REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

SWIFT FOODS, INC.,
Respondent.

CTA *EB* NO. 1613
(CTA Case No. 8399)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

SEP 19 2018
1:23 p.m.

x- x

RESOLUTION

MANAHAN, J.:

To be resolved before this Court is petitioner's **Motion for Reconsideration (Decision Promulgated on 07 May 2018)**[1] filed on May 24, 2018, praying for the reconsideration and setting aside of this Court's decision dated May 7, 2018 and that a new decision be issued instead upholding petitioner's deficiency tax assessment against respondent for taxable year 2017 in its entirety. The dispositive portion of the abovementioned decision is quoted below:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The September 22, 2016 *Decision* and February 15, 2017 *Resolution* of the CTA Third Division in CTA Case No. 8399, are likewise hereby **REVERSED**. Accordingly, the Formal

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[1] *Rollo*, CTA EB No. 1613, pp. 165-183.

Letter of Demand and Final Assessment Notice are hereby declared null and void.

SO ORDERED.

Petitioner argues that respondent did not raise the issue of Letter of Authority (LOA) in its petition for review and, therefore, the question as to the validity of deficiency tax assessment is deemed to have been abandoned by respondent. Petitioner insists that the decision of the Court in Division has already become final.

Petitioner also argues that it was denied its due process as he was neither heard nor given the opportunity to be heard on that particular issue.

Petitioner faults this Court for not observing the rules of procedure and rules of pre-trial citing Sections 1, Rule 11 of Revised Rules of the Court of Tax Appeals (RRCTA) and Section 7, Rule 18 of the Revised Rules of Court (RRC).

As to the voiding and cancellation of the deficiency tax assessment, petitioner argues that the revenue examiners have the authority to conduct the audit investigation and that an LOA is not necessary in this case because there was no actual examination of respondent's books of account.

Petitioner insists that there is no strict requirement for the existence of LOA in "no contact-audit-approach" and the Letter of Notice is sufficient under Revenue Memorandum (RMO) No. 30-2003.

On the other hand, respondent, in its Comment/ Opposition[2], argues that this Court did not err in granting a relief it did not prayed for as the entire case is open for review and the Court is not precluded from discussing issues not raised in the original case and that petitioner's assessments were all null and void due to the absence of LOA because its right to due process was violated.

Respondent also argues that the Court in Division correctly found that the certifications submitted by the

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[2] *Rollo*, pp. 207-225.

customer of RFM Corporation were authenticated and that it was able to overturn the presumption of a correct assessment.

We deny the Motion for Reconsideration.

Petitioner should be aware that there is a difference between a final decision or judgment and when said final decision or judgment attains finality. Such difference was discussed in the case of *Rudecon Management Corporation v. Sisenando S. Singson*,[3] to wit:

> A **final judgment** or order is **one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto**, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res adjudicata or prescription. **Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties next move** (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes final or, to use the established and more distinctive term**, final and executory**. (*Emphasis supplied*)

Applying the above ruling in the instant case, the Court in Division rendered a final decision or judgment when it promulgated its Decision dated September 22, 2016 and Resolution dated February 15, 2017. Hence, the Court in Division has nothing more to do but to wait for the subsequent action of the parties in the instant case.

Although there is a final disposition of the case, the case did not attain finality because of petitioner's appeal to the Court *en banc*. How can petitioner argue that the case before the Court in Division became final, considering that the relief being sought by him, as explicitly prayed in the instant petition, is for this Court to modify the abovementioned decision and resolution?

Thus, when petitioner elevated the case to this Court *en banc*, the entire case is re-opened and the facts and

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[3] G.R. No. 150798 dated March 31, 2005. *am*

circumstances of this case are subjected to a review, including those issues not raised as we discussed in our assailed Decision, to wit:

> Petitioner should also be aware that when he filed the instant petition on appeal, the entire case is open for review and this Court *en banc* is not precluded from discussing issues that were not raised in the original case in order to properly dispose the instant case.
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> In the case of *Armando Aliling v. Jose B. Feliciano et al.*,[4] the Supreme Court ruled on the same, to wit:
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>> Petitioner errs. The Court has, when a case is on appeal, the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. We said as much in *Sociedad Europea de Financiacion, SA v. Court of Appeals*, "It is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case."
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> Said doctrine was again reiterated in the case of *Edilberto L. Barcelona v. Dan Joel Lim et al.*,[5] which ruled that:
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>> While petitioner does not deny that his appeal to the CSC was filed beyond the reglementary period, he argues that the timeliness of his appeal has never been an issue. He thus claims that only the issues raised by the parties may be resolved by the Court.
>>
>> Petitioner is mistaken. An appeal throws the entire case open for review, viz:
>>
>>> [A]n appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.
>
> More specifically, such doctrine was also applied in the tax case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[6] which held that:

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[4] G.R. No. 185829 dated April 25, 2012.
[5] G.R. No. 189171 dated June 03, 2014.
[6] G.R. No. 183408 dated July 12, 2017.

> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> 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:
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>> SECTION 1. *Rendition of judgment.* - x xx
>>
>> 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.
>
> 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 had 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.

Petitioner is mistaken when he faulted this Court for violating his right to due process. In resolving this instant motion, the Court *en banc* disproves such allegation. In the case of *Saturnino C. Ocampo v. Hon. Ephrem S. Abando et al.*,[7] the Supreme Court ruled in such manner, to wit:

> "**The essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense**." What is proscribed is lack of opportunity to be heard. Thus, one who has been afforded a chance to present one's own side of the story cannot claim denial of due process. (*Emphasis supplied*)

When this Court issued the assailed Decision, his right to due process was not lost nor trampled upon because his instant motion was received and studied in order to arrive at the proper disposition of the case. However, it does not mean that the argument therein will outrightly be accepted as the gospel truth.

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[7] G.R. Nos. G.R. No. 176830, 185587, 185636, 190005, dated February 11, 2014.

Petitioner is also mistaken in citing Sections 1, Rule 11 of RRCTA and Section 7, Rule 18 of the RRC particularly the rules on pre-trial where the issues should be defined and limited. Petitioner failed to recognize that said rule is not applicable in the instant case because the proper rule to be observed should be Rule 43 of the RRC. Section 4(b), Rule 8 of the RRCTA provides that:

> SEC. 4. *Where to appeal; mode of appeal.*- (a) xxx xxx;
>
> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court **by petition for review as provided in Rule 43 of the Rules of Court**. The Court *en banc* shall act on the appeal. (*Emphasis supplied*)

Petitioner should be aware that Rule 43 of the RRC pertains to appealed cases while the provisions cited by him pertains to cases that will be heard for trial. The instant case is already an appeal to the Court *en banc*.

Petitioner is also mistaken in alleging that an LOA is not necessary in this case because there was no actual examination of respondent's books of account and there is no strict requirement for the same in "no contact-audit-approach," alleging that the Letter of Notice (LN) is sufficient under RMO No. 30-2003.

Petitioner may have overlooked that said RMO was already amended by RMO No. 32-2005 dated November 24, 2005 or the rules on "Prescribing Guidelines and Procedures in Handling Letter Notices for Deployment via the Information Delivery Portal in the Years 2005 Onwards for Audit and Enforcement Purposes." Such amendment was even highlighted by the Supreme Court in the assailed decision's cited case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[8] to wit:

> Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to

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[8] G.R. No. 222743 dated April 5, 2017.

be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.

With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers' issued LNs by reconciling various revenue issuances which conflict with the NIRC. Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes.

IV. POLICIES AND GUIDELINES

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8. **In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN**, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.

9. **In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA) to replace the LN**. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex "E" hereof) to the OACIR-LTS *I* ORD for the preparation of the corresponding LAs with the notation "This LA cancels LN No. _____ "

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V. PROCEDURES

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B. At the Regional Office/Large Taxpayers Service

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7. Evaluate the Summary List of LNs for Conversion to Las submitted by the RDO xxx prior to approval.

8. Upon approval of the above list, prepare/accomplish and sign the corresponding LAs.

> xxxx
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> 10. Transmit the approved/signed LAs, together with the duly accomplished/approved Summary List of LNs for conversion to LAs, to the concerned investigating offices for the encoding of the required information xxx and for service to the concerned taxpayers.
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> xxxx
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> C. At the RDO xxx
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> xxxx
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> 11. If the LN discrepancies remained unresolved within One Hundred and Twenty (120) days from issuance thereof, prepare a summary list of said LN s for conversion to LAs xxx.
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> xxxx
>
> 16. **Effect the service of the above LAs to the concerned taxpayers**.
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> In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MED ICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

The facts of the case reveal that after the issuance of Notice of Informal Conference on February 11, 2010 to discuss with the respondent its alleged deficiency taxes alleged in LN No. 116-RLF-07-00-00013 dated July 15, 2009, petitioner issued a Preliminary Assessment Notice and Details of discrepancies on August 16, 2010. Thus, it only shows that the discrepancies in the LN were not resolved, hence, under RMO No. 32-2005, petitioner is mandated to issue the required LOA. However, petitioner failed to do so.

It is petitioner himself who had violated the right of the respondent to due process. Thus, as ruled in the case of *Commissioner of Internal Revenue v. Metro Star Superama,* *Inc.*, [9] which was cited in the assailed Decision, a void assessment bears no fruit. The Supreme Court further stated therein that:

> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** If it is not, then the taxpayer has a right to complain and the courts will then come to his succor...

This Court will not anymore dwell as to petitioner's argument of the validity on the details of his assessment since it becomes moot and academic because of the voidability of said assessment.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Decision Promulgated on 07 May 2018)** is hereby **DENIED** for lack of merit. Consequently, the reversal of September 22, 2016 *Decision* and February 15, 2017 *Resolution* of the CTA Third Division in CTA Case No. 8399 is hereby **UPHELD** and **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

[9] G.R. No. 185371 dated December 08, 2010.

(I maintain my position in the assailed Decision)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice