REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

JED MARKETING, CORP.,
Respondent.

CTA EB NO. 2377
(CTA Case No. 9687)

Present:
DEL ROSARIO, *P.J.,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
SEP 12 2022 11:20 am

x - x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated June 10, 2020 ("Assailed Decision") and Resolution[2] dated October 06, 2020 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), setting aside the Final Decision dated August 09, 2017 holding Respondent liable for income tax for taxable year 2007 in the total amount of Php22,640,164.15, inclusive of interest and surcharge, and cancelling the Formal Assessment Notice ("FAN") dated January 24, 2011 and Final Decision on Disputed Assessment ("FDDA") dated August 10, 2012.

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1 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Cielito N. Mindaro-Grulla and Jean Marie A. Bacorro-Villena concurring; Docket, pp. 685-718.

2 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Jean Marie A. Bacorro-Villena concurring; Docket, pp. 751-755.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code ("NIRC") of 1997, as amended, and other laws, rules and regulations. He may be served with summons, notices and other processes at the Legal Division, Bureau of Internal Revenue ("BIR"), Revenue Region No. 8, 2nd Floor, BIR Bldg., 313 Sen. Gil Puyat Avenue, Makati City.[3]

Respondent JED Marketing, Corp. is a corporation duly organized and existing under Philippine laws, with business address at Lot 91-A Bagsakan Road, FTI Complex, Taguig City. It is registered with the BIR with Taxpayer Identification Number (TIN) No. 000-777-176-006.[4]

The Facts

The facts as found by the Second Division are as follows:

> "On January 26, 2011, [Respondent] received the BIR's Formal Assessment Notice (FAN) dated January 24, 2011, with attached Details of Discrepancies, finding [Respondent] liable for deficiency income tax in the amount of [Php]18,924,990.20, inclusive of interest, for taxable year 2007. The BIR likewise assessed [Respondent] the amount of [Php]25,000.00 as compromise penalty.
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> [Respondent] then filed with the BIR its protest letter dated February 2, 2011, protesting the said FAN.
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> Subsequently, Regional Director Nestor S. Valeroso issued a Final Decision on Disputed Assessment (FDDA) dated August 10, 2012, with attached Details of Discrepancies, denying [Respondent's] protest, and informing [Respondent] that it is liable for deficiency income in the total amount of [Php]22,640,164.15, inclusive of interest and surcharge, for taxable year 2007. The said document was received by [Respondent] on August 29, 2012.
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> Consequently, on September 14, 2012, [Respondent] filed with the BIR its Legal Petition Notice — Protest for Review

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[3] *Id.*, Decision dated June 10, 2020, The Parties, p. 686.

[4] *Id.*, Decision dated June 10, 2020, The Parties, p. 685.

> dated September 12, 2012, appealing to [Petitioner] the said FDDA dated August 10, 2012.
>
> Thereafter, [Petitioner] issued the Final Decision dated August 9, 2017, affirming the demand for payment in the aggregate amount of [Php]22,640,164.15, as embodied in the FDDA dated August 10, 2012.[5]

The Proceedings in the Second Division

On September 13, 2017, Respondent filed a Petition for Review with the Second Division, praying for the cancellation of the assessment issued against it for its alleged deficiency income tax for taxable year ending 2007.[6]

On June 10, 2020, the Second Division promulgated the Assailed Decision, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the assailed Final Decision holding [Respondent] liable for income tax for taxable year 2007 in the total amount of [Php]22,640,164.15, inclusive of interest and surcharge, is **WITHDRAWN and SET ASIDE**. Moreover, the FAN dated January 24, 2011 and FDDA dated August 10, 2012 are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"[7]

Aggrieved, Petitioner filed a "Motion for Reconsideration"[8] *via* registered mail on July 01, 2020, which the Second Division denied in the Assailed Resolution, to wit:

> "**WHEREFORE**, in view of the foregoing, [Petitioner's] Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[9]

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5 *Id.*, Decision dated June 10, 2020, Antecedents (Administrative Level), pp. 686-687.
6 *Id.*, pp. 10-17.
7 *Id.*, Decision dated June 10, 2020, pp. 716-717.
8 *Id.*, pp. 719-725.
9 *Id.*, Resolution dated October 06, 2020, p. 755.

The Proceedings in the Court of Tax Appeals En Banc

On October 23, 2020, Petitioner filed a "Motion for Extension of Time to Petition for Review"[10], asking an extension of fifteen (15) days or until November 11, 2020 within which to file her petition.

On November 18, 2020, Petitioner filed a "Manifestation (With Motion to Admit the Attached Copies of 'Motion for Extension of Time to File Petition for Review')"[11], with attached six (6) additional copies of Petitioner's "Motion for Extension of Time to Petition for Review".

On November 20, 2020, a Minute Resolution[12] was issued:

1) Noting Petitioner's "Manifestation (With Motion to Admit the Attached Copies of 'Motion for Extension of Time to File Petition for Review')";

2) Admitting the attached six (6) copies of Petitioner's "Motion for Extension of Time to Petition for Review"; and

3) Granting Petitioner a final and non-extendible period of fifteen (15) days from October 27, 2020, or until November 11, 2020, within which to file her Petition for Review.

On November 10, 2020, Petitioner filed *via* registered mail the present "Petition for Review"[13].

On January 05, 2021, the Court issued a Resolution[14] ordering Petitioner to submit the original or certified true copy of Revenue Delegation Authority Order No. 2-2007 within five (5) days from notice.

On January 25, 2021, Petitioner filed a "Compliance"[15] *via* registered mail.

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[10] Rollo, pp. 26-4. Record shows that Petitioner received the October 06, 2020 Resolution on October 12, 2020; Docket, p. 750.
[11] *Id.*, pp. 7-10.
[12] *Id.*, p. 15.
[13] *Id.*, pp. 16-31.
[14] *Id.*, pp. 85-86.
[15] *Id.*, pp. 88-89.

On February 05, 2021, a Minute Resolution[16] was issued ordering Petitioner to submit additional six (6) copies of his "Compliance" within ten (10) days from notice.

On March 08, 2021, Petitioner filed another "Compliance"[17] *via* registered mail.

On March 22, 2021, a Minute Resolution[18] was issued noting Petitioner's "Compliance".

On July 29, 2021, the Court issued a Resolution[19] ordering Respondent to comment on the "Petition for Review" within ten (10) days from notice.

On September 27, 2021, Respondent filed *via* registered mail its "Comment/Opposition"[20].

On November 11, 2021, the Court issued a Resolution[21] noting Respondent's "Comment/Opposition" and referring the case to mediation with the Philippine Mediation Center – Court of Tax Appeals ("PMC-CTA").

Noting the PMC-CTA's Form No. 6 - No Agreement to Mediate stating that the parties refused mediation, the Court issued a Resolution[22] on February 02, 2022, submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of the petition:

1) the subject deficiency tax assessments are valid because the examining revenue officers were duly authorized to conduct the audit of the Respondent's books of accounts and other accounting records; and

2) Respondent's right to due process was not violated.[23]

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[16] *Id.*, p. 94.
[17] *Id.*, pp. 95-97.
[18] *Id.*, p. 98.
[19] *Id.*, pp. 100-101.
[20] *Id.*, pp. 102-107.
[21] *Id.*, pp. 113-114.
[22] *Id.*, pp. 117-118.
[23] *Id.*, "Petition for Review" dated November 09, 2020, Arguments/Discussion, pp. 19-26.

The Arguments of Parties

Petitioner posits that the ruling in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[24] should not apply for Letter of Authority ("LOA") No. 0002810 dated July 17, 2008 was issued in the instant case authorizing Revenue Officer ("RO") Shella C. Samaniego to examine and investigate Respondent's books of accounts. Thereafter, on account of the transfer and re-assignment of RO Samaniego, the investigation was re-assigned to RO Margiely Belgera by virtue of a Revalidation/Reassignment Notice dated June 04, 2009.

According to Petitioner, Revenue Memorandum Order ("RMO") No. 08-2006[25] states that only one LOA should be issued to the same taxpayer, for the same tax type and period and that RMO No. 69-2010[26] allows the issuance of a Memorandum of Assignment (MOA) for the continuation of audit or investigation of a case to another RO due to resignation or retirement or transfer of the original RO.

Petitioner also points out that Group Supervisor ("GS") Melba N. Gador, who conducted the audit, was authorized pursuant to the same LOA No. 0002810 and Revalidation/Reassignment Notice dated June 04, 2009.

Lastly, Petitioner avers that Respondent was duly afforded an opportunity to controvert the initial findings of Petitioner on its deficiency taxes for taxable year 2007. A perusal of the BIR Records would show that Respondent made at least other eleven (11) legal protests, notices, transmittals and manifestation. Accordingly, Respondent was duly apprised of the factual and legal bases of the assessment.

On the other hand, Respondent in its Comment/Opposition maintains that the grounds raised in the "Petition for Review" are the exact same grounds raised in Petitioner's "Motion for Reconsideration" filed with the court *a quo*.

Likewise, Respondent asserts that the presumption of regularity of the assessments in this case is overturned by the evidence of the fact that the assessments are null and void on the basis of the lack of an LOA and the violation of due process.

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24 G.R. No. 222743, April 05, 2017.

25 Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), February 01, 2006.

26 Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment, August 11, 2010.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration", on October 06, 2020. Petitioner received said Resolution on October 12, 2020.[27] Pursuant to Rule 4, Section 2(a)(1)[28] in relation to Rule 8, Section 3(b)[29] of the Revised Rules of the Court of Tax Appeals[30] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until October 27, 2020 within which to file her petition for review.

On October 23, 2020, Petitioner filed a "Motion for Extension of Time to Petition for Review", asking until November 11, 2020 within which to file her petition, which this Court granted in a Minute Resolution dated November 20, 2020.

On November 10, 2020, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction over the case.

We now proceed to the merits of the case.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. These arguments were already passed upon, addressed and resolved in the Assailed Decision. Nevertheless, we will discuss, once again, the demerits of Petitioner's arguments which may serve as a guidepost in deciding issues of similar nature in the future.

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27 Docket, p. 750.

28 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> xxx xxx xxx
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

29 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

30 A.M. No. 05-11-07-CTA, November 22, 2005.

The assessment issued by Petitioner against Respondent is void in the absence of the authority of the Revenue Officer who conducted the audit

Section 6(A) of the NIRC of 1997, as amended, lays down the power of Respondent or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, to wit:

> "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." [31]

Based on the foregoing provision, an authority emanating from Respondent or her duly authorized representative is required **before an examination and an assessment may be made against a taxpayer**.

Relative thereto, Section 13 of the NIRC of 1997, as amended, provides that the authority of a RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, as follows:

> "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, a **Revenue Officer assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority</u> issued by the Revenue Regional Director, 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

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[31] *Emphasis and underscoring supplied.*

> the same manner that the said acts could have been performed by the Revenue Regional Director himself."[32]

Thus, a grant of authority through an LOA must be made, assigning a RO to perform tax assessment functions, in order that such officer may examine a taxpayer and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[33] ("*Medicard v. CIR*"), the Supreme Court emphasized the importance of obtaining prior authority, through an LOA, before conducting assessment functions. Otherwise, the resulting assessment would be rendered void, *viz.*:

> "Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, <u>through an LOA</u>**, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.
>
> xxx xxx xxx
>
> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:
>
>> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**"[34]

Petitioner however argues that the RO and GS who conducted the audit of Respondent's books of accounts were authorized under LOA No. 0002810 and Revalidation/Reassignment Notice dated June 04, 2009.

[32] *Emphasis and underscoring supplied.*
[33] G.R. No. 222743, April 05, 2017.
[34] *Emphasis and underscoring supplied.*

As duly found by the Second Division and verified by the court *En Banc*, no documentary evidence was presented to support the authority of RO Belgera and GS Gador to examine Respondent's accounting records.

Section 34, Rule 132 of the Revised Rules on Evidence is clear that evidence must be formally offered for it to be considered by the courts; otherwise, it is excluded and rejected, to wit:

> "**SEC. 34.** *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Simply put, the rule is that a document is not evidence when it is not formally offered and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it.[35]

This rule however admits of an exception. In *Federico Sabay v. People of the Philippines*[36], the Supreme Court enumerated the requirements so that evidence, not previously offered, can be admitted: first, the evidence must have been duly identified by testimony duly recorded and, second, the evidence must have been incorporated in the records of the case.

In the case at bar, both the general rule and the exception does not apply. No LOA can be found in the BIR Records. As for the Revalidation/Reassignment Notice, although the same had been incorporated in the BIR Records, Petitioner's witness did not identify them by testimony duly recorded. Indeed, Petitioner opted not to present any witness at all.[37] Also, the Revalidation/Reassignment Notice was not marked considering that it was neither included in Respondent's Pre-Trial Brief[38] nor in the Pre-Trial Order[39]. More importantly, the same was not offered as an exhibit by Respondent[40] and admitted by the court as evidence[41]. Even the BIR Records itself was not formally offered and introduced as evidence. Hence, the Revalidation/Reassignment Notice is inadmissible and cannot be considered by this Court *En Banc* in ruling the instant petition.

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35 *See* Heirs of Serapio Mabborang, Et. Al. v. Hermogenes Mabborang and Benjamin Mabborang, G.R. No. 182805, April 22, 2015.
36 G.R. No. 192150, October 01, 2014.
37 Docket, Notice of Hearing dated July 23, 2018, p. 412.
38 *Id.*, Respondent's Pre-Trial Brief, pp. 238-255.
39 *Id.*, Pre-Trial Order, pp. 266-272.
40 *Id.*, Formal Offer of Evidence with Motion to Correct Sub-Markings and Description of Exhibits, pp. 414-421.
41 *Id.*, Resolution dated August 22, 2018, pp. 592-594.

Considering that the examination and assessment were issued without requisite authority, the FAN and FDDA issued against Respondent are null and void.

In view of the foregoing disquisition, a discussion on the remaining issues is deemed unwarranted.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* through registered mail on November 10, 2020 is **DENIED** for lack of merit. Accordingly, the June 10, 2020 Decision and October 06, 2020 Resolution in CTA Case No. 9687 are **AFFIRMED**.

Consequently, Petitioner is **ENJOINED** and **PROHIBITED** from collecting against Respondent the amount representing the assessed deficiency income tax which was set aside and cancelled by this Court.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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 Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice