REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AC CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8485

Members:

CASTAÑEDA, JR., *Chairperson*,
MINDARO-GRULLA and
BACORRO-VILLENA, *JJ.*

Promulgated:

JUN 10 2020 4:09 PM

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RESOLUTION

MINDARO-GRULLA, *J.*:

Submitted before this Court is respondent's **Motion for Reconsideration**, filed through registered mail January 21, 2020 and received by the Court on January 24, 2020 with petitioner's **Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 21 January 2020)** filed on February 6, 2020.

In his Motion, respondent moves for the reconsideration of the Decision promulgated on January 6, 2020 in cancelling his deficiency tax assessments primarily by reason of his revenue officer's want of authority in conducting the said assessment against petitioner, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* and *Supplement to the Petition for Review* are **GRANTED**. Accordingly, the FDDA dated March 27, 2012 of respondent, requesting petitioner to pay the assessed

deficiency income tax, VAT, and EWT, in the amounts of ₱76,137,587.45, ₱7,342,384.72, and ₱2,793,387.86, respectively, covering calendar year ending December 31, 2007, is **WITHDRAWN** and **SET ASIDE.**

SO ORDERED."

Respondent primarily argues that petitioner is estopped from assailing the authority of the persons who received the Letter of Authority (LOA) as it was never raised in the administrative level. He claims that the LOA was served to petitioner's registered office address and the security guard is considered as person having sufficient discretion to receive papers on behalf of his/her employer. In fact, all other BIR notices had been admittedly received by petitioner in all of its protest letters. Not a squeak was heard from petitioner about the purported impropriety in the service of the LOA during the administrative investigation of the case, which is a classic case of estoppel by silence.

Furthermore, respondent asserts that failure on the part of the revenue officer to present the LOA to the concerned taxpayer within thirty (30) days from its date of issuance does not nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. Respondent posits that Revenue Audit Memorandum Order (RAMO) No. 1-00 which mandates that an LOA must be served within thirty days from the time it has been issued has already been superseded by issuance of Revenue Memorandum Circular (RMC) No. 23-09 which provides that the failure of the revenue officer to request for revalidation of LOA or expiration of the revalidation period does not nullify the LOA nor will affect or modify the rules on reglementary period within which an assessment may be validly issued.

Lastly, respondent posits that a memorandum of assignment is equivalent to a letter of authority. The grant of authority is in writing as in this case and although not formally titled "Letter of Authority", it nonetheless contains all the elements necessary to establish a contract of agency between the Commissioner of Internal Revenue and Revenue Officer Luzviminda G. Sabile.

On the other hand, in its comment, petitioner submits that it adequately adduced evidence as to the lack of authority of the security guard to receive the subject LOA No. 2007-00048613. As

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earlier discussed in its Memorandum dated February 8, 2019, petitioner states that Mr. Alfor Efren's Home Development Mutual Fund (HDMF) Employee Statement of Accumulated Value reveals that AC Corporation is not his employer but rather Integrated Safeguard Security Agency, Inc. More so, in the judicial affidavits of petitioner's witnesses, *viz.*: Mr. Romeo B. Toribio, then President and Chief Operation Officer of petitioner, and Ms. Elisa V. Sarmiento, petitioner's Accounting Manager, they respectively state that Mr. Alfor Efren has never been connected or employed by petitioner nor ever authorized him to deal in any matters with the Bureau of Internal Revenue (BIR), much more receive the LOA on its behalf.

Also, petitioner insists that its active participation in the administrative investigation and its failure to raise its non-receipt of LOA, does not automatically equate to estoppel since a taxpayer cannot validly refuse to be subjected to an examination. Therefore, petitioner's willingness to participate in the examination does not cure the respondent's alleged invalid act. Even assuming *arguendo* that petitioner failed to raise the issue of the LOA in the administrative level, this Court is not precluded from considering the issue, as the absence of a valid LOA renders an assessment intrinsically void. Simply stated, the Court of Tax Appeals has the authority to rule on the same as it goes into the validity of the assessment itself.

As to respondent's claim that RAMO No. 1-00 has already been superseded by RMC No. 23-09, petitioner contends that the latter did not in any manner, repeal the former, as RMC No. 23-09 covers the belated submission of the report of investigation despite failure to revalidate the LOA, and not the non-observance of the period to serve the LOA. Besides, RMC No. 23-09 was not yet in effect when the subject LOA was issued considering RMC No. 23-09 was only issued nine (9) months later.

Lastly, petitioner emphasizes that a memorandum of assignment is not equivalent to a letter of authority, citing law and jurisprudence ruling the mandatory character of an LOA prior to the conduct of an audit or examination of a taxpayer.

After due consideration, this Court denies respondent's motion.

It must be emphasized that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) categorically provides that

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the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.

In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[1], the Supreme Court affirmed the power and jurisdiction of this Court to resolve the issue on the authority of revenue officers to conduct the audit even if it was not raised by the parties in their pleadings or memoranda, to wit:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> SECTION 1. Rendition of judgment. - x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
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> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

Moreover, this Court agrees with petitioner that it was able to prove that it did not actually received the LOA. Petitioner's Exhibit "U"[2] describes as *Alfor Efren's Home Development Mutual Fund (HDMF) Employee Statement of Accumulated Value* would show that

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[1] G.R. No. 183408, July 12, 2017.
[2] Docket (Vol. I), p. 416.

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Integrated Safeguard Security Agency, Inc. is the registered employer of Mr. Efren, after being corroborated by the testimonies of petitioner's witnesses, it would explain that Mr. Efren has no authority to deal with the BIR and receive LOA therefrom on petittioner's behalf. As such, the service of the LOA to a security guard who is not an employee of petitioner constitutes an invalid service as it was not served upon the taxpayer itself or to its authorized representative. Consequently, the assessment issued by respondent against petitioner is void in the absence of LOA.

As to respondent's contention that RAMO No. 1-00 which mandates that an LOA must be served within thirty (30) days from the time it has been issued has already been superseded by RMC No. 23-09, which provides that the failure of the revenue officer to request for revalidation of LOA or expiration of the revalidation period does not nullify the LOA nor will affect or modify the rules on reglementary period within which an assessment may be validly issued, is of no moment. Petitioner is likewise correct in its observation that RMC No. 23-09 was not yet in effect when LOA No. 2007-00048613 dated July 29, 2008 was issued considering RMC No. 23-09 was only issued on April 16, 2009.

Finally, respondent is also not correct in considering that a memorandum of assignment is equivalent to a letter of authority. In *Commissioner of Internal Revenue vs. Composite Materials, Inc.*[3], the Supreme Court, citing the case *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[4], categorically held that a revenue officer 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 directing another RO to continue with the examination of taxpayer's records is not equivalent to an LOA nor does it cure the RO's lack of authority. As a matter of fact, Revenue Memorandum Order (RMO) No. 43-90[5], 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.

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[3] G.R. No. 238352, September 12, 2018.
[4] G.R. No. 222743, April 5, 2017.
[5] "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.

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In view of the foregoing, the Court finds that respondent failed to raise any substantial matter or compelling reason to justify the reversal or modification of the assailed Decision.

WHEREFORE, premises considered, respondent's Motion Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice