REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

TITANIUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9644

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUN 01 2021
1:53 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is Respondent's **Motion for Reconsideration**, filed through registered mail on December 9, 2020 and received by the Court on January 4, 2021, with Petitioner's **Opposition (To Respondent's Motion for Reconsideration dated December 7, 2020)**, filed via electronic mail on February 4, 2021.

On November 11, 2020, the Court promulgated a Decision cancelling Respondent's deficiency tax assessments for being conducted without authority and violating Petitioner's right to due process of law, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FDDA dated June 29, 2017 is **WITHDRAWN** and **SET ASIDE**. Moreover, the FLD/FAN dated December 17, 2014 is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

In his Motion, Respondent primarily insists that the subject deficiency tax assessments substantially complied with the prescribed due process requirements for the issuance of deficiency tax assessments under Section 228 of the National of Internal Revenue Code (NIRC) of 1997, as amended. He continues that the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) dated November 24, 2014 and Formal Letter of Demand/Formal Assessment Notice (FLD/FAN) dated December 17, 2014, clearly show the facts and law on which the assessments were based, as well as the computations and schedules of the said assessments. Respondent further states that Petitioner was in fact able to file letter protests on December 12, 2014 and January 7, 2015, respectively, against the said PAN and FLD/FAN. More importantly, Respondent posits that he acted on the said letter protests by reducing Petitioner's deficiency income tax and expanded withholding tax (EWT) assessments, and even further cancelling Petitioner's deficiency withholding tax on compensation (WTC) and documentary stamp tax (DST). Unfortunately, the deficiency value added tax (VAT) assessment remained for Petitioner's failure to substantiate the same.

Respondent also claims that securing of a new Letter of Authority (LOA) is not necessary for purposes of recommending the issuance of a Final Decision of Disputed Assessment (FDDA). He explains that the revenue officer (RO) who conducted the reinvestigation only assumed the case after a letter protest has been filed against the PAN and FAN/FLD. Thus, the due process requirement was already satisfied. Respondent likewise argues that under Revenue Memorandum Order (RMO) No. 69-2010,[1] which provides that a manually serially-numbered Memorandum of Assignment (MOA) shall be issued in case of protested cases/cases of reinvestigation, there is no requirement for the issuance of a new LOA because there was already an existing LOA issued to the RO who conducted the original investigation. Accordingly, Respondent maintains that assessments conducted via a validly issued LOA, which is later on reinvestigated through a MOA, is deemed to have sufficiently cloak the subsequent RO with the same authority of the former RO.

Moreover, Respondent similarly contends that while RMO No. 69-2010 did not explicitly specify the officers authorized to sign and issue the MOA, simple reference to Annex "A" of RMO No. 62-2010,[2] which contains a sample MOA, would readily indicate that the said sample was signed by the "Authorized Revenue Official/Head, Investigating Office." Applying the foregoing to the present case, Respondent concludes that the subject MOA dated March 2, 2015 signed by Revenue District Officer Shirley O. Calapatia as the Head of the Investigating Office is valid, thereby effectively referring to RO Milan S. Madarang and Group Supervisor (GS) Nerissa B. Ty the reinvestigation of Petitioner's letter protest against the FLD/FAN, which eventually resulted in the issuance of the FDDA dated June 29, 2017.

Lastly, Respondent submits that settled is the rule that the deficiency income tax, VAT and EWT assessments issued by his revenue officers are *prima*

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[1] "SUBJECT: Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment," dated August 11, 2010.

[2] "SUBJECT: Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures," dated June 28, 2010.

facie presumed correct and made in good faith and that Petitioner has the duty proving otherwise; in the absence of proof of any irregularities in the performance of official duties, the said deficiency tax assessments should not be disturbed.

On the other hand, in its Opposition, Petitioner points out that Respondent misappreciated the rationale of the Decision he assails. Petitioner continues that the PAN, FLD/FAN, and FDDA were not invalidated for failure of the assessment to state the fact and the law on which the assessment was based, but rather, for failure of the Bureau of Internal Revenue (BIR) to consider the documents and arguments submitted by Petitioner in its Reply to the PAN. Petitioner claims that the Decision elucidates how the BIR merely replicated in the FAN the deficiency findings under the PAN without giving any reason for rejecting the explanations made by Petitioner in its Reply to the PAN.

Furthermore, Petitioner asserts that the power of the Respondent to conduct audit investigation of taxpayers is enshrined in Section 6 of the NIRC of 1997, as amended. It cites the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue (G.R. No. 222743, April 5, 2017)*, wherein the Supreme Court held that only an authorized representative of Respondent may conduct the audit of a taxpayer's books of accounts, and this authority is evidenced by a LOA and any assessment issued by ROs whose investigation was not supported by a valid LOA is inescapably void. Lastly, Petitioner states that Article 8 of the Civil Code explicitly provides that judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines. On the other hand, a mere administrative issuance, like a BIR regulation, cannot amend the law.

The Court finds Respondent's Motion for Reconsideration bereft of merit.

At the onset, the arguments proffered by Respondent in the instant Motion are essentially rehashes of what have already been considered, weighed, and resolved by the Court in the assailed Decision.

To stress, a PAN merely informs the taxpayer of the initial findings of the BIR. It contains the proposed assessment, and the facts, law, rules, and regulations or jurisprudence on which the proposed assessment is based. It does not contain a demand for payment but usually requires the taxpayer to reply within 15 days from receipt. Otherwise, the Commissioner of Internal Revenue (CIR) will finalize an assessment and issue a FAN. The PAN is a part of due process. It gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.[3]

[3] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.

Perforce, a FAN which merely reiterated the same findings as that stated in the PAN, without giving any reason for rejecting the explanations made by the taxpayer in its protest to the PAN, leaving the taxpayer unaware on how the BIR appreciated the defenses raised against the said PAN, is in clear violation of the taxpayer's right to administrative due process.

Section 3.1.1 of Revenue Regulations (RR) No. 12-99,[4] as amended by RR No. 18-2013,[5] expressly provides that "[i]f the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency liability, inclusive of the applicable penalties." Notably, the said fifteen (15)-day period is given to a taxpayer, to give it time to prepare and amply ventilate its defense for the consideration of the taxing authority.

It is well-settled that the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer an opportunity to respond thereto.[6] In the same vein, this right of the taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto; and that the issuance of the FLD/FAN without considering the side of the taxpayer is anathema to the cardinal principles of due process.

In the landmark case of *Ang Tibay, et al. v. The Court of Industrial Relations, et al.,*[7] the Supreme Court stated that one of the requisites for due process compliance was that the decision must be rendered on the basis of the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. In a similar case, the High Court held that the essence of due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard.[8]

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[4] "SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty," dated September 6, 1999.

[5] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment," dated November 28, 2013.

[6] *Commissioner of Internal Revenue v. Hemano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Science Institute), Inc.*, CTA EB No. 1151 (CTA Case No. 8095), February 17, 2015.

[7] G.R. No. L-46496, February 27, 1940.

[8] *Office of the Ombudsman v. Nicasio A. Conti*, G.R. No. 221296, February 22, 2017.

As to Respondent's argument that Revenue District Officer Shirley O. Calapatia has the power or authority to effect any modification or amendment, via the issuance of MOA, to the previously issued LOA by Regional Director Nestor S. Valeroso, this Court does not agree.

It is settled that the audit process normally commences with the issuance by the CIR of a LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[9] Corollary, Section 6(A)[10] in relation to Section 13[11] of the NIRC of 1997, as amended, vests Respondent or his duly authorized representatives, the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due. Unless authorized by Respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[12]

Verily, the list of persons who may issue and sign LOAs for the purpose of conducting audit/examination assessments is finite and exclusive. Relative thereto, Section D (4) of RMO No. 43-1990,[13] provides that for proper monitoring and coordination of the issuance of LOA, the only BIR officials authorized to issue and sign letters of Authority are Regional Directors, Deputy Commissioners, and the Commissioner of Internal Revenue. Furthermore, Part II (2) of the RMO No. 29-2007,[14] also authorizes the Assistant Commissioner or Head Revenue Executive Assistants of the Large Taxpayers Service, to issue and approve LOAs in cases falling under Large Taxpayers Service.

Evidently, from the foregoing provisions of laws and Bureau of Internal Revenue (BIR) issuances, all audit investigations of taxpayer's books and accounting records must only be conducted by duly authorized revenue officers, pursuant to an LOA – signed and approved by the **Commissioner of Internal Revenue, Revenue Regional Director, Deputy Commissioner** (under RMO

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[9] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

[10] "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. x x x"

[11] "SEC. 13. *Authority of a Revenue Offices.* - 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."

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

[13] "SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit", September 20, 1990.

[14] "SUBJECT: Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service", September 26, 2007.

No. 43-90), and the **Assistant Commissioner or Head Revenue Executive Assistants of the Large Taxpayers Service** (RMO No. 29-2007).

To reiterate, in order for the MOA to be considered as an equivalent of an LOA, it must be signed by the CIR or his duly authorized representative. However, in this case, it is clear that the MOA was only signed by Revenue District Officer Shirley O. Calapatia. Therefore, both RO Milan S. Madarang and GS Nerissa B. Ty had no authority to continue the examination.

As such, by not having a valid authority to examine or reinvestigate Petitioner's books of accounts, the subject deficiency tax assessments for taxable year 2011 issued by Respondent against Petitioner *via* the FDDA is likewise inescapably void. A void assessment bears no valid fruit.[15]

Accordingly, the Court finds no cogent reasons that will justify the reversal or any modification of the assailed Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

[15] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation and Liquigaz Philippines Corporation v. Commissioner of Internal Revenue,* G.R. No. 215534 and G.R. No. 215557, respectively, April 18, 2016.