REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2010** *(CTA Case No. 9190)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY,**
-versus-	**RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
TRINITY FRANCHISING AND MANAGEMENT CORPORATION, *Respondent.*	Promulgated: JAN 12 2021 2:39 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is petitioner's Motion for Reconsideration [re: Decision dated 14 July 2020] (hereinafter referred to as "Motion") posted on 2 September 2020,[1] with respondent's Comment/Opposition (to Petitioner's Motion for Reconsideration dated 28 August 2020) (hereinafter referred to as "Comment") filed on 23 September 2020.[2]

In his Motion, petitioner moves for the reconsideration of this Court's Decision, promulgated on 14 July 2020, denying his Petition for Review for lack of merit, and affirming the Decision, dated 2 October 2018, and Resolution, dated 15 January 2019, of the Court of Tax Appeals ("CTA") Special Second Division ("Court in Division").

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[1] *EB* Docket, pp. 157-169
[2] *Id.*, pp. 173-182.

He argues that this Court erred in ruling on the issue of the lack of authority of the revenue officer who conducted respondent's audit and assessment. He insists that the said issue was never raised during pre-trial, in the Pre-trial Order, or in any of the parties' respective pleadings. Hence, he alleges that the action of the Court violated his basic right to fair play and due process.

However, even assuming that this Court may rule on the said issue, petitioner contends that the assessment against respondent is still valid. He explains that the authority of Revenue Officer Luzviminda A. Pedrosa ("RO Pedrosa") emanated from Memorandum of Assignment ("MOA") signed by the Chief of Regular Large Taxpayers Audit Division II ("RLTAD II"), who is one of the valid signatories of an MOA as provided under Revenue Memorandum Order Nos. 8-2006[3] and 62-2010.[4]

Finally, he insists that assuming further that RO Pedrosa is without authority to conduct the audit and assessment of respondent, he submits that the same is still valid since Group Supervisor Fe Caling ("GS Caling") is authorized to audit respondent pursuant to a Letter of Authority ("LOA") duly issued by the OIC-Assistant Commissioner- Large Taxpayer Services, Mr. Alfred D. Misajon.

Meanwhile, in its Comment, respondent counters that petitioner's arguments are only a reiteration of his allegations in his Petition for Review. Therefore, it argues that the Motion should be denied outright.

Respondent opines that the case of ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc., (hereinafter referred to as "Lancaster Case")***[5] is clear that this Court is empowered to rule on the revenue officer's authority even if such issue was not raised by any of the parties during the proceedings of the case.

Respondent argues that the assailed Decision is correct in finding the assessment void for lack of authority of the revenue officer who conducted its audit and assessment. It explains that petitioner did not allege nor submit any evidence to refute the ruling of this Court finding RO Pedrosa without authority to perform its audit and to issue the assessment against it.

Lastly, respondent points out that petitioner cannot rely on the supposed authority of GS Caling to cure the defect of the assessment. It explains that

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[3] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), 1 February 2006.
[4] Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures, 28 June 2010.
[5] G.R. No. 183408, 12 July 2017.

the participation of GS Caling was merely supervisory. It stresses that the one who conducted the actual audit and assessment was RO Pedrosa.

After going through the foregoing arguments, this Court resolves to deny the Motion.

Contrary to the argument of petitioner, the Court *En Banc* did not violate his right to due process nor did it disregard the application of the rules of procedure when it ruled on the authority of RO Pedrosa to audit and assess respondent.

In fact, ***Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***[6] empowers this Court to rule on related issues, although not specifically raised by any of the parties in their respective pleadings, as long as its resolution is necessary to achieve an orderly disposition of the case. The said rule was expounded by the Supreme Court in the ***Lancaster Case***, 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 xx
>
> **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**."[7]

As pointed out in the assailed Decision, the issue as to the lack of authority of the revenue officer to conduct respondent's audit and assessment is not only related to the issues raised by the respondent, specifically, on whether it is liable to pay deficiency IT, DST, VAT, and EWT, but is also vital in the orderly disposition of the case since failure to resolve the issue in

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[6] A.M. No. 05-11-07-CTA, 22 November 2005.
[7] Emphasis supplied.

question will lead to the possibility of the Court validating an already void assessment.

Neither can the Court give credence to the argument of petitioner that he was deprived of the opportunity to present evidence to disprove that RO Pedrosa is not clothed with the pre-requisite authority.

First, the LOA and the MOA which are the alleged bases of RO Pedrosa's authority to audit and assess respondent were already formally offered into evidence and had already been considered by this Court.

Second, aside from his bare assertions, petitioner never mentioned nor identified in his Petition for Review or in his Motion the pieces of evidence he intended to present to disprove the lack of authority of RO Pedrosa to conduct the audit and assessment of respondent.

Hence, based on the foregoing reasons, the Court sees no error in resolving the issue pertaining to the revenue officer's lack of authority even if the same was not raised in any of the parties' pleadings.

Likewise, the Court *En Banc* finds no merit on the second issue raised by petitioner. Petitioner's insistence that the MOA validly conferred authority to RO Pedrosa to audit and assess respondent is without basis.

Indeed, petitioner failed to cite any specific provision of law or BIR Regulation to support his view that the Chief of RLTAD II is one of the authorized representatives of the petitioner who can authorize the assessment and audit of a taxpayer. The RMOs cited by petitioner did not specifically identify the Chief of RLTAD II as one of the officers contemplated under ***Section 6(A) of the Tax Code***.

To reiterate, to the point of being repetitive, the only BIR officials recognized by the Tax Code, BIR Regulations, and jurisprudence who have the authority to sign LOAs are the respondent, Revenue Regional Director, and the Assistant Commissioner/Head Revenue Executive Assistant.

Considering that the Chief of RLTAD II is not an authorized representative of the petitioner, the MOA cannot be considered an equivalent of an LOA. Consequently, RO Pedrosa had no authority to continue respondent's audit, which is in all fours with this Court's decision in ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[8] to wit:

[8] CTA EB No. 1880, 6 August 2019.

> "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 Pefia were without authority to continue the audit."

Likewise, the argument of petitioner that GS Caling's participation cured and made the assessment against respondent valid deserves scant consideration.

One of the roles of a group supervisor is to supervise the conduct of the audit.[9] The actual examination (e.g. verification of documents submitted and conducts further examination of books of accounts and other records) lies with the revenue officer. This is consistent with ***Section 13 of the Tax Code*** which identifies the revenue officer, as the person in charge of the examination and assessment of a taxpayer.

Given this, the same provision is also clear to the letter, that the revenue officer must be authorized pursuant to a valid LOA.

The participation of GS Caling and RO Pedrosa in the audit of respondent can be further deduced in the testimony of respondent's witness, Ms. Adelia R. Sarmiento-Accounting Manager of respondent, who testified that it was RO Pedrosa who conducted the audit examination of respondent.[10] The pertinent portion of her testimony is quoted, to wit:

> "Q19. What happened after Julius Bongabong conducted the investigation and you submitted the documents to the BIR?
>
> A19. **We never heard from Julius Bogabong. Subsequently, Revenue Officer Luz Pedrosa visited our office and sent an email requesting for various documents, which were submitted by the company. She also suggested that the company submit waivers of the defense of prescription. The company submitted separate waivers dated May 21, 2013 and March 24, 2014.**
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> Q20. I am showing to you a Waiver of the Statute of Limitations under the National Internal Revenue Code dated May 21, 2013, which has been marked as Exhibit "P-43". What is the relation between this document and the waiver you mentioned earlier?

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[9] Revenue Memorandum Order No. 34-95, Amendments to Revenue Memorandum Order No. 5-89 dated January 11, 1989 creating the Audit Report Evaluation Committee to Enhance Audit Efficiency and Supervisory Performance
1. Purpose
The objectives of this Revenue Memorandum Order are:
1.1 To enhance the effectiveness of supervisory functions being performed by Revenue District Officers, section chiefs and group supervisors in the regional/district offices designated to supervise the conduct of audit/investigation of internal revenue tax cases.
1.2 To motivate revenue officers to apply adequate audit procedures and examination techniques through the exercise of better judgment and prudence."

[10] Exhibit "P-40", Rollo, Vol. 1, p. 204.

A20. **This is the first waiver executed by the company following the instructions of Luz Pedrosa."**[11]

This is supported by the testimony of RO Pedrosa,[12] to wit:

Q6: As a Revenue Officer, what are your duties and functions?

A6: My duties include the conduct of audit and investigation as well as continuation of examination of internal revenue tax cases assigned to me. I also perform other duties and functions that may be assigned to me from time to time.

xxx xxx xxx

Q8: Why are you familiar with the tax account of Trinity?

A8: **I am familiar with the tax account of Trinity since it was assigned to me for the continuation of audit and investigation of all internal revenue tax liabilities of Trinity for taxable year ending 2010 through a Memorandum of Assignment No. LOA-125-2013-143 dated March 22, 2013.**

xxx xxx xxx

Q19: What happened after the issuance of the Waiver?

A19: <u>**I recommended for the issuance of a Preliminary Assessment Notice through a Memorandum dated July 8, 2014**</u>.

xxx xxx xxx

Q25: What happened next after you recommended for the issuance of a Formal Letter of Demand?

A25: The Formal Letter of Demand dated November 12, 2014 with the Attached Details of Discrepancies and various Audit Result/Assessment Notice for deficiency Income Tax, VAT, Documentary Stamp Tax and Withholding Tax was issued and served to Trinity.

xxx xxx xxx

Q27: What happened next after the FLD with Attached Details of Discrepancies and various Audit Result/Assessment Notices was issued and served to Trinity?

A27: **Trinity filed a protest which I evaluated. Subsequently, a recommendation for the issuance of a Final Decision on Disputed Assessment was made through a Memorandum dated 05 October 2015."**[13]

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[11] Emphasis supplied.
[12] Exhibit "R-21", Rollo, Vol. 2, pp. 649-655.
[13] Emphasis supplied.

A close reading of the testimonies of the witnesses shows that it was RO Pedrosa who performed the audit examination of respondent, consistent with her position as revenue officer.

The participation of GS Caling in signing the Memoranda recommending the issuance of the assessment is only connected with her review function as supervisor of RO Pedrosa.

Further, in ***CIR v. Opulent Landowners, Inc.***,[14] the Supreme Court ruled, to wit:

> "xxx a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. **It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer. This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90, which provides that any re-assignment/transfer of cases to another revenue officer(s), and revalidation of a LOA which had already expired, shall require the issuance of a new LOA. In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void**."[15]

Hence, applying the foregoing in this case, the fact that an unauthorized revenue officer, in the person of RO Pedrosa, was able to audit and recommend the issuance of a deficiency tax assessment against respondent already renders the assessment void.

As a final note, to follow the view of the respondent will violate the taxpayer's right to due process since it has the effect of curing an assessment recommended by an unauthorized revenue officer which undermines the rule under the Tax Code and jurisprudence that the audit should be conducted exclusively by those authorized by the Commissioner of Internal Revenue or his authorized representative. This view may also open the floodgates for unauthorized revenue officers to participate in audit investigations of taxpayers.

In view of the foregoing disquisition, the Court finds no justifiable reason to reverse or modify the conclusion reached in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration [re: Decision dated 14 July 2020] is **DENIED** for lack of merit.

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[14] G.R. Nos. 249883-84, 27 January 2020.
[15] Emphasis supplied.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(I maintain my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I maintain my Concurring Opinion dated July 14, 2020)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice