

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER, BUREAU
OF INTERNAL REVENUE,
represented by OIC-Regional
Director, Maridur V. Rosario,
Revenue Region No. 9A -
CaBaMiRo, Sto. Tomas,
Batangas,

Petitioner,

-versus-

BASIC HOUSING
SOLUTIONS, INC.,
Respondent.

CTA EB No. 2723
(CTA Case No. 9905)

Present:

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

Promulgated:

JUN 11 2024

4:22 pm

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DECISION

REYES-FAJARDO, J.:

We address the Petition for Review dated January 9, 2023,¹ impugning the Decision² dated June 28, 2022, and Resolution³ dated December 5, 2022, in CTA Case No. 9905, whereby the Court in Division cancelled and set aside the deficiency income tax (IT) assessment, and compromise penalty, issued by petitioner against respondent for Taxable Year (TY) 2014.

The facts follow.

¹ Rollo, pp. 7-17.

² *Id.* at pp. 26-42.

³ *Id.* at pp. 44-50.

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Petitioner Commissioner of Internal Revenue (**petitioner/CIR**) heads the Bureau of Internal Revenue (**BIR**), with office address at BIR Building, Diliman, Quezon City, represented by Maridur V. Rosario, the Officer-in-Charge-Revenue Regional Director (**OIC-RD Rosario**) of Revenue Region (RR) No. 9A-CaBaMiRo, located in Sto. Tomas, Batangas.

Respondent is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Block 31, Lot 3, Hillsvie Royale, Brgy. Timalan, Bacoor, Cavite. It is also registered with the BIR, with Taxpayer Identification Number (**TIN**) 001-668-599, particularly with Revenue District Office (**RDO**) No. 054B-Bacoor, Cavite. Its primary purpose is to acquire by purchase, lease, donation or otherwise, and to own, hold, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances.

For TY 2014, respondent sold units (that were reported as exempt sales), prior to the approval of its application for Income Tax Holiday (**ITH**) incentive with the Board of Investments (**BOI**).

On March 31, 2015, the BOI issued in respondent's favor a Certificate of ITH Entitlement as New Developer of Low-Cost Mass Housing Project for each of its projects, Tierra Vista Pampanga Phase 1 (**Tierra Vista**) and The Veraneo (**The Veraneo**).

Sometime in March 2016, respondent received copies of letters, issued by then BOI Executive Director Efren V. Leño (**Director Leño**) dated March 3, 2016, addressed to Erlinda A. Simple, Assistant Commissioner, Assessment Service of the BIR (**ACIR Simple**), informing that the following sales of the latter, are not eligible for ITH:

Tierra Vista Pampanga Phase 1	₱11,910,700.00
The Veraneo	21,398,900.00
Total	₱33,309,600.00

In the meantime, Memorandum of Assignment No. 16-094 dated September 22, 2016 (**first MOA**) was issued by Revenue District Officer Benjamin B. Virtucio Jr. (**RDO Virtucio**), authorizing Revenue Officer Layna A. Magpantay (**RO Magpantay**) and Group Supervisor Romanito P. Guiuan (**GS Guiuan**) to evaluate respondent's ITH incentive availment.

By reason of said disallowance, respondent filed a Motion for Reconsideration (**MR**) and a Supplemental MR with the BOI's Incentives Services Department.

Sometime in October 2017, and pending resolution of its MR and Supplemental MR with the BOI, respondent received a Preliminary Assessment Notice (**PAN**) dated October 6, 2017, encapsulating the proposed deficiency IT assessment, and compromise penalty in the sum of ₱21,061,617.36, composed of the following:

Basic IT deficiency	₱13,848,393.53
Interest (until November 15, 2017)	7,163,223.83
Compromise Penalty	50,000.00
Total	₱21,061,617.36

On December 20, 2017, respondent received a Formal Letter of Demand (**FLD**) with Details of Discrepancies and Assessment Notices (**FAN**), assessing the latter for deficiency IT and compromise penalty covering TY 2014, in the total amount of ₱21,410,672.76, computed as follows:

Basic IT deficiency	₱13,848,393.53
Interest (until December 31, 2017)	7,512,279.23
Compromise Penalty	50,000.00
Total	₱21,410,672.76

On January 16, 2018, respondent responded to the FLD/FAN by way of protest, asserting that the assessment is void for lack of legal and factual bases.

On February 21, 2018, the BOI issued Resolution No. 07-10, Series of 2018, granting respondent's MR, and giving it full entitlement of ITH incentives on its sales of low-cost mass housing units at Tierra Vista and The Veraneo. Respondent also received copies of two (2) separate letters, both dated March 6, 2018, issued by the BOI's Atty. Marjorie O. Ramos-Samaniego (**Atty. Samaniego**) addressed to ACIR Simple, informing the latter of respondent's full entitlement to ITH on said sales.

On March 26, 2018, RDO Virtucio issued another MOA with No. MOA 54B-18-030 (**second MOA**) to RO Magpantay and GS Guiuan for reinvestigation of respondent's internal revenue tax liabilities, pursuant to the protest letter/request for reinvestigation.

On July 11, 2018, respondent received the Final Decision on Disputed Assessment (**FDDA**) dated June 19, 2018, finding it liable for deficiency IT in the same amounts stated in the FLD/FAN.

On August 10, 2018, respondent filed a Petition for Review before the Court in Division, docketed as CTA Case No. 9905. It sought the cancellation of the deficiency tax assessment for TY 2014.⁴

In the Decision dated June 28, 2022,⁵ it was found that the examination and audit performed by RO Magpantay and GS Guiuan on respondent for TY 2014, was without prior legal permission from the CIR, or his duly authorized representatives, as required by Sections 6 and 13 of the 1997 National Internal Revenue Code (**NIRC**), as amended. *A fortiori*, the resultant deficiency IT assessment and compromise penalty, issued by petitioner against respondent for TY 2014 are void. Precisely, the Court in Division disposed CTA Case No. 9905, in this wise:

WHEREFORE, in view of the foregoing, the Petition for Review filed on 10 August 2018 by [respondent] Basic Housing Solutions, Inc. is hereby **GRANTED**. Accordingly, the Formal

⁴ Docket (CTA Case No. 9905), pp. 12-48.

⁵ *Supra* note 2.

Letter of Demand with Details of Discrepancies and Assessment Notice Nos. RR9A-54B-eLA-14-IT-051 and RR9A-54B-eLA-14-MC-051, all dated 07 December 2017, issued against [respondent] for the taxable year 2014, are hereby **CANCELLED** and **SET ASIDE**. Consequently, [petitioner] Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes arising therefrom.

SO ORDERED.

Petitioner moved,⁶ but failed⁷ to overturn the impugned Decision; hence, the present⁸ recourse.

Petitioner ascribes error on the Court in Division's ruling that an LOA is indispensable for the validity of an audit or examination, and resultant tax assessment. For the latter, under Revenue Memorandum Order (**RMO**) No. 8-2006, if both the RO and GS cease employment, or were detailed in another revenue region, the continuation of the examination of a taxpayer may be re-assigned to another RO and GS within the same RDO, through the issuance of a MOA. Hence, the MOA dated September 22, 2016, issued by RDO Virtucio is sufficient authority for RO Magpantay and GS Guiuan to examine respondent for internal revenue tax liabilities covering TY 2014. Accordingly, respondent is liable for the ensuing deficiency IT assessment for said year.

Through Comment/Opposition (To Petition for Review),⁹ respondent ripostes that: (1) the deficiency IT assessment covering TY 2014 was a product of an unlawful examination and audit by petitioner's tax agents; and (2) it is *not* liable for deficiency IT covering TY 2014 because the BOI confirmed that it is 100% exempted from IT due on said year with respect to its registered activity, *i.e.*, new developer of low-cost mass housing project in Tierra Vista Pampanga Phase 1 and The Veraneo.

RULING

⁶ Respondent (now petitioner)'s Motion for Reconsideration (Re: Decision dated 28 June 2022). Docket (CTA Case No. 9905), pp. 830-840.

⁷ *Supra* note 3.

⁸ *Supra* note 1.

⁹ *Rollo*, pp. 55-61.

We deny the Petition.

Section 6(A) of the NIRC, as amended, restricts the authority to examine any taxpayer for the correct determination of tax liabilities to petitioner or his duly authorized representatives. By way of exception, petitioner or his duly authorized representatives may authorize the examination of any taxpayer for the correct determination of tax liability:

SEC. 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 examination of any taxpayer and the assessment of the correct amount of tax: ...

...

Sections 10(c) and 13 of the NIRC, as amended, permits the Revenue Regional Directors (**RDs**) to issue Letters of Authority (**LOAs**) in favor of ROs performing assessment functions in their respective region and district offices for the examination of any taxpayer within such region:

SEC. 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:

...

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

...

SEC. 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.

Moreover, Section D(4) of RMO No. 43-90¹⁰ provides that deputy commissioners (**DCIRs**), and other BIR officials authorized by the CIR himself are permitted to issue an LOA.¹¹ Among the BIR officials expressly authorized¹² by the CIR to issue an LOA are the Assistant Commissioners (**ACIRs**) and Head Revenue Executive Assistants (**HREAs**).

Truly, the LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the ROs pursuant to Sections 6(A), 10(c) and 13 of the NIRC, as amended. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, a revenue officer.¹³ It gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a *particular period*.¹⁴ Conversely, the absence of such an authority renders the assessment or examination a patent nullity.¹⁵

There is no denying that the FLD¹⁶/FAN¹⁷ and PAN¹⁸ are alike, with respect to the basic deficiency IT and compromise penalty for TY 2014. The findings in the PAN sprung from the recommendation¹⁹ of RO Magpantay and GS Guiuan. In turn, such tax agents derived their authority to examine respondent for TY 2014, from the MOA

¹⁰ SUBJECT: *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.*

¹¹ For 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 exigencies of service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

¹² No. 2, Roman Number II of RMO No. 29-2007 permits assistant commissioners and head revenue executive assistant to issue LOAs.

¹³ See *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, G.R. No. 242670, May 10, 2021.

¹⁴ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

¹⁵ See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

¹⁶ Exhibits "P-10," "P-10-a," and "P-10-b." Docket (CTA Case No. 9905), pp. 573-575.

¹⁷ Exhibits "P-10-c," and "P-10-d." *Id.* at pp. 576-577.

¹⁸ Exhibits "P-9," "P-9-a," and "P-9-b." *Id.* at pp. 570-572.

¹⁹ Exhibit "R-3." BIR Records, pp. 240-242.

dated September 22, 2016,²⁰ issued by RDO Virtucio. RDO Virtucio is bereft of legal competence to issue authority to examine a taxpayer. Only the CIR, RD, DCIRs, ACIRs, HREAs, and other BIR officials explicitly authorized by the CIR, may issue such authority. The absence thereof tarnishes the examination and audit conducted by RO Magpantay and GS Guiuan on respondent for TY 2014 with illegality. For this reason, their findings of deficiency IT and compromise penalty for said year, embodied in the PAN and FLD/FAN are void.

Wanting in persuasiveness is petitioner's asseveration that the MOA dated September 22, 2016, issued by RDO Virtucio, validly clothed RO Magpantay and GS Guiuan with authority to examine respondent for TY 2014. To be precise, RDO Virtucio is *not* one of the persons legally permitted to issue authority to examine a taxpayer, such as respondent. By issuing such MOA, RDO Virtucio arrogated upon himself the statutory authority to allow the examination of taxpayer, belonging to the CIR, or his duly authorized representatives, which may not be countenanced. *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*²¹ is *apropos*:

...

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 [or her] duly authorized representative. **The memorandum of assignment, referral memorandum, or such other 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 [or her] 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 herself] or his [or her] duly authorized representatives.**²²

²⁰ Exhibit "R-1." *Id.* at p. 238.

²¹ *Supra* note 13.

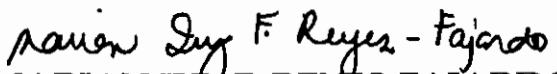
²² Boldfacing supplied.

To end our discussion, the Court in Division struck down petitioner's deficiency IT assessment, and compromise penalty, imposed on respondent for TY 2014.

So must it be.


WHEREFORE, the Petition for Review dated January 9, 2023, in CTA EB No. 2723, is **DENIED**. The Decision dated June 28, 2022 and Resolution dated December 5, 2022, in CTA Case No. 9905, are **AFFIRMED**.


SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
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

ON OFFICIAL BUSINESS
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
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 writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice