REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

ED & F MAN PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10053

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

DEC 14 2023, 10:15AM

x- -x

RESOLUTION

REYES-FAJARDO, ***J.***:

In the Decision dated August 10, 2023,[1] it was ruled: (1) we have jurisdiction over CTA Case No. 10053; (2) there was no perfected compromise agreement between petitioner and the Bureau of Internal Revenue (BIR); hence, the deficiency Valued-Added Tax (VAT) assessment issued by the latter for Taxable Year (TY) 2008 may still be impugned by petitioner; and (3) said VAT assessment is void because it was anchored on a mere Letter Notice (LN), and *not* a Letter of Authority (LOA), along with the absence of due date for payment. By these findings, we allowed the refund of petitioner's erroneously paid compromise amount, in the sum of ₱46,018,145.17, representing twenty-five percent (25%) of the basic VAT for TY 2008, as follows:

> **WHEREFORE**, the Petition for Review, filed on April 1, 2019, is **GRANTED**. Accordingly, the Commissioner of Internal Revenue

---

1 Docket (Vol. II), pp. 930-951.

is **DIRECTED** to refund ED & F Man Philippines, Inc., the amount of ₱46,018,145.17, representing twenty-five percent (25%) of the basic deficiency Value-Added Tax assessment it paid, for Taxable Year 2008.

SO ORDERED.

On August 30, 2023, respondent filed a Motion for Reconsideration (Re: Decision dated 10 August 2023),[2] arguing: (1) the VAT assessment for TY 2008 became final, executory, and demandable because petitioner failed to appeal before the CTA, Regional Director Murna S. Leonid's Letter dated July 7, 2015, denying with finality petitioner's Letter dated March 25, 2014; (2) petitioner violated the principle of prior exhaustion of administrative remedies, by filing its judicial claim for refund on April 1, 2019, or three (3) days after the filing of its administrative claim of even nature on March 29, 2019; and (3) the perfected compromise agreement between petitioner and the BIR resulted in the former's foreclosure of right to recover the amount it paid as settlement, along with the lack of cause of action before the Court.

Through its Comment/Opposition (To the Respondent's Motion for Reconsideration dated 24 August 2023), [3] filed on September 18, 2023, petitioner mainly counters that the Court was correct in granting the refund of erroneously paid compromise amount, in the sum of ₱46,018,145.17, representing twenty-five percent (25%) of the basic deficiency VAT assessment for TY 2008.

The Motion is denied.

First. Jurisprudence defines a final assessment as a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof."[4] Taking our cue therefrom, there was no final assessment for deficiency VAT covering TY 2008 to speak of, because of lack of due date in the FAN[5] for said tax.

---

2 *Id.* at pp. 956-975.

3 *Id.* at pp. 980-1001.

4 See *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016; *Commissioner of Internal Revenue v. Menguito*, G.R. No. 167560, September 17, 2008; *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*, G.R. No. 128315, June 29, 1999; and *Collector of Internal Revenue v. Benipayo*, G.R. No. L-13656, January 31, 1962.

5 Exhibit "P-28." Docket (Vol. II), p. 795.

Second. On the assumption that there exists a final assessment for VAT against petitioner covering TY 2008, the BIR violated the latter's right to due process on audit or investigation, because it was tethered solely on an LN. No LOA was issued by respondent or his duly authorized representatives for said year. *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[6] was more elaborative:

> To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. ... **Due process requires that the taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**
>
> ...[7]

Since the BIR failed to accord petitioner due process, the effect thereof is that the FAN for TY 2008 could never reach finality and incontestability. *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[8] pronounced:

> Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves. As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord [the taxpayer] due process in their issuance, the CIR's argument necessarily fails.

Third. The remainder of respondent's arguments were already weighed, and found wanting in the Decision dated August 10, 2023.

---

6 G.R. No. 242670, May 10, 2021.

7 Boldfacing supplied.

8 G.R. No. 240729, August 24, 2020 (Resolution).

WHEREFORE, respondent's Motion for Reconsideration (Re: Decision dated 10 August 2023), filed on August 30, 2023, is **DENIED**, for lack of merit.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

I reiterate my Concurring and Dissenting Opinion.
ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice