REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

UNITED COCONUT PLANTERS BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1790
(CTA CASE NO. 8963)

x -- x

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

-versus-

UNITED COCONUT PLANTERS BANK,
Respondent.

CTA EB NO. 1792
(CTA CASE NO. 8963)

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

Promulgated:
FEB 19 2021 11:40am

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.

For the Court's resolution is the Commissioner of Internal Revenue's ("CIR") **Motion for Reconsideration [Amended Decision dated July 14, 2020]**[1] ("Motion for Reconsideration") filed through registered mail on 20 August 2020, with United Coconut Planter's Bank's ("UCPB") **Comment**

[1] *See* Records CTA EB No. 1790, pp. 443-462.

(Re: Motion for Reconsideration dated 14 August 2020)[2] ("Comment") filed through registered mail on 27 October 2020.

The CIR seeks reconsideration of the Court *En Banc's* Amended Decision promulgated on 14 July 2020 ("Amended Decision"),[3] the dispositive part of which reads:

> "**WHEREFORE**, the Motion for Reconsideration dated September 23, 2019 filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit.
>
> On the other hand, the Motion for Reconsideration dated September 30, 2019 filed by United Coconut Planters Bank is **GRANTED**. The assailed Decision dated September 3, 2019 is **REVERSED** and **SET ASIDE**. Accordingly, the Final Assessment Notice (FAN) dated March 4, 2013 and the Final Decision on Disputed Assessment (FDDA) dated December 1, 2014 are **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"

In its Motion for Reconsideration, the CIR claims that:[4]

(1) Petitioner's basic right to fair play and due process was violated when the Honorable Court *En Banc* ruled on a matter not raised as an issue by respondent in the original Petition for Review or Pre-Trial Brief, not joined by the parties, nor defined by the Court in Division in the Pre-Trial Order;

(2) Assuming the court may suddenly decide the case based on an issue that was never raised by respondent, was never joined by the pleadings, never raised at the pre-trial conference, never defined by the court in the pre-trial order and never tried by the parties- still the assessments are valid as the audit investigation was authorized by the CIR; and

(3) There was no violation of respondent's right to due process, hence, there is no ground to invalidate the subject assessments.

In refutation, UCPB argues in its Comment that:[5]

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[2] *See* Records CTA EB No. 1790, pp. 466-483.

[3] *See* Amended Decision dated 14 July 2020, Records CTA EB No. 1790, pp. 432-442.

[4] *See* Motion for Reconsideration [Amended Decision dated July 14, 2020], Records CTA EB No. 1790, pp. 445-457.

[5] *See* Comment (Re: Motion for Reconsideration dated 14 August 2020), Records, CTA EB No. 1790, pp. 467-479.

(1) The assessment for deficiency taxes for taxable year 2006 is null and void ab initio due to the lack of authority of the revenue officer who conducted the audit;

(2) The Honorable Court has ample authority to rule on matters not assigned as errors in an appeal, if these are indispensable or necessary to the just resolution of the case; and

(3) Neither the Court nor the taxpayer can be barred from raising the nullity of an assessment for lack of authority of the examiner who conducted the audit.

The Court *En Banc* finds the CIR's contentions bereft of merit.

This Court has, time and again, ruled on related issues not raised by the parties and are necessary for the orderly disposition of the case pursuant to ***Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***.[6] ***Section 1, Rule 14 of the RRCTA*** pertinently provides:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. Rendition of judgment. – The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *En Banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *En Banc* or in Division agree on the draft decision, the ponente shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *En Banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the *rollo*.
>
> **In deciding the case, the Court <u>may not limit itself</u> to the issues stipulated by the parties but <u>may also rule upon related issues necessary to achieve an orderly disposition of the case</u>.**" (Emphasis, Ours)

In ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***,[7] the Supreme Court discussed the authority of this Court to rule on issues not raised by the parties in this wise:

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6 Metro Rail Transit Corporation v. Commissioner of Internal Revenue, CTA Case No. 9016, 4 December 2019; Makati Agro Trading, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9735, 10 June 2020; and Jinzai Experts, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9473, 18 February 2020.

7 G.R. No. 183408, 12 July 2017.

> "On **whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
>> SECTION 1. Rendition of judgment. — x x x
>> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA **even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.**"[8]

In the instant case, UCPB raised the alleged nullity of the assessment for lack of authority of the revenue officer conducting the audit investigation in its Motion for Reconsideration to the Decision dated 3 September 2019.[9] Such lack of authority of the examiner conducting the audit investigation is a related issue necessary in the orderly disposition of the case. As held in the Amended Decision, the absence of a Letter of Authority ("LOA") renders the assessment or investigation a patent nullity.[10]

The CIR also claims that it was denied procedural and substantive due process when it was neither heard nor given the opportunity to be heard on the particular issue on the invalidity of the assessment in relation to the authority of the revenue officers who conducted the audit examination.[11]

We disagree.

UCPB raised the issue of the alleged lack of authority of the revenue officer who conducted the audit investigation in its Motion for Reconsideration[12] to the Decision dated 3 September 2019. Thereafter, this Court granted the CIR fifteen (15) days from notice within which to file its comment/ opposition thereto.[13] The Records Verification Report reveals that

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8 Citation omitted; Emphasis supplied.

9 *See* Motion for Reconsideration (Re: Decision Promulgated on 03 September 2019), Records CTA EB No. 1790, pp. 363-370.

10 *See* Amended Decision dated 14 July 2020, Records CTA EB No. 1790, p. 439 *citing* Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010

11 *See* Motion for Reconsideration [Amended Decision dated July 14, 2020], Records CTA EB No. 1790, p. 457.

12 *See* Motion for Reconsideration (Re: Decision Promulgated on 03 September 2019), Records CTA EB No. 1790, pp. 363-370.

13 *See* Resolution dated 23 October 2019, Records CTA EB No. 1790, pp. 415-418.

the CIR did not file its comment/opposition to UCPB's Motion for Reconsideration[14] prompting this Court to resolve and issue the Amended Decision. Thus, contrary to the CIR's claim, it was sufficiently given an opportunity to address the issue of the alleged lack of authority of the revenue officer who conducted the audit investigation.

As found by this Court, the revenue officer who actually conducted the audit of UCPB's records and who recommended the issuance of the Formal Assessment Notice (FAN) with Details of Discrepancy dated 4 March 2013 against UCPB anchored her authority to conduct the investigation from Referral Nos. D-57-05-08 and D-LOA-55-07-09 both issued by OIC-Chief, LT Audit and Investigation I. [15]

The Court *En Banc* reiterates its ruling in the Amended Decision that the audit conducted by the revenue officer, and consequently the subject assessment, was illegal for lack of prior legal authority either from the CIR or his authorized representative.[16] The authorized representatives of the CIR are the Revenue Regional Director[17] and the Assistant Commissioner/ Head Revenue Executive Assistants.[18] Being the fruit of the illegal tax examination, the subject assessment is a patent nullity and without legal consequence, justifying its cancellation and withdrawal.[19]

WHEREFORE, premises considered, the Commissioner of Internal Revenue's **Motion for Reconsideration [Amended Decision dated July 14, 2020]** is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[14] *See* Resolution dated 28 January 2020, Records CTA EB No. 1790, pp. 428-431 citing Records Verification Report dated 16 January 2020.
[15] *See* Amended Decision dated 14 July 2020, Records CTA EB No. 1790, pp. 439-440.
[16] *See* Amended Decision dated 14 July 2020, Records CTA EB No. 1790, p. 440.
[17] *See* Section 10(c), National Internal Revenue Code of 1997, as amended.
[18] *See* Revenue Memorandum Order No. 29-07.
[19] *See* Amended Decision dated 14 July 2020, Records CTA EB No. 1790, p. 440.

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

ERLINDA P. UY
Associate Justice

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice