REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

## *EN BANC*

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**GS MTE GRAINS CORPORATION,**
Respondent.

**CTA EB NO. 1958**
(CTA Case No. 8837)

*Present:*

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

Promulgated:
JUL 06 2020
4:10 p.m.

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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**). He seeks the nullification of

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[1] Rule 8. Procedure in Civil Cases, Section 3(b), RRCTA; Filed on 12 November 2018.
**Section 3.** *Who may appeal; period to file petition.* —
...
(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

the Court's First Division[2] Decision promulgated on 19 March 2018 and the subsequent Resolution dated 08 October 2018 on petitioner's Motion for Reconsideration (**MR**) in the case of *GS MTE Grains Corporation v. Commissioner of Internal Revenue*, docketed as CTA Case No. 8837. The dispositive portions of the assailed Decision and Resolution, respectively, read:

> ...
>
> **WHEREFORE**, premises considered, the [GS MTE Grains Corporation's (GS MTE's)] Petition for Review is **GRANTED**. Accordingly, the Decision dated February 3, 2014 issued by [CIR] is **SET ASIDE** and the Formal Letter of Demand dated December 1, 2009 for calendar year 2006 is **CANCELLED**.
>
> **SO ORDERED.**[3]
>
> ...
>
> **WHEREFORE**, premises considered, [CIR's] **Motion for Reconsideration Re: Decision promulgated on March 19, 2018** is **DENIED** for lack of merit.
>
> **SO ORDERED.**[4]
>
> ...

The facts as found by the Court's First Division are as follows:

> ...
>
> On November 28, 2007, [GS MTE] received the Letter of Authority (LOA) No. 200700022310 dated November 26, 2007, authorizing Revenue Officer (RO) Sophia D. Dipatuan under Group Supervisor Ashary B. Gampong of Revenue District Office (RDO) No. 110-Gen. Santos City to examine its books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2006 to December 31, 2006.
>
> The BIR issued a Notice for Informal Conference on August 5, 2008, requesting [GS MTE] to appear for an informal conference to enable it to present its side of the case.

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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.

2 With Hon. Justice Cielito N. Mindaro-Grulla as *ponente*; Hon. Presiding Justice Roman G. Del Rosario and Hon. Justice Erlinda P. Uy, concurring.

3 Decision dated 19 March 2018.

4 Resolution dated 08 October 2018.

On October 6, 2009, RO Sophia D. Dipatuan submitted her Memorandum Report in connection with the examination and investigation of internal revenue tax liabilities of [GS MTE] for CY 2006 pursuant to LOA No. 200700022310 dated November 26, 2007.

On October 15, 2009, the BIR issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies, assessing [GS MTE] for deficiency income tax, expanded withholding tax (EWT), and compromise penalties for CY 2006.

On February 19, 2010, [GS MTE] received a copy of the Formal Letter of Demand (FLD) dated December 1, 2009 with attached Details of Discrepancies issued by Regional Director Atty. Marcelinda Omila-Yap of Revenue Region No. 18-Cotabato City, demanding the payment of the aggregate amount of ₱12,970,415.01, allegedly representing deficiency income tax, EWT, and compromise penalties for CY 2006.

On March 4, 2010, [GS MTE] filed a Letter dated February 26, 2010 with the Regional Director requesting reinvestigation of the result of the audit. On March 19, 2010, [GS MTE] received a copy of the Letter from the Regional Director dated March 8, 2010. On May 5, 2010, [GS MTE] submitted a Letter dated May 3, 2010 to the Regional Director.

On September 29, 2010, [GS MTE] received a copy of the Letter dated August 16, 2010 issued by the Regional Director declaring that the request for reinvestigation cannot be given due course. [GS MTE] filed its Protest dated October 27, 2010 with respondent on November 3, 2010.

On March 7, 2014, [GS MTE] received a copy of [the CIR's] Decision dated February 3, 2014, denying its protest and demanding from [GS MTE] the payment of deficiency income tax, EWT, and compromise penalties in the total amount of ₱12,970,415.01 for CY 2006.

...

In disagreement with the CIR's action, GS MTE filed its Petition for Review (CTA Case No. 8837) before this Court. Essentially, GS MTE faulted the Bureau of Internal Revenue (**BIR**) in concluding that it had unsubstantiated costs and expenses in its 2006 accounting period. According to it, the BIR's findings were highly speculative. It was also not informed of the law and the facts on which the assessment was made, in clear violation of Section 228[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

As earlier stated, this Court, through the First Division, granted GS MTE's Petition for Review, denied CIR's MR and ultimately, set aside the CIR's assessment of GS MTE. The relevant portions of the assailed Decision reads:

> ...
>
> A review of [GS MTE's] Memorandum shows that it raised as one of the issues, the validity of the LOA for lack of revalidation within the 120-day period. Thus, it is necessary to rule first on whether the Court has jurisdiction to decide on the question of validity of the LOA.
>
> In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, the Supreme Court confirmed the jurisdiction of the Court to resolve the issue on the validity of the authority of revenue officers to conduct the audit under the phrase "other matters" under Section 7 of Republic Act (R.A.) No. 1125 or its amendment, R.A. No. 9282, as follows:

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5 SEC. 228. ***Protesting of Assessment.*** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

> "The law vesting unto the CTA its jurisdiction is Section 7 of Republic Act No. 1125 (*R.A. No. 1125*) which in part provides:
>
> > Section 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > > (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or ***other matters*** arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; x x x. (emphasis supplied)
>
> Under the afore-cited provision, the jurisdiction of the CTA is not limited only to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR. Thus, for instance, we had once held that the question of whether or not to impose a deficiency tax assessment comes within the purview of *'other matters arising under the National Internal Revenue Code.'*
>
> The jurisdiction of the CTA on such ***other matters arising under the NIRC*** was retained under the amendments introduced by R.A. No. 9282.
>
> ...

With the above, the CIR filed the instant petition with the Court *En Banc*. In his petition, the CIR assigned the following errors to the First Division's actions, to wit:

I.

THE HONORABLE FIRST DIVISION ERRED IN APPLYING THE RULING OF THE SUPREME COURT IN THE CASE OF *MEDICARD PHILIPPINES, INC. v. COMMISSIONER OF INTERNAL REVENUE.*

II.
THE HONORABLE FIRST DIVISION ERRED IN DECLARING THAT THE CONTINUATION OF THE AUDIT BEYOND THE PRESCRIBED 120-DAY PERIOD WITHOUT SUBMISSION OF A PROGRESS REPORT RENDERED THE ASSESSMENT VOID.

As petitioner herein, the CIR argues that the application of the Supreme Court ruling in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[6] (**Medicard**) was erroneous. In *Medicard,* the assessment was invalidated for failure of the CIR to issue a Letter of Authority (**LOA**), which absence was considered a violation of the taxpayer's right to due process. The CIR insists that the LOA issued against GS MTE was valid and that the non-revalidation of the same beyond the 120-day audit period should not result in the nullification of the LOA.

Respondent GS MTE, on the other hand, failed to file its comment on CIR's Petition for Review.[7]

**<u>RULING OF THE COURT *EN BANC*</u>**

To support his contention that the LOA issued was valid, petitioner CIR cites Revenue Memorandum Order (**RMO**) No. 44-2010[8], that reads:

> ...
> Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the LA even if the prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.
> ...

Petitioner argues that the failure of the Revenue Officer (**RO**) to complete the audit within 120 days gives rise only to an administrative penalty against the erring RO and would not affect the validity of the

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6 G.R. No. 222743, 05 April 2017.
7 Records Verification report dated 03 May 2019.
8 *Electronic issuance of Letter of Authority.*

assessment (by the conduct of the audit investigation beyond the 120-day period).

Upon further consideration of the arguments raised in the Petition for Review, while we agree with the CIR that failure to revalidate the LOA would not affect its validity and consequently the assessment stemming from it; this, however, is not enough to overturn the First Division's assailed Decision and Resolution cancelling the assessment for deficiency taxes.

Indeed, the conduct of audit investigation beyond the 120-day period, without the LOA having been revalidated, may only subject the erring RO to administrative sanction. However, it is worthy to note that RMO 44-2010 (that petitioner relied on) is inapplicable in this case since the subject LOA was issued on 26 November 2007 or prior to the issuance and effectivity of RMO 44-2010. As petitioner quoted aptly, the relevant provision of RMO 44-2010 applies ***beginning*** 01 June 2010 hence, this clearly means that it shall be applied prospectively. Instead, what applies in this case is RMO 12-2007[9] issued on 03 July 2007. The latter RMO provides:

> ...
>
> 29. Reports of investigation of cases covered by LAs/ANs/TVNs shall be submitted by the RO within the following prescribed number of calendar days from the date of LAs/ANs/TVNs:

| | No. of Days |
|---|---|
| Cases other than VAT claims for refund/credit: | |
| Very Large/Large | 120 |
| Medium | 90 |
| Small/TVN | 60 |
| Cases covering claims for VAT refund/credit | 120 days from the submission of complete documents |

> 30. In case the report of investigation cannot be rendered within the aforementioned time frame due to constraints attributable to the taxpayer, the RO may request for the revalidation of the LA by preparing a progress report with a valid reason for the request for revalidation, duly noted by the Group Supervisor and approved by

9 *2007 Audit Program for Revenue District Offices.*

> the RDO. The RDO shall transmit the entire docket of the case, including all notices with checklist of documentary requirements served to the taxpayer, to the RD for revalidation of the LA. The previously issued LA shall be stamped "Revalidated on ___________" and shall be signed by the RD.
>
> The revalidation of LA shall give rise to the extension of the period within which the concerned RO shall submit the required report of investigation to higher authorities for review and approval without the imposition of applicable administrative sanctions. <u>Failure on the part of the RO to request for revalidation or the expiration of the "revalidation period" does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.</u> However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO.[10]
>
> ...

From the foregoing, it is therefore clear that the subject LOA did not lose its validity as a result of the RO's failure to cause its revalidation pursuant to RMO 12-2007.

The above disquisition notwithstanding, we are constrained to uphold the Decision rendered by the First Division cancelling and setting aside the assessment for deficiency taxes issued against herein respondent.

We likewise echo Presiding Justice Roman G. Del Rosario's Concurring Opinion (to the assailed Decision) that there was no showing that the Assessment Notices were issued and enclosed together with the Formal Letter of Demand (**FLD**). The absence of the same is fatal to petitioner's claim and violates the due process requirements.

To implement Section 228 of the NIRC of 1997, as amended, Revenue Regulations (**RR**) 12-99[11] was issued and provided for the due process requirement in issuing assessments, thus:

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10 Underscoring supplied.

11 *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.*

> ...
>
> Section 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> ...
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* - <u>The formal letter of demand **and** assessment notice shall be issued by the Commissioner or his duly authorized representative</u>. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and[,] (d) date of receipt thereof).[12]
>
> ...

Clearly then, to satisfy the due process requirement, the assessment must contain both the FLD and Assessment Notices. The use of the word "shall" connotes a mandatory character that cannot be brushed aside.

In the context in which it is used in the NIRC of 1997, as amended, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[13] For an assessment to be valid, there must be a demand for payment and the said payment must be made within a prescribed period.

In *Commissioner of Internal Revenue v. Menguito*[14], the Supreme Court ruled that "[t]he issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a

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12 Italics in the original, emphasis and underscoring supplied.

13 *Lucas G. Adamson, et al. v. Court of Appeals, et al.*, G.R. No. 120935, 21 May 2009.

14 G.R. No. 167560, 17 September 2008, citing *Commissioner of Internal Revenue v. Reyes*, G.R. No. 159694, 27 January 2006 and *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, 07 August 2006, *Commissioner of Internal Revenue v. Pascor Realty & Devt. Corp., et al.*, 368 Phil. 714 (1999).

computation of tax liabilities **but also a demand for payment within a prescribed period**, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer."[15]

The importance of the assessment notices providing for the deadline for payment is emphasized in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[16], *viz*:

> ...
>
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and <u>not the due date for payment of tax liabilities</u>. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality.[17]
>
> ...

A perusal of the subject FLD in the instant case would show that the last paragraph made reference to the assessment notice that should have been enclosed with or attached to it, to wit:

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15 Emphasis supplied.
16 G.R. No. 215957, 09 November 2016.
17 Italics in the original and underscoring supplied.

> ...
>
> In view thereof, you are requested to pay your aforesaid deficiency income tax and withholding tax liabilities through the duly authorized agent bank in which you are enrolled <u>within the time shown in the enclosed assessment notice.</u>[18]
>
> ...

The Assessment Notices, however, were not found in the records of this case. Neither was it proven, in any way, that respondent herein received the same together with the FLD.

The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.[19]

With the above disquisitions, the Court *En Banc* finds no cogent reason to disturb the First Division's assailed Decision and Resolution.

**WHEREFORE**, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated 19 March 2018 and Resolution dated 08 October 2018 are hereby **AFFIRMED**.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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18 Underscoring supplied.
19 *Commissioner of Internal Revenue v. Fitness By Design*, supra at note 16.

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Ma. Belen S.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
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