REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

CONCEPCION INDUSTRIES, INC., *Petitioner,*	**CTA CASE NO. 10584**
	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 10 2024 1:10 p.m.

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RESOLUTION

For the Court's resolution are (a) petitioner's "Motion for Summary Judgment" ("Motion"), filed on 9 August 2022, with respondent's "Comment/Opposition (Re: Petitioner's Motion for Summary Judgment)", filed on 5 September 2022; and (b) petitioner's "Motion for Leave to File Attached Reply (To Respondent's Comment/Opposition to Petitioner's Motion for Summary Judgment)" ("Motion for Leave"), filed on 18 September 2022.

Acting first on the Motion for Leave, the same is hereby **GRANTED**. The attached Reply is hereby **ADMITTED** as part of the records of this case.

Meanwhile, in its Motion, petitioner claims that respondent's assessment for its alleged deficiency taxes for taxable year ("TY") 2014 is void for the following reasons:

(a) The revenue officers ("RO") who audited its books and records were not authorized to do so as three of the ROs who recommended the issuance of the Preliminary Assessment Notice ("PAN"), Formal Letter of Demand ("FLD"), and Final Decision on Disputed Assessment ("FDDA") against petitioner were not named in Letter of Authority ("LOA") eLA201200042220; and

(b) The FLD and Assessment Notices issued against it did not indicate a definite amount of tax liabilities or a due date, contrary to the requirements of ***Sec. 228 of the 1997 National Internal Revenue Code, as amended*** ("***NIRC***").

Crucially, petitioner also alleges that these legal questions may be resolved without resort to trial: while respondent, in his Amended Answer, may have denied some of petitioner's material allegations, the Judicial Affidavits petitioner submitted with its Motion and the evidence on file are sufficient to show that there is no genuine factual issue in the case at bar. As such, petitioner claims that it is entitled to a summary judgment.

Respondent counters these by insisting that there are genuine issues as to the material facts of this case. In particular, he argues that (a) the ROs who participated in the audit of petitioner's records were authorized pursuant to a valid LOA; and (b) the FLD and FDDA substantially complied with the requirements of such issuances.

The Motion is meritorious.

Summary judgment is proper.

Petitioner's Motion is a Motion for Summary Judgment, which is proved by ***Rule 35 of the 1997 Rules of Court, as amended. Sec. 3*** thereof states:

> "Section 3. *Motion and proceedings thereon.* – **The motion shall cite the supporting affidavits, depositions or admissions, and the specific law relied upon**. The adverse party may file a comment and serve opposing affidavits, depositions, or admissions within a non-extendible period of five (5) calendar days from receipt of the motion. Unless the court orders the conduct of a hearing, judgment sought shall be rendered forthwith **if the pleadings, supporting affidavits, depositions and admissions on file, show that**, except as to the amount of damages, **there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law**.
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> x x x"
>
> (Emphasis supplied.)

The Supreme Court clarified the procedural rules governing Summary Judgment by contrasting it with a Judgment on the Pleadings in ***Legario D. Boongaling v. Banco San Juan***,[1] citing ***Iloilo Jar Corporation v. Comglasco***

1 G.R. No. 214259, 29 November 2022.

Corporation/Aguila Glass,[2] which itself cites ***Eugenio Basbas, et al. v. Beata Sayson, et al.***,[3] *viz.*:

> "Simply stated, what distinguishes a judgment on the pleadings from a summary judgment is the presence of issues in the Answer to the Complaint. When the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate. On the other hand, when the Answer specifically denies the material averments of the complaint or asserts affirmative defenses, or in other words raises an issue, **a summary judgment is proper provided that the issue raised is not genuine. 'A 'genuine issue' means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived or which does not constitute a genuine issue for trial.'"**
> (Citations omitted; emphasis supplied.)

From the above, a Motion for Summary Judgment is proper under two (2) important circumstances:

(a) When it cites (i) supporting affidavits; (ii) depositions or admissions; and (iii) specific laws; and
(b) When the above are sufficient to show that there are no issues of fact "which [call] for the presentation of evidence" that would prevent the immediate resolution of the case on the merits.

The present Motion complies with both.

Petitioner cites affidavits, admissions, and specific laws.

A perusal of the Motion shows that it is compliant with requirement (a), above. First, it is supported by the Judicial Affidavit and Supplementary Judicial Affidavit of Leila S. Daguman, which petitioner submitted through its "Manifestation & Submission (relative to Petitioner's *Motion for Summary Judgment dated 7 August 2022*)", filed with the Court on 10 August 2022.

It also identifies the specific admissions of facts, taken from respondent's Amended Answer, upon which it bases its legal arguments, as well as the specific sections of said Amended Answer where these admissions may be found. Specifically, respondent admitted, in paragraph 2 of his Amended Answer, and demonstrated, in the Judicial Affidavit attached to the same, the following:

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2 G.R. No. 219509, 18 January 2017.
3 G.R. No. 172660, 24 August 2011.

(a) that he issued the relevant LOA, authorizing Group Supervisor ("GS") Olivia F. Aviles and ROs Aurora Pelayo and Felina Guimbao to examine petitioner's records and assess it;
(b) that ROs Olivia Sison, Josa Gomez, and Neriza Manuel signed the Memorandum recommending the issuance of the PAN and the Memorandum recommending the issuance of the FDDA; and
(c) that he issued the relevant FLD.

Petitioner also identifies a failure, on respondent's part, to deny a crucial material allegation (that ROs Sison, Gomez, and Manuel were not named in the LOA) as well as specific pieces of evidence already present in the Court's records in support of its arguments.

Finally, petitioner cites the ***NIRC*** and relevant jurisprudence.

Given the above, petitioner's Motion clearly complies with the technical requirements for a Motion for Summary Judgment.

No issues of fact that can only be established via a full-blown trial remain.

As to requirement (b), above, respondent faults the Motion for failing to comply with it, insisting that genuine issues of fact remain.

Respondent, however, is mistaken.

As petitioner observes in its Reply, the issues respondent raises in his Comment are *legal* but not *material*. In other words, respondent fails to controvert any of the material allegations relevant to the Motion. He insists that the Assessment Notices are valid as GS Aviles and ROs Pelayo and Guimbao recommended the said Notices' issuance, but he does *not* deny that ROs Sison, Gomez, and Manuel also recommended the issuance of said Notices despite not being named in the LOA. He contends that the wording and form used in the FLD and FDDA are substantially compliant with the requirements of the ***NIRC***, but he does *not* deny that specific statements were used.

In short, respondent's counter-arguments constitute a disagreement with petitioner about how the relevant laws and jurisprudence should apply to the facts as presented, but they do *not* substantially challenge the truth of said facts.

Accordingly, only legal questions remain, the relevant facts having already been established even without the conduct of a full-blown trial. The Court can thus resolve the case at this stage of the proceedings.

And, after a judicious review of the facts, the Court resolves to grant the Motion.

ROs Sison, Gomez, and Manuel were not authorized to assess petitioner, rendering the assessment void *ab inito.*

Petitioner observes that ROs Sison, Gomez, and Manuel participaterd in the audit of petitioner's records by recommending the issuance of the PAN, FLD, and FDDA despite not being named in the LOA. This, it argues, renders the assessment void. Respondent disagrees: he holds that GS Aviles and ROs Pelayo and Guimbao, who also recommended the issuance of the PAN, FLD, and FDDA, were named in the LOA. The assessment is thus valid as it was performed by duly authorized officers pursuant to a valid LOA.

Petitioner is correct.

Under ***Sec. 6(A) of the NIRC***, respondent or his duly authorized representative may authorize the examination of a taxpayer and the assessment of the amount due from said taxpayer. Meanwhile, ***Sec. 10(C) of the NIRC*** allows Revenue Regional Directors to issue LOAs to GSs and ROs for the performance of such duties. ***Sec. 13 of the NIRC*** governs the authority of a RO to perform said duties:

> "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 peformed by the Revenue Regional Director [himself]."
> (Emphasis and underscoring supplied.)

The above clearly states that a RO may recommend the assessment of any deficiency tax due. It is also clear, however, that such recommendation may only be done *pursuant to a Letter of Authority.*

What is the result, then, when a RO lacks the authority granted by a valid LOA? The Supreme Court has, in various cases, judged such a lack sufficient ground to declare an assessment void. In ***Commissioner of Internal Revenue v. Sony Philippines, Inc.***[4] ("***Sony***"), the High Court stated that the lack of authority granted by a LOA renders any examination or assessment conducted by a RO a nullity. Later, in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***[5] ("***Medicard***"), the Supreme Court affirmed this stance, adding that the absence of a LOA authorizing a RO to examine and assess a taxpayer is a violation of said taxpayer's right to due process. The issue has been so thoroughly threshed out in the decade since ***Sony*** that in the year 2020, the Supreme Court resolved the case of ***Commissioner of Internal Revenue v. Opulent Landowners, Inc.***[6] ("***Opulent***") through a short Notice, observing that "[i]t is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer". The message is clear and unwavering: a RO *needs* to be authorized by a LOA before said RO can examine and/or assess a given taxpayer.

As has already been established, ROs Sison, Gomez, and Manuel participated in the audit and assessment process by recommending the issuance of the PAN, FLD, and FDDA. They, however, were not named in the LOA issued against petitioner, and no later LOA was issued naming them. Following ***Medicard***, this was a clear violation of petitioner's right to due process. Accordingly, the assessment against it is null and void.

It is of no moment that GS Aviles and ROs Pelayo and Guimbao were identified in the LOA. Following ***Opulent***, *only* ROs actually named in a LOA are authorized to examine and assess a taxpayer. While GS Aviles and ROs Pelayo and Guimbao did sign the Memoranda recommending the issuance of the PAN, FLD, and FDDA, this fact does not refute the more important fact that ROs Sison, Gomez, and Manuel did so as well. Even if GS Aviles and ROs Pelayo and Guimbao assessed petitioner pursuant to a valid LOA, as respondent insists again and again, this does not change the fact that ROs Sison, Gomez, and Manuel assessed petitioner *without* a valid LOA. The assessment, tainted as such, is void.

Neither is the Court persuaded by respondent's utilization of a Dissenting Opinion and a Decision from this very Court. First, both issuances predate ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.***[7] ("***McDonald's***"), where the Supreme Court unequivocally declared that the reassignment of a RO *requires* the issuance of a new or amended LOA. Furthermore, *respondent failed to even allege, much less*

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[4] G.R. No. 178697, 17 November 2010.
[5] G.R. No. .2222743, 5 April 2017.
[6] G.R. No. 249883-84, 27 January 2020.
[7] G.R. No. 242670, 10 May 2021.

prove, that the offending ROs were formally reassigned to this case. He does not identify a Memorandum of Assignment, Referral Memorandum, or any other type of issuance assigning the ROs to this case. He simply says that they were "added" to the team. As such, even if We were to directly defy the Supreme Court in ***McDonald's*** and revert to the previous stance expressed in the cited Dissenting Opinion and Decision, said stance would not apply here. A reassignment, valid or otherwise, is not present in this case; there is only a clear and simple lack of a LOA.

Returning to ***Opulent***, when an assessment is made, even in part, by ROs who lack any authority granted by a LOA, said assessment is void. As ROs Sison, Gomez, and Manuel were not armed with a LOA when they recommended the issuance of the PAN, FLD, and FDDA, so, too, is the assessment in the present case null, void, and without force and effect.

There is also no need to discuss the alleged violations of due process in the FLD and FDDA. Even if this Court were to find that these were compliant with the relevant rules and regulations, the assessment would still be void *ab inito* for the reasons outlined above.

WHEREFORE, petitioner's Motion for Summary Judgment is hereby **GRANTED**. The assessment for petitioner's income tax, value-added tax, expanded withholding tax, improperly accumulated earnings tax, and compromise penalties for taxable year 2014 is hereby **CANCELLED** and **SET ASIDE**. Respondent is hereby **ENJOINED** and **PROHIBITED** from collecting said taxes.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice