REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE, *Plaintiff,*	**CTA OC No. 020**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
RYAN NEIL ERASMO ALVEZ, *Defendant.*	**Promulgated:** MAY 17 2019 : 3:02 pm

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RESOLUTION

DEL ROSARIO, P.J.:

For resolution is plaintiff's **"Motion for Reconsideration (Re: Decision dated 8 November 2018)"** filed on November 28, 2018, with defendant's "Opposition to the Motion for Reconsideration (Re: Decision dated 8 November 2018)" filed on February 26, 2019.

In its Motion for Reconsideration, plaintiff prays that the Court's Decision dated November 8, 2018 be reversed and set aside and that a judgment be rendered ordering defendant to pay the aggregate amount of ₱4,280,420.42 for deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax for calendar year 2009, inclusive of interests, surcharges and penalties. In support of his motion, plaintiff insists that:

1. The assessment is already final, executory and demandable and now beyond the scope of judicial review; and

2. Assuming, without admitting that the Court can scrutinize the validity of a demandable assessment, the Revenue Officer

("RO") has authority to conduct the audit investigation of defendant's tax liability for taxable year 2009.

On the other hand, defendant claims the following:

1. The Court correctly pointed out that RO Jennifer S. Tenio's authority emanated not from a Letter of Authority ("LOA"), but only from a Reassignment Notice signed by Revenue District Officer ("RDO") Rogelio T. Balaga.

2. RMO 8-2006 does not show anything that does away with the requirements of the issuance of a new LOA in case of re-assignment. Unless RMO 43-90 is specifically revoked, it is still the controlling RMO insofar as the requirement for the issuance of a new LOA in case of re-assignment of a particular case to another RO.

3. Since there was no new LOA, it is therefore clear that the assessment made on the basis alone of the Reassignment Notice was void *ab initio.*

THE COURT'S RULING

The Court resolves to deny plaintiff's Motion for Reconsideration.

Anent plaintiff's claim that the assessment is already final and executory, and therefore beyond the scope of judicial review and the arguments made on the authority of the RO to conduct audit investigation on the basis of a Reassignment Notice, the same are mere reiterations of those raised in the Complaint and the parties' respective Memoranda. Such issues have already been exhaustively and thoroughly addressed in the assailed Decision, ***particularly on pages 6 to 15 thereof***.

In this case, it is undisputed that the authority of RO Tenio to audit defendant's pertinent records for taxable year 2009 emanated, **not from an LOA issued by plaintiff or the concerned Revenue Regional Director**, but from the **Reassignment Notice issued by RDO Balaga.** As discussed in the assailed Decision, the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any RO is indispensable to the validity of an assessment.

Anent the claimed standard operating procedure to issue a memorandum to another revenue officer to continue the audit examination pursuant to RMO 8-2006, suffice it to say that in *Commissioner of Internal Revenue vs. Composite Materials, Inc.,*[1] the Supreme Court, citing *Medicard*, categorically held that an RO may only examine the taxpayer's books **pursuant to an LOA issued by the Regional Director** and emphasized that the Referral Memorandum issued by the Revenue District Officer ("RDO") directing another RO to continue with the examination of Composite Materials, Inc.'s (CMI) records is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.*:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, **the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA *en banc* found that **the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.**
>
> Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum** issued by a Revenue District Officer **directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**." *(Boldfacing supplied)*

In fine, the necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and consequently, to the validity of the Final Assessment Notice ("FAN"), that may be issued after said audit. Here, the absence of an LOA authorizing the RO to audit defendant rendered the assessment void.

[1] G.R. No. 238352, September 12, 2018.

All told, the Court finds no compelling reason or substantial justification to modify its findings much more reverse the assailed Decision.

WHEREFORE, plaintiff's **"Motion for Reconsideration (Re: Decision dated 8 November 2018)"** is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice