REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

RACAL MOTORSALES CORPORATION, *Petitioner,*	**CTA CASE NO. 9737**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
BUREAU OF INTERNAL REVENUE through MYRNA S. LEONIDA in her capacity as the OIC-Regional Director, Revenue Region No. 5, Caloocan City, *Respondent.*	Promulgated: MAR 2 1 2024 8:46 a.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is respondent's *Motion for Reconsideration* posted on October 24, 2023, with petitioner's *Comment/Opposition (To the Respondent's Motion for Reconsideration)* filed through accredited courier[1] on December 13, 2023, and received by the Court on December 14, 2023.

On September 14, 2023, the Court promulgated a *Decision* cancelling respondent's deficiency value-added tax (VAT) assessment due to the lack of authority of the revenue officer (RO) who conducted the reinvestigation, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject VAT assessment issued against petitioner for deficiency VAT for the period January 1, 2014 to June 30, 2014 in the total amount of ₱54,462,094.49 IS **CANCELLED** and **SET ASIDE.**

[1] Supreme Court OCA Circular No. 54-2023.

> Furthermore, the FDDA dated October 13, 2017, and RFLD, with *Assessment* Notice No. 22117 dated November 21, 2017, both issued against petitioner are hereby **WITHDRAWN**.
>
> **SO ORDERED**."

In his Motion, respondent assails the above Decision and mainly argues the VAT assessment against petitioner should not be cancelled based the following assignment of errors, *viz*:

> I.
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> The Final Assessment Notice with Formal Letter of Demand issued on January 10, 2017 covering taxpayer's deficiency VAT assessment for the 1st and 2nd quarters of 2014 cannot be cancelled as the same was issued pursuant to the audit findings of Revenue Officers Jeffrey Butial and Bryan Dela Cruz who were issued Letter of Authority and not pursuant to the Memorandum of Assignment to Revenue Officers Paul Simon A. Francisco (RO Francisco) and Bryan Dela Cruz.
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> II.
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> The Final Assessment Notice with Formal Letter of Demand issued on January 10, 2017 covering taxpayer's deficiency VAT assessment for the 1st and 2nd quarters of 2014 cannot be cancelled as the said Final Assessment Notice with Formal Letter of Demand issued on January 10, 2017 were duly recognized and admitted by the petitioner and served as petitioner's bases on their request for reinvestigation.
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> III.
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> The FDDA dated October 13, 2017 and RFLD, with Assessment Notice No. 22117 dated November 21, 2017 issued against petitioner should not be withdrawn since a new Letter of Authority is no longer required for the conduct of reinvestigation when the original Revenue Officers who were previously issued Letter of Authority had not been reassigned or transferred to another case or place of assignment, or has retired, or resigned or otherwise removed from handling the case covered by the Letter of Authority pursuant to Section D(5) of RMO No. 43-90.

Respondent recalls that in the *Amended Petition for Review* filed on April 10, 2018, petitioner admitted (i) the existence and receipt of the Letter of Authority (LOA) dated May 4, 2015, authorizing RO Jeffrey Butial and group supervisor (GS) Bryan Dela Cruz to examine its books of account and other accounting records for VAT for the period from January 1, 2014 to June 30, 2014.; (ii) the receipt of the *Preliminary Assessment Notice* (PAN) dated November 7, 2016 with *Details of Discrepancies*; and (iii) the receipt of the *Final Assessment Notice* with *Formal Letter of Demand* (FAN/FLD) dated January 10, 2017 for which a request for reinvestigation was granted. From the foregoing, respondent asserts that due process was properly observed and that the FAN/FLD should not be cancelled since it was issued pursuant to an LOA in accordance with Section 13 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Moreover, respondent insists that the requirement for the issuance of a new LOA for purposes of reinvestigation applies only in cases when the original ROs who handled the audit investigation were "reassigned or transferred to another case or place of assignment, or has retired, or resigned or otherwise removed from handling the case covered by the LOA". Respondent continues that such is not the situation in the present case since either RO Butial or RO Dela Cruz can proceed with the reinvestigation. Simply put, respondent maintains that the reinvestigation should not be considered void, albeit no new LOA was issued to RO Francisco, since RO Dela Cruz, being one of the ROs who conducted the reinvestigation, was duly authorized pursuant to the previously issued LOA. Lastly, respondent asserts that the audit findings of ROs Francisco and Dela Cuz were not tainted with irregularity, so the presumption of correctness of the assessment still stand.

On the other hand, in its Comment, petitioner reiterates that Sections 6(A) and 13 of the NIRC of 1997, as amended, respectively provides that only the Commissioner of Internal Revenue (CIR) or his duly authorized representative are empowered to examine petitioner and that the authority to assess the correct amount of tax must be made pursuant to a valid LOA. Petitioner asserts that perusal of the LOA reveals that it was only RO Jeffrey Butial/GS Bryan Dela Cruz, and not RO Francisco, that was authorized to examine petitioner's books of accounts. Petitioner points out that such lack of authority cannot be cured by a mere Memorandum of Assignment considering that the law is clear, plain, and free from ambiguity, which must be given its literal meaning.

As to the arguments raised by respondent, petitioner contends that (1) the admission of the existence and receipt of LOA does not carry with it the admission that it was valid; (2) that the admission of having received the PAN with Details of Discrepancies as well as FAN/FLD merely proves the fact of receipt but not their validity; and (3) that the FAN/FLD only tends to establish that these are the initial audit findings of RO Butial and not RO Francisco. Lastly, petitioner insists that the authority of respondent under Sections 6(A) and 13 of the NIRC of 1997, as amended, can only be delegated through a valid LOA.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

To recapitulate, respondent during trial presented as witness RO Paul Simon A. Francisco to prove the finding of petitioner's deficiency tax liability. Respondent insists that since GS Bryan Dela Cruz was still one of the ROs who conducted the reinvestigation pursuant to the said LOA, there is already substantial compliance with the law. He further claims that the FDDA should not be cancelled since it was made pursuant to the findings of RO Butial and GS Dela Cruz, which was only reviewed by RO Francisco pursuant to a *Memorandum of Assignment* (MOA) dated March 9, 2017.

The Court is not swayed.

While it is true that Revenue Memorandum Order (RMO) No. 08-06[2] provides that protested cases under re-investigation shall not be assigned to the same RO who handled the original investigation. A reinvestigation, once granted by respondent, involves the re-evaluation of an assessment on the basis of newly discovered or additional evidence of the concerned taxpayer.[3] As such, it is, in effect, a continuation of the examination and audit of the latter which necessitates the issuance of a new LOA, in case the RO who would conduct such reinvestigation, is different from the one(s) named in the previously-issued LOA. In other words, the new RO would be acting as a substitute or replacement of those named in the said LOA.

Furthermore, RMO No. 43-90[4] explicitly provides that the continuation of audit by a revenue officer other than the officer named in a previous LOA, requires the issuance of a new LOA:

> "C. Other policies for issuance of L/As.
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> 1. All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority.
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> x x x
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> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A,** x x x." *(Emphases and underscoring supplied)*

Herein, it is undisputed that the investigation and audit of petitioner's books of account for the period January 1, 2014 to June 30, 2014 was transferred to RO Francisco, however, no new LOA was issued. Thus, having been made without the required authority as contained in an LOA, the examination of petitioner's records by RO Francisco makes the disputed assessment a nullity.

In addition, aside from the fact that no LOA was issued to authorize RO Francisco, the MOA that was issued in his favor was signed only by the OIC-

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

3 Refer to Section 3.1.4(ii) of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013.

4 "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.

Chief of Assessment Division. An MOA cannot supersede or amend an LOA that was issued by the Commissioner of Internal Revenue, the Deputy Commissioners, and the Regional Directors, the only officials authorized to issue and sign LOAs.[5]

With respect to respondent's argument that the FAN/FLD dated January 10, 2017 should have been considered valid since they were issued through the recommendation of RO Butial and GS Dela Cruz under a valid LOA (*i.e.*, LOA No. LOA-V05-2015-00000 dated May 4, 2015), it should be stressed that the FAN/FLD, which were marked and offered as Exhibits "R-11", "R-11-A, "R-12", "R-12-A, "R-13", and "R-13-A", cannot be considered by the Court for having been denied admission in the *Resolution* dated June 22, 2022.[6] Evidence that has not been admitted cannot be validly considered by the courts in arriving at their judgments.[7]

Without the LOA, the resulting deficiency tax assessments against petitioner is inescapably void. A *void* assessment bears no valid fruit.[8] A void assessment cannot be a basis for the collection of the same.

The Court finds no compelling reason to reverse, amend, or modify the *Decision* promulgated on September 14, 2023.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[5] Section D(4) of RMO 43-90.
[6] Docket – Vol. II, pp. 840 to 842.
[7] *Dra. Leila A. Dela Llano v. Rebecca Biong, doing business under the name and style of Pongkay Trading*, G.R. No. 182356, December 4, 2013.
[8] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation* and *Liquigaz Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 215534 and G.R. No. 215557, April 18, 2016.