REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BICYCLEPOKER, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9868

Members:

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

Promulgated:

FEB 17 2021 1:40 PM

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration Re: Decision dated 07 October 2020**, filed on October 22, 2020, with petitioner's **Comment/Opposition (To Motion for Reconsideration)**, posted on November 26, 2020 and received by the Court on December 9, 2020.

On October 7, 2020, this Court promulgated a Decision cancelling respondent's deficiency assessments against petitioner for lack of a valid Letter of Authority (LOA) in conducting the same, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant *Petition for Review* is **GRANTED**. Accordingly, the FLD on Assessment No. 21-A-R-1504057404 dated 11 October 2017, holding petitioner liable for deficiency taxes for taxable year 2014, as well as the FDDA dated August 9, 2018, are **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In his Motion, respondent assails the above Decision in ruling that his revenue officers (ROs) did not have authority to conduct the investigation of petitioner's books of accounts. Respondent contends that ROs Marielle de Guzman and Angelina Gozun were assigned to continue the audit investigation of petitioner by virtue of a Memorandum of Assignment (MOA). Purportedly, despite of the absence of a second LOA, the investigation done by the ROs were performed pursuant to a valid LOA.

Respondent further posits that it was in Revenue Memorandum Order (RMO) No. 43-90 that a new LOA is required to be issued to clothe the subsequent ROs with authority to continue the investigation of the previous ROs. However, the National Internal Revenue Code (NIRC) of 1997, as amended, merely provides that an audit investigation must be made pursuant to a valid LOA. Notably, there is no requirement under the said tax code that the names of the ROs be included in the said LOA. Also, the said RMO was promulgated seven years before the passing of the NIRC of 1997; thus, the same does not and cannot modify, amend or repeal the NIRC of 1997, as amended.

He continues that the concept of an LOA was not yet in the statute before the promulgation of the NIRC of 1997. He insists that the equivalent provision in Section 11 of the NIRC of 1977 merely states that *"a revenue examiner in any district may, in the name of the Revenue District Officer in charge of such district and under the control of such officer as his immediate superior, exercise any power or perform any act which might be exercised or performed by such Revenue District Officer himself."* As such, respondent asserts that an LOA, prior to the promulgation of the NIRC of 1997, was merely an administrative tool which was devised to account for audit activities under audit programs – it is mere a formal requirement and not a statutory requirement. Otherwise, it can be claimed that taxpayers audited for several decades prior to 1997 were not accorded due process of law for lack of an LOA.

Lastly, respondent insists that petitioner is liable for the assessed deficiency taxes. He avers that the tax exemption granted under Section 13(2)(b) of Presidential Decree (PD) No. 1869 shall inure only to the entities: (i) in contract with Philippine Amusement and Gaming Corporation (PAGCOR) in running the operations of the casino; or (ii) those which provides facilities essential for the casino; and finally, (iii) those who render technical services to PAGCOR in the operation of the casino. Hence, to fall under the said exemption, petitioner must prove that it is an entity with a contractual relationship with PAGCOR to operate a casino; that it renders facilities essential for the operation of a casino; or that it renders technical services to PAGCOR in the operation of a casino. However, none of this was shown by petitioner in the present case.

On the other hand in its comment, petitioner reiterates the ruling of this Court that respondent's investigating ROs did not have the authority to conduct the audit investigation and assessment. Petitioner points out that RO de Guzman was acting without authority as she was acting under the LOA issued and intended for ROs Jonathan Miranda and Marivic Mendoza. Thus, petitioner insists that without an LOA issued to RO de Guzman, the same could not examine petitioner's books of account, even if it merely continued the investigation made by RO Miranda. Petitioner maintains that it is of no moment that a MOA was issued, since a MOA is not the same as an LOA and does not vest the same authority to examine a taxpayer.

Lastly, petitioner emphasizes the Court's ruling in the Decision that it is not liable for deficiency taxes because the assessment was conducted without authority thereby making it void. And, a void assessment bears no valid fruit.

The Court finds respondent's Motion for Reconsideration bereft of merit.

Verily, an LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[1] For the said reason, this Court has been consistent in its pronouncements that an RO must be authorized, through a duly issued LOA, in order that the said officer may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the Bureau of Internal Revenue (BIR) against such taxpayer shall be void.

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[1] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017; *Commissioner of Internal Revenue v. Sony Philippines, Inc.,* G.R. No. 178697, November 17, 2010.

Perforce, the power to authorize the examination of a taxpayer's books of accounts and to issue assessments is primarily lodged with respondent **or his duly authorized representative,** pursuant to Section 6(A)[2] of the NIRC of 1997, as amended. More so, his power to delegate to his duly authorized representative is elucidated under Section 7, in relation to Sections 10(c) and 13 of the same Tax Code, but only limited to his subordinate officials with the rank equivalent to a **division chief or higher**, to wit:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* – **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: x x x."
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> "SEC. 10. *Revenue Regional Director.* – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director shall, within the region and district offices under his jurisdiction**, among others:
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> x x x
>
> (c) **Issue Letters of Authority for the examination of taxpayers within the region;**"
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> "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 gh

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[2] "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*-

(A) Examination of Returns 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." *(Emphasis supplied)*

> 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."

Corollary, the list of persons who may issue and sign LOAs for the purpose of conducting audit/examination assessments is finite and exclusive. Unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[3] Relative thereto, Section D(4) of RMO No. 43-1990[4] further provides that for proper monitoring and coordination of the issuance of LOA, only the following BIR officials are authorized to issue and sign letters of Authority, *viz.*: Regional Directors, Deputy Commissioners, and the Commissioner of Internal Revenue (CIR). In the same vein, Part II (2) of the RMO No. 29-2007,[5] likewise authorizes the Assistant Commissioner or Head Revenue Executive Assistants of the Large Taxpayers Service, to issue and approve LOAs in cases falling under Large Taxpayers Service.

In summation, all audit investigations of a taxpayer's books and accounting records must only be conducted by duly authorized revenue officers, pursuant to an LOA – signed and approved by the **CIR, Revenue Regional Director, Deputy Commissioner** (under RMO No. 43-90), and the **Assistant Commissioner or Head Revenue Executive Assistants of the Large Taxpayers Service** (RMO No. 29-2007).

Moreover, considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises. *Je*

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[3] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[4] "SUBJECT: 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.
[5] "SUBJECT: Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service", September 26, 2007.

In the present case, there can be no doubt that the subject MOA dated March 7, 2017 did not clothe ROs de Guzman and Gozun with the required authority to continue the examination of petitioner's books of accounts and other accounting records for taxable year 2009, since it were merely issued by Revenue District Officer (RDO) Renato J. Mina. As an RDO, he is bereft of any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only respondent or his duly authorized representatives are granted such power. While it is true that under Section 11 of the 1997 NIRC,[6] an RDO has the duty *"to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with,"* it does not follow that it may exercise functions which the law has expressly granted to other tax officials such as the CIR and the Revenue Regional Director. Hence, needless to say, should the RO who conducted the examination of a taxpayer is not duly authorized to do so, through a valid LOA, the assessment is inescapably void.

All told, in view of the invalidity of the assessments due to the lack of a valid LOA, this Court finds it no longer necessary to further discuss the remaining issues raised by respondent since a void assessment bears no valid fruit.

Accordingly, there is no cogent reason to disturb the Decision assailed by respondent.

WHEREFORE, premises considered, respondent's Motion for Reconsideration Re: Decision dated 07 October 2020 is **DENIED** for lack of merit.

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[6] "SEC. 11. *Duties of Revenue District Officers and Other Internal Revenue Officers.* — It shall be the duty of every Revenue District Officer or other internal revenue officers and employees to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with, and to aid in the prevention, detection and punishment of frauds or delinquencies in connection therewith.

It shall be the duty of every Revenue District Officer to examine the efficiency of all officers and employees of the Bureau of Internal Revenue under his supervision, and to report in writing to the Commissioner, through the Regional Director, any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts and any evidence sustaining each case."

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice