REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HOBBIES OF ASIA, INC., Petitioner,	CTA CASE NO. 9476
	Members:
-versus-	DEL ROSARIO, *P.J., Chairperson*, FABON-VICTORINO, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 07 2020 : 2:41pm

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RESOLUTION

Fabon-Victorino, J.:

On November 12, 2019, the Court promulgated a Decision the dispositive portion of which reads:

> **WHEREFORE**, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated August 18, 2016, assessing petitioner for deficiency Income Tax, Value-added Tax, Expanded Withholding Tax and Documentary Stamp Tax, including interests and penalties, in the aggregate amount of ₱20,540,505.43 for the taxable year 2011, is hereby **CANCELLED and SET ASIDE**.
>
> **SO ORDERED**.

The Court cancelled the assessment on the ground that no Letter of Authority (LOA) was issued authorizing Revenue Officer (RO) Marilyn D. Guerzon to conduct tax audit against petitioner. Her tax investigation was merely based on the Memorandum of Assignment (MOA) dated May 19, 2014, directing her to continue the tax audit against petitioner. Thus, the deficiency tax assessments she issued against petitioner was void *ab initio*.

Not convinced, respondent filed the instant *Motion for Reconsideration* claiming that the Court's ratiocination is misplaced, erroneous and bereft of factual and legal bases on the following grounds:

1. The Regional Director has the power to issue Letters of Authority and similar documents for the examination of taxpayers within the Region under his/her jurisdiction;

2. A Memorandum of Assignment is equivalent to a Letter of Authority;

3. Revenue Memorandum Order No. 43-90 is not an implementing rule of any statute – it is a mere statement of policy;

4. The cases of *Medicard* and *Sony* are not applicable on all fours with the instant case and should not be applied to the same; and

5. Administrative authorities should be allowed the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court or in the administrative proceedings cannot be raised for the first time on appeal.

In its *Comment/Opposition*, petitioner maintains that the examination of its books of accounts was illegal as the RO who conducted the audit/examination was not duly armed with LOA.

Contrary to respondent's allegation, issuance of a Memorandum is not sufficient to validly to authorize an RO to continue a tax audit against a taxpayer commenced by RO who has resigned, retired or transferred to another Revenue Region. This position betrays his very own issuance - RMO No. 43-90 - which specifically provides that

"***Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As*". Since no evidence was adduced indicating that another LOA was issued authorizing RO Marilyn D. Guerzon to examine its books of accounts, the assessment resulting therefrom is likewise null and void.

Further, the cases of *Sony Philippines, Inc. vs. Commissioner of Internal Revenue*[1] (*Sony* case) and *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[2] (*Medicard* case), are applicable in the present case given that in both cases, the ROs who conducted the tax examination were not named in the LOA rendering the assessment they issued null and void.

Lastly, petitioner rejects respondent's assertion that it is estopped from questioning the authority of RO Marilyn D. Guerzon for failure to raise this issue at the administrative level. According to petitioner, the Supreme Court has consistently ruled that estoppel cannot validate an act that contravenes law or is against public policy. The Supreme Court has consistently ruled that without a valid LOA, any assessment issued is a nullity. Even assuming that it is already estopped from raising the issue of the authority of the RO who conducted the tax audit, the Court is not precluded from ruling on the same by virtue of Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals.

The Court's Ruling

Respondent's *motion* must fail.

Section 13 of the NIRC of 1997 provides that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

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[1] G.R. No. 178697, November 17, 2010.
[2] G.R. No. 222743, April 5, 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, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>**, 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.

Clearly, there must be a LOA validly issued in his or her name before any RO may conduct a tax examination against a particular taxpayer. This is because the absence of LOA goes into the validity of the assessment that will subsequently be issued. Without the LOA, the tax examination as well as resulting assessment shall be null and void.

Relevantly, in the *Medicard* case, the Supreme Court elucidated on the significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> **An 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. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

> 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, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> xxx xxx xxx
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> Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, <u>through an LOA</u>**, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**. (*Emphases supplied*)

The rationale for requiring a valid LOA as a prerequisite to a valid assessment is not that difficult to perceive — it is to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand,

and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the Bureau of Internal Revenue's (BIR) exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[3]

For failure to advance new and substantial arguments that will warrant a departure, much less, a modification of the Decision of November 12, 2019, respondent's Motion for Reconsideration has no leg to stand on.

WHEREFORE, the *Motion for Reconsideration* dated December 10, 2019 filed by respondent Commissioner of Internal Revenue is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

(No part per Rule VII, Section 3(a), Internal Rules of the Court of Tax Appeals)
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

[3] *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8952, March 6, 2019.