REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GOLDEN DONUTS, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1866
(CTA Case No. 9676)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUN 30 2020
4:16 p.m.

x- x

RESOLUTION

MANAHAN, J.:

This resolves petitioner's *Motion for Reconsideration (of the Decision dated 19 November 2019)* filed on December 6, 2019, with respondent's *Comment (Re: Motion for Reconsideration dated 6 December 2019)* filed on January 29, 2020.

Petitioner assails the Decision dated November 19, 2019, which disposed of the case as follows:

> Based on the foregoing, the issuance of LOA No. LOA-211-2017-00000037 (eLA201500081454) for investigation of petitioner's books of accounts for taxable year 2007 is not a matter which may be appealed to the CTA.

WHEREFORE, the Petition for Review is **DENIED**. The Resolutions dated January 24, 2018 and May 10, 2018 are **AFFIRMED**.

SO ORDERED.[1]

Petitioner states that the case is within the CTA's jurisdiction under "other matters arising under the National Internal Revenue Code..." considering that there is an adverse decision, i.e. the issuance of the *subpoena duces tecum*, which effectively denied petitioner's request for withdrawal and cancellation of the subject LOA.

Citing several cases, petitioner points that the Court has ruled on issues such as: (a) a taxpayer's immunity from the payment of taxes under a tax amnesty law;[2] (b) prescription of the right to assess even if there is no disputed assessment;[3] (c) a prayer for reversal of Certification Ruling and DOF Resolution even if the BIR had not issued a deficiency tax assessment;[4] and (d) authority of BIR revenue officers to conduct an examination of a taxpayer.[5]

Finally, petitioner cites *The Professional Services, Inc. v. Commissioner of Internal Revenue*,[6] where it was stated that "where the BIR had already made an initial assessment for deficiency taxes in a taxable year, and the taxpayer paid the deficiency tax assessed, the BIR has no valid authority to issue, after the three (3)-year prescriptive period had expired, a second or third assessment for the same taxable year.

In his *Comment*, respondent states that the CTA being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. In the instant case, there is no disputed assessment since petitioner is questioning the issuance of the LOA and *subpoena duces tecum*. Respondent reiterates that the issuance of an LOA is a

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[1] *Rollo*, Decision dated November 19, 2019, p. 228.
[2] *Commissioner of Internal Revenue V. Transfield Philippines, Inc.*, G.R. No. 211449, January 16, 2019.
[3] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010; *Lanao del Norte Electric Corporation v. Bureau of Internal Revenue*, CTA EB No. 1452, April 5, 2017; and, *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, CTA EB No. 1204, March 17, 2016.
[4] *Century Peak Property Development, Inc. v Secretary of Finance*, CTA Case No. 9145, January 15, 2018.
[5] *CIR v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[6] CTA Case No. 9502, August 13, 2019, citing *Philippine International Air Terminals, Co., Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9123, May 7, 2018.

mandate legally delegated to the BIR to properly determine lawful tax liabilities, and that prohibiting the exercise of such mandate shall create a dangerous precedent that will eventually make the BIR inutile.

We agree with respondent.

We reiterate that the issuance of LOA No. LOA-211-2017-00000037 (eLA201500081454) and the August 23, 2017 *subpoena duces tecum* does not fall within the enumerated matters that the Court in Division may take cognizance of prior to the issuance of a final assessment.[7] A Petition for Review assailing an interlocutory action of respondent prior to the issuance of a final assessment is premature and may not be construed within the context of "other matters arising under the National Internal Revenue Code".[8]

The cases cited by petitioner are not on all fours with the instant case. None of the said cases involved an appeal before the CTA questioning the issuance of an LOA and/or *subpoena duces tecum*. Further, the cases cited by petitioner involved an assessment, disputed or otherwise, which was already issued by the BIR. Even in the case of *The Professional Services, Inc. v. Commissioner of Internal Revenue*[9] which involved multiple assessments for the same taxable year under different LOAs, and for which the taxpayer had previously paid its deficiency taxes, there was still an assessment issued by the BIR, upon which the CTA may exercise its jurisdiction.

Thus, the issuance of LOA No. LOA-211-2017-00000037 (eLA201500081454) for investigation of petitioner's books of accounts for taxable year 2007 is not a matter which may be appealed to the CTA.

WHEREFORE, the instant *Motion for Reconsideration (of the Decision dated 19 November 2019)* is **DENIED** for lack of merit.

SO ORDERED.

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[7] *Rollo*, Resolution dated January 24, 2018, p. 44.
[8] *Rollo*, Resolution dated January 24, 2018, p. 45.
[9] CTA Case No. 9502, August 13, 2019, citing *Philippine International Air Terminals, Co., Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9123, May 7, 2018.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice