REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TRINITY FRANCHISING AND MANAGEMENT CORPORATION,
Petitioner,

- versus –

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9190

Members:

CASTAÑEDA, JR., *Chairperson,*
MANAHAN, *JJ.*

Promulgated:

OCT 02 2018

1:05 p.m.

x---x

DECISION

CASTAÑEDA, JR., ***J.:***

THE CASE

This is a Petition for Review[1] filed on November 13, 2015 by Trinity Franchising and Management Corporation to seek the nullification of the Final Decision on Disputed Assessment (FDDA) dated October 15, 2015, that found it liable for alleged deficiency income tax, documentary stamp tax (DST), value-added tax (VAT), and expanded withholding tax (EWT) in the aggregate amount of ₱54,370,082.80 for taxable year 2010.

[1] Docket, Vol. I, pp. 10-29.

THE FACTS

Petitioner Trinity Franchising and Management Corporation is a corporation duly organized and existing under Philippine laws, with principal office at No. 7, Mercury Avenue, Bagumbayan, Quezon City.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 12, 2011, respondent issued Letter of Authority (LOA) No. 125-2011-00000024[2], authorizing Revenue Officer Julius Rex Bungabong (RO Bungabong) and Group Supervisor Fe Caling (GS Caling) to examine petitioner's books of accounts and other accounting records for income tax for the period covering January 1, 2010 to December 31, 2010, pursuant to Revenue Memorandum Order (RMO) No. 62-2010.[3]

Thereafter, respondent issued another LOA No. 125-2011-00000073[4], authorizing RO Bungabong and GS Caling to examine petitioner's books of accounts and other accounting records for all internal revenue taxes except income tax for the period from January 1, 2010 to December 31, 2010, pursuant to RMO No. 62-2010 on September 29, 2011.[5]

On March 22, 2013, the BIR issued Memorandum of Assignment No. LOA-125-2013-143 dated March 22, 2013[6] authorizing RO Luzviminda A. Pedrosa (RO Pedrosa) and GS Caling to continue the conduct of audit of petitioner's books of accounts and other accounting records for all internal revenue taxes except income tax for taxable year 2010.

[2] Exhibit "P-41", Docket, Vol. I, p. 232.
[3] Par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, p. 398.
[4] Exhibits "P-42", Docket, Vol. I, p. 233; "R-2", BIR Records, Folder 1, p. 1.
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket, Vol. I, p. 399.
[6] Exhibit "R-9", BIR Records, Folder 1, p. 35.

On August 29, 2014, respondent issued to petitioner a Preliminary Assessment Notice (PAN) with Details of Discrepancies[7], stating that after examination of all of petitioner's internal revenue tax liabilities for taxable year 2010, pursuant to LOA No. 125-2011-00000073, respondent found petitioner liable for deficiency income tax, DST, VAT, and EWT.[8]

On November 14, 2014, petitioner received from respondent a Formal Letter of Demand and Final Assessment Notices (FLD-FAN) with attached Details of Discrepancies[9], all dated November 12, 2014, assessing it for deficiency income tax, DST, VAT, and EWT for taxable year 2010.[10] Petitioner filed its protest letter[11] against the FLD-FAN on December 15, 2014.

On October 16, 2015, petitioner received a copy of the FDDA[12] dated October 15, 2015, assessing it for deficiency income tax, DST, VAT, and EWT in the aggregate amount of ₱54,370,082.80 for taxable year 2010.[13]

Petitioner then filed the present Petition for Review before this Court on November 13, 2015.

Respondent filed his Answer[14] on February 1, 2016.

The Pre-Trial Conference[15] was set on March 17, 2016. Respondent's Pre-Trial Brief[16] was filed on March 10, 2016; while petitioner's Pre-Trial Brief[17] was filed on March 14, 2016.

---

[7] Exhibits "P-45", Docket, Vol. I, pp. 236-241; "R-14", BIR Records, Folder 1, pp. 321-326.
[8] Par. 4, Summary of Admitted Facts, JSFI, Docket, Vol. I, p. 399.
[9] Exhibits "P-46, "P-46-A", "P-46-B", "P-46-C", "P-46-D", Docket, Vol. I, pp. 250-265; "R-17", "R-17-a", "R-17-b", "R-17-c", and "R-17-d"; BIR Records, Folder 1, pp. 340-355.
[10] Par. 5, Summary of Admitted Facts, JSFI, Docket, Vol. I, p. 399.
[11] Exhibit "P-47", Docket, Vol. I, pp. 266-272.
[12] Exhibits "P-50", Docket, Vol. I, pp. 284-287; "R-20", BIR Records, Folder 1, pp. 571-574.
[13] Par. 6, Summary of Admitted Facts, JSFI, Docket, Vol. I, p. 399.
[14] Docket, Vol. I, pp. 88-102.
[15] Docket, Vol. I, pp. 103-104.
[16] Docket, Vol. I, pp. 105-112.
[17] Docket, Vol. I, pp. 361-370.

The parties filed their Joint Stipulation of Facts and Issues[18] on April 6, 2016, which was approved by the Court in its Pre-Trial Order[19] dated April 14, 2016.

Petitioner presented Mr. Cyre M. Clores, Mr. Ronaldo R. Rañada, Ms. Adelia R. Sarmiento[20], and Independent Certified Public Accountant (ICPA) Mr. Michael L. Aguirre as its witnesses.[21]

On August 22, 2016, petitioner filed its Formal Offer of Evidence[22], offering Exhibits "P-1" to "P-58", "P-60" to "P-61-A", "P-1-A" to "P-1-Y-ICPA", "P-2-A" to "P-2-U-ICPA", "P-3-A" to "P-3-P-ICPA", "P-4-A" to "P-4-B-ICPA", "P-5-A" to "P-5-V-ICPA", "P-6-A" to "P-6-C-ICPA", "P-7-A" to "P-7-B-ICPA", "P-8-A" to "P-8-B-ICPA", "P-9-A" to "P-9-C-ICPA", "P-10-A" to "P-10-C-ICPA", "P-11-A" to "P-11-C-ICPA", "P-12-A" to "P-12-AR-ICPA", "P-13-A" to "P-13-BE-ICPA", "P-14-A.1" to "P-14-CN-ICPA", "P-15-A" to "P-15-CN-ICPA", "P-16-A.1" to "P-16-N.2-ICPA", "P-17-ICPA", "P-18-A.1" to "P-18-DL.3-ICPA", "P-19-A.1" to "P-19-BS.3-ICPA", "P-20-A" to "P-20-AB-ICPA", "P-21-A" to "P-21-T-ICPA", "P-22-A" to "P-22-AP-ICPA", "P-23-A" to "P-23-B-ICPA", "P-24-A.1" to "P-24-AU.2-ICPA", "P-25-A" to "P-25-U-ICPA", "P-26-A" to "P-26-J-ICPA", "P-27-A" to "P-27-D-ICPA", "P-28-ICPA", "P-29-A" to "P-29-B.3-ICPA", "P-30-A" to "P-30-CF-ICPA", and "P-31-A" to "P-31-E-ICPA", as its documentary evidence. Respondent filed his Comment (Re: Petitioner's Formal Offer of Evidence)[23] on August 23, 2016.

In the Resolution[24] dated October 18, 2016, the Court admitted all of petitioner's formally offered exhibits, except for Exhibits "P-53", "P-15-BZ-ICPA", and "P-19-O-ICPA".

Petitioner filed a Motion for Partial Reconsideration (of the Resolution dated 18 October 2016 on Petitioner's Formal Offer of Evidence)[25] on November 3, 2016. Respondent filed his Comment (Re: Motion for Partial Reconsideration dated 03 November 2016)[26] on

[18] Docket, Vol. I, pp. 398-408.
[19] Docket, Vol. I, pp. 410-418.
[20] Minutes of the hearing on June 13, 2016, Docket, Vol. I, pp. 443-444.
[21] Minutes of the hearing on August 1, 2016, Docket, Vol. I, p. 574.
[22] Docket, Vol. II, pp. 585-620.
[23] Docket, Vol. II, pp. 626-629.
[24] Docket, Vol. II, pp. 634-637.
[25] Docket, Vol. II, pp. 656-665.
[26] Docket, Vol. II, pp. 675-678.

January 12, 2017. The Court admitted Exhibit "P-19-O-ICPA" via Resolution[27] dated April 10, 2017.

On the other hand, respondent presented Revenue Officer Luzviminda A. Pedrosa as witness.[28]

Respondent filed his Formal Offer of Evidence[29] on May 26, 2017, offering Exhibits "R-1", "R-2", "R-4", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-16", "R-17", "R-17-a", "R-17-b", "R-17-c", "R-17-d", "R-19", "R-20", "R-20-a", "R-20-b", "R-20-c", "R-20-d", and "R-20-e". Petitioner filed its Comment (To Respondent's Formal Offer of Evidence)[30] on June 6, 2017.

The Court admitted all the exhibits formally offered by respondent in its Resolution[31] dated October 24, 2017.

The Court declared the case submitted for decision on January 5, 2018,[32] considering the filing of respondent's Memorandum[33] on December 19, 2017 and of petitioner's Memorandum[34] on December 22, 2017.

THE ISSUES

The parties submitted the following issues for this Courts resolution:[35]

1. Whether or not petitioner is liable to pay for deficiency income tax, DST, VAT, and EWT, inclusive of increments, in the aggregate amount of ₱54,370,082.80 for taxable year 2010 as well as deficiency and delinquency interests as provided in Sections 248 and 249 of the NIRC.

---

[27] Docket, Vol. II, pp. 684-687.
[28] Minutes of the hearing on May 10, 2017, Docket, Vol. II, p. 689.
[29] Docket, Vol. II, pp. 695-702.
[30] Docket, Vol. II, pp. 703-706.
[31] Docket, Vol. II, pp. 715-716.
[32] Resolution dated January 5, 2018, Docket, Vol. II, p. 812.
[33] Docket, Vol. II, pp. 727-740.
[34] Docket, Vol. II, pp. 741-810.
[35] JSFI, Docket, Vol. I, pp. 399-400.

2. Whether or not respondent's right to assess petitioner for deficiency income tax, VAT, and EWT for taxable year 2010 and/or portions thereof has allegedly prescribed.

3. Whether or not petitioner is entitled to the issuance of a tax credit certificate in the amount of ₱33,279,062.22 allegedly representing excess and unused expanded creditable withholding tax for taxable year 2010.

4. Assuming that the alleged income tax due per investigation is correct, whether or not petitioner's alleged excess income tax credits from prior years in the amount of ₱44,103,744.25 can be offset against the alleged income tax due against petitioner for the taxable year 2010.

THE COURT'S RULING

After careful evaluation of the case records, more particularly the evidence duly presented by the parties, this Court finds the deficiency tax assessments issued by respondent against the petitioner to be intrinsically void and thus, shall be cancelled and set aside. The invalidity of such deficiency tax assessments springs from the absence of authority on the part of the revenue officer who conducted the examination of petitioner's books of accounts and other accounting records.

In its Memorandum, petitioner submits, among others, that the assessment is void as there is no LOA authorizing RO Luzviminda A. Pedrosa to conduct the examination of its books of accounts and accounting records for taxable year 2010.

In fact, even if the lack of authority of the revenue officer to conduct the audit was not specifically raised as an issue, this Court is not precluded from considering the same given that a void assessment bears no fruit.[36]

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[37] the Supreme Court emphatically ruled that the Court of Tax Appeals can resolve an issue which was not raised by the parties. The Supreme Court said:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> **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 disposition of the case.** The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* — x x x
> >
> > 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 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 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." *(Emphasis supplied and citation omitted)*

---

[36] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 516 Phil. 176, 189-190; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 744 SCRA 459; *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016, 808 SCRA 422.
[37] G.R. No. 183408, July 12, 2017.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to assess deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> "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.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows: *Je*

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "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**:
>
> x x x x x x x x x
>
> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "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." *(Emphasis supplied)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that the Chief of LTS-RLTAD II is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
>
> x x x x x x x x x
>
> 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 <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, only the CIR or his duly authorized representatives can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[38]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, logically speaking, it is only them who can effect any modification or amendment to a previously issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. Be that as it may, this Court is of the view that the same would not necessarily negate the authority of the CIR and his duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of just issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are

---

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

transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[39] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[40]

In the present case, the revenue officer named under LOA No. 125-2011-00000024 dated July 12, 2011 and LOA No. 125-2011-00000073 dated September 29, 2011 was different from the one who actually examined petitioner's books of accounts and other accounting records for taxable year 2010. As it appears, RO Pedrosa conducted the audit on the basis of Memorandum of Assignment No. LOA-125-2013-143 issued by Mr. Edwin T. Guzman, OIC-Chief of LTS-RLTAD II reassigning to her the conduct of examination of petitioner's books of accounts and other accounting records.

Guided by the foregoing disquisition, this Court holds that the Memorandum of Assignment No. LOA-125-2013-143 dated March 22, 2013 issued by Mr. Edwin T. Guzman, OIC-Chief of LTS-RLTAD II cannot validly grant RO Pedrosa the authority to conduct the examination pursuant to LOA No. 125-2011-00000024 dated July 12, 2011 and LOA No. 125-2011-00000073 dated September 29, 2011. In his capacity as OIC-Chief of LTS-RLTAD II, Mr. Edwin T. Guzman is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

---

[39] Revenue Administrative Order No. 001-12 dated April 2, 2012.

[40] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[41] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit/examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated October 15, 2015, assessing petitioner for deficiency income tax, documentary stamp tax, value-added tax, and expanded withholding tax in the aggregate amount of ₱54,370,082.80 for taxable year 2010 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

---

[41] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

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
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice