REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EXCLUSIVE NETWORKS-PH INC., formerly TRANSITION SYSTEMS PHILS. PTE LTD., INC. herein represented by MICHELLE G. MEJIA,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9689

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
FEB 23 2021 1:00 p.m.

x---x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Exclusive Networks-PH Inc., formerly Transition Systems Phils. Pte Ltd. **(Exclusive Networks/petitioner)** pursuant to Rule 8, Section 3(a)[2], in relation to

---

[1] Filed on 20 September 2017, Division Docket, Volume I, pp. 10-25.

[2] **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

Rule 4, Section 3(a)(2)[3] of the Revised Rules of the Court of Tax Appeals[4] (**RRCTA**). It seeks the cancellation of the Formal Letter of Demand[5] (**FLD**) with Details of Discrepancies Demand No. 43A-B270-13[6] and Assessment Notices (BIR Form No. 1708)[7] dated 23 January 2017 in the amount of ₱16,377,797.24 and ₱7,570,452.47, inclusive of interest, representing deficiency income tax (**IT**) and value-added tax (**VAT**), respectively, for taxable year (**TY**) 2013.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office address at 1505 Orient Square Building, Ortigas Center, Barangay San Antonio, Pasig City. Its former corporate name is Transition Systems Phils. Pte Ltd., Inc., which was amended to Exclusive Networks-PH Inc. by virtue of the Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission (**SEC**) on 02 March 2017.[8]

Respondent Commissioner of Internal Revenue (**respondent/CIR**) is sued in his official capacity, having been duly appointed and empowered to perform duties of his office, including, among others, the duty to act on protest of tax assessments, as provided by law. The CIR holds office at the Bureau of Internal Revenue (**BIR**) National Office Building, Agham Road, Diliman, Quezon City.[9]

FACTS OF THE CASE

On 03 November 2014, petitioner received a copy of Letter of Authority (**LOA**) No. LOA-43A-2014-00000963 (SN: eLA201100094682)

---

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action:...

[4] A.M. No. 05-11-07-CTA dated 22 November 2005.

[5] Exhibit "P-1", Division Docket, Volume II, pp. 955-956; Exhibit "R-10", BIR Records, between pp. 349-350.

[6] Exhibit "P-2", id., p. 957; Exhibit "R-10-a", BIR Records, between pp. 349-350.

[7] Exhibits "P-3" and "P-3-a", Division Docket, Volume II, pp. 958-959.

[8] Paragraph 2, Memorandum dated 10 February 2020, id., p. 1097.

[9] Paragraph 1.a, Joint Stipulation of Facts and Issues (JSFI), id., Volume I, p. 334.

dated 30 October 2014[10] apprising petitioner of the tax investigation to be conducted for all of its internal revenue taxes, including documentary stamp tax (**DST**) and other taxes, for the period from 01 January 2013 to 31 December 2013.[11] The LOA was accompanied by a Letter dated 31 October 2014[12], requesting for the presentation of books of accounts and other related records of petitioner.[13]

The aforementioned LOA[14] was issued by Alfredo V. Misajon (**Misajon**), Regional Director of Revenue Region No. 7 – Quezon City, authorizing Revenue Officer (**RO**) Rhea Domingo (**Domingo**) and Group Supervisor (**GS**) Maricar Favis (**Favis**) of Revenue District Office (**RDO**) No. 43A – East Pasig to examine petitioner's books of accounts and other accounting records.

On 19 November 2014, petitioner received a copy of the BIR's First Notice dated 17 November 2014[15] signed and issued by RO Domingo and reviewed by GS Favis, requiring the presentation of accounting books and records pursuant to said LOA. In compliance with the First Notice, petitioner submitted the requested accounting documents and records to RO Domingo, for which she acknowledged receipt[16] thereof on 25 November 2014.[17]

Thereafter, petitioner submitted another set of accounting records and documents to RO Domingo which she acknowledged to have received on 02 December 2019.[18]

A few days after the submission of the second set of documents and records, on 05 December 2014, petitioner again received a Second and Final Request for Presentation of Records (**Second and Final Request**) dated 02 December 2014[19], signed and issued by Revenue District Officer Josephine S. Virtucio (**Virtucio**), stating that petitioner

---

[10] Exhibit "P-7", id., Volume II, p. 985; Exhibit "R-2", BIR Records, p. 2.
[11] Paragraph 1.b, JSFI, id., Volume I, p. 335.
[12] Exhibit "P-7-a", id., Volume II, p. 986.
[13] Question and Answer (Q&A) No. 6, Judicial Affidavit [of Michelle G. Mejia], Exhibit "P-15", id., Volume I, p. 170.
[14] Supra at note 10.
[15] Exhibit "P-8", Division Docket, Volume II, p. 987.
[16] Exhibits "P-9" and "P-9-g", id., p. 988.
[17] Q&A Nos. 9 to 12, id., Volume I, p. 171.
[18] See Acknowledgement Receipt, Exhibits "P-10" and "P-10-j", id., Volume II, p. 989; See also Q &A Nos. 13 to 14, id., Volume I, pp. 171-172.
[19] Exhibit "P-11", id., Volume II, p. 1020.

had yet to present the required books of accounts and other accounting records.

On 21 May 2015, RO Domingo conducted an audit at petitioner's main office.[20]

On 06 April 2016, Emilia C. Combes (**Combes**), Revenue District Officer of RDO 43A – East Pasig, signed and issued a Memorandum of Assignment (**MOA**) No. RR7-30367.[21] Said MOA directed RO Lilibeth Nazario (**Nazario**) and GS Nenita Crespo (**Crespo**) to continue the audit and investigation, and replace the previously assigned ROs who retired/transferred to another office.

On 06 January 2017, petitioner was personally served with a copy of the Preliminary Assessment Notice[22] (**PAN**).[23]

Subsequently, on 23 January 2017, petitioner was also personally served with the FLD[24] with Details of Discrepancies Demand No. 43A-B270-13[25] and Assessment Notices[26] (BIR Form No. 1708).[27]

Based on the FLD, petitioner was being held liable for deficiency IT and VAT for TY 2013 in the aggregate amount of ₱16,377,797.24 and ₱7,570,452.47, both inclusive of interest. In addition, petitioner was also disallowed to claim input tax in the amount of ₱4,164,330.19.[28]

In response to the said FLD, on 22 February 2017, petitioner submitted a protest letter to request for reconsideration[29] of the assessed deficiency IT and VAT before Regional Director Misajon of Revenue Region No. 7.

20 Paragraph 1.c, JSFI, id., Volume I, p. 335.
21 Exhibit "R-3", BIR Records, p. 310.
22 Exhibit "R-7", id., between pp. 338-339.
23 Paragraph 1.d, JSFI, Division Docket, Volume I, p. 335.
24 Supra at note 5.
25 Supra at note 6.
26 Supra at note 7.
27 Paragraph 1.e, JSFI, Division Docket, Volume I, p. 335.
28 Id.
29 Exhibits "P-4" and "P-4-b", id., Volume II, pp. 960-962.

Respondent, however, failed to act on petitioner's request for reconsideration, prompting the latter to file the instant Petition for Review before the Court on 20 September 2017.[30]

PROCEEDINGS BEFORE THE FIRST DIVISION

On 09 November 2017, respondent filed his Answer[31] maintaining that the subject assessments were issued in accordance with applicable laws and regulations. Specifically, the factual and legal bases are contained and exhaustively discussed in the Details of Discrepancies attached to the PAN and FLD.

Respondent also declared in his Answer that he complied with due process requirements as provided in Revenue Regulation (**RR**) No. 18-2013[32], as amended. Additionally, petitioner's documents were considered during the conduct of reinvestigation.[33]

On 12 December 2017, respondent submitted a Compliance[34] manifesting his submission to the Court of the complete BIR Records consisting of 384 pages embodied in one folder and one compact disc (**CD**).

On 02 February 2018, respondent filed his Pre-Trial Brief[35] while petitioner posted its Pre-Trial Brief[36] on 09 February 2018. The parties then submitted their Joint Stipulation of Facts and Issues (**JSFI**) on 02 March 2018.[37]

In the *interim*, on 05 April 2018, the Court commissioned Ma. Theresa R. Dela Roca (**Dela Roca**) as Independent Certified Public Accountant (**ICPA**).[38]

---

30 Supra at note 1.

31 Division Docket, Volume I, pp. 82-88.

32 *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

33 The Court, however, notes that the protest filed by petitioner is in the nature of request for reconsideration.

34 Division Docket, Volume I, pp. 94-96.

35 Id., pp. 99-104.

36 Id., pp. 238-247.

37 Id., pp. 334-343.

38 Order dated 05 April 2018, id., pp. 390-391.

On 19 April 2018, in response to the inquiry of the Court as to the relation of "Transition Systems Phils. Pte Ltd., Inc." to "Exclusive Networks-PH Inc.", petitioner explained that the corporate name was changed from the former to the latter, by virtue of the Certificate of Filing of Amended Articles of Incorporation issued by the SEC on 02 March 2017. Petitioner further explained that, since the amendment became legally effective only on such date, the subject Petition for Review constantly reflected the former name to be consistent with the FLD and Assessment Notices.[39]

At the time when the Court issued the Pre-Trial Order on 22 May 2018[40], petitioner also presented its first witness, Michelle G. Mejia (**Mejia**), who testified on direct examination through her Judicial Affidavit[41] that: (1) she is petitioner's authorized representative and works as an accountant; (2) she is primarily the custodian of petitioner's financial records and is likewise responsible for their updating and for all other tasks connected thereto; (3) petitioner received the LOA, Letter dated 31 October 2014, First Notice and Second and Final Request from the BIR; (4) the audit of petitioner's financial books and records was conducted in its office on 21 May 2015; (5) they presented purchase orders, vouchers, manual books, importation documents from the Bureau of Customs (**BOC**), summary of importations, Amended Articles of Incorporation, zero-rated transactions with Philippine Economic Zone Authority (**PEZA**)-accredited entities, aging of receivables, aging of payables, sales invoices and official receipts; (6) on 23 January 2017, petitioner received the FLD with Details of Discrepancies Demand No. 43A-B270-13 and Assessment Notices (BIR Form 1708); (7) petitioner filed a letter of protest to request for reconsideration; and, (8) the BIR failed to act on petitioner's protest which prompted them to file the instant Petition for Review.

On cross examination, Mejia confirmed that: (1) at the time the LOA was served, she was not yet an employee of petitioner[42]; and, (2) the actual audit happened in petitioner's office on 21 May 2015.[43]

---

39 Manifestation dated 18 April 2018, id., pp. 393-395.
40 Id., pp. 447-456.
41 Exhibit "P-15", id., pp. 168-177.
42 TSN of 22 May 2018, p. 12.
43 Id., p. 14.

On re-direct examination, Mejia further testified that the acknowledgement receipts evidencing the BIR's receipt of documents requested were found in petitioner's financial records and it was among her functions to keep safe and update them.[44] No re-cross examination was conducted.[45]

On 19 June 2018, petitioner presented its second witness, Joanne B. Rubio (**Rubio**), who also testified on direct examination through her Judicial Affidavit[46] that: (1) petitioner engaged their tax and accounting firm, Rubio & Rubio, as tax consultant; (2) she came to know of the subject assessment when petitioner informed her about it and was furnished with copies of pertinent documents; (3) on 25 November 2014, she submitted to RO Domingo the Quarterly VAT Returns (BIR Form 2550), Annual Income Tax Return (BIR Form 1702) and Summary List of Sales and Purchases, all for TY 2013; (4) on 02 December 2014, she also submitted to RO Domingo BIR Form Nos. 1601-C, 1601-E, 1702-Q, 1604-CF, 1604E, Audited Financial Statements (**AFS**) and Annual Inventory List, all for TY 2013; (5) when petitioner received the Second and Final Request, she called RO Domingo who told her that petitioner need not submit additional documents and that they would proceed to conduct an audit of petitioner's books; (6) RO Domingo and GS Favis finally conducted the audit on 21 May 2015 where petitioner nevertheless also presented additional documents; and, (7) after receiving the FLD with Details of Discrepancies Demand No. 43A-B270-13 and Assessment Notices (BIR Form 1708), they filed a letter of protest on 22 February 2017.[47]

On 31 July 2018, Dela Roca, the ICPA, likewise testified on direct examination through her Judicial Affidavit[48] that: (1) after her official appointment as such, she requested from Mejia relevant and necessary documents for her examination, study, verification and preparation for report which were all duly provided to her; (2) upon securing copies of the Petition for Review and all the relevant documents, she studied and examined the same; (3) her first step was to study the BIR

---

44 Id., pp. 15-16.

45 Id., p. 16.

46 Division Docket, Volume I, pp. 252-262.

47 After identifying said Judicial Affidavit, petitioner sought the correction of Rubio's answer in to question number 7, paragraph 3 from 03 November 2014 to 19 November 2014 and likewise sought the deletion of her answers to question numbers 43 and 44. Respondent did not conduct a cross examination. See Order dated 19 June 2018, id., pp. 477-478.

48 Exhibit "P-21", id., pp. 494-512.

assessment and thereafter examined the 2013 AFS and the returns relative to IT and VAT; (4) thereafter, she proceeded to reconcile the amounts and figures reflected thereat and vouched all the receipts and invoices provided to her; (5) she found that all of petitioner's zero-rated sales for TY 2013 in the amount of ₱4,312,718.44 are sales to entities registered with PEZA or Subic Bay Metropolitan Authority (**SBMA**); (6) as regards the deficiency IT, she found that out of the total amount of petitioner's purchases and expenses amounting to ₱180,175,588.53, ₱175,378,964.74 are supported by original documents, ₱2,127,935.52 are supported by incomplete or insufficient documents and ₱2,668,688.27 are without supporting documents; (7) she reduced all her findings in two reports, the initial Report filed with the Court on 21 May 2018[49] and the Supplemental Report filed on 29 June 2018[50]; and, (8) she also reduced all the voluminous documents into scanned copies after pre-marking the same and stored such copies into a portable storage device in the form of CDs.[51]

On cross examination, Dela Roca confirmed that, although it is her duty to examine and verify the documents presented to her, it is not her duty to substantiate the same.[52] On re-direct examination, Dela Roca additionally testified that the purpose of her study and verification is to check if there are proper supporting documents.[53] No re-cross examination was conducted.[54]

On 20 August 2018, petitioner filed its Formal Offer of Evidence[55] (**FOE**).

On 01 October 2018, pursuant to CTA Administrative Circular No. 02-2018 dated 18 September 2018 reorganizing the three (3) divisions of the Court, the case was transferred to the Second Division.[56]

---

49 Exhibit "P-17", id., pp. 584-599.
50 Exhibit "P-18", id., pp. 600-605.
51 Exhibits "P-19" and "P-20".
52 TSN of 31 July 2018, pp. 19-20.
53 Id., p. 22.
54 Id.
55 Division Docket, Volume II, pp. 613-628.
56 Order dated 01 October 2018, id., p. 937.

PROCEEDINGS BEFORE THE SECOND DIVISION

Noting that respondent failed to file his comment on petitioner's FOE[57], the Court resolved to admit all of petitioner's documentary evidence, except Exhibits "P-4", "P-6", "P-7-a", "P-8", "P-9", "P-9-g", "P-10-h", "P-11" and "P-12-f"[58], for failure to submit the duly marked exhibits while Exhibits "P-10", "P-10-j", "P-12", "P-12-a", "P-12-b", "P-12-c", "P-12-d" and "P-12-e"[59] were likewise denied admission for failure to

[57] Records Verification dated 07 November 2018, id., p. 943.

[58]

Exhibit	Description
P-4	Letter-Protest for a Reconsideration dated February 22, 2017 addressed to Alfredo V. Misajon, Regional Director, Revenue Region 7, Bureau of Internal Revenue, signed by Michelle G. Mejia, Accountant for petitioner
P-6	Secretary's Certificate signed by Henry Claude Roy V. Salarzon on September 20, 2017
P-7-a	Letter dated October 31, 2014 addressed to petitioner and signed by Revenue Officer Rhea A. Domingo and Group Supervisor Maricar F. Favis of the Bureau of Internal Revenue
P-8	First Notice dated November 17, 2014 addressed to petitioner requiring the presentation/production of accounting books/records pursuant to Letter of Authority No. 43A-201400000963 signed by Rhea A. Domingo and Maricar F. Favis
P-9	Acknowledgment Receipt dated 25 November 2014
P-9-g	Signature of Rhea Domingo over her handwritten name on the Acknowledgment Receipt dated November 25, 2014
P-10-h	Audited Financial Statements of petitioner for the year ended December 31, 2013
P-11	Second and Final Request for Presentation of Records dated December 2, 2014 issued by the Bureau of Internal Revenue addressed to petitioner received by the latter on December 5, 20914 thru its Finance Assistant Josefina Pascual
P-12-f	Letter of the Philippine Economic Zone Authority ("PEZA") dated April 26, 2018 signed by PEZA Director General Charito B. Plaza addressed to counsel for petitioner, Dulay Pagunsan and Ty Law Offices

[59]

Exhibit	Description
P-10	Acknowledgement Receipt dated December 2, 2014
P-10-j	Signature of Rhea Domingo over her handwritten name on the Acknowledgement Receipt dated December 2, 2014
P-12	Certification dated January 15, 2013 issued by the Philippine Economic Zone Authority ("PEZA") to Transnational E-Business Solutions, Inc., signed by its Deputy Director General for Operations, Mary Harriet O. Abordo, with Certificate No. 2013-0662
P-12-a	Certificate of Tax Exemption issued by Subic Bay Metropolitan Authority ("SBMA") to Subic Nexus Technologies, Inc. signed by the Chairman and Administrator of SBMA, Roberto V. Garcia, with Certificate No. 2012-10-0326
P-12-b	Certification dated January 11, 2013 issued by the Philippine Economic Zone Authority ("PEZA") to Diversified Technology Solutions International, Inc., signed by its Deputy Director General for Operations, Mary Harriet O. Abordo, with Certificate No. 2013-0571
P-12-c	Certification dated January 15, 2013 issued by the Philippine Economic Zone Authority ("PEZA") to Softwareone Philippines Corporation, signed by its Deputy Director General for Operations, Mary Harriet O. Abordo, with Certificate No. 2013-0646

present the originals for comparison. Lastly, Exhibit "P-5"[60] was also denied admission for failure to submit the duly marked exhibit and for failure to identify the same.[61]

As a result, on 20 December 2018, petitioner filed a Motion for Reconsideration and a Motion to Admit Attached Documentary Exhibits.[62] Upon failure of respondent to file his comment thereto, the Court resolved to partially grant the same whereby all of the initially denied exhibits were subsequently admitted (except Exhibit "P-5" for failure to identify the same).

On 29 May 2019, respondent presented his two (2) witnesses, RO Lilibeth M. Nazario (**Nazario**) and RO Ivan Christopher P. Alcaraz (**Alcaraz**).

RO Nazario testified on direct examination, through her Judicial Affidavit[63], that: (1) she is familiar with the case because it was reassigned to her by virtue of Memorandum of Assignment (**MOA**) No. RR7-30367 dated 06 April 2016[64]; (2) after she served the said MOA to petitioner and checked the records and documents previously submitted to the former RO, she prepared a Memorandum[65] and Revenue Officer's Audit Report on IT[66] and VAT[67]; and, (3) thereafter, she forwarded the BIR Records to the Assessment Division for the issuance of PAN.

On cross examination and upon clarificatory questions from the Court, RO Nazario confirmed that: (1) she also examined and studied the case records which had been subjected to the examination of RO

P-12-d	Certification dated February 25, 2013 issued by the Philippine Economic Zone Authority ("PEZA") to IBM Daksh Business Process Services Philippines, Incorporated, signed by its Deputy Director General for Operations, Mary Harriet O. Abordo, with Certificate No. 2013-1336
P-12-e	Certification dated May 14, 2013 issued by the Philippine Economic Zone Authority ("PEZA") to King Earl Resources Technologies, Inc., signed by its Deputy Director General for Operations, Mary Harriet O. Abordo, with Certificate No. 2013-1613

60 Petitioner's Certificate of Filing of Amended Articles of Incorporation.
61 Resolution dated 05 December 2018, Division Docket, Volume II, pp. 945-946.
62 Id., pp. 949-954.
63 Exhibit "R-14", id., Volume I, pp. 141-144.
64 Supra at note 21.
65 Exhibit "R-4", BIR Records, between pp. 319-320.
66 Exhibit "R-5", id., between pp. 317-318.
67 Exhibit "R-6", id., between pp. 316-317.

Domingo[68]; (2) the assessment involved is based on her (RO Nazario's) recommendation[69]; and, (3) the last office that studied this case is the Assessment Division, where RO Domingo was.[70] No re-direct examination was conducted.[71]

On the other hand, RO Alcaraz testified on direct examination, through his Judicial Affidavit[72], that: (1) he is familiar with the case because he was assigned to conduct a review on the recommendation of the RO; (2) he found discrepancies on IT and VAT after his review; (3) thereafter, he prepared the PAN[73] with Details of Discrepancies[74] which petitioner received on 23 January 2017[75]; and, (4) after the preparation of the PAN, he prepared the FLD with Assessment Notices which were personally served upon petitioner on 23 January 2017.

On cross examination, RO Alcaraz confirmed that he was not the one who served the PAN and the FLD.[76] On re-direct examination, RO Alcaraz clarified that, as a reviewer in the Assessment Division, he is not among those tasked to serve the FLD or Assessment Notices. He added that, after issuance of the FLD, the usual procedure would be for the taxpayer's case to be transmitted to the examiners who would in turn be responsible to serve the PAN and the FLD.[77]

Later, when asked whether RO Domingo or RO Nazario issued the memorandum indicating the findings against petitioner, RO Alcaraz answered that it was RO Nazario's recommendation that was provided to the Assessment Division.[78] RO Alcaraz further clarified that while the report of RO Domingo was submitted and made part of the docket, it was the report of RO Nazario that he considered.[79]

---

68 TSN of 29 May 2019, p. 9.
69 Id., p. 10.
70 Id., p. 11.
71 Id.
72 Exhibit "R-15", Division Docket, Volume I, pp. 108-112.
73 Supra at note 22.
74 Exhibit "R-7-a", BIR Records, between pp. 338-339.
75 The Affidavit of Service of Preliminary Assessment Notice, however, states that the same was served on 06 January 2017.
76 TSN of 29 May 2019, p. 15.
77 Id., p. 16.
78 Id., p. 17.
79 Id., pp. 17-18.

Respondent failed to timely file his FOE but after he filed his motion to admit his belated FOE on 06 September 2019[80], the same was granted in the Court's Resolution dated 29 October 2019.[81] In another Resolution dated 16 December 2019[82], the Court resolved to admit all of respondent's documentary evidence over petitioner's objection.

On 10 February 2020, petitioner filed its Memorandum[83] while respondent failed to file his own[84], thereby submitting the case for decision on 24 February 2020.[85]

ISSUES

As the parties so stipulated[86] and as indicated in the Pre-Trial Order[87], the sole issue to be resolved is –

> WHETHER PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2013 IN THE AGGREGATE AMOUNT OF ₱16,377,797.24, INCLUSIVE OF INTEREST.

The Court notes that petitioner filed a Motion/Clarification[88] seeking the inclusion of the issue on "whether or not petitioner is liable for deficiency Value-Added Tax (VAT) for the taxable year 2013 in the aggregate amount of Php7,570,452.47" in the amended pre-trial order. Since the Court also found that a similar issue was likewise raised in respondent's Pre-Trial Brief[89], the Court deems it appropriate to resolve the same together with the issue on petitioner's deficiency IT.

80 Division Docket, Volume II, pp. 1062-1064.
81 Id., pp. 1090-1091.
82 Id., pp. 1094-1095.
83 Id., pp. 1096-1118.
84 Records Verification dated 13 February 2020, id., p. 1119.
85 Resolution dated 24 February 2020, id., p. 1120.
86 Paragraph 2.a, JSFI, id., Volume I, p. 336.
87 Pre-Trial Order, id., p. 449.
88 Id., pp. 472-474.
89 Id., p. 101.

RULING OF THE COURT

While the Court deemed that only a singular issue needs to be resolved herein, the Court finds it appropriate to first thresh out any doubt on the exercise of its jurisdiction over the case before proceeding to resolve the central issue.

THE COURT HAS JURISDICTION OVER THE CASE.

At the outset, it bears to emphasize that the Court of Tax Appeals (**CTA**) is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[90] Section 7 of Republic Act (**RA**) No. 9282[91], amending RA 1125[92], provides:

> ...
>
> **SEC.** 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ...
>
> > (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.][93]
>
> ...

Corollary, Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, lays down the procedure to be observed in the issuance of tax deficiency assessment:

---

90 *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, 24 April 2007.

91 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS.

92 AN ACT CREATING THE COURT OF TAX APPEALS.

93 Emphasis supplied.

> ...
>
> **Sec. 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings...
>
> ...
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within **one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days** from receipt of the said decision, or **from the lapse of one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable.[94]
>
> ...

In this case, the following are the pertinent dates and events in determining the timeliness of the Petition for Review:

Date	Event
23 January 2017	Petitioner received the FLD with Details of Discrepancies Demand No. 43A-B270-13 and Assessment Notices[95]
22 February 2017[96]	Petitioner filed a protest letter to request for reconsideration addressed to the Regional Director of BIR Revenue Region No. 7[97]
21 August 2017	End of 180-day period from the filing of protest
20 September 2017	Filing of Petition for Review[98]

Considering that the instant Petition for Review was filed on 20 September 2017 or within thirty (30) days from 21 August 2017 or the expiration of the 180-day period, the Court has jurisdiction over the case.

94 Emphasis supplied.
95 Exhibits "R-10" and "R-10-a", BIR Records, between pp. 349-350; Paragraph 1.e., JSFI, Division Docket, Volume I, p. 335.
96 The BIR Revenue Region No. 7 – Assessment Division received the same on 23 February 2017.
97 BIR Records, pp. 358-360.
98 Supra at note 1.

We now proceed to the resolution of the central issue.

THE REVENUE OFFICER WHO CONTINUED THE AUDIT IS NOT ARMED WITH A LETTER OF AUTHORITY (LOA).

The audit process normally commences with the issuance by the CIR of a LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment and, at the same time, it authorizes or empowers a designated RO to examine, verify and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[99]

The Court has thus been consistent in ruling that an RO tasked to examine the books of taxpayers must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

> ...
>
> **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.[100]
>
> ...

Based on the afore-cited provision, it is clear that only the CIR or his duly authorized representative may authorize the examination of any taxpayer. It is crucial that the RO who will carry on the examination must act only upon the authority given either by the CIR himself or his duly authorized representative.

---

[99] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,* G.R. No. 183408, 12 July 2017.
[100] Emphasis supplied.

In relation to the above, Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books must be armed with an LOA, *viz*:

> ...
>
> **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.[101]
>
> ...

Under the said provision, an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon respondent.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[102], the Supreme Court emphasized the importance of an LOA, *viz*:

> ...
>
> **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...
>
> ...
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of

---

[101] Emphasis supplied.

[102] G.R. No. 222743, 05 April 2017; Emphasis supplied and citation omitted.

> 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.**
>
> ...

In the case at bar, the LOA[103] on which respondent has anchored the validity of the assessment only names RO Domingo and GS Favis as those authorized to examine petitioner's books of accounts and other accounting records. *However*, during the trial, it was revealed that RO Nazario, who was not specifically named in the subject LOA, likewise participated in the audit of petitioner. Particularly, during RO Nazario's cross-examination[104], she testified that she just continued the examination left by RO Domingo, to wit:

> ...
>
> ATTY. REYES:
> Were you the first revenue officer to up hand this case of the petitioner?
>
> WITNESS:
> No.
>
> ATTY. REYES:
> Who is the first officer?
>
> WITNESS:
> **The first one is Ms. [Rhea] Domingo, sir.**
>
> ATTY. REYES:
> Can you affirm that [Rhea] Domingo already taken steps in the investigation of the records of the petitioner?
>
> WITNESS:
> Yes, sir. The Letter of Authority (LOA) was issued on October 30, 2014, and she was the one who issued the first notice and the documents were submitted to her first.

---

[103] Supra at note 10.
[104] TSN of 29 May 2019, pp. 8-9.

ATTY. REYES:
So, can you also affirm that [Rhea] Domingo already submitted the records of the petitioner?

WITNESS:
She examined the books, sir.

ATTY. REYES:
Do you also examine and study the case records which is also subjected to the examination of [Rhea] Domingo?

WITNESS:
Yes, sir. [105]

...

Furthermore, when the Court asked clarificatory questions[106], it was revealed that the assessment was issued based on the examination conducted by RO Nazario, *viz*:

...
JUSTICE CASTAÑEDA:
May I just interject a question. **The assessment involved here is based on whose recommendations?**

WITNESS:
My recommendations, Your Honors.

JUSTICE CASTAÑEDA:
Your recommendation?

WITNESS:
Yes, Your Honors.[107]

...

This was also confirmed by RO Alcaraz during his re-cross examination[108], as follows:

...
ATTY. REYES:
In relation to what you just have mentioned, who was the last revenue officer you remember which issued the

---

105 Emphasis supplied.
106 TSN of 29 May 2019, p. 10.
107 Emphasis supplied.
108 TSN of 29 May 2019, pp. 17-18.

memorandum indicating the findings against the petitioner? Was it [Rhea] Domingo or other witness [Ms.] Lilibeth Nazario?

WITNESS:
Lilibeth Nazario, it was her recommendation that was provided the assessment division. Then thereafter, it was asserted by me together with my supervisor. And if there will be more findings, so we just issued the final assessment notice (FAN) and formal letter of demand (final letter of demand (FLD). And then same, we go over the same process having signed by the Regional Director and forwarded the final assessment notice (FAN) and formal letter of demand (FLD) to the RDO office.

ATTY. REYES:
You mean that the report of Ms. [Rhea] Domingo was not submitted?

WITNESS:
It was submitted, it was part of the docket.

ATTY. REYES:
But was the report of Ms. [Rhea] Domingo, the last report that you considered?

WITNESS:
What is your question, Attorney?

ATTY. REYES:
Is the last report that you considered is the report of Ms. [Rhea] Domingo and not Lilibeth Nazario?

WITNESS:
No. It was the report of Lilibeth Nazario, sir.

ATTY. REYES:
No further question, Your Honors.[109]

...

From the foregoing, it is evident that RO Nazario participated in the actual conduct of the audit without being so authorized by respondent or his duly authorized representative. In fact, RO Nazario even admitted that her recommendation prompted the issuance of the assessment against petitioner. As such, it is clear that the subject

[109] Emphasis supplied.

assessment arose from the examination made by an RO who, as stated earlier, was not properly authorized by the CIR or the latter's duly authorized representative.

While it may be argued that RO Nazario was equipped with MOA No. RR7-30367[110], as a result of reassignment or transfer, the Court, however, cannot consider the same as a valid substitute for the required LOA as the law requires the issuance of a **new** LOA in cases of reassignment/transfer of cases to another RO. The same finds basis from the provisions of Revenue Memorandum Order (**RMO**) No. 43-90[111] issued by the CIR himself which pertinently provides:

> ...
>
> **Any reassignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.[112]
>
> ...

In *Commissioner of Internal Revenue v. Composite Materials, Inc.*[113], the Supreme Court ruled that:

> ...
>
> **As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.**
>
> Here, the CTA en banc found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.

---

110 Supra at note 21.

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

112 Emphasis supplied.

113 G.R. No. 238352, 12 September 2018; Citations omitted and emphasis supplied.

> Moreover, **the Court agrees with the CTA en banc that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA.
>
> ...

As such, it becomes even more clear that a new LOA (and not merely an MOA) is required as a result of the reassignment/transfer from RO Domingo to RO Nazario. Corollary, the MOA subsequently issued is neither tantamount to an LOA nor a supplement thereto, as to validly give the new set of RO and GS the same kind of authority vested in the LOA.

Considering the absence of a new LOA authorizing RO Nazario to examine petitioner's books of accounts and other accounting records as a result of the reassignment/transfer of the case to her, the deficiency tax assessments issued against petitioner are inescapably void.

THE MEMORANDUM OF ASSIGNMENT (MOA) CANNOT ALSO BE CONSIDERED AS A VALID SUBSTITUTE FOR THE REQUIRED LETTER OF AUTHORITY (LOA) AS IT WAS ISSUED BY A MERE REVENUE DISTRICT OFFICER.

Moreover, the MOA (No. RR7-30367) relied upon by respondent cannot likewise confer authority upon RO Nazario to conduct the audit. A perusal thereof would reveal that the same was signed only by a Revenue District Officer, who is not duly authorized to issue LOAs, pursuant to the pertinent provisions of the law.

To be valid, an LOA must be issued either by the CIR himself or by his duly authorized representative, who, under Section 13[114] in relation Section 10(c)[115] of the NIRC of 1997, as amended, is the

---

[114] Supra at page 16.

[115] **SEC. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

Revenue Regional Director. In addition to the authority conferred upon a Revenue Regional Director, RMO 43-90, likewise provides:

> ...
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the **Deputy Commissioners** and the Commissioner. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.**[116]
>
> ...

Relatedly, RMO 29-2007[117] also authorizes Assistant Commissioner/Head Revenue Executive Assistants to issue LOAs relative to Large Taxpayers.

Summing up the foregoing rules, only the following officials are properly conferred with authority to permit the examination of taxpayers for deficiency taxes:

1. CIR;
2. Regional Directors;
3. Deputy Commissioners;
4. Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and,
5. Other officials but only upon prior authorization by the CIR himself.

Consequently, since MOA No. RR7-30367 was issued only by a Revenue District Officer who is not authorized to authorize the examination of the taxpayer's books, the same cannot properly confer authority upon the persons named therein to conduct the audit. Furthermore, the LOA issued by the Revenue Regional Director cannot be subsequently modified or amended through a MOA signed by a subordinate official such as, in this case, the Revenue District Officer.

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

116 Emphasis supplied.
117 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service

Indubitably, the failure to issue a new LOA specifically naming the new set of RO and GS who continued the examination of petitioner's books is fatal to respondent's case. As a result, the Court cannot uphold the validity of the assessment without offending petitioner's right to due process.

Well-entrenched are the principles that in the absence of such an authority, the assessment or examination is a nullity[118] and a void assessment bears no fruit.[119]

WHEREFORE, in view of the foregoing, the Petition for Review filed by petitioner Exclusive Networks-PH Inc. (formerly Transition Systems Phils. Pte Ltd., Inc.) is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancies Demand No. 43A-B270-13 and Assessment Notices dated 23 January 2017 issued against petitioner representing deficiency income tax and value-added tax for taxable year 2013 are **CANCELLED** and **SET ASIDE**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes arising from the Formal Letter of Demand with Details of Discrepancies Demand No. 43A-B270-13 and Assessment Notices dated 23 January 2017 in the amounts of ₱16,377,797.24 and ₱7,570,452.47, inclusive of interest, representing deficiency income tax and value-added tax, respectively, for taxable year 2013.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

118 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

119 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010.

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice