

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)