REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

NYK-FILJAPAN SHIPPING CORP.,
Respondent.

CTA EB NO. 2402
(CTA Case No. 9120)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated: NOV 28 2022 2:25pm

x - x

RESOLUTION

BACORRO-VILLENA, J.

For the Court *En Banc*'s resolution is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision promulgated 7 July 2022)"[1] (**MR**) filed on 19 July 2022, with respondent NYK-FILJAPAN Shipping Corp.'s (**respondent**'s/**NSC**'s) "Comment/Opposition (to the Motion for Reconsideration dated July 19, 2022)"[2] (**Comment**) filed on 09 August 2022.

[1] Rollo, pp. 106-124.
[2] Id., pp. 131-146.

The MR seeks the reversal of this Court *En Banc*'s Decision[3] (**assailed Decision**) dated 07 July 2022. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 25 June 2020 and 22 December 2020, respectively, in CTA Case No. 9120, entitled *NYK-FILJAPAN Shipping Corp. v. Commissioner of Internal Revenue* are hereby **AFFIRMED**.
>
> Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** from collecting or taking further action on the subject deficiency taxes assessed against respondent NYK-FILJAPAN Shipping Corp. as provided in the Final Decision on Disputed Assessment in the aggregate amount of ₱25,448,013.85 for the taxable year 2007.
>
> **SO ORDERED.**
>
> ...

The Court *En Banc* essentially affirmed the invalidity of the assessment (as found by the Third Division) on the ground that the officers who conducted the assessment to be devoid of any authority to do the same.

In the MR, petitioner mainly argues that the assessment of respondent was valid considering that the Memoranda of Assignment (**MOAs**) dated 03 March 2010[4] (**First MOA**) and 19 April 2010[5] (**Second MOA**) validly extended the authority to Revenue Officer William F. Sundiam (**RO Sundiam**) and Group Supervisor Joriz U. Saldajeno (**GS Saldajeno**) to conduct the assessment.

In its Comment, respondent calls for the Court *En Banc* to deem petitioner's MR *pro forma* considering that it is a mere rehash of the issues previously raised and resolved. It adds that at any rate, the assessment remains invalid due to the lack of authority of the officers who conducted respondent's audit.

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[3] Id., pp. 87-102.
[4] Exhibit "R-1", BIR Records, p. 58.
[5] Exhibit "R-1-a", id., p. 188.

We resolve.

After a review of the case records and the arguments raised, We find the instant motion bereft of merit.

To be sure, the present MR is not *pro forma* just because it reiterated the arguments earlier passed upon and rejected by the appellate court.[6] However, mere reiterations of previously settled arguments are usually dealt with by this Court summarily following the Supreme Court's ruling in the case of *Ortigas and Company Limited Partnership v. Judge Tirso Velasco and Dolores V. Molina.*[7] Despite this being the case, the Court would proceed to explain, albeit briefly, the issue of the MOAs' validity.

The reassignment or transfer of pending cases to other ROs requires the issuance of a new Letter of Authority (**LOA**). Revenue Memorandum Order (**RMO**) No. 43-90[8] issued by the CIR himself or herself pertinently provides:

> ...
>
> **Any reassignment/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.[9]
>
> ...

In addition, the above RMO also enumerates the officers authorized to issue an LOA:

> ...
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.
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> ...

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6 *Security Bank and Trust Company, Inc. v. Rodolfo M. Cuenca*, 396 Phil. 108 (2000); *Department of Agrarian Reform v. Vicente K. Uy*, 544 Phil. 308, 329 (2007); and, *Valencia (Bukidnon) Farmers Cooperative Marketing Association, Inc. v. Heirs of Amante P. Cabotaje, et al.*, G.R. No. 219984, 03 April 2019.

7 G.R. Nos. 109645 & 112564, 04 March 1996.

8 *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.*

9 Emphasis supplied.

In relation thereto, RMO No. 29-2007[10] also authorizes Assistant Commissioner/Head Revenue Executive Assistants to issue LOAs relative to Large Taxpayers.

Summing up the foregoing rules, only the following officials are properly conferred with authority to permit the examination of taxpayers for deficiency taxes:

1. The Commissioner of Internal Revenue;
2. Regional Directors;
3. Deputy Commissioners;
4. Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and,
5. Other officials but only upon prior authorization by the CIR himself.

The following facts were established in the assailed Decision, to wit:

> ...
>
> On 03 July 2008, respondent NYK-FILJAPAN Shipping Corp. (**respondent/NSC**) received Letter of Authority (**LOA**) No. 00035448 dated 01 July 2008, from Romulo L. Aguila, Jr., then Head Revenue Executive Assistant (**HREA Aguila**), through Albino M. Galanza, then Chief, Large Taxpayers (**LT**) Audit and Investigation Division I (**Chief Galanza**), authorizing Revenue Officer Juan M. Luna, Jr. (**RO Luna**) to conduct an audit of respondent's tax records for the taxable year (**TY**) 2007.
>
> ...
>
> On 03 March 2010, then Officer-in-Charge Chief Edralin M. Silario (**OIC-Chief Silario**) of the LT Regular Audit Division I issued a Memorandum (Referral No. D-LOA-0310-0002) dated 03 March 2010 (**First MOA**), referring the entire docket of respondent's case to RO William F. Sundiam (**RO Sundiam**) and Group Supervisor Joriz U. Saldajeno (**GS Saldajeno**), for the continuance of respondent's audit investigation. OIC-Chief Silario issued another Memorandum (Referral No. D-LN-0410-002) dated 19 April 2010 (**Second MOA**) addressed to the same RO and GS..."[11]
>
> ...

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10 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

11 Citations omitted.

From the foregoing, it is clear that the LOA was validly issued as it was signed by Head Revenue Executive Assistant Romulo L. Aguila, Jr., who is an authorized officer under RMO No. 29-2007. *However*, the First and Second MOAs which transferred respondent's case to RO Sundiam and GS Saldajeno, and extended their authority to assess, were issued by Officer-in-Charge (**OIC**) Chief Edralin M. Silario of the LT Regular Audit Division I.

A perusal of the previously cited RMO No. 29-2007 immediately show that an OIC-Chief of the LT Regular Audit Division is not one of those authorized to issue the LOA. Consequently, the MOAs issued by OIC-Chief Silario could not have clothed RO Sundiam and GS Saldajeno with the requisite authority to continue the assessment of respondent absent any authority from the CIR pursuant to both RMO Nos. 43-90 and 29-2007.

At this juncture, petitioner is reminded of his duty as movant to sufficiently substantiate his claim to event warrant consideration of his arguments. The Supreme Court's ruling in *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[12] is instructive on this matter, *to wit*:

> ...
> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.
> ...

[12] G.R. No. 159938, 22 January 2007.

WHEREFORE, the foregoing considered, petitioner's "Motion for Reconsideration (Re: Decision promulgated 7 July 2022)" filed on 19 July 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON OFFICIAL BUSINESS
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice