REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GOLDXTREME TRADING CO.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10129

Members:
BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
APR 12 2023 8:42 Am

x- -x

RESOLUTION

CUI-DAVID, J.:

For resolution of this Court is respondent's ***Motion for Reconsideration (Notice of Decision promulgated on February 7, 2023)***, filed on 27 February 2023, with petitioner's ***Comment/Opposition (To Respondent's Motion for Reconsideration dated 27 February 2023)***, filed on 21 March 2023.

On 7 February 2023, the Court promulgated a *Decision* ("assailed Decision") in the instant case with the following disposition:

> **WHEREFORE**, in light of the foregoing, the instant Petition for Review is **GRANTED**.
>
> Accordingly, respondent's undated *Letter of Denial*, received by petitioner on 24 June 2019, is **REVERSED** and **SET ASIDE**; the tax assessments covering petitioner's TY 2015 for the alleged deficiency IT, VAT, EWT, and interests and surcharges thereon, are **CANCELLED** and **SET ASIDE**.
>
> Further, respondent is **ENJOINED** from proceeding with the collection of taxes in the above-captioned case.
>
> **SO ORDERED.**

In his *Motion*, Respondent avers that the Court erred in ruling that the Preliminary Assessment Notice ("**PAN**") and Final Assessment Notice ("**FAN**")/Formal Letter of Demand ("**FLD**") were issued "without the authority of the Revenue Officer." He posits that the "issuance and receipt of the First Letter of Authority ("**LOA**") [1] ... is undisputedly valid and remains to be valid because the same was not revoked by the *[second] LOA.*" [2] According to respondent, Revenue Officer ("**RO**") Julie Kaw is still authorized to prepare the RO's Audit Report as her authority is derived from the *First LOA*. He contends that the PAN and FAN/FLD were issued under the *First LOA*, not the *Second LOA*.[3]

Respondent likewise points to the alleged anomaly that the *First LOA* and *Second LOA* were sent to the same address, but petitioner failed to receive the *Second LOA*. According to respondent, petitioner did not bother to update its information with the Bureau of Internal Revenue ("**BIR**") or inform it of its transfer to another place.[4]

Respondent further contends that a Notice of Informal Conference is not required. According to him, the requirement for a Notice of Informal Conference is imposed by Revenue Regulations ("**RR**") No. 7-2018, while the taxable year involved in the audit is 2015. Citing Section 246 of the National Internal Revenue Code ("**NIRC**") of 1997, as amended, respondent suggests that requiring a Notice of Informal Conference would violate the principle of non-retroactivity of rulings.[5]

Petitioner, in its *Comment*, mentions that respondent failed to distinguish "replacement" and "revocation" when he said that "the Second LOA is just a replacement, and it never revoked the First LOA." [6] Petitioner then points out to the Second LOA, which provided that it replaces the First LOA.[7] Further, according to petitioner, respondent issued the FLD/FANs under the Second LOA.[8]

---

[1] First LOA pertains to Exhibit "P-8", Docket, Vol. II, p. 572.
[2] Second LOA pertains to Exhibit "P-9", Docket, Vol. II, p. 573.
[3] Motion for Reconsideration, p. 7.
[4] *Ibid.*
[5] *Id.*, pp. 9-11.
[6] Comment, par. 2.
[7] *Id.*, pars. 6-7.
[8] *Id.*, par. 9.

Petitioner likewise brings to the attention of the Court the fact that the First LOA was served personally while the Second LOA was served through registered mail.[9] Petitioner quotes the assailed Decision stating that having received a mailed letter is merely a disputable presumption and that respondent failed to discharge his burden of proving receipt by petitioner of the Second LOA.[10]

Petitioner also forwards that the principle of non-retroactivity of rulings does not apply in the instant case as Section 246 of the NIRC of 1997, as amended, intends to protect taxpayers and not the government. [11] Further, petitioner argues that no retroactivity was applied, quoting the assailed Decision.[12]

We resolve.

The assessment is void due to the improper service of the Second LOA to petitioner.

As stated in the assailed Decision, issuing an LOA before examination and assessment is a requirement of due process. It is not a mere formality or technicality.[13] Accordingly, unless authorized by the CIR or his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[14] There must be a grant of authority before any revenue officer can conduct an examination or assessment.[15] Without such an authority, the assessment or examination is a nullity.[16]

We reiterate our factual findings: *first*, petitioner was informed and provided with a copy of the *Second LOA* only when it filed its *Reply* to PAN on 26 October 2018, or sixty-nine (69) days after its issuance;[17] *second*, the *Second LOA* was served by registered mail;[18] *third*, that the *Second LOA* was delivered on 11 July 2018 at No. 42 Bronze Street, Barangay

---

[9] *Id.*, par. 13.
[10] *Id.*, par. 14.
[11] *Id.*, par. 15.
[12] *Id.*, par. 16.
[13] *Id.*
[14] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, 5 April 2017.
[15] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.
[16] *Ibid.*
[17] Decision, p. 17.
[18] *Id.*, pp. 17-18.

Tugatog, Malabon City,[19] and received by a certain Nins de Guzman, [20] which turned out to be Ms. Luningning De Guzman,[21] and *fourth,* that Ms. De Guzman testified that she is neither an employee nor an authorized representative of petitioner.[22]

With this factual milieu, We ruled the following:

1. The Second LOA was not served at the registered address of the petitioner on the 2nd Floor Calubad Bldg., No. 474 EDSA, Brgy. 87, Caloocan City 1400, [23] contrary to respondent's supposition in his *Motion*;

2. Ms. Nins De Guzman is not authorized to receive the Second LOA on behalf of petitioner;

3. Petitioner did not receive the Second LOA that was sent via registered mail;

4. The Second LOA was then delivered personally to petitioner beyond the 30 days provided under Revenue Audit Memorandum Order ("**RAMO**") No. 1-2000, [24] which requires that an LOA must be served or presented to the taxpayer *within thirty (30) days* from the date of issuance.[25]

Respondent's argument that the FLD/FANs were issued under the *First LOA* and not under the *Second LOA* deserves scant consideration, considering that by the precise wording of the FLD/FAN, it is given "after investigation pursuant to eLA No. 97674-2018-00301, dated June 18, 2018." Such details pertain to the invalidly served Second LOA.[26]

Likewise unmeritorious is respondent's alleged anomaly that the *First LOA* and *Second LOA* were sent to the same

---

[19] Exhibits "P-10" and "P-10-1," Docket, Vol. II, pp. 575-576; Q18/A18, Judicial Affidavit of Luningning G. De Guzman, Docket, Vol. I, pp. 470-475.
[20] Exhibit "P-33," Judicial Affidavit of Luningning G. De Guzman, Docket, Vol. I, pp. 470-475.
[21] Decision, pp. 18-20.
[22] *Ibid.*
[23] Exhibits "P-1" and "P-2," Docket, Vol. II, pp. 516-523.
[24] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), 17 March 2000.
[25] 2. *Serving of Letter of Authority*

... ...

2.3 A Letter of Authority **must 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." [*Emphasis and underscoring supplied*]
[26] Exhibit "P-9", Docket, Vol. II, p. 573.

address, but petitioner failed to receive the *Second LOA*. Records show that the *Second LOA* was served to an address (*i.e.*, No. 42 Bronze Street, Barangay Tugatog, Malabon City)[27] different from that of the registered address of petitioner (*i.e.*, 2nd Floor Calubad Bldg., No. 474 EDSA, Brgy. 87, Caloocan City 1400).[28]

We find merit in petitioner's observation that the *Second LOA* was intended to replace the *First LOA*. This is evident in the wordings used in the *Second LOA* that such LOA "is a replacement of Letter Authority No. LOA-027-2016-00000155 dated 10/05/2016."

Accordingly, We maintain our ruling that the assessment is void for being conducted without the requisite authority. To reiterate, a void LOA makes the authority of the ROs named therein non-existent and not legally binding, and resultingly, the FLD/FANs issued under the *Second LOA* are null and void and could not be enforced against petitioner.

The assessment is void for failure of respondent to send a Notice of Informal Conference.

Respondent argues that a Notice of Informal Conference is not required. According to him, the requirement for a Notice of Informal Conference is imposed by RR No. 7-2018,[29] while the taxable year involved in the audit is 2015. Respondent further suggests that requiring a Notice of Informal Conference would violate the principle of non-retroactivity of rulings.

Respondent's arguments lack merit.

First, the principle of non-retroactivity of rulings under Section 246 of the NIRC of 1997, as amended, does not apply. The provision is quoted below:

> SEC. 246. Non- Retroactivity of Rulings. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the

---

[27] Exhibits "P-10" and "P-10-1," Docket, Vol. II, pp. 575-576; Q18/A18, Judicial Affidavit of Luningning G. De Guzman, Docket, Vol. I, pp. 470-475.
[28] Exhibits "P-1" and "P-2," Docket, Vol. II, pp. 516-523.
[29] Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 22 January 2018.

> Commissioner shall not be given retroactive application if the revocation, modification or reversal **will be prejudicial to the taxpayers**, ... [*Emphasis and underscoring supplied.*]

As correctly pointed out by petitioner, this prohibition applies if the retroactive application will be prejudicial to taxpayers, not the government.

Second, assuming but not conceding that the above-quoted provision applies, We rule that there is no retroactive application of RR No. 7-2018.

To recall, RR No. 12-1999, as amended,[30] required the BIR to issue a notice and conduct an informal conference as a due process requirement in issuing a deficiency tax assessment. This requirement was *removed* in RR No. 18-2013, issued on 28 November 2013,[31] and *restored* in RR No. 7-2018 issued on 22 January 2018.[32]

Respondent issued the *First LOA* on *5 October 2016*[33] and the PAN on *12 September 2018*.[34] We observed that the PAN issuance was still pending when RR No. 7-2018 took effect on 16 February 2018.[35] The PAN was issued almost seven (7) months after the effectivity of the said regulation. There is no other conclusion but to rule that the requirement to issue the notice of informal conference under RR No. 7-2018 applies to the present case.

We have likewise made the following observation:

> Moreover, respondent's claim that an informal conference is not required in this case is belied by the BIR records and evidence which show that on 7 February 2018, the BIR sent by registered mail two (2) letters dated 26 January 2018 inviting petitioner for a *preliminary conference*. The letters were sent to petitioner through Mr. Gavino Tan at No. 84 Bronze St. Tugatog, Malabon City[36] and Mr. Rommel Enriquez Tan at No. 42 Bronze St. Tugatog, Malabon City.[37] None was sent to petitioner's registered address at 2nd Floor Calubad Bldg., No. 474 EDSA, Brgy. 87, Caloocan City 1400.

---

[30] RR No. 12-99 was issued on 6 September 1999.
[31] Amending Certain Sections of Revenue Regulations No. 12-99, 28 November 2013.
[32] Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 22 January 2018.
[33] Exhibit "P-8", Docket, Vol. II, p. 572.
[34] Exhibit "P-13", Docket, Vol. II, pp. 596-598.
[35] Fifteen (15) days after its publication in Manila Bulletin on 1 February 2018.
[36] Exhibit "P-29," Division Docket, Vol. II, page 697; BIR Records, pp. 203-204.
[37] Exhibit "P-30," Division Docket, Vol. II, page 698; BIR Records, pp. 203-204.

Certainly, the BIR would not have sent those notices if it was not required to hold an informal conference.

Accordingly, We see no cogent reason to depart from our previous findings. Considering that petitioner denied receipt of the said notices of informal conference,[38] it becomes incumbent for respondent to prove otherwise. However, as We have previously found, respondent did nothing to disprove petitioner and Mr. Rommel Tan alleged non-receipt of the said notices.

Consistent with *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*[39] and *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,*[40] failure of respondent **to issue a notice of informal conference** is violative of taxpayer's due process and renders the assessment void.

Finally, respondent did not argue against the findings of the Court relating to (1) his failure to serve the PAN and FLD/FANs to petitioner or its duly authorized representative, (2) his issuance of the FLD/FANs without taking into consideration petitioner's arguments and submissions in its *Reply* to the PAN, and (3) his issuance of the *Denial Letter* without considering the *Supporting Documents* that petitioner filed in relation to its request for reinvestigation. Even if We have found merit on respondent's arguments in his *Motion,* the assessment would have nevertheless been declared void for these uncontroverted violations of petitioner's right to due process.

It bears reiterating that void assessments bear no valid fruit.[41]

WHEREFORE, respondent's *Motion for Reconsideration (Notice of Decision promulgated on February 7, 2023)* is **DENIED** for lack of merit.

---

[38] Paragraph 55, Memorandum, Division Docket, Vol. II, pp. 17-18.
[39] G.R. Nos. 197945 & 204119, 9 July 2018.
[40] G.R. Nos. 201398-99, 3 October 2018.
[41] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694 & G.R. No. 163581, 27 January 2006, 382 SCRA 480; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 8 December 2010, 637 SCRA 647; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 126; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, 10 December 2014, 744 SCRA 474.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice