REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CEBU MITSUMI, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8531

Members:

Castañeda,Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
MAY 2 1 2015
4:27 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

The case involves a Petition for Review filed by petitioner Cebu Mitsumi, Inc. to appeal the decision of respondent Commissioner of Internal Revenue, which assessed petitioner for alleged deficiency income taxes for taxable year March 31, 2009.

STATEMENT OF FACTS

Petitioner, Cebu Mitsumi, Inc., is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at MRI Special Economic Zone, Sabang, Danao City, Cebu, Philippines.[1] Petitioner is an Ecozone Export Enterprise. It is engaged in the production of magnetic heads, floppy disk drives, connectors, flexible printed circuit, digital audio tape deck mechanism for data streamers, magnetic drums, optical heads for CD-ROM drives, CD_ROM drives, membrane switch unit, reel motor, pressed and molded parts, spindle motor, floppy disk adapter, DC micro motor, IC module, camera module and monolithic integrated circuit.[2]

---
[1] Docket, pp. 1-2.
[2] Docket, p. 7.

Respondent Commissioner of Internal Revenue (CIR) is the chief of the Bureau of Internal Revenue (BIR). The government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith.[3]

On May 18, 2012, petitioner received from respondent a Formal Letter of Demand with Assessment Notice No. 123-IT-20-2009-2012-05-27, assessing petitioner for alleged deficiency income tax.[4] On May 30, 2012, petitioner filed a Letter of Protest/Request for Investigation against the said Formal Letter of Demand.[5]

On July 19, 2012, petitioner received from respondent a Final Decision on Disputed Assessment (FDDA) demanding payment of alleged deficiency income tax for taxable year ended March 31, 2009.[6]

In the FDDA, respondent disallowed the deduction of petitioner's brokerage, freight & handling, training expenses, and repairs & maintenance expenses from petitioner's Gross Revenue on the basis that these expenses are allegedly not included under Revenue Regulations (RR) No. 11-2005. Respondent computed petitioner's alleged deficiency income tax as follows:[7]

Undeclared Rental Income under 5% GIT Legal Basis: Sec. 24 of RA 8748		2,144,085.35
Disallowed Expenses (not included in RR 11-2005)		
Brokerage, Freight & Handling	24,796,768.00	
Training Expenses	2,338,840.00	
Repairs & Maintenance	197,356,985.00	224,492,593.00
Total		226,636,678.35
Rate		5%
Basic		11,331,833.92
Add:Interest July 15, 2009 – July 31, 2012		6,904,657.16
Total Amount Due		18,236,491.08

[3] Docket, p. 2.
[4] Joint Stipulation of Facts and Issues (JSFI), par. 4, docket, p. 99.
[5] JSFI, par. 5, docket, p. 100.
[6] JSFI, par. 6, docket, p. 100.
[7] JSFI, p. 3, docket, p. 99.

Considering receipt of the FDDA on July 19, 2012, petitioner had until August 18, 2012 to appeal to the CTA, thus, the instant petition filed, on August 17, 2012, is timely filed.

Upon notice and after an extension was granted, respondent filed its Answer[8] on October 18, 2012. Pre-trial briefs were filed by the respondent and petitioner on November 1, 2012 and November 19, 2012, respectively.[9] After pre-trial, the parties submitted their Joint Stipulation of Facts and Issues (JSFI) on December 12, 2012.[10] The Court issued its Pre-Trial Order on January 3, 2013.[11]

Petitioner presented as witnesses: petitioner's Finance Manager, Mr. Edwin Alvero, and independent certified public accountant (ICPA), Mr. Elmer P. Minerva. On November 25, 2013, petitioner submitted its Formal Offer of Evidence.[12] The Court admitted Exhibits "A" to "O-1", in its Resolution dated January 17, 2014.[13] On February 4, 2014, petitioner filed a Motion for Reconsideration[14] of the Court's denial of admission of certain documents, which the Court only partially granted in a Resolution[15] dated March 17, 2014.

On December 12, 2013, petitioner filed a Motion to Reopen Case[16] in order for petitioner to present additional evidence, which the Court granted in a Resolution[17] dated February 3, 2014. Petitioner recalled Mr. Edwin Alvero on February 26, 2014 and March 17, 2014.[18]

Petitioner filed its Supplemental Formal Offer of Evidence on March 27, 2014.[19] In the Resolution, dated May 12, 2014, the Court admitted Exhibits "R", "S", "T", "U", "V", and "AA-ABX-07-002-00".[20] Subsequently, and upon reconsideration, Exhibits "AA-ABX-07-001-00", "P", "Q", "W", "Y", "Z", "AA",

---

[8] Docket, pp. 52-70.
[9] Docket, pp. 75-83 and 84-92.
[10] Docket, pp. 98-102.
[11] Docket, pp. 104-109.
[12] Docket, pp. 335-343.
[13] Docket, pp. 729-730.
[14] Docket, pp. 744-750.
[15] Docket, pp. 876-877.
[16] Docket, pp. 716-720.
[17] Docket, pp. 741-743.
[18] Docket, pp. 867 and 874.
[19] Docket, pp. 880-886.
[20] Docket, pp. 968-969.

"BB", "CC", "DD", "K", "K-1", "EE", and "EE-1" were also admitted.[21]

Respondent, on the other hand, presented revenue officer, Ms. Vivian Pollisco, as its sole witness.[22] Respondent filed its Formal Offer of Documentary Evidence on July 7, 2014.[23] On September 4, 2014, the Court admitted Exhibits "1", "3", "5", "7, "7-a", "9", "9-a", "10", and "12".[24] Upon reconsideration, Exhibits "8" and "11" were also admitted.[25]

The case was deemed submitted for decision on March 3, 2015, upon the submission of petitioner's Memorandum, on January 20, 2015, and respondent's Memorandum, received by this Court on February 2, 2015.[26]

Hence, this decision.

STATEMENT OF ISSUES

The parties agreed to submit the following issues:

1. Whether or not the Formal Letter of Demand issued by the respondent against the petitioner has factual and legal bases;

2. Whether or not petitioner's payment of the assessed deficiency income tax on the alleged undeclared rental income and disallowed repairs and maintenance expenses extinguished the obligation of petitioner;

3. Whether or not petitioner is entitled to deduct from its gross sales or revenues the expenses it incurred related to brokerage, freight and handling, training expenses, and repairs & maintenance in the total amount of PhP244,492,593.00;

---

[21] Docket, pp. 1061-1062.
[22] Docket, pp. 1058-1059.
[23] Docket, pp. 1070-1075.
[24] Docket, pp. 1080-1081.
[25] Docket, pp. 1096-1097.
[26] Docket, p. 1193.

4. Assuming arguendo, that BIR Ruling No. 014-2012 dated January 4, 2012 is binding, whether the same should be applied prospectively; and

5. Whether or not petitioner is liable to pay the alleged deficiency income tax for taxable year ended March 31, 2009 amounting to PhP18,236,491.08 as well as interest and surcharges provided in Section 248 and 249 of the NIRC of 1997.[27]

Petitioner, in its Memorandum, raised the following issue for the first time:

> Whether the assessment is void as no Letter of Authority (LOA) was issued by respondent.[28]

DISCUSSION/RULING

This Court will first look into the issue of the presence or absence of the LOA, despite having only been raised in the Memorandum, considering that the presence or absence of the LOA is relevant to the validity of the entire assessment procedure.

In the instant case, the absence of the LOA was alleged by petitioner only in its Memorandum. Respondent did not rebut this argument in its own Memorandum, despite having the opportunity to do so when it requested for extension of time to file its Memorandum.

An examination of the court records reveals that petitioner did not allege that it has received a Letter of Authority prior to the notice of informal conference. This was oversight on the part of petitioner which it seeks to correct through its memorandum. The BIR Records transmitted by respondent to this Court also reveals the absence of the Letter of Authority. Finally, respondent's witness, Revenue Officer Vivian Pollisco, during cross-examination, stated that no Letter of Authority was issued:

---

[27] Docket, pp. 105-106.
[28] Docket, p. 1122.

> "ATTY. UNCIANO:
> Q. How would you know that a certain case has been assigned to you for examination?
>
> MS. POLLISCO:
> A. If these referred to us, a Letter of Authority, TVN or whatever...if these were assigned to us for investigation.
>
> xxx
>
> ATTY. UNCIANO:
> Q. Your authority to examine this case [is] embodied [in] a Letter of Authority?
>
> MS. POLLISCO:
> A. No, there's no Letter of Authority for this."[29]

Thus, this Court finds that no Letter of Authority was issued by respondent nor received by petitioner.

A Letter of Authority is required by Section 13 of the National Internal Revenue Code of 1997 (NIRC), as amended, which provides:

> "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."

From the foregoing provision, it is clear that there must first be a grant of authority before an officer can conduct an examination or issue an assessment. Thus, the Supreme Court elucidated in *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*(*Sony* case)[30]:

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the

[29] TSN, June 16, 2014, p. 12 and 15.
[30] G.R. No. 178697, November 17, 2010.

> appropriate revenue officer assigned to perform assessment functions. It empowers or 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. xxx
>
> xxx
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue office so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity."[31]

In the *Sony* case, there was an LOA issued by the BIR and received by the taxpayer. However, the assessment was nullified after the Court found that the revenue officers went beyond the scope of their authority. It was further noted that issuing an LOA for "unverified prior years" violated Section C of Revenue Memorandum Order No. 43-90.[32] The same circumstances were present in *De La Salle University, Inc. vs Commissioner of Internal Revenue*[33], wherein the CTA *En Banc* also nullified the assessments arising from an invalid LOA.

Recently in *University of Santo Tomas Hospital, Inc. vs. Commissioner of Internal Revenue*[34], the assessment was cancelled and withdrawn for having been issued under a void authority. In this case, the LOA was issued by the Revenue Regional Director, when the taxpayer has already been transferred to the Large Taxpayers Service (LTS), thus the Region did not have jurisdiction over the taxpayer. When the Region proceeded with the assessment, it did so without authority since the taxpayer was already under the jurisdiction of the LTS.[35]

In the cases of *Sony, De La Salle University, University of Santo Tomas Hospital,* letters of authority were issued prior to the assessment which were subsequently declared void. In the instant case, no letter of authority was issued prior to the investigation and assessment. With more reason, the assessment in the instant case is void having been issued without an LOA.

---

[31] *Id.*
[32] *Supra*, note 29.
[33] CTA Case EB Case No. 671, June 8, 2011.
[34] CTA Case No. 8292, March 2, 2015.
[35] *Id.*

The Court will no longer discuss the details of the assessment.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, Assessment Notice No. 123-IT-20-2009-2012-05-27 is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
CAESAR A. CASANOVA
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.
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice