

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB No. 2667
(CTA Case No. 9953)

Present:

- versus -

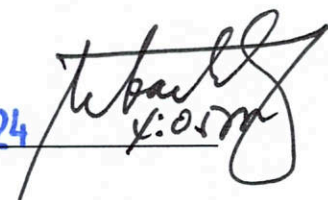
**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

**EXECUTIVE INTERNATIONAL
MOVERS, INC.,**

Respondent.

Promulgated:

JAN 18 2024



X-----X

DECISION

FERRER-FLORES, J.:

This Petition for Review filed by **Commissioner of Internal Revenue (petitioner/CIR)** on August 25, 2022,¹ seeks to nullify the Decision of the Second Division of the Court of Tax Appeals (CTA) promulgated on March 14, 2022 (**assailed Decision**),² and the Resolution dated July 19, 2022 (**assailed Resolution**),³ whereby the assessment notices under the Formal Letter of Demand (FLD) No. 43B-B057-09 dated October 30, 2013, assessing respondent Executive International Movers, Inc. for deficiency income tax (IT), value-added tax (VAT) and expanded withholding tax (EWT) for taxable year (TY) 2009 were cancelled and set aside.

¹ *Rollo*, pp. 4 to 16.

² *Rollo*, pp. 18 to 50.

³ *Rollo*, pp. 52 to 55.

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PARTIES OF THE CASE

Petitioner is CIR who is duly appointed and empowered to perform the duties of his office, including among others, the duty to act on disputed assessments, refunds of internal revenue taxes, fees, or other charges as provided by law. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.⁴

Respondent, **Executive International Movers, Inc.** (EIMI) now AGS Four Winds International Movers, Incorporated, is a corporation duly organized and existing under Philippines laws with Tax identification No. 02-648-185-000 and principal place of business at No. 8 Mercury Avenue, Barangay Bagumbayan, Quezon City (formerly No. 10 P. Antonio St., Barrio Ugong, Pasig City).⁵

FACTUAL ANTECEDENTS

The facts as found by the Court in Division are as follows:⁶

“On May 24, 2010, the Regional Director (RD) of the BIR Revenue Region No. 7, Quezon City, issued a Letter of Authority (LOA) No. 2009-00014560 authorizing Revenue Officer Ryan C. Loon (RO Loon)/Group Supervisor Danilo B. Abat (GS Abat) to examine the books of accounts and other accounting records for all internal revenue taxes of the petitioner [herein respondent] for TY 2009, or from January 1, 2009, to December 31, 2009. The LOA was received by Elizabeth L. Cordero, petitioner’s [herein respondent’s] employee.

On July 7, 2010, a Second Request for Presentation of Records dated July 1, 2010 was received by the petitioner [herein respondent].

On April 23, 2012, RO Loon submitted a Memorandum, returning the entire docket of the petitioner [herein respondent] for reassignment to another RO given his transfer to the Large Taxpayers Regular Audit Division III (LTRAD3), Large Taxpayer Service.

On April 27, 2012, a Waiver of the Defense of Prescription (Waiver) was executed by the petitioner’s [herein respondent’s] Managing Director, Christopher Ward, extending the period of the assessment until December 31, 2013.

On April 30, 2012, a Memorandum of Assignment (MOA) was issued by Revenue District Officer (RDO) Luis A. Alberto, Jr., referring the subject tax docket to Revenue Officer Mia Portia R. Mempin (RO Mempin) and

⁴ *Rollo*, p. 6.

⁵ *Ibid.*

⁶ *Rollo*, pp. 19 to 24.

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Group Supervisor Maria Cecilia Masangya (GS Masangya) for the *continuation* of the audit/investigation.

On July 27, 2012, Ms. Gina Robles, an accountant of the petitioner [herein respondent], received an undated Notice of Informal Conference (NIC) together with electronic Letter of Authority (eLOA) No. eLA-2010-00025089 dated October 21, 2010, issued by RD Jonas DP. Amora, pursuant to Revenue Memorandum Order (RMO) No. 69-2010, converting the manual LOA to electronic LOA. The said eLOA, issued still under the name of RO Loon and GS Abat, covers the same taxable period and taxes.

