REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

BUILDERS STEEL CORPORATION
Petitioner,

CTA Case No. 9050

- versus -

Members:

FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

HON. KIM S. JACINTO-HENARES, in her capacity as Commissioner of Internal Revenue, ALFREDO V. MISAJON and NESTOR S. VALEROSO, in their capacity as OIC-Assistant Commissioner Large Taxpayer Service, Bureau of Internal Revenue,
Respondents.

Promulgated:

MAY 27 2019 10:06 a.m.

x- x

RESOLUTION

***Fabon-Victorino, J.*:**

On December 17, 2018, the Court promulgated a Decision the decretal portion of which reads:

> **WHEREFORE**, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Final Decision dated March 12, 2015 issued by respondent Commissioner of Internal Revenue, affirming the Final Decision on Disputed Assessment dated November 25, 2014, and the Assessment Notices attached thereto are hereby **CANCELLED AND SET ASIDE**.

SO ORDERED.

Unrelenting, respondents filed the instant *Motion for Reconsideration (Re: Decision dated 17 December 2018)*[1] on January 21, 2019, assailing the foregoing Decision on the following grounds:

I. THE HONORABLE COURT ERRED IN CONSIDERING AN ISSUE THAT WAS BELATEDLY RAISED BY PETITIONER. THE HONORABLE COURT'S POWER OF JUDICIAL REVIEW OVER DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE ON DISPUTED ASSESSMENT IS BY NATURE EXCLUSIVE AND APPELLATE.

II. WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN CONSIDERING AN ALLEGATION THAT WAS NOT PART OF THE PETITION NOR OF THE ISSUES FOR TRIAL AND WAS ONLY RAISED FOR THE FIRST TIME BY PETITIONER IN ITS MEMORANDUM. RESPONDENTS' BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED.

III. WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN CANCELLING THE DEFICIENCY TAX ASSESSMENT ISSUED AGAINST PETITIONER FOR THE ALLEGED LACK OF LETTER OF AUTHORITY (LOA). THE CONDUCT OF THE AUDIT WAS DULY AUTHORIZED PURSUANT TO LAW AND PERTINENT REGULATION.

In its *Comment and/or Opposition* filed on February 20, 2019, petitioner counters that the validity of the subject assessment was duly raised as an issue in the *Joint Stipulation of Facts and Issues* dated October 2, 2015 submitted by the parties to the Court. Per petitioner, the validity of the assessment is hinged on the issue of whether petitioner is liable for the alleged deficiency taxes. It added that the submission of the Letter of Authority (LOA) to prove the authority of the Revenue Officer (RO) to conduct the examination of petitioner's books of accounts and other accounting records is not a mere procedural technicality, but

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[1] Docket, pp. 969-984.

a statutory requirement that must be established to prove the validity of the assessment.

Petitioner further states that the Court has jurisdiction to resolve the issue of the authority of the RO to conduct tax examination even if it was not raised as an issue, citing the principle laid down in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[2]

Petitioner likewise contends that respondents were not denied due process as they actively participated in the entire proceeding, and that they were afforded sufficient opportunity to establish the existence and due issuance of a valid LOA. Petitioner posits that the record shows that respondent presented their witnesses and even submitted the entire BIR Record in support of their case. This notwithstanding, nothing therein shows the existence and due issuance of a valid LOA.

Lastly, petitioner contends that the Mission Order (MO) Nos. MSO 2001 00105952 and MSO 2001 00105962 cannot take the place of a LOA. According to petitioner, it is mandated that the authority must be embodied in a LOA, and not in the form of a Mission Order which scope is limited only to inventory taking.

Respondents' *motion* must fail.

A careful examination of the instant *Motion for Reconsideration* readily reveals that the issues and arguments submitted by respondents had already been sufficiently passed upon and adequately discussed in the assailed Decision dated December 17, 2018.

As emphasized in the assailed Decision dated December 17, 2018, the Court is **<u>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</u>**. In the instant case, the legal authority of the RO

[2] G.R. No. 183408, July 12, 2017.

to conduct a valid tax audit for the issuance of a valid assessment is a related issue for determination in achieving an orderly disposition of the case.

Thus, considering that the ROs who conducted the examination were not validly authorized to do so, the assessments for income tax and value-added tax deficiency issued against petitioner are void. And a void assessment bears no valid fruit.

WHEREFORE, respondents' *Motion for Reconsideration (Re: Decision dated 17 December 2018)* filed on January 21, 2019, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice