

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2402
(CTA Case No. 9120)

Present:

- versus -

DEL ROSARIO, P.L.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and,
CUI-DAVID, II.

NYK-FILJAPAN SHIPPING
CORP.,
Respondent.

Promulgated:

JUL 07 2022

X ----- X

DECISION

BACORRO-VILLENA, L:

Before the Court *En Banc* is a Petition for Review¹ pursuant to Section 3(b)², Rule 8 of the Revised Rules of the Court of Tax Appeals.

¹ Filed on 15 January 2021, *Rollo*, pp. 1-55, with annexes.

² SEC. 3. *Who may appeal; period to file petition.* — ...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

(**RRCTA**), filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**). He seeks the reversal of the Decision dated 25 June 2020³ (**assailed Decision**) and the Resolution dated 22 December 2020⁴ (**assailed Resolution**) of the Court's Third Division⁵ in CTA Case No. 9120, entitled *NYK-FILJAPAN Shipping Corp. v. Commissioner of Internal Revenue*.

The antecedent facts follow.

On 03 July 2008, respondent NYK-FILJAPAN Shipping Corp. (**respondent/NSC**) received Letter of Authority (**LOA**) No. 00035448 dated 01 July 2008, from Romulo L. Aguila, Jr., then Head Revenue Executive Assistant (**HREA Aguila**), through Albino M. Galanza, then Chief, Large Taxpayers (**LT**) Audit and Investigation Division I (**Chief Galanza**), authorizing Revenue Officer Juan M. Luna, Jr. (**RO Luna**) to conduct an audit of respondent's tax records for the taxable year (**TY**) 2007.⁶

During the conduct of the audit of respondent and upon the request of petitioner's examiners, respondent's President and representative, Dan C. Florentino (**Florentino**) executed three (3) Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (**NIRC**) of 1997, as amended, (**waivers**), which were all accepted by Officer-in-Charge Assistant Commissioner for the Large Taxpayers Service (**LTS**), Nestor S. Valeroso (**OIC-ACIR Valeroso**). The details of the said waivers are as follows:

Waiver	Date of Acceptance	Date of Respondent's Receipt	Period of Extension
First Waiver ⁷	15 February 2010	15 February 2010	Until 30 September 2010
Second Waiver ⁸	05 August 2010	20 August 2010	Until 31 March 2011

additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

³ Division Docket, Volume V, pp. 2363-2390.

⁴ Id., pp. 2422-2428.

⁵ The Assailed Decision dated 25 June 2020 and the Assailed Resolution dated 22 December 2020 were penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

⁶ Exhibit "P-9", Division Docket, Volume IV, p. 1548.

⁷ Exhibit "R-10", BIR Records, p. 57.

⁸ Exhibit "R-11", id., p. 284.

Waiver	Date of Acceptance	Date of Respondent's Receipt	Period of Extension
Third Waiver ⁹	02 November 2010	04 November 2010	Until 30 September 2011

On 14 July 2010, respondent received a Notice for Informal Conference (NIC) dated 12 July 2010, wherein it was requested to confer and discuss with the ROs then conducting the tax audit.

On 03 March 2010, then Officer-in-Charge Chief Edralin M. Silario (**OIC-Chief Silario**) of the LT Regular Audit Division I issued a Memorandum (Referral No. D-LOA-0310-0002)¹⁰ dated 03 March 2010 (**First MOA**), referring the entire docket of respondent's case to RO William F. Sundiam (**RO Sundiam**) and Group Supervisor Joriz U. Saldajeno (**GS Saldajeno**), for the continuance of respondent's audit investigation. OIC-Chief Silario issued another Memorandum (Referral No. D-LN-0410-002)¹¹ dated 19 April 2010 (**Second MOA**) addressed to the same RO and GS stating, to wit:

...
Referred to you herewith is/are the enclosed paper(s)/entire docket(s) of NYK FIL-JAPAN SHIPPING CORPORATION relative to Letter Notice No. 116-RLF-07-00-00060 dated February 23, 2010 for taxable year 2007, for appropriate action.

Your report hereon should be submitted promptly.

...

On 07 January 2011, respondent received a copy of the Preliminary Assessment Notice¹² (PAN) dated 21 December 2010, which found respondent liable for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and final withholding tax (FWT) for TY 2007 in the total amount of ₱37,025,578.52. Respondent filed a Reply¹³ to the PAN with corresponding supporting documents, contesting petitioner's assessment.

⁹ Exhibit "R-12", id., p. 285.
¹⁰ Exhibit "R-1", id., p. 58.
¹¹ Exhibit "R-1-a", id., p. 188; Emphasis and underscoring in the original text.
¹² Exhibit "R-3", pp. 484-488.
¹³ Dated 27 January 2011, Exhibit "P-16", Division Docket, Volume IV, pp. 1582-1589.

On 27 May 2011, respondent received a copy of the Formal Letter of Demand¹⁴ with Final Assessment Notice dated 20 May 2011 (FLD/FAN), assessing it for the aforesaid deficiency taxes in the reduced amount of ₱35,558,114.67, inclusive of interests and penalties, for TY 2007. On 27 June 2011, respondent then disputed the said FLD/FAN through its Letter¹⁵ dated 24 June 2011.

On 26 September 2014, respondent received a copy of the Final Decision on Disputed Assessment¹⁶ (FDDA) of even date. The said FDDA assessed respondent for deficiency tax assessments amounting to ₱25,448,013.85, inclusive of interests and penalties. Later, respondent administratively appealed the same FDDA before petitioner.¹⁷

On 20 July 2015, respondent received a Letter¹⁸ dated 02 June 2015 issued by then Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**), denying its administrative appeal. Aggrieved, respondent filed a Petition for Review¹⁹ on 18 August 2015. Thereafter, the case was raffled to this Court's Third Division.

On 12 October 2015, the Third Division issued Summons²⁰ to petitioner. On 28 December 2015, petitioner filed an Answer²¹ to the above petition.

On 11 January 2016, the Court issued a Notice of Pre-Trial Conference.²² On 07 July 2016²³ and 11 July 2016²⁴, respondent and petitioner submitted their respective Pre-Trial Briefs (PTBs). On 17 October 2016, the parties also filed their Joint Stipulation of Facts and Issues²⁵ (JSFI), which the Court approved in a Pre-Trial Order²⁶ dated 08 November 2016.

¹⁴ Exhibit "R-5", BIR Records, pp. 616-657.

¹⁵ Exhibit "P-18", Division Docket, Volume IV, pp. 1632-1646.

¹⁶ Exhibit "P-19", id., Volume I, pp. 205-227.

¹⁷ Exhibit "P-20", id., Volume IV, pp. 1647-1661.

¹⁸ Exhibit "P-21", id., Volume I, p. 252.

¹⁹ Id., pp. 10-489, with annexes.

²⁰ Id., p. 490.

²¹ Id., Volume II, pp. 505-517.

²² Id., pp. 519-520.

²³ Id., pp. 548-558.

²⁴ Id., pp. 593-596.

²⁵ Id., Volume III, pp. 1425-1438.

²⁶ Id., pp. 1445-1456.

When trial ensued, respondent presented the following witnesses: (1) Nilo Palonpon (**Palonpon**), respondent's Chief Accountant; (2) Cynthia A. Garcia (**Garcia**), respondent's Comptroller; and, (3) Atty. Melitha F. Gasapos (**Atty. Gasapos**), respondent's Corporate Secretary.

In his Judicial Affidavit²⁷, Palonpon testified that since filing an appeal with the Court, respondent had settled part of its assessed liabilities leaving thus a balance of ₱7,022,457.00. He further stated that the waivers which Florentino and OIC-ACIR Valeroso executed were invalid since the latter's authority to approve the waivers were merely temporary (as he was only an OIC at that time).

When Garcia assumed the witness stand, she corroborated Palonpon's testimony regarding respondent's partial settlement of its assessed liabilities.²⁸ Garcia also presented and identified respondent's financial documents to show the incorrectness of petitioner's assessment.

Lastly, Atty. Gasapos testified that upon her search of respondent's records, she found that the corporation's Board of Directors (**BOD**) did not issue any authority for Florentino to execute the waivers approved by OIC-ACIR Valeroso.²⁹

On 27 March 2017, with no other witnesses to present, respondent filed its Formal Offer of Evidence³⁰ (FOE). On 21 April 2017, petitioner filed his Comment³¹ thereto.

In a Resolution dated 19 October 2017³², the Third Division admitted all of respondent's documentary exhibits and deemed respondent to have rested its case.

For petitioner's presentation of evidence, RO Sundiam took the witness stand. In his Judicial Affidavit³³, he declared that the issuance

²⁷ See Judicial Affidavit of Nilo Palonpon, Exhibit "P-42", id., Volume II, pp. 635-650.

²⁸ See Judicial Affidavit of Cynthia A. Garcia, Exhibit "P-44", id., pp. 884-893.

²⁹ See Judicial Affidavit of Atty. Melitha F. Gasapos, Exhibit "P-43", id., pp. 620-623.

³⁰ Id., Volume IV, pp. 1482-1492.

³¹ Id., Volume V, pp. 2168-2170.

³² Id., pp. 2178-2179.

³³ See Judicial Affidavit of Revenue Officer William Sundiam, Exhibit "R-14", id., pp. 2227-2233.

of the PAN, FLD/FAN, and FDDA against respondent was done in a regular manner. He further testified to conducting the audit investigation of respondent pursuant to the First MOA³⁴ that assigned him to respondent's case.

On 18 September 2018, petitioner filed his FOE³⁵, with respondent's Manifestation³⁶ dated 01 October 2018 adopting its earlier Comment and Opposition³⁷ filed on 19 March 2018 as its comment/opposition thereto. In a Resolution dated 17 January 2019³⁸, the Third Division admitted all of petitioner's evidence.

Later, on 20 February 2019, petitioner filed his Memorandum³⁹ while respondent filed its Memorandum⁴⁰ on 20 March 2019. Still later, in a Resolution dated 28 March 2019⁴¹, the Third Division submitted the case for decision.

On 25 June 2020, the Third Division promulgated the assailed Decision⁴² granting respondent's petition, setting aside petitioner's assessment of respondent. The dispositive portion thereof reads:

...

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency tax assessments under the FDDA dated September 26, 2014 for TY 2007 against [respondent] in the amount of ₱25,448,013.85, inclusive of interests and penalties, are **WITHDRAWN and SET ASIDE**.

SO ORDERED.

...

On 17 August 2020, petitioner filed a Motion for Reconsideration⁴³ (MR) of the assailed Decision. Respondent filed its Comment/Opposition⁴⁴ thereto on 15 September 2020. 

³⁴ Supra at note 10.
³⁵ Division Docket, Volume V, pp. 2254-2261.
³⁶ Id., pp. 2262-2264.
³⁷ Id., pp. 2204-2212.
³⁸ Id., pp. 2267-2268.
³⁹ Id., pp. 2274-2290.
⁴⁰ Id., pp. 2297-2358.
⁴¹ Id., p. 2360.
⁴² Supra at note 3.

In the equally assailed Resolution⁴⁵ dated 22 December 2020, the Third Division denied petitioner's MR. Hence, the present Petition for Review⁴⁶ filed before the Court *En Banc* on 15 January 2021.

On 05 March 2021, respondent filed its Comment-Opposition⁴⁷ to the instant petition. On 16 March 2021, the Court *En Banc* referred the present case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).⁴⁸ However, the PMC-CTA, on 23 June 2021, notified the Court *En Banc* of the parties' decision to not have their case mediated.⁴⁹ Considering the parties failure to reach a compromise, the Court *En Banc*, in a Resolution dated 07 July 2021⁵⁰, submitted the instant petition for decision.

In the instant petition, Petitioner raises the following issue for the Court *En Banc*'s resolution:

WHETHER THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE SUBJECT TAX ASSESSMENTS ARE VOID FOR WANT OF A VALID LETTER OF AUTHORITY (LOA) AUTHORIZING THE REVENUE OFFICERS WHO CONDUCTED THE AUDIT.⁵¹

In support of the above issue, petitioner argues that the Third Division erred when it cancelled the assessment based on RO Sundiam's lack of authority to audit respondent. Petitioner contends that RO Sundiam need not be authorized through another LOA separate from the LOA which authorized a certain RO Luna to conduct an audit of respondent. He deems that the MOAs issued by then OIC-Chief Silario are sufficient to authorize RO Sundiam to continue the investigation of respondent. In support of his claim, petitioner cites Revenue Memorandum Order (RMO) No. 08-2006⁵², which states:

⁴³ Division Docket, Volume V, pp. 2391-2402.

⁴⁴ Id., pp. 2406-2420.

⁴⁵ Supra at note 4.

⁴⁶ Supra at note 1.

⁴⁷ Rollo, pp. 59-78.

⁴⁸ See Resolution dated 16 March 2021, id., pp. 80-81.

⁴⁹ Id., p. 82.

⁵⁰ Id., pp. 84-85.

⁵¹ Id., p. 3.

⁵² Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

...
In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS.
...

Respondent, on the other hand, agrees fully with the Third Division's findings. It reiterates that RO Sundiam was not authorized under the LOA and that then OIC-Chief Silario was likewise without authority to refer respondent's case to the former.

The Court *En Banc*'s ruling follows.

After a careful scrutiny of the records and the parties' contrasting arguments, the Court *En Banc* finds the present petition to be bereft of merit.

As the Third Division correctly found, RO Sundiam and GS Saldajeno, who continued the audit of respondent and recommended the issuance of the PAN and FLD/FAN against the latter, were not authorized through an LOA. It is undisputed that their authority to conduct the audit of respondent emanated from the MOAs that then OIC-Chief Silario issued.

This Court has consistently held that an RO tasked to examine a taxpayer's books must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

...
SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —

(A) *Examination of Returns and Determination of Tax Due. —* After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative** may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however, That failure to file a return shall not prevent*



the Commissioner from authorizing the examination of any taxpayer.⁵³

...

In relation thereto, Section 10(c) of the NIRC of 1997, as amended, provides:

...

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[.]⁵⁴

...

Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books must be equipped with an LOA, viz:

...

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.⁵⁵

...

Based on the foregoing provisions, an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of a taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of the taxpayer's books of accounts and other

⁵³ Emphasis supplied.
⁵⁴ Emphasis supplied.
⁵⁵ Emphasis supplied.



accounting records because such right is statutorily conferred only upon the CIR or his duly authorized representatives.

As it is, the audit process normally commences with the issuance by the CIR of an LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment and, at the same time, it authorizes or empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.⁵⁶

It is well-settled that the authority given to ROs to conduct audit and examine the taxpayer's books is a continuing requirement and any gap in authorization will violate the taxpayer's right to due process.

In this case, the records show that the audit of respondent was initially assigned to RO Luna pursuant to an LOA⁵⁷ issued by then HREA Aguila. Subsequently, then OIC-Chief Silario of the LT Regular Audit Division I, issued the First MOA and Second MOA, assigning RO Sundiam and GS Saldajeno to continue with respondent's audit investigation.

As the records further show, petitioner does not dispute the facts herein but insists that the subject MOAs were enough to grant RO Sundiam and GS Saldajeno the authority to investigate respondent. Unfortunately for petitioner, he himself has issued RMO No. 43-90⁵⁸, which contradicts his very assertion, to wit:

...

Any reassignment/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.⁵⁹

...

⁵⁶ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017.
⁵⁷ Exhibit "P-9", supra at note 6.
⁵⁸ *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit* dated 20 September 1990.
⁵⁹ Emphasis and underscoring supplied.

It bears stressing that the issue involved in the present case is not novel and the Supreme Court has already settled the same in a plethora of cases. The most recent of these cases is the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*⁶⁰ (**McDonald's**), where the Supreme Court highlighted the difference between an MOA and an LOA in this wise:

...

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.**

...

Applying the above principles to the case at bar, a mere MOA signed by the OIC-Chief of the LT Regular Audit Division I did not and could not confer authority to RO Sundiam and GS Saldajeno to continue the audit or investigation of respondent's books of accounts for TY 2007. Hence, the subject MOAs that then OIC-Chief Silario signed are not the equivalent of an LOA nor a supplement thereto, as to validly give the new set of RO and GS the same kind of authority vested by the LOA to RO Luna.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*⁶¹, the Supreme Court emphasized the importance of an LOA, viz:

...

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. 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 ...

...

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly**

⁶¹

G.R. No. 222743, 05 April 2017; Citation omitted and emphasis supplied.

conduct any of these kinds of examinations without prior authority.

...

... To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made...

...

... In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. 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.

...

Citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*⁶², the Supreme Court went on to state:

...

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that 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.

...

Furthermore, the Supreme Court in *McDonald's*⁶³ also concluded that:

...

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 RMO No. 43-90 dated September 20, 1990.

...

Based on the foregoing pronouncements, the Court *En Banc* finds no merit in petitioner's contention that a new LOA is unnecessary in cases of reassignment (of audit) to new ROs and that the present MOAs would suffice for a successful transfer of authority from one RO to another.

As the Third Division likewise correctly pointed out in the assailed Resolution, petitioner's heavy reliance on RMO No. 08-2006 is erroneous as it has already been superseded by RMO No. 12-2007.⁶⁴ The pertinent provisions of RMO No. 12-2007 proscribe the use of memoranda, referrals, and similar documents in the conduct of tax assessments, to wit:

...

The practice of issuing mission orders, correspondence letters, referral memoranda or any other similar orders for the purpose of audit examination and assessment of internal revenue taxes is hereby strictly prohibited. ...

...

In view of the above disquisitions and the clear lack of authority of RO Sundiam and GS Saldajeno to continue with respondent's

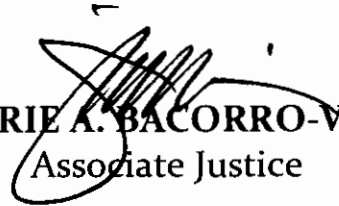
⁶³ Supra at note 60; Emphasis and underscoring supplied.
⁶⁴ 2007 Audit Program for Revenue District Offices.

assessment for deficiency taxes, the said assessment issued against the latter is indisputably void.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 25 June 2020 and 22 December 2020, respectively, in CTA Case No. 9120, entitled *NYK-FILJAPAN Shipping Corp. v. Commissioner of Internal Revenue* are hereby **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** from collecting or taking further action on the subject deficiency taxes assessed against respondent NYK-FILJAPAN Shipping Corp. as provided in the Final Decision on Disputed Assessment in the aggregate amount of ₱25,448,013.85 for the taxable year 2007.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

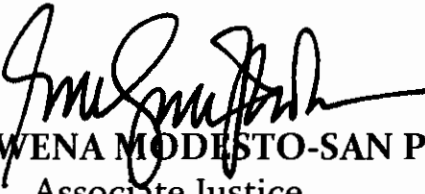
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


with separate concurring opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

NYK-FILJAPAN SHIPPING CORP.,

Respondent.

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(CTA Case No. 9120)

Present:

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

Promulgated:

JUL 07 2022

x- - - - -

x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, L.:

I concur in the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue ("Petitioner") for lack of authority of the examining Revenue Officer ("RO"), but for the reasons to be discussed below.

In my humble opinion, a new letter of authority ("LOA") is not needed in case of re-assignment as long as the authority given to the new RO is signed by the Commissioner of Internal Revenue ("CIR") or his duly authorized representative. This is permissible under the laws of agency under the Civil Code.

In the case at bar however, the Memorandum of Authority (MOA) was issued not by the duly authorized representative of Petitioner, the Assistant Commissioner or Head Revenue Executive Assistant of the Large Taxpayers

✓

Division¹, but by Ms. Edralin M. Silario, OIC-Chief of the Large Taxpayers Regular Audit Division I (LTRAD 1) of the BIR. Hence, RO William F. Sundiam who audited the books of account of Respondent is without any valid authority to do so.

I am also of the firm belief that the ruling of the Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*² (“*McDonald's*”) should not be haphazardly applied in cases regarding the validity or invalidity of an RO's authority. A perusal of the case discloses that *McDonald's* invalidated the practice of reassigning ROs through a Revalidation Notice or Memorandum of Reassignment or any equivalent letter, only because it was presumed that these documents are issued by a subordinate official and not by the CIR or his duly authorized representative, to wit:

“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 ✓

¹ The position equivalent to a Revenue Regional Director for the Large Taxpayers Division, who is authorized to issue the LOA, is identified in Revenue Memorandum Order No. 29-07 (September 26, 2007) as the Assistant Commissioner or Head Revenue Executive Assistant.

² G.R. No. 242670, May 10, 2021.

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.³

The Supreme Court in the said case did not consider instances where the Revalidation Notice or Memorandum of Reassignment or any equivalent letter is issued by the CIR himself or his duly authorized representative. Thus, it seems that the assumptions from which *Mcdonald's* derived the conclusion that there should be issuance of a new LOA if a RO is reassigned or transferred, is incomplete and as such should not be applied.

From all the foregoing, I vote to **AFFIRM** the Decision dated June 25, 2020 and Resolution dated December 22, 2020 of the court *a quo*.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

³ *Emphasis and underscoring supplied.*