REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GOLDEN DONUTS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1866
(CTA Case No. 9676)

Present:

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

Promulgated:

NOV 19 2019 11:58 a.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review[1] of the Resolutions of the Court in Division, dated January 24, 2018 and May 10, 2018, respectively, which dismissed the Petition for Review filed before the Court in Division, for lack of jurisdiction. The mere issuance of a Letter of Authority (LOA) is not an appealable matter to the Court of Tax Appeals.

The Facts

Petitioner recites the antecedents, as follows:

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8. Petitioner is a corporation duly organized and existing under the laws of the Republic of the

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[1] *Rollo*, pp. 7-31.

Philippines with office address at GDI Building, Sheridan corner Reliance Streets, Mandaluyong City.

9. Respondent is the duly appointed Commissioner of Internal Revenue with office address at BIR Building, Diliman, Quezon City where he may be served with summons and other legal processes.

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10. On 20 June 2008, Petitioner received a BIR Letter of Authority No. LOA-2007-00016170 ("2008 LOA") dated 17 June 2008, authorizing the examination of the books of accounts of Petitioner for the period **<u>1 January 2007 to 31 December 2007</u>**.

11. The 2008 LOA resulted in a full-blown investigation of Petitioner's books and records for taxable year **<u>2007</u>** and GDI fully cooperated with the BIR and fulfilled all its requests for documents and information.

12. The BIR eventually issued a "Formal Letter of Demand" ("FLD") to Petitioner in the total amount of Php1,564,426,808.08 representing its deficiency income tax, VAT, EWT, Final WT, fringe benefits tax, and increments and penalties allegedly due for taxable year 2007.

13. Petitioner duly protested the FLD and as a result thereof, the BIR, through Revenue District Office No. 41, conducted a thorough reinvestigation of Petitioner's books of accounts and records for taxable year 2007.

14. After the reinvestigation and verification of additional voluminous supporting documents by Petitioner to reconcile its accounts, the BIR determined that GDI's actual deficiency tax liabilities for the taxable year **<u>2007</u>** was Php4,003,081.30 and thereafter informed Petitioner of the results of its reinvestigation.

15. Petitioner accepted the BIR's findings and executed an Agreement Form with the BIR. The Agreement Form was signed by Petitioner and the BIR, represented by Revenue District Officer Isabel A. Paulino, Group Supervisor Gregorio S. Tumanguil, and Revenue Officer Stanley Ong.

16. Thereafter, Petitioner paid the tax due as recomputed by the BIR. This is duly evidenced by the proofs of payment by Petitioner of the BIR's assessment

on 1 October 2012 (i.e. bank deposit slip and duly accomplished BIR Form No. 0605).

17. After paying its deficiency taxes for taxable year **2007**, in addition to the taxes it previously paid based on the tax returns it filed and the taxes remitted by its income payors, Petitioner's tax liabilities for the taxable year 2007 had been duly and completely settled. Thus, as of 1 October 2012, the BIR's reinvestigation into Petitioner's **2007** books of accounts was already closed and terminated.

18. On 2 May 2017, Petitioner received from the BIR-National Investigation Division a new Letter of Authority No. LOA-211-2017-00000037 (eLA201500081454) dated 27 April 2017 ("2017 LOA"), authorizing the examination of the books of accounts of Petitioner for taxable year **2007** – the very **same period** that was the subject of the 2008 LOA.

19. Petitioner filed several letters with the Respondent to register its objection to the reopening of its 2007 tax case on the ground that any and all tax liabilities for taxable year **2007** had been fully paid and settled in 2012 following the BIR's audit investigation pursuant to the 2008 LOA.

20. Instead of granting Petitioner's request to terminate the reinvestigation of its 2007 books of accounts, respondent, through its agents issued a subpoena duces tecum (SDT) to compel the Petitioner to submit additional documents pertaining to taxable year 2007.

21. Believing that the 2017 LOA was illegally issued by the BIR, Petitioner filed a Petition for Review dated 29 August 2017 with Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction (the "Case *a quo*") with the court *a quo* seeking to invalidate the 2017 LOA and the SDT and the immediate termination of the ongoing BIR-NID investigation on Petitioner. xxx

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22. In response, Respondent filed its Opposition with Motion to Dismiss (Re: Petitioner's Urgent Motion for the Issuance of Temporary Restraining Order and/or

Writ of Preliminary Injunction) dated 18 September 2017 and the Answer dated 20 October 2017.[2]

On January 24, 2018, the Court in Division granted respondent's Motion to Dismiss, and accordingly, dismissed petitioner's Petition for Review.[3] The Court in Division reasoned that:

> xxx a Petition for Review assailing an interlocutory action of respondent prior to the issuance of a final assessment is premature and may not be construed within the context of 'other matters arising under the National Internal Revenue Code' as appearing in Section 7(1) of RA No. 1125, as amended by RA No. 9282. xxx
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> As correctly raised by respondent, the Court cannot, at this stage, prevent respondent from exercising his official mandate to authorize the examination of any taxpayer and the assessment of the correct amount of tax, pursuant to Section 6(A) of the NIRC of 1997. It is only after the audit and examination, and the issuance of the final assessment notice, that the party disputing the assessment may resort to this Court to appeal respondent's inaction or denial of its protest or prevent respondent from enforcing collection thereof; otherwise, the invocation of this Court's jurisdiction during the course of the assessment process would simply invite multiplicity of suits which, needless to say, is anathema to the sound administration of justice.[4]

Petitioner's Motion for Reconsideration was likewise denied, as follows:

> **WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
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> **SO ORDERED**.[5]

On June 18, 2018, petitioner filed the instant Petition for Review assailing the abovequoted Resolutions dated January

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[2] *Rollo*, Petition for Review (PFR), pp. 8-11.
[3] *Rollo*, Resolution dated January 24, 2018, pp. 38-47.
[4] *Rollo*, Resolution dated January 24, 2018, pp. 45-46.
[5] *Rollo*, Resolution dated May 10, 2018.

24, 2018 and May 10, 2018, respectively. Petitioner prays that the assailed Resolutions be reversed, reconsidered and set aside, and that the Court in Division be ordered to assume jurisdiction, set the case for trial and resolve the issues on the merits.[6]

On August 3, 2018,[7] respondent filed his Comment (Re: Petition for Review dated 18 June 2018)[8] stating that the Court in Division correctly ruled that it had no jurisdiction over the original petition.

On October 8, 2018, respondent filed his Memorandum[9], while petitioner filed its Memorandum[10] on October 22, 2018. Considering the foregoing, the case was deemed submitted for decision on November 22, 2018.[11]

Issue

> Whether or not the Court in Division has jurisdiction over the Petition for Review filed on August 29, 2017.

Ruling of the Court

The petition lacks merit.

The Petition for Review was timely filed.

On May 16, 2018, petitioner received the Resolution dated May 10, 2018, which denied petitioner's Motion for Reconsideration.

Pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioner had fifteen (15) days from May 16, 2018, or until May 31, 2018, within which to file its petition for review with the Court *En Banc*.

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[6] *Rollo*, PFR, p. 29.
[7] Within the extended period granted, per Minute Resolution dated July 30, 2018, p. 145.
[8] *Rollo*, pp. 146-154.
[9] *Rollo*, pp. 170-182.
[10] *Rollo*, pp. 183-212.
[11] *Rollo*, Resolution dated November 22, 2018, pp. 214-215.

On May 30, 2018, petitioner filed a Motion for Extension of Time to File Petition for Review[12] praying for an extension of fifteen (15) days from May 31, 2018 within which to file the Petition for Review. Petitioner was granted an extension up to June 15, 2018.[13]

On June 18, 2018, petitioner timely filed the subject Petition for Review, considering that June 15, 2018 was declared a holiday[14].

There is no compelling reason to reverse or modify the Court in Division's Resolutions.

Petitioner argues that the issue falls under the CTA's jurisdiction under "other matters arising under the National Internal Revenue Code and other laws administered by the BIR". Petitioner argues against the reopening of investigation for taxable year 2007 considering that:

> (1) the BIR has already investigated, issued a formal letter of demand, and reinvestigated petitioner for its tax liabilities for taxable year 2007;
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> (2) petitioner has already fully paid and settled its tax liabilities for taxable year 2007; and
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> (3) the right of the BIR to further investigate and assess petitioner for taxable year 2007 has prescribed.

On the other hand, respondent argues that the CTA is a court of special jurisdiction and can take cognizance only of matters that are clearly within its jurisdiction. Respondent also states that the decision contemplated in the law is one rendered on a disputed assessment, while in this case, there is no assessment yet because respondent is still about to commence the investigation with the issuance of the LOA. Respondent states that the CTA has no power to restrain the

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[12] *Rollo*, pp. 1-4.
[13] *Rollo*, p. 6.
[14] Proclamation No. 514, Declaring Friday, 15 June 2018, a regular holiday throughout the country in observance of Eid'l Fitr (Feast of Ramadhan), June 6, 2018.

exercise of respondent's power to assess or to conduct audit to determine whether proper taxes have been paid.

We agree with respondent.

The CTA's civil jurisdiction, in relation to the Bureau of Internal Revenue and the National Internal Revenue Code, is enumerated as follows:

> SEC. 7. Jurisdiction. – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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>> (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;
>>
>> (2) Inaction by 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

The Supreme Court, in *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation,*[15] already discussed what falls under the "other matters" jurisdiction of the CTA, as follows:

> xxx **the phrase "other matters arising under This Code," as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrases "disputed assessments, refund of internal revenue taxes, fees or other charges,**

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[15] G.R. No. 207843, July 15, 2015.

> **penalties imposed in relation thereto" and must therefore not be taken in isolation to invoke the jurisdiction of the CTA**. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers.
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> **In this case, there was even no tax assessment to speak of. While customs collector Federico Bulanhagui himself admitted during the CTA's November 8, 2012 hearing that the computation he had written at the back page of the IEIRD served as the final assessment imposing excise tax on Petron's importation of alkalyte, the Court concurs with the CIR's stance that the subject IEIRD was not yet the customs collector's final assessment that could be the proper subject for review.** And even if it were, the same should have been brought first for review before the COC and not directly to the CTA. It should be stressed that the CTA has no jurisdiction to review by appeal, decisions of the customs collector. The TCC prescribes that a party adversely affected by a ruling or decision of the customs collector may protest such ruling or decision upon payment of the amount due and, if aggrieved by the action of the customs collector on the matter under protest, may have the same reviewed by the COC. It is only after the COC shall have made an adverse ruling on the matter may the aggrieved party file an appeal to the CTA. (*Emphases supplied*)

The issuance of LOA No. LOA-211-2017-00000037 (eLA201500081454) and the August 23, 2017 *subpoena duces tecum* does not fall within the enumerated matters that the Court in Division may take cognizance of prior to the issuance of a final assessment.[16] A Petition for Review assailing an interlocutory action of respondent prior to the issuance of a final assessment is premature and may not be construed within the context of "other matters arising under the National Internal Revenue Code".[17] Thus, the Court in Division stated:

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[16] *Rollo*, Resolution dated January 24, 2018, p. 44.
[17] *Rollo*, Resolution dated January 24, 2018, p. 45.

> As correctly raised by respondent, the Court cannot, at this stage, prevent respondent from exercising his official mandate to authorize the examination of any taxpayer and the assessment of the correct amount of tax, pursuant to Section 6(A) of the NIRC of 1997. It is only after the audit and examination, and the issuance of the final assessment notice, that the party disputing the assessment may resort to this Court to appeal respondent's inaction or denial of its protest or prevent respondent from enforcing collection thereof; otherwise, the invocation of this Court's jurisdiction questioning each and every step undertaken by respondent during the course of the assessment process would simply invite multiplicity of suits, which needless to say, is anathema to the sound administration of justice.
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> Incidentally, petitioner cited cases to justify that the Court has jurisdiction over the subject matter of the *Petition for Review*. A careful perusal of the facts involved therein, however, would reveal that the subject thereof was confined neither to the mere issuance of a letter of authority or *subpoena duces tecum* nor to any action of respondent prior to the issuance of a final assessment notice. Indeed, this Court has jurisdiction to take cognizance of said cases as the issues involved therein revolve around the final assessments issued by respondent.[18]

Based on the foregoing, the issuance of LOA No. LOA-211-2017-00000037 (eLA201500081454) for investigation of petitioner's books of accounts for taxable year 2007 is not a matter which may be appealed to the CTA.

WHEREFORE, the Petition for Review is **DENIED**. The Resolutions dated January 24, 2018 and May 10, 2018 are **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[18] *Rollo*, Resolution dated January 24, 2018, p. 46.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
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