REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

REPUBLIC OF THE PHILIPPINES,
Plaintiff,

- versus -

ROBIEGIE CORPORATION,
Defendant.

CTA OC No. 023

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
AUG 26 2020
10:50 a.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is plaintiff's **Motion for Reconsideration (Re: Decision dated June 08, 2020)**, filed through registered mail on June 26, 2020, and received by the Court on July 6, 2020, with defendant's **Comment/Opposition to the Motion for Reconsideration filed by the Plaintiff (Dated June 26, 2020)**, filed on July 8, 2020.

On June 8, 2020, a Decision was promulgated by this Court, finding plaintiff's, through the Bureau of Internal Revenue (BIR), revenue officers were not duly authorized by a Letter of Authority (LOA) when they conducted the examination of defendant's books of accounts, the dispositive portion of which reads as follows:

"**WHEREFORE**, the present *Complaint* is **DISMISSED**.

SO ORDERED."

In its Motion, plaintiff raises the following grounds as its main arguments:

I. The revenue officers who conducted the audit were duly authorized, hence, the assessment is valid; and,

II. Robiegie is liable to pay its deficiency internal revenue taxes for the year 2008 since the assessment is already final, executory and demandable.

As to the first ground, plaintiff cites Revenue Memorandum Order (RMO) No. 8-2006[1], wherein it states that in case both the revenue officer (RO) and group supervisor (GS) have resigned/retired or transferred to another Revenue Region (RR), the case shall be reassigned to another RO under the supervision of another GS within the same revenue district office. In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned taxpayer and the concerned RO and/or GS.

Plaintiff claims that since only one LOA per taxable year can be issued to a taxpayer, the need for plaintiff to issue a Memorandum of Assignment (MOA) to another RO to continue the audit under the previously issued LOA is needed. Conversely, if the Court maintains the position that only those ROs indicated in the LOA can continue the audit, and the BIR cannot issue another LOA for the same year, then, the collection of taxes would be in jeopardy which is contrary with the lifeblood doctrine.

Moreover, plaintiff also cites RMO No. 62-2010[2], which was subsequently issued to supplement additional guidelines in the issuance of LOA, Tax Verification Notice and MOA. In the said RMO, the standard operating procedure for a RO would be to issue a memorandum to another RO who will handle the case and continue the audit examination which the former, due to their reassignment, could not anymore do so. Plaintiff further explains that the ROs indicated in the original LOA would not always be able to complete their audit investigation since there will be instances where one or all the ROs indicated would retire, reassign, take ill, or die prior to the completion of the audit investigation. As such, the government should not be made to suffer thereof and, it is for that reason why a MOA is given to another RO to continue the audit investigation.

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

[2] "SUBJECT: Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures", dated June 28, 2010.

Purportedly, the MOA is merely for the continuation of the taxpayer's audit as already authorized under the LOA, and since the subsequently issued MOA derived its authority from the said LOA, the source of the RO's authority to continue the investigation of the taxpayer is not the MOA or any other document but the original issued LOA itself.

Nonetheless, plaintiff maintains that defendant is liable to pay its deficiency internal revenue taxes for the year 2008 since the assessment is already final, executory and demandable.

On the other hand, defendant points out that the arguments raised in the present motion are reiterations of matters which have already been considered, weighed and resolved by this Court. Defendant reiterates that an RO must be first be authorized, through an LOA, before the said RO may validly examine a taxpayer's books of accounts and other accounting records. In the absence of such authority, any tax assessment issued by the BIR is a complete nullity or void. Therefore, applying the foregoing in the present case, plaintiff has no right to collect the subject deficiency taxes from defendant.

After due consideration, plaintiff's Motion for Reconsideration is bereft of merit.

As correctly pointed out by defendant, this Court finds the arguments raised in plaintiff's Motion are mere rehash of the same facts and issues which have already been discussed extensively in the Decision assailed. With emphasis, this Court has been consistent in its pronouncements that an RO must be authorized, through a duly issued LOA, in order that the said officer may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

In fact, unless authorized by the Commissioner of Internal Revenue (CIR) himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[3]

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[3] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

Perforce, the term "**duly authorized representative**" under Section 6(A)[4] of the National Internal Revenue Code (NIRC) of 1997, as amended, which may authorize examination of taxpayers refers to a *Revenue Regional Director*, in accordance with Sections 10(c)[5] and 13[6] of the same tax code. In the same vein, the term likewise refers to other tax officials with the rank equivalent to a *division chief or higher*, pursuant to the CIR's authority to delegate powers vested in him under Section 7[7] of said tax code.

In relation to the foregoing provisions, RMO No. 43-90[8] issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that an OIC-Chief of the Regular Large Taxpayers Audit Division II is not included therein. The relevant portion of the said issuance reads:

"D. Preparation and issuance of L/As.

x x x 9r

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[4] "**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.—* After a return has been filed as required under the provisions of this Code, **the Commissioner or his 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.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

[5] "**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**:

x x x

(c) Issue Letters of Authority for the examination of taxpayers within the region;" *(Emphasis supplied)*

[6] "**SEC. 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." *(Emphasis supplied)*

[7] "**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: *Provided, however, x x x." (Emphasis supplied)*

[8] "SUBJECT: 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.

> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself**." *(Emphasis supplied)*

To reiterate, it is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. As stated earlier, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made. As such, considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

In the present case, plaintiff admitted in his Motion that the MOA was issued by a revenue district officer. Unfortunately, however, a revenue district officer does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power. As argued by plaintiff, to wit:

> "*Thus, based on the above, the standard operating procedure of the revenue officers have been to issue a memorandum to other revenue officers who will handle the case, the latter to continue the audit examination which the former, due to their reassignment, could not continue. The Memorandum of Assignment is signed may be signed by the Head of the Investigating Office.* ***As in this case, the MOA was signed by the Revenue District Officer****, as the head of the Revenue District Office/Investigating Office, which was conducting the audit of respondent.*"[9] *(Emphasis supplied)* gc

[9] Motion for Reconsideration (Re: Decision dated June 08, 2020), p. 4.

Accordingly, in view of the finding that the RO who conducted the examination of defendant's books of accounts and other accounting records for taxable year 2008, and who also recommended the issuance of the said PAN for the same taxable year, does not have the necessary authority to do so in the first place, the subject tax assessments issued against defendant are inescapably void and without effect.

Furthermore, this Court likewise disagrees with plaintiff's assertion that the collection of taxes would be jeopardized and would run contrary with the lifeblood doctrine if this Court maintains the position that only those ROs indicated in the LOA could continue the audit. The pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*[10] is highly instructive on the matter, to wit:

> "**<u>Laws Not Amended by Regulations</u>**
>
> Second, the law cannot be amended by a mere regulation. In fact, a regulation that 'operates to create a rule out of harmony with the statute is a mere nullity'; it cannot prevail.
>
> It is a cardinal rule that courts 'will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it xxx.' In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that 'Congress may not have the opportunity or competence to provide.' The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.
>
> x x x
>
> In case of conflict, the law must prevail. A 'regulation adopted pursuant to law is law.' Conversely, a regulation or any portion thereof not adopted pursuant to

[10] G.R. No. 159647, April 15, 2005.

law is no law and has neither the force nor the effect of law."

While administrative agencies, such as the BIR, may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. In case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.[11] Accordingly, since Sections 6 and 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, explicitly requires for an LOA before an examination and assessment may be made against a taxpayer, not even a revenue regulation, more so an RMO, could invalidate/relax such requirement of LOA for tax investigation.

Guided by the foregoing disquisition, this Court finds no cogent reason to disturb the conclusion reached in the Decision assailed by plaintiff.

WHEREFORE, premises considered, plaintiff's Motion for Reconsideration (Re: Decision dated June 08, 2020) is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[11] *Commissioner of Internal Revenue v. The Insular Life Assurance Co. Ltd.*, G.R. No. 197192, June 4, 2014; citing *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 158885, October 2, 2009.