REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2165** (CTA Case No. 9387)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO, *JJ.***
AMPARO SHIPPING CORPORATION, Respondent.	Promulgated: FEB 23 2021 2:15pm

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) on 15 November 2019. It seeks the reversal of the Decision dated 28 June 2019[2] and the Resolution dated 08 October 2019[3], respectively, of the Court's Special Second

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[1] *Rollo*, pp. 7-27.

[2] Division Docket, Volume IV, pp. 1959-1987; Penned by Associate Justice Catherine T. Manahan with Associate Justice Juanito C. Castañeda, Jr., concurring.

[3] Id., pp. 2028-2035.

Division in CTA Case No. 9387 entitled *Amparo Shipping Corporation v. Commissioner of Internal Revenue.*

The antecedent facts follow.

On 05 September 2013, Officer-in-Charge-Assistant Regional Director (**OIC-ARD**) Hermeno A. Palamine (**Palamine**) issued Letter of Authority[4] (**LOA**) No. LOA-082-2013-00000030 against respondent Amparo Shipping Corporation (**respondent/ASC**) authorizing an examination of the latter's books for all internal revenue taxes for the period 01 January 2011 to 31 December 2011.

On 09 October 2014, respondent's President, Andrew G. Lau (**Lau**) executed a Waiver of the Defense of Prescription (**first waiver**) under the Statute of Limitations of the National Internal Revenue[5], extending the period of assessment until 31 December 2015.

On 21 May 2015, petitioner issued a Preliminary Assessment Notice[6] (**PAN**) assessing respondent for deficiency taxes amounting to ₱16,380,254.19. On 18 September 2015, respondent received a copy of the Final Letter of Demand[7] (**FLD**) and a Final Assessment Notice[8] (**FAN**) dated 24 August 2015.

Respondent filed a protest[9] to the FLD on 15 October 2015.

Later on 11 December 2015, Lau executed another Waiver of the Defense of Prescription under the Statute of Limitations[10] (**second waiver**) extending the period of assessment until 31 December 2016.

Still later, on 14 June 2016, respondent received petitioner's Final Decision on Disputed Assessment[11] (**FDDA**) dated 17 May 2016,

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4 Exhibit "R-1", BIR records, p. 1.
5 Exhibit "R-5", id., p. 397.
6 Exhibit "R-7", id., pp. 461-462.
7 Exhibit "P-4", Division Docket, Volume III, pp. 1257-1261.
8 Exhibit "P-4-1" to "P-4-4", id., pp. 1262-1265.
9 Exhibit "P-6", id., pp. 1266-1270.
10 Exhibit "R-9", BIR records, p. 537.
11 Exhibit "R-10", id., pp. 568-570.

upholding the assessment and holding respondent liable for ₱16,879,047.24 in deficiency taxes.

Aggrieved, on 14 July 2016, respondent appealed the FDDA with this Court and the same was raffled to the Court's Special Second Division.

During the trial, respondent offered the testimonies of its bookkeeper, Shirley Aringo Villaraza[12] (**Villaraza**), and Atty. Rheneir P. Mora[13] (**Atty. Mora**), the Court-appointed Independent Certified Public Accountant (**ICPA**). Both witnesses essentially testified to the validity and genuineness of respondent's documentary evidence. Particularly, the ICPA also testified on the result of his examination of respondent's documents relative to petitioner's assessment.

On the other hand, petitioner presented his sole witness, Revenue Officer (**RO**) Romela M. Cortes[14] (**Cortes**), who testified as regards her involvement in respondent's assessment.

After respondent and petitioner submitted their memoranda, the Court deemed the case submitted for Decision on 30 July 2018.[15]

On 28 June 2019, the Special Second Division promulgated the now assailed Decision.[16] The dispositive portion of the said Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the FLD and the FANs dated August 24, 2015 are declared **VOID** and are **CANCELLED**, and the FDDA dated May 17, 2016 covering the assessed deficiency taxes against petitioner for TY 2011 in the aggregate amount of ₱16,879,047.24 is **CANCELLED** and **SET ASIDE**.

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[12] Judicial Affidavit of Shirley Aringo Villaraza, Division Docket, Volume II, pp. 658-679.
[13] Judicial Affidavit of Shirley Atty. Rheneir P. Mora, id., Volume III, pp. 1176-1198.
[14] Judicial Affidavit of Romela M. Cortes, id., Volume IV, pp. 1689-1696.
[15] Resolution dated 30 July 2018, id., p. 1950.
[16] Supra at note 2.

SO ORDERED.

...

In the afore-cited Decision, the Special Second Division found petitioner's LOA invalid on the ground that the issuing officer (OIC-ARD Palamine) was without authority to issue the same. Furthermore, the Court found the first waiver to be invalid as it did not contain a date of petitioner's acceptance.[17] Consequently, the second waiver could not also have further extended the period of assessment. Due to this infirmity in the first waiver's execution, both the FAN and FLD were issued beyond the three-year period prescribed under Section 203[18] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

Unfazed, petitioner filed a Motion for Partial Reconsideration[19] (**MPR**) on 17 July 2019.

In his bid to convince the Special Second Division to abandon its assailed Decision, petitioner attached to his MPR a photocopy of Revenue Travel Assignment Order (**RTAO**) No. 44-2012[20] dated 20 September 2012, indicating Palamine's change of assignment from OIC-ARD to OIC-Regional Director (**RD**); and, a Certification[21] (**Certification**) issued by Cecilia C. Felipe, the Chief of the Personnel Division of the Bureau of Internal Revenue (**BIR**), showing Palamine's status as OIC-RD.

On 08 October 2019, the Special Second Division denied petitioner's MPR. The dispositive portion of the assailed Resolution[22] reads:

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17 Decision dated 28 June 2019, Division Docket, Volume IV, pp. 1981-1983.

18 **Sec. 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

19 Division Docket, Volume IV, pp. 1993-2007.

20 Id., p. 2008.

21 Id., p. 2009.

22 Supra at note 3.

> ...
>
> **WHEREFORE,** premises considered, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 28 June 2019)* filed on July 17, 2019, is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In the assailed Resolution, the Special Second Division gave no probative weight to petitioner's RTAO 44-2012 and Certification (as attached to his MPR) stating that these documents were not formally offered as evidence during the trial of the case.[23]

Petitioner then filed the present petition before the Court *En Banc* and assigned the following errors to the Special Second Division's actions, to wit:

> I.
>
> WHETHER THE SPECIAL SECOND DIVISION ERRED IN RULING THAT THE LETTER OF AUTHORITY (LOA) IS VOID FOR HAVING BEEN SIGNED AND ISSUED ONLY BY AN OFFICER IN-CHARGE-ASSISTANT REGIONAL DIRECTOR (OIC-ARD);
>
> II.
>
> WHETHER THE SPECIAL SECOND DIVISION ERRED IN RULING THAT THE WAIVERS EXECUTED BY RESPONDENT AMPARO SHIPPING CORPORATION WERE DEFECTIVE;
>
> III.
>
> WHETER THE SPECIAL SECOND DIVISION ERRED IN RULING THAT PETITIONER COMMISSIONER OF INTERNAL REVENUE'S RIGHT TO ASSESS HAD PRESCRIBED; and,
>
> IV.
>
> WHETER THE SPECIAL SECOND DIVISION ERRED IN RULING THAT RESPONDENT AMPARO SHIPPING CORPORATION IS NOT LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX (VAT) AND EXPANDED WITHOLDING TAX (EWT).[24]

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[23] Resolution dated 08 October 2019, Division Docket, Volume IV, p. 2032.
[24] *Rollo*, pp. 9-10.

Invoking the Supreme Court's ruling in *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*[25] (**BPI**), petitioner now argues before Us that the Special Second Division should not have disregarded his RTAO 44-2012 and Certification as attached to its MPR. According to petitioner, the Supreme Court ruled in *BPI* that:

> ...
>
> True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence." The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.
>
> ...

Petitioner likewise insists on the validity of the waivers that respondent executed. He points out that a perusal of the first waiver reveals that the same was accepted by RDO Lilivic Minguez-Gatdula (**Gatdula**). Petitioner also notes that respondent never raised the perceived error as an issue.

Additionally, petitioner contends that his right to assess respondent for deficiency value-added tax (**VAT**) has not yet prescribed since respondent filed a false return which is subject to a 10-year prescription period upon discovery of the fraud pursuant to Section 222[26] of the NIRC of 1997, as amended.

Lastly, petitioner alleges that the Special Second Division erred in finding respondent free from any tax liability.

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[25] G.R. No. 122480, 12 April 2000; Citation omitted.

[26] **Sec. 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 executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
...

As expected, respondent wholly agrees with the conclusions reached by the Special Second Division in the assailed Decision and Resolution and could only pray for the outright dismissal of petitioner's present recourse.

The Court *En Banc* resolves below.

After a careful review of the records of the case and the parties' contrasting arguments, We still find no reversible error in the actions taken by the Special Second Division.

Although petitioner offers several points of contention, the success of his petition rests heavily on first finding that the due process requirements have been met in conducting the taxpayer's assessment.

In the assailed Decision, the Special Second Division found that petitioner was unable to prove that OIC-ARD Palamine was clothed with authority to issue the LOA in the absence of a permanent RD. This lack of authority, among others, led the Special Second Division to invalidate the BIR's assessment of respondent.

Realizing his lapse and in his attempt to remedy the same, petitioner attached to his MPR a copy of RTAO 44-2012 and the Certification issued by the BIR's Personnel Division Chief to prove Palamine's status as an RD at the time of the LOA's issuance. While it is true that, as held in *BPI*, the Court of Tax Appeals (**CTA**) is not governed by the technical rules of evidence[27], it is, however, equally true that the Rules of Court (**ROC**) apply suppletorily to the CTA's own rules.

The principle established in *BPI*, although telling of the value placed upon the opinions and findings of this Court, is nevertheless a mere exception. As such, resort thereto as to require the relaxation of the rules of procedure must be exercised with caution and favored only for valid and compelling reasons.[28]

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27 Supra at note 25.
28 *Building Care Corporation, et al. v. Macaraeg*, G.R. 198357, 10 December 2012.

In asking the Special Second Division to take cognizance of RTAO 44-2012 and the Certification, petitioner essentially prayed for a new trial and not a mere reconsideration of the assailed Decision. Section 1, Rule 37 of the ROC provides:

...

RULE 37
New Trial or Reconsiderations

Sec. 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) **Fraud, accident, mistake or excusable negligence** which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) **Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.**

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.[29]

...

A perusal of petitioner's own MPR reveals that he did not cite any of the foregoing circumstances to justify a consideration of RTAO 44-2012 and the Certification attached thereto. As a result, the trial was not re-opened for the presentation and reception of these additional documents into evidence. Section 34, Rule 132 of the ROC states:

...

RULE 132
Presentation of Evidence

C. OFFER AND OBJECTION

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29 Emphasis and underscoring supplied.

> Sec. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> ...

As the Special Second Division aptly cited in the assailed Resolution, an exception to this rule is found in the Supreme Court's ruling in *Barut v. People of the Philippines*[30], to wit:

> ...
>
> The rule that only evidence formally offered before the trial court can be considered is relaxed where two requisites concur, namely: *one*, the evidence was duly identified by testimony duly recorded; and, *two*, the evidence was incorporated in the records of the case...
>
> ...

We thus echo the Special Second Division in its finding that none of these requisites are present to warrant consideration of the attached documents in the present case. In sum, petitioner's sole reliance on the case of *BPI*, absent any other compelling reason by which this Court could excuse the attached documents' non-presentation during trial, is not enough to sway the Court *En Banc* into abandoning the Special Second Division's findings.

Moreover, a further reading of *BPI* would show that there, the CIR failed to file an opposition to BPI's motion as well as to the documents attached thereto. This was one circumstance taken into account by the Supreme Court when it maintained the CTA's ruling (which considered BPI's additional documents). In the case at bar, the same cannot be said of respondent as it was able to file its comment on petitioner's MPR and timely raised its objections against the inclusion of RTAO 44-2012 and the Certification.

In *Lorenzana v. Lelina*[31], the Supreme Court ruled:

> ...

[30] G.R. No. 167454, 24 September 2014; Citations omitted and italics in the original text.
[31] G.R. No. 187850, 17 August 2016; Citations omitted.

> ...Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time.
>
> ...

Given that respondent was able to properly object to the attached documents on valid grounds, the Special Second Division did nothing but rule in a manner consistent with procedural rules.

In *Daikoku Electronics Phils., Inc. v. Raza*[32], the Supreme Court declared:

> ...
>
> To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules ... The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse...
>
> We must stress that the bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.
>
> ...

Moving on to the LOA's validity, the Special Second Division was correct in ruling that only the CIR, Deputy Commissioners and RDs possess the power to issue an LOA. Section 6 of the NIRC of 1997, as amended, provides:

> ...
>
> **Section 6.** *Power of the Commissioner to Make assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -

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32 G.R. No. 181688, 05 June 2009; Citations omitted.

> (A) Examination of Returns and Determination of Tax Due. - After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative** may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided*, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[33]
>
> ...

Section 10 thereof likewise states:

> ...
>
> **Sec. 10.** *Revenue Regional Director*. - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional director** shall, within the region and district offices under his jurisdiction, among others:
>
> ...
>
> (c) Issue **Letters of authority** for the examination of taxpayers within the region[.][34]
>
> ...

Further clarifying this matter, Revenue Memorandum Order (**RMO**) No. 43-90[35] enumerates the BIR officials who may issue an LOA, to wit:

> ...
>
> D. Preparation and issuance of L/As
>
> ...
>
> 4. For the proper monitoring and coordination of the issuance of the Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the **Regional Directors, the Deputy Commissioner and the Commissioner.** For the exigencies of the service, other officials may be authorized to issue

33 Emphasis supplied.
34 Emphasis supplied.
35 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

> and sign Letters of Authority, but only upon prior authorization by the Commissioner himself.[36]
>
> ...

Clearly from the above provisions, an ARD is not one of the persons authorized to issue an LOA. Therefore, the Special Second Division correctly invalidated the LOA as the same was issued and signed only by OIC-ARD Palamine. On this note, it cannot be gainsaid that a void LOA bears no fruit.[37]

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[38] **(Sony)** and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[39] **(Medicard)**. In *Sony*, the Supreme Court underscored the importance of the principle and discussed the invalidity of unauthorized assessments in the following wise:

> ...
>
> Clearly, 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.[40]
>
> ...

While in *Medicard*, the Supreme Court explained the effects of an LOA's issuance by an unauthorized officer, to wit:

> ...
>
> ... [I]t is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order

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36 Emphasis and underscoring supplied.

37 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010.

38 G.R. No. 178697, 17 November 2010.

39 G.R. No. 222743, 05 April 2017.

40 Supra at note 38.

> to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.[41]
>
> ...

At any rate, even if the Special Second Division did not throw out the assessment solely on the basis of the tainted LOA, the first waiver executed by the parties remained defective – a fact which, in itself, is sufficient to invalidate the assessment on the ground of prescription. As cited by the Special Second Division, RMO 20-90[42] provides:

> ...
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90...
>
> ...
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. **The date of such acceptance by the BIR should be indicated...**
>
> ...

To further emphasize the need for strict adherence with the waiver's form, in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[43], the Supreme Court held:

> ...
>
> The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time...
>
> ...

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41 Supra at note 39.

42 Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

43 G.R. No. 162852, 16 December 2004; Citations omitted.

> RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed...
>
> ...

As correctly found by the Special Second Division, though ostensibly accepted by the BIR, the first waiver herein bears no date of acceptance, thus failing to prevent the assessment's eventual prescription.

All told, the Court *En Banc* sees no further need to belabor itself with a discussion of petitioner's other issues as the same will no longer change the outcome of his case.

WHEREFORE, the foregoing considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on 15 November 2019 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution of the Special Second Division on 28 June 2019 and 08 October 2019, respectively, in CTA Case No. 9387 entitled *Amparo Shipping Corporation v. Commissioner of Internal Revenue,* are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

x - x

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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