REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2702** (CTA Case No. 9522)
- versus -	*Present:* **DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES, *JJ.***
DIAGEO PHILIPPINES, INC., Respondent.	Promulgated: NOV 19 2024 4:20

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RESOLUTION

FERRER-FLORES, J.:

For resolution is the **Motion for Reconsideration [re: Decision dated 25 April 2024]** (*Motion for Reconsideration*) filed by the **Commissioner of Internal Revenue (petitioner/CIR)** on May 21, 2024,[1] with respondent's **Comment (On Petitioner Commissioner of Internal Revenue's Motion for Reconsideration dated 20 May 2024)** (*Comment*) filed on July 8, 2024.[2]

The instant *Motion for Reconsideration* assails the Decision of this Court promulgated on April 25, 2024 (assailed Decision), the dispositive portion of which reads:

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1 *Rollo*, pp. 137 to 144.

2 *Id.* at 147 to 155

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review filed on October 27, 2022 by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The Decision, dated November 4, 2021, and the Resolution, dated September 16, 2022 of the Court in Division in CTA Case No. 9522 are **AFFIRMED**.
>
> **SO ORDERED.**

In the assailed Decision, the Court held that a Letter of Authority (LOA) is required in order for Revenue Officer (RO) Claress Marie S. Notario and Group Supervisor (GS) Emmanuel G. Viardo to conduct an audit investigation of the books of accounts and other accounting records, and eventually assess respondent. The Court affirmed the Decision of the Court in Division, which extensively discussed the necessity of an LOA before the ROs who will conduct the audit investigation may proceed to do so.

Moreover, the Court held that there was no violation of the right to fair play and due process as the Court may rule on matters not raised as an issue by respondent in its Petition for Review or Pre-Trial Brief, not joined by the parties, nor defined by the Court in the Pre-Trial Order.

Finally, the Court ruled that the Formal Letter of Demand (FLD) did not provide legal and factual bases for the deficiency tax assessments contained therein.

In his *Motion for Reconsideration*, petitioner contends that the assessments issued against respondent are valid as an LOA is not required in the conduct of audit investigations by the Office of the Commissioner. He insists that the FLD indicated a due date for the payment of the taxes, which is 30 days from the receipt of respondent. Lastly, it avers that the FLD clearly provided the factual and legal bases for the assessment since respondent was able to intelligently file a protest.

Respondent, on the other hand, maintains that an LOA is required before any RO can conduct an examination, audit, and investigation of a taxpayer's books of accounts. According to respondent, unless the CIR himself or his duly authorized representative conducts the audit investigation on taxpayer's books of accounts, the officer must be equipped with an LOA to validly perform assessment function. Respondent likewise asserts that the assessment notice did not indicate a due date for payment; thus, the assessment notices are null and void. Echoing the numerous pronouncements of both the Supreme Court and the Court of Tax Appeals, a fixed and definite period or a specific date by which a taxpayer must pay the assessed deficiency taxes must be clearly stated in the assessment notice. Finally, the PAN and the FLD did not provide the legal and factual bases for the deficiency tax assessments.

The Court denies the instant *Motion for Reconsideration*.

A careful perusal of the instant *Motion for Reconsideration* shows that most of the arguments raised therein are a duplication of its arguments in its *Petition for Review*, which have been determined and passed upon by this Court in the assailed Decision.

Petitioner's contention that an LOA is not required for ROs under the Office of CIR is utterly baseless. Settled is the rule that, unless authorized by the CIR himself or by his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of an LOA, before any RO can conduct an examination or assessment.[3]

As regards the argument that the FLD clearly indicated a due date for the payment of the taxes, the Court finds it without merit. The Court in Division found that petitioner failed to attach the Assessment Notices to the FLD when it was served on respondent. Thus, there was no indicated due date when respondent received the FLD.

The Court likewise disagrees with petitioner's claim that the due date indicated thereon is immaterial and the date of the receipt of the FLD is the reckoning period of the due date of the FLD.

The Supreme Court, in the cases of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*,[4] ruled that the requirement to indicate a fixed and definite period or certain date within which a taxpayer must pay the assessed deficiency taxes is indispensable to the validity of an assessment as demand for payment of the assessed deficiency taxes must be within a specific period.

Petitioner's argument that the FLD clearly provided the factual and legal bases of the assessment deserves scant consideration. Petitioner posits that the legal and factual basis indicated in the FLD is sufficient since Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, does not require a full explanation of every legal and factual basis, and that respondent was able to intelligently file a protest to the assessment. The findings of the Court in Division, which was affirmed by this Court in the assailed Decision, reveal that the deficiency excise tax and value-added tax

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[3] *Commissioner of Internal Revenue vs. McDonalds Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.

[4] G.R. No. 215957, November 9, 2016.

assessments were arrived at when petitioner found that there was an understatement on the respondent's declared Suggested Net Retail Prices (SNRP). While the under-declaration of 15% was stated as the basis of the deficiency assessments, petitioner failed to indicate how they arrived at the computation other than merely stating that a market survey was conducted by means of direct purchase from the supermarkets/outlets and through photographs of the item with the corresponding prices by which it was sold.

Clearly, the arguments raised by petitioner in the instant *Motion for Reconsideration* are insufficient for this Court to modify the assailed Decision.

WHEREFORE, petitioner's **Motion for Reconsideration [re: Decision dated 25 April 2024]** is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
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
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

(On Official Business)
HENRY S. ANGELES
Associate Justice