REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

FIRST PHILIPPINE POWER SYSTEMS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9067

Members:

FABON-VICTORINO, *and* **RINGPIS-LIBAN,** *JJ.*

Promulgated:

FEB 14 2020 4:20 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

For resolution is respondent's **Motion for Reconsideration (Re: Decision dated 09 September 2019)**, filed on September 26, 2019, with petitioner's **Comment-Opposition (to the Motion for Reconsideration dated September 25, 2019)**, filed October 30, 2019.

In his Motion, respondent moves for the reconsideration of the Decision dated September 9, 2019, in finding that his revenue officers were not properly authorized, by a Letter of Authority (LOA), to conduct examination of petitioner's books of accounts, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the *[Formal]* Letter of Demand and Final Assessment Notice for deficiency income tax, value-added tax, expanded withholding tax, final tax, documentary stamp tax and miscellaneous taxes, inclusive of interest, surcharge and penalties for the taxable year (TY) 2009, in the total amount of ₱17,236,413.95 are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

Respondent raises the following grounds in support of his motion:

I. The Court erred in granting a relief that was not prayed for by petitioner. The issue on the alleged want of authority of the Revenue Officer (RO) was never part of the issues raised during the trial and even on appeal. *[Respondent's]* basic right to fair play and due process was violated.

II. Assuming for the sake of argument that the Court may rule on an issue that was not part of the trial nor found in the pleadings, the Court erred in ruling on an undisputed issue.

III. Assuming for the sake of argument that the Court may rule on an issue that was not part of the trial nor found in the pleadings, the Court erred in ruling that the assessments are void because the ROs who conducted the audit were allegedly not authorized through a LOA.

IV. The assessment was made within the prescribed period to assess allowed by law.

On the other hand, in its comment, petitioner offers the following counter-arguments against the above assertions, *viz.*:

1. The Court is empowered and mandated to dispose of cases fully, taking into consideration all evidence presented before it, in resolving issue presented before it and those related thereto.

2. The issuance of referral memoranda for the purpose of conducting examinations of taxpayers is prohibited.

After due consideration, the Court resolves to deny respondent's Motion for Reconsideration.

Apparently, no new issues are raised in the present Motion, and the arguments presented therein are mere rehash of what have been said and reiterated in his previous pleadings, which have already exhaustively passed upon, duly considered and resolved in the assailed Decision.

To reiterate, the Court 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. It must be emphasized that the lack of authority of the concerned RO to make an examination goes into the issue of the validity of the assessment itself. Hence, the Court has the power to resolve this related issue, even though the parties had not raised the same in their pleadings.

Perforce, in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[1] (*Lancaster* case), the Supreme Court ruled that this Court can resolve questions relating to the authority of the ROs who conducted the audit of the taxpayer, to wit:

> "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)*

With regard to respondent's argument that the issue on the authority of the RO should not be addressed in deciding the case since this Court's jurisdiction over disputed assessments is in the nature of an appeal, hence, the Court's power to determine, by review, the propriety of the decision rendered by respondent should be based on the arguments and records presented during the administrative level, this Court is not convinced.

Again, in the *Lancaster* case, the Supreme Court held that the question on the authority of ROs to examine the books and records of any person is cognizable by this Court under the phrase "other matters", as provided under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, *viz.*:

> **Section 7.** Jurisdiction. – The CTA shall exercise:

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

> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or *other matters* arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

Moreover, in the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*[2], the Supreme Court also held that:

> "The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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> > **The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]"

The Court did not violate respondent's right to due process in taking into account his ROs' lack of authority in conducting the examination of petitioner's books of accounts. As held in the *Lancaster* case, an assessment is void if issued without valid authority. Thus, the Court has the authority to rule on this issue as it necessarily determines the validity of the assessment.

More so, respondent's argues that pursuant to Revenue Memorandum Order (RMO) No. 8-2006, in case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or Group Supervisor (GS). As such,

[2] G.R. No. 163835, July 7, 2010.

respondent claims that the Memorandum of Assignment (MOA) directing ROs Guimbao and Gomez with GS Olivia Aviles to continue the audit/examination of petitioner for taxable year 2009 is valid considering that the said MOA derived its authority from the original LOA initially issued, in other words, the source of the ROs' authority to investigate is not the memorandum or any other document, but the validly issued LOA itself.

Under Section 6(A) of the National Internal Revenue Code of (NIRC) of 1997, as amended, the power to authorize examination of a taxpayer and issue assessments is primarily lodged with the Commissioner of Internal Revenue (CIR). However, the said power may be delegated in accordance with Section 7, in relation to Sections 10 and 13 of the NIRC of 1997, as amended. Hence, while the power to make assessments is primarily lodged with respondent CIR, the power to issue a LOA in relation thereto may be expressly delegated to the Revenue Regional Director, or in this case, to the Assistant Commissioner/Head Revenue Executive Assistant.

As held in the assailed Decision, ROs Felina Guimbao and Josa Gomez together with GS-Olivia Aviles, who conducted the examination of petitioner's records, may be deemed authorized to do so without need for a new LOA, only if the said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service. Instead, in the present case, the MOA authorizing said ROs to continue the audit/investigation was only signed by Mr. Cesar Escalada, Chief, Regular LT Audit Division 1. As a result therefore, ROs Guimbao and Gomez, and GS-Olivia Aviles acted without authority when they performed the audit of petitioner.

Verily, the Court finds the CTA En Banc case of *Commissioner of Internal Revenue vs. San Miguel Foods, Inc. (as surviving corporation in a merger involving Monterey Foods Corporation)*[3], which involves the same issue, as instructive on the matter at hand, *viz.*:

> "RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. Dela Peña who conducted the examination of San Miguel's records may be deemed authorized to do so without need for a new LOA, **if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.**
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> Under RMO No. 29-07[4], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant

[3] CTA EB No. 1880 (CTA Case No. 9046), August 6, 2019.
[4] Subject: Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service, dated September 26, 2007.

> Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:
>
> > 'II. AUDIT POLICIES AND GUIDELINES
> >
> > 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
> >
> > 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants</u>.**'
>
> In the instant case, the Memorandum of Assignment was only signed by Cesar D. Escalada, Chief, Regular LT Audit Division 1. **Therefore, RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña were without authority to continue the audit.**" *(Emphases supplied)*

As to the issue of prescription, it appears that respondent misunderstood the Court's ruling on the matter. Respondent argues that petitioner executed valid waivers which extended his period to assess petitioner, hence, it was erroneous for this Court to rule that the assessment on Final Tax and Withholding Tax on Compensation has already prescribed.

It should be emphasized that while in the assailed Decision, the subject Waivers have validly extended the period for assessment in view of the fact that the parties are both *in pari delicto*. However, the Court found that the period within which to assess the Withholding Tax on Compensation and Final Tax covering January to May 2009 had already prescribed not because the Waivers were invalid but because the First Waiver was only executed (June 25, 2012) and accepted (June 26, 2012) beyond the expiration of the prescriptive period, which falls on June 10, 2012.

Pursuant to Section 222(b) of the NIRC of 1997, as amended, the waiver must be executed **prior** to the lapse of the period prescribed by law for the assessment of the tax. In relation thereto, RMO No. 20-90 provides that both the date of execution by the taxpayer and date of acceptance by the Bureau of Internal Revenue should be before the expiration of the period of prescription.

In *Commissioner of Internal Revenue vs. Standard Chartered Bank*[5], the Supreme Court held that:

> "In the landmark case of *Philippine Journalists, Inc. v. CIR* (PJI case), we pronounced that a waiver is not automatically a renunciation of the right to invoke the defense of prescription. A waiver of the Statute of Limitations is nothing more than 'an agreement between the taxpayer and the Bureau of Internal Revenue (BIR) that the period to issue an assessment and collect the taxes due is extended to a date certain.' It is a bilateral agreement, thus necessitating the very signatures of both the CIR and the taxpayer to give birth to a valid agreement. Furthermore, indicating in the waiver the date of acceptance by the BIR is necessary in order to determine whether the parties (the taxpayer and the government) had entered into a waiver 'before the expiration of the time prescribed in Section 203 (the three-year prescriptive period) for the assessment of the tax.' **When the period of prescription has expired, there will be no more need to execute a waiver as there will be nothing more to extend. Hence, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.** (*Emphasis supplied*)

In view of the foregoing discussions, the Court finds no cogent reason to reverse or modify the Decision promulgated on September 9, 2019.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 09 September 2019) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I Concur:

ESPERANZA R. FABON-VICTORINO
Associate Justice

[5] G.R. No. 192173, July 29, 2015.