REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DRUGMAKERS BIOTECH RESEARCH LABORATORIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9635

Members:

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

Promulgated:

FEB 08 2022 2:19 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court for resolution are the following:

1. Respondent's **Motion for Reconsideration (Re: Decision promulgated 15 October 2021)** filed on October 29, 2021, with petitioner's **Comment/Opposition (Re: Motion for Reconsideration dated October 21, 2021)** filed, through registered mail, on November 10, 2021 and received by the Court on November 17, 2021; and,

2. Petitioner's **Manifestation** filed on November 10, 2021.

On October 15, 2021, the Court promulgated a Decision cancelling respondent's deficiency income tax and value-added tax (VAT) assessments for lack of authority of his revenue officers to conduct the said assessments and failure to properly serve the same in violation of the against petitioner's right to due process of law, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the assessments issued against petitioner for alleged deficiency income tax and VAT, and compromise penalty, in the amount of ₱26,712,499.01, for calendar year 2008, and the *Warrant of Distraint and/or Levy* dated June 27, 2017, are hereby **DECLARED VOID**, and are therefore, **CANCELLED.**
>
> **SO ORDERED**."

In his Motion, respondent primarily argues that the Court has no jurisdiction to cancel his deficiency income tax and VAT assessments, including the compromise penalty, against petitioner and to declare the Warrant of Distraint and Levy void since a taxpayer's right to appeal to this Court may be waived or lost, as in the present case.

Respondent recalls that after the Letter Notice No. 057-RLF-08-00-00091 dated January 4, 2012 and Follow-up Letter dated January 12, 2012 was sent to petitioner, a Notice of Informal Conference was subsequently issued on May 10, 2012. However, respondent asserts that since petitioner failed to file a valid protest, a Preliminary Assessment Notice (PAN) was sent on February 19, 2013 to petitioner's registered address and, thereafter, a Final Assessment Notice (FAN) on March 20, 2013.

He further recollects that since there was no response from petitioner and the deficiency assessments remains unpaid, a Preliminary Collection Letter (PCL) dated August 30, 2016 was sent to petitioner on September 2, 2016. Consequently, respondent avers to have issued a Final Notice Before Seizure (FBNS) on September 19, 2016, which was received by petitioner through a certain Mr. Carlos Tagapia on September 30, 2016. Considering that petitioner only has thirty (30) days from receipt of the PCL on September 2, 2016 within which to file a Petition for Review before this Court, respondent maintains that instant Petition for Review was filed out of time. Thus, respondent reiterates that the Court is bereft of jurisdiction to entertain the present case.

Moreover, respondent also insists that petitioner is liable for deficiency income tax and VAT for taxable year 2008 based from the discrepancy found out through the *Reconciliation of Listing for*

Enforcement (RELIEF) system, under Revenue Memorandum Order (RMO) No. 30-2003.[1] He continues that petitioner's defense of lack of corporate personality may not be used to ignore the discrepancy that resulted from the RELIEF and Third-Party Matching based on the Bureau of Customs (BOC) Data Program.

Lastly, respondent cites the case of *Commissioner of Internal v. Bank of the Philippine Islands,*[2] wherein the Supreme Court stated that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

On the other hand, in its comment, petitioner points out that contrary to respondent's assertion, the present Petition for Review was timely filed on July 27, 2017, which is well-within the thirty (30) day period from which petitioner received the Warrant of Distraint and Levy (WDL) on June 28, 2017, and not from the date of issuance of the PCL on September 2, 2016 as claimed by respondent.

Petitioner likewise reiterates the ruling of the Court that it was sufficiently established during trial that it did not receive any assessment notices, particularly the Letter of Authority (LOA), PAN, FAN, PCL, and FNBS, which respondent claims he sent to petitioner, in violation of the due process of law requirements. In fact, petitioner claims that it only learned that it was being assessed for taxable year 2008 when it received the WDL on June 28, 2017 thereby prompting it to file the present Petition for Review with Motion to Quash the Warrant of Distraint and Levy.

More so, petitioner insists that it cannot be validly assessed for deficiency income tax and VAT because its corporate existence had already been extinguished long before by virtue of its merger with Drugmakers Laboratories, Inc. on March 29, 2007. Thus, when respondent was assessing and collecting from petitioner for taxable year 2008, it was assessing and collecting from a corporate entity that has already ceased to exist. *jc*

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[1] "SUBJECT: Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes," dated September 18, 2003.

[2] G.R. No. 134062, April 17, 2007

Lastly, petitioner avers that respondent's assessments should be based on actual facts and not on mere allegations like the calculation on the RELIEF System. By doing so, respondent's assessments were arrived at, not only arbitrarily and capriciously, but also, erroneously.

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

Again, the Court explains that it has jurisdiction to act on petitions to invalidate or annul the distraint orders issued by respondent, because they fall as "other matters"' arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR), such as the validity of the subject WDL in the present case.

To reiterate the ruling in the assailed Decision, the subject WDL is invalid since the proceedings that led to the issuance of deficiency income tax and VAT assessments had no prior approval and authorization from respondent or his duly authorized representatives. As a matter of fact, jurisprudence dictates that a Letter Notice is not a valid substitute for a LOA.[3] In the most recent case of *Commissioner of Internal Revenue v. Mc Donald's Philippines Realty Corp.,*[4] the Supreme Court echoed the ruling it made in the *Medicard Philippines, Inc.* case (2017), to wit:

> "The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that '[d]ue process demands xx x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.' The result of the absence of a LOA is the nullity of the examination and assessment based on

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[3] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743; April 5, 2017.

[4] G.R. No. 242670, May 10, 2021.

> the violation of the taxpayer's right to due process." *(Citations omitted)*

Clearly, there must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. As such, the issuance of LN No. 057-RLF-07-00-00047 dated January 4, 2012 in the present case, did not justify the examination of petitioner's books of accounts as it violates petitioner's right to due process of law.

Similarly, this Court finds respondent's deficiency tax assessments which resulted from a discrepancy found through the RELIEF system under Revenue Memorandum Order No. 30-2003, is likewise void for lack of LOA in conducting the same. In the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,*[5] the Supreme Court held that:

> "Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the **LN is merely similar to a Notice for Informal Conference**. However, **for a Notice of Informal Conference,** which generally precedes the issuance of an assessment notice **to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place**.
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> x x x.
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> The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, **an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast**

[5] *Supra No. 3.*

> **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 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." *(Emphasis Supplied)*

As found by this Court in the assailed Decision, there was no showing that the subject LN was converted to LOA. Irrefutably, the deficiency income tax and VAT assessments for taxable year 2008 conducted against petitioner were therefore void.

With regard to the issue of whether proper service of the PAN and FAN was made by respondent, the same has already been extensively discussed in the Decision assailed by respondent.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised in respondent's Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on October 15, 2021.

On the final note, petitioner's *Manifestation* filed on November 10, 2021, giving notice to the Court that petitioner's counsel has transferred its office address is hereby **NOTED**. Accordingly, let all copies of orders, resolutions, notices, pleadings, and other pertinent court papers addressed to petitioner's counsel be served to the address stated below:

MATA-PEREZ, TAMAYO & FRANCISCO
Unit 1002, One Corporate Plaza,
845 A. Arnaiz Avenue, Legazpi Village,
Makati City

WHEREFORE, premises considered, respondent's Motion Reconsideration (Re: Decision promulgated 15 October 2021) is **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice