REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BICYCLEPOKER, INC., Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9868

Members:

CASTAÑEDA, JR., Chairperson, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

OCT 07 2020
9:55 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on July 4, 2018 prays for the cancellation and setting aside of the *Formal Letter of Demand* (FLD) dated October 11, 2017 issued by respondent against petitioner.[1]

THE FACTS

Petitioner Bicyclepoker, Inc. is a taxpayer with Tax Identification Number 007-941-225-000.[2]

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[1] Summary of the Case, Pre-Trial Order dated January 14, 2019, Docket – Vol. I, p. 353.
[2] Par. 2, Summary of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 348.

Respondent Commissioner of Internal Revenue is the duly appointed authority to administer and enforce all revenue laws in the land.[3] He has the power to act upon and render final decisions on protests filed against internal revenue tax assessments, and other matters arising under the National Internal Revenue Code (NIRC) or other laws, and may be served with legal processes at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[4]

On May 17, 2016, the BIR issued the *Letter of Authority* (LOA) No. LOA-21A-2016-00000127 (SN: eLA201100065614),[5] signed by Mr. Jethro M. Sabariaga, OIC-Regional Director for Revenue Region No. 4 -San Fernando, Pampanga, authorizing Revenue Officer (RO) Jonathan Miranda and Group Supervisor (GS) Marivic Mendoza to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other taxes, covering the period from January 1, 2014 to December 31, 2014.

Thereafter, the *Memorandum of Assignment* dated March 7, 2017 was issued by Mr. Renato J. Mina, Revenue District Officer, referring the case to RO Marielle P. de Guzman and GS Angelina L. Gozun for the continuation of the audit/investigation of petitioner to replace the previously assigned revenue officers.[6] Petitioner was informed of the same in the *Re-Assignment Notice* on March 30, 2017.[7] Eventually, RO de Guzman recommended the issuance of a *Preliminary Assessment Notice* (PAN) against petitioner.[8]

Subsequently, petitioner received the PAN on Assessment No. 21-A-R-1504057404 dated 30 August 2017, finding due from it, deficiency income tax, withholding tax on compensation (WTC), expanded withholding tax (EWT), and miscellaneous tax, for the taxable year 2014.[9]

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[3] Par. 1, Summary of Facts, JSFI, Docket – Vol. I, p. 348.
[4] Par. 2, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 11 and 123, respectively.
[5] Exhibit "R-1", BIR Records, p. 4.
[6] Exhibit "R-4", BIR Records, p. 6.
[7] Exhibit "R-5", BIR Records, p. 7.
[8] Exhibit "R-6", BIR Records, pp. 180 to 182.
[9] Par. 4, Summary of Facts, JSFI, Docket – Vol. I, p. 348; Exhibit "P-10", Docket – Vol. I, pp. 427 to 431; Exhibits "R-8" and "R-8-A", BIR Records, pp. 187 to 191.

On November 9, 2017, petitioner received the FLD on Assessment No. 21-A-R-1504057404 dated October 11, 2017 from the OIC-Regional Director of the BIR Region 4, City of San Fernando, Pampanga, wherein the latter informed the former that after audit, there was found due from it deficiency income tax, EWT, WTC, and other administrative penalties, for the taxable year 2014.[10]

Petitioner filed, on December 6, 2017, a *Letter of Request for Reinvestigation* on the said FLD.[11] In reply, the BIR informed petitioner that the docket of its tax case was referred to the Office of the Revenue District Office (RDO) No. 21A-North Pampanga for reinvestigation.[12]

On July 19, 2018, another LOA was issued, with No. LOA-21A-2018-00000492 (SN: eLA201500094198), authorizing RO de Guzman and GS Gozun, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes covering the period from January 1, 2014 to December 31, 2014.[13]

Acting on petitioner's administrative protest for reinvestigation, RO de Guzman subsequently recommended that a *Final Decision on Disputed Assessment* (FDDA) be issued against petitioner.[14] Thereafter, an FDDA was issued on August 9, 2018 and received by petitioner on August 10, 2018.[15] In the said FDDA, Regional Director requested the payment of petitioner's income tax liability in the amount of ₱1,871,395.77, inclusive of interests and compromise penalty.

In the meantime, petitioner filed the instant *Petition for Review* on July 4, 2018.[16]

In the *Answer* posted on September 28, 2018,[17] respondent interposed certain special and affirmative defenses, such as: (1) that

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[10] Par. 5, Summary of Facts, JSFI, Docket – Vol. I, p. 348; Exhibits "P-11" to "P-11-I', Docket – Vol. I, pp. 316 to 325; Exhibits "R-9", "R-9-A", and "R-10" to "R-10-C", BIR Records, pp. 197 to 206.
[11] Par. 6, Summary of Facts, JSFI, Docket – Vol. I, p. 349.
[12] Exhibit "R-11", BIR Records, p. 227.
[13] Exhibit "R-17", BIR Records, p. 276.
[14] Exhibit "R-14", BIR Records, pp. 281 to 283.
[15] Par. 7, Summary of Facts, JSFI, Docket – Vol. I, p. 349; Exhibits "R-15" and "R-16", BIR Records, pp. 284 to 286, and 289.
[16] Docket – Vol. I, pp. 10 to 20.
[17] Docket – Vol. I, pp. 123 to 127.

petitioner must prove that: (i) it is an entity with a contractual relationship with PAGCOR to operate a casino, (ii) it renders facilities essential for the operation of a casino, or (iii) it renders technical services to PAGCOR in the operation of a casino; (2) that petitioner failed to prove any of the following, and thus, the exemptions provided under Presidential Decree (PD) No. 1869 may not extend to or inure to its benefit; (3) the exemption granted under PD No. 1869 is not a blanket exemption from tax; (4) that the Supreme Court ruled that PAGCOR and its licensees are subject to 5% franchise tax only on its income from gaming operations but it is subject to corporate income tax on its income from other related services; and (5) that petitioner is liable for the assessed deficiency income tax, plus interests and surcharges.

Respondent transmitted the *BIR Records* on October 1, 2018.[18]

The pre-trial conference was set and held on November 22, 2018.[19] Prior thereto, *Respondent's Pre-Trial Brief* was filed on November 16, 2018,[20] and petitioner's *Pre-Trial Brief* was submitted via courier on November 19, 2018.[21]

On December 12, 2018, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[22] The said JSFI was approved and adopted in the Pre-Trial Order dated January 14, 2019.[23]

During trial, petitioner presented its documentary and testimonial evidence. As part of its testimonial evidence, petitioner offered the testimony of Ms. Noemi T. Feliciano,[24] petitioner's Operations Manager.

On July 1, 2019, petitioner filed its *Formal Offer of Evidence*.[25] Respondent failed to file any comment thereon.[26]

[18] *Compliance* dated October 1, 2018, Docket – Vol. I, pp. 118 to 120.
[19] *Notice of Pre-Trial Conference* dated October 8, 2018, Docket – Vol. I, pp. 130 to 131; Minutes of the hearing held on, and Order dated, November 22, 2018, Docket – Vol. I, pp. 257 to 258.
[20] Docket – Vol. I, pp. 133 to 136.
[21] Docket – Vol. I, pp. 138 to 146.
[22] Docket – Vol. I, pp. 348 to 352.
[23] Docket – Vol. I, pp. 353 to 356.
[24] Exhibit "P-16", Docket – Vol. I, pp. 259 to 269; Minutes of the hearing held on, and Order dated January 23, 2019, Docket – Vol. I, pp. 358 to 358-A.
[25] Docket – Vol. I, pp. 387 to 391.
[26] Records Verification dated July 12, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. I, p. 450.

In the Resolution dated August 9, 2019,[27] the Court admitted petitioner's exhibits, *except* for Exhibits "P-12-D" to "P-12-N", for failure to present the originals for comparison.

For his part, respondent likewise set forth his documentary and testimonial evidence. He proffered the sole testimony of Ms. Marielle P. de Guzman,[28] a Revenue Officer I at the BIR.

Respondent's *Formal Offer of Evidence* was filed on September 13, 2019.[29] Petitioner posted its *Comment/Opposition (To the Formal Offer of Evidence)* on September 23, 2019.[30] In the Court's Resolution dated October 29, 2019,[31] respondent's exhibits were admitted in evidence.

Respondent submitted his *Memorandum* on December 4, 2019,[32] while petitioner's *Memorandum* was posted on December 3, 2019.[33]

This instant case was considered submitted for decision on January 10, 2020.[34]

THE ISSUES RAISED BY THE PARTIES

The following issues were stipulated by the parties for the Court's resolution, to wit:

> "a. Whether or not petitioner is liable to pay assessed deficiency income tax, expanded withholding tax, withholding tax on compensation, plus surcharge and interest and compromise penalties, in the aggregate amount of Php 3,643,454.09 for taxable year 2014 despite its payment of franchise taxes for the year 2014.

[27] Docket – Vol. II, pp. 452 to 453.
[28] Exhibit "R-18", Docket – Vol. I, pp. 247 to 255; Minutes of the hearing held on, and Order dated, August 28, 2019, Docket – Vol. II, pp. 464 to 465.
[29] Docket – Vol. II, pp. 469 to 475.
[30] Docket – Vol. II, pp. 477 to 483.
[31] Docket – Vol. II, pp. 487 to 488.
[32] Docket – Vol. II, pp. 489 to 495.
[33] Docket – Vol. II, pp. 497 to 510.
[34] Resolution dated January 10, 2020, Docket – Vol. II, p. 514.

b. Whether or not Republic Act No. 9337 repealed the provisions of Presidential Decree No. 1869, particularly that the payment of five percent (5%) franchise tax by PAGCOR exempts its contractees and licensees from paying other taxes."[35]

Petitioner's arguments:

Petitioner argues that it is not liable for deficiency income tax for taxable year 2014 because it is subject to 5% franchise tax and the examination was conducted by a revenue officer who did not have an LOA; and that Republic Act No. 9337 did not repeal the provisions of PD No. 1869, insofar as the exemption of PAGCOR, its contractees and licensees from payment of corporate income tax is concerned.

Respondent's counter-arguments:

Respondent avers that petitioner must prove that it is (1) an entity with contractual relationship with PAGCOR to operate a casino, (2) it renders facilities essential for the operation of a casino, or (3) it renders technical services to PAGCOR in the operation of a casino. Respondent claims that petitioner failed to prove any of the foregoing, and thus, the exemptions provided under PD No. 1869 may not extend or inure to its benefit. According to respondent, the Supreme Court, in the case of *Philippine Amusement Gaming Corporation v. The Bureau of Internal Revenue* (*PAGCOR* case) and *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue* (*Bloomberry* case), has not ordered the BIR to desist from implementing Revenue Memorandum Circular (RMC) No. 33-2013 in its entirety. According to respondent, the BIR was merely ordered to desist from implementing RMC No. 33-2013, insofar as imposing corporate income tax on income derived from gaming operations and franchise tax on income from related services of PAGCOR or its licensees. Thus, respondent insists that all other provisions of RMC No. 33-2013 are valid and may be implemented by the BIR.

THE RULING

The instant *Petition for Review* has merit. 9c

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[35] Statement of Issues, JSFI, Docket – Vol. I, p. 349.

Petitioner argues, *inter alia*, that the RO who found it liable for deficiency income tax, and other taxes, was not authorized by an LOA.

This Court agrees.

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[36] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[37]

Therefore, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to respondent himself or his duly authorized representatives.[38] This is explicitly provided under Sections 6(A) and 13 of the NIRC of 1997, which provide as follows:

> "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, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis added)* fr

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[36] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

[37] *Commissioner of Internal Revenue v. De La Salle University, Inc., etseq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

[38] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra.

> "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 the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring added)*

Based on the afore-quoted provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[39] Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.[40] In the absence of such an authority, the assessment or examination is a nullity.[41]

It must be ensured that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[42]

Apparently, after the LOA No. LOA-21A-2016-00000127 (SN: eLA201100065614) was issued on May 17, 2016 and received by petitioner on May 18, 2016, authorizing RO Jonathan Miranda and GS Marivic Mendoza to conduct tax investigation against petitioner,[43] the BIR, thru Revenue District Officer Renato J. Mina, subsequently issued a *Memorandum of Assignment* to RO Marielle P. de Guzman and GS Angelina L. Gozun on March 7, 2017 to continue such investigation without issuing another LOA.[44] Having no LOA issued in their favor, RO de Guzman and GS Gozun were not validly authorized to investigate petitioner.

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[39] *Ibid.*
[40] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178797, supra.
[41] *Ibid.*
[42] Refer to *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra.
[43] Exhibit "R-1", BIR Records, p. 4.
[44] Exhibit "R-5", BIR Records, p. 7

Having no authority to examine petitioner's books of accounts and other accounting records, the PAN on Assessment No. 21-A-R-1504057404 dated 30 August 2017 with *Details of Discrepancies*,[45] and the FLD on Assessment No. 21-A-R-1504057404 dated 11 October 2017 are void.[46]

The subsequent LOA No. LOA-21A-2018-00000492 addressed to RO de Guzman and GS Gozun was issued on July 19, 2018,[47] primarily for the purpose of reinvestigation as testified by respondent's witness, RO de Guzman, to wit:[48]

> "46. Q: You mentioned that you conducted the reinvestigation for this case. What is your authority to do so?
>
> A: A Letter of Authority with LOA No. 21A-2018-00000492 dated July 19, 2018 was issued authorizing me to conduct an audit or investigation of petitioner's books of accounts and other accounting records in relation to its request for reinvestigation."

Thus, even if respondent has issued the subsequent LOA No. LOA-21A-2018-00000492, the defect, *i.e.*, absence of authority given to RO de Guzman and GS Gozun, cannot be cured. This is simply because the investigation was already conducted when the said subsequent LOA was issued. More importantly, it is noteworthy that petitioner already appealed respondent's inaction on July 4, 2018,[49] before the subsequent LOA was issued on July 19, 2018.

It must be emphasized that a void assessment bears no valid fruit.[50] Such being the case, the subject tax assessments cannot be enforced against petitioner.

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[45] Exhibit "P-10", Docket – Vol. I, pp. 427 to 431; Exhibits "R-8" and "R-8-A", BIR Records, pp. 189 to 191 and 187 to 188.
[46] Exhibits "P-11" to "P-11-I', Docket – Vol. I, pp. 316 to 325; Exhibits "R-9", "R-9-A", and "R-10 to R-10-C", BIR Records, pp. 204 to 206, 201 to 203, and 197 to 200.
[47] Exhibit "R-17", BIR Records, p. 276.
[48] Exhibit "R-18", Docket – Vol. I, p. 253.
[49] Docket – Vol. I, pp. 10 to 20.
[50] *Commissioner of Internal Revenue v. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

In view of the finding that the subject tax assessments are invalid, including the subject deficiency income tax in the amount of ₱1,871,395.77, inclusive of interests and compromise penalty, it becomes unnecessary to address the other arguments and matters raised by the parties.

WHEREFORE, the instant *Petition for Review* is **GRANTED**. Accordingly, the FLD on Assessment No. 21-A-R-1504057404 dated 11 October 2017, holding petitioner liable for deficiency taxes for taxable year 2014, as well as the FDDA dated August 9, 2018, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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