REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

ABUNDANCE PROVIDERS AND ENTREPRENEURS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND THE BUREAU OF INTERNAL REVENUE,
Respondents.

CTA Case No. 9407

Members:

RINGPIS-LIBAN, *Chairperson,*
REYES-FAJARDO,*
CUI-DAVID,* *JJ.*

Promulgated:

DEC 07 2023
4:24 p.m.

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RESOLUTION

REYES-FAJARDO, J.:

For the Court's resolution is the respondent Commissioner of Internal Revenue (CIR)'s Motion for Reconsideration[1] dated August 31, 2023 of the Decision promulgated on July 14, 2023 (Assailed Decision). In the Assailed Decision, the Court **nullified** the Formal Letter of Demand dated June 26, 2013 (FLD) and the Final Decision on Disputed Assessment dated February 24, 2016 (FDDA), assessing Abundance Providers and Entrepreneurs Corporation (petitioner or APEC) for deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for calendar year 2008 and **enjoined** the CIR and its agents/representatives from collecting the deficiency taxes subject of the void assessments.

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* Designated as special members of the Third Division per Memorandum dated August 9, 2022. Docket – Vol. 13, p. 6448.

1 Docket – Vol. 13, pp. 6470-6493.

The CIR cites the following grounds in support of the instant Motion for Reconsideration:

> THE HONORABLE COURT ERRED IN RULING ON AN ISSUE NEVER RAISED BY PETITIONER, NEVER JOINED BY THE PLEADINGS, NEVER RAISED DURING THE PRE-TRIAL AND NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER.
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> WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENTS ISSUED BY RESPONDENT ARE VOID.
>
> THE HONORABLE COURT ERRED IN ENJOINING AND PROHIBITING RESPONDENT TO COLLECT THE ASSESSED DEFICIENCY TAXES FROM PETITIONER.[2]

APEC counters[3] as follows:

> I
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> As Correctly Held By The Honorable Court and Contrary To Respondent CIR's Assertions, The Assessment Notices Were Issued In Blatant Violation of Petitioner APEC's Right To Due Process.
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> II
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> Contrary To Respondent CIR's Claim, There Was No Violation Of Respondent CIR's Right To Fair Play And Due Process When the Honorable Court Ruled On The Issue As To Absence Of Authority Of The Revenue Officers To Conduct An Audit Investigation Of Petitioner APEC.
>
> III
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> The Assessment Notices Issued By Revenue Officers And Group Supervisors Not Duly Authorized Under A Letter Of Authority ("LOA") Are Null And Void, Pursuant To The Provisions Of The Tax Code, Revenue Memorandum Order ("RMO") No. 48-90 And Relevant Jurisprudence.
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> IV
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> No Error Was Committed By the Honorable Court In Exercising Its Authority To Permanently Enjoin and Prohibit Respondent CIR From Collecting The Alleged Assessed Deficiency Taxes Which Is A

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2 Docket - Vol. 13, p. 6471
3 In its Comment/Opposition dated September 27, 2023. Docket - Vol. 13, pp. 6496-6527.

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Necessary Consequence Of Its Judgment Declaring The Assessment Notices Null And Void.[4]

On October 4, 2023, the CIR's Motion for Reconsideration, with APEC's Comment/Opposition, was submitted for resolution.

After a careful review of the records, the Court finds no compelling reason to reverse or modify the Assailed Decision.

At the outset, We emphasize that the subject assessments against APEC were nullified based on the following grounds: *First,* the FLD and FDDA were issued in violation of APEC's right to due process, relative to the Supreme Court's pronouncements in *Ang Tibay v. Court of Industrial Relations*[5] and *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[6] *Second,* the concerned revenue officers did not possess the required formal authority to audit APEC, consistent with the Supreme Court's ruling in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp (McDonald's).*[7] In the instant motion, the CIR only raises arguments pertaining to the *second* ground.

The Court is not barred from considering the issue of the revenue officers' lack of authority

The Revised Rules of the Court of Tax Appeals (RRCTA) provide that "[i]n deciding the case, the Court 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.**"[8] Verily, the Court shall be authorized to pass upon matters even outside the parties' assigned errors or stipulations only when the following requisites concur: *First,* the additional issues are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case. *Second,* the resolution of these new issues would not require the presentation of additional evidence and

[4] Docket - Vol. 13, p. 6498.
[5] G.R. No. 46496, February 27, 1940, 69 PHIL 635-645.
[6] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[7] G.R. No. 242670, May 10, 2021.
[8] Rule 15, Section 1, Revised Rules of the Court of Tax Appeals, A.M. No. 05-11-07-CTA, November 22, 2005. Also see *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.* (G.R. No. 183408, July 12, 2017, 813 PHIL 622-654).

must rely solely on factual bases that are already matters of record in the case.[9]

Accordingly, We observe the following in the present case: *First,* whether the revenue officers were authorized to audit APEC is a matter that directly affects the core issue on the validity of the assessment issued against the taxpayer. *Second,* the Court reached the conclusion that the concerned revenue officers did not possess the required formal authority to audit APEC based on an examination of documents already part of the record, *viz.*: Letter of Authority (LOA) No. 00033698 dated July 1, 2009,[10] Letter dated April 7, 2010,[11] and Memorandum of Assignment (MOA) dated February 25, 2013.[12] These exhibits were formally offered by both parties during trial.[13]

APEC submitted these documents to prove that only one LOA was issued relative to the audit of APEC's books, despite the further reassignment of the same investigation to revenue officers other than those named in the original LOA.[14] The CIR did not object to the admission of these documents[15] nor did it proffer any argument to counter APEC's assertion (*i.e.,* lack of authority) when it filed its Memorandum[16] after both parties have rested their case.

For its part, the CIR offered the same documents in evidence to prove that it notified APEC that a different set of revenue officers were going to conduct/continue the audit.[17]

To be sure, that revenue officers did not possess the required formal authority to conduct an investigation is a matter that affects the resulting assessment's intrinsic validity. The Court may take cognizance of this issue despite the taxpayer's failure to raise it at earliest opportunity,[18] more so when it appears that, in fact, the

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[9] *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue,* G.R. No. 249153, September 12, 2022.
[10] Exhibits "P-28" and "R-1", BIR Records, p. 1.
[11] Exhibits "P-32" and "R-8", BIR Records, p. 24.
[12] Exhibits "P-56" and "R-14", BIR Records, p. 851.
[13] See petitioner APEC and respondent CIR's Formal Offers of Evidence, Docket – Vol. 10, pp. 4742-4782 and Docket - Vol. 12, pp. 6262-6267, respectively.
[14] See petitioner APEC's Formal Offer of Evidence, Docket – Vol. 10, pp. 4745-4754.
[15] Docket - Vol. 12, p. 6191.
[16] Docket - Vol. 13, pp. 6286-6298.
[17] Purpose of offering Exhibits "R-8" and "R-14" in respondent CIR's Formal Offer of Evidence, Docket - Vol. 12, pp. 6263-6264.
[18] See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue* (G.R. No. 241848, May 14, 2021) citing Presiding Justice Roman G. Del Rosario's Dissenting Opinion in CTA EB No. 1513.

taxpayer disputed the revenue officers' authority in the course of the trial.

The CIR's power to assess is conditioned upon a valid authority to examine a taxpayer's books of account.

The CIR rejects the application of the pronouncement in *McDonald's*, stating that said ruling cannot be applied retroactively and that, previously, a new LOA was not required and a MOA was already sufficient to vest authority to the revenue officers named in the MOA.

This position specious.

That a revenue officer must be duly appointed in a valid LOA before it may proceed to examine a taxpayer is a **statutory requirement.**[19] Relative thereto, Revenue Memorandum Order No. 43-90[20] mandated[21] the issuance of a new LOA when active cases are re-assigned to other revenue officers.

Moreover, aside from *McDonald's*, the Supreme Court has been consistent in upholding and reiterating these requirements and in invalidating assessments in case of the tax authorities' non-compliance thereto.[22] The CIR cannot feign ignorance of the LOA requirement's mandatory nature as the uniform judicial interpretations establish contemporaneous legislative intent that the law and revenue issuances carried into effect and are regarded as part of the law as of the date it was originally passed.[23]

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[19] See Section 13, in relation to Section 6, of the National Internal Revenue Code.

[20] *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit*, September 20, 1990])

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

[22] *Republic v. Robiegie Corp.*, G.R. No. 260261, October 3, 2022; *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021; *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010, 649 PHIL 519-537.

[23] *Ramos v. National Commission on Indigenous Peoples*, G.R. No. 192112, August 19, 2020.

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When the assessment is invalid, the taxpayer has no liability for deficiency taxes and the CIR has no authority to demand payment thereof.

The CIR claims that it cannot be enjoined from collecting the assessed deficiency taxes, relying on Section 218 of the National Internal Revenue Code of the Philippines (Tax Code) and Rule 10 of the RRCTA, *viz.*:

> SECTION 218. Injunction not Available to Restrain Collection of Tax. — No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code.
>
> RULE 10
>
> Suspension of Collection of Tax
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> SECTION 1. No Suspension of Collection of Tax, Except as Herein Prescribed. — **No appeal taken to the Court** shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of his tax liability as provided under existing laws, except as hereinafter prescribed. (Boldfacing supplied)

Respondent CIR's argument is misplaced.

The basic principle is that taxes being the lifeblood of the government should be collected promptly, without unnecessary hindrance or delay. Thus, as a general rule, courts are barred from granting injunctive relief to restrain the collection of taxes.[24] This is only consistent with the presumption of correctness in favor of tax assessments, such that assessments shall be regarded as valid **until proven otherwise.**

That said, We underscore that the above-quoted prohibitions contemplate an injunction sought as a **provisional remedy during the pendency of an appeal.**

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[24] *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*, G.R. No. 219340 (Resolution), April 28, 2021.

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Certainly, **after trial on the merits**, when it is established that collection of deficiency tax is baseless and/or contrary to law or, simply, when the presumption of correctness is overturned, the Court shall render a **final judgment** in accordance with its findings, thus, directing the tax authorities to cease and desist from implementing collection measures.

Notably, in cases where the tax assessment is upheld, the law authorizes the CTA to issue an order directing the tax authorities to proceed against the taxpayer and to implement collection measures in satisfaction of the adjudged deficiency tax liability.[25] By necessary implication,[26] when a tax assessment is invalidated, it must be understood that the CTA shall be so empowered to render judgment preventing the unwarranted effects of the voided assessment.

The settled rule is that an invalid assessment bears no fruit, in which case, any attempt to collect thereon shall be illegal.[27] To nullify an assessment but keep silent as to collection may be construed as giving implicit consent to proceed with collection despite the judgment of nullification. This amounts to an absolute absurdity and is inimical to the taxpayer's right to protest an assessment.

All in all, the CIR has not adduced any substantial argument to warrant reconsideration or modification of the Assailed Decision.

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[25] Section 13, Republic Act No. 1125, as amended by Republic Act No. 9282, March 30, 2004.

[26] The doctrine of necessary implication sets out that every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege (See *Province of Camarines Sur v. Commission on Audit*, G.R. No. 227926, March 10, 2020). "No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding of events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. Ex necessitate legis." (See *Department of Environment and Natural Resources v. United Planners Consultants, Inc.*, G.R. No. 212081, February 23, 2015, 754 PHIL 513-534).

[27] See *Commissioner of Internal Revenue v. Unioil Corp.* (G.R. No. 204405, August 4, 2021).

WHEREFORE, in light of the foregoing considerations, respondent Commissioner of Internal Revenue's Motion for Reconsideration of the Decision promulgated on July 14, 2023 is **DENIED** for lack of merit.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

LANEE S. CUI-DAVID
Associate Justice