REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

8196 CONVENIENCE CORPORATION,
Respondent.

CTA EB NO. 2648
(CTA Case No. 9818)

Present:

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

Promulgated:
JUN 26 2024 3:22pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision promulgated on 5 January 2024)"[1] (**MR**) filed on 19 January 2024, *sans* respondent 8196 Convenience Corporation's (**respondent**'s) comment or opposition thereto.[2]

The MR assails the Court *En Banc*'s Decision[3] promulgated on 05 January 2024 (**assailed Decision**). The dispositive portion of which reads:

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[1] *Rollo*, pp. 106-119.
[2] See Records Verification dated 16 February 2024, id., p. 124.
[3] Id., pp. 76-102.

...

> **WHEREFORE**, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 20 July 2022 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 10 June 2021 and assailed Resolution dated 14 June 2022, of the First Division in CTA Case No. 9818, entitled *8196 Convenience 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 **ENJOINED** from pursuing any actions against respondent 8196 Convenience Corporation relative to herein case.
>
> **SO ORDERED.**

...

In the MR, petitioner asserts that the subject assessment should not have been declared void for petitioner's alleged failure to issue the requisite Letter of Authority (**LOA**) to clothe the investigating Revenue Officer (**RO**) and Group Supervisor (**GS**) with the necessary authority to conduct the investigation over petitioner's books of accounts, particularly in the reinvestigation stage. For petitioner, the measures it took were sufficient to sustain the validity of the assessment, in accordance with Revenue Memorandum Order (**RMO**) No. 69-2010[4] dated 11 August 2010 (wherein a Memorandum of Assignment [**MOA**] is to be issued for protested cases) and RMO No. 08-06[5] dated 01 February 2006 (which provides that protested cases under reinvestigation shall not be assigned to the same RO who handled the original investigation). Thus, the assessment's validity must be maintained as it was issued pursuant to a validly issued LOA.

Petitioner likewise claims that Revenue Regulations (**RR**) No. 18-2013[6] dated 28 November 2013, in relation to RR No. 12-99[7] dated 06 September 1999 should not have been applied retroactively in the present case. According to petitioner, the circumstances of the instant

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4 Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.

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

6 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

7 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

case do not fall within the exception contemplated under Section 246[8] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. As such, petitioner avers that the assessment already became final, executory, and demandable when respondent failed to submit the required documents supporting its protest.

We resolve.

After considering the arguments presented, We are constrained to deny petitioner's MR for lack of merit.

As can be gleaned from the assailed Decision, Sections 6(A)[9], 10(C)[10] and 13[11] of the NIRC of 1997, as amended, in relation to Section D(4)[12] of Revenue Memorandum Order (**RMO**) No. 43-90[13], require the

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8 **SEC. 246.** *Non- Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
(c) Where the taxpayer acted in bad faith.

9 **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.

10 **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[.]

11 **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.

12 D. Preparation and issuance of L/As.
...
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.

13 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 20 September 1990.

issuance of an LOA by the CIR or his or her duly authorized representatives to properly clothe the assigned ROs with the authority to conduct the audit or investigation of a taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon petitioner.

As it is, the relevance of a valid LOA has been thoroughly passed upon in the assailed Decision. In any case, We cannot give due course to the instant Petition for Review solely relying on the said ground. Even assuming the validity of petitioner's pertinent arguments in the present MR, the investigation carried out by the Bureau of Internal Revenue (**BIR**) admits of further infirmities.

RO Remigio N. Tiangco, Jr., under the supervision of Group Supervisor (**GS**) Marvin C. Sevilla were the ones authorized, through LOA No. 200700022984 issued for this case, to examine the books and other accounting records of petitioner for all internal revenue taxes for taxable year (**TY**) 2009.[14]

The records show, however, that RO Mirabel R. Vidal (**Vidal**) has been participating in respondent's case as early as September 2012, prior to the Notice of Informal Conference (**NIC**). Her supposed authority was conferred *via* an Assignment Slip (not an LOA).[15] The same did not bear the equivalent authority emanating from respondent, as among other factors, it was not issued by any of the parties so authorized under Section D(4)[16] of RMO No. 43-90.

As the records also bear, RO Vidal then proceeded to examine respondent's books and eventually recommended the issuance of the Preliminary Assessment Notice (**PAN**).[17] She later became a member of the BIR's team tasked to review respondent's request for reinvestigation.

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14 Exhibit "P-2", Division Docket, Volume II, p. 499.
15 Exhibit "R-18", id., p. 712.
16 Supra at note 12.
17 See TSN dated 19 November 2019, pp. 8-9; "Revenue Officer's Audit Report on Income Tax for the period from January 1 to December 31, 2009" and "Revenue Officer's Audit Report on Expanded Withholding Tax for the period from January 1 to December 31, 2009", BIR Records, pp. 184 and 179, respectively.

As previously determined, the lack of authority of the RO and the GS is tantamount to the absence of an LOA itself which results in the avoidance of an assessment. Being a void assessment, the same bears no fruit.[18]

Notably, contrary to petitioner's contention that he or she assigned distinct officers to handle the original investigation and reinvestigation as mandated by RMO No. 08-06[19], RO Vidal is designated in both stages' teams as a reviewer.

Meanwhile, as to petitioner's other core argument against the retroactive application of RR No. 18-2013[20] through Section 246[21] of the NIRC of 1997, as amended, the Court *En Banc* has already rendered an exhaustive discussion. We find it fitting to echo Our disquisitions on the matter:

> ...
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> Considering that the alleged failure of respondent to submit the relevant documents occurred before the issuance and effectivity of RR No. 18-2013, it is relevant to determine whether RR No. 18-2013 may be given retroactive effect insofar as the meaning of the phrase "the assessment shall become final" is concerned. To this, the Court *En Banc* rules that a retroactive application is proper.
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> ...
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> Incidentally, it is equally important to note that a retroactive application of RR No. 18-2013 in this case is not proscribed nor does it fall under the exceptions provided in Section 246 of the NIRC of 1997, as amended. ...
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> ...
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> Here, the retroactive application of RR No. 18-2013 will not prejudice respondent. The circumstances under paragraphs (a) to (c) of the above provision are also not present in this case.
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> ...

With the remainder of petitioner's arguments consisting of points already submitted to and pronounced to be without merit by the Court (in its assailed Decision as well as that of the First Division), the Court

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18 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, 14 May 2021.
19 Supra at note 5.
20 Supra at note 6.
21 Supra at note 8.

En Banc finds no needful use to discuss them anew. In *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[22], 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 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, 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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> ...

Furthermore, the Supreme Court in *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[23] held:

> ...
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> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is,

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22 G.R. No. 109645, 04 March 1996.

23 G.R. No. 159938, 22 January 2007; Citation omitted.

> however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.
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> ...

WHEREFORE, in view of the foregoing, petitioner's "Motion for Reconsideration (Re: Decision promulgated on 5 January 2024)" filed on 19 January 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 M. RINGPIS-LIBAN
Associate Justice

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