On June 3, 2013, petitioner [herein respondent] also received an undated Amended Notice of Informal Conference informing it about the investigation report of RO Mempin under GS Masangya.

On September 30, 2013, a Preliminary Assessment Notice (PAN) was issued by RD Jonas DP. Amora. The PAN was sent by the BIR through registered mail and received by the petitioner [herein respondent] on October 28, 2013.

On November 5, 2013, petitioner [herein respondent] filed its protest/reply to the PAN, requesting for cancellation/termination of the 2009 audit investigation including the PAN.

On the same day, November 5, 2013, petitioner [herein respondent] received Final Assessment Notices (FAN) and Formal Letter of Demand (FLD) with Demand No. 43B-B057-09 all dated October 30, 2013, assessing it for deficiency Income Tax, Value Added Tax (VAT), and Expanded Withholding Tax (EWT) in the respective amount of ₱12,785,689.97, ₱533,176.13, and ₱452,074.19 for TY 2009.

On November 8, 2013, petitioner [herein respondent], through its representative, filed a petition/motion reiterating its request for the termination of the audit investigation for TY 2009 including all notices such as the PAN dated September 30, 2013 and the FAN dated October 30, 2013.

On June 11, 2014, petitioner [herein respondent] received a Final Notice Before Seizure (FNBS) dated may 26, 2014 sent by the BIR via registered mail on June 6, 2014.

On February 5, 2015, a Warrant of Dstraint and/or Levy (WDL) was issued and constructively received by the petitioner [herein respondent] on June 11, 2015.

On September 19, 2018, petitioner's [herein respondent's] authorized representative Ria A. Sablon, received a copy of the Decision of the respondent CIR [herein petitioner] on its Request for the Lifting of the WDL."

PROCEEDINGS BEFORE THE COURT

On October 18, 2018, respondent EIMI filed its Petition for Review with prayer to issue a Temporary Restraining Order (TRO) against petitioner CIR to suspend the collection proceedings in accordance with Rule 10 of the

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Revised Rules of the Court of Tax Appeals (RRCTA).⁷ This case was then raffled to this Court's Second Division and was docketed as CTA Case No. 9953.

Petitioner CIR filed his Answer on December 10, 2018, interposing the following special and affirmative defenses, *to wit*: (1) the Court has no jurisdiction over the case; (2) the period of the Government to assess has not yet prescribed; (3) the assessment made by the Revenue Officers (ROs) assigned to conduct the audit assessment against the petitioner is valid; and (4) a TRO to suspend the collection of taxes is unwarranted.⁸

On January 25, 2019, petitioner filed his Pre-Trial Brief,⁹ while respondent filed its Pre-Trial Brief on January 28, 2019.¹⁰

The Pre-Trial Conference of the case was held on January 31, 2019.¹¹ During the Pre-Trial conference, respondent's prayer for the issuance of a TRO was treated as a Motion for Suspension of Collection of Tax. The Pre-Trial Conference proceeded and the parties were directed to file their Joint Stipulation of Facts and Issues (JSFI).

On February 11, 2019, the parties submitted their JSFI,¹² which the Court approved and adopted in the Pre-Trial Order dated February 18, 2019, thereby terminating the Pre-Trial Conference.¹³

The trial of the case then ensued.

During the hearing held on February 20, 2019, respondent manifested that it will no longer pursue the Motion to Suspend Collection of Tax, and instead, will proceed with the trial of the case on the merits.¹⁴

Respondent EIMI presented documentary and testimonial evidence. It presented Ms. Ria A. Sablon, its tax consultant and authorized representative,¹⁵ on March 25, 2019.¹⁶

⁷ Division Docket, Vol. I, pp. 10 to 28.

⁸ *Ibid.*, pp. 172 to 188.

⁹ Division Docket, Vol. I, pp. 194 to 197.

¹⁰ *Ibid.*, pp. 212 to 218.

¹¹ Minutes of the hearing and Order dated January 31, 2019, *ibid.*, pp. 222 to 223.

¹² *Ibid.*, pp. 224 to 228.

¹³ *Ibid.*, pp. 232 to 235.

¹⁴ Minutes of the hearing and Order dated February 20, 2019, *ibid.*, pp. 236 to 237.

¹⁵ Judicial Affidavit of Ria A. Sablon, Exhibit "P-17", *ibid.*, pp. 243 to 249.

¹⁶ Minutes of the hearing and Order dated March 25, 2019, *ibid.*, pp. 250 to 251.

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Respondent then filed its Formal Offer of Documentary Evidence on April 1, 2019.¹⁷ In the Resolution dated May 28, 2019,¹⁸ the Court admitted respondent's exhibits except for Exhibit "P-1-A", for not being found in the records of the case, and Exhibit "P-16", for failure to identify.

Petitioner filed a Motion for Resetting of Hearing and Motion for Leave of Court to File Demurrer to Evidence on May 22, 2019.¹⁹ The Court granted the motion for resetting; but, denied the motion for leave to file demurrer for failure of respondent to attach the demurrer to evidence.²⁰

Petitioner filed his Motion for Reconsideration and attached the Demurrer to Evidence on June 11, 2019.²¹ The Court granted the motion for reconsideration and required respondent to file its comment on the Demurrer to Evidence.²² In the Resolution dated February 14, 2020, the Court denied petitioner's Demurrer to Evidence.²³

On July 1, 2020,²⁴ petitioner presented Revenue Officers (ROs) Solita C. Mauricio²⁵ and Remedios May A. Roque;²⁶ and on February 8, 2021,²⁷ he presented RO Mia Portia R. Mempin-Bien.²⁸

Petitioner's Formal Offer of Evidence was filed on February 24, 2021.²⁹ In the Resolution dated May 20, 2021, Court admitted his exhibits.³⁰

Respondent's Memorandum was filed on October 25, 2021,³¹ whereas, petitioner failed to file his Memorandum as per Records Verification issued by this Court's Judicial Records Division on November 9, 2021.³² Thereafter, the case was submitted for decision on November 29, 2021.³³

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¹⁷ *Ibid.*, pp. 253 to 256.

¹⁸ *Ibid.*, pp. 266 to 267.

¹⁹ *Ibid.*, pp. 262 to 264.

²⁰ Minutes of the hearing and Order dated May 29, 2019, *ibid.*, pp. 268 to 269.

²¹ Division Docket, Vol. I, pp. 270 to 281.

²² *Ibid.*, pp. 289 to 290.

²³ *Ibid.*, pp. 296 to 303.

²⁴ Minutes of the hearing and Order dated July 1, 2020, *ibid.*, pp. 324 to 325.

²⁵ Affidavit, Exhibit "R-6", *ibid.*, pp. 200 to 204.

²⁶ Affidavit, *ibid.*, pp. 207 to 211.

²⁷ Minutes of the hearing and Order dated February 8, 2021, Division Docket, Vol. II, pp. 421 to 422.

²⁸ Judicial Affidavit, Exhibit "R-26", Division Docket, Vol. I, pp. 373 to 384.

²⁹ Division Docket, Vol. II, pp. 425 to 434.

³⁰ Division Docket, Vol. I, pp. 438 to 439.

³¹ Division Docket, Vol. II, pp. 446 to 454.

³² *Ibid.*, p. 455.

³³ *Ibid.*, p. 457.

The Court in Division rendered a Decision on March 14, 2022,³⁴ stating:

“**WHEREFORE**, in light of the foregoing, the instant Petition for Review is **GRANTED**. Accordingly, the following Assessment Notices under the Formal Letter of Demand No. 43B-B057-09 all dated October 30, 2013, covering TY 2009, assessing petitioner Executive for deficiency taxes, viz:

Kind of Tax	Amount
Income Tax	₱ 12,785,689.97
Value Added Tax	533,176.13
Expanded Withholding Tax	452,074.19

are **CANCELLED** and **SET ASIDE** for being null and void.

Consequently, respondent Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from proceeding with the collection of the said deficiency taxes against petitioner during the pendency of the instant case.

SO ORDERED.”

In the assailed Decision, the Court in Division ruled that it has jurisdiction over the instant case as the Petition for Review was timely filed. The Court in Division, however, found that the ROs who continued the audit investigation of respondent were not authorized by a valid LOA, thereby rendering the subject tax assessments void *ab initio*. Finally, the Court in Division held that the waiver, being defective and invalid, did not extend the period to assess respondent until December 31, 2013; hence, the right of the government to assess the alleged deficiency taxes was already barred by prescription, and therefore the assessments were rendered null and void.

Petitioner filed his Motion for Reconsideration (Decision dated March 14, 2022),³⁵ but it was denied by the Court for lack of merit in the Resolution dated July 19, 2022.³⁶ Hence, the instant Petition for Review.

Respondent EIMI filed its Comment on Petition for Review on September 27, 2022.³⁷ The instant case was then referred to mediation on October 11, 2022,³⁸ however, the parties decided not to have their case mediated by the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).³⁹

³⁴ *Ibid.*, pp. 459 to 491.
³⁵ Division Docket. Vol. II, pp. 492 to 498.
³⁶ *Ibid.*, pp. 504 to 507.
³⁷ *Rollo*, pp. 62 to 63.
³⁸ *Rollo*, pp. 65 to 66.
³⁹ *Rollo*, p. 67.

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On January 18, 2023, the case was then submitted for decision.⁴⁰

ISSUES

Petitioner CIR raised the following ground to support his petition:⁴¹

Whether the Honorable Court erred in granting the Petition for Review thereby canceling and setting aside the Assessment Notices and Formal Letter of Demand for the 2009 taxable year of respondent in the amount of ₱12,785,689.97 for Income Tax, ₱533,176.13 for Value-added Tax, and ₱452,074.19 for Expanded Withholding Tax, inclusive of increments.

ARGUMENTS

Petitioner argues that a duly authorized RO may conduct the audit assessment *not because of, but pursuant to* the Letter of Authority. Petitioner claims that reliance on the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* (Medicard case),⁴² is untenable as it involves a total absence of LOA, which the Court concluded could not be supplanted by a mere Letter Notice. Petitioner maintains that under Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, the power of the Commissioner to make assessments may be delegated to his duly authorized representatives. The PAN and FAN issued against respondent were signed by the Revenue Regional Director (RRD), who holds the authority to make assessments. The ROs, who are agents of the RRD and who carried out the audit investigation, were under the control and supervision of the RRD. Finally, petitioner asserts that, in view of the importance of taxes as these are the lifeblood of the government, collection of deficiency taxes should not be barred.

On the other hand, respondent insists that the arguments raised by petitioner in the instant Petition for Review are mere reiterations or a rehash of matters which have already been considered and resolved by the Second Division of the Court in the assailed Decision dated March 14, 2022 and the Resolution dated July 19, 2022. It posits that the issuance of a MOA reassigning the task of conducting the audit investigation to another RO does not and cannot render null and nugatory the clear mandate of Section 6 of the NIRC of 1997, as amended, requiring the issuance of a LOA, which shall indicate the names of ROs authorized to conduct the audit of a taxpayer's books of accounts and other accounting records. Respondent manifests its observation that petitioner's interpretation of the words "pursuant to" seems

⁴⁰ *Rollo*, pp. 69 to 70.

⁴¹ Grounds, Petition for Review, *Rollo*, p. 8.

⁴² G.R. No. 222743, April 5, 2017.

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to be tantamount to making a mockery of this Court and the whole justice system.

RULING OF THE COURT *EN BANC*

We uphold the ruling of the Court in Division.

Timeliness of the Petition for Review

Records show that, on July 26, 2022, petitioner received the Resolution dated July 19, 2022.⁴³ Counting fifteen (15) days therefrom, petitioner had until August 10, 2022 within which to file his Petition for Review before the Court En Banc. On August 10, 2022, petitioner filed a Motion for Extension of Time to File Petition for Review,⁴⁴ requesting for an additional period of fifteen (15) days or until August 25, 2022, within which to file his Petition for Review, which was granted as per minute resolution dated August 11, 2022.⁴⁵ On August 25, 2022, petitioner timely filed his Petition for Review.

MOA does not give ample authority to RO Mempo and GS Masangya to continue with the audit investigation of respondent's books of accounts and other accounting records.

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.* (McDonald's case),⁴⁶ firmly ruled that the use of MOA, Referral Memorandum or any other equivalent document directing the continuation of audit or investigation by an unauthorized RO is a usurpation of the functions of the LOA under the NIRC of 1997, as amended, and that the issuances referring to reassignment of the audit or investigation from one RO to another and the actual authority of the RO who will conduct the actual audit or investigation are different. Thus, it is specifically required to issue a new LOA if ROs are reassigned or transferred, *to wit*:

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

⁴³ *Rollo*, p. 51.

⁴⁴ *Rollo*, pp. 1 to 2.

⁴⁵ *Rollo*, p. 3.

⁴⁶ G.R. No. 242670, May 10, 2021.

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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(64) and revalidation of L/As 65(65) which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.



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

The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the law it supposedly implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.

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

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

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

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

In this case, RO Mempin and GS Masangya continued the audit investigation of respondent solely by virtue of the MOA issued by the RDO without the required new LOA issued by the CIR or his duly authorized representatives. Applying the above principles, the MOA issued by the RDO did not give ample authority to RO Mempin and GS Masangya to continue the audit investigation of respondent's books of accounts and other accounting records.



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

Considering that the only document reassigning the audit investigation of respondent's books of accounts and other accounting records to RO Mempin and GS Masangya is the MOA signed by RDO Alberto, Jr., clearly, no authority was given to them.

It has been categorically concluded by the Supreme Court in the McDonald's case,⁴⁷ that the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation, *viz*:

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

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

xxx

The Court hereby puts an end to this practice.

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

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

⁴⁷ G.R. No. 242670, May 10, 2021.

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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[.]

Section 10 (c) of the NIRC provides:

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

xxx

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

Section 13 of the NIRC provides:

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

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

For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority

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

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Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. The revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.” (Emphasis ours)

Considering that the assessments were issued pursuant to the audit investigation of unauthorized RO and GS, the tax assessments are void *ab initio*. Accordingly, the PAN and FLD/FAN and the collection notices issued by petitioner are null and void.

Accordingly, the Court in Division did not err in granting respondent’s Petition for Review and thereby cancelling the assessment of petitioner for TY 2009.

WHEREFORE, in light of the foregoing, the Petition for Review filed on August 25, 2022 by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The Decision dated March 14, 2022 and the Resolution dated July 19, 2022 of the Court in Division in CTA Case No. 9953 are **AFFIRMED**.

SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

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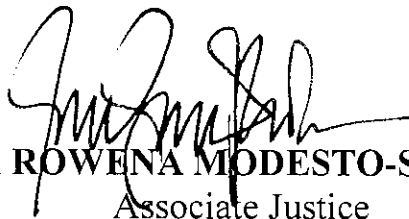
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



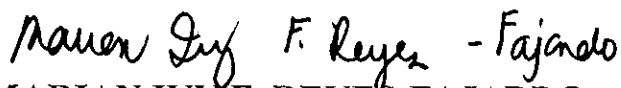
CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



HENRY S. ANGELES
Associate Justice

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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.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', is written over the printed name.

ROMAN G. DEL ROSARIO

Presiding Justice