REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, ALFREDO V. MISAJON and NESTOR S. VALEROSO, in their capacity as OIC-Assistant Commissioner Large Taxpayer Service, Bureau of Internal Revenue,
Petitioners,

CTA EB NO. 2080
(CTA Case No. 9050)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

- versus -

BUILDERS STEEL CORPORATION,
Respondent.

Promulgated:
JAN 28 2020
10:32a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals

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[1] Filed on 28 June 2019, *Rollo*, pp. 6-22.
[2] **SEC. 3.** *Who may appeal; period to file petition.* –
...

(RRCTA), filed by petitioners Commissioner of Internal Revenue (**CIR**), Alfredo V. Misajon (**Misajon**) and Nestor S. Valeroso, in their capacity as OIC-Assistant Commissioner Large Taxpayer Service, Bureau of Internal Revenue (**BIR**). They seek the reversal of the Decision dated 17 December 2018[3] and Resolution dated 27 May 2019[4], respectively, of the Court's Special Third Division in CTA Case No. 9050, entitled *Builders Steel Corporation v. Hon. Kim S. Jacinto-Henares, in her capacity as Commissioner of Internal Revenue, Alfredo V. Misajon and Nestor S. Valeroso, in their capacity as OIC-Assistant Commissioner Large Taxpayer Service, Bureau of Internal Revenue.*

FACTS OF THE CASE

On 15 May 2015, respondent Builders Steel Corporation (**BSC/respondent**) filed a Petition for Review[5] before the Court seeking the reversal of the Final Decision[6] of the CIR holding respondent liable for deficiency income tax and value-added tax (VAT), amounting to ₱1,775,626,235.57. Respondent assailed the validity of the assessment mainly on the ground that the BIR failed to comply with the requirements for investigation under Revenue Memorandum Order (**RMO**) 03-2003.[7]

During the trial, respondent's receipt of two (2) Mission Orders (**MOs**), namely MO Nos. MSO2001 00105952[8] dated 11 March 2013 and MSO2001 00105962[9] dated 12 March 2013, were proved. The said MOs authorized Revenue Officers (**ROs**) Rosario Arriola, Reynante Martinez, Carolyn Mendoza, Shella Samaniego, Tito Monforte, Arnaldo Ancheta, Riza Budaño and Maria Gracielle Cecilia F. San

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 Division Docket, Volume II, pp. 951-968.
4 Id., pp. 1001-1004.
5 Id., Volume I, pp. 10-31.
6 Exhibit "P-15", id., Volume II, p. 771.
7 Prescribing Guidelines and Procedures in the Conduct of Inventory Taking/Stocktaking and Verification of Inventories Covering Taxable Year 2002 by the Large Taxpayers Audit and Investigation Division I, Large Taxpayers Audit and Investigation Division II, Large Taxpayers District Office–Makati, Large Taxpayers District Office-Cebu and Revenue District Offices, dated February 26, 2003.
8 Exhibit "P-1", Division Docket, Volume II, p. 592.
9 Exhibit "P-2", id., p. 594.

Pedro (**San Pedro**) to conduct an immediate inventory of respondent's goods on hand. Petitioners' witness, San Pedro, affirmed this fact in her testimony as one of the assigned officers for respondent's case.

In the same trial, petitioners offered, among others, copies of the Checklist of Records/Documents[10], First Notice[11], Second and Final Notice[12] and a *Subpoena Duces Tecum*[13] issued against respondent to prove the latter's receipt of these issuances. After trial, both parties submitted their respective memoranda.

In respondent's Memorandum[14] dated 13 December 2017, it pointed out that petitioners failed to show that the ROs (who conducted the investigation) were authorized pursuant to a valid Letter of Authority (**LOA**). The Special Third Division, in its Decision of 17 December 2018, found this claim supported by the case records hence, it granted respondent's Petition for Review and set aside the CIR's Final Decision. The Special Third Division held:

> ...
>
> Clearly, a revenue officer must be clothed with authority before he or she may proceed with the examination of the subject taxpayer and subsequently issue an assessment. Note that the said authority must be embodied in a Letter of Authority and not in any other form.
>
> In the case at bar, the examination and assessment against petitioner for its internal revenue taxes for TY 2012 was made on the basis of the two Mission Orders issued by [petitioner] Misajon and not a validly issued LOA...[15]
>
> ....

Aggrieved by the aforementioned Decision, petitioners timely filed their Motion for Reconsideration[16] (**MR**) on 21 January 2019. The Special Third Division, remaining steadfast in its position, denied petitioners' MR on 27 May 2019.[17] Hence, they filed the present petition before the Court *En Banc.*

10 Exhibit "R-3", BIR records, p. 2.
11 Exhibit "R-4", id., p. 5.
12 Exhibit "R-5", id., p. 7.
13 Exhibit "R-6", id., p. 12.
14 Division Docket, Volume II, pp. 940-946.
15 Id., p. 966.
16 Id., pp. 969-984.
17 Resolution, id., pp. 1001-1004.

ISSUES

In the present petition, petitioners ascribe the following to the Special Third Division in their bid to reverse the assailed 17 December 2018 Decision[18] and Resolution dated 27 May 2019, respectively:

> I.
> THE COURT ERRED IN CONSIDERING AN ISSUE THAT WAS BELATEDLY RAISED BY RESPONDENT.
>
> II.
> THE COURT ERRED IN CONSIDERING AN ALLEGATION THAT WAS NOT PART OF THE ORIGINAL PETITION NOR OF THE ISSUES FOR TRIAL AND WAS ONLY RAISED FOR THE FIRST TIME BY RESPONDENT IN ITS MEMORANDUM THEREBY, VIOLATING THEIR RIGHT TO DUE PROCESS.
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> III.
> THE COURT ERRED IN CANCELLING THE DEFICIENCY TAX ASSESSMENT ISSUED AGAINST RESPONDENT FOR THE ALLEGED LACK OF A LETTER OF AUTHORITY SINCE THE AUDIT WAS DONE PURSUANT TO LAW AND PERTINENT REGULATION.

ARGUMENTS

Before the Court *En Banc*, in amplifying support to the issues above, petitioners argue that the Court cannot rule on matters not raised before it in respondent's original Petition for Review in CTA Case No. 9050. They contend that the issue regarding the absence of the LOA was belatedly raised and the Court, by entertaining the same, allowed respondent to take a completely different stance. They further allege that, by basing the assailed Decision on the LOA's absence, the Court deprived petitioners of due process of law.

Respondent, on the other hand, maintains that the issue relating to the LOA is germane to the assessment's validity, which matter was duly stipulated in the parties' Joint Stipulation of Facts and Issues (**JSFI**) during the trial in CTA Case No. 9050.[19] It argues likewise that

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18 Supra at note 3.
19 Comment and/or Opposition, *Rollo*, pp. 54-65.

the Special Third Division did not err in granting its petition and there was no violation of due process. It maintains that the absence of an LOA, authorizing the ROs named in the MOs to investigate respondent, renders the BIR's assessment void.

RULING OF THE COURT *EN BANC*

After an assiduous scrutiny of the records and in consideration of the parties' contrasting arguments, the Court *En Banc* finds no compelling reason to disturb the assailed 17 December 2018 Decision and the Resolution dated 27 May 2019 of the Special Third Division.

At the onset, it must be noted that the errors that petitioners assigned to the Special Third Division have already been addressed by the latter. Petitioners' arguments are mere restatements of their arguments in their MR. It is therefore this Court *En Banc*'s view that the issues petitioners raise now can be simply addressed by answering the singular question of - whether this Court has the authority to entertain issues not formally raised before it in the original Petition for Review. To this query, the Court answers in the affirmative.

It is noted that petitioners are adamant that the Court cannot pass upon an issue not raised by respondent during the administrative proceedings before the CIR. They quote the following excerpt from the case of *Aguinaldo Industries Corporation (Fishing Nets Divisions) v. Commissioner of Internal Revenue and The Court of Tax Appeals*[20] (**Aguinaldo**) in support of their argument, to wit:

> ...
> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court — which is supposed to *review* administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.

[20] G.R. No. L-29790, 25 February 1982.

> In the instant case, up to the time the questioned decision of the respondent Court was rendered, the petitioner had always implicitly admitted that the disputed capital gain was taxable, although subject to the deduction of the bonus paid to its corporate officers. It was only after the said decision had been rendered and on a motion for reconsideration thereof, that the issue of tax exemption was raised by the petitioner for the first time...
>
> ...

In citing this particular paragraph of the Supreme Court's decision, the petitioners left out the last sentence which reads:

> ...
>
> <u>It was thus not one of the issues raised by petitioner in his petition and supporting memorandum in the Court of Tax Appeals.</u>[21]
>
> ...

In the present case, the records show that, contrary to petitioners' claim, respondent raised the issue in its Memorandum for its original Petition for Review (CTA Case No. 9050). Likewise, the Court *En Banc* find no merit in their insistence that respondent was allowed to take a different stand when the latter questioned the LOA in its memorandum. As respondent correctly noted, the matter of the assessment's validity was properly put in issue in the parties' JSFI. It must be noted as well that the controversy in *Aguinaldo* stemmed from the BIR's disallowance of certain deductions from the taxpayer's gross income. The taxpayer therein, although admitting the taxability of the disallowed amount, argued that the deduction was warranted by its by-laws (given that such was used as bonuses and allowances of its officers). After the case was elevated to this Court, the taxpayer was held liable for deficiency income tax. In its then MR[22], the taxpayer argued, for the first time, that it was exempt from income taxes which led to the above-quoted Supreme Court decision. Unlike in *Aguinaldo*, the Court does not see the incompatibility of respondent's contentions. In its then original Petition for Review before the Special Third Division, it assailed the validity of petitioners' assessment on procedural grounds; particularly, non-compliance with the procedure of investigation and computation of its taxes due in accordance with RMO 03-2003[23]. Nowhere in the proceedings did respondent admit to

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21 Underscoring supplied.
22 See at note 6.
23 Supra at note 7.

its taxability for the amount in question, nor did it admit receiving a valid LOA authorizing the ROs to conduct an audit of the corporation. On the other hand, it was petitioners who admitted (through their witness' testimony) that the ROs' authority to investigate respondent was pursuant to MOs that petitioner Misajon issued. Unfortunately, an MO is not an acceptable substitute for the lack of an LOA. Thus, the Special Third Division correctly invalidated the CIR's assessment of respondent due to the absence of a valid LOA, as required in Section 6[24], in relation to Section 13[25], of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and the doctrine laid down by the Supreme Court in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[26], and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[27] (**Medicard**). *Medicard*'s application to the case at bar has also already been exhaustively discussed in the assailed 17 December 2018[28] Decision.

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24 **Sec. 6.** *Power of the Commissioner to Make [A]ssessments and Prescribe [A]dditional 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.

...

25 **Sec. 13.** *Authority of a Revenue Office[r].* – [S]ubject 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.

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

...

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.

...

27 G.R. No. 222743, 05 April 2017.

...

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

...

28 Supra at note 3.

At any rate, the decision in *Aguinaldo* was reached in 1982, years prior to the promulgation of this Court's present procedural rules. By now, it is well-settled that this Court has jurisdiction to hear and decide the issues not raised before it pursuant with Rule 14, Section 1 of the RRCTA[29], which states:

> ...
> **SEC. 1.** *Rendition of judgment.* –
> ...
> 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.
> ...

This authority of the CTA in this respect was affirmed in the more recent case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[30] (**Lancaster**), where the Supreme Court, in interpreting the foregoing provision, held that the CTA could validly consider in its decision the authority of revenue officers to conduct an assessment although the issue was never raised in the parties' pleadings or memoranda.[31] The pertinent portion of the decision in *Lancaster*[32] holds, thusly:

> ...
> 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.
> ...

Despite the existence of the afore-quoted rule and the *Lancaster* ruling, petitioners still insist that the Special Third Division deprived them due process of law when it resolved issues not raised before the CIR at the administrative level (or in respondent's original Petition for Review). In insisting that the authority of the ROs to audit respondent cannot be raised for the first time on appeal, petitioners also allude to several Supreme Court decisions; sadly, none of which have originated

29 A.M. No. 05-11-07-CTA.
30 G.R. No. 183408, 12 July 2017.
31 Id.
32 Id.

from tax cases except for the case of *Commissioner of Internal Revenue v. Hon. Raul M. Gonzalez, Secretary of Justice, L. M. Camus Engineering Corporation (represented by Luis M. Camus and Lino D. Mendoza)*[33] **(Gonzalez)**. Petitioner particularly cites the following portion of the decision in *Gonzalez*, to wit:

> ...
> Moreover, these objections to the assessments should have been raised, considering the ample remedies afforded the taxpayer by the Tax Code, with the Bureau of Internal Revenue and the Court of Tax Appeals, as described earlier, and cannot be raised now via Petition for Certiorari, under the pretext of grave abuse of discretion. The course of action taken by the petitioner reflects his disregard or even repugnance of the established institutions for governance in the scheme of a well-ordered society. The subject tax assessments having become final, executory and enforceable, the same can no longer be contested by means of a disguised protest. In the main, Certiorari may not be used as a substitute for a lost appeal or remedy. This judicial policy becomes more pronounced in view of the absence of sufficient attack against the actuations of government.
> ...

The quoted portion was lifted from the case of *Ferdinand R. Marcos II v. Court of Appeals et al.*[34] **(Marcos II).** We find the doctrine laid down in *Gonzalez* and *Marcos II* inapplicable to the case at bar. These cases involved a criminal case for tax evasion and a petition for *certiorari,* respectively. Indeed, a defense of an assessment's invalidity in a tax evasion case or raising the same as a cause of action in a petition for *certiorari* are inadequate substitutes for a timely filed petition for review before the CTA. It is true that, in a tax evasion suit, the validity of an assessment cannot be attacked due to the simple reason that an assessment is neither an element of the crime of tax evasion nor is it a prerequisite for such a case to prosper. However, equally true is the settled principle that a petition for *certiorari* is not a substitute for a lost appeal.[35] Simply put, in both *Gonzalez* and *Marcos II,* the assessment's validity was already foreclosed from judicial review. Unlike in the cited cases, the one at bar originated from a petition for review of a disputed assessment which was elevated to this Court well within the reglementary period provided by law. Since the Court validly acquired jurisdiction over the case and the parties, there

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[33] G.R. No. 177279, 13 October 2010.
[34] G.R. No. 120880, 05 June 1997.
[35] *Medina et al. v. Sps. Lozada*, G.R. No. 185303, 01 August 2018.

was no bar to the Special Third Division's application of this Court's authority provided under Rule 14, Section 1 of the RRCTA.

Moreover, the Supreme Court, citing the late Justice Isagani Cruz in *Secretary of Justice v. Hon. Ralph C. Lantion et al.*[36], explained due process in this wise:

> ...
> Due process is comprised of two components — substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.
> ...

While in the older case of *El Banco Español-Filipino v. Vicente-Palanca*[37], the Supreme Court enumerated the requisites of procedural due process as particularly applied to judicial proceedings, namely:

> ...
> (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; (3) the defendant must be given the opportunity to be heard; and[,] (4) judgment must be rendered upon lawful hearing.
> ...

Unfortunately, petitioners fail to specify which tenet of due process did the Special Third Division miss to afford them before rendering its decision. In reviewing the case's history, the Court *En Banc* is unconvinced that petitioners were given an unfair trial. It appears that all the necessities of due process were met: (1) respondent's Petition for Review in CTA Case No. 9050 was filed within the reglementary period and its subject matter was within the CTA's jurisdiction; (2) jurisdiction was duly acquired over petitioners after they were served with summons; (3) petitioners were likewise given ample opportunity to present their evidence and witnesses; and, (4) judgment in the case was rendered only after a full-blown trial.

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36 G.R. No. 139465, 18 January 2000 citing Isagani Cruz, Constitutional Law, 1993 Edition, pp. 94-95.

37 G.R. No. L-11390, 26 March 1918.

Given the foregoing discussion, petitioners could not now argue that their audit of respondent was done pursuant to law and pertinent regulation. Even granting that they observed all other rules, the same does not cure the assessment's nullity resulting from the absence of a valid LOA.

WHEREFORE, the foregoing considered, the Petition for Review filed by petitioners Commissioner of Internal Revenue, Alfredo V. Misajon and Nestor S. Valeroso, in their capacity as OIC-Assistant Commissioner Large Taxpayer Service, Bureau of Internal Revenue on 28 June 2019, is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 17 December 2018 and Resolution dated 27 May 2019, respectively, of the Court's Special Third Division in CTA Case No. 9050, entitled *Builders Steel Corporation v. Hon. Kim S. Jacinto-Henares, in her capacity as Commissioner of Internal Revenue, Alfredo V. Misajon and Nestor S. Valeroso, in their capacity as OIC-Assistant Commissioner Large Taxpayer Service, Bureau of Internal Revenue,* are both **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ON LEAVE
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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