REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AMPARO SHIPPING CORPORATION,
Respondent.

CTA EB NO. 2165
(CTA Case No. 9387)

Present:

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

Promulgated:
OCT 22 2021 11:33am

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Commissioner of Internal Revenue's (**petitioner's**) Motion for Reconsideration[1] (**MR**) of the Court's Decision[2] in the above-captioned case dated 23 February 2021, with respondent Amparo Shipping Corporation's (**respondent's/ASC's**) Comment[3] filed 21 June 2021. The dispositive portion of the assailed Decision reads:

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[1] Motion for Reconsideration (Re: Decision promulgated on 23 February 2021) filed on 15 March 2021, *Rollo*, pp. 112-126.

[2] Id., pp. 97-111.

[3] Comment (On Petitioner's Motion for Reconsideration dated March 16, 2021) filed on 21 June 2021, id., pp. 138-153.

> ...
>
> **WHEREFORE**, the foregoing considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on 15 November 2019 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution of the Special Second Division on 28 June 2019 and 08 October 2019, respectively, in CTA Case No. 9387 entitled *Amparo Shipping Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**
>
> **SO ORDERED.**
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> ...

The instant motion raises yet another rehash of petitioner's arguments. He maintains that Letter of Authority[4] (**LOA**) No. LOA-082-2013-00000030 was issued with authority and is therefore, valid. Likewise, he contends that the Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code[5] (**Waiver**) extending the period of his assessment until 31 December 2015 is valid despite the lack of date of the Bureau of Internal Revenue's (**BIR's**) acceptance.

Petitioner also claims that his assessment of respondent for internal revenue taxes covering taxable year (**TY**) 2011 has not yet prescribed. He argues that the assessment of respondent was founded on fraud therefore giving the BIR ten (10) years within which to assess respondent in accordance with Section 222(a)[6] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

In further support of the LOA's validity, petitioner once again insists that the Special Second Division (**Division**) and the Court *En Banc* should have taken cognizance of the Certification issued by Ms. Cecilia C. Felipe, Personnel Division Chief of the BIR and the photocopy of the Revenue Travel Assignment Order (**RTAO**) No. 44-2012 dated 20 September 2012 (**collectively referred to as the "documents"**) attached to his MPR before the Division. However, as the Court *En Banc* has already ruled and discussed, said documents

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4 Exhibit "R-1", BIR records, p. 1.

5 Exhibit "R-5", id., p. 397.

6 **Sec. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-*
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
...

were neither presented at trial nor did petitioner call for a new trial of the case for the possible admission of these documents into evidence. In the assailed Decision, We explained, thus:

> ...
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> In the assailed Decision, the Special Second Division found that petitioner was unable to prove that OIC-ARD Palamine was clothed with authority to issue the LOA in the absence of a permanent RD. This lack of authority, among others, led the Special Second Division to invalidate the BIR's assessment of respondent.
>
> Realizing his lapse and in his attempt to remedy the same, petitioner attached to his MPR a copy of RTAO 44-2012 and the Certification issued by the BIR's Personnel Division Chief to prove Palamine's status as an RD at the time of the LOA's issuance. While it is true that, as held in *BPI*, the Court of Tax Appeals (**CTA**) is not governed by the technical rules of evidence, it is, however, equally true that the Rules of Court (**ROC**) apply suppletorily to the CTA's own rules.
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> The principle established in *BPI*, although telling of the value placed upon the opinions and findings of this Court, is nevertheless a mere exception. As such, resort thereto as to require the relaxation of the rules of procedure must be exercised with caution and favored only for valid and compelling reasons.
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> In asking the Special Second Division to take cognizance of RTAO 44-2012 and the Certification, petitioner essentially prayed for a new trial and not a mere reconsideration of the assailed Decision.[7]
>
> ...

Given that petitioner did not formally offer these documents, the same could not even be considered by the Court *En Banc* as part of the case's records. In *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*[8], the Supreme Court held, thus:

> ...
>
> The rule is that evidence formally offered by a party may be admitted or excluded by the court. If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the records of the case. If the excluded evidence is oral, he may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. These procedures are known as offer of proof

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7 *Rollo*, pp. 103-104;

8 G.R. No. 192024, 01 July 2015.

> or tender of excluded evidence and are made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence.
>
> ...

To recall, the Court *En Banc* found that the LOA issued against respondent was signed by Atty. Hermeno A. Palamine (**Atty. Palamine**) under the title of Officer-in-Charge (**OIC**), Assistant Regional Director (**ARD**). However, as explained in the assailed Decision, it is the Revenue Regional Director that has the authority to issue LOAs pursuant to Section 6 in relation to Section 10 of the NIRC of 1997, as amended, which states:

> ...
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> **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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided*, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[9]
>
> ...
>
> **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:
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> ...
>
> (c) Issue **Letters of authority** for the examination of taxpayers within the region[.][10]
>
> ...

This fact led both the Division and the Court *En Banc* to rule that the LOA was void for being issued without authority. Now, assuming *arguendo* that respondent's documents could prove that

9 Emphasis supplied.
10 Emphasis supplied.

Atty. Palamine was already OIC-Regional Director of RR No. 13 at the time of the LOA's issuance and the same was thus issued with authority, other circumstances still exist to render the assessment void. Particularly, the invalidity of the waiver which would have extended the BIR's period to assess respondent until 31 December 2015.

As the Division correctly observed, although apparently received by the BIR, the said Waiver did not contain a date of its acceptance thereof as required by Revenue Memorandum Order (**RMO**) No. 20-90.[11] Thus, the absence of the date of acceptance rendered the Waiver ineffective to extend the period of assessment. The Court reiterates its discussion on this matter below:

> ...
>
> At any rate, even if the Special Second Division did not throw out the assessment solely on the basis of the tainted LOA, the first waiver executed by the parties remained defective – a fact which, in itself, is sufficient to invalidate the assessment on the ground of prescription. As cited by the Special Second Division, RMO 20-90 provides:
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> > ...
> > 1. The waiver must be in the proper form prescribed by RMO 20-90...
> >
> > ...
> >
> > 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. **The date of such acceptance by the BIR should be indicated**...
> >
> > ...
>
> To further emphasize the need for strict adherence with the waiver's form, in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* the Supreme Court held:
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> > ...
> >
> > The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time...
> >
> > ...
> >
> > RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and

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11 Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

> collection of taxes. A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed...
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> ...
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> As correctly found by the Special Second Division, though ostensibly accepted by the BIR, the first waiver herein bears no date of acceptance, thus failing to prevent the assessment's eventual prescription.[12]
>
> ...

Lastly, petitioner's argument that the assessment of respondent is based on fraud is a weak one. Petitioner, on one hand, wants the Court *En Banc* to recognize the validity of the Waiver (which would extend the petitioner's period of assessment beyond the three-year period prescribed under Section 203[13] of the NIRC of 1997, as amended) while, on the other hand, it argues that its period of assessment is ten (10) years pursuant under Section 222(a)[14] on the ground of fraud. Aside from this argument being raised by petitioner for the first time, the same conflicts with everything he initially tried to establish. With that said, such allegation is totally unsupported by any evidence of record.

WHEREFORE, the foregoing considered, petitioner Commissioner of Internal Revenue's Motion for Reconsideration (Re: Decision promulgated 23 February 2021) filed on 16 March 2021 is hereby **DENIED** for lack of merit. Consequently, petitioner is hereby enjoined from enforcing collection of taxes against respondent in relation to the present case.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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12 *Rollo*, pp. 109-110; Citations omitted and emphasis in the original text.

13 **Sec. 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

14 Supra at note 6.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice