



**Republic of the Philippines
Supreme Court
Bacolod City**

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 29, 2022, which reads as follows:

“G.R. No. 249795 (*Commissioner of Internal Revenue v. Wellington Investment & Manufacturing Corporation*). — The Court resolves to **DENY** the Petition for Review¹ on *Certiorari* filed by the Commissioner of Internal Revenue² (petitioner) against Wellington Investment & Manufacturing Corporation (respondent) for failure to sufficiently show any reversible error in the assailed judgment as to warrant the exercise of this Court’s discretionary appellate jurisdiction pursuant to Section 6, Rule 45 of the Rules of Court.

The Court of Tax Appeals (CTA) *En Banc* is empowered to rule upon related issues necessary to achieve an orderly disposition of the case, pursuant to Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals:

SECTION 1. Rendition of judgment. – The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *en banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *en banc* or in Division agree on the draft decision, the *ponente* shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the *rollo*.

¹ *Rollo*, pp. 11-31.

² Atty. Caesar R. Dulay at the time of filing of the petition.

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. (Emphasis supplied)

There was therefore no error on the part of the CTA *En Banc* when it raised the issue of lack of authority of the Revenue Officers (ROs) who conducted the audit.

Petitioner cannot likewise claim that he was denied due process when he was allegedly not given the opportunity to present evidence of the authority of the RO or explain the justification for the conduct of the tax audit.

Petitioner cannot pass the blame on the CTA for an issue he could have addressed. Presiding Justice Roman G. Del Rosario (Presiding Justice Del Rosario), in his Dissenting Opinion³ in CTA Case No. 8726, already pointed out the lack of authority of the ROs who conducted the audit.⁴ At the very least, petitioner could have presented evidence of the authority of the ROs after the lack thereof was pointed out by Presiding Justice Del Rosario.

Moreover, CTA Associate Justice Juanito C. Castañeda, Jr., in his Separate Concurring Opinion⁵ in CTA EB No. 1773, noted that while RO Reynoso C. Bravo (Bravo) testified that the audit examination of respondent's books of account and other accounting records for taxable year 2008 was assigned to their group, Memorandum of Assignment (MOA) No. OTH-116-2011-903 dated November 28, 2011 issued to him as expressly stated in MOA No. LOA-116-2013-0492 dated February 28, 2013, was not presented as evidence.⁶

The records also show that petitioner already knew of the existence of MOA No. OTH-116-2011-903 dated November 28, 2011 as early as pre-trial when it presented MOA No. LOA-116-2013-0492 dated February 28, 2013 as its Exhibit "R-13."⁷ Petitioner thus had the opportunity to present this document during trial, and it was his responsibility to do so. The CTA cannot therefore be faulted for petitioner's failure to present this document at several opportunities.

In any case, as correctly held by the CTA *En Banc*, the lack of a Letter of Authority (LOA) authorizing ROs Bravo and Carolyn V. Mendoza to continue the audit of respondent's books of account still renders the resulting assessments void.⁸

³ *Rollo*, pp. 282-292A.

⁴ *Id.* at 282.

⁵ *Id.* at 58-63.

⁶ *Id.* at 63.

⁷ See Pre-trial Order, p. 12; *rollo*, p. 169.

⁸ *Rollo*, p. 56.

We recently ruled in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*⁹ that (1) 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; (2) the use of a memorandum of assignment, referral memorandum, or such equivalent document, directing the continuation of audit or investigation by an unauthorized RO usurps the functions of the LOA; and (3) Revenue Memorandum Order (RMO) No. 43-90¹⁰ expressly and specifically requires the issuance of a new LOA if ROs are reassigned or transferred. We declared:

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.¹¹ (Italics in the original)

In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*,¹² the examination of the taxpayer's books of accounts was reassigned to another RO sans issuance of a new LOA; the authority of the subsequent RO therein was anchored only upon the MOA signed by the revenue district officer. We thus declared void the assessments against the taxpayer for having been issued without an LOA by the CIR or his duly authorized representative.

The RMOs cited by petitioner, namely RMO Nos. 08-2006¹³ and 69-2010,¹⁴ merely provide additional regulations in case of reassignment of revenue officers and should not be interpreted to remove the requirement of an LOA. Rather, the MOA, referral memorandum, or any equivalent document are issued for the purpose of reassignment and transfer of cases of revenue officers, and not for the purpose of vesting authority on an RO to examine a taxpayer's books of accounts, which is the function of an LOA.

⁹ G.R. No. 242670, May 10, 2021.

¹⁰ "AMENDMENT OF REVENUE MEMORANDUM ORDER NO. 37-90 PRESCRIBING REVISED GUIDELINES FOR EXAMINATION OF RETURNS AND ISSUANCES OF LETTERS OF AUTHORITY TO AUDIT. Dated: September 20, 1990.

¹¹ *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, supra.

¹² G.R. No. 241848, May 14, 2021.

¹³ *Rollo*, pp. 345-352.

¹⁴ *Id.* at 356-359 (incorrectly paginated as 256-259).

As stated in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*:¹⁵

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.**¹⁶ Hence, the issuance of such memorandum of assignment, and

¹⁵ Supra.

¹⁶ Section 6 of the National Internal Revenue Code (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[.]
x x x.

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 x

(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

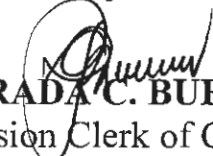
its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.¹⁷ (Emphases supplied)

We find no reason to depart from these sound rulings, which have similar circumstances as the instant case. We thus affirm the assailed decision and resolution of the CTA *En Banc*, declaring void the subject assessments for having been issued without an LOA by petitioner or his duly authorized representative.

ACCORDINGLY, the petition filed by the Commissioner of Internal Revenue is **DENIED**. The Decision dated April 11, 2019 and the Resolution dated October 11, 2019 of the Court of Tax Appeals *En Banc* in CTA EB No. 1773 are **AFFIRMED**.

SO ORDERED.” *Marquez, J., on official business.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court #179

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

149-A

JAN 19 2023

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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.

¹⁷ Supra note 9.

NAF