REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

ERMILO TAN NG HUA
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, represented by Regional Director ALBERTO S. OLASIMAN, Bureau of Internal Revenue, Revenue Region No. 10, Legazpi City,
Respondent.

CTA Case No. 9291

Members:

FABON-VICTORINO, and
RINGPIS-LIBAN, JJ.

Promulgated:

FEB 21 2019
12:50 p.m.

x- x

DECISION

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

Assailed in this Petition for Review[1] is the Final Decision on Disputed Assessment (FDDA) dated January 20, 2016, holding petitioner liable for deficiency income tax (IT) and value-added tax (VAT) for taxable year (TY) 2011 in the total amount of FOUR MILLION SIX HUNDRED FIFTY THOUSAND FOUR HUNDRED FIFTY-ONE PESOS AND SIX CENTAVOS (₱4,650,451.06), inclusive of interests and surcharges.

First, the facts.

Petitioner Ermilo Tan Ng Hua is a registered taxpayer with Tax Identification Number (TIN) 114-096-192-000. He

[1] Docket, pp. 10-34.

is doing business under the tradename: (1)Ragay Shell Service Station, a gas station, and (2) Ragay Trading, a dealer of San Miguel Beer products, both located in Ragay, Camarines Sur.

Respondent Commissioner of Internal Revenue, on the other hand, is the head of the Bureau of Internal Revenue (BIR) authorized to enforce revenue laws and collection of taxes and duties and is represented herein by Regional Director Alberto S. Olasiman of BIR Revenue Region No. 10, Lagazpi City. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 25, 2013, petitioner received an undated Letter Notice (LN) No. 065-RLF-11-00-00069[2], inviting him to appear at the BIR office to reconcile the discrepancies noted based on the computerized matching on the information/data provided by third-party sources as against his declarations per VAT returns for TY 2011. With the LN was a Checklist of Documents[3] he was requested to submit.

Thereafter, petitioner received a Follow-up Letter[4] dated February 4, 2014, advising that failure to respond to the LN would result in the review of his case and the issuance of Letter of Authority/Notice of Informal Conference, Preliminary Assessment Notice or Final Assessment Notice, as the case may be.

On March 31, 2014, petitioner received a Notice of Informal Conference (NIC)[5] with enclosed Computation Sheet[6], showing IT and VAT deficiencies in the total amount of ₱49,880,042.71, broken down as follows:

TAX TYPE	BASIC	INTEREST	SURCHARGE	TOTAL
Value-added Tax	₱ 7,012,693.20	₱4,207,615.92	₱3,506,346.60	₱ 14,726,655.73
Income Tax	₱18,665,515.21	₱7,155,114.16	₱9,332,757.60	₱ 35,153,386.98
TOTAL				**₱49,880,042.71**

[2] Exhibit "R-1", BIR Records, pp. 1-3.
[3] Exhibit "P-2", docket, p. 68.
[4] Exhibit "R-4", BIR Records, p. 11.
[5] Exhibit "P-1", docket, p. 59.
[6] Exhibit "P-1-A", docket, p. 59.

To reconcile the alleged noted discrepancies indicated in the LN, petitioner filed a Letter[7] dated March 17, 2014 attaching thereto the following documents: (1) photocopy of 2011 Income Tax Return with audited Financial Statements and official receipts; (2) photocopy of Quarterly Income Tax Returns and VAT Returns; (3) Photocopies of Purchases for 2011; and (4) a flash disk containing the summary list of purchases.

On July 1, 2015, petitioner received a Preliminary Assessment Notice[8] (PAN) dated May 26, 2015, finding him liable for deficiency IT and VAT for TY 2011 amounting to ₱4,506,206.04, inclusive of legal increments, computed as follows:

TAX TYPE	BASIC	INTEREST	SURCHARGE	TOTAL
Value-added Tax	₱ 576,164.23	₱390,213.14	₱288,082.12	₱ 1,254,459.49
Income Tax	₱1,524,582.52	₱964,872.77	₱762,291.26	₱ 3,251,746.55
TOTAL				**₱4,506,206.04**

Petitioner protested[9] the PAN on July 6, 2015.

On August 14, 2015, petitioner received the Formal Letter of Demand[10] (FLD) and Final Assessment Notices[11] (FAN) dated August 3, 2015, reiterating respondent's findings in the PAN.

Petitioner likewise protested[12] the FAN but it was denied in the FDDA[13] received on February 16, 2016.

Hence, petitioner elevated his case before the Court *via* the instant Petition for Review filed on March 14, 2016.

---

[7]Exhibit "R-13", BIR Records, p. 13.
[8] Exhibit "R-7", BIR Records, pp. 360-362.
[9] Exhibit "R-13", BIR Records, pp. 366-378.
[10] Exhibit "R-8", BIR Records, pp. 363-365.
[11] Exhibits "R-8-b" and "R-8-c", BIR Records, pp. 355-356.
[12] Exhibit "R-9", BIR Records, pp. 397-398.
[13] Exhibit "R-10", BIR Records, pp. 412-413.

Petitioner claims that the subject assessment is invalid as it was issued (a) without conducting a complete and thorough audit; (b) without observing the prescribed procedure in the assessment of tax; (c) with arbitrariness and without legal, factual and competent bases; and (d) with utter disregard of the rudiments of fair play and administrative due process.[14]

In his Answer[15], respondent counters that petitioner was not denied due process having been accorded with the opportunity to refute the audit findings; that it was informed of the factual and legal bases of the assessment from the commencement of the initial audit to the issuance of the FDDA; and that the assessment against petitioner for deficiency IT and VAT has factual and legal bases.

Moreover, Section 5 of the National Internal Revenue Code (NIRC) of 1997, as amended, grants him the authority to obtain information from other sources other than those obtained from the taxpayer.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues[16] on the basis of which a Pre-Trial Order[17] was issued on December 21, 2016.

During his presentation of evidence, petitioner **Ermilo Tan Ng Hua** testified[18] that before the issuance of the disputed assessment, no examination of his books of accounts and other accounting records was conducted by any Revenue Officer (RO). Neither was there directive to produce his books of accounts and other accounting records.

According to petitioner, he initially received a Letter Notice with enclosed Checklist of Documents asking him to submit his Income Tax Return (ITR) with audited Financial Statements (AFS), Quarterly ITRs, VAT Returns, and

---

[14] Petition for Review, docket, pp. 16-17.
[15] Docket, pp. 148-158.
[16] Docket, pp. 233-241.
[17] Docket, pp. 250-256.
[18] Judicial Affidavit, docket, pp. 266-279.

Summary List of Sales and Purchases. He was not able to immediately submit the required documents due to the damage brought about by typhoon Yolanda in their area.

Subsequently, he received a Follow-up Letter stating that his failure to respond to the LN would render him in default and the BIR would conduct a review of his case and cause the issuance of a Letter of Authority/Notice of Informal Conference, PAN, and FAN, as the case may be.

However, no Letter of Authority (LOA) was issued and served to him. Instead of an LOA, an undated NIC was served notifying him of his tax liabilities with attached Computation Sheet pursuant to the LN, and requesting his presence at the BIR office to refute the findings, within five (5) days from notice.

In compliance with the NIC, he submitted the requested documents.

Thereafter, he received a PAN followed by a FAN and FDDA. Nevertheless, he did not understand the computation of deficiency taxes in the assessments as well as the reduction of the alleged deficiency VAT from ₱14,726,655.73 indicated in the computation sheet attached to the NIC to ₱1,296,369.52 in the FDDA; and the reduction of the alleged deficiency IT from ₱35,153,386.98 to ₱3,354,081.54.

He also claimed that the BIR computation of his "purchases per return filed" in the aggregate amount of ₱22,912,333.33 for the year 2011 is erroneous as his purchases for the 2nd Quarter amounting to ₱7,528,163.73, per Summary List of Sales and Purchases filed with the BIR, were excluded.

He also declared that the BIR erred in applying the 5% gross profit ratio in determining the constructive unreported sales of San Miguel Beer (SMB) products since the 5% gross profit ratio per audited Financial Statements only pertains to his gasoline station business and not to his dealership business. Under his dealership agreement with San Miguel Brewery, Inc., his purchase price shall be the same or equal to his actual sales price and instead of profit or gain, he gets commission income in the form of discounts on a per case basis.

Finally, he admitted that he could not substantiate his operating expenses attributable to his dealership business as the pertinent accounting record were destroyed during the onslaught of typhoon Yolanda in November 2013.

After his formal offer of evidence, petitioner rested his case.

For his part, respondent presented his lone witness, RO Josephine G. Gomez.

RO **Josephine G. Gomez** testified[19] that she is currently a Group Supervisor assigned at Revenue District Office No. 65 - Naga City. She is familiar with the case as she reviewed the reports and recommendations by the assigned investigating revenue officer.

She declared that the audit of petitioner's tax liabilities for TY 2011 was originally assigned to RO Fely B. Pasiona pursuant to a Letter Notice. The said LN, together with the attachment, was sent to petitioner through registered mail.

In the absence of any reply, they sent a Follow-up Letter on January 30, 2014, reminding petitioner to submit documentary evidence to refute or reconcile the variances indicated in the LN. In compliance, petitioner submitted some documents through a Transmittal Letter. After evaluation of all the documents on hand, they found petitioner liable for deficiency IT and VAT.

On May 26, 2015, the PAN with Details of Discrepancies was issued on the basis of their recommendation and served

---

[19] Docket, pp. 216-225.

upon petitioner via registered mail. Petitioner replied but failed to overcome the audit findings as contained in the PAN. Accordingly, the Formal Letter of Demand and the FAN/Assessment Notices were issued against petitioner on August 3, 2015.

Petitioner moved for a reconsideration but it was denied in the FDDA issued on January 20, 2016.

After his formal offer of evidence, respondent rested his case[20].

On September 14, 2017, petitioner filed an Offer of Proof[21] of denied Exhibits but only P-6 was admitted being a common exhibit marked as Exhibit R-6 for respondent, per Resolution dated January 10, 2018.

On March 13, 2018, the instant case was deemed submitted for decision with the filing of petitioner's Memorandum[22] on March 5, 2018 and that of respondent[23] on February 28, 2018.

THE ISSUE

As stipulated by the parties, the lone issue for the Court's determination is:

> WHETHER PETITIONER IS LIABLE TO PAY THE TOTAL AMOUNT OF ₱4,650,451.06 AS DEFICIENCY INCOME TAX AND VALUE-ADDED TAX, INCLUSIVE OF SURCHARGES AND INTERESTS, FOR TAXABLE YEAR 2011.

THE COURT'S RULING

---

[20] Docket, pp. 325-326.
[21] Docket, pp 305-306.
[22] Docket, pp. 347-381.
[23] Docket, pp. 334-345.

The timeliness of the filing of a Petition for Review is paramount in any assessment case. On this regard, Section 228[24] of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that a taxpayer adversely affected by the decision of the Commissioner of Internal Revenue may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the adverse decision; otherwise, the assessment shall become final, executory and demandable.

It is undisputed that petitioner received the FDDA dated January 20, 2016 denying his *Motion for Reconsideration* and sustaining the subject deficiency tax assessments on February 16, 2016. Thus, petitioner had thirty (30) days from receipt or until March 17, 2016, within which to appeal respondent's adverse decision to the CTA. Evidently, the instant Petition for Review was seasonably filed on March 14, 2016 vesting this Court the jurisdiction to determine the case pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.[25]

Now, on the merits.

---

[24]SEC. 228. *Protesting of Assessment*. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases: xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision** or inaction **may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (*Emphasis supplied*)

[25]Sec. 7. *Jurisdiction.* - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(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; xxx.

w/

The assessment issued by respondent against petitioner is a nullity in the absence of valid LOA.

It must be emphasized that before any revenue officer can conduct a tax audit or examination, there must be a valid grant of authority for that purpose.

Section 6(A) of the NIRC, as amended, vests the CIR the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, 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." (*Emphasis supplied*)

In relation thereto, Section 13 of the same Code describes an LOA as the authority given to the appropriate revenue officer assigned to perform assessment functions, thus:

> 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 supplied*)

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[26] the Supreme Court defined LOA as follows:

> 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.
>
> xxx xxx xxx
>
> **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.** (*Boldfacing supplied*)

In the more recent case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[27] the Supreme Court

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

expounded that under RMO No. 32-2005, previously issued LN should be converted first to an LOA before a revenue officer proceeds with the further examination and assessment of the taxpayer. The pertinent portion of the decision reads:

> **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.**
>
> xxx xxx xxx
>
> In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore, no LOA was also served on MEDICARD. **The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision**. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid.
>
> xxx xxx xxx

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

w/

xxx **Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.**

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. **Simply put, LN is entirely different and serves a different purpose than an LOA.Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.** Unfortunately, this was not done in this case. *(Emphasis supplied)*

Clearly, a revenue officer must be clothed with authority before he can proceed with the examination or assessment. And since the law specifically requires an LOA, a previously issued LN must first be converted into an LOA before proceeding with the further examination and assessment of the taxpayer. Otherwise, the assessment is void for lack of valid authority.

In the case at bar, the assessment and examination of petitioner's internal revenue taxes for TY 2011 commenced after a Letter Notice was issued to him. This was confirmed by respondent's witness, RO Josephine G. Gomez, during her cross-examination, to wit:[28]

Atty. Florin

Q Now, you mentioned that the conduct of audit was pursuant to a Letter Notice, is that correct?

Ms. Gomez

A Yes, sir.

xxx xxx xxx

Atty. Florin

Q **Since the audit was conducted pursuant to a Letter Notice, does it mean that there was no Letter of Authority, that was issued to authorize the examination of the Income Tax liability of the petitioner**?

Ms. Gomez

A **There is none, sir**."[29]

Admittedly, there was no LOA issued to replace the LN earlier served upon petitioner. Thus, following the doctrine

---

[28] TSN, September 25, 2017, pp. 7-8.
[29] Boldfacing supplied.

laid down in the *Sony* and *Medicard* cases, the assessment that resulted from the examination of petitioner's internal revenue taxes for TY 2011 is a nullity for lack of authority issued for the conduct of tax audit. In fine, the assessment issued against petitioner is void and a void assessment bears no fruit.[30]

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision Disputed Assessment and Assessment Notice No. 065-11-114-096-192-000, both dated January 20, 2016, are hereby **CANCELLED AND SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

---

[30] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

ATTESTATION

I attest 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's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice