REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2438** (CTA Case No. 9064)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*
FIRST PHILEC, INC. (Formerly First Electro Dynamics Corp.), Respondent.	Promulgated: SEP 21 2023 1:25

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Reconsideration (Re: Decision promulgated 15 February 2023)"[1] (**MR**) filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) on 01 March 2023 with "Comment/Opposition (Re: Motion for Reconsideration dated March 1, 2023)"[2] (**Comment**) filed by respondent First Philec, Inc. (Formerly First Electro Dynamics Corp.) (**respondent/FPI**) on 02 May 2023, pursuant to Section 1[3], Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

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1 *Rollo*, pp. 149-159.
2 Id., pp. 169-185.
3 SEC. 1. *Who may and when to file motion.* — Any aggrieved party may seek a reconsideration or new trial of any decision; resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

The MR prays for the reversal of the Court *En Banc*'s Decision promulgated on 15 February 2023 (**assailed Decision**). The dispositive portion thereof reads:

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> **WHEREFORE**, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 10 February 2021 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 09 March 2020 and Resolution dated 27 January 2021, respectively, of the Third Division in CTA Case No. 9064 entitled *First Philec, Inc. (Formerly: First Electro Dynamics Corporation) v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.
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> Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes assessed against respondent First Philec, Inc. (Formerly First Electro Dynamics Corp.) as provided in the Final Decision on Disputed Assessment dated 07 May 2015 in the total amounts of ₱128,181,133.03, representing deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax and documentary stamp tax, inclusive of increments, for taxable year 2009.
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> **SO ORDERED.**
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> ...

In its bid to reverse the assailed Decision, petitioner reiterates the argument in his or her Petition for Review that Revenue Officer (**RO**) Felina B. Guimbao (**Guimbao**) was duly authorized to continue the audit and/or investigation of respondent's tax liabilities for taxable year (**TY**) 2009 because a Memorandum of Assignment (**MOA**) was issued *pursuant to* a valid Letter of Authority (**LOA**).

Petitioner avers further that it is not a statutory requirement to indicate the names of the ROs in the LOA since the same is merely an internal procedure which has been incorporated in the document being used by the Bureau of Internal Revenue (**BIR**). Petitioner also submits that the ROs named in the LOA may not always be the same ROs who will conclude the examination. In so insisting, petitioner cites Revenue Memorandum Order (**RMO**) No. 8-2006[4] that allows the issuance of a memorandum by the head of the investigating office in cases of

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

reassignment. As the same was duly observed in the instant case, the assessments made by RO Guimbao were, therefore, valid.

Petitioner likewise points out that RMO No. 43-90[5] is not an implementing rule of any statute and the Court erred in assuming that it is. According to petitioner, the National Internal Revenue Code (**NIRC**) of 1997, as amended, is not yet in existence when RMO No. 43-90 was promulgated in September 1990 or seven (7) years prior to the enactment of the Tax Code. Neither can it be said that RMO No. 43-90 is the implementing rule of the equivalent provision in the NIRC of 1977, as amended, as an LOA was not yet in the statute books back then.

Petitioner adds that, prior to the enactment of the NIRC of 1997, as amended, an LOA was merely an administrative tool to manage or monitor audit activities under an audit program. As such, petitioner submits that RMO No. 43-90 was overtaken by the NIRC of 1997, as amended, and its applicability has now become suspect. Moreover, RMO No. 43-90 is a mere statement of policies and carries no penal provisions or punitive clauses.

Lastly, petitioner faults the Court *En Banc*'s reliance on the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[6] (**McDonald's**) stating that the ruling therein could not apply retroactively. Citing the case of *Albino S. Co v. Court of Appeals, et al.*[7] (**Co**), petitioner claims that judicial decisions laying down a new principle must be applied prospectively. Resultantly, since the *McDonald's* case was promulgated only after the instant case was filed, it will not apply to the latter.

On the other hand, respondent counters that the Court *En Banc* correctly ruled that tax assessments against the former are void as the RO who conducted the audit and/or investigation was not one of the authorized officers named under the original LOA. Respondent echoes the Court *En Banc*'s findings and claims that neither an MOA nor a referral memorandum can validly grant the authority or the power to conduct a tax examination to newly assigned ROs.

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

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

7 G.R. No. 100776, 28 October 1993.

As for the prospective application, respondent clarifies that the *Co* case is criminal in nature and cannot be applied squarely in the instant case. In addition, respondent avers that Supreme Court decisions form part of the law as of the date they were originally passed. Thus, the *McDonald's* case was correctly applied here.

Finally, respondent stresses that petitioner failed to raise new arguments in his or her MR, hence the present MR should be denied for being *pro forma*.

We resolve.

After considering the parties' arguments, the Court *En Banc* does not find any new compelling reason to warrant the reversal of the assailed Decision.

As petitioner's arguments are essentially a duplication of those already passed upon and decided in the assailed Decision, We deem it propitious to focus our resolution of the MR on the applicability or inapplicability of the *McDonald's* case.

Petitioner posits that the *McDonald's* case is a recent jurisprudence that must not be applied in the instant case as allegedly held in *Co*.

We do not agree.

Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed (since the Supreme Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect).[8] Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one. This is only subject to the qualification that when a doctrine of Supreme Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should

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8 *Columbia Pictures, Inc., et al. v. Court of Appeals, et al.*, G.R. No. 110318, 28 August 1996.

not apply to parties who relied on the old doctrine and acted in good faith.[9]

Applying the foregoing in the *McDonald's* case, an examination of the facts thereof shows that the Supreme Court discussed therein the LOA's significance as the concrete manifestation of the grant of the CIR's authority and his or her duly authorized representatives to the ROs, pursuant to the provisions of Sections 6[10], 10(c)[11], and 13[12] of the NIRC of 1997, as amended. The said ruling did not overrule or reverse a previous jurisprudence, nor did it introduce a new interpretation. Consequently, it is clear that the judicial decision in *McDonald's* became part of the NIRC of 1997, as amended, from the time the said tax law was originally passed. Thus, contrary to petitioner's contentions, *McDonald's* was not applied prospectively.

Moreover, petitioner's reliance in *Co* is misplaced. There, the Supreme Court gave prospective effect to its ruling in *Victor Que v. People of the Philippines, et al.*[13] – that even checks to guarantee the performance of an obligation were covered by *Batas Pambansa Blg.* 22 – as the accused in *Co* relied on an official opinion of the Minister of Justice that such checks were not within the ambit of *Batas Pambansa Blg.* 22.[14] However, in this instance, there is no previous administrative interpretation issued by a competent body that petitioner could claim to have relied on in good faith.

As petitioner's other contentions are mere rehash of arguments already submitted to and pronounced to be without merit by this Court in its assailed Decision, the Court *En Banc* finds no needful use to

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9 Id.

10 **SEC. 6.** *Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement.*

11 **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:
...
(c) Issue Letters of authority for the examination of taxpayers within the region;
(d) Provide economical, efficient and effective service to the people in the area;
(e) Coordinate with regional offices or other departments, bureaus and agencies in the area;
(f) Coordinate with local government units in the area;
(g) Exercise control and supervision over the officers and employees within the region; and
(h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner.

12 **SEC. 13.** *Authority of a Revenue Officer.* – ...

13 G.R. No. 75217-18, 21 September 1987.

14 *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 205837, 21 November 2017.

discuss them anew. In *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[15], the Supreme Court declared:

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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 be 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, as above stated, 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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> ...

WHEREFORE, premises considered, the "Motion for Reconsideration (Re: Decision promulgated 15 February 2023)" filed by petitioner Commissioner of Internal Revenue on 01 March 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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15 G.R. No. 109645, 04 March 1996 (Resolution).

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen M. Ringpis-Liban
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