivia F. Aviles (**Aviles**) were authorized with an LOA to conduct the audit of respondent's books.

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6 SEC. 17. *Assignment of Internal Revenue Officers and Other Employees to Other Duties.*

7 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

8 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.* – ...

9 G.R. No. 242670, 10 May 2021.

10 G.R. No. 222743, 05 April 2017.

Invoking the cases of *McDonald's, Medicard* and *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[11], respondent stresses that an LOA is the authority given to the appropriate RO to perform assessment functions, and the issuance thereof stems from the power that belongs only to the CIR or his or her authorized representatives. Hence, a resulting assessment from an audit that was conducted without a valid LOA is inevitably void, such as in this case.

We resolve.

After due consideration of the arguments raised, We are constrained to deny petitioner's MR for lack of merit.

Regarding petitioner's contention that reassignment is sanctioned under the tax statute, the Supreme Court had addressed this issue in *Republic of the Philippines v. Robiegie Corporation*[12], where it held that the CIR's reassignment powers cannot be invoked to defeat the statutory LOA requirement:

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> *The CIR's reassignment powers cannot be invoked to defeat the statutory LOA requirement*
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> To further justify its position that a valid LOA is not necessary for the reassignment of tax investigations to other ROs, the Republic relies on Section 17 of the NIRC, which provides:
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> > SEC. 17. ***Assignment of Internal Revenue Officers and Other Employees to Other Duties.*** — The Commissioner may, subject to the provisions of Section 16 and the laws on civil service. as well as the rules and regulations to be prescribed by the Secretary of Finance upon the recommendation of the Commissioner, assign or reassign internal revenue officers and employees of the Bureau of Internal Revenue, without change in their official rank and salary, to **other or special duties connected with the enforcement or administration of the revenue laws** as the exigencies of the service may require: *Provided*, That internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years; *Provided, further*, That

[11] G.R. No. 178697, 17 November 2010.

[12] G.R. No. 260261, 03 October 2022; Citations omitted, emphasis, italics and underscoring in the original text and supplied.

> assignment of internal revenue officers and employees of the Bureau to special duties shall not exceed one (1) year.

In *Castro v. Hechanova, et al. (Castro)* then CIR Benjamin Tabios (CIR Tabios) reassigned Revenue Regional Director Teodoro Castro (Castro) of Revenue Region No. 7 to the BIR central office. When Castro questioned the reassignment, CIR Tabios argued that it was justified under Section 12 of the 1939 NIRC; and this Court, in partially sustaining CIR Tabios' position, held that the reassignment is valid, but for only thirty days, unless a longer duration is approved by the President, under the then prevailing rules on reassignment of government personnel:

> Under the law, respondents, as the administrative heads of the Bureau of Internal Revenue, not only have administrative supervision and control over the same, but are also specifically empowered to assign revenue personnel to other duties, thus:
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> > "SEC. 12. ASSIGNMENT OF INTERNAL REVENUE AGENTS AND OTHER EMPLOYEES TO **OTHER** DUTIES. — The Collector of Internal Revenue may, with the approval of the Secretary of Finance, assign internal revenue agents and other officers and employees of the Bureau of Internal Revenue without change in their official character or salary to such **special duties** connected with the administration of the revenue laws as the best interest of the service may require."
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> [Castro], however, contends that for the exercise of the foregoing authority to be valid, the assignment of personnel should involve the performance of some "special duties" and should not result in any change in the official character of their positions and salaries. In assailing the validity of the travel assignment order in question, petitioner claims that being a regional director, to discharge the functions of Revenue Operations-head cannot be considered as performance of a special duty.
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> The term "special duties" mentioned in the law, evidently is here being equated by the petitioner with work requiring the use of some special talent or knowledge. *It may be pointed out, however, that the title of Section 12 of the Revenue Law mentions the assignment of revenue employees to "other duties," and the body thereof refers to "such special duties connected with the administration of the revenue law." To our mind, the "special duties" mentioned in the law refer not to a "special" or extraordinary or different undertaking, but to functions or work other than, or not related to, those regularly discharged by the employee concerned. In other words, to the employee reassigned or detailed to another post, the*

> *performance of work other than those he was regularly doing, constitutes the doing of "special duties," which supports the view that the designation is not permanent but merely temporary.* And, there is nothing wrong, legally or personnel-wise, in the aforequoted provision, giving to the office administrator or supervisor, the authority to formulate a personnel program designed to improve the service and to carry out the same, utilizing approved techniques or methods in personnel management, to the end that the abilities of the employees may be harnessed to promote optimum public service. Of course, it must be realized that the exercise of this authority may be abused or carried out to serve some other purposes, as so charged in this case. But, as it was once said, "the possibility of abuse is not an argument against the concession of power, as there is no power that is not susceptible of abuse."

Section 17 of the current NIRC is the statutory descendant of Section 12 of the 1939 NIRC. The current Section 17 retains the modifiers "*other*" and "*special*" to describe the duties to which revenue officers may be reassigned. However, the current provision departs from the old Section 12 in that: 1) Section 17 incorporates the principle enunciated by this Court in the above-quoted ruling, that such reassignments must be for a limited time only, *i.e.*, one year; and 2) Section 17 explicitly states that "internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years."

In view of the foregoing, it becomes clear that Section 17 of the NIRC contemplates three types of reassignments: 1) reassignments to other and special duties, which shall not exceed one year, and, following the *Castro* ruling, must pertain to functions not regularly performed by the reassigned officer or employee; 2) reassignments of revenue officers involved in excise tax functions under Section 16; and 3) reassignments of revenue officers assigned to perform assessment or collection functions, which must be done every three (3) years. However, the text of Section 17 is clearly limited to the CIR's power to reassign BIR officers and employees. While the CIR is empowered and mandated to regularly reassign revenue officers who perform assessment or collection functions, such mandate is distinct and separate from the CIR's investigatory power, which is governed by other provisions of the NIRC. As the CTA *en banc* correctly points out:

> [There is] nothing in [Section 17 which] would justify dispensing with the issuance of a valid LOA in favor of the Revenue Officer concerned. x x x
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> xxx xxx xxx
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> [T]he statutory requirement of issuing a new LOA in no way prevents the CIR from validly assigning or re-

> assigning the Revenue Officers and employees of the BIR. It does not even require that audit must be completed before such employee can be transferred. Rather, what is simply required by the law is that in case of reassignment, a new LOA be issued to the Revenue Officer to whom the case is transferred to. To rule otherwise and dispense with the requirement of the issuance of an LOA runs counter to both law and jurisprudence.
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> ...

Likewise, We see no cogent reason to expound Our Discussion regarding RMO No. 8-06 and RMO No. 62-10, the inapplicability of RMO No. 43-90; and, the interpretation of Section 6 of the NIRC of 1997, as amended, as these were already exhaustively and discussed in the *En Banc* assailed Decision of 28 February 2024.

In *Licomcen Incorporated v. Foundation Specialists, Inc.*[13], the Supreme Court, citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[14], held that:

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> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, . . . deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
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13 G.R. No. 167022 and G.R. No. 169678, 31 August 2007.
14 G.R. No. 109645, 04 March 1996.

WHEREFORE, in view of the foregoing, petitioner Commissioner of Internal Revenue's "Motion for Reconsideration [Re: Decision dated 28 February 2024]" filed on 19 March 2024 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice