

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB No. 2681
(CTA Case No. 10004)

Present:

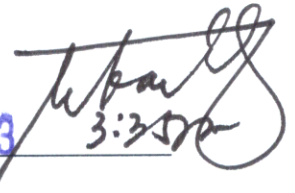
- versus -

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

THE MERRY COOKS, INC.,
Respondent.

Promulgated:

OCT 23 2023

A handwritten signature in black ink is written over a blue date stamp that reads "OCT 23 2023". The signature appears to be "Tubaran" followed by a flourish.

X-----X

DECISION

FERRER-FLORES, J.:

This Petition for Review filed by **Commissioner of Internal Revenue (petitioner/CIR)** on September 27, 2022¹ seeks to nullify the Decision of this Court promulgated on March 15, 2022 (**assailed Decision**),² and the Resolution dated August 18, 2022 (**assailed Resolution**)³ in CTA Case No. 10004, whereby the First Division cancelled and set aside the Final Decision on Disputed Assessment (FDDA) dated November 28, 2018 and the assessment notices and the Formal Letter of Demand (FLD) dated December 12, 2016, assessing respondent The Merry Cooks, Inc. for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT) and documentary stamp tax (DST) for taxable year (TY) 2013.

¹ *Rollo*, pp. 6 to 15.

² *Rollo*, pp. 9 to 33.

³ *Rollo*, pp. 36 to 40.

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PARTIES OF THE CASE⁴

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority and powers under his office including the power to conduct investigation of the internal revenue taxes paid by taxpayers, issue deficiency tax assessments, decide on any disputed internal revenue tax assessments, and collect all national internal revenue taxes, fees and charges.

Respondent, **The Merry Cooks, Inc.** (TMCI), is a domestic corporation established and existing under the laws of the Republic of the Philippines, with the primary purpose of processing food additives and spices.

FACTUAL ANTECEDENTS

The facts as found by the Court in Division are as follows:⁵

“On September 24, 2015, petitioner [herein respondent] received the *Letter of Authority* (LOA) No. LOA-039-2015-00001146 dated September 18, 2015, wherein Revenue Officer (RO) Irene Juana Acacio and Group Supervisor (GS) Virgilio Tablizo of Revenue District No. 39 – South Quezon City, were authorized by Regional Director Alfred V. Misajon, to examine petitioner’s [herein respondent’s] books of accounts and other accounting records for all internal revenue taxes, for the period from January 1, 2013 to December 31, 2013, pursuant to Sections 6(A) and 10(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

In the *Memorandum of Assignment* (MOA) No. 039-0716-03560 dated July 15, 2016 which was issued by the Revenue District Officer (RDO) Editha A. Calipusan, the instant case/docket was referred to RO Charlie C. De Leon and GS Maricar Favis, for continuation of the audit/investigation due to the transfer of previously assigned ROs pursuant to Revenue Travel Authority Order (RTAO) No. 3-2016. Petitioner [herein respondent] was informed of the said MOA in the letter dated September 6, 2016 issued by RDO Ma. Victoria G. Reinante, which it received on September 7, 2016.

In the Memorandum dated September 6, 2016 addressed to the Regional Director, with corresponding *Revenue Officer’s Audit Reports*, submitted by RO Charlie C. De Leon, the latter recommended the issuance of a *Preliminary Assessment Notice* (PAN) against petitioner [herein respondent].

The PAN dated November 16, 2016, with *Details of Discrepancies*, was then issued by respondent [herein petitioner], through Regional Director Alfredo V. Misajon, against petitioner [herein respondent].

⁴ Parties, Petition for Review, *Rollo*, p. 7.

⁵ *Rollo*, pp. 20 to 23. Citations omitted.

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Subsequently on December 12, 2016, a *Formal Letter of Demand* (FLD), with *Details of Discrepancies*, and *Assessment Notices* (FAN), were issued against petitioner [herein respondent], wherein respondent [herein petitioner], through Regional Director Alfredo V. Misajon, requested payment of petitioner [herein respondent]'s tax liabilities. The said FLD and FAN were received by petitioner [herein respondent] on the same date they were issued.

Petitioner [herein respondent] filed a protest on the assessments for deficiency income tax, VAT, EWT and DST and compromise penalties, for the year 2013, on January 11, 2017.

Thereafter, on December 5, 2018, the *Final Decision on Disputed Assessment* (FDDA) dated November 28, 2018, with *Details of Discrepancies*, issued by respondent [herein petitioner], through Regional Director Marina G. De Guzman, was received by petitioner [herein respondent].”

PROCEEDINGS BEFORE THE COURT

On January 4, 2019, respondent, then petitioner, filed the instant Petition for Review.⁶ This case was then raffled to this Court's First Division and was docketed as CTA Case No. 10004.

Petitioner, then respondent, filed his Answer on April 12, 2019, interposing the following special and affirmative defenses, *to wit*: (1) the assessments issued against petitioner for the deficiency IT, deficiency VAT, deficiency EWT, and deficiency DST, have factual and legal bases; (2) the Bureau of Internal Revenue's (BIR) period to assess the deficiency taxes has not yet prescribed; and (3) the tax assessments are presumed to be correct.⁷

In the Resolution dated May 3, 2019,⁸ the Court referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals. The parties, however, decided not to have their case mediated.⁹

Respondent's Pre-Trial Brief was filed by herein petitioner CIR on July 31, 2019,¹⁰ while respondent TMCI filed its Pre-Trial Brief on August 5, 2019.¹¹ The Pre-Trial Conference was held on August 8, 2019.¹²

⁶ Division Docket, pp. 10 to 15.

⁷ *Ibid.*, pp. 42 to 47.

⁸ *Ibid.*, pp. 50 to 51.

⁹ No Agreement to Mediate, *Ibid.*, p. 55.

¹⁰ Division Docket, pp. 68 to 71.

¹¹ *Division Docket*, pp. 122 to 125.

¹² Minutes of the hearing and Order dated August 8, 2019, *Division Docket*, pp. 126 to 132.

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On September 4, 2019, respondent filed a Manifestation stating that the parties could not agree on the facts and issues and thus, cannot submit a Joint Stipulation of Facts and Issues considering that no agreement on the matter was arrived at between the parties.¹³ The Court noted respondent's Manifestation and ordered the issuance of the Pre-Trial Order.¹⁴

The Pre-Trial Order was issued on November 8, 2019 thereby terminating the Pre-Trial Conference.¹⁵

The trial of the case then ensued.

Respondent TMCI presented documentary and testimonial evidence, with its lone witness Mr. Rodrigo V. Bacon, TMCI's Accounting Manager,¹⁶ testifying on February 13, 2020.¹⁷

Respondent TMCI then filed its Formal Offer of Evidence on February 24, 2020.¹⁸ In the Resolution dated July 7, 2020, the Court admitted petitioner's exhibits except for Exhibit "P-5", for failure to submit the duly marked exhibit.

On October 20, 2020,¹⁹ petitioner CIR presented Revenue Officer (RO) Charlie C. De Leon.²⁰

Formal Offer of Respondent's Documentary Evidence was filed on November 19, 2020,²¹ which the Court admitted in its Resolution dated February 23, 2021.²²

Petitioner's (then respondent's) Memorandum was filed on May 20, 2021;²³ whereas respondent TMCI failed to file its Memorandum as per Records Verification issued by this Court's Judicial Records Division on June 4, 2021.²⁴ Thereafter, the case was submitted for decision on June 28, 2021.²⁵

¹³ Division Docket, pp. 143 to 144.

¹⁴ *Ibid.*, pp. 152 to 153.

¹⁵ *Division Docket*, pp. 165 to 172.

¹⁶ Judicial Affidavit of Rodrigo V. Bacon, Jr., Exhibit "P-6", Division Docket, pp. 219 to 225.

¹⁷ Minutes of the hearing and Order dated February 13, 2020, Division Docket, pp. 208 to 215.

¹⁸ Division Docket, pp. 216 to 256.

¹⁹ Minutes of the hearing and Order dated October 20, 2020, Division Docket pp. 247-A to 247-C.

²⁰ *Judicial Affidavit*, Exhibit "R-10", Division Docket, pp. 76 to 82.

²¹ Division Docket, pp. 249 to 257.

²² *Ibid.*, pp. 314 to 315.

²³ *Ibid.*, pp. 322 to 332.

²⁴ *Ibid.*, p. 333.

²⁵ *Ibid.*, p. 335.

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The Court in Division rendered a Decision on March 15, 2022,²⁶ stating:

“WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, the FDDA dated November 28, 2018, requesting petitioner to pay deficiency income tax, VAT, EWT and DST, and compromise penalties, in the aggregate amount of ₱13,641,165.72 for taxable year 2013, and the FLD/FAN dated December 12, 2016 issued against petitioner [herein respondent], are all **CANCELLED** and **SET ASIDE**.

The CIR, his representatives, agents, or any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject deficiency taxes.

SO ORDERED.”

In the assailed Decision, the Court ruled that the Court has jurisdiction over the instant case as the Petition for Review was timely filed. The Court, however, found that the revenue officers who continued the audit investigation of respondent TMCI’s books were not authorized to do so; hence, the subject tax assessments could not have attained finality.

Respondent (herein petitioner CIR) filed his Motion for Reconsideration (Decision dated 15 March 2022),²⁷ but was denied by the Court for lack of merit in the Resolution dated August 18, 2022.²⁸ Hence, the instant Petition for Review.

Respondent TMCI filed its Comment on Petition for Review on December 27, 2022.²⁹ On March 2, 2023, the case was submitted for decision.³⁰

ISSUES

Petitioner CIR prays for the Court to give due course to the instant Petition for Review and to reverse and set aside the assailed Decision, dated March 15, 2022, and the assailed Resolution, dated August 18, 2022, based on the following grounds:³¹

²⁶ *Ibid.*, pp. 336 to 350.

²⁷ Division Docket, pp. 351 to 365.

²⁸ *Division Docket*, pp. 375 to 379.

²⁹ *Rollo*, pp. 47 to 56.

³⁰ *Rollo*, pp. 58 to 59.

³¹ Issues, Petition for Review, *Ibid.*, p. 9.

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I.

THE HONORABLE COURT ERRED IN RULING THAT THE REVENUE OFFICER AND GROUP SUPERVISOR WHO CONTINUED THE AUDIT OF PETITIONER WERE NOT AUTHORIZED BY A VALID LOA.

II.

THE HONORABLE COURT ERRED IN RULING THAT THE FORMAL LETTER OF DEMAND AND THE ASSESSMENT NOTICES ARE VOID.

ARGUMENTS

Petitioner CIR argues that a Memorandum of Assignment (MOA) subsequently issued derives its authority from the original LOA issued. He avers that the MOA is issued for the continuation of the audit/investigation which was already authorized under the LOA. Petitioner contends that the LOA is not an authorization letter of the ROs, but is, in fact, issued to taxpayers to inform them that an audit has been authorized by the CIR through the Revenue Regional Director (RRD). Once the LOA is served, any duly authorized RO may conduct the audit not because of, but pursuant to such LOA.

Moreover, petitioner posits that the Court erred in ruling that the FDDA and FLD/FAN are void as these clearly stated the facts and the law upon which the assessments were based. Finally, he maintains that the law heavily presumes upon the favor of the propriety and exactness of tax assessments. As he faithfully observed the procedure prescribed under Revenue Regulations (RR) No. 12-99, the assessment must be upheld.

On the other hand, respondent TMCI counters that, in the LOA, the ROs are required to provide identification cards to taxpayers during the conduct of an audit investigation. Thus, any RO not mentioned in the LOA cannot undertake the examination of the books of accounts and other accounting records of the taxpayer. Respondent avers that RO De Leon declared, during cross examination, that his LOA was the one issued to RO Acacio. Respondent insists that the irregularities in the performance of duties of RO De Leon overturn the presumption of the correctness of the assessments. Lastly, respondent points out that the Verification and Certification was executed by the OIC-Regional Director for Revenue Region No. 7A, Mr. Mahinardo G. Mailig on September 23, 2022; whereas, the Petition for Review was dated September 27, 2022. It also emphasized that



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the authority indicated in Revenue Delegation Authority Order (RDAO) No. 2-2007 dated March 1, 2007 was executed by then Commissioner Jose Mario C. Buñag; thus, such authorization cannot be said to be still effective under the current Commissioner.

RULING OF THE COURT *EN BANC*

We uphold the ruling of the Court in Division granting respondent's Petition for Review.

Timeliness of the Petition for Review

Records show that, on August 30, 2022, petitioner received the Resolution dated August 18, 2022.³² Counting fifteen (15) days therefrom, petitioner had until September 14, 2022 within which to file his Petition for Review before the Court *En Banc*. On September 12, 2022, petitioner filed a Motion for Extension of Time to File Petition for Review,³³ requesting for an additional period of fifteen (15) days or until September 29, 2022, within which to file his Petition for Review, which was granted by this Court.³⁴ On September 27, 2022, petitioner timely filed his Petition for Review.

RO De Leon and GS Favis were not duly authorized to continue with the audit investigation of respondent's books of accounts and other accounting records.

Petitioner's assertion that the LOA authorizes *any* duly authorized RO is unfounded.

Sections 6(A), 10(c) and 13 of the NIRC of 1997, as amended, is clear as regards the authority given by the Commissioner or his duly authorized representative, which reads:

“SECTION 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.

(A) Examination of Returns 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**

³² *Rollo*, p. 34.

³³ *Rollo*, pp. 1 to 4.

³⁴ *Rollo*, p. 5.

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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.”

“SECTION 10. Revenue Regional Director. — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:

xxx

xxx

xxx

(c) **Issue Letters of Authority for the examination of taxpayers within the region;”**

“SECTION 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.**” (Emphases ours)

Without a doubt, the RO must be authorized through an LOA to conduct the audit or investigation of the taxpayer.

LOAs may be issued only by authorized BIR officers.

Moreover, the authority must be granted by the CIR or his duly authorized representatives, pursuant to Section D(4) of Revenue Memorandum Order (RMO) No. 43-90, *to wit:*

“D. Preparation and issuance of L/As.

xxx

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.”

Based on the foregoing, only the CIR and the duly authorized BIR officials, *i.e.*, Regional Directors and the Deputy Commissioners may issue an LOA. As elucidated by the Supreme Court in the case of *Medicard*

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Philippines, Inc. vs. Commissioner of Internal Revenue (Medicard case),³⁵ unless authorized by the CIR himself or by his duly authorized representative pursuant to RMO No. 43-90, an examination of a taxpayer's books of accounts cannot be ordinarily undertaken. In the absence of such an authority, the assessment or examination is a nullity.³⁶

In the instant case, petitioner issued LOA No. LOA-039-2015-00001146, dated September 18, 2015, authorizing RO Acacio and GS Tablizo of Revenue District No. 39 – South Quezon City to examine respondent's books of accounts and other accounting records for the period January 1 to December 31, 2013. Thereafter, MOA No. 039-0716-3560, dated July 15, 2016, was issued by Revenue District Office (RDO) Editha Calipusan, reassigning the case to RO De Leon, which led to the issuance of the PAN and the FLD.

Based on the cited provisions of RMO No. 43-90, the RDO is not among the authorized BIR officials to issue an LOA; hence, the MOA issued by RDO Calipusan is of no force and effect.

Reassignment or transfer of RO requires issuance of a new LOA.

In the same RMO No. 43-90, the own rules of the BIR mandate the need for the issuance of a new LOA in cases of reassignment or transfer of examination to another RO. Thus:

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

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.”**

The Court in Division, in the assailed Decision, cited the case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.* (McDonald's case),³⁷ which categorically concluded that the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation. The Supreme Court expressly ruled in the McDonald's case that the practice of reassigning or transferring ROs, who are the original authorized officers named in the LOA, and subsequently substituting them with new ROs who do

³⁵ G.R. No. 222743, April 5, 2017.

³⁶ *Commissioner of Internal Revenue*, G.R. No. 178697, November 17, 2010.

³⁷ G.R. No. 242670, May 10, 2021.

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not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative, *to wit*:

“This case is an occasion for the Court to rule on a disturbing trend of tax audits or investigations conducted by revenue officers who are not specifically named or authorized in the LOA, under the pretext that the original revenue officer authorized to conduct the audit or investigation has been reassigned or transferred to another case or place of assignment, or has retired, resigned or otherwise removed from handling the audit or investigation.

This practice typically occurs as follows: (i) a valid LOA is issued to an authorized revenue officer; (ii) the revenue officer named in the LOA is reassigned or transferred to another office, case or place of assignment, or retires, resigns, or is otherwise removed from handling the case covered by the LOA; (iii) the revenue district officer or a subordinate official issues a memorandum of assignment, referral memorandum, or such equivalent document to a new revenue officer for the continuation of the audit or investigation; and (iv) the new revenue officer continues the audit or investigation, supposedly under the authority of the previously issued LOA.

xxx

The Court hereby puts an end to this practice.”

Thus, the Supreme Court, in the McDonald’s case, discussed the nature of an LOA and the pertinent provisions of the NIRC of 1997, as amended, and BIR issuances to emphasize the need for a new or amended LOA in case of substitution or replacement of an RO to continue audit or investigation, *viz*:

“I. The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of 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.

Section 6 of the NIRC provides:

SECTION 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



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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[.]

Section 10 (c) of the NIRC provides:

SECTION 10. Revenue Regional Director. — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:

xxx

(c) Issue Letters of Authority for the examination of taxpayers within the region[.]

Section 13 of the NIRC provides:

SECTION 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

Section D (4) of RMO No. 43-90 dated September 20, 1990 provides:

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

Pursuant to the above provisions, only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. 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. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. 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.”



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It is clear in the McDonald's case that the identification of ROs authorized to conduct the tax audit or investigation is part of due process. Taxpayers need to be informed that the RO knocking at their door has the proper authority to examine their books of accounts; and the authority is the LOA wherein the name of the RO is identified and all other details of the audit are stated. If any RO other than those named in the LOA conducts the examination and assessment, taxpayers would be unable to verify the existence of the authority of the RO; and, it is their right to know that the ROs actually conducting the examination and assessment are duly authorized to do so.

Also in the McDonald's case, the Supreme Court categorically held that the LOA is the concrete manifestation of the grant of authority by the CIR or his duly authorized representatives to the ROs pursuant to Sections 6, 10(c) and 13 of the NIRC of 1997, as amended. It is a mistake to characterize the LOA as a document "issued" to the taxpayer, and that, once so issued, "any RO may then act pursuant to such authority."

Further, the McDonald's case firmly ruled that the use of MOA, Referral Memorandum or any other equivalent document directing the continuation of audit or investigation by an unauthorized RO is a usurpation of the functions of the LOA under the NIRC of 1997, as amended; and that issuances referring to reassignment of the audit or investigation from one RO to another and the actual authority of the RO who will conduct the actual audit or investigation are different. Thus, it is specifically required to issue a new LOA if ROs are reassigned or transferred, *to wit*:

"B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other



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subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. **But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives."

C. Revenue Memorandum Order No.
43-90 dated September 20, 1990
Expressly and Specifically Requires the
Issuance of a New LOA if Revenue
Officers are Reassigned or Transferred

Section D (5) of RMO No. 43-90 dated September 20, 1990 provides:

Any re-assignment/transfer of cases to another RO(s), 64(64) and revalidation of L/As 65(65) 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.

The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases. The provision involves the following two separate phrases: "re-assignment/transfer of cases to another RO(s)," on the one hand, and "revalidation of L/As which have already expired," on the other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA. The new LOA must then have a corresponding relevant notation, including the previous LOA number and date of issue of the said LOAs.

The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the



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law it supposedly implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.

The petitioner is mistaken. Section 291 of the NIRC states:

SECTION 291. In General. —All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.

Section D (5) of RMO No. 43-90 dated September 20, 1990 is not contrary to or inconsistent with the NIRC. In fact, the NIRC codifies the LOA requirement in RMO No. 43-90. While RMO No. 43-90 was issued under the old tax code, nothing in Section D (5) of RMO No. 43-90 is repugnant to Sections 6 (A), 10 and 13 of the NIRC. Hence, pursuant to Section 291 of the NIRC, RMO No. 43-90 remains effective and applicable.

Even the Operations Group of the BIR now recognizes that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate LOA, is no longer tenable. Thus, in Operations Memorandum No. 2018-02-03 dated February 9, 2018, the Operations Group has decided that "the issuance of a MOA for reassignment of cases in the aforementioned instances [i.e., the original revenue officer's transfer to another office, resignation, retirement, etc.] shall be discontinued." (*Boldfacing ours*)

In this case, RO De Leon and GS Favis continued the audit investigation of respondent solely by virtue of the MOA issued by the RDO without the required new LOA issued by the CIR or his duly authorized representatives. As clearly established by law and jurisprudence, the MOA issued by the RDO did not give ample authority to RO De Leon and GS Favis to continue the audit investigation of respondent's books of accounts and other accounting records.

As aptly found by the Court in Division, the assessments having been issued pursuant to the audit investigation of unauthorized RO and GS, the tax assessments are void *ab initio* and, thus, bear no valid fruit. Accordingly, the FLD/FAN is null and void and the FDDA is without force and effect.

Consequently, the Court in Division did not err in granting respondent's Petition for Review and thereby cancelling the assessment of petitioner for TY 2013.

WHEREFORE, in view of the foregoing, the Petition for Review filed on September 27, 2022 by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The Decision dated March 15, 2022 and the Resolution



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dated August 18, 2022 of the Court in Division in CTA Case No. 10004 are **AFFIRMED.**

SO ORDERED.


CORAZON G. FERRER FLORES
Associate Justice

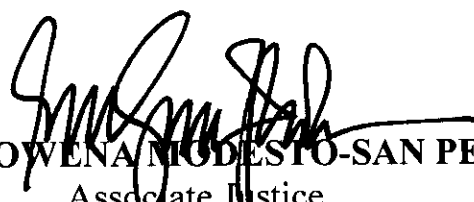
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

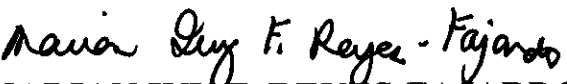

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

DECISION

CTA EB No. 2681 (CTA Case No. 10004)

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MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the write of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice