REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

CENTRAL LUZON DRUG CORPORATION, Petitioner,	CTA Case No. 8952
	Members:
-versus-	FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 06 2019 10:22 a.m.

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RESOLUTION

Fabon-Victorino, J.:

On November 14, 2018, the Court rendered a Decision,[1] the dispositive portion of which states as follows:

> **WHEREFORE**, the instant Petition for Review filed on December 19, 2014 by petitioner Central Luzon Drug Corporation, is hereby **GRANTED**.
>
> Accordingly, the Final Decision on Disputed Assessment issued by respondent Commissioner of Internal Revenue dated November 20, 2014, affirming the Formal Letter of Demand and Final Assessment Notice issued against petitioner, for alleged deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax and Documentary Stamp Tax in the aggregate amount of ₱1,146,686,052.85 for TY 2009, is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**.

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[1] Docket, pp. 2119-2141.

Unperturbed, respondent filed his *Motion for Reconsideration* dated December 5, 2018, complaining that its right to due process of law was violated when the Court ruled on an issue of whether RO Gomez was authorized to conduct audit/examination of petitioner's tax liabilities for TY 2009, which was allegedly neither raised in petitioner's pleadings nor tackled during the trial of the case.

Respondent further asserts that Revenue Memorandum Order (RMO) Nos. 8-2006 and 62-2010 allow the head of investigating office to issue a Memorandum of Assignment (MOA) in cases of reassignment/retirement or resignation of the previously assigned RO named in the LOA. Since the ROs named under LOA No. 116-2010-00000100 were transferred/reassigned, the Chief of LT- Regular Audit Division I had the authority to issue the MOA dated February 25, 2013 authorizing RO Gomez to continue the audit/examination of petitioner's books of account or accounting records for TY 2009. Thus, the deficiency tax assessments for TY 2009 he issued against petitioner resulting from such audit/examination must be upheld.

In its Comment dated January 22, 2019,[2] petitioner counters that the determination of whether the examining RO had the authority to conduct audit/examination was interwoven with the issue stipulated during the pre-trial conference and indicated in the Pre-Trial Order, to wit: whether petitioner is liable to pay the deficiency tax assessments for TY 2009. Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) also explicitly allows the Court to rule on such matter since it is necessary in the determination of the validity of the assessment itself. Thus, petitioner sides with the Court in saying that it did not err in taking cognizance of the issue of whether RO Gomez was armed with a valid LOA to conduct the subject examination or audit against petitioner for TY 2009.

Petitioner points out that the authority of RO Gomez to proceed with the subject audit/examination was void for it originated from a MOA and not a LOA as required by law.

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[2] Comment (on Respondent's Motion for Reconsideration dated 5 December 2018), docket (CTA Case No. 8952), unpaged.

The myriad of cases decided by the Supreme Court,[3] as well as the CTA[4] uniformly held that an assessment is void when the revenue officer/s who conducted the examination/audit of the taxpayer's records was without a valid LOA. In addition, there is nothing in RMO No. 62-2010 dispensing the issuance of a LOA for a valid tax examination or audit. Moreover, respondent utterly failed to present evidence that the person who signed[5] the MOA was indeed authorized.

THE RULING OF THE COURT

The instant Motion lacks merit.

There is nothing in Section 1, Rule 14 of the RRCTA limiting the powers of the Court to resolve only the issues raised by the parties. In fact, the rule permits the Court to resolve not only the issues brought forth by the parties, but also those related or interwoven with the issues raised by the parties and even those are necessary to pass upon in order to achieve an orderly disposition of the case before it, thus:

> SECTION 1. *Rendition of judgment.* - xxx
>
> 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.

Ex-opposito with respondent's posture, the Court is procedurally allowed to address the issue of whether RO Gomez was legally authorized to conduct verification/validation of petitioner's books of account or other accounting records for TY 2009 despite not having been specifically raised by petitioner in its pleadings and at trial as the same is decisive in determining the validity of the subject assessment.

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[3] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

[4] *Overseas Container Line LTD., represented by OOCL (Philippines), Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 9179, August 2, 2018; and *Composite Materials vs. Commissioner of Internal Revenue,* CTA EB No. 1314, August 15, 2017.

[5] Chief – LT Regular Audit Division I.

Significantly, Sections 6(A)[6] and 13[7] of the NIRC, as amended, are unequivocal and require only application. Both mandate, *inter alia* that a valid LOA originating from the CIR or the Revenue Regional Director is a condition *sine qua non* for a RO to legally conduct a verification/audit of a taxpayer for potential deficiency taxes. Conversely, the absence of such authority renders the assessment void.[8]

There is no denying that the authority of RO Gomez to examine or audit petitioner for possible deficiency taxes pertaining to TY 2009 originated from MOA No. LOA-116-2013-0421 dated February 25, 2013 issued by the Chief, Regular LT Audit Division I.[9] The record is bereft of any showing that a valid LOA was issued by respondent or the concerned Revenue Regional Director in favor of RO Gomez for the latter to continue the examination of petitioner's books of account or accounting records for potential tax liabilities for the relevant period. Being a product of an unauthorized tax audit/examination, the subject assessment predicated upon the findings of RO Gomez should be deemed a complete nullity and without any legal consequence, thereby warranting its cancellation and withdrawal.

The *rationale* for requiring a valid LOA as a prerequisite to a valid assessment is not that difficult to perceive – it is to prevent undue harassment of a taxpayer and level the

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[6] 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. (underscoring supplied)

[7] 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. (underscoring supplied)

[8] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

[9] Exhibit R-2; and Judicial Affidavit of Josa C. Gomez, Answer to Question No. 9, docket, p. 139.

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playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR' s revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[10]

WHEREFORE, there being no formidable argument warranting a reversal, much less a modification of the challenged Decision of November 14, 2018, respondent's *Motion for Reconsideration* dated December 5, 2018 is **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[10] See Note 3.