REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

WATSONS PERSONAL CARE STORES (PHILIPPINES), INC.,
Respondent.

CTA EB No. 2391
(CTA Case No. 9303)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
SEP 01 2022 1:44 pm

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RESOLUTION

UY, J.:

For resolution is petitioner's ***MOTION FOR RECONSIDERATION (re: Decision dated 13 May 2022)*** filed on June 2, 2022,[1] with respondent's ***Comment (on CIR's Motion for Reconsideration)*** filed on June 27, 2022.[2]

In the said *Motion*, petitioner prays for the reconsideration of the Decision promulgated on May 13, 2022, the dispositive portion of which reads:

[1] EB Docket, pp. 127 to 146.
[2] EB Docket, pp. 150 to 156.

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated June 11, 2020 and the Resolution dated November 19, 2020 rendered by the Second Division of this Court in CTA Case No. 9303 are **AFFIRMED**.
>
> Consequently, petitioner CIR or any person acting on his behalf is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against respondent during the pendency of the instant case.
>
> **SO ORDERED.**"

Petitioner's Motion for Reconsideration:

In her *Motion for Reconsideration*, petitioner submits that the Court of Tax Appeals cannot rule on the issue of lack of authority by the Revenue Officers (RO) to conduct investigation which were not stated by the parties in their pleadings nor raised during the Pre-Trial Conference in CTA Case No. 9303. Allegedly, by ruling on an issue not jointly stipulated by the parties, petitioner was deprived of due process.

Petitioner further asserts that the subject deficiency tax assessment against respondent is valid.

Allegedly, the issuance of a Letter of Authority (LOA) is not a requirement when the audit investigation is conducted by the Office of the Commissioner of Internal Revenue as it is the organic function of the CIR to assess as provided under Section 6 of the National Internal Revenue Code (NIRC) of 1997. The issuance of an LOA is only required if the audit will be conducted by revenue officers in Revenue District Offices which are directly under the jurisdiction of Revenue Regions headed by a Regional Director.

Assuming *arguendo* that an LOA is required, petitioner claims that the subject assessments were issued pursuant to a valid LOA. The reassignment was made through a Memorandum of Assignment (MOA) which was issued pursuant to a valid LOA. Hence, it does not invalidate the subject assessment.

According to petitioner, Revenue Memorandum Order (RMO) No. 8-2006 permits the reassignment of an LOA and requires no new LOA for the reassigned RO; and that the reassignment of the LOA and the failure of the reassigned RO to secure a new LOA does not result in lack of authority of the RO and invalidity of the assessment.

Under the said RMO, the Head of the Investigating Office is duly authorized to issue and sign a MOA. In this case, Cesar D. Escalada, being the head of the investigating office who issued the MOA, validly granted authority to RO Jennifer L. Almedilla and Group Supervisor (GS) Marivic P. Bautista to continue with the audit in view of the transfer/reassignment of the ROs named in the LOA.

Petitioner also argues that the Court erred in relying on the case of *Commissioner of Internal Revenue vs. Mcdonald's Philippines Realty Corp.*[3] (*Mcdonald's* for brevity), which in turn relied on RMO No. 43-90.

Petitioner claims that RMO No. 43-90 is not an implementing rule of any statute; that it was promulgated on September 1990, or seven (7) years prior to the law it supposedly implemented. Said RMO could not have implemented a law which at the time of its promulgation is still not in effect. Neither can it be said that RMO No. 43-90 is the implementing rule of the equivalent statutory provision in the 1977 Tax Code which preceded the 1997 NIRC. Allegedly, an LOA was not yet mentioned in the statute back then.

Likewise, petitioner contends that the order of the Court in Division and Court *En Banc* in prohibiting petitioner to collect the assessed deficiency taxes from respondent does not have factual and legal basis and is tantamount to a restraining order or restraining the collection of national internal revenue taxes which is not allowed by law.

Allegedly, enjoining petitioner from collection of taxes contravenes Section 218 of the Tax Code and the ruling in *Southern Cross Cement Corp. vs. Cement Manufacturers Association of the Philippines, et. al.*[4], which prohibits any court from granting an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the Tax Code.

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[3] G.R. No. 242670, May 10, 2021.
[4] G.R. No. 158540, July 8, 2004.

Moreover, petitioner points out that respondent did not pray for a restraining order. Hence, entitlement thereto was not established.

Petitioner argues that an injunctive writ is only available upon proving two important conditions: 1) the right to be protected exists *prima facie;* and 2) the acts sought to be prevented would cause an irreparable injustice. In this case, respondent never presented any evidence to show that it has an existing right to be protected and that the acts sought to be prevented would cause it an irreparable injustice. Hence, the Court should not have issued such restraining order. Even assuming that there exist grounds to issue the restraining order, respondent should have also been ordered to pay or post the required bond under Section 6, Rule 10 of Revised Rules of the Court of Tax Appeals (RRCTA).

Respondent's Comment:

Respondent counter-argues that the Court in Division did not err in tackling issues which respondent says are unassigned issues; that the authority of the RO is an issue that is related and necessary to achieve an orderly disposition of the case and one that goes into the validity of the deficiency assessment which is in accordance with Section 1, Rule 14 of the RRCTA.

Contrary to petitioner's argument, respondent counters that as early as in the Petition for Review at the Division level, and during the Pre-Trial, the core issue has always been the validity of the assessments, which is captured in its prayer to cancel and set aside the assessment notices.

As regards the CIR's contention that an LOA is not required when the audit investigation is conducted by the Office of the CIR, respondent argues that it was the Large Taxpayers Services (LTS) which conducted the audit, only to be re-assigned by virtue of a MOA from the Regular Large Taxpayers Audit Division (RLTAD); and that the re-assignment was not through an LOA.

Respondent also asserts that the MOA has no basis in law since the MOA issued by Cesar D. Escalada, Chief of the RLTAD 1 of the BIR, a position not equivalent to a Regional Director. Thus, arrogating upon himself a power not delegated upon him.

Finally, respondent points out that RO Almedilla was joined by ROs Ferly Anne B. Paez and Vivien C. Guillermo, the latter ROs were not named in the MOA. Thus, they acted without authority, which makes the assessment a nullity.

THE COURT *EN BANC'S* RULING

Notably, petitioner's arguments in her *Motion for Reconsideration,* are mere reiterations or restatements of the matters raised in her Petition for Review, which have already been weighed, discussed and passed upon by the Court *En Banc* in the assailed Decision. Thus, this Court shall no longer belabor, in this Resolution, to repeat the disquisitions made therein, except for some arguments which shall be squarely addressed below.

Petitioner argues that the Court erred in relying on the *Mcdonald's* case as one of the authorities cited in the assailed Decision, averring that RMO No. 43-90 is not an implementing rule of any statute. Said RMO was allegedly promulgated only on September 1990, or seven (7) years prior to the law it supposedly implemented. Thus, it could not have implemented a law which at the time of the promulgation of RMO No. 43-90, was still not in effect. Moreover, petitioner asserts that RMO No. 43-90 does not implement a rule of any equivalent statutory provision in the 1977 Tax Code which preceded the 1997 NIRC because an LOA was not yet mentioned in the statute back then.

We are not convinced.

It bears pointing out that this particular argument raised by petitioner has already been addressed by no less than the Supreme Court in the *Mcdonald's* case which held, to *wit*:

> "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.

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> **The petitioner is mistaken. Section 291 of the NIRC states:**
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> > **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.
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> **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.**"[5] (*Emphases added*)

Based on the foregoing pronouncement, it is clear that RMO No. 43-90, regardless of being issued seven (7) years prior to the enactment of the NIRC of 1997, as amended, remains an effective and valid administrative issuance as the provisions contained therein are not repugnant to Sections 6(A), 10 and 13 of the NIRC of 1997, as amended.

Verily, under the doctrine of *stare decisis et non quieta movere*, a point of law already established will be followed by the court in subsequent cases where same legal issue is raised.[6] Thus, the Supreme Court, as the final arbiter, can establish judicial doctrine.[7]

With regard to petitioner's argument that the Court cannot enjoin petitioner from collecting the assessed deficiency taxes which is tantamount to a restraining order or restraining the collection of national internal revenue taxes as it is not allowed by law, the same deserves scant consideration.

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[5] G.R. No. 242670, May 10, 2021.

[6] *Development Bank of the Philippines vs. Ronquillo, Numeriano et al.*, G.R. No. 204948, September 7, 2020.

[7] *Bangko Sentral ng Pilipinas vs. The Commission on Audit*, G.R. No. 210314, October 12, 2021.

It bears stressing that the subject assessments in the instant case were declared void *ab initio* based on the finding that the revenue officers who conducted the audit and examination against respondent were not duly authorized through an LOA, perforce no tax collection on such assessment can transpire since, as a rule, a void assessment bears no valid fruit.[8] Consequently, petitioner's collection efforts arising out of such tax assessments are also null and void.

In sum, We find no compelling reason to modify or reverse our findings and conclusions reached in the Assailed Decision.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[8] *Commissioner of Internal Revenue v. Azucena T. Reyes, et. seq.*, G.R. Nos. 159694 and 163851, January 27, 2006.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice