REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

TEKTITE INSURANCE BROKERS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9184

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 27 2021
9:25 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

Submitted before this Court is Respondent's **Motion for Reconsideration (Decision dated 25 June 2020)** filed on August 20, 2020, with Petitioner's **Comment (To Respondent's Motion for Reconsideration dated August 19, 2020)** filed on October 19, 2020.

On June 25, 2020, this Court promulgated a Decision cancelling Respondent's deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) assessments against Petitioner due to his revenue officer's lack of a valid Letter of Authority (LOA), the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, Formal Letter of Demand No. 043A-B179-11 dated January 9, 2015 with attached Assessment Notices and Details of Discrepancies issued against Petitioner for alleged deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax in the aggregate amount of ₱9,616,239.28, inclusive of surcharges and interest, for taxable year

ended December 31, 2011 is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED."

In his Motion, Respondent assails the above Decision primarily on the ground that the Court erred in holding the LOA void for not having revalidated in accordance with Department of Finance (DOF) Department Order No. 006-99[1] and Revenue Memorandum Order (RMO) No. 43-1990.[2] Respondent argues that the said issuances have already been superseded by RMO No. 44-2010[3], which veered away from the revalidation requirement. He continues that LOA No. 43A-2013-00000005 was issued on January 13, 2013 which is already therefore covered by RMO No. 40-2010, wherein there is no more need for revalidation of the LOA even if the prescribed audit period has been exceeded. Hence, the examiner's assessment should be given full weight and credit considering that the basis for invalidating the assessment has already been superseded by RMO No. 44-2010.

On the other hand, in its Comment, Petitioner insists that Respondent failed to provide any basis to support his theory that RMO No. 44-2010 has superseded DOF Department Order No. 006-99 and RMO No. 43-1990. Petitioner also emphasizes that the power of Respondent to conduct audit investigations of taxpayers is enshrined by law under Section 6 of the National Internal Revenue Code (NIRC), as amended, to which a mere administrative issuance, like a BIR regulation, cannot effectively amend. It further cites the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,*[4] wherein the Supreme Court confirmed that only an authorized representative of Respondent may conduct said audits as evidenced by an LOA and any assessments issued by any revenue officer (RO) whose investigation was not supported by a valid LOA, are considered void. Petitioner continues that Article 8 of the Civil Code explicitly provides that judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

Petitioner likewise points out that, in the present Motion, Respondent did not dispute the fact that Petitioner adduced evidence that he failed to timely issue a Preliminary Assessment Notice (PAN) before it served the Final Assessment Notice/Formal Letter of Demand (FAN/FLD) for taxable year 2011. Petitioner claims that Respondent issued the PAN only on January 13, 2015, which is four days after Petitioner already received the FAN/FLD on January 9, 2015. Petitioner maintains that considering that it received the FAN/FLD before the PAN, its right to due process of law in the conduct of tax audit investigation was not properly observed and therefore was clearly violated. Petitioner cites the case

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[1] "Defining the Authority of the Commissioner of Internal Revenue and Regional Directors Re: Issuance of Letter of Authority and Taxpayer's Investigation", dated January 1999.
[2] "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.*
[3] "SUBJECT: *Electronic Issuance of Letters of Authority",* dated May 12, 2010.
[4] G.R. No. 222743, April 5, 2017.

of *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue,*[5] wherein the Supreme Court stated that Respondent's failure to observe Revenue Regulations (RR) No. 12-99 by not issuing a preliminary assessment notice, among others, as required by law, deprived Petitioner of statutory and procedural due process to contest the assessment before it was issued. Thus, the formal letter of demand and assessment notice is void for being formally defective.

Lastly, Petitioner further claims that Respondent also did not dispute the fact that Respondent's examination of Petitioner's *Monthly Remittance Return of Creditable Income Taxes Withheld* (BIR Form No. 1601-E) and *Monthly and Quarterly Value-Added Tax Returns* (BIR Form Nos. 2550M & 2005Q) for taxable year 2011, will show that it had already prescribed by the time the FAN/FLD was issued on January 9, 2015.

Accordingly, this Court finds Respondent's Motion for Reconsideration bereft of merit.

As correctly pointed out by Petitioner, Respondent failed to provide any basis to support his contention that RMO No. 44-2010 has superseded DOF Department Order No. 006-99. Under Sec. 2[6] of the NIRC of 1997, as amended, the Bureau of Internal Revenue (BIR) is under the supervision and control of the DOF. As a result, a revenue issuance of the BIR cannot have the effect of superseding a Department Order of the DOF considering that the former is merely under the supervision and control of the latter. In fact, of all revenue issuances from the BIR, only Revenue Regulations are signed by the Secretary of Finance.[7] Incidentally, Section 13 of the NIRC of 1997, as amended, provides:

> "**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." (*Underscoring supplied*)

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[5] G.R. No. 172598, December 21, 2007.

[6] "**SEC. 2.** *Powers and Duties of the Bureau of Internal Revenue.* - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws." *(Underscoring supplied)*

[7] RMO No. 12-97 "SUBJECT: Establishment of the Internal Communications Network", dated March 20, 1997.

As held in the assailed Decision, DOF Department Order No. 006-99, which applies to all LOAs and taxpayer's investigation by the BIR,[8] requires the issuance of a new LOA in case of revalidation of a LOA:

> "SECTION 3. *Taxpayer's Investigation.* — All investigations of taxpayers shall be covered by a Letter of Authority issued by either the Commissioner of Internal Revenue or Regional Directors only. **A revenue officer shall within one hundred twenty (120) days from the date of the issuance of Letter of Authority conduct his audit and submit his investigation.** While the case is pending completion a progress report shall be submitted every end of the month to the head of the audit office, copy furnished the issuing authority. If the final report is not completed within the 120-day period, the revenue officer shall then return the Letter of Authority for revalidation. **The revalidation shall be limited to one issuance only and is done by issuing a new Letter of Authority.**" *(Emphases supplied)*

Evidently, there is no showing that DOF Department Order No. 006-99 has been subsequently repealed. Even assuming that RMO No. 43-1990 was already repealed by RMO No. 44-2010, DOF Department Order No. 006-99 requiring a RO who fails to complete the final report within the 120-day period to return the LOA for revalidation, *i.e.*, issuance of a new LOA, is still in effect and with force. As such, this Court stands by its ruling that the use of the word "shall" in DOF Department Order No. 006-99 can only mean that the issuance of a new LOA, with a corresponding notation thereto in case of revalidation, is mandatory. Consequently, failure of the RO to secure a new LOA from Respondent or any of his duly authorized representatives will result in the invalidity of the assessment for lack of authority on the part of the RO to continue with the examination of the taxpayer's books of accounts and other accounting records.

Applying the foregoing in the present case, LOA No. 43A-2013-00000005 issued on January 15, 2013, authorized RO Elma Delluta to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2011 to December 31, 2011. As such, RO Elma Delluta had 120 days from January 15, 2013 or until May 15, 2013 to conduct the audit and submit a report therefrom. However, RO Elma Delluta submitted the Memorandum Report only on April 21, 2014 which is beyond the period set in Section 3 of DOF Department Order No. 006-99.

Verily, as the head of the government agency empowered to assess and collect all national internal revenue taxes, fees, and charges, and the enforcement

[8] Sec. 1, DOF Department Order No. 006-99.

of all forfeitures, penalties, and fines connected therewith, including the execution of judgment in all cases decided in its favor by the courts, Respondent must see to it that all his issuances are in accordance with law and regulations and that the same will be followed by no less than the officers and employees who are tasked to conduct the audit, assessment, and collection under his name. As held by the Supreme Court in *Commissioner of Internal Revenue v. Placer Dome Technical Services (Phils.), Inc.,*[9] an administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by this Court.

In view of the foregoing disquisitions, this Court finds no cogent reason to justify the reversal or any modification of the conclusion reached in the Decision assailed by Respondent.

WHEREFORE, premises considered, Respondent's Motion for Reconsideration (Decision dated 25 June 2020), is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

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[9] G.R. No. 164365, June 8, 2007; citing *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.