22-000036-0080

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10746

FIRST TELECOM PHILS. INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. MARVEEN B. DE LA PAZ
ATTY. MARK JOEY S. LUCERO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Sts.
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **April 15, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 21, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

FIRST TELECOM PHILS., INC.,[1]
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10746

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

APR 15 2025 9:05 AM

x- -x

DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review (with Urgent Motion to Suspend the Collection of Tax and Dispense with Payment of Bond)[2] filed on February 2, 2022 by petitioner First Telecom Philippines, Inc. praying for the cancellation and withdrawal of the assessments issued by respondent Commissioner of Internal Revenue (CIR) against petitioner for its alleged deficiency income tax (IT), improperly accumulated earnings tax (IAET), value-added tax (VAT), expanded withholding tax (EWT), and compromise penalties for taxable year (TY) 2014, in the aggregate amount of ₱1,373,843,258.62, inclusive of interest and penalties.[3]

THE PARTIES

Petitioner First Telecom Philippines, Inc. is a domestic corporation duly organized and existing under the laws of the Republic

---

[1] Petitioner's name in the title of the case per Petition for Review is "First Telecom Philippines, Inc.", while petitioner's name in its Exhibit "P-1" is "First Telecom Phils., Inc.".
[2] CTA Docket Vol. I, pp. 16-69.
[3] Summary of the Case, Pre-Trial Order, CTA Docket Vol. II, p. 864.

of the Philippines,[4] with principal office address at 2-D Ison Building, 1 MC Ison Street corner Rizal Avenue, Dolores, Taytay, Rizal.[5] It is registered with the Bureau of Internal Revenue (BIR) as shown in its Certificate of Registration No. 8RC0000039964 with Tax Identification No. (TIN) 005-694-880-000.[6]

Respondent CIR, on the other hand, is the chief of the BIR, the government agency charged with authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all internal revenue taxes, fees and charges.[7] He may be served with summons, notices, and other court processes through his counsel at Litigation Division, Room 703 BIR National Office Building, BIR Road [now Sen. Miriam P. Defensor-Santiago Avenue], Diliman, Quezon City.[8]

THE FACTS

On November 10, 2015, Letter of Authority (LOA) No. AUDM50/005009/2015 / SN: eLA201200042160[9] was issued by Nestor S. Valeroso, Assistant Commissioner of the BIR Large Taxpayers Service (LTS), authorizing Revenue Officers (ROs) Ruby Ann Oradia and Jan Andre Abellera and Group Supervisor (GS) Gilquin Tolentino to examine petitioner's books of accounts and other accounting records covering all internal revenue taxes for TY 2014.[10] This was received by petitioner on December 14, 2015.[11]

On December 15, 2017,[12] petitioner received a Preliminary Assessment Notice (PAN),[13] with Details of Discrepancies,[14] dated December 15, 2017, assessing petitioner for alleged deficiency taxes, penalties, and interests for TY 2014 in the total amount of ₱1,422,779,144.34, broken down as follows:[15]

---

[4] Exhibits "P-1" and "P-2", CTA Docket Vol. I, pp. 237 and 239-255.
[5] Exhibit "P-3", CTA Docket Vol. I, p. 256.
[6] Exhibit "P-3", CTA Docket Vol. I, p. 256.
[7] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket Vol. II, p. 742.
[8] Par. 1, Answer, CTA Docket Vol. II, p. 450.
[9] Exhibit "P-4", CTA Docket Vol. II, p. 498; Exhibit "R-1", BIR Records Folder 1, p. 1.
[10] Par. 2, Summary of Admitted Facts, JSFI, CTA Docket Vol. II, p. 743.
[11] Exhibit "R-1", BIR Records Folder 1, p. 1.
[12] Exhibit "R-5", BIR Records Folder 1, p. 234.
[13] Exhibit "P-5", CTA Docket Vol. I, pp. 261-270; Exhibit "R-5", BIR Records Folder 1, pp. 232-234.
[14] Exhibit "R-5-1", BIR Records Folder 1, pp. 244-246.
[15] Par. 3, Summary of Admitted Facts, JSFI, CTA Docket Vol. II, p. 743.

Kind of Tax	Amount (₱)
IT	309,420,341.69
IAET	772,962.95
VAT	1,110,782,664.92
EWT	1,719,247.64
WTC	8,927.14
Compromise Penalties	75,000.00
TOTAL	**₱1,422,779,144.34**

On January 4, 2018, petitioner received an undated Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices,[16] issued by ACIR Teresita M. Angeles, finding it liable for alleged deficiency taxes, penalties, and interests for TY 2014 in the total amount of ₱1,434,417,863.64, broken down as follows:[17]

Kind of Tax	Amount (₱)
IT	311,992,966.23
IAET	779,229.94
VAT	1,119,824,088.74
EWT	1,737,556.36
WTC	9,022.37
Compromise Penalties	75,000.00
TOTAL	**₱1,434,417,863.64**

On January 26, 2018,[18] petitioner filed a Protest Letter[19] dated January 25, 2018 against the undated FLD and Assessment Notices.

On December 1, 2021,[20] petitioner received the Final Decision on Disputed Assessment (FDDA)[21] signed by CIR Caesar R. Dulay with Audit Results/Assessment Notices,[22] all dated November 3, 2021, assessing petitioner for alleged deficiency taxes, penalties, and interests for TY 2014 in the total amount of ₱1,373,843,258.62, broken down as follows:[23]

---

[16] Exhibit "P-6", CTA Docket Vol. I, pp. 271-282; Exhibit "R-7", BIR Records Folder 1, pp. 249-260.
[17] Par. 4, Summary of Admitted Facts, JSFI, CTA Docket Vol. II, p. 743.
[18] Exhibit "P-7-1", CTA Docket Vol. I, p. 283.
[19] Exhibit "P-7", CTA Docket Vol. I, pp. 283-291.
[20] Exhibit "P-8-1", CTA Docket Vol. II, p. 499.
[21] Exhibit "P-8", CTA Docket Vol. II, pp. 499-503; Exhibit "R-9", BIR Records Folder 1, pp. 568-572.
[22] Exhibits "P-8-2", "P-8-3", "P-8-4", "P-8-5", and "P-8-6", CTA Docket Vol. II, pp. 504, 505, 506, 507, and 508.
[23] Par. 5, Summary of Admitted Facts, JSFI, CTA Docket Vol. II, pp. 743-744.

Kind of Tax	Amount (₱)
IT	281,157,786.11
IAET	765,381.71
VAT	1,089,609,065.43
EWT	2,236,025.37
Compromise Penalties	75,000.00
TOTAL	**₱1,373,843,258.62**

On February 2, 2022, petitioner filed the present Petition for Review (with Urgent Motion to Suspend the Collection of Tax and Dispense with Payment of Bond [Urgent Motion to Suspend])[24] assailing the aforesaid FDDA. The case was raffled to the Court's Second Division.

On March 7, 2022, respondent filed his Comment and Opposition (Re: Petitioner's Urgent Motion to Suspend Collection of Tax and Dispense with Payment of Bond).[25]

During the hearing on the Urgent Motion to Suspend, petitioner presented its Treasurer, Mr. Ulysses Lao,[26] as witness.

On April 18, 2022, petitioner filed a Supplemental Motion to Suspend Collection of Tax and Dispense With the Payment of Bond (with Urgent Motion to Lift Warrant of Distraint and/or Levy and Recall Witness) [Supplemental Motion to Suspend].[27] The Court granted petitioner's Motion to Recall Witness in the Resolution dated July 26, 2022[28] and petitioner's recalled witness, Mr. Lao, was presented on September 7, 2022.[29]

In relation to its Urgent Motion to Suspend, petitioner filed its Formal Offer of Evidence,[30] Supplemental Formal Offer of Evidence,[31] and Second Supplemental Formal Offer of Evidence[32] on April 7, 2022, May 13, 2022, and September 12, 2022, respectively. These were resolved by the Court in the Resolution dated October 20, 2022.[33] In

[24] CTA Docket Vol. I, pp. 16-69.
[25] CTA Docket Vol. I, pp. 162-175.
[26] Exhibit "P-113", Judicial Affidavit of Ulysses Lao, CTA Docket Vol. I, pp. 79-103; and, Minutes of Hearing and Order dated March 21, 2022, CTA Docket Vol. I, pp. 184-186.
[27] CTA Docket Vol. II, pp. 434-445.
[28] CTA Docket Vol. II, pp. 525-528.
[29] Exhibit "P-128", Supplemental Judicial Affidavit of Ulysses Lao, CTA Docket Vol. II, pp. 548-557; and, Minutes of Hearing and Order dated September 7, 2022, CTA Docket Vol. II, pp. 596-598.
[30] CTA Docket Vol. I, pp. 214-236.
[31] CTA Docket Vol. II, pp. 487-497.
[32] CTA Docket Vol. II, pp. 647-655.
[33] CTA Docket Vol. II, pp. 736-741.

the aforesaid Resolution, the Court directed the parties to file their respective memoranda on petitioner's Urgent Motion to Suspend and Supplemental Motion to Suspend within fifteen (15) days from notice.

Petitioner filed its Memorandum (For Petitioner's Urgent Motion to Suspend Collection of Tax and Dispense with the Payment of Bond)[34] on November 10, 2022, while respondent's Memorandum (Re: Petitioner's Urgent Motion to Suspend Collection of Tax and Dispense with Payment of Bond)[35] was filed on November 14, 2022.

In the Resolution dated February 9, 2023,[36] the Court granted petitioner's Urgent Motion to Suspend and Supplemental Motion to Suspend; suspended the collection of taxes by respondent, his representatives, agents, or other persons acting on his behalf against petitioner; and lifted the Warrant of Distraint and/or Levy with Warrant No. 116-2022-034 until further orders from the Court.

Meanwhile, on April 19, 2022, within the extended period,[37] respondent filed his Answer,[38] raising the following Special and Affirmative Defenses: *(i)* the issue on the validity of the LOA was never raised by petitioner in the administrative level, thus petitioner can no longer raise said issue on the ground of laches; *(ii)* the LOA is valid and its non-revalidation only warrants disciplinary action against the erring RO; *(iii)* the service of the assessment notices on petitioner is valid; even assuming that the service of the FDDA is invalid, the assessment cannot be rendered void on this ground; *(iv)* the period to assess has not prescribed; *(v)* petitioner is liable for the deficiency taxes assessed against it; and, *(vi)* petitioner failed to overcome the presumption of validity and correctness of the assessments.

Petitioner's Pre-Trial Brief[39] was filed on September 9, 2022, while the Respondent's Pre-Trial Brief[40] was filed on September 22, 2022. The Pre-Trial Conference was held on September 28, 2022.[41] During the Pre-Trial Conference, the Court referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation.

---

[34] CTA Docket Vol. II, pp. 780-818.
[35] CTA Docket Vol. II, pp. 819-833.
[36] CTA Docket Vol. II, pp. 888-897.
[37] Order dated March 29, 2022, CTA Docket Vol. I, p. 203.
[38] CTA Docket Vol. II, pp. 450-470.
[39] CTA Docket Vol. II, pp. 602-646.
[40] CTA Docket Vol. II, pp. 708-713.
[41] Minutes of the Hearing and Order dated September 28, 2022, CTA Docket Vol. II, pp. 722 and 726-728.

On October 27, 2022, the parties filed their Joint Stipulation of Facts and Issues[42] which was approved by the Court in the Resolution dated November 3, 2022 thereby terminating the Pre-Trial.[43]

On November 23, 2022, the Court received the No Agreement to Mediate of even date, stating that the parties decided not to have their case mediated by the PMC-CTA.[44]

Thereafter, the Court issued the Pre-Trial Order on January 17, 2023.[45]

Upon motion[46] of petitioner, the Court commissioned Mr. Joseph Peter Anthony S. Ayson as Independent Certified Public Accountant (ICPA) on February 1, 2023.[47]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Mr. Ulysses Lao,[48] petitioner's Treasurer; Ms. Gina Hernandez,[49] petitioner's External Accounting Consultant; Mr. Clark Vincent M. Zara,[50] Smart Communications, Inc.'s Vice President and Department Head of Tax Compliance and Reporting; Ms. Ma. Jaimita P. Sabido,[51] Smart Communications, Inc.'s Vice President for Channel Development Capabilities Support; and, Mr. Joseph Peter Anthony S. Ayson,[52] the Court-commissioned ICPA.

On May 15, 2023, petitioner filed its Formal Offer of Evidence (With Motion to Correct Description of Documentary Exhibits).[53]

---

[42] CTA Docket Vol. II, pp. 742-777.
[43] CTA Docket Vol. II, p. 779.
[44] CTA Docket Vol. II, p. 835.
[45] CTA Docket Vol. II, pp. 864-881.
[46] CTA Docket Vol. II, pp. 858-862.
[47] CTA Docket Vol. II, pp. 882-885.
[48] Exhibit "P-113", Judicial Affidavit of Ulysses Lao, CTA Docket Vol. I, pp. 79-103; and, Minutes of Hearing and Order dated February 15, 2023, CTA Docket Vol. II, pp. 900-901.
[49] Exhibit "P-114", Judicial Affidavit of Gina Hernandez, CTA Docket Vol. I, pp. 108-119; and, Minutes of Hearing and Order dated March 1, 2023, CTA Docket Vol. II, pp. 902-903.
[50] Exhibit "P-115", Judicial Affidavit of Clark Vincent M. Zara, CTA Docket Vol. I, pp. 124-139; and, Minutes of Hearing and Order dated March 29, 2023, CTA Docket Vol. II, pp. 925-926.
[51] Exhibit "P-116", Judicial Affidavit of Ma. Jaimita P. Sabido, CTA Docket Vol. I, pp. 143-149; and, Order dated April 19, 2023, CTA Docket Vol. II, p. 962.
[52] Exhibit "P-145", Judicial Affidavit of Joseph Peter Anthony S. Ayson, CTA Docket Vol. II, pp. 932-961; and, Order dated April 19, 2023, CTA Docket Vol. II, p. 962.
[53] CTA Docket Vol. III, pp. 978-1021.

On May 29, 2023, this case was transferred to the First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated May 23, 2023.[54]

In the Resolution dated July 27, 2023,[55] the Court granted petitioner's Motion to Correct Description of Documentary Exhibits and admitted most of petitioner's exhibits, but denied Exhibits "P-9", "P-9-1 to P-9-862", "P-10", "P-10-1 to P-10-108", "P-11", "P-11-1 to P-11-4", "P-107", "P-107-1 to P-107-24", and "P-112" for failure to present the originals for comparison; and Exhibits "P-162-193" and "P-162-645" for being unreadable.

On August 24, 2023, petitioner filed an Omnibus Motion for Reconsideration (Re: Resolution dated July 27, 2023) (with Motion to Correct Description of the Documentary Exhibits and Motion to Recall Petitioner's Witness and Independent Certified Public Accountant),[56] praying for the Court to: (i) reconsider the Resolution dated July 27, 2023; (ii) note the correct description of Exhibit "P-86-1"; (iii) admit Exhibit "P-86-1" with its corrected description; (iv) make part of the records the clearly scanned copies of Exhibits "P-162-193" and "P-162-645", "P-162-131", "P-162-189", "P-162-192", "P-162-643" and "P-162-644"; and, (v) alternatively, recall petitioner's witnesses to properly identify documents and plead its case. In the Resolution dated December 19, 2023,[57] the Court partially granted petitioner's motion, admitted Exhibits "P-162-193" and "P-162-645", and noted the corrected description of Exhibit "P-86-1" and the submission of clearer copies of Exhibits "P-162-131", "P-162-189", "P-162-192", "P-162-643" and "P-162-644".

Thereafter, respondent presented his lone witness, RO Ruby Ann B. Oradia.[58]

On March 20, 2024, the Respondent's Formal Offer of Evidence[59] was filed. In the Resolution dated June 27, 2024,[60] the Court admitted all of respondent's offered evidence; and, gave the parties thirty (30) days from receipt thereof to file their respective memoranda.

---

[54] CTA Docket Vol. III, p. 1228.
[55] CTA Docket Vol. III, pp. 1235-1240.
[56] CTA Docket Vol. III, pp. 1241-1251.
[57] CTA Docket Vol. III, pp. 1265-1268.
[58] Exhibit "R-11", Judicial Affidavit of Revenue Officer Ruby Ann B. Oradia, CTA Docket Vol. II, pp. 475-481; and Order dated March 14, 2024, CTA Docket Vol. III, pp. 1275-1276.
[59] CTA Docket Vol. III, pp. 1278-1285.
[60] CTA Docket Vol. III, pp. 1296-1297.

Petitioner filed its Memorandum[61] on May July 31, 2024, while respondent filed a Manifestation[62] on the same date, manifesting that he is adopting the arguments raised in his Answer as his Memorandum. Thereafter, the case was submitted for decision on August 13, 2024.[63]

ISSUE

The parties stipulated on the following issue for the Court's resolution:[64]

> Whether petitioner is liable for the alleged deficiency IT, IAET, VAT, EWT, and compromise penalties for TY 2014 in the total amount of ₱1,373,843,258.62.

PARTIES' ARGUMENTS

Petitioner argues that:

(i) The assessment is void for violation of petitioner's right to due process;

(ii) Respondent's right to assess petitioner had already prescribed;

(iii) The BIR officers who conducted the audit of petitioner's books of accounts were not authorized by a valid LOA;

(iv) The recommendation for the issuance of the FLD was premature;

(v) The LOA was served after thirty (30) days from the date of its issuance;

(vi) The LOA and the assessment arising from it are unenforceable;

(vii) Petitioner is not liable for the alleged deficiency taxes; and,

---

[61] CTA Docket Vol. III, pp. 1302-1354.
[62] CTA Docket Vol. III, pp. 1298-1300.
[63] Minute Resolution dated August 13, 2024, CTA Docket Vol. III, p. 1356.
[64] Statement of the Issue to be Resolved, JSFI, CTA Docket Vol. II, p. 744.

(viii) Petitioner is not liable for the alleged compromise penalties.[65]

On the other hand, respondent counter-argues that:

(i) The issue on the validity of the LOA was never raised by petitioner in the administrative level, thus, petitioner can no longer raise said issue on the ground of laches;

(ii) The LOA is valid and its non-revalidation only warrants disciplinary action against the erring RO;

(iii) The service of the assessment notices on petitioner is valid; even assuming that the service of the FDDA is invalid, the assessment cannot be rendered void on this ground;

(iv) The period to assess has not prescribed;

(v) Petitioner is liable for the deficiency taxes assessed against it; and,

(vi) Petitioner failed to overcome the presumption of validity and correctness of the assessments.[66]

THE COURT'S RULING

This Court finds the Petition for Review meritorious.

The Petition for Review was timely filed; hence, the Court has jurisdiction over the case

The Court shall first determine the timeliness of the filing of the present Petition for Review.

This Court is vested with authority to review respondent's FDDA pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as

---

[65] Memorandum, CTA Docket Vol. III, pp. 1309-1350.
[66] Answer, CTA Docket Vol. II, pp. 450-470.

amended by RA No. 9282,[67] in relation to Section 3(a)(1), Rule 4 of Revised Rules of the Court of Tax Appeals (RRCTA), as amended.[68]

Under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, a taxpayer adversely affected by a decision of the CIR on the disputed assessment is given a remedy to appeal with the Court within thirty (30) days from receipt of the assailed decision, *viz.*:

> "SEC. 228. *Protesting of Assessment.* -xxx
>
> 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." (*Boldfacing supplied*)

On the other hand, under Section 11 of RA No. 1125,[69] as amended, in relation to Section 3(a), Rule 8 of the RRCTA,[70] a party

---

[67] SEC. 7. *Jurisdiction.* - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

[68] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

[69] Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for actions as referred to in Section 7(a)(2) herein. xxx

[70] Sec. 3. *Who may appeal; period to file petition.* –
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed

adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA by way of a petition for review within thirty (30) days after receipt of the copy of such decision or ruling or within thirty (30) days after the expiration of the specific period of action.

Based on the foregoing, this Court has exclusive appellate jurisdiction to review on appeal decisions of respondent involving disputed assessments. The taxpayer adversely affected by respondent's decision may file an appeal with this Court within thirty (30) days after receipt of such decision.

Since petitioner received respondent's FDDA dated November 3, 2021[71] on December 1, 2021,[72] petitioner had thirty (30) days therefrom, or until December 31, 2021 within which to file its appeal before the Court. Considering, however that December 31, 2021 fell on a holiday, and January 1, 2022 and January 2, 2022 fell on a Saturday and a Sunday, respectively, petitioner had until January 3, 2022, the next working day, within which to file its appeal.

Due, however, to the adverse effects of super typhoon Odette, the Court issued CTA Circular No. 02-2021[73] on December 21, 2021. The Circular suspended the filing of any and all pleadings with the CTA from December 21, 2021 to January 3, 2022, and extended the deadline for filing of pleadings with the CTA that fell due during said period for seven (7) calendar days counted from January 4, 2022.

Subsequently, on January 10, 2022, the Supreme Court issued Administrative Circular No. 01-2022[74] stating that the filing period of any and all pleadings falling due in the month of January 2022 in all courts are extended until February 1, 2022. Considering that February 1, 2022 fell on a holiday, petitioner therefore had until February 2, 2022 within which to file its appeal. The present Petition for Review was

---

within thirty days after receipt of the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.

[71] Exhibit "P-8", CTA Docket Vol. II, pp. 499-503; Exhibit "R-9", BIR Records Folder 1, pp. 568-572.

[72] Exhibit "P-8-1", CTA Docket Vol. II, p. 499.

[73] RE: EXTENSION OF THE DEADLINES FOR THE FILING OF ANY AND ALL PLEADINGS AND OTHER COURT SUBMISSIONS WITH THE COURT OF TAX APPEALS IN LIGHT OF SUPER TYPHOON ODETTE.

[74] RE: EXTENSION OF THE DEADLINES FOR THE FILING OF ANY AND ALL PLEADINGS AND OTHER COURT SUBMISSIONS FALLING DUE IN THE MONTH OF JANUARY 2022 IN ALL COURTS.

timely filed on February 2, 2022.[75] Thus, the Court acquired jurisdiction over the present case.

The Court has the power to rule on the issue on the validity of the LOA even though the same was not raised in the administrative level

Respondent argues that since the issue on the validity of the LOA was never raised by petitioner in the administrative level, it can no longer raise said issue on the ground of laches.

Petitioner's failure to raise this issue is not fatal to its case.

The Court can consider issues and arguments raised by the parties in the petition and answer, albeit the same were not raised before the administrative level. On this note, the pronouncement in *Commissioner of Internal Revenue vs. Geniographics Incorporated*[76] is instructive, *viz.:*

> "Anent the alleged error of the CTA in deciding an issue not raised before the administrative level, suffice it to state that respondent's **failure to raise the absence of a valid LOA at the earliest opportunity does not preclude the CTA from considering the same because said issue delves into the intrinsic validity of the assessment itself.** Besides, **the CTA, in deciding a case, may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**." *(Emphasis supplied)*

Clearly, the Court has the power to rule on the issue on the validity of the LOA even though the same was not raised by petitioner at the administrative level.

---

[75] CTA Docket Vol. I, pp. 16-69.
[76] G.R. No. 264572, July 26, 2023.

The FLD was issued in violation of petitioner's right to due process; hence, the same is void ab initio

Some of the ROs who conducted the audit/ investigation of petitioner are not authorized by an LOA

Sections 6[77] and 13[78] of the NIRC of 1997, as amended, is clear and categorical in requiring a specific authority from the CIR or from his/her duly authorized representatives before an examination of a taxpayer may be made. An officer of the BIR cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[79] and in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[80] the Supreme Court held that the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any RO is indispensable to the validity of an assessment.

Moreover, RMO No. 43-90 is explicit in requiring the issuance of a new LOA when an audit is continued by an RO other than the officer named in a previous LOA, *viz.*:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.

---

[77] SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –

(A) Examination of Return 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.

[78] 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, pursuant to a Letter of Authority 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.

[79] G.R. No. 178697, November 17, 2010.

[80] G.R. No. 222743, April 5, 2017.

xxx xxx xxx

> 5. **<u>Any re-assignment/transfer of cases to another RO(s)</u>**, and revalidation of L/As which have already expired, **<u>shall require the issuance of a new L/A</u>, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." (*Boldfacing and underlining supplied*)

In *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[81] the Supreme Court emphasized that before any RO can conduct any kind of examination or assessment of a taxpayer, there must be a grant of authority, in the form of an LOA, which empowers and enables the ROs to examine the books of accounts and other accounting records of the taxpayer. The Supreme Court also clarified that the issuance of the LOA is a statutory power vested in the CIR and his/her duly authorized representatives, *viz.*:

> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.** The issuance of 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 the CIR [himself/herself] or [his/her] duly authorized representatives.
>
> xxx xxx xxx
>
> **Unless authorized by the CIR [himself/herself] or by [his/her] duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR [himself/herself] or [his/her] duly authorized representatives, <u>other tax agents</u> may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct any of these kinds of examination or assessment.** The revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. (*Boldfacing and underlining supplied*)

Evidently, all tax agents or ROs must be armed with an LOA issued by the CIR himself/herself or his/her duly authorized representatives to be able to conduct the audit or examination. Without an LOA, only the CIR himself/herself or his/her duly authorized representatives themselves can conduct the audit or examination.

---

[81] G.R. No. 242670, May 10, 2021.

The Supreme Court also stressed in *McDonald's* the importance of identifying the authorized revenue officer who will conduct the examination and assessment against a taxpayer, *viz*:

> **To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts.** The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the **LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.** (*Boldfacing supplied*)

Furthermore, the Supreme Court held in *McDonald's* that the practice of reassigning or transferring ROs originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his/her duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his/her duly authorized representative to examine the taxpayer's books of accounts.

The LOA dated November 10, 2015 authorized ROs Oradia and Abellera and GS Tolentino to examine petitioner's books of accounts and other accounting records covering all internal revenue taxes for TY 2014.

A perusal of the BIR Records shows that in addition to those ROs named in the LOA dated November 10, 2015, **ROs A.T. Zamora and J.C. Galicia** also took part in the conduct of the audit/investigation to assess petitioner for deficiency taxes for TY 2014. The following documents show that ROs Zamora and Galicia also took part in the conduct of the audit/investigation to assess petitioner, *viz.*:

OM

1. Revenue Officer's Audit Report on Income Tax;[82]
2. Revenue Officer's Audit Report on Improperly Accumulated Earnings Tax;[83]
3. Revenue Officer's Audit Report on Value-Added Tax;[84]
4. Revenue Officer's Audit Report Expanded Withholding Taxes;[85]
5. Revenue Officer's Audit Report Compensation Withholding Taxes;[86]
6. Memorandum dated November 27, 2017 recommending the issuance of the PAN;[87]
7. Revenue Officer's Audit Report on Income Tax;[88]
8. Revenue Officer's Audit Report on Improperly Accumulated Earnings Tax;[89]
9. Revenue Officer's Audit Report on Value-Added Tax;[90]
10. Revenue Officer's Audit Report Expanded Withholding Taxes;[91]
11. Revenue Officer's Audit Report Compensation Withholding Taxes;[92]
12. Revenue Officer's Audit Report on Miscellaneous Penalty Taxes;[93] and,
13. Memorandum dated December 27, 2017 recommending the issuance of the FLD and Assessment Notices.[94]

Moreover, an examination of the BIR Records reveals that no LOA was issued to authorize ROs Zamora and Galicia to conduct audit/investigation of petitioner's tax liabilities for TY 2014. Thus, they were not authorized to take part on the conduct of said audit/investigation on petitioner. As a consequence, the conduct of said audit/investigation was legally flawed. The assessments issued pursuant to said audit/investigation are inescapably void and must be slain at sight.

In light of the foregoing, the Court need not belabor the other issues raised by the parties.

---

[82] Exhibit "R-12", BIR Records Folder 1, p. 224.
[83] Exhibit "R-12", BIR Records Folder 1, p. 222.
[84] Exhibit "R-12", BIR Records Folder 1, p. 221a.
[85] Exhibit "R-12", BIR Records Folder 1, p. 220.
[86] Exhibit "R-12", BIR Records Folder 1, p. 217.
[87] Exhibit "R-4", BIR Records Folder 1, pp. 226-230.
[88] Exhibit "R-12", BIR Records Folder 1, p. 243.
[89] Exhibit "R-12", BIR Records Folder 1, p. 241.
[90] Exhibit "R-12", BIR Records Folder 1, p. 239.
[91] Exhibit "R-12", BIR Records Folder 1, p. 238.
[92] Exhibit "R-12", BIR Records Folder 1, p. 237.
[93] Exhibit "R-12", BIR Records Folder 1, p. 236.
[94] Exhibit "R-6", BIR Records Folder 1, pp. 243-248.

WHEREFORE, premises considered, the Petition for Review filed on February 2, 2022 by petitioner First Telecom Phils., Inc. is **GRANTED**. Accordingly, the undated Formal Letter of Demand with Details of Discrepancies and Assessment Notices, and the Final Decision on Disputed Assessment with Audit Results/Assessment Notices, all dated November 3, 2021 assessing petitioner in the total amount of ₱1,373,843,258.62, inclusive of interest and penalties, representing the alleged deficiency income tax, improperly accumulated earnings tax, value-added tax, expanded withholding tax, and compromise penalties for taxable year 2014, are **CANCELLED** and **SET ASIDE** for being void *ab initio*.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed alleged deficiency tax assessments subject of the undated Formal Letter of Demand with Details of Discrepancies and Assessment Notices and the Final Decision on Disputed Assessment with Audit Results/Assessment Notices, all dated November 3, 2021, assessing petitioner of deficiency income tax, improperly accumulated earnings tax, value-added tax, expanded withholding tax, and compromise penalties in the total amount of ₱1,373,843,258.62, inclusive of interest and penalties, for taxable year 2014. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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