

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2675
(CTA Case No. 9820)

Present:

-versus-

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

TANN PHILIPPINES, INC.,
Respondent.

Promulgated:

APR 19 2024

11:56 am

X-----X

DECISION

REYES-FAJARDO, J.:

The Petition for Review¹ filed on September 16, 2022, challenges the Decision² dated December 16, 2021 and Resolution³ dated August 2, 2022 in CTA Case No. 9820, whereby the Court in Division cancelled the deficiency tax assessments and corresponding penalties covering Taxable Year (TY) 2010, issued by the Commissioner of Internal Revenue against Tann Philippines, Inc.

The antecedents follow.

¹ Rollo, pp. 7-17.

² *Id.* at pp. 25-44.

³ *Id.* at pp. 53-58.

CA

Petitioner is the head of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes; and has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, and other matters arising under the Tax Code or other laws or other laws or portions thereof administered by the BIR. Petitioner may be served with summons and other court processes at the 5th Floor, BIR Building, Agham Road, Diliman, Quezon City.

Respondent is a corporation duly organized and existing under the laws of the Philippines, with Tax Identification Number (TIN) 216-405-611-000. It is registered with the Securities and Exchange Commission with Registration No. A200203395; and with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise with Certificate of Registration No. 02-016.

On October 4, 2011, petitioner issued Letter of Authority (LOA) No. 122-2011-00000158 (SN: eLA201100003295), authorizing Revenue Officers (ROs) Teodoro Matibag, Celestino Mejia, Marilu Zeta, and Group Supervisor (GS) Edenny Lingan, to examine the books and other accounting records of respondent for TY 2010.

Thereafter, respondent executed various *Waivers of the Statute of Limitation under the National Internal Revenue Code*.

On September 4, 2013, respondent received a *Preliminary Assessment Notice (PAN)*, with attached Details of Discrepancies, containing the proposed deficiency tax assessments for TY 2010, detailed as follows:

Tax Type	Amount
Income Tax	₱14,281,306.32
Value-Added Tax (VAT)	35,392,582.32
Final Withholding Tax on VAT	369,182.11
Expanded Withholding Tax (EWT)	8,774,348.55
Withholding Tax on Compensation	1,644,749.78
Final Withholding Tax	29,029,029.24
TOTAL	₱89,491,198.32

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On September 19, 2013, respondent filed its *Reply* to the PAN.

On May 27, 2014, respondent received a *Formal Assessment Notice* (FAN) dated May 26, 2014, with attached Details of Discrepancies and Assessment Notice Nos. IT-122-LA158-2010-14-0170, VT-122-LA158-2010-14-017, WE-122-LA158-2010-14-0172, issued by Alfredo V. Misajon, OIC-Assistant Commissioner of the Large Taxpayers Service (LTS), assessing respondent for deficiency income tax, VAT and EWT for TY 2010, detailed as follows:

Tax Type	Amount
Income Tax	₱7,965,604.29
VAT	3,961,298.06
EWT	2,918,126.47
TOTAL	₱14,845,028.82

On June 26, 2014, respondent filed its *Protest* to the FAN, requesting for a reinvestigation, and praying that the findings of tax deficiency be cancelled and withdrawn.

On July 26, 2016, respondent received the *Final Decision on Disputed Assessment* (FDDA) dated July 21, 2016, with attached Details of Discrepancies and Assessment Notice Nos. IT-122-LA158-2010-16-080; VT-122-LA158-2010-16-081; and WE-122-LA158-2010-16-082, issued by Nestor S. Valeroso, Assistant Commissioner of the LTS (ACIR Valeroso), demanding the payment of deficiency taxes for TY 2010, amounting to ₱18,705,022.31, detailed as follows:

Tax Type	Amount
Income Tax	₱10,067,373.05
VAT	4,976,084.91
EWT	3,661,564.35
TOTAL	₱18,705,022.31

On August 25, 2016, respondent appealed ACIR Valeroso's FDDA to petitioner.

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On March 26, 2018, respondent received petitioner's *Final Decision* dated May 23, 2017, denying its Motion for Reconsideration filed on August 25, 2016, and demanding the immediate payment of respondent's deficiency taxes for TY 2010, amounting to ₱18,705,022.31.

On April 24, 2018, respondent filed a Petition for Review with the Court in Division, docketed as CTA Case No. 9820.

On December 16, 2021, the Court in Division rendered the challenged Decision,⁴ disposing CTA Case No. 9820, in this wise:

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the FDDA and Assessment Notice Nos. IT-122-LA158-2010-16-080; VT-122-LA158-2010-16-081; and WE-122-LA158-2010-16-082, dated July 21, 2016, issued against [respondent] for deficiency taxes for TY 2010 in the amount of [₱]18,705,022.31, inclusive of increments, are **CANCELLED** and **SET ASIDE**[,] for being null and void.

[Petitioner] is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes during the pendency of the instant case.

SO ORDERED.

Petitioner sought,⁵ but failed⁶ to secure a reversal of the challenged Decision; hence, the present⁷ recourse.

Petitioner argues that under Section 13 of the 1997 National Internal Revenue Code (NIRC), as amended, the requirement of prior issuance of a valid LOA before proceeding with tax investigation of a taxpayer only applies to ROs in the Revenue District Office (RDO). Since the individuals who performed the audit and examination on respondent are revenue officers under the Office of the Commissioner of Internal Revenue (OCIR) – LTS, the issuance of a valid LOA may be dispensed with.

⁴ *Supra* note 2.

⁵ Respondent (now petitioner)'s Motion for Reconsideration (Re: Decision Promulgated on 16 December 2021). Docket (CTA Case No. 9820), pp. 630-640.

⁶ *Supra* note 3.

⁷ *Supra* note 1.

Petitioner further claims that under Revenue Memorandum Order (RMO) No. 8-2006, if both the RO and GS cease employment, or were detailed in another revenue region, the continuation of the examination of a taxpayer may be re-assigned to another RO and GS within the same RDO. Given that the revenue officers named in the LOA were transferred or reassigned, the alleged Memorandum of Assignments (MOAs) issued by OIC-Chief of LT Division Edralin Silario (Chief Silario) and Chief of Regular LT Audit Division 1 Shirley A. Calapatia (Chief Calapatia), in the names of ROs Turbolencia and Sarrosa, are sufficient legal authority for them to continue the examination of respondent for TY 2010.

Petitioner, too, insists that respondent was afforded due process at administrative level, because it was able to participate in the proceedings, as well as present its arguments and evidence before the BIR.

Being a product of a legal examination and audit, petitioner declares that respondent failed to debunk the presumption of correctness of tax assessments issued against it; thus, respondent should be made liable for deficiency taxes and their penalties for TY 2010.

In refutation,⁸ respondent ripostes that the ROs who conducted the examination on it are part of the Large Taxpayer's Division, Revenue Region No. 7-Makati, and *not* under the OCIR; hence, a valid LOA is need for such examination.

Respondent further counters that there must be a separate or amended LOA, for the re-assigned ROs to continue with the audit examination or audit, left-off by the original ROs named in the LOA.

Respondent also retorts that the BIR transgressed its right to due process on examination and assessment because it is only through the issuance of a separate or amended LOA in the names of the re-assigned ROs by which it would legally know who would conduct the examination against it.

⁸ Respondent's Comment on Petition for Review En Banc. *Rollo*, pp. 63-71.

of

Since the BIR conducted an illegal examination against it for TY 2010, respondent concludes that the resultant deficiency tax assessment covering said year is as well void.

RULING

We deny the Petition.

Section 6(A) of the NIRC, as amended, restricts the authority to examine any taxpayer for the correct determination of tax liabilities to petitioner or his duly authorized representatives. By way of exception, petitioner or his duly authorized representatives may authorize the examination of any taxpayer for the correct determination of tax liability:

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: ...

...

Sections 10(c) and 13 of the NIRC, as amended, permits the Revenue Regional Directors (RD) to issue LOAs in favor of ROs performing assessment functions in their respective region and district offices for the examination of any taxpayer within such region:

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;

...

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.

Additionally, Section D(4) of RMO No. 43-90⁹ provides that deputy commissioners (DCIRs), and other BIR officials authorized by the CIR himself are permitted to issue an LOA.¹⁰ Among the BIR officials expressly authorized¹¹ by the CIR to issue an LOA are the Assistant Commissioners (ACIRs) and Head Revenue Executive Assistants (HREAs).

As it stands, the LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers pursuant to Sections 6, 10(c) and 13 of the NIRC, as amended. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, a revenue officer.¹² It gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a *particular period*.¹³ Conversely, the absence of such an authority renders the assessment or examination a patent nullity.¹⁴

⁹ SUBJECT: *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.*

¹⁰ For 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 exigencies of service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

¹¹ No. 2, Roman Number II of RMO No. 29-2007 permits assistant commissioners and head revenue executive assistant to issue LOAs.

¹² See *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, G.R. No. 242670, May 10, 2021.

¹³ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

¹⁴ See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

In the LOA dated October 11, 2011,¹⁵ ROs Matibag, Mejia, Zeta, under GS Lingan, were authorized by petitioner to conduct examination of respondent for possible deficiency taxes covering TY 2010.

Meanwhile, it was RO Jose R. Turbolencia and GS Oscar A. Sable who suggested the issuance of the PAN,¹⁶ FAN,¹⁷ and FDDA¹⁸ against respondent covering TY 2010. RO Turbolencia and GS Sable's respective names do *not* appear on the LOA dated October 11, 2011. Their authority to examine and audit respondent for said year originated from a MOA dated May 5, 2013,¹⁹ issued by Chief Silario, a person without legal competence to issue authority to examine taxpayers. It means that the examination and audit conducted by RO Turbolencia and GS Sable against respondent for TY 2010 is illegal. Therefore, the ensuing deficiency tax assessments slapped by the BIR against respondent for said year is void.

Wanting in cogency is petitioner's contention that since the ROs who audited respondent are allegedly part of OCIR, they may conduct examination of respondent without any valid LOA pursuant to Section 13 of the NIRC, as amended. The issuance by petitioner or his duly authorized representatives of an LOA to ROs doing assessment functions as a precondition for the validity of examination and assessment is *not* based on the office *where* the ROs are stationed or detailed. Rather, the need for the issuance thereof is prefaced on the persons *who* would perform the audit and examination of the taxpayer. To be precise, if petitioner himself, or the BIR officials duly authorized by law or petitioner are the ones who would personally conduct the examination of the taxpayer, the issuance of a valid LOA may be dispensed with.²⁰ RO Turbolencia and GS Sable do *not* fall under the group just mentioned; thus, a valid LOA is a condition *sine qua non* for the validity of their examination, and resultant tax assessment.

Neither may Chief Silario's MOA dated May 5, 2013 cure the invalidity of the examination and audit conducted by RO Turbolencia and GS Sable against respondent for TY 2010. The reason—only

¹⁵ Exhibit "R-4." Folder 1, BIR Records, p. 1-c.

¹⁶ Memorandum dated July 31, 2013. Exhibit "R-11." Folder 2, BIR Records, pp. 19-23.

¹⁷ Memorandum dated May 9, 2014. Folder 2, BIR Records, pp. 294-299.

¹⁸ Memorandum dated July 13, 2016. Exhibit "R-16." Folder 2, BIR Records, pp. 335-337.

¹⁹ Exhibit "R-8." Folder 1, BIR Records, p. 536.

²⁰ See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

petitioner, RD, DCIRs, ACIRs, and HREAs may legally authorize the examination of any taxpayer. Chief Silario is *not* one of them; precisely, the MOA dated May 5, 2013 endowed *no* legal authority in favor of RO Turbolencia and GS Sable to examine respondent for TY 2010.

Nor could we sustain petitioner's posture that the BIR did *not* offend respondent's right to due process on examination and assessment. RO Turbolencia and GS Sable's audit of respondent for TY 2010, *sans* a valid LOA in their names, flouted respondent's right to due process on examination and assessment. *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*²¹ declared:

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. ... **Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**

...²²

In precis, the Court in Division annulled the BIR's deficiency tax assessments, issued against respondent for TY 2010.

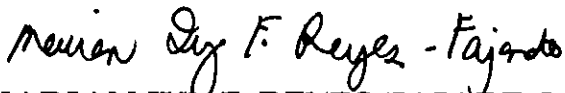
Rightfully so.

WHEREFORE, the Petition for Review filed on September 16, 2022, by the Commissioner of Internal Revenue in CTA EB No. 2675, is **DENIED**. The Decision dated December 16, 2021 and Resolution dated August 2, 2022, in CTA Case No. 9820, are **AFFIRMED**.

²¹ *Supra* note 12.


²² Boldfacing supplied.

SO ORDERED.



MARIAN IVY F. REYES-FAJARDO
Associate Justice

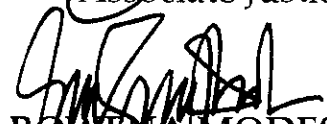
We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice



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



LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
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