

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, CTA EB No. 2702
(CTA Case No. 9522)

Petitioner,

Present:

- versus -

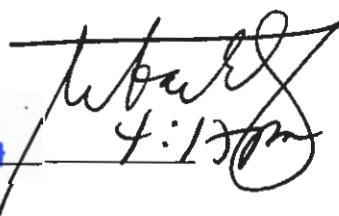
**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

DIAGEO PHILIPPINES, INC.,

Respondent.

Promulgated:

APR 25 2024



4:17pm

X-----X

DECISION

FERRER-FLORES, J.:

This is a Petition for Review filed by the **Commissioner of Internal Revenue (CIR)** on October 27, 2022¹ seeking the reversal of the Decision of this Court, dated November 4, 2021² (assailed Decision),³ and the Resolution, dated September 16, 2022 (assailed Resolution),⁴ whereby the Third Division cancelled and set aside the deficiency Excise Tax and Value-added Tax (VAT) assessments issued against then petitioner **Diageo Philippines, Inc.**

¹ *Rollo*, pp. 6 to 22.

² Penned by Associate Justice Maria Rowena Modesto-San Pedro and concurred by Associate Justice Erlinda P. Uy and Associate Justice Ma. Belen M. Ringpis-Liban.

³ *Ibid.*, pp. 31 to 60.

⁴ *Ibid.*, pp. 62 to 68.

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(Diageo) for the taxable years (TYs) 2013 and 2014 in the aggregate amount of **₱462,217,162.76**.

PARTIES OF THE CASE

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office, such as the power to decide disputed assessments, refund of internal revenue taxes, fees, other charges and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997,⁵ as amended.

Respondent is a duly organized corporation existing in accordance with and by virtue of the laws of the Republic of the Philippines, engaged in the business of importing, exporting, manufacturing, marketing, distribution, buying, and selling by wholesale of all kinds of beverages and liquor.⁶

FACTUAL ANTECEDENTS

The facts as found by the Court in Division are as follows:⁷

On June 1, 2015, respondent [herein petitioner] issued a Request for Presentation of Records requiring petitioner [herein respondent] to submit the following documents in relation to respondent [herein petitioner]'s validation/verification of petitioner's Importer's Sworn Statements ('ISS') pertaining to all of its imported brands of distilled spirits and champagne: a) ISS of all imported brands of distilled champagne; b) Authority to Release Imported Goods (ATRIGs) issued including attached computation of excise tax payments; and c) other documents that may be required in the course of the evaluation. This request was served by revenue officer ('RO') Claress Marie S. Notario ('RO Notario') to petitioner on 3 June 2015.

On 18 June 2015, petitioner [herein respondent] filed a letter with respondent [herein petitioner] requesting for an extension of the deadline to file the requested documents. On 10 July 2015, petitioner [herein respondent] submitted the requested documents.

On 7 July 2015, Mission Order No. 00110082 ('MO') was issued by Officer-In-Charge Assistant Commissioner Nestor S. Valleroso directing RO Notario and group supervisor ('GS') Emmanuel G. Viardo ('GS Viardo') to validate the Net Retail Price declared in petitioner's [herein respondent's] submitted Manufacturers/Importers Sworn Statement pursuant to Sections 6, 7 and 8 of Revenue Regulations No. ('RR') 17-2012. The MO was received by a certain Karen Ann I. Peralta on 23 July 2015.

⁵ Republic Act (RA) No. 8424, as amended.

⁶ *Rollo*, p. 31.

⁷ *Rollo*, pp. 32 to 34.

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Upon receipt of the requested documents, RO Notario allegedly proceeded to validate and verify the ISS and ATRIGs submitted by petitioner [herein respondent] for taxable years 2013 and 2014. These documents were then compared to the Actual Net Retail Price ('ANRP') which was allegedly acquired through market survey. By performing these procedures, RO Notario determined that deficiency Excise Tax and VAT are due from petitioner. Thus, RO Notario prepared a Memorandum, dated 30 October 2015, recommending the issuance of a Preliminary Assessment Notice ('PAN') against petitioner [herein respondent].

On 30 October 2015, the PAN was issued against petitioner [herein respondent]. This was received by petitioner [herein respondent] on 5 November 2015. In the PAN, respondent [herein petitioner] assessed petitioner [herein respondent] for deficiency Excise Tax and VAT in the total amount of Four Hundred Thirty One Million Three Hundred Sixty One Thousand Two Hundred Eighteen and 74/100 Pesos (Php431,361,218.74).

Allegedly, petitioner [herein respondent] did not respond to the PAN. Thus, RO Notario prepared a Memorandum, dated 20 April 2016 recommending the issuance of a Formal Letter of Demand ('FLD'). On 20 April 2016, respondent [herein petitioner] issued the FLD, and purportedly, Audit Results/Assessment Notices ('ARANs') for the assessed deficiency taxes. The FLD was received by petitioner [herein respondent] on 26 May 2016. The FLD assessed petitioner [herein respondent] for deficiency Excise Tax and VAT for the taxable years 2013 to 2014, in the aggregate amount of Four Hundred Sixty Two Million Two Hundred Seventeen Thousand One Hundred Sixty Two and 76/100 Pesos (Php462,217,162.76). Petitioner [herein respondent], however, denies receipt of the ARANs or any type of assessment notice from respondent [herein petitioner]. In fact, petitioner [herein respondent] is alleging that for failure to attach an assessment notice with the FLD, the FLD failed to provide for a due date for payment of the assessed deficiency taxes. Notably, while each of the ARANs provided an issuance date of 20 April 2016, the due date indicated was 29 February 2016.

On 23 June 2016, petitioner [herein respondent] filed with the respondent [herein petitioner] a Request for Reconsideration of the FLD and the ARANs.

Meanwhile, on 19 January 2017, petitioner [herein respondent] filed the original Petition before this Court.

On 17 February 2017, RO Notario prepared a Memorandum recommending the denial of the Request for Reconsideration filed by petitioner [herein respondent]. On same date, respondent [herein petitioner] issued the Final Decision on Disputed Assessment ("FDDA") denying petitioner's [herein respondent's] Request for Reconsideration. The FDDA was received by petitioner on 7 March 2017. On 5 April 2017, petitioner [herein respondent] wrote a letter to respondent [herein petitioner] informing him that a Petition had already been filed with this Court appealing the deficiency tax assessments issued against, and that petitioner [herein respondent] no longer had any intention to file an appeal by way of a request for reconsideration before the CIR.

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PROCEEDINGS BEFORE THE COURT

Within thirty (30) days from the lapse of the 180-day period, herein respondent Diageo filed a Petition for Review on January 19, 2017.⁸ This case was then raffled to this Court's Third Division and was docketed as CTA Case No. 9522. Herein petitioner CIR filed his *Answer* to the Petition for Review on April 24, 2017.⁹

On May 8, 2017, herein respondent Diageo filed its *Manifestation/Motion for Leave to File Attached Amended Petition for Review*.¹⁰ Herein petitioner CIR, on the other hand, filed his Answer thereto on September 29, 2017.¹¹

Diageo filed a *Motion for Summary Judgment*,¹² which was denied by the Court in a Resolution dated October 14, 2019,¹³ after hearing and presentation of documentary and testimonial evidence.

Trial ensued.

Herein respondent Diageo presented documentary and testimonial evidence. It presented Ms. Anne Christine Carlos, petitioner's Tax Controller,¹⁴ on June 3, 2020.¹⁵

On June 11, 2020, Diageo then filed its *Formal Offer of Evidence*.¹⁶ In the Resolution dated July 30, 2020, the Court admitted all of its exhibits.¹⁷

On the other hand, herein petitioner CIR adopted the testimony of RO Notario,¹⁸ during his presentation in relation to the Motion for Summary Judgment,¹⁹ as part of the main case.

Memorandum *for the Petitioner* was filed on October 21, 2020 by herein respondent Diageo,²⁰ whereas, herein petitioner CIR manifested that he is adopting the arguments raised in his Answer dated September 29, 2017 as

⁸ Division Docket - Vol. 1, pp. 10 to 28.

⁹ *Ibid.*, pp. 69 to 72.

¹⁰ *Ibid.*, pp. 10 to 28.

¹¹ *Ibid.*, pp. 258 to 270.

¹² *Ibid.*, pp. 314 to 341.

¹³ Division Docket, Vol. 2, pp. 811 to 820.

¹⁴ Judicial Affidavit of Anne Christine Carlos, Division Docket - Vol. 2, pp. 829 to 842.

¹⁵ Minutes of the hearing and Order dated June 3, 2020, *Ibid.*, pp. 879 to 881.

¹⁶ Division Docket - Vol. 2, pp. 937 to 951.

¹⁷ Division Docket - Vol. 3, pp. 1031 to 1032.

¹⁸ Judicial Affidavit of Revenue Officer Claress Marie S. Notario, Division Docket - Vol. 2, pp. 745 to 755.

¹⁹ Minutes of the hearing and Order dated July 2, 2019, Division Docket - Vol. 2, pp. 763 to 765.

²⁰ Division Docket - Vol. 3, pp. 1087 to 1130.

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his memorandum.²¹ Thereafter, the case was submitted for decision on June 28, 2021.²²

The Court in Division rendered a Decision on November 4, 2021,²³ stating:

“**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The PAN, FLD and FDDA issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency Excise Tax and VAT assessments issued against petitioner for the taxable years 1 January 2013 to 31 December 2014, in the aggregate amount of Four Hundred Sixty Two Million Two Hundred Seventeen Thousand One Hundred Sixty Two and 76/100 Pesos (Php462,217,162.76), are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

SO ORDERED.”

In the assailed Decision, the Court ruled that the ROs who conducted the audit of petitioner were not properly authorized considering that the closest document that may be said to have granted authority to them to continue the audit investigation of petitioner’s books was the MO. Moreover, the Court found that the FLD issued by respondent failed to provide a due date for payment as petitioner only admitted the receipt of the FLD but without the attached FAN as referred to in the FLD. Finally, the Court concluded that the FLD did not provide the legal and factual bases for the deficiency tax assessments contained therein. The assessment notices did not provide any explanation on how the basic deficiency Excise Taxes and VAT were arrived at and petitioner was in no position to validly form an intelligent defense on the deficiency assessments issued against it.

Petitioner, then respondent, filed his Motion for Reconsideration [re: Decision dated November 4, 2021],²⁴ but was denied by the Court for lack of merit in the Resolution dated September 16, 2022.²⁵ Hence, the instant Petition for Review.

Respondent Diageo Philippines, Inc. filed its Comment (To Petitioner’s Petition for Review dated 27 October 2022).²⁶

On January 13, 2023, the case was referred to mediation.²⁷ The parties, however, decided not to have their case mediated by the Philippine Mediation

²¹ Manifestation filed on October 26, 2020, Division Docket - Vol. 3, pp. 1137 to 1138.

²² Division Docket – Vol. 1, p. 335.

²³ Division Docket - Vol. 3, pp. 1145 to 1174.

²⁴ Division Docket - Vol. 3, pp. 1175 to 1189.

²⁵ *Ibid.*, pp. 1209 to 1215.

²⁶ *Rollo*, pp. 73 to 86.

²⁷ *Ibid.*, pp. 89 to 90.

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Center Unit – Court of Tax Appeals.²⁸ Thus, on April 28, 2023, the case was then submitted for decision.²⁹

ISSUES

Petitioner CIR assigned the following errors as basis of his petition.³⁰

I.

The Honorable Court in Division erred in ruling that the assessment is void because of lack of Letter of Authority (LOA).

II.

The Honorable Court in division erred in ruling on an issue never raised by respondent, never joint by the pleadings, never raised during the Pre-Trial and never defined by the Court in the Pre-Trial Order. Thus, petitioner's basic right to fair play and due process was violated when the Court ruled to grant the original petition on the ground that the assessments are void on the grounds of failure to indicate dates in the assessment notice.

III.

The Honorable Court in Division erred in ruling that the FLD did not provide the legal and factual bases of the assessment.

IV.

The Honorable Court in division erred in enjoining and prohibiting petitioner from collecting the assessed deficiency taxes.

ARGUMENTS

Petitioner argues that an LOA is not required for the validity of an assessment as it applies only to ROs in the RDOs. He contends that an LOA is not necessary when the audit investigation is conducted under the Office of the CIR as it is the organic function of the Commissioner to assess as provided

²⁸ *Ibid.*, p. 91.

²⁹ *Ibid.*, pp. 93 to 94.

³⁰ Assignment of Errors, Petition for Review, *Ibid.*, pp. 9 to 10.

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in Section 6 of the NIRC of 1997, as amended. Petitioner insists that the audit investigation was authorized by the OIC Assistant Commissioner of the Large Taxpayer Services (LTS) Nestor S. Valeroso, whose office is under the Office of the CIR. The LOA is merely for administrative purposes to allow keeping track of ongoing assessments.

Petitioner also claims that its basic right to fair play and due process was violated when the Court in Division ruled on a matter not raised as issue by respondent in its Petition for Review or Pre-Trial Brief, not joined by the parties, nor defined by the Court in the Pre-Trial Order. Petitioner also maintains that the FLD issued against respondent provided the factual and legal basis of the assessment.

He likewise insists that Section 228 of the NIRC of 1997, as amended, does not require a full explanation of every legal and factual basis, rather, substantial compliance would suffice for what is important is that the taxpayer has been sufficiently informed so that it may file an effective protest against the assessment.

Finally, petitioner claims that the Court cannot enjoin and prohibit him from collecting the assessed deficiency taxes as it contravenes Section 218 of the NIRC of 1997, as amended and the Southern Cross ruling. He maintains that injunctive writ is only available upon compliance with two (2) requisite conditions namely: 1) the right to be protected exists prima facie; and 2) the acts sought to be prevented would cause an irreparable injustice, which are both not present in the instant case. In addition, the suspension of collection of taxes requires the posting of the bond, which was not present in the assailed Decision.

On the other hand, respondent counters that an RO that conducts an examination, audit and investigation of taxpayer's books of accounts should be armed with an LOA. Respondent also posits that the alleged special or different treatment for examination and assessments conducted by officers under the Office of the CIR is without legal basis.

Moreover, respondent asserts that petitioner's right to fair play and due process were not violated as he was given the opportunity to be heard on the issues allegedly neither raised in the petition nor joined by him during the Pre-Trial. Petitioner had the opportunity to cross-examine respondent's witness on her statements during the trial and had the chance to refute her claims in her Memorandum. Regardless, the Court is not bound by the issues raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of cases. *u*

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Respondent also avers that the FLD actually failed to provide any explanation on how the deficiency Excise Tax and VAT were arrived at, since no details were provided as to when, where and how such market survey was conducted. It claims that if the survey was actually conducted, neither the PAN nor the FLD revealed the survey results; and in the absence of such, it was deprived of an opportunity to intelligently mount its defense.

Lastly, the Court can enjoin and prohibit petitioner from collecting the assessed deficiency taxes after finding that there was a clear violation of respondent's right to due process.

RULING OF THE COURT EN BANC

We uphold the ruling of the Court in Division.

Timeliness of the Petition for Review

Records show that, on September 27, 2022, petitioner received the Resolution dated September 16, 2022.³¹ Counting fifteen (15) days therefrom, petitioner had until October 12, 2022 within which to file his Petition for Review before the Court En Banc. On October 11, 2022, petitioner filed a Motion for Extension of Time to File Petition for Review,³² requesting for an additional period of fifteen (15) days from October 12, 2022, or until October 27, 2022, within which to file his Petition for Review. On October 27, 2022, petitioner timely filed his Petition for Review.

An LOA is required in order for RO Notario and GS Viardo to conduct an audit investigation of books of accounts and other accounting records, and eventually assess respondent

Petitioner's assertion that an LOA applied only to ROs in the RDOs but is not necessary when the audit investigation is conducted under the Office of the CIR is unfounded.

The Court in Division, in the assailed Decision, extensively discussed the necessity of an LOA before the ROs who will conduct the audit investigation may proceed to do so, citing the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* (Medicard case),³³ which was

³¹ *Rollo*, pp. 61 to 69.

³² *Ibid.*, pp. 1 to 4.

³³ G.R. No. 222743, November 17, 2010.

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given paramount consideration by the Supreme Court emphasizing the importance of an LOA as a due process requirement in issuing the deficiency tax assessments, *to wit*:

“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. Section 6 of the NIRC clearly provides as follows:

SEC. 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: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

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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 conduct any of these kinds of examinations without prior authority.

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In the case of Commissioner of Internal Revenue v. Sony Philippines, Inc., the Court said that:

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.

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a

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taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has served its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.

Contrary to the ruling of the CTA en banc, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. 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. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

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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."

As aptly held in the assailed Decision, the reason an LOA is placed on a pedestal in deficiency tax assessments proceedings is because it ensures that due process will be observed in favor a taxpayer who is subjected to an audit/investigation for the purpose of determining the correct amount of taxes due. In this case, RO Notario and GS Viardo conducted the audit investigation of respondent and eventually recommended the issuance of PAN and FLD based on the audit investigation without the required new LOA issued by the CIR or his duly authorized representatives. ↴

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His contention that an LOA is not required for ROs under the Office of the CIR is baseless.

The Court is not unaware that the Office of the Assistant CIR – Large Taxpayers Service issues LOAs to ROs under its office to conduct audit investigation of taxpayers under its jurisdiction. Petitioner, however, failed to adduce sufficient reason as to why no LOA was issued to RO Notario and GS Viardo to conduct the audit investigation of respondent's books of accounts.

Moreover, the Supreme Court, in the *Medicard* case, has clearly enunciated that the LOA is the authority given to the appropriate RO assigned to perform the assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. Moreover, it is already settled that the LOA demonstrates 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.

Further, the Supreme Court has concluded that, unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer's books of accounts and other accounting records cannot ordinarily be undertaken. Consequently, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct this kind of examination without prior authority. Hence, without such authority the examination is a nullity.

The assessment resulting from the examination conducted by RO Notario and GS Viardo is no exception.

To reiterate, Sections 6, 10(c) and 13 of the NIRC of 1997, as amended, provide:

“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.”

“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:

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(c) Issue Letters of Authority for the examination of taxpayers within the region.”

“**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 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.”

Based on the foregoing, RO Notario and GS Viardo were neither any of the duly authorized representatives of the CIR or were duly authorized by the CIR to issue LOA or conduct the examination of respondent. Accordingly, the assessment of petitioner against respondent is a nullity.

There was no violation of the right to fair play and due process as the Court may rule on matters not raised as an issue by respondent in its Petition for Review or Pre-Trial Brief, not joined by parties, nor defined by the Court in the Pre-Trial Order

Petitioner assails the Court in Division’s ruling on the failure of his assessment to indicate the due date for the payment of the deficiency tax assessment in the assessment notice considering that the issues raised in respondent’s Petition for Review were: (1) whether the assessment is void for being issued without an LOA; (2) whether the assessment is void for lack of factual and legal basis; and (3) whether the assessment is void for having been issued against existing laws and regulations.

As the issue on the due date was never joined by the pleadings nor raised by the parties during the pre-trial conference, petitioner claims that he was denied procedural and substantial due process. Had these issues been raised during trial, he would have presented evidence to refute the allegations of respondent.

Petitioner further insists on the fact that Section 1, Rule 14 of the Revised Rules of CTA (RRCTA) only allows this Court to resolve key issues related to the main issues to provide a complete, orderly disposition of the

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case. Petitioner contends that the provision does not give license to this Court to resolve as a main issue a matter not derived from the pleadings and not tried by the parties, which blindsides a litigant and is not an "orderly" disposition of the case. It further maintains its position that achieving an orderly disposition of the cases under the RRCTA is not synonymous to violating litigants' basic right to fair play and due process, and does not mean disregarding the rules of procedure.

He contends that, considering that the Pre-Trial Order binds all parties including the Court, the issues defined therein should be the only issues to be resolved by the Court.

We do not agree.

As petitioner is very much well aware, paragraph 2 of Section 1, Rule 14 of the RRCTA, provides that, 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.

In the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,³⁴ the Supreme Court held:

"The general rule is that the appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.

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The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. x x x" (emphasis supplied)

Moreover, the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,³⁵ has specifically ruled that the foregoing provision is clearly worded, and that the CTA was well within its

³⁴ G.R. No. 163835, July 7, 2010.

³⁵ G.R. No. 183408, July 12, 2017.

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authority to consider in its decisions the question on the scope of authority of the ROs who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. It further declared that the CTA *En Banc* is correct in sustaining the CTA Division's view concerning such matter.

Clearly, the CTA can rule on matters not raised as an issue by the parties and joined in the pleadings and incorporated in the Pre-Trial for as long as it as an essential part in the disposition of the case.

Here, the main issue to be resolved by the Court is the validity of the assessment issued by herein petitioner. Part of the requirements of a valid assessment is a valid demand to pay against herein respondent which includes a due date for payment; absent which does not constitute a clear demand for payment which may render the assessment invalid. Accordingly, the issue on the date of payment is an essential part in the disposition of the case in order for the Court to determine the validity of the assessment and the Court may rule on this matter despite not being raised as an issue by the parties.

The FLD did not provide legal and factual bases for the deficiency tax assessments contained therein

Petitioner insists that he does not need to provide a full explanation of every legal and factual basis of his assessment against respondent; instead, it is sufficient to identify the law and recite the facts.

We do not agree.

The law requires that the legal and factual bases of the assessment be stated in the FLD and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory.³⁶

In the instant case, the Court in Division found that the PAN and FLD indicates that the deficiency Excise Tax and VAT assessments were arrived at when petitioner found that there was an understatement on the declared Suggested Net Retail Prices (SNRPs) in respondent's ISS. The amounts stated therein was used as the basis for the computation of the excise tax and VAT paid on various brands of imported distilled spirits, by as much as fifteen percent (15%) as compared to the ANRPs. The amounts used for comparison

³⁶ *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 183408, July 12, 2017.

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were obtained through market surveys conducted by means of direct purchase of such items from major supermarkets and outlets, and through photographs showing the item on the shelf and corresponding prices by which it is sold.

The Court found, however, that petitioner did not provide any details or computation on how the conclusion on petitioner's SNRP were understated by fifteen percent (15%) and how the basic deficiency excise taxes and VAT were arrived at. Specifically, petitioner failed to indicate the supermarket where they conducted the survey and the date of the survey in order for respondent to check whether the prices it declared in the ISS for 2013 and 2014 are still relevant. Moreover, the results of the market surveys were not indicated in the PAN and FLD.


The alleged "factual bases" in the PAN and FLD are not sufficient. While the under-declaration of fifteen percent (15%) was stated as the basis of the deficiency assessments, petitioner clearly failed to indicate how they arrived at the computation of the under-declaration other than mentioning market surveys conducted by means of direct purchase from supermarkets/outlets and through photographs of the item with the corresponding prices by which it is sold.

The law mandates that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice. In view of this, respondent failed to intelligently raise a defense on the alleged deficiency excise tax and VAT assessments.

Consequently, the Court in Division did not err in granting respondent's Petition for Review, thereby cancelling the excise tax and VAT assessments of petitioner for TYs 2013 and 2014.

WHEREFORE, in view of the foregoing, the Petition for Review filed on October 27, 2022 by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The Decision, dated November 4, 2021, and the Resolution, dated September 16, 2022, of the Court in Division in CTA Case No. 9522 are **AFFIRMED**.

SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice


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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


MARIAN IVY F. REYES-FAJARDO
Associate Justice

On Leave
LANEE S. CUI-DAVID
Associate Justice

DECISION

CTA EB No. 2702 (CTA Case No. 9522)

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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