REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TRINITY FRANCHISING AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9190

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

JAN 15 2019 3:30 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is respondent's **Motion for Reconsideration Re: Decision dated 2 October 2018**, filed on October 17, 2018, with petitioner's **Comment (to Respondent's Motion for Reconsideration dated 17 October 2018)**, filed on November 8, 2018.

Respondent moves for the reconsideration of the Decision promulgated on October 2, 2018, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated October 15, 2015, assessing petitioner for deficiency income tax, documentary stamp tax, value added tax, and expanded

withholding tax in the aggregate amount of ₱54,370,082.80 for taxable year 2010 is **CANCELLED** and **SET ASIDE**.

SO ORDERED."

Respondent contends that the Court erred in addressing an issue which was not raised by the parties. He argues that in resolving an issue not raised by the parties, respondent's basic right to fair play and due process was violated. Respondent thus claims that the Court erred in saying that the subject assessments are void for lack of authority of the revenue officer (RO) who conducted the audit investigation.

Moreover, respondent asserts that the RO was duly authorized to conduct the audit examination. He argues that RO Luzviminda A. Pedrosa, the one who continued the examination, was duly authorized without the need to issue a new Letter of Authority (LOA). Respondent further claims that the assessment issued against petitioner is valid and lawful.

On the other hand, petitioner points out that respondent's arguments are erroneous and were already addressed by the Court in the assailed Decision. Accordingly, it claims that the motion should be denied as it does not raise any new, cogent or substantial ground to warrant a reversal or modification of the said Decision.

Apparently, the issues and arguments presented in respondent's motion were already addressed and resolved by the Court in the assailed Decision.

It has been settled that the Court can take cognizance of the issue concerning the lack of LOA although it is not raised in the pleadings filed by the parties.[1] To reiterate, the authority to make an examination or assessment, being a matter provided for by the National Internal Revenue Code (NIRC), is well within the exclusive and appellate jurisdiction of this Court under the phrase "other matters" arising under the NIRC or other laws administered by the BIR. Furthermore, the Court is not bound by the issues specifically raised by the parties but may also rule upon related issues

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[1] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

necessary to achieve an orderly disposition of the case, pursuant to Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals (CTA).

It must be emphasized that the lack of authority of the concerned RO to make an examination pursuant to a LOA goes into the issue of the validity of the assessment itself. Hence, the Court has the power to resolve this related issue, even though the parties had not raised the same in their pleadings or memoranda.

The Court found that the assessment is void in view of the absence of authority on the part of the RO who conducted the examination of petitioner's books of accounts and other accounting records for taxable year 2010. Records show that the RO named under LOA No. 125-2011-00000024 dated July 12, 2011 and LOA No. 125-2011-00000073 dated September 29, 2011 was different from the one who actually examined petitioner's books of accounts and other accounting records for taxable year 2010. As it appears, RO Luzviminda A. Pedrosa conducted the audit on the basis of Memorandum of Assignment No. LOA-125-2013-143 dated March 22, 2013 issued by Mr. Edwin T. Guzman, OIC-Chief of LTS-RLTAD II reassigning to her the conduct of examination of petitioner's books of accounts and other accounting records.

It is worthy to note that the audit process normally commences with the issuance by the Commissioner of Internal Revenue (CIR) of a LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[2] Moreover, Revenue Memorandum Order (RMO) No. 43-90 provides that all audits or investigations should be conducted under a LOA and that any reassignment/transfer of cases to another revenue officer shall require the issuance of a new LOA. Also, only the CIR or his duly authorized representatives 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.[3]

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[2] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

[3] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

It is clear that the RO must be clothed with authority before proceeding with an examination or assessment. Moreover, that authority must be embodied in a LOA signed by the CIR or his duly authorized representative, and not in the form of a mere Memorandum of Assignment issued by OIC-Chief of LTS-RLTAD II to the taxpayer.

Considering that the RO who conducted the examination was not validly authorized to do so by virtue of a LOA signed by the CIR or his duly authorized representative, the subject tax assessment or examination is a nullity.

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.[4] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[5] If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[6]

Thus, the Court finds no compelling reasons that will justify the reversal of the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision dated 2 October 2018**, is **DENIED** for lack of merit.

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

[5] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

[6] *Commissioner of Internal Revenue vs. San Miguel Corporation*, G.R. Nos. 205045 and G.R. No. 205723, January 25, 2017.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice