REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1328** (CTA Case No. 8292)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **RINGPIS-LIBAN,** JJ.
UNIVERSITY OF SANTO TOMAS HOSPITAL, INC., Respondent.	***Promulgated:*** NOV 28 2016 3:51 p.m.

x - x

DECISION

UY, J.:

In the instant Petition for Review filed before the Court *En Banc* on July 20, 2015,[1] the Commissioner of Internal Revenue seeks the reversal and setting aside of the Decision dated March 2, 2015[2] and Resolution dated June 11, 2015[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8292, entitled *"University of Santo Tomas Hospital Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

<u>Decision dated March 2, 2015</u>:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice Nos. 32-FY05/31/06-IT-0188 and 32-FY05/31/06-MC-0189 dated July 19, 2010 are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"

<u>Resolution dated June 11, 2015</u>:

> "**WHEREFORE,** from the foregoing, the 'Motion for Reconsideration *(Re: Decision promulgated 02 March 2015)*,' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Commissioner of Internal Revenue is the government authority duly designated to collect all taxes, grant refunds, issue and abate tax assessments, examine books of accounts and returns filed with it to determine the correctness of taxes paid under the National Internal Revenue Code (NIRC).

Respondent University of Santo Tomas Hospital Inc. is a non-stock, non-profit corporation duly organized under Philippine laws with principal address at the University of Santo Tomas Compound, España Boulevard, Manila.

Respondent filed its Annual Income Tax Return for fiscal year ending May 31, 2006 (FY 2006) on September 18, 2006, and its Amended Annual Income Tax Return for FY 2006 on February 2007.

On January 12, 2007, respondent was informed that it was transferred from the jurisdiction of Revenue Region (RR) No. 6 to the Large Taxpayers Service (LTS) effective immediately.

Subsequently, the RR No. 6 issued the Letter of Authority No.

May 31, 2006.

On June 6, 2007, respondent was informed that since it falls under the jurisdiction of the LTS, "all Letters of Authority (LAs)/ Tax Verification Notices (TVNs) / Letter Notices (LNs) issued/to be issued after December 30, 2006 shall be issued by the LTS."

On April 3, 2008, respondent was delisted from the LTS and transferred back to the jurisdiction of Revenue Region No. 6. However, jurisdiction over respondent reverted to the LTS.

On January 29, 2009, the Revenue District Office (RDO) No. 32 issued a Notice for Initial Conference, informing respondent that RO Ampa, under the supervision of GS Sani, had submitted their audit report and recommended deficiency tax liabilities with an invitation to appear before the said office to hear its side of the result of the verification made.

On December 11, 2009, a Preliminary Assessment Notice was issued to respondent. Thereafter, on July 19, 2010, a Formal Letter of Demand and Assessment Notice Nos. 32-FY-05/31/06-IT-0188 and 32-FY-05/31/05-MC-0189 were issued informing respondent of its deficiency income tax in the amount of ₱171,538,834.91 and compromise penalty in the amount of ₱56,000.00, for FY 2006, details of which are as follows:

	SPECIAL RATE	REGULAR RATE	TOTAL
Taxable Net Income per Amended Return	₱ 44,223,983.00	₱ 16,354,183.00	₱ 60,578,166.00
Add: Adjustments			
Undeclared income	726,300,305.46	-	726,300,305.46
Adjusted Taxable Net Income	₱ 770,524,288.46	₱ 16,354,183.00	₱ 786,878,471.46
Tax due	₱ 77,052,428.85	₱ 5,519,536.76	₱ 82,571,965.61
Less: tax withheld and payment			
Total per Return		₱ 9,968,102.00	
Less: unsupported creditable tax withheld		2,732,913.00	7,235,189.00
Deficiency Income Tax			₱ 75,336,776.61
Add: 50% Surcharge (Sec. 248)			₱ 37,668,388.31
Interest from filing of origin return up to its amendment		₱ 566,276.93	
from ____________ to 07/20/2010		57,967,393.07	58,533,670.00
TOTAL AMOUNT DUE AND COLLECTIBLE			**₱ 171,538,834.91**
Compromise Penalty			
Violation of Sec. 264 of the 1997 Tax Code			**₱ 56,000.00**

Claiming inaction on the part of the petitioner, respondent filed on May 17, 2011 a *Petition for Review (Review by Appeal of the Inaction of the Commissioner of Internal Revenue Involving Disputed Assessments)* with the Court in Division. The case was docketed as CTA Case No. 8292.

On June 30, 2011, petitioner filed her Answer interposing the following Special and Affirmative Defenses, to wit:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 18. The subject assessment is valid and correct and the [respondent] has the burden of proof to impugn its validity *(Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647).* Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise *(Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671)*; and assessments duly made by the BIR examiner and approved by her superior officers will not be disturbed *(Gutierrez vs. Villegas, 8 SCRA 547)*;
>
> 19. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right *(Tan Guan vs. Court of Tax Appeals, et Al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil. 967 [1960]*);
>
> 20. All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue; the taxpayer must prove the contrary *(Commissioner of Internal Revenue vs. Antonio Tuason, Inc. 173 SCRA 397; Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671)*;
>
> 21. Petitioner filed a *false or fraudulent income tax return*, hence, [petitioner]'s right to assess is within ten (10) years from the date of discovery of the falsity or

> *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.'*
>
> 22. The assessments were issued in the regular course and within the reglementary period to assess provided by law."

The parties then, through their respective counsel, filed their Joint Stipulation of Facts and Issues on August 22, 2011.

On September 16, 2011, a Pre-trial Order was issued by the Court in Division terminating pre-trial and setting the date for the presentation of evidence by the parties.

Respondent presented the following as witnesses: Ma. Mariza C. Cruz; Ma. Theresa P. Dela Cruz; and Aaron C. Escartin, and documentary evidence marked as *Exhibits "A"* to *"GG"*, inclusive of sub-markings. On the other hand, petitioner presented RO Ampa and Fernando R. Gonzales as witnesses and *Exhibits "9"* to *"12"*; *"24"* to *"37"*; and *"43"* to *"45"*.

After trial, the Court in Division ordered both parties to file their respective memorandum within a period of thirty (30) days, in the Resolution dated January 2, 2014.

On March 4, 2014, the Court in Division resolved to submit the case for decision, taking into consideration the Memorandum filed by

On March 2, 2015,[4] the Court in Division promulgated the assailed Decision, granting respondent's Petition for Review, thereby cancelling and withdrawing Assessment Notice Nos. 32-FY05/31/06-IT-0188 and 32-FY05/31/06-MC-0189 dated July 19, 2010.

Petitioner filed its *Motion for Reconsideration (Re: Decision promulgated 02 March 2015)* on March 27, 2015.[5] The Court in Division denied said motion in the assailed Resolution for lack of merit.[6]

On July 3, 2015, petitioner filed with the Court *En Banc* a *Motion for Extension of Time To File Petition for Review.*[7] The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from July 4, 2015, or until July 19, 2015, within which to file his Petition for Review.[8]

On July 20, 2015,[9] petitioner filed the instant Petition for Review.[10]

In the Resolution dated September 21, 2015,[11] the Court *En Banc* directed respondent to file its Comment, within ten (10) days from receipt of the said Resolution. Respondent filed its *Comment/Opposition (Re: Commissioner of Internal Revenue's Petition for Review dated 14 July 2015)* on November 13, 2015.[12]

The Court *En Banc*, in the Resolution dated January 14, 2016, submitted the instant Petition for Review for decision.[13]

Hence, this Decision.

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[4] Division Docket – Vol. 2 (CTA Case No. 8292), pp. 928 to 939; EB Docket, pp. 16 to 27.
[5] Division Docket – Vol. 2 (CTA Case No. 8292), pp. 940 to 944.
[6] Division Docket – Vol. 2 (CTA Case No. 8292), pp. 969 to 973; EB Docket, pp. 29 to 33.
[7] EB Docket, pp. 1 to 3.
[8] Minute Resolution dated July 7, 2015, EB Docket, p. 4.
[9] The deadline set forth by the Court *En Banc*, *i.e.*, July 19, 2015, fell on Sunday. Thus, the instant Petition for Review was timely filed.
[10] EB Docket, pp. 5 to 14.

ASSIGNMENT OF ERROR

Petitioner assigns the following error supposedly committed by the Court in Division, to wit:

> **"THE HONORABLEC OURT ERRED IN HOLDING THAT LETTER OF AUTHORITY NO. 2001 00052716 DID NOT HAVE ANY FORCE AND EFFECT HAVING BEEN ISSUED WHEN PETITIONER WAS ALREADY TRANSFERRED TO THE JURISDICTION OF THE LARGE TAXPAYERS SERVICE AND THE ASSESSMENT BY REVENUE REGION NO. 6 WAS ISSUED WITHOUT THE NECESSARY AUTHORITY."**[14]

Petitioner's arguments:

Petitioner argues that since Letter of Authority No. 2001-00052716 dated March 7, 2007 was issued for fiscal year ended May 31, 2006, when respondent was still in the database of RDO No. 32, the tax assessments against respondent were issued within the audit jurisdiction of RR No. 6, BIR-Manila.

Furthermore, petitioner points out that respondent filed its Amended Annual Income Tax Return for FY 2006 on February 27, 2007, indicating therein that it is within the jurisdiction of RR No. 6, RDO No. 32, despite knowledge that it is already under the jurisdiction of the LTS.

Petitioner likewise claims that by actively participating in the audit/investigation process, filing a tax protest assailing the tax assessments and submitting the pertinent documents in support thereof despite knowledge that it is already under the jurisdiction of the LTS, respondent, therefore, voluntarily submitted to the audit jurisdiction of RDO No. 32, RR No. 6, BIR-Manila, and is not precluded and estopped from assailing the same; and that besides, the LTS never conducted an audit of the books of accounts and other accounting records of respondent for FY 2006 and no Letter of Authority was issued by LTS for the purpose.

Respondent's counter-arguments:

00052716 issued by BIR RR No. 6, RDO No. 32 of Manila on March 7, 2007 did not have any force and effect for having been issued when respondent was already transferred to the jurisdiction of the LTS. Thus, according to respondent, when the Region proceeded with its assessment, it did so without the necessary authority.

Respondent further maintains that the filing of the protest cannot in any way be considered as tantamount to estoppel or waiver by respondent of its objection to jurisdiction of RR No. 6, RDO No. 32. It avers that it filed the protest to precisely assail and challenge, among others, RR No. 6, RDO No. 32's audit jurisdiction.

Finally, respondent argues that estoppel by laches is not applicable. It agrees with the Court in Division that the essence of estoppel by laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier. Respondent maintains that it was not remiss in asserting any of its rights. In fact, it questioned the authority of RDO No. 32 from the time it issued Letter of Authority No. 2001-00052716 to the time it issued the formal letter of Demand and Assessment notice.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

The BIR RR No. 6, RDO No. 32 of Manila has no jurisdiction to audit respondent.

Section 10(c) of the NIRC of 1997 provides as follows:

> "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 <u>under his jurisdiction</u>**, among others:
>
> xxx xxx xxx

xxx xxx xxx."*(Emphases and underscoring supplied)*

Based on the foregoing provision, while the Revenue Regional Director is empowered to issue Letters of Authority for the examination of taxpayers within the region and district offices, said official may only do so with those *"under his jurisdiction"*. Thus, the Revenue Regional Director of RR No. 6 is only allowed to issue Letters of Authority for the examination of taxpayers within the region under his or her jurisdiction, such as those belonging to RDO No. 32.

In this case, however, when the Letter of Authority No. 2001-00052716 dated March 7, 2007 was issued by the Regional Director of RR No. 6, respondent was already under the jurisdiction of RDO No. 116, and no longer under the said Region (*i.e.*, RR No. 6), nor of RDO No. 32, pursuant to the letter dated January 12, 2007 of Mr. Jose Mario C. Buñag, the then Commissioner of Internal Revenue,[15] to wit:

> "January 12, 2007
>
> The President / General Manager
> UNIVERSITY OF STO. TOMAS HOSPITAL, INC.
> España cor. AH Lacson St., Sampaloc, Manila
>
> Gentlemen:
>
> In connection with our recent review of the composition of the Large Taxpayers under the jurisdiction of the Large Taxpayers Service (LTS) pursuant to the provisions of Revenue Regulations (RR) No. 1-98, as amended, **it was determined that your company qualifies as a Large Taxpayer, and is now considered such, under the jurisdiction of RDO No. 116.**
>
> xxx xxx xxx
>
> This will serve as your notice as a Large Taxpayer under RDO No. 116, effective upon receipt hereof.
>
> Very truly yours,
>
> *(signed)*
> JOSE MARIO C. BUÑAG
> Commissioner of Internal Revenue"

In this connection, it must be emphasized that once a taxpayer has been identified and notified of his/its status as a Large Taxpayer by the Commissioner of Internal Revenue, he/it shall continue to be classified as such, until otherwise notified.[16] Thus, it is the notification by the Commissioner of Internal Revenue which determines when a taxpayer becomes a Large Taxpayer and as to which BIR Office has jurisdiction over the same. Such being the case, it is inconsequential even when the said taxpayer is still in the database of a particular RDO or has filed its recent tax return thereto.

Furthermore, it must be noted that then Commissioner Buñag even clarified, in his letter dated June 6, 2007,[17] that the Letter of Authority authorizing investigation of respondent's books of accounts must emanate from the LTS. For easy reference, the said letter dated June 6, 2007 reads:

> "June 6, 2007
>
> UNIVERSITY OF STO. TOMAS HOSPITAL, INC.
> España Blvd., Manila 1008 Philippines
>
> Gentlemen:
>
> This refers to your letter dated May 18, 2007 verifying the jurisdiction issue of the Letter of Authority (LA) issued to you on March 7, 2007 by Revenue District Office (RDO) No. 32.
>
> In reply, please be informed that per the Commissioner's instruction which was disseminated by way of the orientation of the newly-enlisted large taxpayers, all Letters of Authority (LAs) / Tax Verification Notices (TVNs) / Letter Notices (LNs) issued/to be issued after December 30, 2006 to cover investigation shall be issued by the Large Taxpayers Service (LTS) which has jurisdiction over the concerned taxpayer. **<u>Since UST Hospital is now under the LTS effective January 19, 2007, the LA authorizing investigation of its books of accounts must emanate from the LTS</u>.**
>
> Very truly yours,
>
> *(signed)*
> JOSE MARIO C. BUÑAG
> Commissioner of Internal Revenue"

Thus, without doubt, the foregoing determination of the then Commissioner Buñag prevails over the Letter of Authority No. 2001-00052716 dated March 7, 2007 issued by the Regional Director of RR No. 6. To rule otherwise would create an absurd situation where an act of the Commissioner of Internal Revenue, while being the chief of the BIR,[18] may be overturned by a subordinate, specifically, by a Revenue Regional Director. Needless to state, the presumption is against absurdity, and it is the duty of the courts to interpret the law in such a way as to avoid absurd results.[19]

Correspondingly, the Court in Division is not in error in holding that Letter of Authority dated 2001-00052716 dated March 7, 2007 did not have any force and effect.

A tax assessment must proceed from a valid authority. Otherwise, it is a nullity.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[20] the Supreme Court held that in the absence of an authority, the assessment or examination conducted by the BIR is a nullity. It ruled as follows:

> "Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.**" *(Emphasis supplied)*

Considering that Letter of Authority dated 2001-00052716 dated March 7, 2007 is without force and effect, the deficiency income tax assessment which proceeded from the same are likewise invalid.

Estoppel by laches is not applicable.

Petitioner argues that respondent, by actively participating in jurisdiction of RDO No. 32 and is precluded and estopped from assailing the audit jurisdiction of RDO No. 32.

The Court disagrees with petitioner.

In *Commissioner of Internal Revenue, vs. Kudos Metal Corporation,*[21] the Supreme Court held as follows:

> "xxx. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. **As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.** It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. **Simply put, the doctrine of estoppel must be sparingly applied.**" *(Emphases supplied)*

The earlier quoted Section 10(c) of the NIRC of 1997 is clear that the power of the Revenue Regional Director to issue Letters of Authority for the examination of taxpayers is confined only *"within the region and district offices under his jurisdiction".* Such being the case, the issuance by the Revenue Regional Director for RR No. 6 of a Letter of Authority for the examination of a taxpayer **<u>not</u>** under his jurisdiction is clearly an act that is prohibited by law. Hence, the doctrine of estoppel cannot give validity thereto.

Moreover, the essence of estoppel and laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it either has abandoned or declined to assert it although there is no absolute rule as to what constitutes staleness of demand as each case is to be determined according to its particular circumstances.[22]

In the case at bar, as correctly found by the Court in Division, petitioner was not remiss in asserting any of its rights in relation to the issuance of the subject Letter of Authority by the Revenue Regional Director for RR No. 6. In fact, respondent has consistently questioned the authority of the BIR revenue officers granted under Letter of Authority dated 2001-00052716 dated March 7, 2007, up to the time it issued the Formal Letter of Demand and Assessment Notice Nos. 32-FY-05/31/06-IT-0188 and 32-FY-05/31/06-MC-0189 dated July 19, 2010.[23]

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the Court in Division's Decision March 2, 2015 and Resolution dated June 11, 2015 in CTA Case No. 8292 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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