

THIRD DIVISION

[G.R. No. 242670, May 10, 2021]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
MCDONALD'S PHILIPPINES REALTY CORP., RESPONDENT.

DECISION

LOPEZ, J., J.:

The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (*LOA*) and substituting or replacing them with new revenue officers 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 Commissioner of Internal Revenue (*CIR*) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (*BIR*) rules and regulations on the requirement of an *LOA* in the grant of authority by the *CIR* or his duly authorized representative to examine the taxpayer's books of accounts.

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeks to set aside the Decision^[2] dated January 4, 2018, and the Resolution^[3] dated September 27, 2018 of the Court of Tax Appeals (*CTA*) *En Banc* in *CTA* EB No. 1535, which affirmed the *CTA* Division's Decision dated June 1, 2016 and the Resolution dated October 3, 2016 in *CTA* Case No. 8655, invalidating the P16,229,506.83 assessment of deficiency value-added tax (*VAT*) for calendar year (*C.Y.*) 2006 against the respondent.

The Facts

The *CIR* (*petitioner*), is the duly appointed Commissioner of the *BIR*, with the authority to carry out the functions, duties and responsibilities of the said office under the *National Internal Revenue Code of 1997 (NIRC)*, as amended, including the power to decide disputed assessments.^[4] The petitioner holds office at the *BIR* National Office Building, Agham Road, Diliman, Quezon City.^[5]

McDonald's Philippines Realty Corporation (*respondent*), is a corporation organized and existing under the laws of Delaware, USA, and is licensed to do business in the Philippines through its branch office, with office address at 17th Floor, Citibank Center Building, Paseo de Roxas, Salcedo Village, Makati City.^[6]

Respondent established its branch office in the Philippines for the purpose of purchasing and leasing back two existing McDonald's Restaurants to Golden Arches Development

Corporation, and to engage in the development of new McDonald's restaurant sites, which would then be leased to McGeorge Foods, Inc.^[7]

On August 31, 2007, the BIR Large Taxpayers Service issued LOA No. 00006717 (*August 31, 2007 LOA*) to the following revenue officers: Eulema Demadura (*Demadura*), Lover Loveres, Josa Gomez, and Emalyn dela Cruz.^[8] The LOA authorized the said revenue officers to examine the books of accounts and other accounting records of the respondent for all internal revenue taxes for January 1, 2006 to December 31, 2006.^[9]

On December 2, 2008, the BIR transferred the assignment of Demadura and, pursuant to Referral Memorandum No. 122-LOA-1208-00039, directed and designated Rona Marcellano (*Marcellano*) to continue the audit of the respondent's books of accounts.^[10]

No new LOA was issued in the name of Marcellano to continue the conduct of audit of the respondent's books of accounts. Moreover, the August 31, 2007 LOA was not amended or modified to include the name of Marcellano. The referral memorandum states that Marcellano will continue the pending audit of Demadura pursuant to the August 31, 2007 LOA.^[11]

On January 25, 2011, the petitioner issued a Formal Letter of Demand (*FLD*) dated January 11, 2011 to the respondent. The FLD demands payment of deficiency income tax and VAT liabilities for C.Y. 2006 in the aggregate amount of P17,486,224.38, inclusive of interest.^[12]

On February 23, 2011, the respondent filed a protest letter with the petitioner, requesting the cancellation and withdrawal of the deficiency income tax and VAT assessments for C.Y. 2006.^[13]

On April 18, 2013, the petitioner issued the Final Decision on Disputed Assessment (*FDDA*).^[14] The FDDA (i) granted the respondent's request for cancellation of deficiency income tax assessments for C.Y. 2006, and (ii) reiterated the petitioner's demand for payment of the respondent's deficiency VAT for C.Y. 2006 in the total amount of P16,229,506.83.^[15]

On May 20, 2013, the respondent filed a petition for review with the CTA Division.^[16] The CTA Division declared the C.Y. 2006 assessment void on the ground that Marcellano was not authorized by way of an LOA to investigate the books of accounts of the respondent.^[17] The petitioner filed a motion for reconsideration with the CTA Division.^[18] The CTA Division denied the motion.^[19]

On November 7, 2016, the petitioner filed a petition for review with the CTA *En Banc*.^[20] The CTA *En Banc* denied the petition for lack of merit.

Ruling of the CTA En Banc

The CTA *En Banc* ruled: (i) that the revenue officer who conducted the audit of the respondent's books of accounts acted without authority;^[21] (ii) that the absence of an LOA issued in the name of the substitute or replacement revenue officer violated the respondent's right to due process;^[22] and (iii) that the respondent is not estopped from questioning the revenue officer's lack of authority.^[23]

The dispositive portion of the CTA *En Banc* Decision dated January 4, 2018 states:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated June 1, 2016 and the Resolution dated October 3, 2016 of the Court in Division, are hereby **AFFIRMED** and **UPHELD**.

SO ORDERED.^[24] (Emphasis in the original)

The petitioner filed a motion for reconsideration, which was denied by the CTA *En Banc*.^[25]

The Issue

Whether a separate or amended LOA must be issued in the name of a substitute or replacement revenue officer in case of reassignment or transfer of a revenue officer originally named in a previously issued LOA.

Petitioner's Arguments

The petitioner claims that once an LOA had issued, the revenue officer originally named in the LOA may be substituted or replaced by another revenue officer in case the original revenue officer is reassigned or transferred to another case, without the need to amend the said LOA or to issue a separate and new LOA in the name of the substitute or replacement revenue officer.^[26]

To support this claim, the petitioner argues: (i) that the LOA is not in fact issued to the revenue officer, but to the taxpayer, and thus "any" revenue officer may act under the validly issued LOA during the period of audit or investigation;^[27] (ii) that Revenue Memorandum Order (RMO) No. 43-90 dated September 20, 1990, entitled "*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 requires the issuance of a new and separate LOA in case of reassignment or transfer of cases of revenue officers, is no longer in effect, considering that it was issued prior to the National Internal Revenue Code;^[28] (iii) that assuming RMO No. 43-90 dated September 20, 1990 is still in effect, nothing in the said issuance provides that the effect of a lack of LOA results in the nullity of the assessment;^[29] (iv) that *Commissioner of Internal Revenue v. Sony Philippines, Inc.*^[30] and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,^[31] where We held that an LOA must authorize a revenue officer to examine

taxpayer's books of accounts, which are not squarely applicable to this case,^[32] (v) that there is no requirement that a revenue officer should be identified in the LOA itself;^[33] (vi) that the LOA at the time Marcellano conducted the audit was not yet ineffective for lack of revalidation;^[34] and (vii) that the BIR's General Audit Procedures and Documentation, which provides the standard operating procedures in examining books of accounts of taxpayers, is not applicable.^[35]

Respondent's Arguments

The respondent claims that in case the original revenue officer is reassigned or transferred to another case, the substitute or replacement revenue officer must hold a new or amended LOA issued in his/her name in order to prove the grant of authority to examine the books of accounts of the taxpayer and to assess the correct tax.^[36]

To support this claim, the respondent argues: (i) that Section 13 of the NIRC provides that a revenue officer may only examine taxpayers pursuant to an LOA, and this requirement demands that the LOA must identify the revenue officer duly authorized to conduct the examination;^[37] (ii) that RMO No. 43-90 dated September 20, 1990 was not invalidated by the promulgation of the NIRC, since the provisions of this issuance are not inconsistent with the NIRC;^[38] (iii) that the revenue officer's lack of authority to examine a taxpayer's books of accounts constitutes a violation of the taxpayer's right to due process which, consequently, invalidates the resulting assessment;^[39] (iv) that the referral memorandum issued in favor of Marcellano is not a valid substitute for the LOA required to be issued under Section 13 of the NIRC;^[40] and (v) that the cases of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*^[41] and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*^[42] are applicable to this case.^[43]

The Court's Ruling

The petition is denied for lack of merit.

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.^[44]

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*,^[45] *Strawberry Foods Corporation v. CIR*,^[46] *Sugar Crafts, Inc. v. CIR*,^[47] *CIR v. Marketing Convergence, Inc.*,^[48] *Exclusive Networks-PH Inc. v. CIR*,^[49] and the decision in the court *a quo*.^[50]

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.^[51] 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.^[52] 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.^[53]

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)

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:

X X X

(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. - 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. (Emphasis supplied)

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 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.^[54] 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.^[55] There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment.^[56] The revenue officer so authorized must not go beyond the authority given.^[57] In the absence of such an authority, the assessment or examination is a nullity.^[58]

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

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 *Medicard 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.^[59] In that case, We have stated that "[d]ue process demands x x x that after [a Letter Notice] has serve 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."^[60] 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.^[61]

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must 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.^[62] 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.^[63]

The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized 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***

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 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], and revalidation of L/As^[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: "reassignment/transfer of cases to another RO(s)", on the one hand, and "revalidation of LIAs 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 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) 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."

***D. Revenue Officer
Marcellano Was***

*Not Authorized to
Continue the Audit
of the
Respondent's
Books of Accounts
for C.Y. 2006,
Rendering the
Assessment Void*

Applying the above principles to the case at bar, it is clear that Marcellano was not authorized under a new and separate, or amended, LOA to continue the audit or investigation of the respondent's books of accounts for C.Y. 2006. The August 31, 2007 LOA was originally issued to revenue officers Eulema Demadura, Lover Loveres, Josa Gomez, and Emalyn dela Cruz. The original revenue officer, Demadura, was transferred to another assignment. Pursuant to a mere referral memorandum, revenue officer Marcellano continued the audit of the respondent's books of accounts. No new LOA was issued in the name of Marcellano to conduct the audit of the respondent's books of accounts. Moreover, the August 31, 2007 LOA was not amended or modified to include the name of Marcellano. Hence, the authority under which Marcellano continued the audit or investigation was not pursuant to the statutory power of the CIR or his duly authorized representative to grant the authority to examine the taxpayer's books of accounts.

In summary, We rule 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 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 representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly R.MO No. 43-90 dated September 20, 1990.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** for lack of merit. The Decision dated January 4, 2018 and the Resolution dated September 21, 2018 of the Court of Tax Appeals *En Banc* in CTA EB No. 1535, which affirmed the CTA Division's Decision dated June 1, 2016 and the Resolution dated October 3, 2016 in CTA Case No. 8655, invalidating the P16,229,506.83 assessment of deficiency value-added tax for calendar year 2006 against the respondent, are **AFFIRMED**.

SO ORDERED.

Leonen, (Chairperson), Hernando, Inting, and Delos Santos, JJ., concur.

[1] *Rollo*, pp. 57-88.

[2] *Rollo*, pp. 98-115.

[3] *Rollo*, pp. 116-120.