REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***EN BANC***

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| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB No. 2538** (CTA Case No. 9600) |
| | ***Present:*** |
| - versus - | **DEL ROSARIO,** *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, and FERRER-FLORES,** *JJ.* |
| **THE HEIRS OF EMILIO L. GAN,** Respondent. | ***Promulgated:*** FEB 2 7 2023 4:20pm |

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# DECISION

**UY, *J.*:**

Before the Court *En Banc* is a *Petition for Review*[1] filed on November 26, 2021 by the Commissioner of Internal Revenue (CIR) against the heirs of Emilio L. Gan, praying that the Amended Decision dated January 8, 2021[2] and Resolution dated September 30, 2021,[3] rendered by the First Division of this Court (Court in Division) in CTA

[1] EB Docket, pp. 6 to 26.

[2] Penned by Associate Justice Catherine T. Manahan and concurred by Presiding Justice Roman G. Del Rosario, EB Docket, pp. 32 to 39; Division Docket (CTA Case No. 9600) – Vol. 2, pp. 816 to 823.

[3] Penned by Associate Justice Catherine T. Manahan and concurred by Presiding Justice Roman G. Del Rosario and Associate Justice Jean Marie A. Bacorro-Villena; EB Docket, pp. 40 to 48; Division Docket (CTA Case No. 9600) – Vol. 2, pp. 866 to 874.

Case No. 9600 entitled, *"The Heirs of Emilio L. Gan, petitioner, vs. Commissioner of Internal Revenue, respondent,"* be reversed and set aside. The dispositive portions thereof respectively read as follows:

**Decision dated January 8 2021:**

> "**WHEREFORE,** premises considered, the instant *Motion for Reconsideration* is hereby **GRANTED**. Accordingly, the Court's *Decision* dated June 29, 2020 is **REVERSED** and **SET ASIDE**. The *Formal Letters of Demand* dated January 25, 2016 and July 19, 2016 and the *Assessment Notices* for deficiency and income tax and value added tax amounting to Php983,251.20 and Php39,927.39, respectively, are hereby **CANCELLED**.
>
> **SO ORDERED."**

**Resolution dated September 30, 2021:**

> "**WHEREFORE,** respondent's *Motion for Reconsideration Ad Cautelam (re: Amended Decision promulgated on 08 January 2021)* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**

## THE PARTIES

The Commissioner of Internal Revenue is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with, among other powers and duties, the responsibility of collecting all national internal revenue taxes.

On the other hand, the heirs of Emilio L. Gan (the heirs), is represented by Scepter Jacob T. Gan. Emilio L. Gan (the late Gan) died last January 21, 2014.

## THE FACTS

On July 1, 2014, the BIR issued *Letter of Notice* (LN) No. 057-RLFTRS-12-00-00363 against the late Gan, showing an alleged discrepancy in the latter's local purchases for taxable year (TY) 2012.

On the same date, Revenue District Officer Ramer D. Narvaez (RDO Narvaez) issued *Memorandum of Assignment* (MOA) No. 057-LN-444-7/1/2014, referring the case/docket of the late Gan to Revenue Officer Grace Gonzaga (RO Gonzaga) and Group Supervisor (GS) Nimpha Malaguit "*for immediate service to subject taxpayer*".

Subsequently, RDO Narvaez also issued a *Follow-Up Letter* dated July 30, 2014 addressed to the late Gan stating that the same is a reminder and final notice to the latter that there is a previous finding upon which the BIR will base its forthcoming review/assessment; and that any further inaction on the part of the late Gan after the lapse of ten (10) days from receipt thereof is deemed as an admission to the validity and accuracy of the discrepancy indicated in the subject LN.

In the *Memorandum* dated August 12, 2014, RO Gonzaga reported that the late Gan had died and the case of business closure was assigned to RO Clemente Tenorio (RO Tenorio); and recommended that the LN be consolidated with the audit of the business closure of the subject taxpayer.

On August 28, 2014, RDO Narvaez issued MOA No. 057-LN-1140-8/28/2014 assigning RO Tenorio and GS Emily Singson to continue the audit/investigation of the case/docket of the late Gan previously assigned to RO Gonzaga, "*(c)ontinuation of the audit/investigation previously assigned to Revenue Officer Grace Gonzaga, for consolidation of Application for Closure of Business.*"

In the *Memorandum* dated September 30, 2015, RO Tenorio recommended, with the approval of RDO Narvaez, that the whole case docket of the late Gan be forwarded to the Assessment Division, Revenue Region No. 9 – San Pablo City, for the issuance of the statutory assessment notices required by law.

The BIR then issued *Preliminary Assessment Notice* (PAN) dated January 6, 2016 and an *Audit Results/Assessment Notice* against the late Gan assessing him of deficiency value-added tax (VAT) in the amount of ₱39,762.96, inclusive of interest, and compromise penalty in the amount of ₱10,000 for TY 2012.

On January 25, 2016 the BIR issued the *Formal Letter of Demand (FLD)* and an *Audit Results/Assessment Notice* against the late Gan, assessing the latter for deficiency VAT in the amount of ₱39,927.39, inclusive of interest, and compromise penalty in the amount of ₱10,000.00, for TY 2012.

Thereafter, in the *Memorandum* dated March 7, 2016, RO Tenorio recommended, with the approval of RDO Evangeline S. Abanilla, that the case of the late Gan, together with the whole docket, be transmitted again to the Assessment Division, Revenue Region No. 9 – San Pablo City, for the issuance of Preliminary Assessment Notice relating to the assessment of Income Tax.

On May 12, 2016, the BIR issued a *Supplemental PAN* finding a liability for deficiency income tax in the amount of ₱969,163.42, inclusive of surcharge and interest for TY 2012.

On July 19, 2016, the BIR issued another *FLD* with *Audit Results/Assessment Notice* against the late Gan, assessing him for deficiency income tax in the amount ₱983,251.20, inclusive of surcharges and interest for taxable year 2012.

On October 26, 2016, the heirs filed the *Letter* dated October 21, 2016 with Regional Director Gerardo R. Florendo of Revenue Region 9, San Pablo City, contending that the late Gan was erroneously, wrongfully and illegally assessed, and requested for a reconsideration/ re-computation of the subject assessments.

Due to the inaction of the CIR on the matter, the heirs filed a *Petition for Review* before the Court in Division on May 25, 2017. The case was docketed as CTA Case No. 9600.

On September 29, 2017, the CIR filed his Answer in CTA Case No. 9600, interposing the following defenses:

1) The late Gan is liable for deficiency income tax for TY 2012 based on computerized matching conducted by the Bureau on information/data provided by third party sources as stated per LN No. 57-RLFTRS-12-00-00363 dated July 1, 2014 as against the late Gan's declarations per Income Tax Return resulted to undeclared sales and additional taxable income amounting to ₱227,833,684.65 and ₱1,458,135.58 respectively. Thus, after auditing, the late Gan is liable for deficiency income tax for TY 2012 in the total amount of ₱983,251.20.

2) The NIRC does not limit the audit investigation to the appreciation of the records or documents provided by the taxpayer, as Section 5 of the NIRC grants the Commissioner power to obtain information from other sources to ascertain the correctness of the returns filed.

3) The RELIEF System which stands for 'Reconciliation of Listing for Enforcement' was purposely to detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources. Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services) Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible.

4) The Tax Reconciliation System (TRS) on the other hand is geared toward enhancing revenue collection by computerized matching of data from withholding agents (WAs) and declaration of income recipients, discrepancy reports can be generated to uncover violations on tax rules and regulations such under declaration of income, non-declaration of income, under remittance and/or non-remittance of taxes withheld, overwithholding, under withholding, over declaration of credits to name a few. Timely recognition and accurate reporting of unregistered taxpayers and non-filers will also be possible.

5) The CIR's audit investigation for deficiency taxes is not confined to the examination of the documents provided or obtained from the late Gan. The CIR has the power to promulgate rules to ensure the accuracy and truthfulness of the taxes declared and paid by the taxpayers. The CIR further submits that the late Gan's purchases are directly related to its supplier's sales.

6) The fifty percent (50%) surcharge imposed on the deficiency income tax was proper pursuant to Section 248 (B) of the NIRC.

7) The late Gan is liable for deficiency VAT for TY 2012 based on computerized matching conducted by the Bureau on information/data provided by third party sources as stated per LN No. 057-RLFTR-12-00363 dated July 1, 2014 as against the late Gan's declarations per VAT Returns resulted to undeclared sales amounting to ₱23,487,067.46. Thus, after auditing, respondent is liable for deficiency VAT for TY 2012 in the amount of ₱39,762.96.

8) The compromise penalty of P10,000.00 was properly imposed pursuant to Section 255 of the 1997 NIRC, as implemented under Revenue Memorandum Order (RMO) No. 19-2007, as amended by RMO No. 7-2015, for late payment of VAT.

9) Citing the case of *Commissioner of Internal Revenue vs. Bank of the Philippine islands,*[4] the CIR argues that tax assessments by examiners are presumed correct and made in good faith, with the taxpayer having the duty to prove otherwise. In the absence of proof of any irregularity, an assessment duly made by a Bureau of Internal Revenue examiner approved by his superior officers will not be disturbed, and that all presumptions are in favor of the correctness of tax assessments.

After the *Pre-Trial Conference* on February 13, 2018, the parties submitted their *Joint Stipulation of Facts and Issues* on February 28, 2018. Thereafter, the Court in Division issued a *Pre-Trial Order* on March 31, 2018.

During trial, the heirs presented Charleen Z. Gan, their bookkeeper, as their sole witness. Thereafter, the heirs filed their *Formal Offer of Evidence* on June 19, 2018, with the CIR's *Comment (on Petitioner's Formal Offer of Evidence)* filed on June 28, 2018.

In the Resolution dated July 10, 2018, the Court in Division admitted the heirs' exhibits except for Exhibits "P-1", "P-2", "P-3", "P-5", "P-6-1 to 4", and "P-7" for failure to submit the said duly marked exhibits.

On July 24, 2018, the heirs filed a *Motion for Reconsideration of the Resolution dated July 10, 2018* praying for the admission of their denied exhibits, with the CIR's *Comment (on Petitioner's Motion for Reconsideration)* on July 30, 2018.

For his part, the CIR presented RO Clemente Tenorio as her witness. On July 31, 2018, the CIR filed his *Formal Offer of Evidence.* The heirs failed to file their comment thereon.[5]

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[4] G.R. No. 134062, April 17, 2007.
[5] Records Verification dated December 18, 2018 issued by the Judicial Records Division of the CTA, Division Docket (CTA Case No. 9600) – Vol. 2, p. 690

In the Resolution dated August 22, 2018, the Court in Division granted the heirs' *Motion for Reconsideration of the Resolution dated July 10, 2018* and admitted the denied exhibits.

Pursuant to the Order dated October 1, 2018, CTA Case No. 9600 was transferred from the Third Division to the First Division of this Court.

Subsequently, the Court in Division admitted the CIR's exhibits on February 4, 2019, and gave the parties thirty (30) days to file their respective memoranda. On April 5, 2019, the heirs filed their memorandum; while the CIR filed his memorandum on April 16, 2019. CTA Case No. 9600 was submitted for decision on May 7, 2019.

On June 29, 2020, the Court in Division rendered the original *Decision*[6] dismissing the Petition for Review in CTA Case No. 9600 for lack of jurisdiction.

Aggrieved, the heirs filed a *Motion for Reconsideration* on August 25, 2020, without the CIR's comment. In the Resolution dated October 23, 2020, the Court in Division denied petitioner's *Motion to Admit Attached Comment* filed on October 8, 2020 since the said motion was a subterfuge to effectively file the comment beyond the given period.

Finding merit, the Court in Division promulgated the assailed *Amended Decision* on January 8, 2021[7], granting the heirs' Motion for Reconsideration. As such, the Court in Division's Decision dated June 29, 2020 was reversed and set aside. The FLD dated January 25, 2016 and July 19, 2016, and the Assessment Notices for deficiency income tax and vat amounting to ₱983,251.20 and ₱39,927.39, respectively, were cancelled.

Upon receipt of the said Amended Decision, the CIR filed a *Motion for Reconsideration Ad Cautelam (Re: Amended Decision promulgated on 08 January 2021)* on January 28, 2021, with *Opposition to Respondent's Motion for Reconsideration* filed on March 17, 2021.

On September 30, 2021, the Court in Division denied the CIR's motion for reconsideration for lack of merit.[8]

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[6] Division Docket (CTA Case No. 9600) – Vol. 2, pp. 747 to 768.
[7] Division Docket (CTA Case No. 9600) – Vol. 2, pp. 816 to 823.
[8] Resolution dated September 30, 2021, Division Docket (CTA Case No. 9600) – Vol. 2, pp. 866 to 874.

Thereafter, the CIR filed a *Motion for Extension of Time to File Petition for Review* on November 11, 2021, praying that the CIR be given an additional period of fifteen (15) days from November 11, 2021, or until November 26, 2021, within which to file his Petition for Review.[9] The Court *En Banc* granted the said Motion and gave the CIR until November 26, 2021 to file the same.[10]

The CIR filed the instant *Petition for Review* on November 26, 2021.[11] In the Resolution on February 14, 2022, the Court *En Banc* ordered the heirs to file their comment on the instant Petition.[12]

The heirs filed their *Comment/Opposition (re: Petitioner's Petition for Review dated November 24, 2021)* on February 23, 2022.[13]

Pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals,* the instant case was referred to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on March 17, 2022.[14]

On April 21, 2022, the Court *En Banc* received a *Back to Court* report from the PMC-CTA stating that the instant case was returned due to the refusal of the respondents to undergo mediation.[15]

Subsequently, the instant case was submitted for decision on May 11, 2022.

Hence, this decision.

## ASSIGNMENT OF ERRORS

Culled from the CIR's allegations in the instant Petition for Review, the following are the assignment of errors for resolution of the Court *En Banc*, to wit:

I.

THE COURT IN DIVISION ERRED IN RELAXING THE TECHNICAL RULES OF PROCEDURE.

[9] Docket, pp. 1 to 3.
[10] Minute Resolution dated November 11, 2021, Docket, p. 5.
[11] Docket, pp. 6 to 26.
[12] Docket, pp. 50 to 51.
[13] Docket, pp. 52 to 55.
[14] Resolution dated March 17, 2022, Docket, pp. 58 to 59.
[15] Docket, pp. 60 to 63.

II.

WITHOUT ADMITTING JURISDICTION, THE COURT IN DIVISION ERRED IN RULING ON AN ISSUE THAT WAS BELATEDLY RAISED BY RESPONDENTS.

III.

THE COURT IN DIVISION ERRED IN CONSIDERING AN ALLEGATION THAT WAS ONLY RAISED FOR THE FIRST TIME BY RESPONDENTS IN ITS MEMORANDUM.

IV.

THE COURT IN DIVISION ERRED IN CANCELLING THE DEFICIENCY ASSESSMENTS ISSUED AGAINST RESPONDENT FOR THE ALLEGED LACK OF A LETTER OF AUTHORITY.

**The CIR's arguments:**

The CIR argues that the Court in Division erred when it admitted the *Petition for Review* in CTA Case No. 9600 despite having been filed one (1) day beyond the reglementary period to do so. As it was filed out of time, the Court in Division had no jurisdiction to decide on the propriety of the assessment sought to be reviewed, or even consider a relaxation of the rules in order to give due course to the said *Petition for Review*.

The CIR stresses that the right to appeal is neither a natural right nor a component of due process, and that a strict adherence to the rules of procedure is the general rule and the relaxation thereof, only the exception. Citing *Barnes vs. Hon. Quijano Padilla,*[16] the CIR submits the instances wherein procedural rules may be relaxed which include, among others: *a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, and the other party will not be unjustly prejudiced thereby.*

Allegedly, in this case, the strict adherence to the rules of procedure should govern rather than the exception as the belated filing of the Petition for Review in CTA Case No. 9600 was directly caused by the counsel of the heirs, and in turn, unduly prejudiced the interest

[16] G.R. No. 160753, September 30, 2004.

of the CIR causing further delay in the collection of taxes due to the government given that taxes are the lifeblood of the nation.

Moreover, the CIR avers that the failure to file a valid protest rendered the assessment final, executory and demandable. There being no disputed assessment, the Court in Division has no jurisdiction over the Petition for Review in CTA Case No. 9600.

The CIR further argues that the Court in Division erred in ruling on an issue that was belatedly raised by respondent in their Memorandum; and that the issues on the absence of a LOA and the validity of the FLDs were not raised by the heirs at the administrative level. As such, the CIR's basic right to fair play and due process was allegedly violated when the Court in Division considered the same in the resolution of the instant case.

While being aware of Section 1, Rule 14 of A.M. No. 05-11-07-CTA, the CIR alleges that such provision was only intended to allow the Court to resolve the main issue under the proper perspective, and not to resolve as a main issue a matter not raised in the pleadings.

With regard to the cancellation of the assessments of the taxpayer on account of the absence of a LOA, the CIR avers that there is no strict requirement under the law for the issuance of a LOA in the conduct of an inventory taking. Under the broad powers of the CIR to examine taxpayers and assess taxes, the latter is empowered to order the taking of an inventory at any time during the taxable year to determine the correct amount of tax due, and to this end, Revenue Memorandum Order (RMO) No. 3-2003 was promulgated, which provides that an inventory verification shall be authorized through a Mission Order (MO) and issuance of a letter to the taxpayer duly signed by the Assistant Commissioner, Large Taxpayers Service or the concerned Regional Director. Based on the said RMO, the issuance of Mission Orders, and not an LOA amounted to sufficient authority to conduct an inventory of the taxpayer.

Lastly, the CIR asserts that the assessment has factual and legal basis.

**The heirs' counter-arguments:**

The heirs counter-argue that the Court in Division was correct in cancelling the FLDs and assessment notices for tax deficiencies. They reiterate the Court in Division's ruling that the relaxation of the rules was warranted under the circumstances, as ruling on the instant case on mere technicalities would actually frustrate, rather than meet the ends of justice because in the instant case, they were seeking recourse for the review of an arbitrary assessment against it.

In response to the allegation of lack of LOA that was belatedly raised, they submit that the Petition for Review before the Court in Division was purposely questioning the validity of the deficiency tax assessment issued against respondent for TY 2012.

Anent the CIR's allegation that there was no need to secure an LOA, they argue that before an assessment can be issued, it is fundamental that the official conducting the same be duly authorized to conduct it. The said issue was squarely addressed by the Court in Division in its Amended Decision, by ruling that an inventory taking is an audit technique in the 1997 NIRC, and that the CIR should have been aware that the requirement of an LOA covers all investigative activities, including inventory taking, that the CIR and its agents are to perform upon entering the premises. Relying on the case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp*[17], they argue that the result of the absence of an LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.

## THE COURT *EN BANC'S* RULING

The instant *Petition for Review* lacks merit.

***The factual circumstances attendant in CTA Case No. 9600 warrant the relaxation of technical rules of procedure.***

On the CIR's first contention that the Court in Division erred in deciding to give due course to the *Petition for Review* in CTA Case No. 9600, despite being filed a day beyond the reglementary period, it is not novel for the Court to give due course to an appeal that is belatedly filed.[18] The Supreme Court has, time and time again, relaxed the observance of procedural rules to advance substantial justice.[19]

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[17] G.R. No. 242670, May 10, 2021.
[18] See *Ramos vs. Bagasao*, G.R. No. L-51552, February 28, 1980; *United Airlines vs. Uy*, G.R. No. 127768, November 19, 1999; *Samala vs. Court of Appeals,* G.R. No. 128628, August 23, 2001;
[19] *Malixi et. al., vs. Baltazar,* G.R. No. 208224, November 22, 2017.

As held in the case of *Subic Bay Metropolitan Authority vs. Subic Bay Marine Exploratorium, Inc.*,[20] the Court's primary duty is to render justice free from the constraints of technicalities. An appeal that is belatedly filed may be given due course when substantial justice and paramount public interest demand.

Thus, for a party to seek to exception for its failure to comply strictly with the statutory requirements for perfecting its appeal, strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage thereof must be shown, in order to warrant the Court's suspension of the rules.[21]

Indeed, in the case of *Metro Rail Transit Corporation vs. Court of Tax Appeals and Commissioner of Internal Revenue,*[22] the Supreme Court pronounced, to wit:

> "It is the policy of the Court to afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from the constraints of technicalities. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that this Court is empowered to suspend its operation, or except a particular case from its operation, when the rigid application thereof tends to frustrate rather than promote the ends of justice. Oft-cited is the rule that it is a far better and more prudent course of action for a court to excuse a technical lapse and afford the parties a review of the case on the merits to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice."

In the instant case, the Court *En Banc* agrees with the Court in Division that the Rules of Court should be liberally construed in order to promote their object of securing a just, speedy and inexpensive disposition of every action or proceeding.

Hence, despite the one (1)-day delay in the perfection of the appeal filed by the heirs in CTA Case No. 9600, the factual

[20] G.R. No. 237591, November 10, 2021.
[21] *Trans International vs. The Court of Appeals, et al.,* G.R. No. 128421, January 26, 1998.
[22] G.R. No. 166273, September 21, 2005.

circumstances obtaining in said case warrant a relaxation of our Rules of Procedure.

As aptly observed by the Court in Division, the factual antecedents of the case reveal that the appeal is meritorious since the conduct of the tax audit on the late Gan was authorized only by a LN and not by the required LOA under the 1997 NIRC of 1997, as amended.[23] Thus, the Court in Division did not err in giving due course to CTA Case No. 9600 in the interest of substantial justice.

***The Court of Tax Appeals (CTA) has the authority to rule upon related issues even if not raised by the parties in their pleadings to achieve an orderly disposition of the case.***

As to the CIR's argument that he was deprived of due process when the Court in Division ruled on an issue belatedly raised by the heirs, the same deserves scant consideration.

In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc. (Lancaster* case),[24] the Supreme Court, citing Section 1, Rule 4 of A.M. No. 05-11-07-CTA,[25] upheld the authority of the CTA to rule on related issues not raised by the parties if the resolution of such issues is necessary to achieve a just and orderly disposition of cases. The pertinent portions of the ruling are quoted as follows:

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> 'SECTION 1. *Rendition of judgment.* – x x x

[23] Amended Decision, Division Docket (CTA Case No. 9600) – Vol. 2, pp. 816 to 823, at p. 819.
[24] G.R. No. 183408, July 12, 2017.
[25] Revised Rules of the Court of Tax Appeals.

> In deciding the case, the Court may not limit itself to the issues stipulated by the parties, but may rule upon related issues necessary to achieve an orderly disposition of the case.'
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties have not raised the same in their pleadings or memoranda**. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." (*Emphases added*)

Clearly from the foregoing pronouncement, the Supreme Court not only affirmed this Court's authority to rule on related matters which were not raised by the parties in their respective pleadings or during trial which are necessary for the orderly disposition of the case, but also elucidated that this Court may consider the question on the scope of the authority of the revenue officers named in the LOA. In other words, this Court is likewise empowered to determine whether or not the revenue officer who conducted the audit and investigation of a taxpayer's books of accounts is duly authorized to do so through a letter of authority.

***The revenue officers who conducted the assessment against respondent were not duly authorized with a LOA.***

The CIR's assertion that the issuance of a Mission Order, and not a LOA, was sufficient to authorize the examination and conduct of inventory taking to determine the correct amount of tax due of a taxpayer pursuant to RMO No. 3-2003 is misplaced.

Section 6(A) of the NIRC of 1997, as amended, provides that the CIR or his duly authorized representative has the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, to wit:

> 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." (*Emphasis supplied*)

The grant of authority mentioned in the above Section 6(A), however, can only be validly carried out through the issuance of a LOA in favor of a revenue officer assigned to perform the audit and issue the corresponding assessment against a taxpayer as expressly stated in Section 13 of the NIRC of 1997, as amended, which reads as follows:

"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 act could have been performed by the Revenue Regional Director himself." (*Emphasis supplied*)

Moreover, in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[26] the Supreme Court elucidated on the significance of an LOA, the authority it confers upon a revenue officer relative to the performance of assessment functions, and the effect upon the assessment in the absence of an LOA, 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**

[26] G.R. No. 222743, April 5, 2017.

> **<u>his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives</u>**. x x x
>
> xxx xxx xxx
>
> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,*[27] *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.**' (*Emphases and underscoring ours)"*

Clearly from the foregoing, revenue officers are required to be specifically authorized by a valid LOA, prior to the exercise of their assessment functions, such as the examination of books of accounts and accounting records of the taxpayer. In the absence of a valid LOA authorizing the revenue officer who conducted the audit investigation and subsequently issued the corresponding tax assessments against such taxpayer, said assessments shall be void.

In this case, the CIR presented RO Clemente Tenorio for the purpose of proving that the assessments were issued in accordance with the provisions of law, rules and regulations, among others.[28] However, in his testimony, he made no mention about the issuance of an LOA in his favor, instead only a Letter Notice (LN) No. 057-RLFTRS-12-00-00363 was issued on July 1, 2014.[29] A portion of his testimony is quoted:

> "6. Q: As a Revenue Officer, what are your functions and duties?
>
> A: My duties, among others, include the investigation/examination of all internal revenue taxes cases, evaluation of tax credit/refund cases, validate/certify system generated discrepancies such as Letter Notices (LNs), and

[27] G.R. No. 178697, November 17, 2010.

[28] Par. 3b, *Offer of Testimony of Clemente Tenorio*, Division Docket (CTA Case No. 9600) – Vol. 2, pp. 558 to 561.

[29] Exhibit "R-1", BIR Records, pp. 1 to 3.

perform such other related functions as may be assigned by higher authorities from time to time.

7. Q: In furtherance of your duties, did you investigate the case of Emilio Gan?

A: Yes.

8. Q: For what taxable year did you investigate Emilio Gan?

A: **I investigated Mr. Emilio Gan for the taxable year 2012. Letter Notice (LN) No. 057-RLFTRS-12-00-00363 dated 01 July 2014 was issued to the petitioner** (Exhibit "R-1", p. 3, BIR Records). Attached to the LN was the Details of Taxpayer's Supplier' Records for LN No. 057-RLFTRS-12-00-00363 (Exhibit "R-12", p. 1-2, BIR Records)"[30] (*Emphasis added*)

Furthermore, records show that two (2) MOAs were subsequently issued and presented as evidence to prove the authority of the ROs to conduct the investigation of the late Gan for taxable year 2012, to wit:

| Exhibit | Document | Addressed to | Purposes |
|---|---|---|---|
| R-3 | Memorandum of Assignment No. 057-LN-444-7/1/2014[31] | RO Grace Gonzaga and GS Nimpha Malaguit | *For immediate service to subject taxpayer.* |
| R-6 | Memorandum of Assignment No. 057-LN-1140-8/28/2014[32] | RO Clemente Tenorio and GS Emily Singson | *For continuation of the audit/investigation previously assigned to RO Grace Gonzaga, for consolidation to Application for Closure of Business* |

It bears noting that a MOA is insufficient to grant the ROs the authority to conduct the audit investigation.

In the case of *Commissioner of Internal Revenue vs. Mcdonald's Philippines Realty Corp.*,[33] the Supreme Court stressed that a MOA or

[30] Exhibit "R-23", Division Docket (CTA Case No. 9600) – Vol. 2, pp. 562 to 571, at p. 563.
[31] Exhibit "R-3", BIR Records, p. 4.
[32] Exhibit "R-6", BIR Records, p. 8.
[33] G.R. No. 242670, May 10, 2021.

any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer; and that the use of such document by an unauthorized revenue officer usurps the functions of the LOA. Further, the Supreme Court admonished the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation **without a separate or amended LOA** as the same: (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the 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 BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

In fine, the issuance of the subject tax assessments was a result of the investigation conducted by ROs that have no LOA to conduct the tax audit/investigation against the late Gan. There being no valid authority to examine the late Gan from the very start, the subject tax assessments are void.

Moreover, We do not subscribe to the CIR's reliance on RMO No. 03-2003[34] and his assertion that the issuance of a Mission Order, and not an LOA, amounted to sufficient authority to conduct an inventory of the taxpayer.

A careful perusal of the said issuance show that the objectives thereof pertain to the determination, through inventory verification method, of whether or not taxpayers have declared the correct amount of sales and paid the corresponding internal revenue taxes; to prescribe uniform guidelines and procedures for a comprehensive and effective verification of inventories, inventory lists and inventory records as well as prescribe reporting requirements as a result thereof; to monitor taxpayer's compliance with the registration of their warehouses, storage places and bodegas together with their books of inventories as provided under Revenue Regulations No. 5-94; and to gather data through the inventory verification in relation to the investigation of income tax, value-added tax, and other internal revenue tax liabilities of taxpayers.

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[34] SUBJECT: Prescribing Guidelines and Procedure in the Conduct of Inventory Taking/Stocktaking and Verification of Inventories Covering Taxable Year 2022 by the Large Taxpayers Audit and Investigation Division I, Large Taxpayers Audit Investigation Division II, Large Taxpayers District Office – Makati, Large Taxpayers District Office – Cebu and Revenue District Offices.

Notably, there is no showing that the said issuance dispenses with the requirement that the RO who conducted an audit and investigation of a taxpayer's books of accounts and other accounting records for the purpose of assessing the correct amount of taxes must be properly authorized by a duly issued LOA. Hence, an LOA is still necessary before an investigating revenue officer may issue a deficiency tax assessment arrived at based on the procedures laid down in RMO No. 03-2003.

In sum, the assessments issued against the late Gan are void in the absence of an LOA.

It must be emphasized that a void assessment bears no valid fruit.[35] Such being the case, the subject tax assessments cannot be enforced, and thus, must be cancelled. Correspondingly, it becomes unnecessary to determine whether or not the assessment has legal and factual basis.

**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit. The Amended Decision dated January 8, 2021 and the Resolution dated September 30, 2021 rendered by the First Division of this Court in CTA Case No. 9600 are hereby **AFFIRMED** and **UPHELD**.

Moreover, petitioner CIR, or persons acting on his behalf, are hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against the respondent.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

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[35] *Commissioner of Internal Revenue vs. Azucena T. Reyes; Azucena T. Reyes vs. Commissioner of Internal Revenue*, G.R. Nos. 159694 & 163581, January 27, 2006.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

**CORAZON G. FERRER-FLORES**
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*