

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB No. 2536
INTERNAL REVENUE, (CTA Case No. 9689)
Petitioner,

- versus -

EXCLUSIVE NETWORKS-PH
INC., formerly TRANSITION
SYSTEMS PHILS. PTE LTD.,
INC. herein represented by
MICHELLE G. MEJIA,
Respondent.

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

Promulgated:

JUL 04 2023

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DECISION

REYES-FAJARDO, J.:

This Petition for Review¹ dated November 25, 2021, filed by the Commissioner of Internal Revenue, challenges the Decision² dated February 23, 2021 and Resolution³ dated September 20, 2021 in CTA Case No. 9689, whereby the Second Division of the Court (Court in Division) cancelled the Commissioner of Internal Revenue (CIR)'s Formal Letter of Demand with Details of Discrepancies Demand No. 43A-B270-13 and Assessment Notices dated 23 January 2017 issued against Exclusive Networks-PH Inc., (Formerly: Transition Systems

¹ Rollo, at pp. 5-13.

² Id. at pp. 15-38.

³ Id. at pp. 39-43.

Phils. Pte Ltd., Inc.), representing deficiency income tax (IT) and value-added tax (VAT) for taxable year (TY) 2013.

PARTIES

Petitioner is empowered to perform the duties of his office, including, among others, the duty to act on protest of tax assessments, as provided by law. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent is a corporation duly organized and existing under the laws of the Philippines, with principal office address at 1505 Orient Square Building, Ortigas Center, Barangay San Antonio, Pasig City. Its former corporate name is Transition Systems Phils. Pte Ltd., Inc., which was amended to Exclusive Networks-PH, Inc. by virtue of the Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission (SEC) on 02 March 2017.

FACTS

On November 3, 2014, respondent received a Letter of Authority (LOA) No. LOA-43A-2014-00000963 (SN: eLA201100094682) dated October 30, 2014, issued by Alfredo V. Misajon, Regional Director of Revenue Region No. 7-Quezon City (RD Misajon), authorizing Revenue Officer Rhea Domingo (RO Domingo) and Group Supervisor Maricar Favis (GS Favis) to examine its books of accounts and other accounting records for all internal revenue taxes covering the period of January 1, 2013 to December 31, 2013. This was accompanied by a Letter dated October 31, 2014, requesting for the presentation of respondent's books of accounts and other related records.

On November 19, 2014, respondent received BIR's First Notice dated November 17, 2014, issued by RO Domingo and reviewed by GS Favis, requiring the presentation of its accounting books and records pursuant to said LOA.

In response to said First Notice, respondent submitted several documents to BIR-Revenue District Office (RDO) No. 43A-East Pasig,

which were received by RO Domingo on November 25, 2014 and December 2, 2014.

On December 5, 2014, petitioner received a Second and Final Request for Presentation of Records dated December 2, 2014, issued by Revenue District Officer Josephine S. Virtucio (RDO Virtucio), stating that petitioner has not presented the required books of accounts and other accounting records despite the repeated written requests.

On May 21, 2015, RO Domingo conducted an audit at petitioner's main office.

On April 6, 2016, Emilia C. Combes (RDO Combes), Revenue District Officer of RDO 43A-East Pasig, issued a Memorandum of Assignment (MOA) No. RR7-30367, directing RO Lilibeth Nazario (RO Nazario) and GS Nenita Crespo (GS Crespo) to continue the audit and investigation of respondent, and replace the previously assigned ROs who retired/transferred to another office.

On January 6, 2017, respondent received petitioner's Preliminary Assessment Notice (PAN).

On January 23, 2017, respondent received petitioner's Formal Letter of Demand with Details of Discrepancies Demand No. 43A-B270-13, and Assessment Notices (BIR Form No. 1708) (FLD/FAN), assessing it for deficiency IT and VAT for TY 2013 in the aggregate amount of ₱16,377,797.24 and ₱7,570,452.47, inclusive of interest.

On February 22, 2017, respondent protested the FLD/FAN by way of a request for reconsideration, claiming that the same are null and void and have no basis both in fact and in law.

On September 20, 2017, respondent filed a Petition for Review before the Court in Division, docketed as CTA Case No. 9689. Its judicial recourse was on account of petitioner's inaction on its request for reconsideration.

On February 23, 2021, the Court in Division rendered the challenged Decision, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, the Petition for Review filed by [respondent] Exclusive Networks-PH, Inc. (formerly Transition Systems Phils. Pte Ltd., Inc.) is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancies Demand No. 43A-B270-13 and Assessment Notices dated 23 January 2017 issued against [respondent] representing deficiency income tax and value-added tax for taxable year 2013 are **CANCELLED** and **SET ASIDE**.

Consequently, [petitioner] Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes arising from the Formal Letter of Demand with Details of Discrepancies Demand No. 43A-B270-13 and Assessment Notices dated 23 January 2017 in the amounts of P16,377,797.24 and P7,570,452.47, inclusive of interest, representing deficiency income tax and value-added tax, respectively, for taxable year 2013.

SO ORDERED.

On March 11, 2021, petitioner filed a *Motion for Reconsideration*. (Decision dated 23 February 2021) to the challenged Decision dated February 23, 2021.

On September 20, 2021, the Court in Division rendered the equally challenged Resolution, the dispositive portion of which states:

WHEREFORE, [petitioner] Commissioner of Internal Revenue's Motion for Reconsideration dated 11 March 2021 is hereby **DENIED** for lack of merit.

On November 25, 2021, petitioner filed a Petition for Review with the Court *En Banc*, docketed as CTA EB No. 2536,⁴ to which respondent filed its comment on April 1, 2022.⁵

Under Resolution dated July 4, 2022, the CTA EB No. 2536 was submitted for decision.⁶

⁴ *Rollo*, pp. 5-13. Filed through registered mail, within the extended period granted, per Minute Resolution dated November 15, 2021.
⁵ *Id* at, pp. 53-61.
⁶ *Id* at, pp. 68-69.

ISSUE

Did the Court in Division err in declaring petitioner's deficiency tax assessments for TY 2013 against respondent void for being a product of an illegal examination of respondent's agent?

ARGUMENTS

Petitioner maintains that under Revenue Memorandum Order (RMO) No. 8-2006,⁷ the issuance of a MOA in favor of a RO is legally allowed, in case of re-assignment of the RO/s named in the LOA. Thus, by reason of re-assignment of the person named in the LOA, *i.e.*, RO Domingo, the MOA issued by RDO Combes, replacing RO Domingo, with RO Nazario under GS Crespo, to continue with the audit and examination of respondent for TY 2013 is proper.

Petitioner further insists that once the LOA is served upon the taxpayer, such as respondent, RO Nazario may now conduct an audit or examination of the taxpayer, pursuant to such LOA, irrespective of whether such RO Nazario's authority was derived from the LOA or the MOA.

Petitioner also claims that the audit of an RO through the MOA is valid since only one (1) LOA shall be issued to the same taxpayer per taxable year pursuant to RMO No. 8-2006. Specifically, an LOA was issued to respondent for TY 2013; hence, the issuance of a new LOA to authorize the RO Nazario may be dispensed with.

Petitioner, as well, believes that there is nothing in the law which provides that the ROs must be identified in the LOA to have authority to examine and audit the pertinent taxpayer.

Given that the person, *i.e.*, RO Nazario, who conducted the audit and examination of respondent for TY 2013, is endowed with authority to do so, petitioner concludes that the findings of deficiency

⁷ Subject: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

taxes in the FLD/FAN, based on RO Nazario's findings, must be sustained.

By way of Comment,⁸ respondent counters that RMO No. 43-90⁹ commands the issuance of a new LOA in cases of re-assignment or transfer of cases to another RO. Such requirement is necessitated by the taxpayer's right to know that the revenue officers are duly authorized to conduct the examination and assessment, which in turn, requires that the LOA must contain the names of the authorized ROs. No new LOA was issued by petitioner, or his duly authorized representatives, authorizing RO Nazario, and GS Crespo to continue the audit and investigation of respondent for TY 2013. For this reason, petitioner's FLD/FAN, based thereon is void.

RULING

The Petition lacks merit.

Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, requires an authority from the CIR or from his duly authorized representative before an examination of any taxpayer and the assessment of the correct amount of tax may be made:¹⁰

SEC. 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**, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: ...¹¹

⁸ Respondent's Comment (To the Petition for Review) dated March 29, 2022, *Rollo*, at pp. 53-61.

⁹ 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

¹⁰ See *Medicard Philippines, Inc., v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

¹¹ Boldfacing supplied.

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Relative thereto, Section 10(c) of the NIRC, as amended, allows the Revenue Regional Directors within the region and district offices under his jurisdiction to issue LOAs in favor of ROs 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;

In addition, Section 13 of the NIRC, as amended, provides:

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.¹²

Indeed, 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, as amended. 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.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

¹² Boldfacing supplied.

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

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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

In this case, RD Misajon issued an LOA dated October 30, 2014,¹⁶ authorizing RO Domingo and GS Favis to examine respondent's books of accounts and other accounting records, for TY 2013. However, the RO who undertook the actual examination of respondent and recommended the issuance of a PAN¹⁷ and FLD¹⁸ against it was RO Nazario, an RO not named in the LOA dated October 30, 2014.¹⁹ Neither was there an LOA in RO Nazario's name, to conduct the audit and examination of respondent for TY 2013. Nor was there any indication that the LOA dated October 30, 2014 was ever amended or modified to include RO Nazario therein. Since the examination conducted on respondent is invalid, petitioner's FLD/FAN and his deficiency tax assessments against respondent covering TY 2013 is also void.

There is no merit in petitioner's assertion that the MOA dated April 6, 2016, issued by RDO Combes, directing RO Nazario to continue the audit and investigation of respondent for the periods January 1, 2013 to December 31, 2013 is proper and procedural.

In the challenged Decision,²⁰ the Court in Division addressed the propriety of the MOA dated April 6, 2016.²¹ Particularly, the tax investigation which resulted in the Assessment Notices dated January 23, 2017 was based merely on a MOA, which was not issued by petitioner or his duly authorized representative. The authority of RO Nazario to audit respondent's deficiency IT and VAT for TY 2013 emanated from the MOA issued by RDO Combes.²² RDO Combes is not authorized by respondent, or by his duly authorized representatives to issue authority to examine taxpayers for deficiency taxes.

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 Exhibit "P-7," Docket (CTA Case No. 9689), p. 985.

¹⁷ Exhibit "R-7," BIR records (CTA Case No. 9689), between pp. 338-339.

¹⁸ Exhibit "R-10," BIR records (CTA Case No. 9689), between pages 349-350.

¹⁹ Exhibit "R-4", BIR Records (CTA Case No. 9689), unpagged.

²⁰ Pages 21-22, Decision dated February 22, 2021. *Rollo*, at pp. 15-38.

²¹ Marked as Exhibit "R-3," BIR Records, p. 310.

²² Exhibit "R-3", BIR Records (CTA Case No. 9689), p. 310.

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Pursuant to Section D(4) RMO No. 43-90²³ and RMO No. 29-2007,²⁴ these authorized representatives include only the Regional Directors, Deputy Commissioners, Assistant Commissioners/Head Revenue Executive Assistants (for large taxpayers) and other officials but only upon prior authorization by respondent himself. When Revenue District Officer Combes issued the subject MOA, she, in effect, usurped the statutory power of respondent and his duly authorized representatives to permit examination of the taxpayer.

To be sure, tax assessments issued in violation of the due process rights of a taxpayer are null and void.²⁵ *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*²⁶ is on point:

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 to any revenue officer. 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 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.

²³ *Supra* at not 10.

²⁴ Subject: Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

²⁵ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

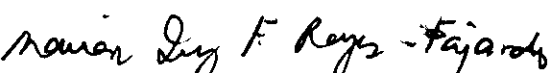
²⁶ G.R. No. 242670, May 10, 2021.

Equally unavailing is petitioner's contention that only one (1) LOA per taxable year can be issued to a taxpayer; hence, the necessity for the issuance of a MOA to another RO to continue the audit and investigation of respondent under the previously issued LOA. *Republic of the Philippines v. Robiegie Corporation*²⁷ debunked petitioner's argument, as follows:

RMO No. 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is necessitated by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation. The BIR official who will issue the new LOA also has the power to make it prevail over the old, previously issued LOA, subject of course to the control and regulation of the CIR as the statutorily designated tax investigator. It must be noted that Section 13 of the NIRC, in providing for the LOA as the mode of delegation of the CIR's investigatory powers to the ROs, likewise gave the CIR the power to regulate and define the parameters for the issuance of LOAs. The "one LOA per taxable year" rule under RMO Nos. 8-2006 and 43-90 is an example of such a regulation; and such regulation is only valid insofar as it is consistent with the provisions of the NIRC.²⁸

WHEREFORE, the Petition for Review dated November 25, 2021, filed by the Commissioner of Internal Revenue, is **DENIED**, for lack of merit. The Decision dated February 23, 2021 and Resolution dated September 20, 2021, in CTA Case No. 9689, are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice

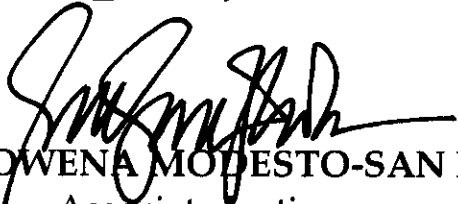
²⁷ G.R. No. 260261, October 3, 2022.

²⁸ Boldfacing supplied.


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


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
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