REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

MCDONALD'S PHILIPPINES REALTY CORPORATION,
Respondent.

CTA *EB* NO. 1535
(CTA Case No. 8655)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

SEP 27 2018 4:10p.m.

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R E S O L U T I O N

MANAHAN, J.:

This resolves the following incidents:

1) Petitioner's *Motion for Reconsideration Re: Decision dated 4 January 2018*[1] filed through registered mail on February 9, 2018 and received by the Court on February 15, 2018, with respondent's *Comment (Re: Motion for Reconsideration Dated February 9, 2018)*;[2] and

2) Petitioner's *Supplement to the Motion for Reconsideration*[3] filed on April 11, 2018, with respondent's *Comment (Re: Supplement to the Motion for Reconsideration dated April 10, 2018)*, filed through registered mail on June 26, 2018 and received by the Court on July 4, 2018.

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[1] *Rollo*, CTA EB No. 1535, pp. 205-219.
[2] *Rollo*, pp. 249-276.

Petitioner seeks the reversal and setting aside of the Court *En Banc*'s Decision[4] dated January 4, 2018, which disposed of the case as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated June 1, 2016 and Resolution dated October 3, 2016 of the Court in Division, are hereby **AFFIRMED** and **UPHELD**.
>
> **SO ORDERED**.[5]

In his *Motions*, petitioner argues that the Revenue Officer had the authority to conduct the audit investigation of respondent's tax liability for calendar year (CY) 2006; that respondent is estopped from questioning the authority of the Revenue Officer; and, that respondent is liable for deficiency VAT in the total amount of Php16,229,506.83, inclusive of interest for CY 2006.

On the other hand, respondent states in its *Comments* that the Bureau of Internal Revenue (BIR) officers had no authority to investigate respondent's books of accounts and other accounting records for CY 2006; that Referral Memo No. 122-LOA-1208-00039 did not validly grant the Revenue Officer authority to investigate respondent's books of accounts and other accounting records for CY 2006; and, that respondent is not estopped from questioning the authority of the Revenue Officer.

Petitioner failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court *En Banc*'s findings in the assailed Decision. Consequently, the Court *En Banc* finds petitioner's *Motion for Reconsideration Re: Decision dated 4 January 2018* and *Supplement to the Motion for Reconsideration* devoid of merit.

Nevertheless, the Court reiterates that any examination of a taxpayer's books of accounts must be made pursuant to a validly issued Letter of Authority (LOA) naming the actual BIR officers who will conduct the audit.

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4 *Rollo*, pp. 158-175.

Section 13 of the 1997 National Internal Revenue Code, as amended (NIRC) clearly provides that a revenue officer may only conduct an assessment pursuant to a validly issued LOA.

> 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 and emphasis supplied*)

Revenue Memorandum Order (RMO) No. 43-90[6] states that any reassignment/transfer of cases to another revenue officer, and revalidation of LOAs which have already expired, shall require the issuance of a new LOA. RMO No. 43-90 also provides that any LOA issued must bear, among others, the name of the BIR officer to whom the case is assigned and who will therefore conduct the audit.

Further, in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[7] the Supreme Court categorically held that a revenue officer must first be granted the authority to conduct the audit through a validly issued LOA, thus:

> Based on Section 13 of the Tax Code, a Letter of Authority or 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. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx

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

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.

In the present case, the records show that while an LOA was issued to conduct an examination of respondent's books of accounts for CY 2006, such examination was transferred to Revenue Officer Rona Marcellano and Group Supervisor Edenny Lingan by way of a Referral Memorandum issued on December 2, 2008. Pursuant to Section 13 of the NIRC, the authority to audit a taxpayer must stem from a validly issued LOA. Further, following RMO No. 43-90, the names of the BIR officers authorized to conduct such audit must be stated in the LOA and, in case of reassignment, a new LOA must be issued in the name of the new revenue officer. Considering that the authority to conduct an examination of respondent's books of accounts for CY 2006 was transferred merely by way of a referral memorandum, the consequent assessment issued pursuant to such authority is null and void.

Given the foregoing, the Court *En Banc* finds no cogent reason to disturb its findings in the Assailed Decision.

WHEREFORE, petitioner's *Motion for Reconsideration Re: Decision dated 4 January 2018* and *Supplement to the Motion for Reconsideration* are hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice