

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**
Petitioner,

CTA EB NO. 2448
(CTA Case No. 9868)

Present:

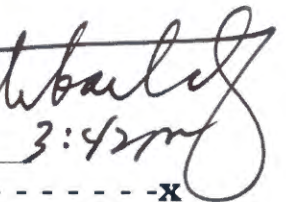
- versus -

**DEL ROSARIO, PJ
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, JJ.**

BICYCLEPOKER, INC.,
Respondent.

Promulgated:

JUN 09 2022



Handwritten signature and date stamp: 3:42pm

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D E C I S I O N

CUI-DAVID, J.:

This is a Petition for Review¹ filed by the Commissioner of Internal Revenue on March 5, 2021, praying for the reversal and setting aside of (1) the Decision² of this Court's Second Division (**Court in Division**) dated October 7, 2020, ordering the cancellation and setting aside of the Formal Letter of Demand (**FLD**) on Assessment No. 21-A-R-1504057404 dated October 11, 2017, as well as the Final Decision on Disputed Assessment (**FDDA**) dated August 9, 2018 he issued to Bicyclepoker, Inc.; and (2) the subsequent Resolution³ dated February 17, 2021, denying his Motion for Reconsideration. The respective dispositive portions of the assailed Decision and Resolution read as follows:

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¹ *En Banc* Docket, pp. 1-15.

² *Id.*, pp. 22-31.

³ *Id.*, pp. 32-38.

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Assailed Decision of October 7, 2020:

WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, the FLD on Assessment No. 21-A-R-1504057404 dated 11 October 2017, holding petitioner liable for deficiency taxes for taxable year 2014, as well as the FDDA dated August 9, 2018, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Assailed Resolution of February 17, 2021:

WHEREFORE, premises considered respondent's Motion for Reconsideration Re: Decision dated 07 October 2020 is **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioner Commissioner of Internal Revenue (**CIR**) is the duly appointed authority to administer and enforce all revenue laws in the land.⁴ He has the power to act upon and render final decisions on protests filed against internal revenue tax assessments and other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other laws and may be served with legal processes at the Bureau of Internal Revenue (**BIR**) National Office Building, BIR Road, Diliman, Quezon City.⁵

On the other hand, respondent Bicyclepoker, Inc. is a taxpayer registered with the BIR with Tax Identification Number 007-941-225-000.⁶

The Facts and the Proceedings

The facts, as found by the Court in Division, remain undisputed:

Mr

⁴ Par. 1, Summary of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Vol. I, p. 348.

⁵ Par. 2, Petition for Review vis-à-vis Par. 1, Answer, Division Docket, Vol. I, pp. 11 and 123, respectively.

⁶ Par. 2, Summary of Facts, JSFI, Division Docket, Vol. I, p. 348.

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On May 17, 2016, the BIR issued the Letter of Authority (LOA) No. LOA-21A-2016-00000127 (SN: eLA201100065614),⁷ signed by Mr. Jethro M. Sabariaga, OIC-Regional Director (OIC-RD) for Revenue Region No. 4-San Fernando, Pampanga (RR-4), authorizing Revenue Officer (RO) Jonathan Miranda and Group Supervisor (GS) Marivic Mendoza to examine [respondent's] books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other taxes, covering the period from January 1, 2014 to December 31, 2014.

Thereafter, the Memorandum of Assignment dated March 7, 2017, was issued by Mr. Renato J. Mina, Revenue District Officer (RDO), referring the case to RO Marielle P. de Guzman (RO de Guzman) and GS Angelina L. Gozun (GS Gozun) for the continuation of the audit/investigation of [respondent] to replace the previously assigned revenue officers.⁸ [Respondent] was informed of the same in the Re-Assignment Notice on March 30, 2017.⁹ Eventually, RO de Guzman recommended the issuance of a Preliminary Assessment Notice (PAN) against [respondent].¹⁰

Subsequently, [respondent] received the PAN on Assessment No. 21-A-R-1504057404 dated 30 August 2017, finding due from it deficiency income tax, withholding tax on compensation (WTC), expanded withholding tax (EWT), and miscellaneous tax for the taxable year (TY) 2014.¹¹

On November 9, 2017, [respondent] received the FLD on Assessment No. 21-A-R-1504057404 dated October 11, 2017, from the OIC-Regional Director of the BIR Region 4, City of San Fernando, Pampanga, wherein the latter informed the former that after the audit, there was found due from it deficiency income tax, EWT, WTC, and other administrative penalties, for the TY 2014.¹²



⁷ Exhibit "R-1", BIR Records, p. 4.

⁸ Exhibit "R-4", *id.*, p. 6.

⁹ Exhibit "R-5", *id.*, p. 7.

¹⁰ Exhibit "R-6", *id.*, pp. 180 to 182.

¹¹ Par. 4, Summary of Facts, JSFI, Division Docket, Vol. I, p. 348; Exhibit "P-10", Division Docket, Vol. I, pp. 427 to 431; Exhibits "R-8" and "R-8-A", BIR Records, pp. 187 to 191.

¹² Par. 5, Summary of Facts, JSFI, Division Docket, Vol. I, p. 348; Exhibits "P-11" to "P-11-I", Division Docket, Vol. I, pp. 3416 to 325; Exhibits "R-9", "R-9-A", and "R-10" to "R-10-C", BIR Records, pp. 197 to 206.

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[Respondent] filed, on December 6, 2017, a Letter of Request for Reinvestigation on the said FLD.¹³ In reply, the BIR informed [respondent] that the docket of its tax case was referred to the Office of the Revenue District Office (RDO) No. 21A-North Pampanga for reinvestigation.¹⁴

On July 19, 2018, another LOA was issued, with No. LOA-21A-2018-00000492 (SN: eLA201500094198), authorizing RO de Guzman and GS Gozun to examine [respondent's] books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other taxes covering the period from January 1, 2014 to December 31, 2014.¹⁵

Acting on [respondent's] administrative protest for reinvestigation, RO de Guzman subsequently recommended that a Final Decision on Disputed Assessment (FDDA) be issued against [respondent].¹⁶ Thereafter, an FDDA was issued on August 9, 2018, and received by [respondent] on August 10, 2018.¹⁷ In the said FDDA, Regional Director requested the payment of [respondent's] income tax liability in the amount of P1,871,395.77, inclusive of interests and compromise penalty.

In the meantime, [respondent] filed the instant Petition for Review on July 4, 2018.¹⁸

In the Answer posted on September 28, 2018,¹⁹ [petitioner] interposed certain special and affirmative defenses, such as: (1) that [respondent] must prove that: (i) it is an entity with a contractual relationship with PAGCOR to operate a casino, (ii) it renders facilities essential for the operation of a casino, or (iii) it renders technical services to PAGCOR in the operation of a casino; (2) that [respondent] failed to prove any of the following, and thus, the exemptions provided under Presidential Decree (PD) No. 1869 may not extend to or inure to its benefit; (3) the exemption granted under PD No. 1869 is not a blanket exemption from tax; (4) that the Supreme Court ruled that PAGCOR and its licensees are subject to

¹³ Par. 6, Summary of Facts, JSFI, Division Docket, Vol. I, p. 349.

¹⁴ Exhibit "R-11", BIR Records, p. 227.

¹⁵ Exhibit "R-17", *id.*, p. 276.

¹⁶ Exhibit "R-14", *id.*, pp. 281 to 283.

¹⁷ Par. 7, Summary of Facts, JSFI, Division Docket, Vol. I, p. 349; Exhibits "R-15" and "R-16", BIR Records, pp. 284 to 286, and 289.

¹⁸ Division Docket, Vol. I, pp. 10 to 20.

¹⁹ *Id.*, pp. 123 to 127.

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5% franchise tax only on its income from gaming operations, but it is subject to corporate income tax on its income from other related services; and (5) that [respondent] is liable for the assessed deficiency income tax, plus interests and surcharges.

[Petitioner] transmitted the BIR Records on October 1, 2018.²⁰

The pre-trial conference was set and held on November 22, 2018.²¹ Prior thereto, [petitioner's] Pre-Trial Brief was filed on November 16, 2018,²² and [respondent's] Pre-Trial Brief was submitted via courier on November 19, 2018.²³

On December 12, 2018, the parties submitted their Joint Stipulation of Facts and Issues (JSFI).²⁴ The said JSFI was approved and adopted in the Pre-Trial Order dated January 14, 2019.²⁵

During the trial, [respondent] presented documentary and testimonial evidence. As part of its testimonial evidence, [respondent] offered the testimony of Ms. Noemi T. Feliciano,²⁶ [respondent's] Operations Manager.

On July 1, 2019, [respondent] filed its Formal Offer of Evidence.²⁷ [Petitioner] failed to file any comment thereon.²⁸

In the Resolution²⁹ dated August 9, 2019, the Court admitted [respondent's] exhibits, except for Exhibits "P-12-D" to "P-12-N", for failure to present the originals for comparison.

²⁰ Compliance dated October 1, 2018, Division Docket, Vol. I, pp. 118 to 120.

²¹ Notice of Pre-Trial Conference dated October 8, 2018. Docket, Vol. I, pp. 130 to 131; Minutes of the hearing held on, and Order dated, November 22, 2018, Division Docket, Vol. I, pp. 257 to 258.

²² Division Docket, Vol. I, pp. 133 to 136.

²³ *Id.*, pp. 138 to 146.

²⁴ *Id.*, pp. 348 to 352.

²⁵ *Id.*, pp. 353 to 356.

²⁶ Exhibit "P-16", Division Docket, Vol. I, pp. 259 to 269; Minutes of the hearing held on, and Order dated January 23, 2019, Division Docket, Vol. I, pp. 358 to 358-A.

²⁷ Division Docket, Vol. I, pp. 387 to 391.

²⁸ Records Verification dated July 12, 2019 issued by the Judicial Records Division of this Court, Division Docket, Vol. I, p. 450.

²⁹ Division Docket, Vol. II, pp. 452 to 453.

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For his part, [petitioner] likewise set forth his documentary and testimonial evidence. He proffered the sole testimony of Ms. Marielle P. de Guzman,³⁰ a Revenue Officer I at the BIR.

[Petitioner's] Formal Offer of Evidence was filed on September 13, 2019.³¹ [Respondent] posted its Comment/Opposition (To the Formal Offer of Evidence) on September 23, 2019.³² In the Court's Resolution³³ dated October 29, 2019, [petitioner's] exhibits were admitted in evidence.

[Petitioner] submitted his Memorandum on December 4, 2019,³⁴ while [respondent's] Memorandum was posted on December 3, 2019.³⁵

On October 7, 2020, the Court in Division rendered the assailed Decision granting the Petition for Review, ordering the cancellation, and setting aside the assessment issued against respondent for being void. The Court in Division found that after LOA No. LOA-21A-2016-00000127 (SN: eLA201100065614) was issued on May 17, 2016, and received by respondent on May 18, 2016, authorizing Revenue Officer (RO) Jonathan Miranda and Group Supervisor (GS) Marivic Mendoza to conduct a tax investigation against respondent, the BIR, thru Revenue District Officer Renato J. Mina, subsequently issued a Memorandum of Assignment (MOA) to RO de Guzman and GS Gozun on March 7, 2017, to continue such investigation without giving another LOA. With no LOA issued in their favor, RO de Guzman and GS Gozun were not validly authorized to investigate respondent. Thus, without the requisite authority to examine respondent's books of accounts and other accounting records, the PAN on Assessment No. 21-A-R-1504057404 dated 30 August 2017 with Details of Discrepancies and the FLD on Assessment No. 21-A-R-1504057404 dated 11 October 2017 are void, says the Court in Division.

³⁰ Exhibit "R-18", Division Docket, Vol. I, pp. 247 to 255; Minutes of the hearing held on, and Order dated, August 28, 2019, Division Docket, Vol. II, pp. 464 to 465.

³¹ *Id.*, pp. 469 to 475.

³² *Id.*, pp. 477 to 483.

³³ *Id.*, pp. 487 to 488.

³⁴ *Id.*, pp. 489 to 495.

³⁵ *Id.*, pp. 497 to 510.

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Aggrieved, petitioner sought reconsideration, but the same was denied in the equally assailed Resolution dated February 17, 2021. Hence, petitioner filed this appeal through a Petition for Review filed with the Court *En Banc* on March 5, 2021.

On May 31, 2021, the Court *En Banc* issued a Resolution directing respondent to file its Comment to petitioner's Petition for Review.

On July 22, 2021, the Court *En Banc* received respondent's Comment (To Petition for Review) filed via registered mail on July 12, 2021.

On November 15, 2021, a Resolution was issued referring the instant case for mediation in the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) under Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.

On March 16, 2022, considering the report of the PMC-CTA that the parties decided not to have their case mediated by the PMC-CTA, and considering further that respondent already filed its Comment (To Petition for Review), the Court *En Banc* issued a Resolution submitting the case for decision.

Hence, this Decision.

ASSIGNMENT OF ERRORS

In his Petition for Review, petitioner assigns the following errors allegedly committed by the Court in Division:

- I. WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE INVESTIGATING REVENUE OFFICERS DO NOT HAVE AUTHORITY TO CONDUCT THE INVESTIGATION AND CONDUCT THE ASSESSMENT.

- II. THE HONORABLE COURT IN DIVISION ERRED IN APPLYING REVENUE MEMORANDUM ORDER NO. (RMO) 43-90 AS IMPLEMENTING RULES AND REGULATIONS OF THE NATIONAL

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INTERNAL REVENUE CODE OF 1997, AS
AMENDED.

- III. THE HONORABLE COURT IN DIVISION ERRED
IN RULING THAT THE RESPONDENT IS NOT
LIABLE FOR THE DEFICIENCY TAXES
ASSESSED.

Petitioner's Arguments:

Contrary to the ruling of the Court in Division, petitioner contends that the investigating ROs, RO Jonathan Miranda and GS Marivic Mendoza, were assigned to examine respondent under a validly issued LOA. Thereafter, an MOA was issued "pursuant to the LOA," assigning the continuation of the investigation to RO Marielle P. De Guzman and GS Angelina L. Gozun. Purportedly, despite the absence of a second LOA, RO de Guzman and GS Gozun continued the investigation under a valid LOA. No circumstance renders the LOA invalid just because the ROs named therein happened to be reassigned or transferred, says the petitioner citing *Orient Overseas Container Line Ltd. vs. CIR*.³⁶

Petitioner further argues that the NIRC of 1997, as amended (1997 Tax Code), merely provides that the RO's investigation must be made pursuant to a valid LOA; that there is no requirement in the 1997 Tax Code requiring that the names of the ROs be included in the LOA; and that while the RMOs issued by the BIR requires that a new LOA be issued to clothe the ROs with authority to continue the investigation, these RMOs do not and cannot modify, amend, or repeal the 1997 Tax Code.

Petitioner likewise claims that the Court in Division erred in treating RMO 43-90 as implementing rules of the 1997 Tax Code; that prior to the promulgation of the 1997 Tax Code, the LOA was merely an administrative tool which was devised to account for audit activities under audit programs; that it was not a statutory requirement, but a mere formal requirement – otherwise, it can be claimed that taxpayers audited for several decades prior to 1997 were not accorded due process for lack of an LOA; that it is incorrect to say that RMO 43-90 is still effective because it does not have any incompatibility with the

³⁶ CTA Case No. 9179, August 2, 2018.

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1997 Tax Code; that the incompatibility is apparent – RMO 43-90 declares that “any re-assignment of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A,” but in current issuances, there is no such requirement, citing RMO 69-10; and that in addition to the incompatibility, RMO 8-2006 issued after the advent of the 1997 Tax Code, which seeks to protect the taxpayer from multiple LOAs, is incompatible with RMO 43-90 which requires the issuance of another LOA every time an RO is reassigned or transferred.

Petitioner added that the rule requiring that investigation must be made under a valid LOA is rooted in the dictates of due process; that following the definition of due process in *Ledesma vs. Court of Appeals*,³⁷ petitioner submits that due process only requires that the taxpayer be given an opportunity to be notified of the investigation being conducted against him, and that the taxpayer is given a chance to explain or defend himself; that the taxpayer must also be afforded the opportunity to seek a reconsideration of the action or ruling complained of; and that in the case at bar, respondent was afforded all of the said requirements, says petitioner.

In closing, petitioner insists that respondent is liable for the assessed deficiency taxes. According to petitioner, the tax exemption granted under Section 13(2)(b) of Presidential Decree (PD) No. 1869 shall inure only to those entities: (1) in contract with PAGCOR in running the operations of the casino; or (2) those which provides facilities essential for the casino; and finally, (3) those who render technical services to PAGCOR in the operation of the casino. However, none of these was shown by respondent in the present case.

Respondent's Arguments:

In its Comment (To Petition for Review),³⁸ respondent counter-argues that the Court in Division correctly ruled that the investigating ROs did not have the authority to conduct the investigation and assessment; that the Court in Division's conclusion was based on its findings of facts and the relevant provisions of the 1997 Tax Code; and that for failure to show how the Court in Division committed an error in its findings of

³⁷ G.R. No. 166780, December 27, 2007.

³⁸ *En Banc* Docket, pp. 44-54.

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facts and conclusions of law, the instant Petition for Review should be denied.

Respondent further argues that the Court in Division did not apply RMO 43-90 as implementing rules and regulations of the 1997 Tax Code in reaching its conclusion in the Decision dated October 7, 2020. Instead, petitioner raised the application of RMO 43-90 in his Motion for Reconsideration, which the Court in Division resolved in its Resolution dated February 17, 2021.

Lastly, respondent likewise contends that the Court in Division correctly ruled that it is not liable for deficiency taxes because the assessment was void for lack of a valid LOA. As succinctly stated by the Court in Division, “void assessment bears no valid fruit.”

THE COURT EN BANC’S RULING

The Court En Banc has jurisdiction to take cognizance of the instant Petition for Review as the same was timely filed.

The Court already tackled the timeliness of the filing of the instant Petition for Review in its Resolution³⁹ dated May 31, 2021, as follows:

On October 7, 2020, the Second Division of this Court issued a Decision.

On October 22, 2020, the Commissioner of Internal Revenue (CIR) filed a Motion for Reconsideration. The Court in Division denied the Motion in its Resolution dated February 17, 2021. The CIR received a copy of the said Resolution on February 19, 2021. Thus, the CIR had until **March 6, 2021**, to file a Petition for Review before this Court.

On **March 5, 2021**, the CIR filed the Petition for Review.

Evidently, the instant Petition for Review was timely filed.

Now, on the merits.

³⁹ *En Banc* Docket, pp. 40-41

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A careful examination of the arguments in the instant petition shows that they were merely lifted from petitioner's *Motion for Reconsideration Re: Decision dated 07 October 2020*⁴⁰ filed with the Court in Division. Nothing in the petition was not considered and passed upon by the Court in Division in the impugned Decision and Resolution. But if only to disabuse petitioner's mind, the Court *En Banc* will discuss them again in *seriatim*.

RO Marielle P. de Guzman continued the audit of respondent without a valid LOA issued in her name; hence, she has no authority to conduct the audit, and the resulting tax assessments are null and void.


Due process requires identification of the revenue officers authorized to continue the tax audit or investigation.

RMO No. 43-90 remains effective and applicable.

Records reveal that on May 17, 2016, an LOA⁴¹ was issued by the OIC-RD for RR-4, authorizing **RO Miranda** and **GS Mendoza** to examine respondent's books of accounts and other accounting records for TY 2014.

Thereafter, an MOA⁴² was issued "pursuant to the LOA," assigning the continuation of the investigation to **RO de Guzman** and **GS Gozun**. The subject MOA serves as the only basis of their authority to conduct the audit since no new or second LOA was issued in their name.

Petitioner claims that the NIRC of 1997, as amended, merely provides that investigation of the RO must be made pursuant to a valid LOA, and there is no requirement that the names of the ROs be included in the LOA;⁴³ that an LOA is not a statutory requirement, but a mere formal requirement – otherwise, it can be claimed that taxpayers audited for several decades prior to 1997 were not accorded due process for lack of an LOA.



⁴⁰ Division Docket, pp. 527-540.

⁴¹ LOA No. LOA-21A-2016-00000127 (SN: eLA201100065614), Exhibit "R-1", BIR Records, p. 4.

⁴² The MOA is dated March 7, 2017 and was issued by RDO Renato J. Mina.

⁴³ Arguments/Discussions, Petition for Review, CTA EB No. 2448.

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Petitioner further claims that the Court in Division erred in treating RMO 43-90 as implementing rules of the 1997 Tax Code; that it is incorrect to say that RMO 43-90 is still effective; and that RMO 8-2006 issued after the advent of the 1997 Tax Code, which seeks to protect the taxpayer from multiple LOAs, is incompatible with RMO 43-90 which requires the issuance of another LOA every time an RO is reassigned or transferred.⁴⁴

Respondent counters that the Court in Division correctly ruled that the investigating ROs did not have the authority to conduct the investigation and assessment; that the Court in Division did not overlook the fact that the LOA was issued to RO Miranda and GS Mendoza when RO de Guzman conducted her examination; that the LOA⁴⁵ of RO de Guzman and GS Gozun was issued after respondent filed its Petition for Review⁴⁶ before the Court's Second Division; that there is no doubt RO de Guzman was acting without authority as she was acting under the LOA of RO Miranda when she conducted her examination; that the belated issuance of the LOA of RO de Guzman did not cure the defect of having acted without a valid LOA; and that an MOA is not the same as an LOA and does not vest upon the RO the same authority to examine a taxpayer.

Respondent further counters that the Court in Division did not apply RMO 43-90 as implementing rules and regulations of the 1997 Tax Code in reaching its conclusion in the Decision dated October 7, 2020. Instead, petitioner raised the applicability of RMO 43-90 in his Motion for Reconsideration, which the Court in Division resolved in its Resolution dated February 17, 2021.

In claiming that RO de Guzman and GS Gozun were authorized to continue the audit based on the MOA since they conducted the audit "pursuant to the LOA," petitioner implies that **when an LOA is validly issued, "any" revenue officer may then act under such LOA.**

The Court *En Banc* is not convinced.

The above arguments of petitioner relative to the authority of the RO, the sufficiency of the MOA, and the applicability of RMO 43-90, have been addressed by the Supreme Court in the

⁴⁴ *Id.*

⁴⁵ The LOA of RO de Guzman and GS Gozun, with No. LOA-21A-2018-00000492 (SN:Ela2015000094198) was issued on July 19, 2018.

⁴⁶ Filed on July 4, 2018.

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recent case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp. (McDonald's)*.⁴⁷ According to the Supreme Court:

This practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been the subject of several CTA decisions, including *Ithiel Corporation v. CIR*, *Strawberry Foods Corporation v. CIR*, *Sugar Crafts, Inc. v. CIR*, *CIR v. Marketing Convergence, Inc.*, *Exclusive Networks-PH, Inc. v. CIR*, and the decision in the court *a quo*.

The Court hereby puts an end to this practice.

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 a 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 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. (Emphasis supplied)

⁴⁷ G.R. No. 242670, May 10, 2021.

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Section 10 (c) of the NIRC provides:

SECTION 10. Revenue Regional Director. —
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. (Emphasis
supplied)

Section 13 of the NIRC provides:

SECTION 13. Authority of a Revenue Officer. — ...
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,
(Emphasis supplied)

Section D (4) of RMO No. 43-90 provides:

... 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. (Emphasis supplied)

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. ... **There must be a grant of
authority, in the form of an LOA, before any revenue
officer can conduct an examination or assessment.** ... In
the absence of such an authority, the assessment or
examination is a nullity.

**A. Due Process Requires Identification
of Revenue Officers Authorized to
Continue the Tax Audit or
Investigation**

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The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In **Medicaid Philippines, Inc. v. Commissioner of Internal Revenue**, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient **if no corresponding LOA was issued**. In that case, We have stated that "[d]ue process demands ... that after [a Letter Notice] has served its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case." The result of the absence of a LOA is the **nullity of the examination and assessment** based on the violation of the taxpayer's right to due process.

... Due process requires that taxpayers have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the **LOAs must contain the names of the authorized revenue officers**. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, "any" revenue officer may then act under such validly issued LOA.

The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the representatives to the revenue officers, pursuant to Sections 6, 10 (c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, i.e., a revenue officer. Hence, **petitioner is mistaken** to characterize the LOA as a document "issued" to the taxpayer, and that once so issued, **"any" revenue officer** may then act pursuant to such authority.

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

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... **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, ... 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 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, ... 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, ... 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), 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.

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The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases.

...

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.** (Emphasis supplied)

The Supreme Court emphasized in *McDonald's* that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representatives to grant the power to examine the books of accounts of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO 43-90 dated September 20, 1990.

The Supreme Court, speaking though Justice Jhosep Y. Lopez, even noted in *McDonald's* that:

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."

In the more recent case of *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*,⁴⁸ the Supreme Court also discussed the LOA, the MOA and RMO 43-90, viz.:

Revenue Officer Baguisan who conducted the audit of petitioner's books of accounts was not authorized pursuant to a valid LOA.

⁴⁸ G.R. No. 241848. May 14, 2021.

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...

However, it appeared that Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Bagauisan who audited petitioner by virtue of a **memorandum of assignment** signed by revenue district officer Nacar, which reads:

...

The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 from revenue officer Cacdac to revenue officer Bagauisan necessitates the issuance of a new LOA. **This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit,"** which provides that:

C. Other policies for issuance of L/As.

xxx xxx xxx

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.

Here, there was no new LOA issued naming Bagauisan as the new revenue officer who would conduct the examination of petitioner's books of accounts. The authority of Bagauisan is anchored only upon the memorandum of assignment signed by revenue district officer Nacar.

Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer:

...

Thus, revenue officer Bagauisan is not authorized by a new LOA to conduct an audit of petitioner's books of accounts for TY 2009.

The lack of a valid LOA authorizing Revenue Officer Bagauisan to conduct an audit on petitioner makes the assessment void.

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...

In *Medicard Philippines, Inc. v. CIR*, the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. The Letter of Notice earlier sent to Medi card Philippines was not validly converted into a LOA. According to the Court in Medicard Philippines:

What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**

... The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. **The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results in a void assessment. Being a void assessment, the same bears no fruit.** *(Emphasis supplied)*

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.*,⁴⁹ the Supreme Court was likewise categorical in saying that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Revenue Regional Director and emphasized that the *Referral Memorandum* issued by the RDO directing another RO to continue with the examination is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.:*

As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that **a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.

Here, the CTA *en banc* found that **the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the**

⁴⁹ G.R. No. 238352, September 12, 2018.

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examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.

Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority.** To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA. (*Emphasis supplied*)

In *Commissioner of Internal Revenue vs. Opulent Landowners, Inc.*,⁵⁰ the Supreme Court pointed out that an LOA is **statutorily required** to clothe ROs with authority, and only the ROs **actually named** therein are authorized to examine taxpayers, to wit:

... Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. It is axiomatic that only the revenue officers **actually named** under the LOA are authorized to examine the taxpayer. This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90 ... **In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.**" (*Emphasis supplied*)

In line with the foregoing jurisprudential pronouncements, there must be a grant of authority in the form of an LOA before any revenue officer can conduct an examination or assessment.⁵¹ Only the revenue officers actually named under the LOA are authorized to examine the taxpayer.⁵² Only the CIR and his duly authorized representatives may issue the LOA; the authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and other officials authorized by the CIR.⁵³



⁵⁰ G.R. Nos. 249883-84, January 27, 2020.

⁵¹ CIR vs. McDonalds Phil. Realty Corp., G.R. No. 242670, May 10, 2021 *citing* CIR vs. Sony Phils, Inc., G.R. 178697, November 17, 2010.

⁵² CIR vs. Opulent Landowners, Inc., G.R. Nos. 249883-84, January 27, 2020.

⁵³ CIR vs. McDonalds Phil. Realty Corp., G.R. No. 242670, May 10, 2021 *citing* Sections 6, 10 and 13 of the NIRC of 1997 and Sec. D (4) of RMO 43-90.

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Moreover, the reassignment or transfer of a revenue officer requires the issuance of a new or amended LOA that will enable the substitute or replacement RO to continue the audit or investigation.⁵⁴ A 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.⁵⁵ Neither is a Referral Memorandum issued by the RDO directing another RO to continue with the examination equivalent to an LOA, nor does it cure the RO's lack of authority.⁵⁶ In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against the respondent, the resulting assessments are void.⁵⁷

In the case at bar, there is no denying that RO de Guzman and GS Gozun were not armed with a valid LOA when they continued the audit and investigation of the respondent's books of accounts and other accounting records. While RDO Renato J. Mina issued an MOA⁵⁸ in their favor, the same cannot be regarded as a valid LOA within the context of the law and the prevailing jurisprudence.

Moreover, the belated issuance of LOA in favor of RO de Guzman and GS Gozun⁵⁹ on July 19, 2018, did not cure the defect of having continued the audit investigation of the respondent without a valid LOA. We quote with approval the pertinent ruling of the Court in Division, *viz.*:

The subsequent LOA No. LOA-21A-2018-00000492, addressed to RO de Guzman and GS Gozun, was issued on July 19, 2018, primarily for the purpose of reinvestigation as testified by respondent's witness, RO de Guzman, to wit:

46. Q: You mentioned that you conducted the reinvestigation for this case. What is your authority to do so?

A: A Letter of Authority with LOA No. 21A-2018-00000492 dated July 19, 2018, was issued authorizing me to conduct an audit or investigation of petitioner's books of accounts and other accounting records

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ CIR vs. Composite Materials, Inc., G.R. 238352, September 12, 2018.

⁵⁷ CIR vs. Opulent Landowners, Inc., G.R. Nos. 249883-84, January 27, 2020.

⁵⁸ MOA with No. MOA21A2016LOA24014 dated March 7, 2017, Exhibit R-4, BIR Records. p. 6.

⁵⁹ LOA No. LOA-21A-2018-00000492 issued in the name of RO de Guzman and GS Gozun, Exhibit R-17, *id.*, p.276.

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in relation to its request for reinvestigation."

Thus, even if respondent has issued the subsequent LOA No. LOA-21A-2018-00000492, **the defect, i.e., the absence of authority given to RO de Guzman and GS Gozun, cannot be cured.** This is simply because the investigation was already conducted when the said subsequent LOA was issued. More importantly, it is noteworthy that petitioner already appealed respondent's inaction on July 4, 2018, before the subsequent LOA was issued on July 19, 2018. (*Citations omitted; Boldfacing and underscoring supplied*)


Accordingly, the absence of a new or separate LOA specifically identifying RO de Guzman as the new RO who would continue the audit examination of the respondent's books of accounts for TY 2014 rendered her without authority to conduct the said audit and recommend the issuance of the deficiency tax assessments. Hence, the resulting tax assessments are null and void. For being void, the same bears no valid fruit.

Having arrived at the foregoing conclusion, We find it unnecessary to discuss and rule upon the other points raised in the instant petition.

We likewise find no reason to reverse or modify the findings of the Court in Division.

WHEREFORE, the instant *Petition for Review* filed by the petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. The assailed Decision dated October 7, 2020, and Resolution dated February 17, 2021, of the Second Division in CTA Case No. 9868 are **AFFIRMED**.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice

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Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Er Linda P. Uy
ERLINDA P. UY
Associate Justice

Ma. Belen Ringpis-Liban
MA. BELEN RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Jean Marie A. Bacorro-Villena
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Maria Rowena G. Modesto-San Pedro
MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice

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

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C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII 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