REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

## SPECIAL SECOND DIVISION

**VMC FARMERS MULTI-PURPOSE COOPERATIVE,**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE AND REGIONAL DIRECTOR, REVENUE REGION 12, BACOLOD CITY,**
*Respondents.*

**CTA CASE NO. 9859**

*Members:*

**BACORRO-VILLENA,** *Acting Chairperson, and*
**CUI-DAVID,** *JJ.*

Promulgated:
JAN 09 2024 4:05 pm

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# RESOLUTION

***CUI-DAVID, J.:***

For resolution is respondent Commissioner of Internal Revenue's (CIR's) *Motion for Reconsideration (Re: Decision dated 4 October 2023)* filed on October 24, 2023, with petitioner's *Comment/Opposition (Re: Respondent's Motion for Reconsideration)* filed on November 20, 2023. The *Motion* assails the Decision dated October 4, 2023 (assailed Decision) with the following dispositive portion:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**. Accordingly, the Decision dated May 9, 2018, issued by the Commissioner of Internal Revenue is **SET ASIDE**. Accordingly, the (a) Assessment Notices with Nos. FDDA-00014-2018, FDDA-00015-2018, and FDDA-00016-2018, all dated June 28, 2018; and the (b) Assessment Notices with Nos. 00035-2011, 00036-2011, 00037-2011, and 00038-2011, all dated January 14, 2011, both for taxable year 2006, are **CANCELLED** and **WITHDRAWN** for being null and void.

> Further, respondent Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are **ENJOINED** from proceeding with the collection of the said deficiency taxes against petitioner during the pendency of the instant case.
>
> **SO ORDERED.**

In his *Motion*, respondent argues that petitioner was not denied due process because it was clearly informed of the identity of the revenue officers (ROs) who will continue the investigation/audit. Regardless of the transfer of the RO, the jurisdiction to conduct an audit remains with the office having jurisdiction over the taxpayer. Besides, Revenue Memorandum Order (RMO) No. 8-2006[1] prescribes that only one LOA per taxable year can be issued to a taxpayer. Petitioner was also sufficiently informed of the factual and legal bases of the assessment, *i.e.*, the sugar *quedans* were not under petitioner's name. Petitioner has the burden to prove that the sugar *quedans* are in its name; thus, it cannot shift the burden to respondent considering that there is a presumption of regularity in assessment proceedings. Lastly, respondent alleges that the right to assess did not prescribe due to petitioner's failure to file a single VAT return, necessitating the application of the ten (10)-year extraordinary period under Section 222 of the Tax Code.

Petitioner counters that any reassignment of cases to another RO shall require the issuance of a new letter of authority (LOA). Citing *Republic v. Robiegie Corporation* (*Robiegie*),[2] petitioner claims that RMO No. 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is issued due to reassignment, retirement, or other inability of the incumbent RO to continue an investigation. Further, petitioner was not informed of the factual and legal bases of the assessment for respondent's failure to present evidence to support his claim that the sugar *quedans* were not in the name of petitioner. The 10-year extraordinary period also does not apply in petitioner's case since it believed in good faith, based on the Certificate of Tax Exemption issued by the Bureau of Internal Revenue (BIR) itself, that it was exempt from paying VAT. Petitioner concludes

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[1] SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), February 1, 2006.
[2] G.R. No. 260261, October 3, 2022.

that the period to assess had already prescribed when respondent issued the FLD/FAN.

The *Motion* lacks merit.

The lack of requisite LOA issued to RO Alacapa, who continued the investigation of petitioner's tax liabilities for TY 2006 and recommended the issuance of an assessment against petitioner, renders the assessment void for violation of the latter's right to due process.[3]

Anent respondent's contention that only "one LOA per taxable year" can be issued under RMO No. 8-2006, the same has already been discussed and reconciled with the requirement of a "new LOA for the valid reassignment of a tax investigation" in the case of *Robiegie*:

> ... Part IV.D., Item 2 of RMO No. 8-2006 authorizes the issuance of duplicate LOAs, subject to the CIR's discretion to determine which of the two LOAs shall prevail. Obviously, **when a tax investigation is reassigned to a different RO pursuant to the mandatory "rotation" of assessment officers** under Section 17 of the NIRC, or for any other legally justified reason, **the CIR or his/her duly authorized representatives may issue a new LOA to the newly assigned RO, and such LOA can be made to prevail over the LOA issued to the previous investigating officer**. Since the CIR's power to issue a LOA is delegable, the concomitant power to uphold the validity of a subsequently issued duplicate LOA is likewise delegable to the CIR's duly authorized representatives, as enumerated in RMO No. 43-90. Stated differently, **RMO No. 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is necessitated by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation**. The BIR official who will issue the new LOA also has the power to make it prevail over the old, previously issued LOA, subject of course to the control and regulation of the CIR as the statutorily designated tax investigator. It must be noted that Section 13 of the NIRC, in providing for the LOA as the mode of delegation of the CIR's investigatory powers to the ROs, likewise gave the CIR the power to regulate and define the parameters for the issuance of LOAs. The "one LOA per taxable year" rule under RMO Nos.

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[3] *CIR v. Manila Medical Services, Inc.*, G.R. No. 255473, February 13, 2023; *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021; *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue (CIR)*, G.R. No. 241848, May 14, 2021; *CIR v. Opulent Landowners, Inc.*, G.R. Nos. 249883-84, January 27, 2020; *CIR v. Composite Materials, Inc.*, G.R. No. 238352, September 12, 2018.

> 8-2006 and 43-90 is an example of such a regulation; and such regulation is only valid insofar as it is consistent with the provisions of the NIRC. [*Emphasis supplied*]

To avail of the extraordinary period of assessment under Section 222 of the Tax Code, respondent should show that the facts upon which the assessment is based are communicated to the taxpayer.[4] The burden of proving that the facts exist in any subsequent proceeding is with the respondent.[5] Hence, respondent is mistaken in that the burden of proving the ownership of sugar *quedans* lies with petitioner. Considering that respondent failed to present the sugar *quedans* that were allegedly not in petitioner's name, respondent failed to prove the basis of the assessment against petitioner, making the same null and void.

**WHEREFORE**, respondent's *Motion for Reconsideration (Re: Decision dated 4 October 2023)* is **DENIED** for lack of merit.

**SO ORDERED.**

**LANEE S. CUI-DAVID**
Associate Justice

*I CONCUR:*

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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[4] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.
[5] *Id.*