REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

8199 CONVENIENCE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1912
(CTA Case No. 8853)

Present:

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

Promulgated:
MAR 03 2021 4:20pm

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's Resolution is a Motion for Reconsideration[1] (**MR**) filed by petitioner 8199 Convenience Corporation (**petitioner/8199**), without respondent Commissioner of Internal Revenue's (**respondent/CIR's**) comment/opposition thereto. The motion seeks the reversal of this Court's Decision dated 03 September 2020[2] in the above-captioned case. The dispositive portion of which reads:

> ...
>
> **WHEREFORE,** the foregoing considered, petitioner 8199 Convenience Corporation's Petition for Review filed on 07

[1] Filed on 30 September 2020, *Rollo*, pp. 130-137.
[2] Id., pp. 117-129

September 2018 is hereby **DENIED**. Accordingly, the assailed Decision dated 02 February 2018 and Resolution on 31 July 2018 of the First Division in CTA Case No. 8853, entitled *8199 Convenience Corporation v. Commissioner of Internal Revenue* are hereby **AFFIRMED**.

...

In its present MR, petitioner changes its whole theory of the case and as a result, raises an entirely new issue. It now argues that the assessment should have been voided on the ground that the appointment of Revenue Officer Josephine Reyes (**RO Reyes**) by a mere Memorandum of Assignment[3] (**MOA**).

We now resolve.

It will be recalled that petitioner, both in its Petitions for Review before the Court in Division[4] and the Court *En Banc*[5], challenged the assessment's validity on account of the Bureau of Internal Revenue's (**BIR's**) use of the "best evidence obtainable" rule in conducting its audit investigation of 8199. At this point, petitioner must be reminded of the functions of an MR. In *Sps. Mendiola v. The Hon. Court of Appeals, et al.*[6], the Supreme Court explains, thus:

> ...
> A motion for reconsideration is not putting forward a new issue, or presenting new evidence, or changing the theory of the case, but is only seeking a reconsideration of the judgment or final order based on the same issues, contentions, and evidence either because: (a) the damages awarded are excessive; or (b) the evidence is insufficient to justify the decision or final order; or (c) the decision or final order is contrary to law.
> ...

While it is true that this Court is not bound by the technical rules of evidence[7], it is also equally true that issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process.[8]

3 Exhibit "R-24", Division Docket, Volume III, p. 1638.
4 Id., Volume I, pp. 6-18.
5 *Rollo*, pp. 5-15.
6 G.R. No. 159746, 18 July 2012.
7 *BPI-Family Savings Bank v. Court of Appeals, et al.*, G.R. No. 122480, 12 April 2000.
8 *Punongbayan-Visitacion v. People of the Philippines, et al.*, G.R. No. 194214, 10 January 2018

At any rate, a review of the records shows that the assessment of petitioner was carried out by BIR officers pursuant to a valid Letter of Authority (**LOA**). The Preliminary Assessment Notice[9] (**PAN**) and Formal Letter of Demand[10] (**FLD**) were attained through the efforts of RO Remigio N. Tiangco, Jr. (**RO Tiangco**) who was authorized under LOA No. 2009-00022985[11] after petitioner had repeatedly failed to supply the BIR with the requested documents.

The records further yield that the assailed MOA was issued only after petitioner filed its protest to the PAN and FLD on 06 February 2013.[12] A perusal thereof reveals that the same was not issued for the continuation of petitioner's audit or to replace the previously assigned revenue officer but only for the purpose of reinvestigation. As a result of petitioner's protest, the BIR made a new request for documents. However, just like it had done previously, petitioner again failed to supply the BIR with the requested documents. Consequently, Regional Director Simplicio A. Madulara (**RD Madulara**), through a letter[13] dated 28 January 2014, informed petitioner of the finality of the previous assessment for its failure to submit supporting documents within sixty (60) days of its protest pursuant to Section 228[14] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

Moreover, the records clearly show that the BIR conducted no further investigation or assessment after petitioner had filed its protest. Instead, RD Madulara merely reiterated the finality of the previously issued PAN and FLD due to petitioner's failure to perfect its protest due to its own refusal to submit the BIR requested documents.

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9 Exhibit "R-17", Division Docket, Volume III, pp. 1628-1629.

10 Exhibits "P-13" to "P-13-1", id., Volume II, pp. 1165-1166.

11 Exhibit "P-1", id., p. 1069.

12 Exhibits "P-14" to "P-14-2", id., pp. 1170-1175.

13 Exhibit "P-19", id., p. 1197.

14 **SEC. 228**. *Protesting of Assessment*. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:

...

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

Therefore, aside from the issue of RO Reyes' authority being raised too late in the day, it would appear that the assessment of petitioner was nevertheless valid.

WHEREFORE, the foregoing considered, petitioner 8199 Convenience Corporation's Motion for Reconsideration filed on 30 September 2020 is hereby **DENIED**. Accordingly, the Court's assailed Decision dated 03 September 2020 in CTA EB No. 1912, entitled *8199 Convenience Corporation v. Commissioner of Internal Revenue,* is hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice