REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ZILOG ELECTRONICS PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 2762
(CTA Case Nos. 9403 & 9492)

Members:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
NOV 13 2024 4:30 pm

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RESOLUTION

CUI-DAVID, J.:

This resolves petitioner's *Motion for Reconsideration [re: Decision dated 18 June 2024]* filed on July 9, 2024, with respondent's *Comment/Opposition (To Petitioner's Motion for Reconsideration dated 8 July 2024)* filed on August 6, 2024. Petitioner prays that the *Decision* dated June 18, 2024 (assailed *Decision*), with the following dispositive portion, be reconsidered:

> **WHEREFORE**, in view of the foregoing, the instant *Petition for Review* is **DISMISSED** due to lack of jurisdiction. Accordingly, the assailed Decision dated November 23, 2022 of the Court's First Division in CTA Case Nos. 9403 and 9492 had lapsed to finality and is already beyond our power to review.

SO ORDERED.

Petitioner argues that the Court erred in affirming the Court in Division's denial of his *Motion for Reconsideration* and *Motion for Leave to File and Admit Attached Amended Motion for Reconsideration.* Petitioner avers that the technical rules of procedure are liberally construed to promote substantial justice. Petitioner asserts that he was able to file a *Motion for Leave to File and Admit the Attached Amended Motion for Reconsideration*, under Sections 2 and 3, Rule 10 of the Rules of Court, upon realizing that the *Motion for Reconsideration* filed with the Court in Division inadvertently referred to the Separate Concurring Opinion.

Petitioner submits that the assessment is valid because the issuance of a Letter of Authority (LOA) is not mandatory when the audit is conducted by the Office of the Commissioner (OCIR), citing Section 13 of the National Internal Revenue Code (NIRC) of 1997, as amended. Even assuming that an LOA is required, the reassignment to another revenue officer (RO) by virtue of a Memorandum of Assignment sufficiently vests authority to such RO to conduct an audit investigation.

Petitioner insists that respondent is liable to pay the assessed deficiency taxes for the fiscal year ending March 31, 2011, because respondent failed to provide sufficient evidence and explanation to overturn the audit finding that it issued sales invoices not declared in its income tax return. Thus, respondent was assessed the corresponding deficiency income tax, which must be judicially affirmed given respondent's failure to present proof of error in the assessment.

On the other hand, respondent counters that petitioner's allegations merely rehash the same arguments previously presented in his *Petition for Review* before this Court, all of which have been evaluated and rejected in the assailed *Decision.* As such, the assailed *Decision* must be considered final and executory.

The Court finds no merit in petitioner's *Motion for Reconsideration.*

Petitioner's contention that he was able to file a *Motion for Leave to File and Admit Attached Amended Motion for Reconsideration* to rectify the *Motion for Reconsideration* filed with the Court in Division under Sections 2[1] and 3,[2] Rule 10 of the Revised Rules of Court is unpersuasive. It is clear from Section 3 of the Revised Rules of Court that substantial amendments by leave of court "shall be refused if it appears to the Court that the motion was made with intent to delay."

Here, petitioner filed his *Motion for Leave to File and Admit Attached Amended Motion for Reconsideration* with the Court in Division only on February 23, 2023, or more than two (2) months after he posted the *Motion for Reconsideration* on December 19, 2022, to which respondent already filed a *Comment (to Respondent's Motion for Reconsideration).* As discussed in the assailed *Decision,* the Court in Division's Decision dated November 23, 2022, which petitioner received on December 2, 2022, had already become final and executory when petitioner filed a *Motion for Leave to File and Admit the Attached Amended Motion for Reconsideration.*

Even so, the Court proceeded to discuss the merits of the case, but the assessment failed to withstand judicial scrutiny. As declared in the assailed *Decision*, the conduct of an audit by an RO without a LOA violates a taxpayer's right to due process. To go against this dictum would contradict the prevailing jurisprudence,[3] which this Court is not keen to do. Lastly, petitioner failed to point out any error in law or, in fact, in the Court's appreciation of the evidence presented by respondent.

In fine, there is no justifiable reason to disturb the findings in the assailed *Decision.*

WHEREFORE, petitioner's *Motion for Reconsideration [re: Decision dated 18 June 2024]* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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1 SEC. 2. *Amendments as a matter of right.* — A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) calendar days after it is served.

2 SEC. 3. *Amendments by leave of court.* — Except as provided in the next preceding Section, substantial amendments may be made only upon leave of court. But such leave shall be refused if it appears to the court that the motion was made with intent to delay or confer jurisdiction on the court, or the pleading stated no cause of action from the beginning which could be amended. Orders of the court upon the matters provided in this Section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.

3 *People v. Gernale*, G.R. No. 256868, October 4, 2023; *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*, G.R. No. 255473, February 13, 2023; *Republic v. Robiegie Corp.*, G.R. No. 260261, October 3, 2022; *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021; *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

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WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice