REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

SWIFT FOODS INC.,
Respondent.

CTA *EB* NO. 1613
(CTA Case No. 8399)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

MAY 07 2018 1:52 p.m.

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D E C I S I O N

MANAHAN, J.:

This resolves the *Petition for Review* [1] filed by the Commissioner of Internal Revenue on March 22, 2017 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which seeks for the issuance of a new decision and modification of the September 22, 2016 *Decision* [3] and February 15, 2017 *Resolution,*[4] promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8399, entitled "*Swift Foods, Inc. vs. Commissioner of Internal Revenue*".

[1] *Rollo,* CTA EB No. 1613, pp. 5-17.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo,* pp. 18-41.
[4] *Rollo,* pp. 42-46.

The dispositive portions of the assailed Decision and Resolution read:

Decision[5] dated September 22, 2016:

"**WHEREFORE**, the instant Petition for Review filed by Swift Foods, Inc. is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency income and value-added taxes in the aggregate amount of P556,254.72, inclusive of the 25% surcharge imposed under Section 248 (A)(3) of the NIRC of 1997, as amended, computed as follows;

Tax Type	Basic	Surcharge	Total
Income Tax	P 98,921.77	P 24,730.44	P 123,652.21
Value Added Tax	346,082.01	86,520.50	432,602.51
TOTAL	**P 445,003.78**	**P 111,250.94**	**P 556,254.72**

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 of P98,921.77 and value added tax of P346,082.01, computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic	Deficiency Interest Computed From
Income Tax	P 98,921.77	April 15, 2008
Value Added Tax	P 346,082.01	January 25, 2008

(b) Delinquency interest at the rate of 20% per annum on the total amount of P556,254.72 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from January 1, 2012 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Resolution[6] dated February 15, 2017:

"**WHEREFORE**, the *Motion for Partial Reconsideration* filed by Respondent Commissioner of Internal Revenue on October 27, 2016, is hereby **DENIED,** for lack of merit.

On the other hand, there being no objection on the part of respondent, petitioner Swift Foods, Inc.'s *Motion to*

[5] *Supra*, Note 3.
[6] *Supra*, Note 4.

> *Pay* filed on December 7, 2016 is hereby **GRANTED**. Consequently, petitioner's payment for compromise settlement in the amount of P1,194,729.88 shall be deducted from its total tax liabilities.
>
> **SO ORDERED**."

The Facts

Petitioner Commissioner of Internal Revenue (CIR), is authorized to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto as provided in the National Internal Revenue Code (NIRC) or other tax laws, administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Diliman, Quezon City.[7]

Respondent Swift Foods, Inc. (SFI) is a domestic corporation, with principal office at RFM Building, corner Pioneer and Sheridan Streets, Mandaluyong City.[8]

On February 11, 2010, petitioner issued a Notice of Informal Conference to discuss with respondent its alleged deficiency taxes for taxable year 2007, pursuant to the Letter Notice (LN) No. 116-RLF-07-00-00013 dated July 15, 2009.[9]

On August 16, 2010, respondent received from petitioner a Preliminary Assessment Notice (PAN) with Details of Discrepancies for deficiency income tax (IT) and value-added tax (VAT) for taxable year 2007 in the aggregate amount of Php10,274,264.51.[10]

On September 1, 2010, respondent protested the PAN.[11]

On September 13, 2010, respondent received from petitioner a Formal Letter of Demand/Assessment Notices (FLD/FAN), reiterating the deficiency taxes alleged in the PAN.[12]

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[7] *Rollo*, Decision dated September 22, 2016, p. 18.
[8] *Id.*
[9] *Id.* at 19.
[10] *Id.*
[11] *Id.* at 20.
[12] *Id.*

On October 1, 2010, respondent protested the FLD/FAN, with a supplement filed on February 15, 2011.[13]

On November 18, 2011, respondent received the Final Decision on Disputed Assessment (FDDA) containing the same assessments with adjustments only on the computation of interest.[14] Thus, on December 19, 2011, respondent filed its petition for review.

After the trial, the Court in Division ruled in favor of the respondent by partially granting its petition and modifying the amount of its tax liability.[15]

Petitioner moved for the reconsideration of said ruling on October 27, 2016 while respondent filed a Motion to Pay on December 7, 2016.[16] The Court in Division denied petitioner's motion for lack of merit while it granted respondent's motion.[17]

Thus, petitioner filed the instant petition through registered mail on March 20, 2017 which was received by this Court on March 22, 2017[18] after granting its motion for extension of time to file said petition.[19]

Respondent was then ordered by this Court to file its comment on said petition[20] which it submitted through registered mail on May 16, 2017 but only received by this Court on May 30, 2017[21] after its motion for extension of time[22] to file said comment was granted.[23]

On June 16, 2017, this Court gave due course to the said petition and directed both parties to submit their respective memoranda.[24]

On July 31, 2017, petitioner requested for the inclusion of its special counsels in the service and furnishing of all

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[13] *Rollo*, Decision dated September 22, 2016, p. 20.
[14] *Id.*
[15] *Id.* at 39-40.
[16] *Id.,* Resolution dated February 15, 2017, p. 42.
[17] *Id.* at 45.
[18] *Id.,* Petition for Review, p. 5.
[19] *Id.,* Minute Resolution dated March 3, 2017, p. 51.
[20] *Id.,* Resolution dated April 5, 2017, pp. 54-55.
[21] *Id.,* Comment/Opposition (To Petition for Review dated March 17, 2017), p. 63.
[22] *Id.* at 56-60.
[23] Id., Minute Resolution dated May 24, 2017, p. 62.
[24] *Id.,* Resolution dated June 16, 2017, pp. 88--89.

pleadings relative to the instant case.[25] Hence, petitioner asked this Court for extension to file his memorandum[26] which this Court granted and was given a final and non-extendible period of fifteen (15) days or until August 14, 2017.[27] However, instead of submitting its memoranda, petitioner filed an Urgent Motion for additional time to file Memorandum.[28]

On the other hand, respondent filed its Memorandum[29] through registered mail on August 10, 2017 which was received by this Court on August 16, 2017.

On August 30, 2017, petitioner filed a Motion for Leave to admit attached Memorandum[30] with the Memorandum[31] attached to the said motion.

On September 26, 2017, this Court granted said motion and admitted said Memorandum. Thus, this Court declared that the instant petition is now submitted for decision.[32]

The Issue

Whether or not respondent is liable to pay deficiency IT and VAT on the gross sales amounting to Php40,415,753.79.

Arguments of Petitioner[33]

The CIR interposed that he only assails the cancellation of the deficiency IT and VAT assessment on petitioner's gross sales to its customers amounting to Php40,415,753.79 because the certifications pertaining to the said amount alleged to have been authenticated by RFM customers were not enough to overturn such assessment.

He also argues that respondent's letter dated September 30, 2010 could hardly be deemed a protest letter as it failed to state the facts, law, and jurisprudence pursuant to Revenue

[25] *Rollo*, Entry of Appearance, pp. 90-92.
[26] *Id.*, Motion for Extension of Time to file Memorandum, pp. 93-96.
[27] *Id.*, Minute Resolution dated August 14, 2017, p. 97.
[28] *Id.* at 98-101.
[29] *Id.* at 102-134.
[30] *Id.* at 136-139.
[31] *Id.* at 140-148.
[32] Id., Resolution dated September 26, 2017, pp. 150-152.
[33] *Supra.*, Note 31.

Regulation No. 12-99. Hence, the assessment had attained its finality.

Arguments of Respondent[34]

In response to the allegations in the subject petition, respondent insists on the ruling of this Court that it is not liable to pay for deficiency IT and VAT on the sales amounting to Php40,415,753.79 since the said sales are not of its own but of RFM Corporation as admitted by the latter corporation and its customers. Respondent argues that its tax identification number (TIN) 003-973-161 was erroneously used in reporting to BIR the purchases made by RFM Corporation's customers from the latter.

Ruling of the Court *En Banc*

A reading of the instant petition for review and memorandum reveals that the issues and arguments raised therein were already discussed in petitioner's Motion for Partial Reconsideration[35] and the same were already passed upon by the Court in Division in its assailed Resolution dated February 15, 2017 under CTA Case No. 8399. Thus, the instant petition is a mere rehash of the previous pleadings already adjudicated on the merits by the Court in Division.

However, upon closer look at the facts of the case, it is shown that the examination conducted by the petitioner was based only on a Letter Notice (LN) and not a Letter of Authority (LOA) which is required under the law, rules, and regulations pertaining to the conduct of an examination on the taxpayers.

Section 6(A) of the National Internal Revenue Code of 1997 (NIRC), as amended, provides that:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>
> (A) 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 am

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[34] *Supra.*, Note 29.
[35] Docket, CTA Case No. 8399, Vol. 3, pp. 1493-1500.

> 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.

Furthermore, Section 13 of the 1997 NIRC, as amended, provides:

> 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.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* (*Medicard*),[36] the Supreme Court ruled that the mere issuance of an LN and the absence of the required LOA is fatal to any investigation conducted by the BIR on a particular taxpayer, 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.* -
>>
>> (A) **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. *om*

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[36] G.R. No. 222743 dated April 5, 2017.

> xxx xxx (Emphasis and underlining ours)
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> 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
>
> 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. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

Furthermore, in the said *Medicard case*, the Supreme Court cited the earlier case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[37] which held that:

> 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 and underlining ours)

Thus, based on the foregoing jurisprudence, the subsequent notices of assessment issued by petitioner were all null and void due to the absence of the proper authority to examine/investigate which violated respondent's right to due process.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[38] the Supreme Court amplified the importance of observing the taxpayer's right to due process, to wit:

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[37] G.R. No. 178697 dated November 17, 2010.

> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. xxx xxx

Petitioner should also be aware that when he filed the instant petition on appeal, the entire case is open for review and this Court *en banc* is not precluded from discussing issues that were not raised in the original case in order to properly dispose the instant case.

In the case of *Armando Aliling v. Jose B. Feliciano et al.*,[39] the Supreme Court ruled on the same, to wit:

> Petitioner errs. The Court has, when a case is on appeal, the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. We said as much in *Sociedad Europea de Financiacion, SA v. Court of Appeals*, "It is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case."

Said doctrine was again reiterated in the case of *Edilberto L. Barcelona v. Dan Joel Lim et al.*,[40] which ruled that:

> While petitioner does not deny that his appeal to the CSC was filed beyond the reglementary period, he argues that the timeliness of his appeal has never been an issue. He thus claims that only the issues raised by the parties may be resolved by the Court.
>
> Petitioner is mistaken. An appeal throws the entire case open for review, viz:
>
> > [A]n appeal, once accepted by this Court, throws the entire case open to review, and that

[38] G.R. No. 185371 dated December 08, 2010.
[39] G.R. No. 185829 dated April 25, 2012.
[40] G.R. No. 189171 dated June 03, 2014.

> this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.

More specifically, such doctrine was also applied in the tax case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[41] which held that:

> 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 xx
> >
> > 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.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The September 22, 2016 *Decision*[42] and February 15, 2017 *Resolution*[43] of the CTA Third Division in CTA Case No. 8399, are likewise hereby **REVERSED**. Accordingly, the Formal Letter of Demand and Final Assessment Notice are hereby declared null and void.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[41] G.R. No. 183408 dated July 12, 2017.
[42] *Supra*, Note 3.
[43] *Supra*, Note 4.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(I maintain my position as indicated in the assailed decision)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice