REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Special Third Division*

**MISNET EDUCATION INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 9941**

Members:

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

Promulgated:
OCT 03 2023
8:02 a.m.

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# RESOLUTION

***RINGPIS-LIBAN, J.:***

Submitted before this Court is respondent's **Motion for Reconsideration** filed through registered mail on August 1, 2023, and received by the Court on August 15, 2023, with petitioner's **Opposition to the Motion for Reconsideration** filed on August 16, 2023.

On July 3, 2023, the Court promulgated a Decision cancelling respondent's deficiency income tax, value-added tax (VAT), and withholding tax on compensation (WTC) assessments for violating petitioner's right to due process of law by conducting the said assessment without a valid Letter of Authority (LOA), the dispositive portion of which states:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
>
> Accordingly, the FDDA dated September 04, 2018, requesting petitioner to pay deficiency income tax, VAT, and WTC, in the aggregate amount of Php7,310,234.42 for taxable year 2007, and the FAN dated January 14, 2011 issued against petitioner, are **CANCELLED and SET ASIDE**.

**SO ORDERED.**"

In his Motion, respondent primarily claims that the Court erred in ruling that petitioner's right to due process of law was violated. Respondent points out that the issue on the authority of the revenue officer (RO) who continued the audit of petitioner's books of accounts was only raised for the first time in petitioner's Memorandum. Respondent continues that petitioner did not question the authority of the ROs in its Petition for Review and stresses that petitioner actively participated in the proceedings in the administrative level without questioning the authority of the said RO. Thus, respondent insists that petitioner cannot be allowed to belatedly raise, for the first time on appeal, the issue of lack of authority of the RO who continued the examination of its books and accounting records.

Respondent further argues that the Letter of Authority (LOA) is in the nature of a contract of agency, wherein the Regional Director acts as the principal and the ROs named therein act as his agent. Respondent expounds that having different sets of ROs continue the audit of petitioner's books of accounts does not amount to lack of authorization of the said ROs, since they were made pursuant to the same LOA. Respondent asserts that despite the absence of the names of the ROs who continued the audit in the LOA, the findings and result of their audit were nonetheless reviewed and approved by the Regional Director thereby ratifying the audit of the said ROs as his own act pursuant the contract of agency.

Respondent also assails the Court's finding that respondent failed to properly observe the fifteen (15) days due process requirement between the issuance of a Preliminary Assessment Notice ("PAN") and Formal Assessment Notice ("FAN"). Respondent continues that petitioner's witness, Assistant Corporate Secretary Josefina R. De Gala, admitted in her testimony that petitioner received the PAN on December 29, 2010. Considering the said admission, respondent maintains that petitioner's right to due process was not violated by the issuance of the FAN on January 14, 2011, since the 15-day period within which to file a Reply to the PAN ends on January 13, 2011. Respondent stresses that petitioner's denial cannot prevail over its own witness' direct, positive, and categorical testimony.

Lastly, respondent avers that his right to collect the assessment has not yet prescribed since the statute of limitations for the collection of taxes is suspended by reason of petitioner's request for reinvestigation; and that, respondent has five (5) years from the issuance of the Final Decision on Disputed Assessment (FDDA) within which to collect the assessed taxes.

On the other hand, in its Opposition, petitioner asserts that the Court did not err in ruling that respondent violates its right to due process of law.

Petitioner points out that the PAN dated December 29, 2010 was actually received by petitioner only on January 3, 2011 as evidence by respondent's own documentary evidence. Petitioner cites Section 3 of Rule 130 of the Rules of Court, stating that under the Best Evidence Rule, when the subject of the inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.

Petitioner also contends that the Court may rule on matters despite not having been raised as issues in the Petition for Review, provided the arguments raised are intricately related to the principal issue to be resolved by the Court; and that the arguments would not require the presentation of additional evidence. Petitioner maintains that the factual and documentary evidence are already matters of records in the case.

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

In the case of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[1] the Supreme Court recognized that this Court can rule on an issue even if not raised in the Petition for Review, to wit:

> "As the CTA *En Banc* held, **the CTA Division was justified in ruling on the issue that respondent was denied due process <u>even though it was not expressly raised by respondent in its petition for review</u>. Sec. 1, Rule 14 of the RRCTA provides that '[i]n 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.**' Herein, the issue of the validity of the assessment against respondent also necessarily requires the determination of the matter of the proper issuance of said assessment in accordance with the requirements of due process. In addition, there were sufficient allegations in respondent's petition for review on the dates of issuance by the BIR and receipt by respondent of the PAN and FLD/FAN, **as well as documentary and testimonial evidence to establish the essential facts for resolution of the issue which were presented during the trial without any objection from petitioner.** This could be deemed as petitioner's implied consent to try the issue, recognized under Sec. 5, Rule 10 of the Revised Rules of Court, which applies suppletorily to the RRCTA."[2]

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[1] G.R. No. 222476, May 05, 2021.
[2] *Emphasis and underscoring supplied.*

In the same vein, the Supreme Court in *Prime Steel Mill Incorporated v. Commissioner of Internal Revenue*,[3] even recognized that the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, provided that (1) these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and (2) the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case, to wit:

> "At the outset, the Court shall delve into the propriety of the CTA *En Banc's* action of entertaining petitioner's additional arguments, including the alleged violation of its right to due process when the BIR prematurely issued the FAN and FLD in this case, which were raised for the very first time on appeal, and only in its Supplemental Memorandum.
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> As correctly held by the CTA *En Banc*, **in deciding a case, the tax 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.'** However, this authority of passing upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues submitted during the pre-trial stage is not unbridled. As the CTA *En Banc* itself recognized, such issues 'should be dealt with, based not only on substantive law but in light of the relevant rules of evidence.'
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> Certainly, the thrust of proscribing a change of argument on appeal rests on upholding the basic tenets of equity and fair play. 'When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.'
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> This principle is also laid down in the Rules of Court which applies suppletorily to the Revised Rules of the CTA, *viz*:
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>> Section 15. Questions that may be raised on appeal. — Whether or not the appellant has filed a motion for new trial in the court below he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

[3] G.R. No. 249153, September 12, 2022.

Hence, in other civil cases, this Court has allowed derogation from this principle only in exceptional cases and only if the factual bases of the new theory would not require presentation of further evidence:

> In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.

For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.* that '[t]he 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.'

Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that **the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.**

From the foregoing, the Court so holds that **the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: *one*, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and *two*, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.**

It bears stressing that the aforementioned parameters were employed by the CTA *En Banc* when it deigned to pass upon the issue on respondent's supposed lack of authority to conduct the audit investigation in this case. This Court quotes with approbation the following disquisition of the CTA *En Banc* in the assailed *Resolution*:

> It is not the failure of the party to raise the issue during the trial stage that renders it futile to raise it on appeal but the lack of opportunity of the other party to rebut or present evidence to contravene the same during the trial of the case that makes it objectionable for a court to rule on this issue at this stage of appeal. The allegation of the lack of an LOA or invalidity thereof conjures up secondary issues and factual matters that need to be adjudicated upon based on evidence or lack thereof. x x x
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> This is the reason why we cannot entertain such issue at this stage, especially so when it was raised for the first time in [petitioner's] Supplemental Memorandum at the *En Banc* level. x x x

Conversely, the same procedural hindrance does not exist in resolving the issue on the violation of petitioner's right to due process.

First. The issue on the violation of petitioner's right to due process is inextricably linked to the validity of the assessment. It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment. This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit. Moreover, a resolution on the apparent violation of petitioner's right to due process is indispensable for an orderly and comprehensive disposition of this case.

Second. Unlike the issue on the invalidity or non-existence of the LOA, the non-observance of the 15-day period to reply to PAN may be resolved by an examination of the evidence on record without requiring the presentation of additional proof. Thus, the CTA En Banc correctly took cognizance of this new issue."

In this case, the issue on the lack of authority of the ROs who conducted the audit of petitioner is intricately related to the principal issue to be resolved by this Court, *i.e.* whether or not petitioner is liable for deficiency taxes for taxable year 2007, and is necessary to achieve an orderly and comprehensive disposition of the case. Moreover, the said issue may be resolved by an examination of the evidence on record and would not require the presentation of additional evidence.

Hence, the Court may resolve the issue on the lack of authority of the ROs who conducted the audit of petitioner even if said issue was not mentioned in the Petition for Review and was only raised in the parties' respective Memorandum.

Also, the Court need not belabor to discuss the necessity of a grant of authority, in form of a LOA, before any RO can conduct any examination considering that the assailed Decision already thoroughly discussed said matter even citing various jurisprudence in support thereof, *i.e. Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue,*[4] *Commissioner of Internal Revenue v. De La Salle University, Inc., et seq.,*[5] *Commissioner of Internal Revenue v. Sony Philippines, Inc.,*[6] *AFP General Insurance Corporation v. Commissioner of Internal Revenue,*[7] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.,*[8] and *Republic of the Philippines v. Robiegie Corporation.*[9]

At the risk of sounding repetitive, the Supreme Court expressly stated that the investigatory powers of the ROs flow from the **LOA** which is the **statutorily designated means** by which respondent delegates its investigative powers to the ROs, as held in the case of *Republic of the Philippines v. Robiegie Corporation,*[10] to wit:

> "The Republic's construction of Section 13 of the NIRC to mean that an LOA is not an authorization but a mere notice of investigation to the taxpayer is blatantly contrary to the text of the law. First, the concept of authorization is inherent in the very language of Sections 6(A) and 13 of the NIRC, which speak of a '**duly <u>authorized</u> representative**' and a 'Letter of **<u>Authority</u>**.' Second, the phrase 'pursuant to' in Section 13 means 'in the course of carrying out, in conformance to or agreement with, [or] according to.' **Thus, an RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a validly issued LOA. Stated differently, under the NIRC, the investigatory powers of the ROs flow from the LOA, which is the <u>statutorily designated means</u> by which the CIR delegates its investigative powers to the BIR revenue officers.**

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[4] G.R. No. 241848, May 14, 2021.
[5] G.R. Nos. 196596, 198841, and 198941, November 09, 2016.
[6] G.R. No. 178697, November 17, 2010.
[7] G.R. No. 222133, November 4, 2020.
[8] G.R. No. 242670, May 10, 2021.
[9] G.R. No. 260261, October 3, 2022.
[10] *Id.*

x x x

> In conclusion, we reiterate that **the power of a BIR revenue officer to conduct taxpayer investigations flows from a validly issued LOA, which is the <u>statutorily defined modality</u> for the delegation of the investigatory powers vested in the CIR by law. <u>Thus, the reassignment of a taxpayer investigation to a different revenue officer must also be made pursuant to a LOA</u>**, the one LOA-per-taxpayer rule notwithstanding. **<u>When a taxpayer investigation is transferred from one revenue officer to another, the responsible BIR official with authority to issue LOAs shall issue a new LOA to the new revenue officer assigned to the investigation.</u>** The old LOA in favor of the reassigned revenue officer shall be deemed cancelled, and the new LOA issued to the subsequently designated revenue officer shall prevail, in accordance with the provisions of RMO No. 8-2006, issued on February 1, 2006."[11]

As to respondents' argument that he properly observe the 15-day due process requirement between the issuance of PAN and FAN, the Court is not convinced.

Again, in *Prime Steel Mill Incorporated v. Commissioner of Internal Revenue*, citing the case of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, the Supreme Court held that the 15-day period provided under Revenue Regulations (RR) No. 12-99 for a taxpayer to reply to a PAN should be strictly observed by the Bureau of Internal Revenue ("BIR"). Hence, there can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN even before petitioner was able to submit its Reply to the PAN.

Herein, the Court found that by respondent's own evidence, petitioner received the PAN dated December 29, 2010 on January 3, 2011.[12] Counting 15 days from January 3, 2011, petitioner had until January 18, 2011, within which to respond to the said PAN. However, without giving opportunity to petitioner to respond to the PAN, respondent already issued the FAN on January 14, 2011,[13] which is before the expiration of the above-stated 15-day period.

Nonetheless, respondent points out that the Court failed to consider petitioner's admission, through the testimony of Josefina R. De Gala in her

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[11] *Emphasis and underscoring supplied.*
[12] BIR Records, Exhibit "R-7-A", p. 1219.
[13] Docket, Exhibit "P-12", pp. 293 to 301; BIR Records, Exhibits "R-9" and "R-10", pp. 1196 to 1200.

Judicial Affidavit dated October 28, 2019, that petitioner received the PAN on December 29, 2010, to wit:

> "Q24: What happened after the informal conference on May 17, 2010?
>
> A: Thereafter, the Company received on December 29, 2010 a Preliminary Assessment Notice (PAN) together, with an Annex A or Details of Discrepancy."[14]

However, it should be stressed that such testimonial evidence will not prevail over documentary proof showing otherwise. In the weighing of evidence, documentary evidence prevails over testimonial evidence.[15]

As to the other issues raised by respondent in his Motion, the Court finds that it is no longer necessary to address or discuss the same considering the nullity of the subject tax assessments.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on July 3, 2023.

**WHEREFORE**, in light of the foregoing considerations, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

I Concur:

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

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[14] Exhibit "P-20" (Q&A No. 24), Docket - Vol. 1, p. 264.
[15] *Dick L. Go v. Court of Appeals, et al.*, G.R. No. 112550, February 5, 2001.