REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2356** (CTA Case No. 9698)
	Present:
- versus -	**DEL ROSARIO,** P.J., **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** JJ.
RAMON Y. MENDOZA, Respondent.	***Promulgated:*** MAY 24 2023 2:40 pm

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RESOLUTION

UY, J.:

For resolution is petitioner's *Motion for Reconsideration (Re: Decision dated February 02, 2023)*[1] filed on February 20, 2023, with respondent's *Comment/Opposition (To Petitioner's Petition for Review dated November 4, 2020* [sic]*)* filed on April 3, 2023.[2]

In the said *Motion*, petitioner prays that the Court *En Banc* reconsider and set aside its *Decision* dated February 2, 2023; render a new one dismissing the original *Petition for Review* filed by respondent; and order respondent to pay the amount of ₱8,257,363.07

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[1] Docket – Vol. 2, pp. 514 to 522.
[2] Docket – Vol. 2, pp. 532 to 551.

for deficiency income tax and value-added tax, inclusive of interest, surcharge and penalties for taxable year (TY) 2012. The dispositive portion of the assailed *Decision* reads:

***Decision* dated February 2, 2023:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The *Decision* dated March 2, 2020 and the *Resolution* dated September 29, 2020 rendered by the First Division of this Court in CTA Case No. 9698 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's arguments:

In his *Motion*, petitioner claims that Revenue Memorandum Orders (RMOs) are issuances, directed to Bureau of Internal Revenue (BIR) personnel, that provide instructions or directives, as well as techniques, workflow method, and the like, which are necessary to carry out programs or to achieve policy goals and objectives. Allegedly, an RMO cannot grant any vested right upon a taxpayer over a particular work process or procedure, such being an internal matter concerning the BIR. As such, any violation of RMO No. 43-90,[3] which was relied upon by the Court *En Banc*, would only result in the administrative liability of the revenue officers involved but would certainly not affect the assessment against the taxpayer.

Likewise, petitioner asserts that a Letter of Authority (LOA) is not an "authorization letter" of the revenue officers. Rather, an LOA is issued to inform a taxpayer that an audit of his/her/its business transactions has been authorized by the Commissioner of Internal Revenue (CIR). According to petitioner, once an LOA is served, any duly authorized revenue officer may now conduct an audit not because of, but "pursuant" to, such LOA. Petitioner claims that a revenue officer's authority to conduct an audit may be included in the letter or may be in any other document issued by the CIR or his duly authorized representative.

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[3] 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.

Further, petitioner posits that considering that the revenue officers named in the original LOA would not always be able to complete the entire audit process, either a memorandum, referral memorandum, and/or a memorandum of assignment (MOA) are issued to other revenue officers to continue the audit/investigation. Petitioner directs the attention of the Court *En Banc* to paragraph 17[4] of RMO No. 12-2007.[5] According to petitioner, the prohibition under paragraph 17 of RMO No. 12-2007 refers to original issuances of referral memoranda for the purpose of audit examination and assessment. It does not cover cases where an LOA was already issued authorizing the audit of a taxpayer.

Moreover, petitioner maintains that a referral memoranda or an MOA subsequently issued derive their authority from the original LOA initially issued. Accordingly, the source of the revenue officer's authority is not the referral memoranda or any other document, but the validly issued LOA itself. Petitioner also cites Item III (par. 7)[6] of RMO No. 19-2015[7] which allows the issuance of an MOA in case of reassignment of the audit/investigation to other revenue officers for the purpose of continuing the audit/investigation. Thus, the absence of an LOA in this case does not invalidate the assessment or examination of respondent.

Meanwhile, as regards the Formal Letter of Demand (FLD) / Final Assessment Notice (FAN) issued against respondent for TY 2012, petitioner claims that the same are valid, and that the due process requirements under the law and Revenue Regulations (RR) No. 12-99,[8] as amended by RR No. 18-13,[9] have been strictly observed and followed. Petitioner asserts that respondent was even able to

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[4] 17. The practice of issuing mission orders, correspondence letters, referral memoranda or any other similar orders for the purpose of audit examination and assessment of internal revenue taxes is hereby strictly prohibited. For purposes of surveillance, stocktaking, TCVD or any similar purpose, the issuance of mission orders shall be governed by the pertinent revenue issuances issued for that purpose.

[5] SUBJECT: *2007 Audit Program for Revenue District Offices*; dated July 3, 2007.

[6] 7. Electronic Memorandum of Assignment (eMOA) thru eLAMS shall be issued for the following cases:

> 7.1 Reassignment for the continuation of the audit/investigation of a case to another Revenue Officer (RO) due to resignation/retirement/transfer of the original RO;
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> xxx xxx xxx.

[7] SUBJECT: *BIR Audit Program*; dated September 15, 2015.

[8] SUBJECT: *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*; dated September 6, 1999.

[9] SUBJECT: *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment*; dated November 28, 2013.

intelligently contest the FLD/FAN, negating the claim that the latter was denied due process.

Petitioner also points out that the RR No. 12-99 does not mention anything regarding the presence or absence of due dates for the assessment to become valid. Allegedly, what was only mentioned in the said RR is that the FLD/FAN shall be issued by the CIR and that the FLD/FAN calling for payment of deficiency taxes shall state the facts, law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void.

Finally, petitioner asserts that all presumptions are in favor of the correctness of tax assessments.

Respondent's counter-arguments

In his *Comment/Opposition*, respondent counter-argues that the FAN and the Final Decision on Disputed Assessment (FDDA) are void for having been issued pursuant to an audit conducted by unauthorized revenue officers.

Respondent concedes that while Section 7, Part II of RMO No. 62-2010[10] provides that an MOA shall be issued for the assignment to another revenue officer for the continuance of the audit, the same regulation does not provide that the LOA requirement may be dispensed with.

Respondent also reiterates that Section 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that an LOA is required before a revenue officer can conduct a tax audit on a taxpayer. According to respondent, jurisprudence is clear that any assessment issued in the course of an unauthorized examination is void.

Allegedly, the FAN and FDDA are void because his right to due process was not observed during the conduct of the audit. Particularly, respondent claims that the BIR issued the subject FLD and related FDDA beyond the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended; thus, are void.

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

According to respondent, petitioner's failure to state the facts on which the assessment against respondent was based grossly violates the latter's right to due process.

Finally, respondent avers that the FAN and FDDA are void for failing to contain a definite and categorical demand to pay. Respondent explains that settled is the rule that a valid assessment must contain not only a detailed computation of tax liabilities but also a demand for payment within a prescribed period. Otherwise, the FLD and assessment shall be void. Considering that the Assessment Notices attached to the FLD do not contain any due dates, the same cannot be considered as a categorical demand to pay nor a final notice which may be the basis of deficiency tax assessments against respondent.

THE COURT *EN BANC*'S RULING

Petitioner's *Motion* lacks merit.

After a careful examination and consideration of petitioner's arguments in his *Motion*, We note that the same are mere reiterations of matters which have already been considered, weighed and resolved in the assailed *Decision*. Thus, We shall no longer belabor, in this *Resolution*, the disquisitions made therein.

The revenue officers who continued the audit of respondent's books of accounts and other accounting records were not authorized by a valid LOA; MOA is not proof of the existence of authority of the substitute revenue officers.

As extensively discussed in the assailed *Decision*, there must be a grant of authority, **through an LOA**, before any revenue officer can conduct an examination or assessment, regardless whether the audit/investigation is of first instance or a continuation of an existing examination which was previously conducted by another revenue officer. In the absence of such authority, the assessment or examination is a nullity.[11]

[11] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

There is no merit in petitioner's claim that any violation of RMO No. 43-90 would only result in the administrative liability of the revenue officers involved and would not affect the validity of the assessment. Neither is petitioner correct in arguing that once an LOA is served, any duly authorized revenue officer may conduct the audit pursuant to said LOA, and that a revenue officer's authority to conduct an audit may be included in the letter or may be in any other document issued by the CIR or his duly authorized representative. Petitioner is also mistaken in his assertion that the source of a revenue officer's authority is not the MOA subsequently issued, but the original LOA initially issued; thus, the absence of a new LOA does not invalidate the assessment or examination of a taxpayer.

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[12] the Supreme Court categorically ruled that the practice of reassigning or transferring revenue officers originally named in the LOA and **substituting them with new revenue officers to continue the audit or investigation <u>without a separate or amended LOA</u> (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.**

Thus, non-compliance with RMO No. 43-90, particularly on the issuance of a new LOA when there is reassignment or transfer of cases to another revenue officer, does not only result in administrative liability of the revenue officers involved. The result of the absence of an LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.[13]

It also bears stressing that an MOA, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers. The issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power

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[12] G.R. No. 242670, May 10, 2021.
[13] *Id.*

that belongs exclusively to the CIR himself or his duly authorized representatives.[14]

Moreover, there is no merit in petitioner's claim that the prohibition on the practice of issuing mission orders, correspondence letters, referral memoranda or any other similar orders for the purpose of audit examination and assessment of internal revenue taxes under paragraph 17 of RMO No. 12-2007 refers to original issuances of referral memoranda for the purpose of audit examination, and does not cover cases where an LOA was already issued authorizing the audit of a taxpayer. It is worth noting that RMO No. 12-2007 covers the audit/investigation of 2006 internal revenue tax returns;[15] thus, inapplicable to the instant case which involves TY 2012. In any case, regardless of RMO No. 12-2007's applicability, petitioner's interpretation that the prohibition under paragraph 17 thereof does not cover cases where an LOA was already issued, is erroneous, pursuant to the discussion above.

Further, petitioner's contention, that the absence of an LOA in this case does not invalidate the assessment or examination of respondent because under Item III (par. 7) of RMO No. 19-2015, the issuance of an MOA in case of reassignment of the audit/investigation to other revenue officers for the purpose of continuing the audit/investigation is allowed, is unavailing. While under said RMO an electronic MOA shall be issued in case of reassignment for the continuation of the audit/investigation of a case to another revenue officer due to resignation/retirement/transfer of the original revenue officer, there is nothing in the said RMO which dispenses of the requirement of issuing a new LOA in case of reassignment/transfer of cases.

In this case, considering that the authority of Revenue Officer Belen S. Occeña and Group Supervisor Corazon C. San Pedro to continue the audit/investigation of respondent was merely based on the MOA dated June 21, 2016, and that there is no showing that a new LOA was issued authorizing them to continue the audit/investigation of respondent, the subject tax assessments are void and thus, bear no valid fruit.[16]

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[14] *Id.*

[15] Per paragraph II. *Coverage* of RMO No. 12-2007.

[16] *Commissioner of Internal Revenue v. Azucena T. Reyes, Azucena T. Reyes v. Commissioner of Internal Revenue*, G.R. Nos. 159694 and 163581, January 27, 2006.

The FLD and Assessment Notices are void.

Petitioner's argument that respondent was able to intelligently contest the FLD/FAN, therefore negating the claim that the latter was denied due process, deserves scant consideration. It is of no moment that respondent was able to contest the FLD/FAN. The FAN and the Assessment Notices attached to it are still void for failure to demand payment of the taxes due within a specific period.[17]

Petitioner also claims that RR No. 12-99, as amended by RR No. 18-13, only provides that the FLD/FAN calling for payment of deficiency taxes shall state the facts, law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void. Allegedly, there is nothing in the said RR regarding the presence or absence of due dates for the assessment to become valid. Again, petitioner is mistaken. In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[18] the Supreme Court invalidated an assessment after noting that there are no due dates in the FAN.

In the instant case, no due dates were indicated in the Assessment Notices issued by petitioner.[19] Consequently, the FLD and Assessment Notices are void.

Accordingly, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration (Re: Decision dated February 02, 2023)* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[17] *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.
[18] G.R. No. 215957, November 9, 2016.
[19] Exhibit "P-9", Division Docket – Vol. II (CTA Case No. 9698), pp. 470 to 475.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice