

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

-versus-

PUEBLO DE ORO DEVELOPMENT
CORPORATION,

Respondent.

CTA *EB* NO. 2303
(CTA Case No. 9553)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

Promulgated:

APR 18 2022

11:50am

x

x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW** (“**Petition**”), filed through registered mail on 18 August 2020,¹ with respondent’s **COMMENT (on the *Petition for Review* dated August 6, 2020)** (“**Comment**”), filed through registered mail on 11 November 2020.²

¹ Records, pp. 7-52.

² *Id.*, pp. 65-490.

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** (“CIR”) is the head of the Bureau of Internal Revenue (“BIR”) and empowered to perform the duties of said office, including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the *National Internal Revenue Code, as amended*, (“NIRC”) or other laws or portions thereof administered by the BIR. He may be served summons, pleadings, and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent **PUEBLO DE ORO DEVELOPMENT CORPORATION** is a corporation duly organized and existing under and by virtue of the laws of the Philippines.

The Facts

The following are the undisputed facts:³

“Petitioner filed its 2012 Income Tax Return (ITR) on April 12, 2013.

On January 27, 2016, respondent issued a Preliminary Assessment Notice (PAN), assessing petitioner for deficiency income tax, inclusive of interest and penalties, for taxable year 2012, in the total amount of P33,814,119.24.

Subsequently, on February 22, 2016, respondent issued a Formal Letter of Demand (FLD) dated February 22, 2016, reiterating petitioner's deficiency income tax, inclusive of interest and penalties, for taxable year 2012 in the total amount of P33,814,119.24, attaching therewith the *Details of Discrepancy*.

On March 29, 2016, petitioner filed with the BIR Large Taxpayer's Division Office its protest letter dated March 21, 2016.

On May 12, 2016, petitioner received a Final Decision on Disputed Assessment (FDDA) dated May 4, 2016 issued by Mr. Nestor S. Valeroso, Assistant Commissioner, Large Taxpayers Service, substantially upholding the deficiency income tax assessment against petitioner, now in the amount of P35,284,993.00, inclusive of interest and penalties, with attached Details of Discrepancy and Audit Result/ Assessment Notice dated May 4, 2016.

On June 9, 2016, petitioner filed with the office of respondent the letter dated June 9, 2016, requesting for the reconsideration and eventual cancellation/withdrawal of the FDDA against petitioner on the ground that

³ Decision, dated 12 December 2019, Annex “A”, Petition, *id.*, pp. 26-27.

said FDDA is null and void, and the corresponding deficiency income tax assessment lacks factual and legal bases.

Thereafter, on February 22, 2017, petitioner received respondent's FDDA dated February 21, 2017, with attached Details of Discrepancy and Audit Result/Assessment Notice dated February 21, 2017, reiterating the ruling made by Mr. Nestor S. Valeroso, Assistant Commissioner, Large Taxpayers Service, in his FDDA dated May 4, 2016.

Petitioner filed the instant *Petition for Review* before this Court on March 24, 2017. This case was raffled to the Second Division of this Court.”

On 12 December 2019, the Court in Division rendered the Assailed Decision, the dispositive portion of which provides:⁴

“**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.

Accordingly, respondent’s FDDA dated February 21, 2017, and the FDDA dated May 4, 2016 issued by Assistant Commissioner Nestor S. Valeroso, both demanding payment from petitioner for deficiency income tax for taxable year 2012 in the amount of P35,284,993.00, inclusive of interest and penalties are **REVERSED** and **SET ASIDE**.

Moreover, the *Audit Result/Assessment Notice* dated May 4, 2016 and *Audit Result/Assessment Notice* dated February 21, 2017, attached to the said FDDAs, respectively, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.”

On 17 January 2020, petitioner filed his Motion for Reconsideration (Re: Decision dated 12 December 2019) on the Assailed Decision, which was denied for lack of merit by the Court in Division in a Resolution, dated 1 July 2020.⁵

Petitioner then filed a Motion for Extension of Time to File Petition for Review on 22 July 2020,⁶ which this Court *En Banc* granted through a Minute Resolution, dated 28 July 2020.⁷

On 18 August 2020, petitioner filed the instant Petition.

The Court *En Banc* then issued a Resolution, dated 9 October 2020, requiring respondent to file a Comment to the Petition within ten (10) days from notice.⁸ On 30 October 2020, respondent filed through registered mail a Motion for Extension of Time to file its Comment.⁹ In a Minute Resolution,

⁴ *Id.*, pp. 41-42.

⁵ Resolution, dated 1 July 2020, Annex “B”, Petition, *id.*, pp. 43-51.

⁶ Records, pp. 1-5.

⁷ *Id.*, p. 6.

⁸ *Id.*, pp. 53-55.

⁹ *Id.*, pp. 57-62.

dated 16 December 2020, this Court *En Banc* granted the Motion for Extension of Time.¹⁰ Respondent filed the Comment through registered mail on 11 November 2020.

Afterwards, Court *En Banc* issued the Resolution, dated 15 January 2021, noting the filing of the Comment and referring the instant case to mediation.¹¹ However, on 18 May 2021, this Court *En Banc* received a No Agreement to Mediate from the Philippine Mediation Center Unit.¹²

On 10 June 2021, this Court *En Banc* issued a Resolution submitting the instant case for Decision.¹³

Hence, this Decision.

The Assigned Errors¹⁴

The Petition raised the following issues for resolution by the Court *En Banc*:

1. The Honorable Court in Division erred in ruling that respondent is not liable for deficiency income tax and that petitioner violated respondent's right to due process; and
2. The Honorable Court in Division erred in ruling that the assessment issued against respondent is void.

Arguments of the Parties

Petitioner presented the following arguments:¹⁵

1. Respondent is liable for deficiency income tax.
2. Petitioner did not violate respondent's right to due process. He alleges that he observed both procedural and substantial due process in issuing the present tax assessment. Respondent was informed of the factual and legal basis of the assessment. The Preliminary Assessment Notice ("PAN"), Formal Letter of Demand with Audit Result/Assessment Notice ("FLD/FAN") and Final Decision on Disputed Assessment

¹⁰ *Id.*, p. 501

¹¹ *Id.*, pp. 512-514.

¹² *Id.*, pp. 515-517.


¹³ *Id.*, pp. 518-520.

¹⁴ *Id.*, p. 10.

¹⁵ *Id.*, pp. 11-16.

(“FDDA”) indicated not only the deficiency tax involved and interest due thereon, but also sufficiently stated the facts and the law on which the assessment is based.

3. The records of the case show that respondent did not pay any income tax for 2012 because it claimed the income tax holiday (“ITH”) incentive under *Executive Order No. 226*, otherwise known as *Omnibus Investment Code of the Philippines, (“EO 226”)* for the said period. However, petitioner alleges, respondent cannot claim exemption prior to the approval of its application for ITH incentive. All of respondent’s sales are therefore taxable unless otherwise proven to be exempt.
4. Under *Section 5 of the NIRC*, the CIR is empowered to ascertain the correctness of a return filed in order to determine any liability for an internal revenue tax. Following this, there is no need for a Letter of Authority (“LOA”) because the deficiency tax assessment did not emanate from the examination of respondent’s books of accounts and other accounting records but from a Letter of the Board of Investments (“BOI”) to the BIR informing the latter of the denial of respondent’s request for ITH incentive for 2012. An LOA is issued to authorize or empower a revenue officer to examine, verify and scrutinize a taxpayer’s books of accounts and other accounting records in relation to internal revenue taxes. It is not necessary in this case because there was no physical examination of the books of accounts and other accounting records of respondent.
5. Taxes are essential to the government’s very existence hence, the dictum that “taxes are the lifeblood of the government.” Due to this, the Courts have always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption must be clearly shown and be based on language in the law too plain to be mistaken.
6. The assessments issued against respondent are valid and lawful. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.
7. Thus, respondent is liable to pay the assessed deficiency income tax for taxable year 2012. The examiner’s assessment should be given full weight and credit, in the absence of proof submitted by respondent to the contrary.

In its Comment, respondent counter-alleged as follows:¹⁶ 

¹⁶ *Id.*, pp. 71-90.

1. The Petition should not be entertained by this Court as it has not been preceded by the timely filing of a Motion for Reconsideration of the Assailed Decision.
2. Contrary to petitioner's claim, respondent is not liable for deficiency income tax. The deficiency income tax assessment is not valid since (a) no LOA was issued for this purpose, and (b) it was based solely on the findings of the BOI, instead of petitioner conducting an independent investigation of respondent's books of accounts and accounting records.
3. Contrary to petitioner's claim, petitioner clearly violated respondent's right to procedural due process by its failure to issue an LOA to respondent and depriving it of the full sixty (60) day period to submit all relevant supporting documents for its Protest as granted by ***Section 228 of the NIRC.***
4. Contrary to petitioner's claim, the deficiency income tax assessment cannot be presumed correct and made in good faith since it has no clear foundation.
5. Even assuming that the fatal procedural infirmities of the deficiency tax assessment can be ignored, the FDDA should still be set aside for being without factual and legal bases.

The Ruling of the Court En Banc

This Court resolves to **DENY** the **Petition** for lack of merit.

The arguments raised in the present Petition are mere reiterations of those adequately and judiciously tackled, resolved, decided, and passed upon in the Decision, dated 12 December 2019, and Resolution, dated 1 July 2020.

Petitioner should make an independent audit or investigation of the facts relevant to an assessment before issuing assessment notices.

Petitioner claims that there was no need for an LOA to validate the present tax assessment since the subject assessment did not emanate from an examination of respondent's books of accounts and other accounting records but from the letter of the BOI to the BIR informing the latter of the denial of respondent's ITH incentive for 2012. ✓

The Court *En Banc* is unpersuaded.

By alleging that the present assessment was not obtained through an examination of respondent's books of accounts and other accounting records but simply through a letter issued by the BOI to the BIR, petitioner has in effect admitted that it did not conduct an independent investigation and examination of the facts that would justify the issuance of a deficiency tax assessment. In fact, petitioner acknowledged that he simply adopted the findings by the BOI as his basis for issuing an assessment against respondent without verifying the same. This is an apparent violation of respondent's right to due process.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., etseq.*,¹⁷ the Supreme Court had the occasion to rule that in issuing tax assessments, the BIR is a quasi-judicial agency that should ensure that its Decisions are based on independent consideration of the law and the facts governing a case:

“In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that although quasi-judicial agencies ‘may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.’ It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) The administrative tribunal or body must consider the evidence presented.

(3) There must be evidence supporting the tribunal's decision.

(4) The evidence must be substantial or ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’

(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case. ✓

¹⁷ G.R. Nos. 201398-99 and 201418-19, 3 October 2018.

(7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

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The second to the sixth requirements refer to the party's 'inviolable rights applicable at the deliberative stage.' The decision-maker must consider the totality of the evidence presented as he or she decides the case.

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The Ang Tibay safeguards were subsequently 'simplified into four basic rights,' as follows:

(a) [T]he right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal right; (b) reasonable opportunity to appear and defend his rights and to introduce witnesses and relevant evidence in his favor; **(c) a tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction; and (d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records or disclosed to the parties.**

Saunar v. Ermita expounded on Ang Tibay by emphasizing that **while administrative bodies enjoy a certain procedural leniency, they are nevertheless obligated to inform themselves of all facts material and relevant to the case, and to render a decision based on an accurate appreciation of facts.**"

(Emphasis and underscoring, Ours.)

Indeed, by admitting that the subject tax assessment was merely based on the correspondences sent by the BOI to the BIR, in which the former informed the latter that respondent's request for ITH incentive for 2012 was denied, and wherein the amounts of respondent's revenue or income which are allegedly not entitled to ITH were provided,¹⁸ petitioner effectively violated respondent's right to due process by issuing an assessment based on unverified and unsubstantiated statements.

Had petitioner been more circumspect in the performance of his duty with respect to issuing tax assessments, he should have conducted further investigation and examination of petitioner's books of accounts and should have not relied on the information provided by the BOI alone. He should have ascertained the amount of revenue or income not entitled to ITH before making an assessment for deficiency income tax. ✓

¹⁸ Exhibit "P-13", Division Docket, Vol. IV, pp. 1525 to 1531; Exhibit "P-14", Division Docket, Vol. II, pp. 620 to 626; and Exhibit "P-15", *id.*, pp. 627 to 633.

The BOI's findings cannot serve as a substitute for an actual examination and investigation that petitioner should have conducted to ascertain the amount of respondent's revenue or income not entitled to ITH for the purposes of issuing the PAN, FLD/FAN, and FDDA. In fact, a Memorandum of Agreement between the BOI, the BOI Autonomous Region of Muslim Mindanao ("BOI-ARMM"), and the BIR that was executed on March 1, 2007 ("MOA")¹⁹ required the BIR to conduct an audit of ITH incentives issues raised by the BOI/BOI-ARMM, to wit:

"The BIR shall:

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3. Conduct post-audit/review of the dockets bearing on ITH incentive availment endorsed by the BOI/BOI/ARMM prior to the end of the prescriptive period provided under Section 203 of the Tax Code, as amended, through the Assessment Service in the BIR National Office;

If any deficiency tax assessment arises from the review of incentive availment, the Assessment Service shall transmit its findings of discrepancy and the corresponding documents to the concerned RDOs to enforce the immediate collection thereof, including increments accruing thereon;"

Given this, when petitioner issued the PAN, FLD/FAN, and the FDDA without even conducting an actual audit of respondent's books of accounts and other accounting records to ascertain the amount of revenue or income not entitled to ITH, petitioner did not only violate respondent's due process rights guaranteed in proceedings but his own duties under the MOA.

While it is true that the said MOA was subsequently repealed by *Revenue Memorandum Circular No. 14-2012*,²⁰ the repeal of the MOA did not whatsoever extinguish the BIR's duty to conduct actual investigation and audit before a tax assessment is issued. This principle is imbued in the very fabric of due process, hence, it cannot be removed by a mere administrative issuance.

On this score alone, the instant deficiency tax assessment is nullified.

We agree with the following findings by the Court in Division:

"In this case, as already observed, insofar as the supposed amounts of income not entitled to ITH, i.e., P7,472,575.74, P35,558,360.00, P5,910,819.00, respondent's FDDA dated February 21, 2017, and the FDDA dated May 4, 2016, merely relied on the BOI's results of its review regarding petitioner's ITH incentive in 2012. Clearly, respondent and the BIR did not base their own independent consideration of the said facts. ✓"

¹⁹ Revenue Memorandum Circular No. 17- 2007, 5 March 2007.

²⁰ 4 April 2012.

Such being the case, there was a violation of petitioner's right to due process, as to the findings of the said amounts of revenues or income not entitled to ITH.”

An LOA is an indispensable requirement for the validity of a tax assessment.

Corollary to petitioner’s failure to conduct an actual audit or investigation to ascertain the amount of respondent’s revenue or income not entitled to ITH for purposes of issuing assessment notices is petitioner’s failure to properly authorize the revenue officers whose efforts lead to the issuance of the PAN, FAN/FLD, and FDDA.

Basic is the rule that before revenue officers can issue assessment notices, they should first be armed with an LOA. This is a principle undeterred under our tax laws. An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in examining a taxpayer.

Sections 6 (A) and 13 of the NIRC are clear that revenue officers who will perform assessment functions must first be authorized to do so:

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

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“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.”
(Emphasis and underscoring, Ours.)

It is clear therefore that before an assessment can be made, a revenue officer must first be duly authorized to do so. This would allow such revenue officer to examine or investigate a taxpayer’s books of accounts for purposes of ascertaining the tax liability. ✓

The importance of an LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court recently in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,²¹ as follows:

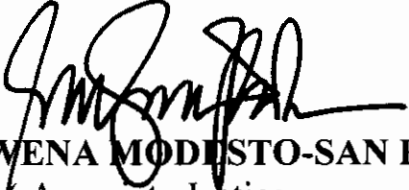
“To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon 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. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. 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.”

As duly found by the Court in Division and verified by the Court *En Banc*, the revenue officers whose efforts led to the issuance of the PAN, FLD/FAN, and FDDA did not have a valid LOA. They clearly had no authority to issue an assessment against respondent. Thus, the deficiency income tax assessment issued against respondent is null and void.

Given the foregoing disquisitions, there is no more need to address the remaining issues.


WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 12 December 2019, and Resolution, dated 1 July 2020, promulgated by the Court in Division are hereby **AFFIRMED**.

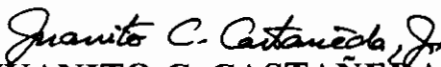
SO ORDERED.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

²¹ G.R. No. 242670, 10 May 2021.


WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

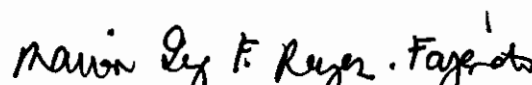

JUANITO C. CASTAÑEDA, JR.
Associate Justice



ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
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