REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ARTURO M. ZAPATA, JACOB VALERIANO, JR. AND CROSS COUNTRY OIL & PETROLEUM CORP.,
Accused.

CTA Crim. Case No. O-653

Members:

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

Promulgated:
SEP 04 2019
2:10 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

For this Court's resolution are prosecution's "**Motion for Reconsideration on the Civil Aspect of the Resolution**" filed on July 18, 2019 with accused's "**Comment/Opposition (Re: Motion for the Reconsideration on the Civil Aspect of the Resolution)**" filed on August 16, 2019. The prosecution is seeking for the reversal of the Resolution promulgated on June 28, 2019, the dispositive portion of which reads as follows:

> Resolution dated June 28, 2019:
>
> "**WHEREFORE**, premises considered, accused's Demurrer to Evidence is **GRANTED**. Accordingly, CTA Crim. Case No. O-653 is hereby **DISMISSED**.
>
> Accused Arturo M.Zapata, Jacob Valeriano Jr., and Cross Country Oil & Petroleum Corp. are hereby **ACQUITTED**.
>
> **SO ORDERED**."

The instant Motion for Reconsideration assails the civil aspect of Resolution on the ground that the Letter of Authority remains valid and binding, thus making the deficiency assessments against the accused valid and binding.

The Court is not persuaded and finds no merit in the Motion for Reconsideration.

A perusal of the Motion for Reconsideration shows that the grounds raised therein are mere reiterations of the prosecution's arguments, which have already been comprehensively discussed and passed upon by this Court in the assailed Resolution.

At the outset, as found in the assailed Resolution, the prosecution failed to establish the elements of the crime charged.

In the instant case, considering that the obligation or requirement to pay the alleged deficiency taxes arose from an assessment, the Court deemed it necessary to determine the validity of the subject tax assessment.

After careful scrutiny and evaluation of the pieces of evidence submitted by the prosecution, the Court found out that the assessments are void for being issued without a Letter of Authority (LOA).

It is a well-settled rule that a void assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[1]

Accordingly, the Supreme Court, in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[2] ruled that when there is no authority to examine the taxpayer's books of accounts and other accounting records, the assessment issued is void, to wit:

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[1]Samar-I Electric Cooperative vs. Commissioner of Internal Revenue, G.R. No. 193100, December 10, 2014, citing Commissioner of Internal Revenue vs. Reyes, G.R. No. 159694, January 27, 2006.
[2] Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 222743, April 5, 2017.

"The absence of an LOA violated MEDICARD's right to due process

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.

> 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.
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> x x x x (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, 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."

For emphasis, We reiterate our ruling, as follows:

"x x x, in the case of *CIR vs. Sony Philippines, Inc.*[3], the Supreme Court also ruled in this wise:

"xxx 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. (Emphasis ours)

As earlier stated, LOA 19734 covered 'the period 1997 and unverified prior years.' For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if the CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA."

xxx xxx xxx

In the case *of University of Santo Tomas Hospital, Inc., vs. Commissioner of Internal Revenue*[4], this Court has similarly ruled that the LOA became null and void when the Revenue Officer was already transferred to the jurisdiction of the Large Taxpayers Service. To wit;

"In the present case, **LA 2001 00052716 did not have any force and effect having been**

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[3] Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17,2010.
[4] University of Santo Tomas Hospital, Inc., vs. Commissioner of Internal Revenue CTA Case No. 8292, March 2, 2015.

issued when petitioner was already transferred to the jurisdiction of the LTS. Thus, when the Region proceeded with its assessment it did so without the necessary authority. Furthermore, Revenue Memorandum Order ("RMO") No. 43- 90 provides:

xxx xxx xxx

'C. Other policies for issuance of L/As.

1. All audits/ investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

xxx xxx xxx

5. 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.**" (underscoring ours)'

Applying RMO No. 43-90 to the instant case, **the assessment conducted by the Region was unauthorized, because there was no valid LA covering it** xxx." (Emphases supplied)

xxx xxx xxx

Under the premises, the Court En Banc sees no reason why the same pronouncements above should not be applied in the case at bar. Whether the crux of the issue pertains to the taxable period covered, the jurisdiction of the examining revenue officers, or the period when the LOA was actually served to the subject taxpayer, what is common under these circumstances is that **the examination conducted did not arise from a valid, and/or existing LOA that will empower and authorize the revenue officers to proceed with the audit**."

Looking at the evidence presented by the prosecution, it is clear that LOA SN: eLA201100030776/LOA-030-2013-0000118 issued on April 15, 2013 were void from the beginning and has no force and effect for having been served only upon the accused on May 30, 2013 or 15 days beyond the prescribed 30-day period.

We acknowledge that the very provision of the NIRC of 1997 that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer. As an administrative agency, the power to implement and interpret a law which the CIR has been entrusted to enforce has the force of law and is entitled to respect.

However, let the CIR be reminded as well that such rules and regulations partake of the nature of the statute and are just as binding as if they had been written in the statute itself[5]. Hence, such authority, no matter how vast, do not automatically give them vested discretion or right on how such rules and regulations should be implemented. Both substantive and procedural due process must still be observed.

RMO No. 43-90, RAMO Nos. 1-00[6], and 2-95 clearly mandate that an audit **<u>should</u>** be conducted under an LOA and that it **<u>must</u> be served on the subject taxpayer within thirty (30) days from date of issue lest the authority becomes null and void**. The terms "should", and "must" are couched in a way that clearly impose a duty that is imperative and mandatory in nature. A deviation from these obviously renders the result of the audit and examination defective.

Even assuming that accused are liable for the deficiency assessments for taxable year 2011, still the deficiency assessments will not prosper. The revenue officers acted without authority in arriving at the deficiency assessments. Thus, the same should be considered without

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[5] Guro Party List , et. al., vs. Hon. Cesar Purisima, et al., G.R. No. 166715, August 14, 2008.
[6] Revenue Audit Memorandum Order (RAMO) 1-00

xxx xxx xxx

> 2.3 **A Letter of Authority <u>must</u> be served or presented to the taxpayer within 30 days from its date of issue; otherwise it becomes null and void, unless revalidated.** The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on " on the face of the copy of the Letter of Authority issued

force and effect. Note that the validity of the assessment becomes invalidated when the procedural standards were done clearly in violation of the law.

As there had been an irregularity in the issuance or service thereof, the said LOA should have been revalidated in accordance with the BIR's own revenue issuances. Following the ruling of the Supreme Court in the *Medicard case* as discussed earlier, the Assessment Notice/Demand Letter Nos. 30-11-IT-7136, 30-11-VT-7137 & 30-11-WE-7138 and the Warrant of Distraint and/or Levy dated December 21, 2011 are void for being issued without a Letter of Authority.

Under the premises, the subject assessment against the accused are considered void. Being so, the BIR has no right to collect the subject deficiency taxes, and accused Accused Arturo M. Zapata, Jacob Valeriano Jr., and Cross Country Oil & Petroleum Corp cannot be required to pay the same.

WHEREFORE, premises considered, prosecution's "Motion for Reconsideration on the Civil Aspect of the Resolution" is hereby **DENIED** for lack of merit.

Accordingly, the Assessment Notice/Demand Letter Nos. 30-11-IT-7136, 30-11-VT-7137 & 30-11-WE-7138 and the Warrant of Distraint and/or Levy dated December 21, 2011 are **CANCELLED and SET ASIDE.**

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice