REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SECURITIES TRANSFER SERVICES, INC.,
Petitioner,

CTA Case No. 8961

Members:

CASTAÑEDA, JR., *Chairperson,*
and
MINDARO-GRULLA, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 08 2019
11:05 a.m.

x--x

DECISION

CASTAÑEDA, JR., ***J.:***

THE CASE

This involves the Petition for Review[1] filed by petitioner Securities Transfer Services, Inc., pursuant to Section 228 of the National Internal Revenue Code of 1997, as amended (1997 NIRC) and Section 9 of Republic Act (RA) No. 9282, as amended. Petitioner prays for the reversal and setting aside of respondent Commissioner of Internal Revenue's Final Decision on Disputed Assessment (FDDA) dated

[1] Docket, Vol. I, pp. 14-48.

December 2, 2014 imposing deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), and documentary stamp tax (DST) for taxable year 2009 in the total amount of Three Million Nine Hundred Eighty-Seven Thousand Nine Hundred Thirty Pesos and 20/100 (₱3,987,930.20).

THE FACTS

Petitioner Securities Transfer Services, Inc. (STSI) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at Ground Floor, Benpres Building, Exchange Road, San Antonio Village, Pasig City, Philippines.[2]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the 1997 NIRC and other tax laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On May 25, 2010, petitioner received Letter of Authority (LOA) No. 116-2010-00000087 dated May 14, 2010 authorizing Revenue Officers Daniella Gabaon (RO Gabaon), Julieta Tubilla (RO Tubilla), Maribel Serafica (RO Serafica), Olivia Sison (RO Sison), Walter Batoon, (RO Batoon), and Reynoso Bravo (RO Bravo) under Group Supervisor Erlinda Ulgado (GS Ulgado) of BIR Large Taxpayers Regular Audit Division 1 (LTS-RAD 1) to examine its books of account and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.[3]

On June 7, 2010, the BIR sent to petitioner the First Notice for the Presentation of Books of Accounts and Other Accounting Records in connection with LOA No. 116-2010-00000087 dated May 14, 2010.[4]

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[2] Petition for Review, Docket, Vol. I, p. 16; Exhibit "P-39", Docket, Vol. II, pp. 994-1003.
[3] Exhibit "P-26" and Exhibit "R-1", BIR Records, p. 4.
[4] Exhibit "R-2", BIR Records, p. 5.

On August 12, 2010, petitioner received a Second and Final Notice for [the] Presentation of Books of Accounts and Other Accounting Records dated August 5, 2010.[5]

On October 6, 2010, the BIR issued to petitioner a follow-up letter requesting for the submission/presentation of certain books of accounts and other accounting records or documents.[6]

On June 28, 2011, Ms. Edralin M. Silario, OIC-Chief of LTS-RAD 1 issued Memorandum of Assignment No. LOA-116-2011-427 referring the continuation of the audit/investigation of petitioner under LOA No. 116-2010-00000087 dated May 14, 2010 to Revenue Officer Rogelio P. Gonzales (RO Gonzales) under Group Supervisor Marivic Bautista (GS Bautista).[7]

On October 3, 2011, the BIR issued to petitioner a Final Notice for Presentation of Books of Accounts and Other Accounting Records.[8]

On May 28, 2012, the BIR through Ms. Edralin M. Silario, Chief of LTS-RAD 1, issued a letter to petitioner informing the latter about the change of revenue officers that will handle its audit investigation for taxable year 2009.[9] The said letter indicated that petitioner's audit investigation will be conducted by RO Gonzales under Group Supervisor Olivia F. Aviles (GS Aviles).[10]

Mr. Victor S. Alvior, petitioner's Head of Operations,[11] subsequently executed several waivers of the statute of limitations to extend the prescriptive period of assessment for taxes due in taxable year 2009 (Waivers), the details of which are summarized as follows:

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[5] Exhibit "R-3", BIR Records, p. 6.
[6] Exhibit "R-4", BIR Records, pp. 387-388.
[7] Exhibit "R-5", BIR Records, p. 392.
[8] Exhibit "R-6", BIR Records, pp. 413-414.
[9] Exhibit "R-7", BIR Records, p. 417.
[10] *Id.*
[11] Exhibit "R-11", BIR Records, pp. 424-425.

Waiver	Extended Date of Prescription	Date of Execution	Date of Acknowledgment	BIR Signatory
First Waiver[12]	September 30, 2012	June 21, 2012	June 21, 2012	OIC-Assistant Commissioner
Second Waiver[13]	March 30, 2013	July 11, 2012	July 11, 2012	OIC-Assistant Commissioner
Third Waiver[14]	September 30, 2013	January 3, 2013	January 3, 2013	OIC-Assistant Commissioner
Fourth Waiver[15]	March 31, 2014	July 19, 2013	July 19, 2013	OIC-Assistant Commissioner
Fifth Waiver[16]	June 30, 2014	September 13, 2013	September 13, 2013	OIC-Assistant Commissioner
Sixth Waiver[17]	September 30, 2014	December 20, 2013	December 23, 2013	OIC-Assistant Commissioner
Seventh Waiver[18]	December 31, 2014	March 14, 2014	March 14, 2014	OIC-Assistant Commissioner

On February 13, 2013, Mr. Cesar D. Escalada, Chief of LTS-RAD 1, issued Memorandum of Assignment No. LOA-116-2013-0227 referring the continuation of the audit/investigation of petitioner under LOA No. 116-2010-00000087 dated May 14, 2010 to Revenue Officer Felina B. Guimbao (RO Guimbao) under GS Aviles.[19]

On February 26, 2013, the BIR through Mr. Cesar D. Escalada, Chief of LTS-RAD 1, issued a letter to petitioner informing the latter about the change of revenue officers that will handle its audit investigation for taxable year 2009.[20] The said letter indicated that petitioner's audit/investigation will be conducted by RO Guimbao under GS Aviles.[21]

On July 15, 2013, petitioner received a Notice of Informal Conference requesting it to appear for an informal conference to enable it to present its side of the case.[22]

On June 18, 2014, petitioner received a Preliminary Assessment Notice (PAN) with Details of Discrepancies, which informed petitioner

[12] Exhibit "P-27", Docket, Vol. II, p. 726; Exhibit "R-8", BIR Records, p. 420.
[13] Exhibit "P-28", Docket, Vol. II, p. 727; Exhibit "R-9", BIR Records, p. 423.
[14] Exhibit "P-29", Docket, Vol. II, p. 728; Exhibit "R-10", BIR Records, p. 434.
[15] Exhibit "P-30", Docket, Vol. II, p. 729; Exhibit "R-16", BIR Records, p. 458.
[16] Exhibit "P-31", Docket, Vol. II, p. 730; Exhibit "R-17", BIR Records, p. 496.
[17] Exhibit "P-32", Docket, Vol. II, p. 731; Exhibit "R-18", BIR Records, p. 497.
[18] Exhibit "P-33", Docket, Vol. II, p. 732; Exhibit "R-19", BIR Records, p. 528.
[19] Exhibit "R-12", BIR Records, p. 461.
[20] Exhibit "R-13", BIR Records, p. 462.
[21] *Id.*
[22] Exhibit "R-14", BIR Records, p. 492.

that after investigation, the BIR found the following deficiency income tax, VAT, WTC, EWT, improperly accumulated earnings tax (IEAT) and DST for taxable year 2009 with compromise penalties, surcharges and interests, in the aggregate amount of ₱5,865,907.46 as indicated below:[23]

Tax Type	*Basic Tax Assessed*	*Surcharge*	*Interest up to 05/31/14*	*Compromise Penalty*	*Total Assessment*
Income Tax	₱1,240,888.52	-	₱1,024,667.94	₱25,000.00	₱2,290,556.46
VAT	₱574,955.83	-	₱501,550.51	₱20,000.00	₱1,096,506.34
WTC	₱89,123.17	-	₱78,233.05	₱12,000.00	₱179,356.22
EWT	₱29,522.75	-	₱25,915.31	₱6,000.00	₱61,438.06
IAET	₱956,942.60	₱239,235.65	₱840,012.08	₱20,000.00	₱2,056,190.33
DST	₱79,726.00	₱19,931.50	₱70,202.56	₱12,000.00	₱181,860.06

Petitioner filed its written reply to the PAN on July 2, 2014.[24]

On July 15, 2014, petitioner received a Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices (Form 0401s) all dated July 17, 2014, which covered the following assessments:[25]

Tax Type	*Basic Tax Assessed*	*Surcharge*	*Interest up to 07/31/14*	*Compromise Penalty*	*Total Assessment*
Income Tax	₱1,240,888.52	-	₱1,066,144.22	₱25,000.00	₱2,332,032.74
VAT	₱574,955.83	-	₱520,768.21	₱20,000.00	₱1,115,724.04
WTC	₱89,123.17	-	₱81,211.96	₱12,000.00	₱182,335.13
EWT	₱29,522.75	-	₱26,902.10	₱6,000.00	₱62,424.85
IAET	₱956,942.60	₱239,235.65	₱871,997.56	₱20,000.00	₱2,088,175.81
DST	₱79,726.00	₱19,931.50	₱72,867.38	₱12,000.00	₱184,524.88

Petitioner filed its protest against the FLD on August 12, 2014.[26]

[23] Exhibit "P-34", Docket, Vol. II, pp. 733-746.
[24] Exhibit "P-35", Docket, Vol. II, pp. 747-751.
[25] Exhibit "P-36", Docket, Vol. II, pp. 843-858.
[26] Exhibit "P-37", Docket, Vol. II, pp. 859-903.

On December 18, 2014, petitioner received the FDDA issued by the respondent, which covered the following:[27]

Tax Type	*Basic Tax Assessed*	*Surcharge*	*Interest up to 05/31/14*	*Compromise Penalty*	*Total Assessment*
Income Tax	₱1,240,888.52	-	₱1,149,096.76	₱25,000.00	₱2,414,985.28
VAT	₱574,955.83	-	₱559,203.62	₱20,000.00	₱1,154,159.45
WTC	₱89,123.17	-	₱87,169.79	₱12,000.00	₱188,292.96
EWT	₱29,522.75	-	₱28,875.68	₱6,000.00	₱64,398.43
DST	₱77,793.00	-	₱76,301.08	₱12,000.00	₱166,094.08

On December 23, 2014, petitioner filed its Petition for Review with this Court.

Within the extended period granted by the Court,[28] respondent filed his Answer[29] via registered mail on March 30, 2015, interposing therein the following special and affirmative defenses:

1. The period to assess has not prescribed;[30]

2. The assessment has factual and legal basis;[31] and

3. Petitioner failed to substantiate its deduction for disallowed income payment, unaccounted income, unsupported creditable withholding tax, the disallowed deduction for the charitable contribution made, and the undeclared income from unaccounted income payments.[32]

On July 20, 2015, petitioner filed an Omnibus Motion[33] with the following prayers, to wit:

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[27] Exhibit "P-38", Docket, Vol. II, pp. 977-991.
[28] Order dated January 28, 2015, Docket Vol. I, p. 252; Order dated February 26, 2015, Docket Vol. I, p. 258.
[29] Docket Vol. I, pp. 260-266.
[30] *Id.*, 261-262.
[31] *Id.*, pp. 272-273.
[32] *Id.*, pp. 262-263.
[33] *Id.*, pp. 263-264.

(A) Allow petitioner to present first its evidence on the issue of whether or not the right of respondent to assess petitioner with deficiency taxes for taxable year 2009 has prescribed;

(B) Thereafter, render a decision/resolution on the issue of prescription;

(C) Should this Honorable Court, after presentation of evidence on this matter, find that the right of respondent to assess petitioner with deficiency taxes for taxable year 2009 has prescribed, a decision be rendered declaring as null and void the subject deficiency taxes under the Final Decision on Disputed Assessment (FDDA) in the total amount of Three Million Nine Hundred Eighty-Seven Thousand Nine Hundred Thirty and Twenty Centavos (₱3,987,930.20); and

(D) On the other hand, should the Honorable Court find that prescription has not set in against respondent, conduct a full-blown trial to, among others, facilitate the reception of petitioner's evidence against the assessments under the Final Decision on Disputed Assessment (FDDA) in the total amount of Three Million Nine Hundred Eighty-Seven Thousand Nine Hundred Thirty and Twenty Centavos (₱3,987,930.20).

Petitioner's Omnibus Motion was set for hearing on August 6, 2015. In the said hearing, this Court allowed petitioner to file the necessary motion for partial judgment with regard to the issue of prescription. [34]

The case was set for a pre-trial conference on September 3, 2015.[35] Respondent filed his Pre-Trial Brief[36] on July 31, 2015 while petitioner filed its Pre-Trial Brief[37] on August 5, 2015. *ju*

[34] Minutes of the Hearing dated August 6, 2015, Docket Vol. I, p. 323.
[35] Minutes of the Hearing dated September 3, 2015, Docket Vol. I, p. 332-A.
[36] Docket Vol. I, pp. 303-309.
[37] *Id.*, pp. 316-322.

On September 23, 2015, the parties filed their Joint Stipulation of Facts and Issues[38], which this Court approved and adopted in the Pre-Trial Order[39] dated October 2, 2015. During the pre-trial hearing held on September 3, 2015, petitioner's prayer in its Omnibus Motion that it be allowed to present first its evidence on the issue of prescription was granted.[40]

After the presentation of the petitioner's witnesses on the issue of prescription, namely: (1) Mr. Jonathan P. Co[41] – Head of Corporate Services of STSI; (2) Mr. Victor S. Alvior[42] – Head of Operations of STSI; and (3) Atty. Esmeraldo C. Amistad[43] - Corporate Secretary of STSI, this Court granted petitioner a period of ten (10) days within which to file its Formal Offer of Evidence (FOE). Petitioner filed its FOE relative to the issue of prescription on October 26, 2015.[44] Respondent filed its Omnibus Motion and Comment (To cancel hearing on 9 December 2015 and to Admit Comment) on December 4, 2015.[45]

In a Resolution dated February 12, 2016,[46] this Court admitted all of petitioner's exhibits save for Exhibit "P-40" for failure to properly identify the said exhibit. Petitioner moved for partial reconsideration[47] of the foregoing resolution. This Court granted petitioner's Motion for Partial Reconsideration in a Resolution dated April 27, 2016.[48]

Respondent presented its witness on the issue of prescription during the hearing held on May 2, 2016.[49] Subsequently on May 23, 2018, respondent's counsel manifested in open court that he has no additional witness to present.[50] Accordingly, this Court granted respondent a period of ten (10) days within which to file his FOE on the issue of prescription.[51] Respondent filed his FOE via registered mail

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[38] Docket Vol. II, pp. 664-668.
[39] *Id.*, pp. 670-680.
[40] Minutes of the Hearing dated September 3, 2015, Docket Vol. I, p. 332-A.
[41] Minutes of the Hearing dated October 14, 2015, Docket Vol. II, p. 681; Exhibit "P-42", Docket, Vol. I, p. 338.
[42] Minutes of the Hearing dated October 14, 2015, Docket Vol. II, p. 681; Exhibit "P-43", Docket, Vol. I, p. 609.
[43] Minutes of the Hearing dated October 14, 2015, Docket Vol. II, p. 681; Exhibit "P-44", Docket, Vol. I, p. 619.
[44] Docket, Vol. II, pp. 682-701; October 24, 2015 falls on a Saturday.
[45] *Id.*, pp. 1045-1048.
[46] *Id.*, pp. 1051-1052.
[47] *Id.*, pp. 1054-1058.
[48] *Id.*, pp. 1116-1117.
[49] Minutes of the Hearing dated May 2, 2016, Docket Vol. II, p. 1118.
[50] Minutes of the Hearing dated May 23, 2016, Docket Vol. II, p. 1119.
[51] *Id.*

on June 3, 2016.[52] On June 21, 2016, petitioner filed its Comment thereto.[53]

In a Resolution[54] dated July 21, 2016, this Court admitted all of respondent's exhibits except Exhibits "R-29" and "R-29-1" because the exhibit formally offered does not correspond to the document actually marked.

On August 10, 2016, respondent filed his Memorandum (Re: Issue on Prescription).[55] Within the extended period granted by this Court,[56] petitioner filed its Memorandum (Re: Issue of Prescription for Petitioner) on August 31, 2016.[57]

In a Resolution[58] dated January 16, 2017, this Court partially granted petitioner's Omnibus Motion filed on July 20, 2015. This Court had ruled that respondent's right to assess petitioner deficiency VAT for the 1st quarter of 2009 as well as deficiency EWT for the months of January to May 2009 had prescribed.[59] Unsatisfied, petitioner moved for partial reconsideration[60] of the January 16, 2017 Resolution but the same was denied for lack of merit.[61]

On May 22, 2017, petitioner filed a Motion to Present Additional Witness.[62]

With respect to the other issues of the case, petitioner presented the following as its witnesses: (1) Mr. Jason S. Jimenez – Senior Corporate Accountant of First Philippine Holdings Corporation (FPH);[63] and (2) Ms. Jennifer C. Tobias – Accounting Clerk of STSI.[64] *Je*

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[52] Docket, Vol. II, pp. 1120-1128.
[53] *Id.*, 1131-1136.
[54] Docket, Vol. III, pp. 1138-1139.
[55] *Id.*, pp. 1143-1151.
[56] Order dated August 11, 2016, Docket, Vol. III, p. 1153; Order dated August 30, 2016, Docket, Vol. III, p. 1154.
[57] Docket, Vol. III, pp. 1158-1208.
[58] *Id.*, pp. 1210-1224.
[59] *Id.*
[60] Docket, Vol. III, pp. 1229-1245.
[61] Resolution dated April 4, 2017, Docket, Vol. III, pp. 1249-1254.
[62] Docket, Vol. III, pp. 1269-1271.
[63] Exhibit "P-55", Docket, Vol. III, pp. 1272-1278; Minutes of the Hearing dated May 24, 2017, Docket Vol. III, p. 1386.
[64] Exhibit "P-423", Docket, Vol. III, pp. 1396-1437; Minutes of the Hearing dated July 31, 2017, Docket Vol. IV, p. 1986.

Thereafter, petitioner filed its FOE on November 27, 2017.[65] In a Resolution dated January 24, 2018,[66] this Court admitted all of petitioner's exhibits except Exhibits "P-14-B", "P-15-B", "P-16-B", "P-17-B", "P-18-B", "P-19-B", "P-20-B", "P-21-B", "P-22-B", "P-23-B", "P-24-B", "P-25-B", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-67", "P-68", "P-69", "P-75", "P-78", "P-80", "P-81", "P-105", "P-294", "P-295", "P-296", "P-299", "P-301", "P-301-a", "P-301-b", "P-302", "P-303", "P-304", "P-305", "P-312", "P-315", "P-320", "P-322", "P-327", "P-373", "P-377", "P-380", "P-382", "P-393" and "P-399", for failure to present their originals for comparison.

On February 13, 2018, petitioner filed an Omnibus Motion with Tender of Excluded Evidence.[67]

During the hearing held on February 19, 2018, respondent through counsel manifested that he is adopting the evidence presented during the determination of prescription and thus, will no longer present additional evidence.[68] In the same hearing, the parties are granted a period of thirty (30) days from notice within which to file their respective memoranda.[69]

On March 9, 2018, petitioner filed a Submission (With Motion to Supplement Omnibus Motion with Tender of Excluded Evidence dated February 13, 2018).[70] Respondent failed to comment on both the Omnibus Motion with Tender of Excluded Evidence as well as the Supplement thereof.[71]

In a Resolution[72] dated August 16, 2018, this Court granted petitioner's Omnibus Motion and noted petitioner's Tender of Excluded Evidence as well as the Submission (With Motion to Supplement Omnibus Motion with Tender of Excluded Evidence dated February 13, 2018). Je

[65] Docket, Vol. IV, pp. 2053-2090.
[66] *Id.*, pp. 2108-2112.
[67] *Id.*, pp. 2114-2118.
[68] Minutes of the Hearing dated February 19, 2018, Docket Vol. IV, p. 2121.
[69] *Id.*
[70] Docket, Vol. IV, pp. 2132-2135.
[71] Records Verification dated April 24, 2018, Docket, Vol. IV, p. 2153.
[72] Docket, Vol. IV, pp. 2155-2157.

On October 2, 2018, petitioner filed its Memorandum[73] within the extended period granted by this Court.[74] Respondent failed to file his Memorandum as per the records verification issued by the Judicial Records Division of this Court dated October 4, 2018.[75]

The Court submitted the present case for decision through its Resolution dated October 12, 2018.[76]

THE ISSUES

The parties agreed to submit the issues below for resolution of this Court:[77]

Issues as to petitioner:

1. Whether or not the period to assess petitioner has already prescribed.

2. Whether or not the assessments are null and void for having been arbitrarily made.

3. Whether or not there is a violation of petitioner's right to speedy disposition of a case.

4. Whether of not the LOAs are void for failure of respondent to replace the same with eLAs as required under RMO No. 69-2010.

5. Whether or not petitioner is liable for deficiency income tax for calendar year 2009.

6. Whether or not petitioner is liable for deficiency value added tax for calendar year 2009.

7. Whether or not petitioner is liable for deficiency EWT for calendar year 2009.

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[73] *Id.*, pp. 2162-2187.
[74] Order dated September 26, 2018, Docket, Vol. IV, p. 2161.
[75] Docket, Vol. IV, p. 2188.
[76] *Id.*, p. 2189.
[77] Issues to be Resolved, Joint Stipulation of Facts and Issues (JSFI), Docket Vol. II, pp. 665-666.

8. Whether or not petitioner is liable for deficiency DST for calendar year 2009.

Issue as to respondent:

1. Whether petitioner is liable for the amount of ₱3,799,637.24 representing deficiency income tax, VAT, WTC, EWT and DST for taxable year 2009 plus 20% deficiency and delinquency interest for late payment until fully paid, pursuant to Sections 248 and 249 of the NIRC, as amended.

THE COURT'S RULING

After careful evaluation of the case records, more particularly the evidence duly presented by the parties, this Court finds the deficiency tax assessments issued by respondent against the petitioner to be intrinsically void and thus, shall be cancelled and set aside. The invalidity of such deficiency tax assessments springs from the absence of authority on the part of the revenue officers who conducted the examination of petitioner's books of accounts and other accounting records.

While the lack of authority of the revenue officers to conduct the audit was not specifically raised as an issue, this Court is not precluded from considering the same given that a void assessment bears no fruit.[78]

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[79] the Supreme Court also emphatically ruled that the Court of Tax Appeals can resolve an issue which was not raised by the parties. The Supreme Court said: *gr*

[78] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 516 Phil. 176, 189-190; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 744 SCRA 459; *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016, 808 SCRA 422.
[79] G.R. No. 183408, July 12, 2017.

"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

SECTION 1. *Rendition of judgment.* — x x x

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded**. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis supplied and citation omitted)*

One of the powers granted to the CIR under the 1997 NIRC is the power to assess deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, 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 from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

"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

(h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

"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 relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that the Chief of LTS-RAD 1 is not included therein. The relevant portion of the said issuance reads:

"D. Preparation and issuance of L/As.

x x x x x x x x x

4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority <u>but only upon prior</u>**

<u>authorization by the Commissioner himself</u>."
(Emphasis and underscoring supplied)

To reiterate, only the CIR or his duly authorized representatives who can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[80]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, logically speaking, it is only them who can effect any modification or amendment to a previously issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officer shall require the issuance of a new LOA. Be that as it may, this Court is of the view that the same would not necessarily negate the authority of the CIR and his duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of just issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[81] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies

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[80] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[81] Revenue Administrative Order No. 001-12 dated April 2, 2012.

of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[82]

In the present case, the revenue officers named under LOA No. 116-2010-00000087 dated May 14, 2010 were different from those who actually examined petitioner's books of accounts and other accounting records for taxable year 2009. As it appears, RO Gonzales and GS Bautista conducted the audit on the basis of Memorandum of Assignment No. LOA-116-2011-427 issued by Ms. Edralin M. Silario, OIC-Chief of LTS-RAD 1 reassigning to them the conduct of examination of petitioner's books of accounts and other accounting records. On the other hand, RO Guimbao and GS Aviles continued the conduct of the audit on the basis of Memorandum of Assignment No. LOA-116-2013-0227 issued by Mr. Cesar D. Escalada, Chief of LTS-RAD 1.

Guided by the foregoing disquisition, this Court holds that the Memorandum of Assignment No. LOA-116-2011-427 issued by Ms. Edralin M. Silario, OIC-Chief of LTS-RAD 1 cannot validly grant RO Gonzales and GS Bautista the power to conduct the examination pursuant to LOA No. 116-2010-00000087 dated May 14, 2010. The same holds true with respect to Memorandum of Assignment No. LOA-116-2013-0227 issued by Mr. Cesar D. Escalada, Chief of LTS-RAD 1. The said document cannot clothe RO Guimbao and GS Aviles with the requisite authority to continue the audit of petitioner's books of accounts and other accounting records for taxable year 2009.

In their respective capacities as OIC-Chief and Chief of LTS-RAD 1, Ms. Edralin M. Silario and Mr. Cesar D. Escalada are both bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[83] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the

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[82] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.
[83] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

audit/examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

Given the invalidity of the subject deficiency assessments, there is no need to discuss the other issues raised by the parties.

WHEREFORE, the present Petition for Review is **GRANTED**. Accordingly, the deficiency income tax, VAT, WTC, EWT, and DST for taxable year 2009 as found in respondent's FDDA dated December 2, 2014 in the total amount of Three Million Nine Hundred Eighty-Seven Thousand Nine Hundred Thirty Pesos and 20/100 (₱3,987,930.20) are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice