CTA Form No. 8 (For DCC)

18-000241-0121

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION\

CTA CASE NO. 9841

3M PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICIROR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

SOMERA JAVELOZA & ASSOCIATES
7th Floor, Philippine AXA Life Centre
1286 Sen. Gil Puyat Avenue
1200 Makati City

GREETINGS:

You are hereby notified by these presents that on **January 26, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 29, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

3M PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 9841**
	Members:
- versus -	**DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	JAN 26 2024, 2:30PM

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RESOLUTION

REYES-FAJARDO, *J.*:

In the Decision[1] dated September 19, 2023, we found that Letter of Authority (LOA) dated January 7, 2016, issued by Assistant Commissioner Large Taxpayer's Service (ACIR-LTS) Nestor S. Valeroso, authorized Revenue Officers (ROs) Rosario Arriola, Shella Samaniego, under Group Supervisor (GS) Rolando Balbido to examine petitioner's books of account, and other accounting records for deficiency internal revenue taxes, covering taxable year (TY) ending December 31, 2014. However, the persons who: (1) actually conducted the examination and audit of petitioner for said year; and (2) suggested the issuance of a Preliminary Assessment Notice (PAN) and Formal Letter of Demand and Final Assessment Notice (FLD/FAN), were ROs Abigail N. Cayabyab, Maria Graciella S. Anaban, Riza F. Budano, Tito R. Monforte, and Carolyn V. Mendoza, persons *not* named in such LOA. By this finding, we voided the deficiency tax assessments for TY 2014, and accordingly, allowed the refund of the deficiency taxes paid by petitioner under protest. In the end, we decreed:

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1 Docket, pp. 4599-4624.

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WHEREFORE, the Petition for Review filed on May 25, 2018, by 3M Philippines, Inc., is **GRANTED**. Accordingly, we **RESOLVE** to:

a. **CANCEL** and **SET ASIDE** the deficiency Income Tax, Expanded Withholding Tax, Withholding Tax-Final Value-Added Tax assessments, their corresponding interests and compromise penalties in the total amount of ₱37,286,558.75, for the Taxable Year 2014;

b. **ORDER** respondent to **REFUND** petitioner the amount of ₱13,398,898.25, representing the amount it paid under protest on April 30, 2018; and,

c. **ENJOIN** respondent, his representatives, agents, or other persons acting in his behalf, from collecting on petitioner, the deficiency tax assessments covering Taxable Year 2014.

SO ORDERED.

On October 9, 2023, respondent filed a Motion for Reconsideration Re: Decision dated 19 September 2023,[2] contending that we erred in: (1) declaring the deficiency tax assessments covering TYs 2014 void because the persons who conducted the audit or examination of petitioner for said year is under the Large Taxpayer's Service (LTS), which is under the Office of the Commissioner of Internal Revenue (CIR). Further, Rosario Arriola, a person named in the LOA dated January 7, 2016, conducted the audit of petitioner for TY 2014; and (2) permitting the refund of taxes for said year paid by petitioner under protest because there was no illegal, or erroneous collection made by the BIR.

By way of Comment (To Respondent's Motion for Reconsideration dated September 29, 2023) filed on November 6, 2023, [3] petitioner mirrors our finding that the deficiency tax assessments covering TY 2014 are void for being a product of an illegal examination or audit by respondent's tax agents, and that it is entitled to the refund of the deficiency taxes for TY 2014, which it paid under protest.

The Motion lacks merit.

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[2] *Id.* at pp. 4625-4640.

[3] *Id.* at pp. 4644-4654.

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For one, the issuance by respondent, or his duly authorized representatives of an LOA to ROs doing assessment functions as a precondition for the validity of examination and assessment is *not* based on the office *where* the ROs are stationed or detailed. Rather, the necessity for the issuance thereof depends on the persons *who* would perform the audit and examination of the taxpayer. If respondent himself, or any of the BIR officials duly authorized by law or respondent, *i.e.,* Regional Directors, Deputy CIRs, Assistant CIRs, and Head Revenue Executive Assistants personally conduct the examination of the taxpayer, then the issuance of an LOA may be dispensed with. ROs Abigail N. Cayabyab, Maria Graciella S. Anaban, Riza F. Budano, Tito R. Monforte, and Carolyn V. Mendoza do *not* fall under the category of persons who may conduct examination against the taxpayer, *sans* an LOA. Therefore, the issuance of a valid LOA by respondent, or his duly authorized representatives, in their favor, is a pre-requisite for the validity of the latter's tax examination, and resulting assessment.[4]

For another, the matter regarding RO Rosario Arriola, as a person named in the LOA dated January 7, 2016, would not save the day for respondent. As discussed in the assailed Decision:[5]

> We, too, are cognizant that GS Arriola was named in the LOA dated January 7, 2016, issued by ACIR-LTS Valeroso. Equally true is that in the Memoranda dated May 10, 2017, and June 22, 2017, GS Arriola *reviewed* the findings of ROs Cayabyab, Anaban, Budano, Monforte, and Mendoza. However, there was nothing for GS Arriola to review or check, since the findings unearthed by ROs Cayabyab, Anaban, Budano, Monforte, and Mendoza are a patent nullity.

Indeed, the Memoranda dated May 10, 2017,[6] and June 22, 2017[7] state that the recommendation of ROs Abigail N. Cayabyab, Maria Graciella S. Anaban, Riza F. Budano, Tito R. Monforte, and Carolyn V. Mendoza was *reviewed by* Rosario Arriola. This militates

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4 See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue,* G.R. No. 241848, May 14, 2021; and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

5 See page 24, assailed Decision. Docket, p. 4622.

6 Exhibit "R-4." Folder 1, BIR Records, pp. 728-735.

7 Exhibit "R-6." Folder 1, BIR Records, pp. 971-982.

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against petitioner's claim that RO Rosario Arriola actually participated in the audit of petitioner for TY 2014.

Besides, even if RO Rosario Arriola did partake in the audit of petitioner for TY 2014, the want of proper authority to examine petitioner for TY 2014, by the *other* tax agents who likewise audited and examined petitioner for said year, *i.e.,* ROs Abigail N. Cayabyab, Maria Graciella S. Anaban, Riza F. Budano, Tito R. Monforte, and Carolyn V. Mendoza, would ultimately result in the invalidity of the tax assessments for TY 2014.

WHEREFORE, respondent's Motion for Reconsideration Re: Decision dated 19 September 2023, is **DENIED**, for lack of merit.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice