REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

TEKTITE INSURANCE BROKERS, INC., *Petitioner,*	**CTA *EB* NO. 1923** *(CTA Case No. 8903)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 08 2021 3:51 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is the ***Motion for Reconsideration ("Motion")***, filed by petitioner on 24 September 2020,[1] asking the Court *En Banc* to set aside the Decision, dated 23 July 2020, upholding the assessment for deficiency income tax plus interest and compromise penalty for taxable year ending 2010. Per the Court's Records Verification Report, dated 6 January 2021, respondent did not file his Comment or Opposition.[2]

In its Motion, petitioner argues that the assessment is void for want of authority of the revenue officers who conducted its audit. It alleges that since the revenue officers failed to conclude the audit investigation within 120 days from the issuance of the Letter of Authority ("LOA") without the same being revalidated, the assessment is invalid and, thus, the revenue officers are devoid of authority to audit and assess the same.

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[1] Petitioner filed its Motion for Reconsideration on 24 September 2020 or within 15 days from its receipt of this Court's Decision on 9 September 2020. Hence, this Motion was timely filed.
[2] Records Verification dated 6 January 2021; *Rollo*, p. 1055.

It also adds that the Formal Letter of Demand/Final Assessment Notice ("FAN") issued against it has a note in asterisk which states that "Please note that the interest and the total amount due will have to be adjusted if paid beyond July 16, 2014." It insists that the phrase made the FAN subject to adjustment and, thus, void for not being definite and final.

Further, petitioner posits that the Court *En Banc* erred in ruling that its Protest to the FAN is void on the ground that petitioner failed to state/attach the following: (a) additional evidence to be presented, (b) date of the FAN, and (c) the applicable law and regulation on which the protest is based, rendering the assessment final and executory.

Petitioner explains that this Court failed to take into consideration its argument that as early as in its Reply Letter to the Notice of Informal Conference ("NIC") and Response Letter to the Preliminary Assessment Notice ("PAN") (hereinafter referred to as "Reply Letters"), it had already submitted all its documentary evidence and had explained in detail its defenses. Since respondent disregarded its submissions and explanations, it argues that it was justified to write its Protest to the FAN in a simplified manner.

Petitioner states that even assuming that its Protest to the FAN is not compliant with the prescribed form under the tax regulations, the Court *En Banc* should have still considered it valid on the basis of substantial compliance.

Petitioner also stresses that respondent failed to provide legal basis for its undeclared commission income assessment. It alleges that the Bureau of Internal Revenue ("BIR") failed to provide any legal ground to justify its findings and merely subjected certain amounts to an applied rate. Considering the same, petitioner argues that it cannot be expected to intelligently refute the BIR's findings rendering it void.

Likewise, petitioner points out that the Court *En Banc* should have invalidated the waiver on the following grounds: its representative who signed the same was not armed by a duly notarized written authority; the BIR officials who signed the waiver are only the Revenue District Officer and the revenue officers and not the Regional Director; and the waiver did not specify the kind and amount of tax mandated under ***Revenue Delegation Authority Order ("RDAO") No. 05-01.***[3]

Finally, petitioner submits that the ruling of this Court finding the defects in the waiver were caused by both petitioner and respondent is not supported by evidence and, therefore, incorrect. It argues that it was the BIR

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[3] Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, 2 August 2001.

who insisted on the waiver and that it did not benefit from its issuance. Hence, it opines that it cannot be considered estopped from questioning its validity.

After going through the arguments of petitioner, the Court *En Banc* finds its contentions bereft of merit.

On its first point, petitioner is mistaken to conclude that the revenue officers' failure to revalidate the LOA will cause its invalidity and, therefore, will divest them of the authority to audit and assess petitioner's accounting books and records.

Nowhere in the Tax Code does it state that an LOA needs to be revalidated after the lapse of 120 days for it to be continuously valid (hereinafter referred to as the "revalidation rule"). The revalidation rule was only imposed by respondent through various tax regulations including ***Revenue Memorandum Order ("RMO") No. 38-88,***[4] ***Revenue Memorandum Circular ("RMC") No. 40-2006,***[5] and ***BIR's General Audit Procedure and Documentation ("GAPD")***. In fact, a close reading of the said issuances proves that the failure of a revenue officer to revalidate the LOA will not cause its invalidity but would only expose the said officer to administrative charges.

Moreover, ***Revenue Memorandum Circular ("RMC") No. 044-10,***[6] which supersedes the aforementioned issuances and the tax issuance applicable to petitioner, provides that LOAs are no longer required to be revalidated. The applicable provision is hereby quoted, to wit:

> "Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the LA even if the prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions."

The ruling in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue ("Medicard Case")***[7] is not applicable herein, considering that the issues and the factual circumstances of both cases are different from one another. Unlike in the ***Medicard Case***, where there was a complete absence of an LOA, the assessment here is pursuant to an LOA authorizing the very same revenue officers who conducted the audit and recommended the issuance of the assessments against petitioner. It is worthy to mention that the

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[4] Guidelines on Revalidation of Letters of Authority, 24 August 1988.

[5] Clarification on the Jurisdictions of the Large Taxpayer Service, the Enforcement Service and the Revenue Regions Including the Revenue District Offices and Divisions under Them, Performing Audit and Investigation Functions, and Guidelines for the Exercise of Such Jurisdictions and Functions, 13 July 2006.

[6] Electronic Issuance of Letters of Authority, 12 May 2010.

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

revalidation rule was never an issue in the ***Medicard Case***. Hence, petitioner's reliance on the said case is erroneous.

As for its second point, the Court *En Banc* observes that this is the first time petitioner is raising the impropriety of the assessment on the ground of the note found in the FAN which states: "Please note that the interest and the total amount due will have to be adjusted if paid beyond July 16, 2014."

Being so, the case of ***Duty Free Philippines Services, Inc., v. Tria***[8] mandates that the courts are prohibited to rule upon issues raised for the first time in a motion for reconsideration or appeal. The relevant portion of the Decision is quoted, to wit:

> "It is a fundamental rule of procedure that higher courts are **precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration** or on appeal. xxx"[9]

The rationale behind this rule was encapsulated in the case of ***Chinatrust (Phils.) Commercial Bank v. Philip Turner***,[10] which provides:

> "Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal.
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> In Philippine Ports Authority v. City of Iloilo:
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>> As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.
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> There is more reason for a reviewing court to refrain from resolving *motu proprio* an issue that was not even raised by a party. This Court has previously declared that:

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[8] G.R. No. 174809, 27 June 2012.
[9] Emphasis supplied.
[10] G.R. No. 191458, 3 July 2017.

> [C]ourts of justice have no jurisdiction or power to decide a question not in issue" and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid."

As explained in the above-mentioned cases, it is too late in the day for petitioner to question the lawfulness of the assessment on the ground of the note found in the FAN without violating respondent's right to due process. However, even assuming that the Court *En Banc* does consider petitioner's new theory, the same is still bereft of merit.

In bolstering its new theory, petitioner explains that the note found in the FAN rendered the amounts mentioned therein subject to adjustment, citing the case of ***Commissioner of Internal Revenue v. Fitness by Design, Inc. (hereinafter referred to as "Fitness by Design Case")***.[11]

In the said case, the Supreme Court found the FAN void for having no definite demand for payment on account of the following note written on the said assessment: "*Please note, however, that the interest and the total amount due will have to be adjusted if paid prior or beyond April 15, 2004*".

The Supreme Court explained that since there is no definite due date and that the amount of tax due in the assessment is subject to modification, the FAN cannot be treated as final rendering the same invalid. However, a close reading of both notes proves that they are different, rendering the ***Fitness by Design Case*** inapplicable herein.

For easy reference, the Court *En Banc* reproduces both notes found in the ***Fitness by Design Case*** and the one herein, to wit:

Present Case	Fitness By Design Case
"Please note that the interest and the total amount due will have to be adjusted if **paid beyond July 16, 2014**"	"Please note, however, that the interest and the total amount due will have to be **adjusted if paid <u>prior</u> or beyond April 15, 2004**"

Scrutinizing the statement in the ***Fitness by Design Case*** proves that its import or meaning is not the same as the statement found in this case.

In the ***Fitness by Design Case***, the BIR failed to provide an exact and definite deadline on when the tax liability is due for payment. Indeed, the note in the FAN made the tax liability indefinite and dependent on when the taxpayer would settle the assessment because of the phrase "prior or beyond April 15, 2004". This is not the case herein.

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[11] G.R. No. 215957, 9 November 2016.

Here, the statement in the FAN did, in fact, mention a due date which is 18 July 2014. The added phrase in the FAN did not make the same indefinite but merely served as a reminder to petitioner that the interest will increase if the tax liability will not be paid within the due date. In short, the statement only emphasized the eventual consequence of not paying the assessment within the due date.

As for its third point, the Court *En Banc* finds no merit in petitioner's argument that it should be considered substantially compliant with the requirements under ***Revenue Regulation ("RR") No. 12-99, as amended*** when it filed its Protest to the FAN on the ground that the BIR allegedly disregarded its previous submissions.[12]

RR No. 12-99, as amended, is clear and admits no exception that, for requests for reinvestigation, the protest must contain: (i) the newly discovered or additional evidence that the taxpayer intends to present; (ii) the date of the assessment notice; and (iii) the applicable law, rules and regulations, or jurisprudence on which the protest is based. Failure to comply with the aforementioned regulation will render the protest void and the assessment final, executory, and demandable.

Furthermore, it is erroneous for petitioner to blame the BIR for not considering its previous submissions. If petitioner intended to let the BIR review these documents anew, it should have specified this in its Protest to the FAN. This is so, considering that during requests for reinvestigation, the BIR is not expected to reevaluate previously submitted documents since it is presumed that these had already been reviewed and found insufficient during the earlier stages of the audit investigation. Moreso, the taxpayer in requests for reinvestigation is expected to submit additional or newly discovered evidence which will be the focus of the BIR's review. This is consistent with ***RR No. 12-99, as amended,*** to wit:

> "For requests for reinvestigation, **the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final**. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. **Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.**"[13]

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[12] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, 6 September 1999.

[13] Emphasis supplied.

Given that petitioner's Protest to the FAN failed to comply with the requirements under ***RR No. 12-99, as amended***, its assessment had long become final and executory rendering the same uncontestable including respondent's findings on its undeclared commission income.

As for its contentions on the waiver, the Court *En Banc* cannot subscribe to petitioner's argument that the waiver should be invalidated since it was signed by its president without any supporting Board Resolution.

As discussed, a company's president, even without a Board Resolution, is presumed to have the authority to act on matters within the general objectives of its business. This includes the signing of waivers. In fact, this is the same reason why the Supreme Court, in the case of ***Cebu Metro Pharmacy, Inc., v. Euro-Med Laboratories, Philippines, Inc.***,[14] affirmed the validity of a verification and certification against forum shopping signed by the company president even without submitting any supporting board resolution authorizing him to sign the said document.

Likewise, it is erroneous for petitioner to argue that the waiver is defective on the basis that it was signed by the Revenue District Officer and not by the Regional Director.

As ruled by the Supreme Court in ***Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.***[15] and as provided in ***RDAO No. 05-01***, the authorized signatory of waivers in audit cases pending investigation in the Revenue District Office is the Revenue District Officer and not the Regional Director.

Applying this rule in the case at bar, it is apparent that the waiver was executed before the issuance of the PAN or while petitioner's audit investigation was still ongoing at the Revenue District Office level. Given this, the Court *En Banc* finds that the Revenue District Officer is the proper signatory of the contested waiver in accordance with jurisprudence and tax regulations.

Petitioner's contention that the waiver should have been signed by the Regional Director since its audit investigation is a regional case on account that its LOA was signed by the Regional Director is of no moment. The signatory of the LOA does not determine whether the case is in the Revenue District Office level or Regional level. It is the stage of the audit investigation and assessment which determines the same. Likewise, petitioner is erroneous in comparing the signatories of the LOA and the waiver. These documents have different purposes and authorized signatories.

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[14] G.R. No. 164757, 18 October 2010.
[15] G.R. No. 187589, 3 December 2014.

In the case of an LOA, the Tax Code and jurisprudence are clear that at no instance can a Revenue District Officer sign an LOA since he is not one of the authorized representatives of respondent. At the very least, it is only the Regional Director who can sign the same.

Lastly, the Court *En Banc* sees no merit in petitioner's contention that it is not estopped from questioning the defects in the waiver. As found in the assailed Decision, not only were the defects attributable to both parties, but petitioner also failed to raise any objection as to its validity at the earliest opportunity.[16] Based on these reasons, petitioner can no longer question the validity of the waiver.

In view of the foregoing, this Court finds no reason to disturb the findings of the Court *En Banc* in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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[16] Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc., G.R. No. 227544, 22 November 2017.

(With due respect, I maintain my CDO.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I maintain my CDO dated July 23, 2020.)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice