REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ENJAY HOTELS, INC.,
Respondent.

CTA *EB* NO. 2052
(CTA Case No. 9273)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
FEB 19 2021 11:35 am

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.:

For the Court *En Banc*'s resolution is petitioner's **Motion for Reconsideration (hereinafter referred to as "Motion")**, posted on 6 October 2020, with respondent's **Comment** filed on 16 November 2020.

In his Motion, petitioner faults the Court *En Banc* for affirming the Decision and Resolution of the Court in Division.

Petitioner contends that the Court *En Banc* erroneously relied on ***Revenue Memorandum Order ("RMO") No. 43-90***[1] in ruling that a new Letter of Authority ("LOA") is required in cases when the audit is reassigned to a new revenue officer. He argues that such contention is not supported by any legal or implementing rule.

[1] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

He stresses that RMO No. 43-90 is not an implementing rule of any provision of the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code"), more so as it was issued seven (7) years prior to the enactment of said statute. Hence, he concludes that the same had already been effectively overturned by subsequent issuances.

Petitioner, citing the Court in Division case of ***Orient Overseas Container Line Ltd. v. CIR***,[2] questions the authority of RMO No. 43-90. He explains that the said issuance does not provide for any legal consequences in cases when no new LOA is issued after the originally named revenue officer under a previously-issued LOA is re-assigned or transferred. He says that RMO No. 43-90 is only an internal issuance of the Bureau of Internal Revenue ("BIR") which does not grant vested rights to the taxpayer. He advances that the act of the Court *En Banc* in nullifying an LOA due to the reassignment of the originally named revenue officer effectively curtails the CIR's statutory authority to conduct audit and assessment.

In short, petitioner insists that the failure of the newly assigned revenue officer to secure a new LOA will not render the assessment invalid on the ground of lack of authority.

Lastly, he explains that the position of OIC-Chief of Regular Taxpayers Audit Division 3 ("OIC-Chief RLTAD") is next-in-charge after the Assistant Commissioner/Head Revenue Executive Assistance ("ACIR/HREA"). Hence, he concludes that the same is authorized to sign/issue documents, such as the Memorandum of Assignment ("MOA") in the absence of the ACIR/HREA in order to avoid unnecessary delay.

In its Comment, respondent counters that the Court correctly relied on RMO No. 43-90. It posits that even if the said issuance was enacted prior to the passing of the Tax Code, it states that the legislature is presumed to pass laws cognizant of existing BIR issuances. Hence, without identifying any law or issuance that abrogates or repeals the said RMO, then the same should stand.

Finally, respondent argues that the OIC-Chief RLTAD cannot sign the MOA since he is not one of the authorized signatories identified under the Tax Code and BIR issuances.

After going through the arguments raised by petitioner, the Court *En Banc* finds the same bereft of factual and/or legal bases worthy of this Court's time and consideration.

[2] CTA Case No. 9179, 2 August 2018.

To begin with, the Court *En Banc* laments petitioner's narrow interpretation and appreciation of this Court's findings in the assailed Decision. Petitioner focused squarely on attacking the legality or applicability of RMO No. 43-90 without addressing the other legal authorities cited in the contended Decision.

Truth be told, ***RMO No. 43-90*** was not the main consideration of the Court *En Banc* in rendering the assessment invalid on account of the revenue officers' lack of authority to conduct respondent's audit. A close reading of the assailed Decision shows that the intention of the Court in citing the said BIR issuance is to highlight the importance of the LOA in the BIR's conduct of its audit and assessment functions, a rule recognized by the BIR even before the passing and implementation of the Tax Code.

The argument of petitioner that ***RMO No. 43-90*** was issued even before the enactment of the Tax Code is of no moment. While this is the case, the fact remains that the prescribed guidelines therein have not yet been repealed or revoked by any of the recent issuances of the BIR. Given the same, petitioner cannot fault the Court for relying on the said issuance.

Furthermore, the Court *En Banc* finds petitioner's reliance on ***Orient Overseas Container Line Ltd. v. CIR*** ludicrous. A reading of the case easily reveals that the Court in Division, like in the present case, nullified the assessment on the ground that the revenue officers who conducted the taxpayer's audit was not authorized pursuant to an LOA.

At any rate, the Court *En Banc* cannot stress enough that the "LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax."[3] This is pursuant to the powers granted by the Tax Code to petitioner CIR and his duly authorized representative by virtue of ***Sections 6 and 13 of the Tax Code***, to wit:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —
>
> (A) Examination of Return and Determination of Tax Due. — After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

[3] Medicard Philippines, Inc., v. CIR, G.R. No. 222743, 5 April 2017.

> 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**."

On the basis of the foregoing provisions, it is clear that, before a revenue officer can conduct the audit and assessment of a taxpayer, the same must be authorized by the CIR or his duly authorized representative through an LOA. Without a duly issued LOA, the revenue officer is without power to conduct the audit of the taxpayer rendering the assessment void.

Although there was an LOA issued in this case, there is no dispute that the revenue officers who conducted respondent's audit, specifically, the one who recommended the issuance of the Preliminary Assessment Notice, Formal Letter of Demand and Final Assessment Notice, are not the revenue officers named in the LOA. To put it in simple words, the revenue officers who conducted respondent's audit are not duly authorized by the CIR or his duly authorized representative as required under the Tax Code rendering its assessment void *ab initio* and without effect.

Unfortunately for petitioner, the MOA issued by the OIC-Chief RLTAD designating the continuation of respondent's audit to the newly assigned revenue officers is without legal effect since the signatory is not one of the CIR's duly authorized representatives sanctioned by the Tax Code or by any BIR issuance who can consent to the examination of a taxpayer.

The Court *En Banc* cannot rely on the empty assertions of petitioner that the OIC-Chief RLTAD is imbued with authority to sign LOAs and MOAs on behalf of the CIR. Without identifying any specific law, BIR issuance, or jurisprudence supporting his assertion on such authority, petitioner miserably failed to convince this Court that the MOA validly conferred authority to the revenue officers who conducted respondent's audit.

All told, based on the foregoing discussions, even if this Court does not consider ***RMO No. 43-90***, the fact remains that the assessment issued against respondent is void for want of authority of the revenue officers who conducted the latter's audit.

WHEREFORE, premises considered, the Motion for Reconsideration filed by petitioner on 6 October 2020 is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice