REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

WATSONS PERSONAL CARE STORE (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9303

Present:

DEL ROSARIO, *P.J., Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

NOV 19 2020 1:19 pm

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RESOLUTION

MANAHAN, J.:

For resolution is respondent's *Motion for Reconsideration (re: Decision dated June 11, 2020)* posted on July 3, 2020, with petitioner's *Comment (On CIR's Motion for Reconsideration)* filed through electronic mail (e-mail) on September 1, 2020.[1]

Respondent seeks reconsideration of the Decision of the Court promulgated on June 11, 2020 (Assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED.** Accordingly, the FLD and the tax assessments dated December 17, 2014 assessing petitioner of deficiency income tax, VAT, EWT, WTC, FWT, FWVAT and DST, for TY 2010, inclusive of penalties and interest, are **WITHDRAWN and SET ASIDE.**

[1] E-Mail dated September 1, 2020 was officially received by the Court on September 2, 2020.

SO ORDERED."

Respondent presents the following grounds for his *Motion for Reconsideration*, and we quote:

"I.

THE HONORABLE COURT ERRED IN RULING ON AN ISSUE NEVER RAISED BY PETITIONER, NEVER JOINED BY THE PLEADINGS, NEVER RAISED DURING PRE-TRIAL AND NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER. THUS, RESPONDENT'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED WHEN THE COURT RULED TO GRANT THE PETITION ON THE GROUND OF WANT OF AUTHORITY OF REVENUE OFFICERS.

II.

ASSUMING THE COURT MAY SUDDENLY DECIDE THE CASE BASED ON AN ISSUE THAT WAS NEVER RAISED BY PETITIONER, NEVER JOINED BY THE PLEADINGS, NEVER RAISED AT THE PRE-TRIAL ORDER, NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER AND NEVER TRIED BY THE PARTIES - STILL THE ASSESSMENT WAS ISSUED PRUSUANT TO A VALID LETTER OF AUTHORITY AND MEMORANDUM OF ASSIGNMENT."

Respondent's Arguments

Respondent CIR argues that that the issue on lack of authority of the revenue officers was never raised by petitioner in the administrative level nor with the Court in its judicial appeal, hence it was erroneous on the part of the Court to delve and rule on such issue. He asserts that his basic rights to fair play and due process were violated when the Court suddenly ruled on an issue which was never raised by petitioner in its pleadings, nor in its Pre-Trial Brief nor defined by the Court in the Pre-Trial Order. He calls such treatment "blindsiding a litigant" and as a result was never given the opportunity to be heard on the particular issue of lack of authority of its revenue officers.

Respondent recognizes the provisions found in Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) where the Court is empowered to rule upon related issues not stipulated by the parties if this is necessary for an orderly disposition of a case, but such must be resorted to if such peripheral issues are necessary to resolve the main issue and not as a license to resolve a matter not derived from the pleadings and not tried by the parties. Respondent adds that the phrase "orderly disposition of cases" does not mean disregarding rules of procedure and rules on pre-trial and that the Pre-Trial Order is binding not only on the parties but also on the court which issued the same. The limitive nature and purpose of the Pre-Trial Order was emphasized by respondent when he cited Section 7 of Rule 18 of the Revised Rules of Court which provides that the contents of said Pre-Trial Order shall control the subsequent course of the action.

As an alternative argument, respondent maintains that it was erroneous on the part of the Court to conclude that the revenue officers had no authority to conduct an examination of petitioner's books of accounts and other accounting records for taxable year 2010 and asserts that a validly issued Letter of Authority (LOA) does not become invalid or void by reason of the reassignment or transfer of the revenue officers named therein. He adds that a validly issued Memorandum of Assignment is sufficient to clothe the new revenue officers with the requisite authority to continue the audit investigation. Respondent cites Revenue Memorandum Order (RMO) No. 62-2010 which provides that in case of reassignment for the continuation of the audit examination, a Memorandum of Assigment shall be issued. In the instant case the Division Chief of the Regular Large Taxpayers Audit Division (RLTAF) I, as head of the investigating office issued a Memorandum of Assignment to the new set of revenue officers to give them the authority under the original LOA, to continue the audit investigation of petitioner's books of accounts and other accounting records for taxable year 2010. Respondent then reiterates that the aforesaid circumstances properly clothed the new set of revenue officers with the requisite authority to continue with the audit investigation.

Petitioner's Counter-Arguments

Petitioner submits that the lack of a valid LOA goes straight into the issue of the validity of the tax assessments which was the main issue in the pleadings and was aptly defined in the Pre-Trial Order of the Court, hence it cannot be said that the Court resolved an issue which was never raised in the pleadings. Petitioner agrees with the Court when it concluded that authority (or lack thereof) of the revenue officers is an issue which goes into the validity of the deficiency assessment and which resolution is necessary to achieve an orderly administration of justice. Petitioner explains that resolving the validity of the assessments would necessarily include the examination of all aspects that led to its issuance, one of which is the authority of the examining officers. Petitioner emphasizes that there is nothing that would prevent the Court from exercising its inherent authority to review unassigned errors when the same is closely related to the issues raised and are supported by evidence on record.

As regards the alleged validity of the Memorandum of Assignment in lieu of a new LOA for the continuance of the audit investigation, petitioner cites several decisions of the Supreme Court which supposedly pronounced that in the absence of an express grant of authority through an LOA, the tax assessment or examination is a nullity. Petitioner further submits that the Supreme Court has categorically declared that a referral memorandum, akin to a Memorandum of Assignment in cases of reassignment of the original revenue officers, does not get its authority from the original LOA, thus the need to issue a new LOA.

Petitioner adds that Section 13 of the 1997 National Internal Revenue Code (NIRC),as amended, authorizes a Revenue Regional Director to issue LOAs. Petitioner alleges that in the instant case, the Memorandum of Assignment was issued and signed by the Chief of the Regular Large Taxpayers Audit Division 1, Cesar Escalada, a position which is not equivalent to a Regional Director, hence rendering the Memorandum of Assignment void and of no legal effect.

RULING OF THE COURT

This is not the first time the Court is called upon to resolve the issue on whether the Court of Tax Appeals can delve into matters not raised by the parties in their pleadings nor included in the Pre-Trial Order. This is the primary opposition/argument of respondent against the assailed Decision when he expressed that the Court committed an error when it invalidated the assessments issued against petitioner on a ground that was never raised in the pleadings nor mentioned in the Pre-Trial Order.

Well entrenched in jurisprudence is the rule that the Court is not bound by the issues specifically raised by the parties but may rule upon related issues necessary to achieve an orderly disposition of cases and this is provided in Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), portions of which are quoted below:

> **"Rule 14**
> **Judgment, Its Entry and Execution**
>
> Section 1. *Rendition of Judgment.-* xxx xxx xxx
>
> xxx xxx 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."

The wordings of Section 1 of Rule 14 of the RRCTA seem to convey an exception to the general rule found in Section 7 of Rule 18 of the Revised Rules of Court that a Pre-Trial Order shall explicitly define and limit the issues to be tried during trial,[2] and is subject to the condition that the resolution of said peripheral issues (not raised) is necessary to achieve an orderly disposition of the case.

This Court finds it necessary to digress and elaborate on this particular rule because as a court of justice, it is generally confined to the issues raised by the parties in their pleadings. Limitation of the issues to be tried and resolved by the court as defined in the pre-trial order is consistent with the basic rules of fair play. Indeed, to raise an issue not raised in the pleadings of either party and thereafter render a ruling upon it will not be fair on the adverse party as he will have no opportunity to present evidence against it.

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[2] "Rule 18
Pre-Trial

Section 7. Record of Pre-Trial. – The proceeding in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference , the action taken thereon, the amendments allowed to the pleadings , and the agreements or admissions made by the parties as to any of the matters considered. **Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice.** (emphasis supplied)

This is the reason why the exception found in the aforequoted Section 1 of Rule 14 of the RRCTA comes with 2 conditions, namely: a) That the issue is related to the main issue stipulated by the parties; and (b) that the resolution of such related issue is necessary to achieve an orderly disposition of the case. These are the same criteria used by the Supreme Court in the case of *CIR vs. Lancaster Philippines, Inc.,*[3] when it ruled affirmatively in favor of the Court on the issue of whether or not it can resolve the question on the scope of authority of the revenue officers who were named in the LOA and which issue was not raised in the parties' pleadings.

The Supreme Court ruling in the *Lancaster case* is clear. The lack of authority of the revenue officers and/or the lack of a valid LOA results to the invalidity of the tax assessments issued and is crucial in every disputed tax assessment appealed to this Court. We quote the relevant portions of the ruling of the Supreme Court in the *Lancaster case*:

> ""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 dispisition of the case. xxx xxx xxx
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> xxx xxx xxx
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> 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 the 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."

On the alternative contention of respondent that the deficiency tax assessment was issued pursuant to a valid LOA and Memorandum of Assignment, we find this to be without merit as thoroughly discussed in the assailed Decision.

The facts show that an LOA was issued on September 19, 2011 authorizing revenue officers Meliza Weepee, Reynoso Bravo, William Sundiam, Miguel Sulit, Maribel Serafica and Group Supervisor Wilfredo Reyes to examine

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[3] G.R. No. 183408, July 12, 2017.

petitioner's books of accounts and other accounting records for taxable year 2010. However, due to the reassignment/transfer of the revenue officers named therein, a Memorandum of Assignment was issued and signed by the Chief of the Regular Large Taxpayers Audit Division 1, Cesar Escalada, assigning a new set of revenue officers, namely Jennifer L. Almedilla and Group Supervisor Marivic P. Bautista to continue the said investigation/examination. As a result of this investigation and subsequent recommendation, the BIR issued the subject Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) dated December 17, 2014.

In the CTA *En Banc* case of *Composite Materials, Inc. vs. CIR,*[4] and later affirmed by the Supreme Court in the case of *CIR vs. Composite Materials, Inc.,*[5] it was held that a Referral Memorandum does not give authority to the new set of revenue examiners to conduct an examination of the taxpayer's records but rather an LOA validly issued by the Revenue Regional Director. We quote relevant portions of the CTA *En Banc* decision, as follows:

> "In the case at bar, it is undisputed that the person who conducted the examination of petitioner CMI's records Revenue Officer Mary Anne P. Cruz, is not among the revenue officers authorized in LOA No. 0008746 dated September 9, 2008. Evidently, Revenue Officer Mary Anne P. Cruz is not authorized under LOA No. 0008746 to examine petitioner CMI.
>
> xxx xxx xxx
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> **The Referral Memorandum signed by the Revenue District Officer does not give authority to Revenue Officer Mary Anne P. Cruz to conduct examination of petitioner CMI's records. On the contrary, pursuant to Sections 10 and 13 of the NIRC of 1997, as amended, it is the Revenue Regional Director who may issue an LOA."** (emphasis supplied)

In a recently issued Resolution in the case of *CIR vs. Opulent Landowners Inc.,*[6] the Supreme Court reiterated the ruling that if the revenue officers are not authorized, in the absence of a new LOA in their favor, their resulting assessments are void.

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[4]CTA *EB* No. 1314, August 15, 2017.
[5]G.R. No. 238352, September 12, 2018.
[6] G.R. Nos. 249883-84, January 27, 2020.

> **is the Revenue Regional Director who may issue an LOA."** (emphasis supplied)

In a recently issued Resolution in the case of *CIR vs. Opulent Landowners Inc.,*[6] the Supreme Court reiterated the ruling that if the revenue officers are not authorized, in the absence of a new LOA in their favor, their resulting assessments are void.

From all the foregoing, the Court finds no cogent reason to reverse or modify the Court's Decision dated June 11, 2020.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (re: Decision dated June 11, 2020)* posted on July 3, 2020 is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[6] G.R. Nos. 249883-84, January 27, 2020.