REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

GOLDEN BREW MARKETING INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9538

Members:

DEL ROSARIO, *P.J., Chairperson*, *and*
MANAHAN, *JJ.*

Promulgated:
DEC 16 2020 /0:15 am

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RESOLUTION

MANAHAN, *J.*:

This resolves respondent's *Motion for Reconsideration [re: Decision dated March 2, 2020]* posted on July 1, 2020 and received by the Court on July 6, 2020, without petitioner's comment.[1]

Respondent Commissioner of Internal Revenue (CIR) assails the Court's Decision dated March 2, 2020, which disposed of the case, as follows:

> **WHEREFORE**, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject assessment for income tax, VAT, EWT, DST, and compromise penalties, issued by respondent against petitioner, in the aggregate amount of P180,041,148.07, inclusive of increments, for taxable year 2010 is **CANCELLED** and **SET ASIDE**, for being void.
>
> **SO ORDERED.**[2]

In his *Motion*, respondent argues that his right to fair play and due process was violated when the Court ruled that the

[1] Per Records Verification dated October 19, 2020.
[2] Decision dated March 2, 2020, p. 18.

revenue officers who conducted the audit lacked authority and that the assessment notice failed to state a date certain to pay and the exact amount of tax liability. Respondent maintains that these issues were never raised by petitioner, nor joined or defined during pre-trial.

Respondent further contends that the revenue officers were properly clothed with authority to conduct the audit/investigation. Relying on Revenue Memorandum Order (RMO) No. 8-2006, respondent states that the Division Chief of RLTAD I, as head of the investigating office, is authorized to effect modifications to a validly issued LOA by issuing a Memorandum of Assignment.

Respondent also states that in order for a final assessment notice to be valid, what is essential is that the taxpayer is informed in writing of the findings of the respondent and stating therein the facts and the laws on which the assessment is based. Respondent also submits that that the Formal Letter of Demand (FLD) contained a definite due date which is July 29, 2016, and definite tax liability. Interest is imposed on the unpaid tax from the date prescribed for its payment until the full payment thereof. Necessarily, the total amount due on the assessment notice will have to be adjusted as the BIR will not be certain when the taxpayer will pay the tax demanded.

We deny the motion for reconsideration.

Under the Revised Rules of the Court of Tax Appeals (RRCTA), the Court of Tax Appeals (CTA) 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.[3] On the basis of the said provision, the Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[4] stated:

> x x x 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. x x x

[3] Revised Rules of the Court of Tax Appeals, Rule 14, Section 1.
[4] G.R. No. 183408, July 12, 2017.

The issue on the authority of the revenue officer to conduct the audit/investigation is directly related to the issue of the validity of the resulting assessment issued by such revenue officer.

As to the requirement for a Letter of Authority (LOA), Section 13 of the 1997 National Internal Revenue Code, 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 *Commissioner of Internal Revenue v. Composite Materials, Inc.*,[5] the Supreme Court reiterated that a revenue officer may only examine the taxpayer's books pursuant to an LOA, and that a referral memorandum is not equivalent to an LOA, *to wit*:

> As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA en banc found that the LOA issued in relation to the examination of CMI's books of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
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> Moreover, the Court agrees with the CTA en banc that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of

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[5] G.R. No. 238352, September 12, 2018.

> CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority. x x x

Based on the foregoing, the Court finds no reason to reconsider its findings that no LOAs were issued to the revenue officers who continued the tax audit/examination of petitioner, and, therefore, that the assessments against petitioner are void.

As aptly held in the case of *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,[6] revenue officers who recommended the issuance of deficiency tax assessments were without authority to do so in the absence of a valid LOA in their favor. The Supreme Court stated:

> x x x Likewise, the CTA *EB* correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer. This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90, which provides that any re-assignment/transfer of cases to another revenue officer(s), and revalidation of a LOA which had already expired, shall require the issuance of a new LOA. In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.

Respondent also contends that there is a definite due date and that there is a definite amount to pay despite the adjustment of interest. The Court agrees.

The basic deficiency tax liability remains the same regardless of when the taxpayer chooses to pay the assessment. This amount of basic deficiency tax is therefore a definite liability. The statement contained in the FLD and the FDDA merely means that the interest will be adjusted if the taxpayer fails to pay on the due date specified in the assessment notices. The interest, and only the interest, may be adjusted if the taxpayer pays before or after the due date. The basic deficiency tax liability remains the same. What is important is that there is a due date contained in the FLD/FDDA/assessment notice.

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[6] G.R. Nos. 249883-84, Resolution dated January 27, 2020.

Nevertheless, due to the lack of authority of the revenue officers who continued the audit/investigation of petitioner, the assessments against it are void, and bears no fruit.[7]

WHEREFORE, the respondent's *Motion for Reconsideration [re: Decision dated March 2, 2020]* is **DENIED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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