REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1515 (CTA Case No. 8724)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
LINDE PHILIPPINES, INC. (formerly CONSOLIDATED INDUSTRIAL GASES, INC.), Respondent.	Promulgated: AUG 15 2018 8:34 a.m.

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RESOLUTION

Fabon-Victorino, J.:

In his *Motion for Reconsideration* dated March 28, 2018, petitioner impugns the Decision dated March 7, 2018, disposing the case as follows:

> **WHEREFORE**, the Petition for Review dated September 23, 2016, filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit. The assailed Decision and Resolution dated May 4, 2016 and August 25, 2016 respectively, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.[1]

Petitioner posits that the Court in Division is without jurisdiction to entertain respondent's Amended Petition for Review. He claims the doctrine of prior exhaustion of administrative remedies requires the filing of administrative claim for refund before a taxpayer may seek judicial intervention before this Court, lest the appeal shall be dismissed on the ground of prematurity. Thus, respondent's filing of the original Petition for Review on November 4, 2013 before instituting its administrative claim for refund on February 5, 2015, is a clear violation of the rules and established principle, warranting an outright dismissal of its appeal.

Petitioner as well faults respondent in radically converting its previous cause of action to invalidate the subject assessment to a claim for refund. He opines that an amendment in the pleading must be ignored if such modification will lead to a substantial alteration of the party's cause of action, as obtaining in the present case, relying on Section 3, Rule 10, as well as jurisprudence[2] as his authority. Further, he was deprived of due process since respondent's claim for refund is a non-issue in the original petition for review. These, according to petitioner, are indications that the Court egregiously erred in allowing the amendment of respondent's original Petition for Review.

Also contrary to the Court's finding, respondent's right to due process in the issuance of assessment under Section 228 of the NIRC, as amended, as implemented by Revenue Regulation (RR) No. 12-99, was not violated. He claims that the following demonstrate that respondent was allowed opportunity to defend its cause, namely: (1) its letter-response, assailing the findings in the Letter-Notice (LN); and (2) respondent's receipt of Notice of Informal Conference (NIC) on November 19, 2012. Neither does the absence of period to reply to the PAN equate to transgression of respondent's right to due process as long as the PAN and FAN/FLD had been served and that respondent was able refute the findings thereon, as occurred in this case. Being a valid assessment, respondent must be held

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[1] *Rollo,* p.198.
[2] *Ng vs. Spouses Marcelo,* G.R. No. 149132, May 9, 2002.

liable to pay deficiency income tax and VAT due thereon with increments for CY 2009 as stated in his FAN/FLD.

For its part, respondent argues that it exhausted all available administrative remedies for refund before seeking judicial review before this Court. Allegedly, its administrative claim for tax refund of the amount paid under protest was filed on January 21, 2015, followed by institution of its judicial claim for refund on February 5, 2015, via its Amended Petition for Review. And even granting that its case falls under the doctrine invoked, the fact remains that petitioner violated its right to due process.

Respondent also holds that the amendment of its original Petition for Review to reflect supervening events, i.e., its payment under protest and its additional prayer for refund did not violate procedural rules and related jurisprudence. It explains that no substantial modification of cause of action took place since both the original and Amended Petition for Review proceed from the same facts, issues and parties. Also, the defenses it invoked on both Petitions are essentially alike. To allow separate filing of cases for refund and assessment considerably arising from the same facts and issues will open the floodgates to multiple suits to the prejudice of all the parties concerned.

Respondent likewise points out that premature issuance of the FAN/FLD six (6) days prior to its receipt of the PAN infringed its right to due process under Section 228 of the NIRC, as amended, as implemented by then RR No. 12-99 as it indicated petitioner's intention to wantonly disregard any evidence, documentary or otherwise that it might adduce to refute his preliminary findings in the PAN. The hasty issuance of the FAN/FLD blotting out any opportunity to rule on issues raised in the PAN leads to but one conclusion, namely, petitioner's assessment is a patent nullity and without any legal consequence.

Finally, respondent underscores its strict adherence to all the requirements for refund of erroneously/illegally collected taxes mandated under Sections 204 and 229 of the NIRC, as amended, justifying its entitlement to the refund sought, specifically: 1) timely institution of its administrative and judicial claims for refund on January 21, 2015 and February 5, 2015 respectively; 2) payment of the taxes subject of the refund under protest; and 3) that the subject refund relates to taxes it paid under a void assessment.

THE RULING OF THE COURT

The instant Motion has no leg to stand on, hence, should be denied.

A judicious reading of Petitioner's Motion for Reconsideration reveals that petitioner merely reiterated its previous arguments, all of which have been considered and passed upon, first by the Court in Division and subsequently on appeal by the Court *En Banc*. There are no new or substantial arguments raised by petitioner as to warrant a deviation, much more, a reversal from the Court's ruling in the impugned Decision of March 7, 2018.

In any event, even assuming that petitioner observed the requirements of due process in the issuance of the subject assessment as enshrined in Section 228 of the NIRC, as amended, and as implemented by RR No. 12-99, the fact that the assessment was issued without the required valid Letter of Authority (LOA) cannot be ignored.

Sections 6(A)[3] and 13[4] of the NIRC, as amended are unequivocal and require only application. They provided, *inter alia,* that a valid LOA originating from the CIR or the Revenue Regional Director is a condition *sine qua non* for a

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[3] SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.

(A)Examination of Returns and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>: *Provided*, *however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. (underscoring supplied)

[4] SEC. 13. Authority of a Revenue Officer. Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, <u>a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, examine taxpayers within the jurisdiction of the district 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 supplied)

RO to legally conduct a verification/audit of a taxpayer for potential deficiency taxes. Conversely, the absence of such authority renders the assessment or examination void.[5]

We underscore the fact that in petitioner's PAN,[6] FAN/FLD,[7] as well as the accompanying audit result/assessment notices,[8] the BIR's competence to examine or audit respondent for possible tax liabilities was derived merely from Letter-Notice (LN) No. 116-TRS-09-00-00036. The record is bereft of any showing that a valid LOA was issued authorizing a particular Revenue Officer or Officers to conduct an examination of respondent's book of accounts and other accounting records. Simply put, the examination/verification conducted by the BIR veered towards the issuance of the subject assessment had no prior legal permission emanating from respondent or his duly authorized representative. Being a product of an illegal examination/audit, respondent's assessment predicated thereon is undoubtedly a complete nullity and without any legal consequence, effectively warranting its cancellation and withdrawal.

In conclusion, the *raison d' etre* in requiring a valid LOA as a precondition to an assessment's efficacy was eloquently explained in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue.*[9] The elucidation merits iteration as a proper closing:

> xxx to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR' s revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

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[5] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[6] Exhibit R-8, BIR Record, pp. 201-202.
[7] Exhibit R-11, BIR Record, pp. 223-224.
[8] Exhibits R-12 and R-13, BIR Record, pp. 217-220.
[9] G.R. No. 222743, April 5, 2017.

WHEREFORE, petitioner's *Motion for Reconsideration (Re: Decision promulgated on 07 March 2018)* dated March 28, 2018 is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice