REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

UNIVERSITY OF SANTO TOMAS HOSPITAL, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8292

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:

MAR 2 2015
9:36 a.m.

x---x

DECISION

BAUTISTA, J:

The Case

Petition for Review filed on November 14, 2011, pursuant to Section 7(a)(1)[1] of Republic Act ("RA") No. 1125,[2] as amended by RA No. 9282[3] and RA No. 9503,[4] seeks for the Court to declare 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 issued by

---

[1]**Sec. 7.***Jurisdiction.* - The Court of Tax Appeals shall exercise:

(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 Code or other laws administered by the Bureau of Internal Revenue.

[2]An Act Creating the Court of Tax Appeals, as amended.

[3]An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[4]An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

respondent through Bureau of Internal Revenue ("BIR") Revenue Region No. 6, Revenue District Office No. 32, Manila as null and void.[5]

The Parties[6]

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

Respondent Commissioner of Internal Revenue ("CIR") is the government authority duly designated to collect all taxes, grant refunds, issue and abate tax assessments, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the National Internal Revenue Code ("NIRC"). She may be served with summons, notices and other legal processes of this Honorable Court at the BIR National Office Building, BIR Road, Diliman, Quezon City, Philippines and/or BIR, Revenue Region No. 6, Revenue District Office No. 32 ("Region"), Manila, Philippines.

The Facts

Petitioner filed its Annual Income Tax Return for fiscal year ending 31 May 2006 ("FY 2006") on 18 September 2006,[7] and its Amended Annual Income Tax Return for FY 2006 on February 2007.[8]

On January 12, 2007, petitioner was informed that it was transferred from the jurisdiction of the Region to the Large Taxpayers Service ("LTS") effective immediately.[9]

On March 7, 2007, Region issued a Letter of Authority ("LA") 2001 00052716[10] authorizing Revenue Officer Abolais Ampa ("RO Ampa") to be supervised by Group Supervisor Alemar Sani ("GS Sani"), to examine petitioner's books of accounts and other

[5] *Records*, pp. 1-85, with Annexes.
[6] *Id.*, p. 2-3.
[7] *Id.*, Joint Stipulation of Facts and Issues ("JSFI"), pp. 156.
[8] *Id.*, JSFI p. 156.
[9] *Id.*, Exhibit "A", pp. 285-287.
[10] *Id.*, Exhibit "B", p. 288.

accounting records for all internal revenue taxes for the period June 1, 2005 to May 31, 2006.

On June 6, 2007, petitioner 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."[11]

On April 3, 2008, petitioner was delisted from the LTS and transferred back to the jurisdiction of the Region.[12]

On January 5, 2009, jurisdiction over petitioner however reverted back to the LTS.[13]

On January 29, 2009, the Region issued a Notice for Initial Conference[14] informing petitioner 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 Region to hear its side of the result of verification made.

On December 11, 2009, Preliminary Assessment Notice[15] ensued. Thereafter, on July 19, 2010, a Formal Letter of Demand and Assessment Notice Nos. 32-FY-05/31/06-IT-0188 and 32-FY-05/31/06-MC-0189[16] were issued informing petitioner of its deficiency income tax in the amount of P 171,538,834.91and compromise penalty in the amount of P56,000, for FY 2006, details are as follows:

Deficiency Income Tax

	SPECIAL RATE	REGULAR RATE	TOTAL
Taxable Net Income per Amended Return	P 44,223,983.00	P 16,354,183.00	P 60,578,166.00
Add: Adjustments			
Undeclared income (sched 1)	726,300,305.46	-	726,300,305.46
Adjusted Taxable Net Income	P 770,524,288.46	P 16,354,183.00	P 786,878,471.46
Tax due	77,052,428.85	P 5,519,536.76	82,571,965.61
Less: tax withheld and payment			
Total per Return		P 9,968,102.00	
Less: unsupported creditable tax withheld		2,732,913.00	7,235,189.00
Deficiency Income Tax			P 75,336,776.61

[11] *Id.*, Exhibit "E", p. 301.
[12] *Id.*, Exhibit "F", p. 302.
[13] *Id.*, Exhibit "G", p. 303.
[14] *Id.*, Exhibit "H", p. 304.
[15] *Id.*, Exhibit "I", pp. 305-306.
[16] *Id.*, Exhibit "L", pp. 321-324.

Add: 50% Surcharge (sec. 248)		37,668,388.30
Interest from filing of origin return up to its amendment (sched 2)	P 566,276.93	
from _____ to 07/20/2010 (sec. 249)	57,967,393.07	58,533,670.00
Compromise Penalty (sec. 254 in relation to RMO 19-2007)		
TOTAL AMOUNT DUE & COLLECTIBLE		**P 171,538,834.91**

Compromise Penalty

Violation of Section 264 of the 1997 Tax Code (sched 3)	**P**	**56,000.00**

NOTE: Interest and total amount due shall be adjusted up to the actual date of payment."

On August 20, 2010, petitioner filed its tax protest assailing the subject tax assessments pursuant to Section 228 of the Tax Code.[17]

One hundred eighty (180) days have passed and petitioner's tax protest is still left unresolved, petitioner filed the "Petition for Review (Review by Appeal of the Inaction of the Commissioner of Internal Revenue Involving Disputed Assessments)" on May 13, 2011.[18]

On June 29, 2011, respondent filed her Answer[19] interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

18. The subject assessment is valid and correct and the petitioner 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];

---

[17] *Id.*, Exhibit "J", pp. 307-320.
[18] *Id.*, pp. 1-85.
[19] *Id.*, pp. 93-98.

Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil. 967 [960]);

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, respondent's right to assess is within ten (10) years from the date of discovery of the falsity or fraudulent return pursuant to Section 222(a) of the 1997 Tax Code, thus:

> 'Section 222. *Exceptions as to Period of 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 executor, 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."

On August 18, 2011, the parties, through their respective counsels, filed their Joint Stipulation of Facts and Issues.[20]

[20] *Id.*, pp. 156-160.

On September 16, 2011, a Pre-trial Order[21] was issued by the Third Division of the Court terminating pre-trial and setting the date for the presentation of *Records* by the parties.

Petitioner presented the following as witnesses:[22] Ma. Mariza C. Cruz; Ma. Theresa P. Dela Cruz; and Aaron C. Escartin, and documentary *Records* marked as *Exhibits "A"* to *"GG,"* inclusive of sub-markings.[23]

On the other hand, respondent presented Revenue Officer Abolais C. Ampa as witness and *Exhibits "9"* to *"12"*; *"24"* to *"37"*; and *"43"* to *"45."*

After trial, in a Resolution[24] dated January 2, 2014, Court ordered both parties to file their respective memorandum within a period of thirty (30) days.

On March 4, 2014, the Court resolved[25] to submit the case for decision, taking into consideration the Memorandum filed by respondent on January 15, 2014[26] and petitioner's Memorandum[27] on February 27, 2014.

Hence, this Decision.

The Issues[28]

For the Court's resolution are the following issues:

1. WHETHER OR NOT THE SUBJECT TAX ASSESSMENTS WERE ISSUED BEYOND THE PRESCRIPTIVE PERIOD FOR ASSESSMENT OF TAXES UNDER THE TAX CODE;

[21] *Id.*, pp. 201-206.
[22] *Id.*, Pre-Trial Order, pp. 201-206.
[23] *Id.*, Petitioner's Formal Offer of Evidence, pp. 272-284.
[24] *Id.*, pp. 871-881.
[25] *Id.*, p. 925.
[26] *Id.*, pp. 883-892.
[27] *Id.*, pp. 895-923.
[28] *Id.*, JSFI, pp. 157-158.

2. WHETHER OR NOT THE SUBJECT TAX ASSESSMENTS WERE ISSUED AGAINST THE PETITIONER WITHOUT OR IN THE ABSENCE OF AUDIT JURISDICTION;

3. WHETHER OR NOT THE ISSUANCE OF THE SUBJECT TAX ASSESSMENTS VIOLATED THE PETITIONER'S RIGHT TO PROCEDURAL DUE PROCESS;

4. WHETHER OR NOT THE SUBJECT TAX ASSESSMENTS WERE ISSUED WITHOUT STATING THE LAW AND THE FACTS UPON WHICH THE SAME ARE BASED PURSUANT TO SECTION 228 OF THE TAX CODE; AND

5. WHETHER OR NOT THE SUBJECT TAX ASSESSMENTS HAVE FACTUAL AND LEGAL BASES.

6. WHETHER OR NOT THE TAX RETURNS FILED ARE FALSE OR FRAUDULENT."

Petitioner's Arguments

Petitioner maintains that the Region had no audit jurisdiction when it issued LA 2001 00052716 dated March 7, 2007 therefore, any corresponding tax assessments, i.e. Assessment No. 32-FY-05/31/06-IT-0188 and 32-FY05/31/06-MC-0189, issued are *ipso facto* null and void.

Petitioner submits that respondent's right to assess petitioner's deficiency income tax for FY 2006 is already barred by prescription. According to petitioner, respondent has a period of three (3) years from the filing of its return within which to issue an assessment against it for deficiency income tax pursuant to Section 203 of the National Internal Revenue Code (NIRC) of 1997.

Petitioner contends that the respondent has the burden of proving that a false or fraudulent return was filed in order for the ten (10) year prescriptive period to be applicable.

Petitioner asserts that respondent violated its right to procedural due process in issuing the subject tax assessments because the procedure provided in Section 228 of the NIRC and Revenue Regulation No. 12-99 were not followed by respondent, particularly because it had no audit jurisdiction over petitioner at the time the proceedings were undertaken.

Petitioner likewise contends that its right to substantive due process was violated when the Notice of Assessments failed to state the law and the facts on which the assessments were made. Accordingly, the assessments failed to provide any relevant information that would apprise the taxpayer of its purported tax liability.

Respondent's Counter-Arguments

Respondent maintains that LA 2001 00052716 dated March 7, 2007 was issued while the Region has jurisdiction over petitioner.

Respondent alleges that petitioner filed a false and fraudulent tax return considering that the amount of unreported and undeclared income was more than thirty percent (30%) of that reported or declared in its Income and Amended Income Tax Return for FY 2006.

Respondent further claims that the assessments are valid and correct and that petitioner has the burden of proof to impugn its validity as Tax Assessments are presumed correct and made in good faith.

The Ruling of the Court

Section 13 of the NIRC provides:

> "XXX a Revenue Officer assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district</u> 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." *(underscoring ours)*

From the foregoing provision, an LA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[29] The provision also states that the authority extends only to those within the jurisdiction of the district.

In the present case, petitioner filed its Income[30] and Amended Income Tax Return[31] for FY 2006 on September 18, 2006 and February 27, 2007, respectively, indicating therein the RDO Code for the Region. On January 12, 2007,[32] petitioner was advised by Commissioner Jose Mario C. Buñag ("Commissioner"), that it falls under the Large Taxpayers Service ("LTS"). Thereafter, in a letter dated June 6, 2007,[33] the Commissioner informed petitioner that the authority of the Region to issue LA's over it has been transferred to the LTS, to wit:

> "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, <u>all Letters of Authority (LAs) / Tax Verification (TVNs) / Letter Notices (LNs) issued/to be issued after December 30, 2006 to cover investigation shall be issued by the Large Taxpayer 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." *(underscoring ours)*

---

[29] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010, 635 SCRA 234. .
[30] *Id.*, Exhibit "C", pp. 289-292.
[31] *Id.*, Exhibit "D", pp. 293-300.
[32] *Id.*, Exhibit "A", pp. 285-287.
[33] *Id.*, Exhibit "E", p.301.

Thus, when the Region issued LA 2001 00052716 on March 7, 2007, it no longer has the authority to do so.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010, 635 SCRA 234,* the Supreme Court held:

> "xxx 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 ours)*
>
> As earlier stated, LOA 19734 covered 'the period 1997 and unverified prior years.' For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if the CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA."

In the present case, LA 2001 00052716 did not have any force and effect having been issued when petitioner was already transferred to the jurisdiction of the LTS. Thus, when the Region proceeded with its assessment it did so without the necessary authority.

Furthermore, Revenue Memorandum Order ("RMO") No. 43-90[34] provides:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

[34] Issued by Commissioner of Internal Revenue Jose U. Ong, dated September 20, 1990.

xxx xxx xxx

> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." *(underscoring ours)*

Applying RMO No. 43-90 to the instant case, the assessment conducted by the Region was unauthorized, because there was no valid LA covering it. Records show that the Region proceeded to conduct the investigation despite advise from Commissioner Buñag that all LAs issued after December 30, 2006 should come from the LTS which has jurisdiction over petitioner. When petitioner was delisted from the LTS in and re-enlisted under the jurisdiction of the Region in 2008,[35] it should have issued a new LA for it to proceed with the audit investigation.

Hence, having proceeded from a void LA, the Assessment Notice Nos. 32-FY05/31/06-IT-0188 and 32-FY05/31/06-MC-0189 dated July 19, 2010 is void. Accordingly, a void assessment bears no valid fruit.[36]

Finding that the assessments are void for being issued beyond the authority of the Region, the Court finds it no longer necessary to discuss the other issues raised.

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.

LOVELL R. BAUTISTA
Associate Justice

---

[35] *Id.*, Exhibit "F", p. 302.

[36] *Commissioner of Internal Revenue vs. Azucena T. Reyes,* G.R. No. 159694/ *Azucena T. Reyes vs. Commissioner of Internal Revenue,* G.R. No. 163581, January 27, 2006, 480 SCRA 382 [396].

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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