REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

WILLORE PHARMA CORPORATION,
Petitioner,

CTA EB NO. 1577
(CTA Case No. 8602)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 09 2018
3:09 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court En Banc is a Petition for Review[1] filed by Willore Pharma Corporation (WPC) against the Commissioner of Internal Revenue (CIR) seeking the reversal of the Decision dated June 22, 2016 (Assailed Decision) rendered by the First Division of this Court in CTA Case No. 8602, as well as the Resolution dated December 15, 2016 (Assailed Resolution) denying its motion for reconsideration.

The dispositive portion of the Assailed Decision reads, as follows:

> "**WHEREFORE**, in light of all the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. The deficiency EWT on the rental of LCD/projector, training room and function

[1] *Rollo*, pp. 5-20.

room, on income payments to Hizon Laboratories, and the deficiency income tax resulting from the disallowance of said expenses and the donation which was found to be in the nature of an advertising expense, as well the compromise penalties imposed, are **CANCELLED** and **SET ASIDE**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency EWT, FBT, FWT, FWVAT and income tax are **UPHELD** but **WITH MODIFICATIONS**. Petitioner is **ORDERED TO PAY** respondent the amount of **FIVE MILLION FIVE HUNDRED THIRTEEN THOUSAND ONE HUNDRED FOUR PESOS AND 9/100 (₱5,513,104.09)** representing basic deficiency EWT, FBT, FWT, FWVAT and income tax, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, to wit:

TYPE OF TAX	BASIC TAX	25% SURCHARGE	TOTAL
EWT	₱ 97,065.56	₱ 24,266.39	₱ 121,331.95
FBT	490,699.37	122,674.84	613,374.21
FWT	17,056.20	4,264.05	21,320.25
FWVAT	5,874.84	1,461.96	7,309.80
Income Tax	3,799,814.30	949,953.58	4,749,767.88
Total	**₱ 4,410,483.27**	**₱ 1,102,620.82**	**₱ 5,513,104.09**

In addition, petitioner is **ORDERED TO PAY**:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax computed from April 15, 2009 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997; and

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱5,513,104.09 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from May 10, 2012 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED."[2]

The Assailed Resolution, on the other hand, in its dispositive portion, provides the following:

[2] *Id.*, pp. 76-77.

> "**WHEREFORE**, in view of the foregoing considerations, petitioner's **Partial Motion for Reconsideration** and **Supplemental Partial Motion for Reconsideration (With Leave to Admit New Evidence)** an respondent's **Motion for Partial Reconsideration** are **DENIED** for lack of merit.
>
> **SO ORDERED.**"[3]

The Parties

Petitioner Willore Pharma Corporation is a corporation duly organized and existing under Philippine laws, with address at Unit 1514 Medical Plaza Ortigas, 25 San Miguel Avenue, Pasig City. It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. (TIN) 241-953-587-000.[4]

Respondent CIR is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the provisions of the National Internal Revenue Code ("Tax Code"). He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

The Facts[6]

The relevant antecedents as borne by the records of the case, are as follows:

On March 21, 2012, petitioner, through its marketing statistician, Mildred Garcia, received the Preliminary Assessment Notice (PAN) with an attached Details of Discrepancies,[7] informing petitioner of its deficiency income tax, EWT, FBT, FWT, and FWVAT for taxable year ending December 31, 2008.[8]

Thereafter, respondent issued the Assessment Notices for taxable year 2008,[9] covered by Formal Letter of Demand dated April 10, 2012 (Demand No. 043A-8004-08), which was received by petitioner on April 18, 2012.[10]

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[3] *Id.*, pp. 93-94.
[4] Docket, p. 1418, Pre-Trial Order dated May 12, 2014, par. II.A.I.
[5] *Id.*, par. II.A.2.
[6] As found by the First Division and as culled from the records of the case.
[7] *Id.* at Note 4, p. 1419.
[8] BIR Records, pp. 215 to 219, Exhibits "R-14" and "R-15".
[9] Exhibits "P-2", "P-3", "P-4", "P-5", "P -6", and "P-7".
[10] *Id.* at Note 8, pp. 230 to 237, Exhibit "P-1"; Exhibits "R-16" to "R-17-1".

The FLD assessed petitioner of the following alleged tax liabilities:[11]

Income Tax	₱ 6,196,458.71
EWT	₱ 900,936.46
FBT	₱ 789,695.26
FWT	₱ 32,638.09
FWVAT	₱ 11,190.20
Compromise Penalty	₱ 21,500.00

On November 8, 2012, petitioner, through Mildred Garcia, received the Preliminary Collection Notice (PCN) dated November 5, 2012 relating to the deficiency tax assessments covered by Demand No. 043A-8004-08.[12]

Petitioner acknowledged receipt of the PCN through the letter dated November 9, 2012.[13] In the same letter, petitioner informed respondent that it protested the assessment on April 20, 2012.[14]

Due to the inaction of respondent on its protest, petitioner filed a Petition for Review[15] on January 10, 2013. This was docketed as CTA Case No. 8602 with the Court in Division.

Respondent filed his Answer on February 19, 2013.[16] As part of his special and affirmative defenses, he argues that all presumptions are in favor of the correctness of the assessment; that due process was observed in the conduct of the investigation of petitioner's internal revenue tax; that petitioner was fully apprised of the facts and the law on which the FAN, FLD and FDDA were based; that the assessment has become final and executory; that the taxpayer must prove its compliance with existing laws and jurisprudence to validly dispute the assessment; and that the taxpayer must establish by sufficient and competent evidence that its protest is valid and binding.

On February 21, 2013, the case was set for pre-trial on April 11, 2013.[17] Petitioner filed its Pre-Trial Brief on May 16, 2013.[18]

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[11] *Id.*, pp. 229 to 231, Exhibits "R-17" and "R-17-1".
[12] *Id.* at Note 4, p. 1419; *id.* at Note 8, p. 245.
[13] Par. II.A.9, Pre-Trial Order dated May 12,2014, Docket-Vol. III, p. 1419.
[14] *Id.* at Note 8, p. 250, Letter dated November 9, 2012.
[15] *Id.* at Note 4, pp. 8 to 27.
[16] *Id.*, pp. 263 to 265.
[17] *Id.*, p. 267, Resolution dated February 21, 2013.
[18] *Id.*, pp. 276 to 280.

On June 18, 2013, respondent filed his Omnibus Motion to Set Preliminary Hearing on Affirmative Defenses and to Defer Pre-Trial Conference, claiming that the Court did not have jurisdiction to act on the petition since there was no timely administrative protest filed.[19]

Petitioner filed its Comment (Re: Omnibus Motion to Set Preliminary Hearing on Affirmative Defenses and To Defer Pretrial Conference) on June 26, 2013, attaching thereto the original receiving copy of the Letter Protest and Letter Submission[20].

The Court denied the Omnibus Motion because the issues raised therein are questions of fact that could best be determined in a full blown hearing and not in a mere preliminary hearing.[21]

Respondent's Pre-Trial Brief was later filed on November 15, 2013.[22]

On February 25, 2014, March 12, 2014, and April 14, 2014, the parties submitted their Joint Stipulation of Facts,[23] Supplemental Joint Stipulation,[24] and Second Supplemental Joint Stipulation,[25] respectively; which were approved in the Resolution dated April 29, 2014.[26]

Thereafter, the Court issued the Pre-Trial Order dated May 12, 2014 and deemed the pre-trial conference terminated.[27]

During trial, petitioner presented witnesses Katherine Sheena S. Tugade, Accounting Manager of petitioner,[28] and Atty. Erano M. Punsalan, the Independent Certified Public Accountant (ICPA).[29]

Petitioner likewise presented, marked, identified, and offered Exhibits "P-1 to P-304-1". With the exception of Exhibits "P-123" to "P-130", "P-149", "P-259", "P-279" to "P-291" and "P-292" to "P-302", and "P-291-1",[30] all of petitioner's exhibits were admitted by the Court in Division.

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[19] *Id.*, pp. 297 to 300.
[20] *Id.*, pp. 306 to 313.
[21] *Id.*, pp. 323 to 325, Resolution dated September 10,2013.
[22] *Id.*, pp. 330 to 334.
[23] *Id.*, pp. 494 to 496.
[24] *Id.*, pp. 857 to 870.
[25] *Id.*, pp. 885 to 886.
[26] *Id.*, pp. 889 to 890.
[27] *Id.*, pp. 1417 to 1452.
[28] *Id.*, pp. 284 to 295, Judicial Affidavit of Katherine Sheena S. Tugade; pp. 503 to 518, Supplemental Judicial Affidavit of Katherine Sheena S. Tugade; Transcript of Stenographic Notes (TSN) at the hearing held on March 13, 2014.
[29] *Id.*, pp. 1460 to 1465, Exhibit "P-303"; TSN at the hearing held on March 13, 2014 and September 9, 2014.
[30] *Id.*, pp. 2017 to 2018, Resolution dated September 8, 2014.

Consequently, petitioner filed its Tender of Excluded Evidence on November 11, 2014 and moved that the denied exhibits be attached to and made part of the records of the case.[31] This was noted by the Court in the Resolution dated December 3, 2014.[32]

Respondent, on the other hand, presented witnesses Clea Marie P. Pimentel-Revenue Officer II of Revenue District Office No. 45-Marikina[33] and Benjamin L. Valeriano-Revenue Officer I, Assessment Division, Revenue Region No. 7[34].

Respondent formally offered Exhibits "R-1" to "R-21-1". Except for Exhibit "R-11", respondent's Exhibits were admitted by the Court.[35]

Petitioner filed its Memorandum[36] on April 20, 2015, while respondent failed to file his memorandum, despite notice.

On June 23, 2015,[37] The case was deemed submitted for decision.

On June 22, 2016, the Court in Division promulgated the assailed Decision[38] partially granting petitioner's Petition for Review.

Petitioner filed his Partial Motion for Reconsideration thereto on July 7, 2016 while respondent filed his Motion for Partial Reconsideration (Decision dated 22 June 2016) on July 11, 2016.

On July 8, 2016, petitioner filed a Supplemental Motion for Partial Reconsideration (With Leave to Admit New Evidence) through registered mail which the Court received on July 14, 2016.

On July 26, 2016, petitioner filed its Comment (To the July 8, 2016 Partial Motion for Reconsideration) while respondent failed to file Comment to petitioner's motion.

On December 15, 2016, the Court in Division issued the assailed Resolution denying both parties respective motions for reconsideration.

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[31] *Id.*, pp. 2030 to 2034.
[32] *Id.*, p. 2036.
[33] *Id.*, pp. 335 to 344, Exhibit "R-19"; TSN at the hearing held on September 9, 2014, pp. 6 to 11.
[34] *Id.*, pp. 415 to 419, Exhibit "R-21"; TSN at the hearing held on November 11, 2014.
[35] *Id.*, pp. 2067 to 2068, Resolution dated February 18, 2015.
[36] *Id.*,, pp. 2081 to 2101.
[37] *Id.*, pp. 2115 to 2116, Resolution dated June 23,2015.
[38] *Id.* at Note 2.

Within the extended period granted by the Court *en banc*[39], on February 2, 2017, petitioner timely posted its Petition for Review through registered mail which the Court received on February 9, 2017 and docketed as CTA EB No. 1577.[40]

In a Resolution dated March 3, 2017,[41] respondent was ordered to file his Comment to the Petition. Despite notice, however, respondent failed to file Comment.[42]

On May 2, 2017, petitioner filed its Manifestation with Urgent Motion with Leave to Allow Correction of Error. Respondent was ordered to file Comment in a Resolution dated May 15, 2017,[43] but failed to file Comment again despite notice.[44]

On July 25, 2017, the Court *en banc* issued a Resolution[45] giving due course to the Petition for Review and granting petitioner's Urgent Motion with Leave to Allow Correction of Error. The parties were also ordered to submit their respective memoranda.

On September 6, 2017, petitioner filed its Memorandum (of Willore Pharam Corporation).[46] Respondent once again, failed to file his Memorandum despite notice.[47]

On November 27, 2017, the case was submitted for decision.[48]

The Assignments of Errors

In its Petition for Review, petitioner assigns one main error in the assailed Decision and Resolution in that the First Division failed to consider the totality of all the evidence presented by both parties in holding petitioner liable for the reduced deficiency income tax, EWT, FBT, FWT, and WVAT in the amount of ₱4,410,483.27.

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[39] *Id.* at Note 1, p. 4.
[40] *Id.*, pp. 5-22.
[41] *Id.*, pp. 97-98.
[42] *Id.*, pp. 99.
[43] *Id.*, pp. 106-107.
[44] *Id.*, p. 108.
[45] *Id.*, 110-111.
[46] *Id.*, pp. 112-124.
[47] *Id.*, p. 125.
[48] *Id.*, pp. 127-128.

The Ruling of the Court

In this appeal by way of Petition for Review, petitioner makes a single and yet crucial argument -- that respondent's assessments, namely, the PAN, FAN, and Preliminary Collection Letter, are all void for being issued without a valid grant of authority.

Sections 6(A), 10 and 13 of the NIRC of 1997 provide as follows, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>
> > (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
> >
> > The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or his duly authorized representative." *(Emphasis supplied)*
>
> x x x x x x xxx
>
> "SEC. 10. *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall**, within the region and district offices under his jurisdiction, among others:
>
> x x x x x x x x x
>
> > (c) **Issue Letters of Authority** for the examination of taxpayers within the region;

x x x x x x x x x" *(Emphasis supplied)*

> "SEC. 13. *Authority of* a *Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied)*

Subsequent to the promulgation of the assailed Decision and Resolution, the Supreme Court enriched Philippine Taxation Law jurisprudence with its holding in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue.*[49] In *Medicard,* the Supreme Court held that the absence of a Letter of Authority affects the validity of the assessment, to wit:

> "**An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions**. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives**. Section 6 of the NIRC clearly provides as follows:
>
> > SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement*. -
> >
> > (B) Examination of Return and Determination of Tax Due. - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. x x x

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

> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority." *(Emphasis supplied.)*

This pronouncement reiterates the doctrine in the prior case of *Commissioner of Internal Revenue* vs. *Sony Philippines, Inc.,*[50] which states that:

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> x x x x x x x x x
>
> **Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.**" *(Emphasis supplied)*

Based on the foregoing jurisprudential pronouncements, it is clear that a revenue officer must be clothed with authority before proceeding with an examination or assessment. Moreover, that authority must be embodied in a Letter of Authority, and not in the form of a mere notice to the taxpayer.

[50] G.R. No. 178697, November 17, 2010.

A perusal of the records in this case reveals that the assessment was precipitated by a mere Tax Verification Notice (TVN), instead of a valid Letter of Authority. The BIR Records, despite being offered and admitted into evidence, also do not contain a Letter of Authority, just a TVN[51]. Respondent's witness RO Pimentel testified as much, to wit:

> "2. On November 11, 2009, I was assigned to conduct the audit investigation on the books of accounts and the accounting records of WILLORE PHARMA COPORATION (Willore for brevity) for taxable year 2008 under Tax Verification Notice No. 2003-00123321 issued by Revenue District Officer Rey Asterio L. Tambis.
>
> x x x x x x x x x
>
> 4. Q. Are you authorized to perform the examination which you have just mentioned?
>
> A. Yes, sir.
>
> 5. Q. What, if any, can you show as proof of said Authorization?
>
> A. **The Tax Verification Notice**." *(Emphasis supplied)*

It is apparent, therefore, that the authority relied upon by the revenue officers who conducted the audit and investigation of the taxpayer was faulty. By any account, it is not the LOA issued either by the CIR or the Revenue Regional Director, as the law requires.

In this case, the authority to examine and verify respondent's records for taxable year 2008 was made only pursuant to TVN No. 2003 00123321 dated November 11, 2009, signed by Revenue District Officer Rey Asterio L. Tambis, which authorized Revenue Officer (RO) Clea Marie P. Pimentel and Group Supervisor (GS) Ruleo V. Badilles to conduct the said examination and verification.

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[51] *Id.* at Note 8, p. 1.

Considering that the revenue officer who conducted the examination was not validly authorized to do so by virtue of an LOA signed by the CIR or the Regional Director, the subject tax assessment or examination is a nullity.

WHEREFORE, the Petition for Review is **GRANTED**. The assailed Decision dated June 22, 2016 and the assailed Resolution dated December 15, 2016 of this Court's First Division are hereby **REVERSED** and **SET ASIDE.** The assessment notices for Taxable Year 2008 covered by Formal Letter of Demand dated April 10, 2012 (Demand No. 043A-B004-08), as well as the Preliminary Collection Notice dated November 5, 2012 are hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice