REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

LINDE PHILIPPINES, INC. (formerly CONSOLIDATED INDUSTRIAL GASES, INC.), Petitioner,	CTA Case No. 8783
	Members:
	FABON-VICTORINO, and RINGPIS LIBAN, JJ.
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 15 2019 11:48 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On March 5, 2019, a Decision[1] was rendered, the decretal portion of which reads:

> **WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment issued by respondent against petitioner for deficiency final withholding tax and value-added tax in the aggregate amount of ₱62,363,178.19, inclusive of surcharge, interest and compromise penalties for fiscal year ended September 30, 2007 is **CANCELLED** and **SET ASIDE**.
>
> In addition, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱62,363,178.19, representing erroneously or illegally collected deficiency final withholding tax and value-added tax.

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[1] Docket, pp. 1205-1230.

SO ORDERED.

The Court ratiocinated that under Sections 6(A), 10 and 13 of the National Internal Revenue Code (NIRC), as amended, as interpreted by jurisprudence, save when the examination and audit of a taxpayer's books of account or other accounting record was conducted by respondent or his authorized representative, a valid Letter of Authority (LOA) issued by the latter's subordinates is crucial for the validity of the assessment. Given that revenue officers Melinda G. Lim, Nimfa P. Saga, as well as group supervisor Edison L. Larin, or the persons who actually validated petitioner's books of account and other accounting record were not named in the LOA dated September 17, 2008 issued by Regional Director Alfredo M. Misajon, their findings of deficiency taxes as adopted in the assailed Final Assessment Notice (FAN) are void, justifying its cancellation and withdrawal. Thus, the sums paid by petitioner under protest corresponding to such flawed deficiency taxes should be refunded or a tax credit be issued in its favor.

In his bid[2] to overturn the impugned Decision, respondent maintains that:

I. The Honorable Court's power of judicial review over decisions of the Commissioner of Internal Revenue on disputed assessment is by nature exclusive and appellate. Petitioner should not be allowed to raised issues for the first time on appeal;

II. The Honorable Court erred in granting a relief that was not prayed for by petitioner. Hence, respondent's right to fair play and due process was violated;

III. The Honorable Court erred in ruling that the assessments are void because the revenue officers who conducted the audit of petitioner's books of account were allegedly not authorized through a LOA; and

IV. The Honorable Court erred in applying the ruling of the Honorable Supreme Court in the case of Medicard vs. CIR.

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2 Respondent's *Motion for Reconsideration* dated April 18, 2019, ibid. at pp. 1238-1260.

In its *Comment* dated June 7, 2019, petitioner admits that the issue of the authority of the ROs to conduct audit or verification of its books of account or accounting record for FY ended September 2007 was neither raised in its pleadings or memorandum. It however counters that the Court may touch or determine the said issue considering that it is determinative of its tax liability under the assessments in question, citing Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), as authority.

Also, the fact that respondent had ample opportunity to assert his arguments during the entire course of the proceeding, as well as to ventilate the merits of his defense negates the impression that that his right to due process was transgressed, retorts petitioner.

Relying on Revenue Memorandum Order (RMO) No. 43-90, as well as cases decided by the Court and the High Tribunal, petitioner further counters that the issuance of a valid LOA in favor of the examining ROs is quintessential to the subject assessments' efficacy. Since the LOA dated September 17, 2008 issued by Regional Director Alredo M. Misajon did not indicate the names of examining Revenue Officers Melinda G. Lim, Nimfa P. Saga, and their group supervisor Edison L. Larin as authorized to conduct validation or examination of its books of account and other accounting record for FY ended September 2007, the deficiency tax assessments emanating therefrom is a patent nullity.

Undeniably, the arguments put forward by the parties in their respective pleadings reveal that their contentions are mere repetitions of their arguments in their previously filed pleadings, all of which have been determined and passed upon by the Court. In any event, even granting *arguendo* that a valid LOA was issued by respondent or his authorized representative, the FAN in question must be struck down since it is not an assessment contemplated by law and jurisprudence.

Article 1158[3] of the Civil Code provides *inter alia* that *obligatio ex-lege* such as taxes are not presumed and may only be demandable upon firm compliance with the law that establishes them. The law referred to therein is Section 6(A) of the NIRC, as amended which reads:

> 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. - xxx
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

The term "assessment" refers to the determination of amounts due from a person obligated to make payments.[4] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[5] It must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period,[6] the purpose of which is to determine the amount that a taxpayer is liable to pay.[7] Conversely, an assessment which neither has a due date nor a fixed and determinate amount of tax liability is *not* an assessment envisaged by Tax Code and pertinent jurisprudence.

In this case, while it is true that the FAN dated March 2, 2012 states for the computation of petitioner's purported tax liabilities, the amount remains indefinite as the tax due and interest thereon are still subject to modification depending on actual date of payment, thus:

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3 **Article 1158.** Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book.

4 See *SMI-ED Phil. Technology, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 175410, November 12, 2014.

5 *Adamson vs. Court of Appeals,* G.R. No. 120935, May 21, 2009.

6 *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,* G.R. No. 128315, June 29, 1999.

7 See *Tupaz vs. Hon. Ulep,* G.R. No. 127777, October 1, 1999.

> Please note that the interest and the total amount will have to be adjusted if paid beyond March 30, 2012.[8]

Respondent's assessment is practically hinged upon the period when petitioner resolves to make good his alleged tax obligation in favor of the government. The FAN dated March 2, 2012 therefore does not contain a fixed and definite amount of tax to be paid, rendering it legally infirm. Precisely, the Court is left with no other recourse but to invalidate the same.

WHEREFORE, respondent's *Motion for Reconsideration* dated April 18, 2019 is **DENIED**, for lack of merit. The impugned Decision of March 5, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

8 Exhibit R-8, BIR Record, p. 489.