REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2365 (CTA Case No. 9673)**
-versus-	**Present:** **Del Rosario,** *P.J.,* **Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo,** *and* **Cui-David,** *JJ*
GLOBAL ENERGY SUPPLY CORPORATION, Respondent.	**Promulgated:** FEB 28 2022 2:20pm

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) to seek nullification of the Decision[1] dated June 11, 2020 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, the present *Petition for Review* is **GRANTED**. Accordingly, the subject assessments for deficiency income tax, VAT, EWT, WTC, and DST for taxable year ending December 31, 2013, in the aggregate amount of P31,299,622.04, and compromise penalty in the amount of P30,000.00, issued by respondent against petitioner, for taxable year 2013 are **CANCELLED** and **SET ASIDE**, for being invalid.

[1] Rollo, CTA EB Case No. 2365, pp. 18-37.

SO ORDERED."

and the Resolution[2] dated September 28, 2020 (assailed Resolution) of the same Second Division of the Court (Court in Division) denying the CIR's Motion for Reconsideration, the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner CIR is the duly appointed Commissioner of Internal Revenue tasked to implement the National Internal Revenue Code (NIRC) of 1997, as amended, who is being represented in this case by the legal officers of the Legal Division, Revenue Region No. 8- Makati City, with office address at the 2nd Floor, Legal Division, BIR Building, No. 313 Gil Puyat Ave., Makati City.[3]

Respondent Global Energy Supply corporation is a corporation duly organized and existing under the laws of the Philippines which holds office at the 22/F GT Tower International, 6813 Ayala Ave. cor. H.V. Dela Costa St., Makati City, Metro Manila. It is a registered taxpayer under the jurisdiction of Revenue District Office (RDO) No. 50, Revenue Region No. 8- Makati City.[4]

THE FACTS

The facts of the case as found by the Court are as follows:

On July 1, 2014, petitioner issued Letter of Authority (LOA)[5] SN eLA201100051565/LOA-050-2014-00000132 authorizing Revenue Officer (RO) Joey Fragante and Group Supervisor (GS) Roderick Cantillana of Revenue District Office (RDO) No. 50. – South Makati to examine the books of accounts of petitioner for taxable year 2013 pursuant to Section 6(A) and Section 10(C) of the NIRC of 1997, as amended.

On April 19, 2016, BIR Revenue District Officer Rosita U. Meniano issued a Memorandum of Assignment (MOA)[6] to Revenue District Officer Ma.

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[2] Rollo, pp. 39-47.
[3] Decision, p. 3.
[4] Ibid. p. 3.
[5] Exhibit "P-2," Docket, p. 1115.
[6] Exhibit "P-5", Docket, p. 1118.

Carmen V. Sy and Group Supervisor Josalyn E. Tan referring to them the subject case/docket for continuation of the audit/investigation to replace the previously assigned Revenue Officer, RO Joey Fragante, who transferred to another District Office and for further appropriate action.

On June 17, 2016, another Memorandum of Assignment[7] was issued by BIR Revenue District Officer Meniano to RO Angeline S. Ifurung and GS Carmen V. Sy referring the subject case/docket for continuation of the audit/investigation to replace the previously assigned Revenue Officer, RO Sy, who was promoted as supervisor per RTAO #113-2016.

On December 8, 2016, petitioner issued a Preliminary Assessment Notice (PAN)[8] finding petitioner liable for deficiency income tax, Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WTC), and Documentary Stamp Tax (DST) in the aggregate amount of P30,916,765.04 and for compromise penalty of P30,000.00 for taxable year ended December 31, 2013.

On December 12, 2016, respondent received the PAN. Thereafter, it filed its protest to the PAN on December 27, 2016 through a letter dated December 23, 2016.[9]

On December 28, 2016, petitioner issued the assessment notices including the Formal Assessment Notice (FAN) for taxable year 2013 in the aggregate amount of P31,299,622.04.[10]

On February 1, 2017, respondent filed its protest to the FAN and submitted all the supporting documents to prove its defenses against the assessments.[11]

On August 29, 2017, respondent filed a Petition for Review before the Court in Division, docketed as CTA Case No. 9873, entitled "*Global Energy Supply Corporation vs. Commissioner of Internal Revenue.*"[12]

On October 24, 2017, petitioner filed his Answer[13] to the Petition for Review.

[7] Exhibit "R-3".
[8] Exhibit "P-7".
[9] Exhibit "P-8".
[10] Exhibits "P-10", "P-10-1", "P-10-2", "P-10-3", "P-10-4", "P-10-5", "P-10-6", "P-10-7', "P-10-8".
[11] Exhibit "P-11".
[12] Docket, pp. 10-27.
[13] Ibid., pp. 92-99.

On December 7, 2017, the parties submitted their Joint Stipulations of Facts and Issues (JSFI) before the Court in Division.[14]

As agreed upon by the parties, the issue as stated in the Joint Stipulations of Facts and Issues presented before the Court in Division is: ***Whether or not Petitioner is liable for deficiency income tax, VAT, EWT, withholding tax on compensation, and DST in the aggregate amount of P31,299,622.04, and the Compromise Penalty in the amount of P30,000.00 for taxable year 2013.***

On January 4, 2018, the Court in Division issued the Pre-Trial Order.[15]

Trial thereafter ensued wherein both parties presented their respective evidence.

Respondent submitted its Memorandum[16] on April 24, 2019, while petitioner filed his Memorandum[17] on April 25, 2019.

In the Resolution[18] dated May 10, 2019, the Court in Division deemed the case submitted for decision.

On June 11, 2020, the Court in Division rendered the assailed Decision.[19]

On July 6, 2020, the CIR filed a "Motion for Reconsideration."[20]

On September 28, 2020, the Court in Division issued the questioned Resolution.[21]

Aggrieved, the CIR filed before the Court *En Banc* this Petition for Review on October 20, 2020.[22]

In the Resolution[23] dated November 20, 2020, respondent was directed by the Court *En Banc* to file its comment in this case.

[14] Ibid., pp. 746-754.
[15] Ibid., pp. 756-761.
[16] Ibid., pp. 1470-1515.
[17] Ibid., pp. 1518-1528.
[18] Ibid., p. 1529.
[19] Ibid., pp. 1531-1550.
[20] Ibid., pp. 1551-1559.
[21] Ibid., pp. 1575-1582.
[22] Rollo, pp. 1-12.
[23] Ibid., pp. 60-61.

On December 7, 2020, respondent filed its "Comment/Opposition (to: Petition for Review)."[24]

In the Resolution[25] dated January 5, 2021, the Court noted respondent's "Comment/Opposition (to: Petition for Review)" and ordered the parties to personally appear before Mediation Staff Assistant of Philippine Mediation center- Court of Tax Appeals (PMC-CTA) on February 9, 2021 at 1:30 p.m., with or without the presence of their counsels for purposes of deciding whether or not they would agree to enter into mediation.

On February 11, 2021, the Court *En Banc* received PMC-CTA Form 6- No Agreement to Mediate[26] stating that the parties decided not to have their case mediated by the Philippine Mediation Center Unit- CTA.

On March 1, 2021, the Court *En Banc* issued a Resolution[27] noting PMC-CTA Form No. 6- No Agreement to Mediate. Accordingly, the instant case was deemed submitted for decision.

THE ISSUE

The main issue in this case is ***Whether or not the Court in Division erred in granting the Petition for Review filed by Global Energy Supply Corporation, which cancelled the deficiency assessment against the latter for income tax, VAT, EWT, WTC and DST for taxable year ending December 31, 2013, and compromise penalty, issued by petitioner for taxable year 2013.***

THE ARGUMENTS

Petitioner CIR contends that RO Angeline S. Ifurung had the authority to investigate respondent's books of accounts and other accounting records. RO Ifurung's authority emanated from a validly issued LOA; that the MOA was issued pursuant to paragraph 7.1 of Revenue Memorandum Order (RMO) No. 62-2010 following the replacement of the previously assigned lead officer, who was transferred to another revenue district per RTAO No. 4-2016; that respondent is estopped from questioning the authority of RO Ifurung to conduct the examination since in the course of the investigation, respondent actively participated in all stages of the audit and did not question the authority of the said RO; that administrative authorities should be allowed prior opportunity to decide controversies within its competence; and that the

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[24] Ibid., pp. 62-73.
[25] Ibid., pp. 81-82.
[26] Ibid., p. 83.
[27] Ibid., pp. 85-86.

Medicard case is inapplicable in this case because in the said case, the CIR issued a Letter Notice (LN) against Medicard instead of an LOA, thus, said case refers to LN replacing the LOA.

On the other hand, respondent counter-argues that Court in Division correctly ruled that RO Ifurung had no authority to investigate respondent's books of accounts and other accounting records; that an RO may only examine a taxpayer's books pursuant to an LOA issued by a Revenue Regional Director and that any memorandum issued by a Revenue District Officer directing another RO to continue with the examination of taxpayer's records is not equivalent to an LOA nor does it cure the RO's lack of authority; that respondent's participation in the conduct of the audit investigation does not prevent the Court from nevertheless ruling that RO Ifurung lacked authority to investigate respondent's books; that the Court has authority to rule on issues not raised or invoked in the administrative proceeding; that petitioner's argument that *Medicard case* is not applicable in this case has no merit. Respondent further argues that the Petition for Review failed to raise any new, cogent, or substantial ground to warrant a reversal or modification of the assailed Resolution.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

On June 19, 2020, petitioner received the Decision of the Court in Division. On July 6, 2020, petitioner filed a Motion for Reconsideration of the said Decision. On September 28, 2020, the Court in Division issued the assailed Resolution denying petitioner's motion. Said Resolution was received by petitioner on October 5, 2020.

From receipt of the said Resolution on October 5, 2020, petitioner has until October 20, 2020 within which to file the Petition for Review. On October 20, 2020, petitioner filed the instant Petition for Review. Hence, this Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

A judicious review of the arguments raised by the parties in the Petition for Review and the Comment/Opposition (to: Petition for Review) shows that they merely rehashed the very same arguments in their previous pleadings all of which have been passed upon by the Court in Division in the assailed Decision of June 11, 2020 and, similarly, in the assailed Resolution of September 28,

2020. Hence, the Court *En Banc* sees no compelling reason to reverse the ruling of the Court in Division.

Nonetheless, the Court *En Banc* shall pass upon petitioner's arguments and will elucidate the conclusions of the Court in Division.

The Revenue Officers have no authority to conduct the audit examination.

This case involves two (2) MOAs. The first MOA was issued on April 19, 2016,[28] authorizing RO Ma. Carmen V. Sy and GS Josalyn E. Tan. The second MOA was issued on June 17, 2016,[29] authorizing RO Ifurung and GS Sy.

Petitioner CIR insists that RO Ifurung has authority to conduct the audit examination of respondent's accounts. The MOA subsequently issued derived its authority from the original LOA initially issued. The source of the RO's authority to investigate is not the Memorandum or any other document, but the validly issued LOA. Thus, the MOA directing RO Ifurung and GS Sy to continue the audit examination of respondent for taxable year 2013 is proper.

Although the Court *En Banc* agrees with petitioner in his theory that the ROs have authority to conduct the audit based on the MOA, however, the Court *En Banc* disagrees with petitioner as regards its averments that the MOA issued in this case is a valid source of authority of RO Ifurung to conduct the audit.

The power of the CIR to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

> "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, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[30]

[28] Exhibit "P-5."
[29] Exhibit "R-3."
[30] *Emphasis and underscoring supplied.*

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz.:*

> "SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
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> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a Regional Evaluation Board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
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> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

"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:

xxx

(c) **<u>Issue Letters of Authority for the examination of taxpayers</u> within the region;**

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[31]

RO Ifurung and GS Sy who conducted the examination of respondent's records may be deemed authorized to do so without need for a new LOA, if said letter or notice or memorandum was signed by persons duly authorized.

Under RMO No. 29-07[32], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

"II. AUDIT POLICIES AND GUIDELINES

1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.

2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants</u>.**"[33]

In the instant case, the MOA[34] was signed by Rosita U. Meniano, Revenue District Officer (RDO) of BIR Revenue District Office No. 50. RDO

[31] *Emphasis and underscoring supplied.*
[32] Issued September 26, 2007.
[33] *Emphasis and underscoring supplied.*
[34] Exhibit "R-7," BIR Records, p. 252.

Meniano has no power to authorize the examination of taxpayer's accounts. Accordingly, RO Ifurung and GS Sy were without authority to continue the audit. Thus, the subject deficiency tax assessments are void, they bear no valid fruit.[35]

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[36]

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and assailed Resolution.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED for lack of merit**. Accordingly, the assailed Decision dated June 11, 2020 and assailed Resolution dated September 28, 2020 are hereby **AFFIRMED**.

Consequently, the petitioner CIR is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from respondent corporation.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[35] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

[36] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice