REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CAMPAIGNS AND GREY, INC.,
Petitioner,

CTA Case No.9420

-versus-

Present:

DEL ROSARIO, *P.J., Chairperson, and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
FEB 03 2021 10:09am

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RESOLUTION

MANAHAN, J.:

For resolution are respondent's *Motion for Reconsideration (re: Decision dated 24 September 2020)* filed on October 14, 2020 and petitioner's *Motion to Admit Comment/ Opposition* filed on December 1, 2020.

We first resolve petitioner's *Motion to Admit Comment/ Opposition.*

Petitioner submits that it did not receive an Order from the Court to file its comment to respondent's Motion for Reconsideration and learned that the Court no longer issues orders to file a comment to motions for reconsiderations following the amendments introduced by the 2019 Proposed

Amendments to the 1997 Rules of Civil Procedure. Petitioner now appeals in the interest of justice and equity for the Court to admit and consider its Comment/Opposition since adjustments to the changes brought about by the New Rules have resulted to excusable mistakes such as its non-filing of the comment and/or opposition within the time prescribed by the Amended Rules.

We grant petitioner's motion in the interest of justice and fairness and admit the attached *Comment/Opposition (To the Motion for Reconsideration dated 14 October 2020).*

We now proceed to resolve respondent's *Motion for Reconsideration* which seeks the reconsideration of the Decision of the Court promulgated on September 24 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** Accordingly, the subject FLD and FANs dated March 17, 2014, and the FDDA dated June 30, 2016, assessing petitioner for deficiency VAT, IAET, EWT, and compromise penalties for taxable year 2006, in the total amount of P29,417,830.86, are hereby **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED."**

Respondent anchors its motion on the following grounds:

1. The Honorable Court erred in ruling on an issue never raised by petitioner, never joined by the pleadings, never raised during the pre-trial and never defined by the Court in the Pre-Trial Order. Thus, respondent's basic right to fair play and due process was violated when the Court ruled that the assessments are void on the ground that the revenue officers lack authority when they conducted the audit/investigation of petitioner's books of account and other accounting records.

2. Assuming the Court may suddenly decide the case based on an issue that was never raised by petitioner, never joined by the pleadings, never raised at the Pre-Trial Order, never defined by the Court in the PreTrial

Order and never tried by the parties – the Honorable Court erred in ruling that the assessments are void.

3. The Honorable Court erred in ruling that the waivers executed by petitioner were defective.

4. The Honorable Court erred in ruling that respondent's right to assess petitioner had already prescribed.

5. The Honorable Court erred in ruling that petitioner is not liable for deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT).

Respondent's Arguments

Respondent argues that the issue on the proper authority of the revenue officers was not one of the issues raised by the parties in this case, hence it was erroneous on the part of the Court to delve and rule on such issue. He asserts that his basic rights to fair play and due process were violated when the Court suddenly ruled on an issue which was never raised by petitioner in its pleadings nor defined by the Court in the Pre-Trial Order. Respondent adds that the orderly disposition of cases does not mean disregarding rules of procedure and rules on pre-trial and that the Pre-Trial Order is binding not only on the parties but also on the court which issued the same, citing Section 7 of Rule 18 of the Revised Rules of Court that states that the contents of said Order shall control the subsequent course of the action.

Respondent stands firmly behind the authority of the revenue officers (ROs) to conduct an examination of petitioner's books of accounts and other accounting records for taxable year 2006 and asserts that there is no statutory requirement that the ROs be named in the Letter of Authority (LOA), thus those named in the LOA may not be the same ROs who will conclude the audit/examination. Respondent insists that there are instances where the originally assigned ROs are not able to continue such audit/examination due to reassignments, resignations, etc., hence, continuance of the audit/examination by a new set of ROs is unavoidable. He clarifies that a validly issued Memorandum of Assignment (MOA) is sufficient to clothe the new revenue officers with the requisite authority to continue the audit investigation.

Petitioner's Counter-Arguments

Petitioner counters that the validity and propriety of the subject deficiency tax assessments was properly raised during trial and defined in the Pre-Trial Order of the Court, hence, there was no violation of due process as alleged by respondent.

Petitioner also expressed agreement with the ruling of the Court that the examining ROs did not have the requisite authority to continue the audit/examination of its books of accounts and other accounting records for taxable year 2006. Petitioner cited the case of *CIR vs. Sony Philippines,*[1] where it was ruled that in the absence of an authority to conduct an examination, the ensuing assessment is a nullity.

RULING OF THE COURT

We deny respondent's Motion for Reconsideration.

Respondent's primary argument that the issue of lack of authority was never raised by petitioner nor defined in the Pre-Trial Order has been been squarely addressed in the case of *CIR vs. Lancaster Philippines, Inc.,*[2] when the Supreme Court ruled affirmatively in favor of the Court on the issue of whether or not it can resolve the question on the scope of authority of the revenue officers who were named in the LOA and which issue was not raised in the parties' pleadings. We quote the relevant portions of the ruling of the Supreme Court in the *Lancaster case*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> 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 dispisition of the case. Xxx xxx xxx
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> xxx xxx xxx
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> **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**

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[1] G.R. No. 78697. November 17, 2010.
[2] G.R. No. 183408, July 12, 2017.

> **scope of the 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)

On the alternative contention of respondent that the deficiency tax assessment was issued pursuant to a valid LOA and MOA, we find this to be without merit as thoroughly discussed in the assailed Decision.

In the CTA *En Banc* case of *Composite Materials, Inc. vs. CIR,*[3] and later affirmed by the Supreme Court in the case of *CIR vs. Composite Materials, Inc.,*[4] it was held that a Referral Memorandum does not give authority to the new set of revenue examiners to conduct an examination of the taxpayer's records but rather an LOA validly issued by the Revenue Regional Director. We quote relevant portions of the CTA *En Banc* decision, as follows:

> "In the case at bar, it is undisputed that the person who conducted the examination of petitioner CMI's records Revenue Officer Mary Anne P. Cruz, is not among the revenue officers authorized in LOA No. 0008746 dated September 9, 2008. Evidently, Revenue Officer Mary Anne P. Cruz is not authorized under LOA No. 0008746 to examine petitioner CMI.
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> xxx xxx xxx
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> **The Referral Memorandum signed by the Revenue District Officer does not give authority to Revenue Officer Mary Anne P. Cruz to conduct examination of petitioner CMI's records. On the contrary, pursuant to Sections 10 and 13 of the NIRC of 1997, as amended, it is the Revenue Regional Director who may issue an LOA."** (emphasis supplied)

In a recently issued Resolution in the case of *CIR vs. Opulent Landowners Inc.,*[5] the Supreme Court reiterated the ruling that if the revenue officers are not authorized, in the absence of a new LOA in their favor, their resulting assessments are void.

In the face of the afore-cited Supreme Court rulings, we see no persuasive reason to deviate from the conclusions

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[3]CTA *EB* No. 1314, August 15, 2017.
[4]G.R. No. 238352, September 12, 2018.
[5] G.R. Nos. 249883-84, January 27, 2020.

reached by the Court in the Assailed Decision dated September 24, 2020.

WHEREFORE, petitioner's *Motion to Admit Comment/Opposition* is **GRANTED** and the attached *Comment/Opposition (to the Motion for Reconsideration dated 14 October 2020)* is **ADMITTED** and **NOTED.**

As to respondent's *Motion for Reconsideration (re: Decision dated 24 September 2020)* filed on October 14, 2020, the same is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice