CTA Form No. 8 (For DCC)

21-000146-0062

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10498

NCR CORPORATION PHILIPPINES,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. FELIX PAUL R. VELASCO
ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. NIKI BERYL B. DELA CRUZ
ATTY. LARA NICOLE T. GONZALES
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

AGAN MONTENEGRO MALASAGA & CO.
7th Floor, Electra House Building
115-117 Esteban Street, Legazpi Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **July 26, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 29, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NCR CORPORATION PHILIPPINES, Petitioner,	**CTA CASE NO. 10498** Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 26 2024; 4:00PM

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **Motion for Reconsideration (of the Decision dated May 10, 2024)** filed on May 29, 2024, with petitioner's **Opposition/Comment (against respondent's motion for reconsideration)** filed on June 10, 2024.

Respondent seeks the reversal and setting aside of the Decision dated May 10, 2024[1] (assailed Decision) and prays that a new one be rendered ordering petitioner to pay the alleged deficiency taxes inclusive of surcharges and interests for taxable year 2014.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE,** premises considered, the Petition for Review filed on May 17, 2021 by NCR Corporation Philippines is **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancy and Assessment Notices, all dated September 13, 2017, the Final Decision on Disputed Assessment with Details of

[1] CTA Docket, Volume III, pp. 1562-1579.

Discrepancies and Audit Results/Assessment Notices, all dated February 8, 2021 assessing petitioner in the adjusted amount of ₱425,585,430.45 representing the alleged income tax, value-added tax, withholding tax on compensation, expanded withholding tax, final withholding tax, final withholding VAT, documentary stamp tax, and compromise penalty, inclusive of interest and surcharges for taxable year 2014, are **CANCELLED** and **SET ASIDE** for being void *ab initio*.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed alleged deficiency tax assessments subject of the Formal Letter of Demand with Details of Discrepancy and Assessment Notices, all dated September 13, 2017, and the Final Decision on Disputed Assessment with Details of Discrepancies and Audit Results/Assessment Notices, all dated February 8, 2021, assessing petitioner of income tax, value-added tax, withholding tax on compensation, expanded withholding tax, final withholding tax, final withholding VAT, documentary stamp tax, and compromise penalty in the aggregate amount of ₱425,585,430.45, for taxable year 2014. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED."

Respondent raises the following arguments:

1. The Court erred in ruling on matters that were raised by petitioner for the first time on appeal. The issue on the authority of Revenue Officer (RO) Abigail Cayabyab to continue the audit, as well as the issue on lack of definite amount of deficiency tax liability, were never raised by petitioner in the administrative level. Petitioner can no longer raise said issues on the ground of laches;

2. The conduct of the audit/investigation and the resulting assessments are valid as the same were in accordance with law and rules;

3. A Letter of Authority (LOA) is not a requirement when the audit investigation is conducted by the Office of the Commissioner of Internal Revenue (CIR);

4. Assuming arguendo that an LOA is required, the examination of petitioner's books of accounts and other accounting records was conducted pursuant to a valid LOA;

5. The Court erred in ruling that the Formal Letter of Demand (FLD) is void as it is a mere reiteration of the Preliminary Assessment Notice (PAN);

6. There was no violation of petitioner's right to due process;

7. The FLD issued by respondent is valid and in order. The FLD has set the definite amount of petitioner's deficiency tax liability; and,

8. The decisions on the invalidity of the FLD (such as *Commissioner of Internal Revenue vs. Fitness by Design Inc.*[2] and CTA decisions pointing out technicalities on the letters and notices issued by respondent) should not be applied to the present case.

Petitioner, on the other hand, prays for the denial of respondent's motion and raises the following arguments:

1. The Court of Tax Appeals can resolve an issue not raised at the administrative level;

2. The cases cited by respondent, *Joselito B. Yap vs. Bureau of Internal Revenue,*[3] *(Yap case) Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*,[4] *(Transitions Optical case)* and *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*[5] *(South Entertainment case)* are inapplicable to the present case;

3. The absence of an LOA issued to RO Abigail Cayabyab to conduct the audit renders the present assessment void; and,

4. The Court committed no error in holding that the present assessment was issued in violation of the taxpayer's right to due process.

THE COURT'S RULING

After careful evaluation of the parties' arguments, the Court resolves to deny respondent's Motion for Reconsideration.

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[2] G.R. No. 215957, November 9, 2016.
[3] CTA Case No. 10063, November 29, 2022.
[4] G.R. No. 227544, November 22, 2017.
[5] G.R. No. 225809, March 17, 2021.

The Court finds that the arguments interposed by respondent are a mere rehash or amplification of his previous arguments in his Answer[6] and Memorandum[7] which were sufficiently considered and addressed by the Court in the assailed Decision. There is no need to discuss the same arguments again in resolving the present Motion for Reconsideration.

The pronouncement in *Social Justice Society (SJS) Officers, et al. vs. Lim,*[8] *which cited Ortigas and Co. Ltd. Partnership vs. Judge Velasco,*[9] *is instructive:*

> "**The grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to 'cut and paste' pertinent portions of the Decision or re-write the *ponencia* in accordance with the outline of the instant motion.**
>
> As succinctly put by then Chief Justice Andres R. Narvasa in *Ortigas and Co. Ltd. Partnership v. Judge Velasco* on the effect and disposition of a motion for reconsideration:
>
>> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; xxx. **It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.**" *(Boldfacing supplied)*

Respondent cited the *Yap*, *Transitions Optical* and *South Entertainment* cases, which applied the principle of estoppel, in

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[6] CTA Docket, Vol. I, pp. 354-390.
[7] CTA Docket, Vol. III, pp. 1464-1503.
[8] G.R. Nos. 187836 & 187916, March 10, 2015.
[9] G.R. Nos. 109645 & 112564, March 4, 1996.

arguing that petitioner is now estopped from questioning the authority of the RO who continued the audit, as well as the alleged lack of definite amount of deficiency tax liability, as such issues were never raised in the administrative level.

The argument deserves scant consideration.

The Court reiterates that it is not precluded from considering issues and arguments raised by the parties in the petition and answer, albeit the same were not raised before the administrative level specially when said issues and arguments delve into the intrinsic validity of the assessment itself. [10]

Anent respondent's argument that an LOA is not a requirement when the audit investigation is conducted by the Office of the CIR, the same is bereft of merit. This argument has already been settled by the Supreme Court in *Commissioner of Internal Revenue vs. Tridharma Marketing Corporation,*[11] *viz.*:

> "Anent the CIR's argument that an LOA is not necessary if it is the Commissioner of Internal Revenue himself/herself who signed the LN and conducted the examination, this deserves scant consideration.
>
> While it may have been the Commissioner himself who signed the LN, it was RO Bravo, and later on, RO Potot who conducted the audit and examination of Tridharma's records. **The signing of an LN by the Commissioner cannot be taken as outright proof that it was the CIR himself who conducted the examination or audit, absent proof of the same.**" *(Boldfacing supplied)*

In the present case, there is nothing on record which shows that the audit/investigation was conducted by the CIR himself. Records reveal that it was RO Abigail Cayabyab who continued the audit/investigation of petitioner without valid authority to do so.

All told, the Court finds no cogent reason to warrant a modification or reversal of the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (of the Decision dated May 10, 2024)** is hereby **DENIED** for lack of merit.

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[10] *Commissioner of Internal Revenue vs. Geniographics Incorporated*, G.R. No. 264572, July 26, 2023; *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017.
[11] G.R. No. 261787, October 4, 2023.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice