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Republic of the Philippines
SUPREME COURT
Manila

[G.R. No. 119934. January 19, 1999]

BIR *vs.* COA

EN BANC

Gentlemen:

Quoted hereunder, for your information, is a resolution of this Court dated **JAN 19, 1999.**

G.R. No. 119934 (*The Bureau of Internal Revenue, petitioner, vs. the Commission on Audit, respondent.*)

Brought on May 10, 1995 by the Bureau of Internal Revenue is the Petition for *Certiorari*, Prohibition, with Temporary Restraining Order, Mandatory Preliminary Injunction and Permanent Injunction at bar, praying as follows:

> **"WHEREFORE, it is respectfully prayed that:**
>
> **1. In view of the urgency of the instant case by the issuance of the COA Resolution No. 95-208 dated March 28, 1995, upon the filing of this petition, pending further proceedings, a temporary restraining order be issued enjoining respondent from enforcing the questioned COA Resolution;**
>
> **2. After notice and hearing, a writ of preliminary mandatory injunction be issued enjoining respondent from taking any further action on said case during the pendency of this petition;**
>
> **3. After consideration on the merits:**
>
> > **a) An order be issued annulling the COA Resolution No. 95-208 dated March 28, 1995 (Annex "C-1") for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and**
> >
> > **b) issuance of the writ of permanent injunction to enjoin the respondent from enforcing the questioned COA Resolution No. 95-208 insofar as the BIR is concerned.**
>
> **Petitioner prays for such other reliefs that are just and equitable in the premises."**

On May 30, 1995, the Court resolved to issue a Temporary Restraining Order effective immediately and continued until further orders from this Court, ordering respondent Commission on Audit to cease and desist from enforcing the questioned COA Resolution No. 95-208, dated March 28, 1995, asserting the power, authority and duty of the Commission on Audit to examine, audit and settle all accounts pertaining to the revenues and receipts of government agencies and subdivisions. The said Restraining Order has remained in full force and effect, until now. With the filing of petitioner's memorandum on March 15, 1996, and respondent's Memorandum on May 13, 1996, the case ripened for this disposition.

Before the case could be decided, however, President Joseph Ejercito Estrada issued Executive Order No. 38, dated October 30, 1998; the full text of which, reads:

"EXECUTIVE ORDER NO. 38

DIRECTING THE AUDIT OF ASSESSMENTS, REVENUES AND RECEIPTS OF THE BUREAU OF INTERNAL REVENUE

WHEREAS, public office is a public trust and public officers shall at all times be accountable to the people.

WHEREAS, there is an urgent need to enhance the efficiency and effectiveness of tax collections in order to support the budget through an audit of tax assessment performance, the records of which constitute public records open for inspection upon the order of the President in accordance with R.A. 8474:

WHEREAS, it is a highly desirable public policy to conduct an assessments and revenue audit of the Bureau of Internal Revenue;

NOW THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Philippines, by virtue of powers vested in me by Article VII Section 1 of Constitution and the laws, do hereby order:

Section 1. Effective immediately, the Department of Finance and the Bureau of Internal Revenue shall adopt measures and general audit procedures, in coordination with the Commission of Audit, to facilitate the conduct of audit of assessments, revenues, and receipts, consistent with the following guidelines/parameters:

(a) The audit and examination of COA, to be conducted on final tax assessments, shall be a performance audit, and on post-audit basis. Audit of controverted assessments shall await final determination of the appropriate authority.

(b) Except in cases of fraud and patent abuse of discretion, no duplication of assessment shall be made on the taxpayer: provided, that prior report to and concurrence thereon is obtained from the Commissioner of Internal Revenue, and that only the BIR shall make contact with the taxpayer upon prior clearance of the Commissioner of Internal Revenue.

(c) Confidentiality of tax information and records shall be observed, and no COA auditor shall divulge to any person, in any manner than as may be allowed by law, information regarding the business, income, estate, secrets, operations, style of work, apparatus, strategies, or other sensitive and confidential data acquired by said COA auditor in the performance of duties.

(d) COA auditors shall not contact any BIR examiner whose assessment or work is to be audited or is undergoing audit. No audit observation memorandum or notice of charge shall be issued, and subject to a preliminary discussion or clarification of initial audit findings, only a final audit report shall be made to the Commissioner of Internal Revenue or his duly designated subordinate representative(s).

(e) In addition to the Commissioner of Internal Revenue, only the following shall, on strictly confidential basis, be provided the final audit report.

(f) After approval by the Commission of Audit: the Secretary of Finance, the COA Chair and Commissioners, the Office of the President, and Congress, unless ordered by the -proper court or the President of the Philippines.

(g) Audit shall be conducted based on taxpayer records in the custody of BIR or other government offices.

(h) Except for confirmatory letters and verifications of actual tax payments as required by generally accepted auditing standards, auditors' communications with, or visiting places of business or examining books of accounts or records of, taxpayers is prohibited.

Section 3. This Executive Order takes effect immediately. All rules, regulations, or other administrative issuances inconsistent herewith are hereby superseded, repealed or modified accordingly.

Section 4. Violations of these guidelines, or the rules and procedures adopted pursuant hereto, shall be dealt with in accordance with law.

DONE in the City of Manila, this 30th day of October in the year of Our Lord, Nineteen Hundred and Ninety-Eight.

(Sgd.) JOSEPH EJERCITO ESTRADA

By the President,

(Sgd.) RONALDO B. ZAMORA

Executive Secretary"

In light of the aforecited Executive Order No. 38, respondent Commission on Audit, through the Solicitor General, filed for our consideration a MANIFESTATION and MOTION stating and praying, as follows:

"MANIFESTATION AND MOTION

RESPONDENT Commission on Audit (COA), by counsel, to this Honorable

Court, respectfully states:

> **1. On October 30, 1998, Executive Order No. 38 (Annex 'A') was issued by President Joseph E. Estrada expressly directing the audit of assessment, revenues and receipts of the Bureau of Internal Revenue by the Commission on Audit.**
>
> **2. The issuance of E.O. 38, which deals with the very subject matter raised in the instant petition, that is, the propriety of COA's conduct of revenue audit which it sought to assert under COA Resolution No. 95-208 dated March 28, 1995 questioned herein by petitioner Bureau of Internal Revenue, renders this case moot and academic.**
>
> **3. There is a pending temporary restraining order issued by this Honorable Court dated March 30, 1995 ordering the COA to 'cease and desist from enforcing COA Resolution No. 95-208 in asserting the power, authority and duty of the Commission on Audit to examine, audit and settle all accounts pertaining to revenues and receipts of government agencies and subdivisions.' In order to effect full implementation of E.O. 38, there is a need to lift the said temporary restraining order.**

WHEREFORE, it is respectfully prayed that the temporary restraining order issued on March 30, 1995 be lifted and that the instant petition be dismissed for being moot and academic."

On December 8, 1998, acting on subject Manifestation and Motion, the Court required the petitioner to comment thereon within a non-extendible period of five (5) days from notice.

On January 11, 1999 was received petitioner's COMMENT manifesting lack of objection to respondent's Manifestation and Motion dated November 12, 1998.

WHEREFORE, the petition is hereby DISMISSED, and the Temporary Restraining Order issued on March 30, 1995 accordingly LIFTED. No pronouncement as to costs.

Very truly yours,

LUZVIMINDA D. PUNO

Clerk of Court

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