REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

REPUBLIC OF THE PHILIPPINES,
Petitioner,

CTA OC Case No. 023

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

- versus –

ROBIGIE CORPORATION,
Respondent.

Promulgated:

JUN 08 2020
4:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

The present *Complaint* filed on June 23, 2017, prays that the defendant be ordered to pay the amounts of ₱315,680.28, ₱10,397,181.78 and ₱20,129.15, respectively, representing deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT), plus 20% deficiency and delinquency interest *per annum* in accordance with Section 249 of the National Internal Revenue Code (NIRC) of 1997.[1]

[1] Summary of the Case, Pre-Trial Order dated February 27, 2018, Docket, p. 148.

THE PARTIES

Plaintiff is the Republic of the Philippines, a political entity whom all citizens and persons deriving income within its territory have the obligation to pay taxes. The power of taxation is exercised by plaintiff through the Bureau of Internal Revenue (BIR).[2] In turn, the BIR is represented by the Commissioner of Internal Revenue (CIR) who is empowered to perform the duties of said office including, among others, the power to assess and collect all national [internal] revenue taxes, fees and other charges, and to enforce all forfeitures, penalties, and fines connected therewith, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City. The CIR is represented in litigation proceedings by legal officers of the BIR in collaboration with the Office of the Solicitor General (OSG). He may be served with notices, summons and other documents through the BIR – Legal Division, Revenue Region No. 6, BIR-Manila, 5th Flr., BIR Building I, Solana St., Intramuros, Manila.[3]

Pursuant to Section 7 of the NIRC of 1997, as amended, the CIR delegated his authority vested in him under the law to officials of the BIR, including Regional Directors, with regard to the institution of civil, administrative and criminal actions/cases for, among others, the recovery of taxes or the enforcement of fine, penalty or forfeiture under the NIRC of 1997, as amended. Thus, the Regional Director of Revenue Region No. 6-Manila is authorized to institute the present *Complaint* for the collection of the deficiency taxes as delegated by the CIR.[4]

The BIR is divided into internal revenue districts in accordance with law and one such district is Revenue District Office (RDO) No. 31 – Sta. Cruz, Manila, which is under the jurisdiction of the Regional Director of Revenue Region No. 6-Manila, wherein defendant Robiegie Corporation's business establishment is located. The address of RDO No. 31 – Sta. Cruz, Manila, is at 5th Flr., BIR Building II, Solana St., Intramuros, Manila.[5]

Defendant Robiegie Corporation is a corporation registered with the Securities and Exchange Commission and is engaged in the business of operating a drugstore with business address at No. 1614

[2] Part II, Par. 1, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 142.
[3] Part II, Par. 2, JSFI, Docket, pp. 142 to 143.
[4] Part II, Par. 3, JSFI, Docket, p. 143.
[5] Part II, Par. 4, JSFI, Docket, p. 143.

Rizal Ave., Sta. Cruz, Manila, where it may be served with summons, notices and other processes of this Court. It is duly registered taxpayer with the RDO No. 31, with assigned Tax Identification No. 004-574-210-000.[6]

THE FACTS

The *Letter of Authority* (LOA) No. 00037842 dated July 27, 2009 was issued, authorizing Revenue Officer (RO) Jose Francisco David, Jr., under Group Supervisor (GS) Felix M. Roy, of the BIR, to examine the books of accounts and other accounting records of defendant Robiegie Corporation for taxable year 2008. Subsequently, the said LOA was re-assigned to RO Cecille D. Dy under GS Jessica O. Bernales, through Referral No. 031-0006-10 dated January 28, 2010, with notice to the subject taxpayer. The above-mentioned LOA, together with the *First Notice for Presentation of Books of Accounts* and other accounting records were served upon and duly received by defendant at the latter's business address, requiring the presentation of the taxpayer's books of accounts and other accounting records for taxable year 2008, for examination of the BIR.[7]

On August 18, 2011, Regional Director Alfredo V. Misajon of Revenue Region No. 6-Manila, issued a *Preliminary Assessment Notice* (PAN), [8] informing defendant of the BIR's findings in connection with investigation of defendant's internal revenue tax liabilities for taxable year 2008, pursuant to LOA No. 00037842 dated July 27, 2009, conducted by RO Cecille D. Dy.

Subsequently, OIC-Regional Director of Revenue Region No. 6-Manila, issued *Formal Letter of Demand* (FLD) and *Final Assessment Notices* (FANs), all dated September 19, 2011,[9] assessing defendant deficiency income tax, VAT, and EWT, including interests and compromise penalties, for taxable year 2008, in the total amount of ₱10,804,991.21, computed as follows:

Income tax	₱ 315,680.28
VAT	10,397,181.78
EWT	20,129.15

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[6] Part II, Par. 5, JSFI, Docket, p. 143.
[7] Part II, Par. 6, JSFI, Docket, p. 143.
[8] Exhibit "P-16", Docket, pp. 132 to 135.
[9] Exhibits "P-17", "P-18", "P-19", "P-20", and "P-21", Docket, pp. 119 to 126.

Compromise penalty	72,000.0
Grant Total	**₱10,804,991.21**

On March 2, 2012 and July 16, 2013, respectively, *Warrants of Distraint and/or Levy* were duly served upon defendant Robiegie Corporation, but no property could be located that may be levied upon the satisfaction of its tax liabilities.[10]

Warrants of Garnishment were likewise issued, but defendant Robiegie Corporation has no existing bank deposits that could be garnished.[11]

Thus, plaintiff filed the present *Complaint* on June 23, 2017.[12]

Thereafter, the defendant filed its *Answer To Complaint* on December 13, 2017.[13]

The Pre-Trial Conference was set on February 1, 2018.[14] However, at the said date, defendant's counsel had no Special Power of Attorney, said counsel was ordered by the Court to submit the same within twenty (20) days therefrom, and reset the Pre-Trial Conference to March 15, 2018, subject to cancellation in case the parties submits a *Joint Stipulation of Facts and Issues* (JSFI) on or before February 21, 2018.[15]

Defendant's *Pre-Trial Brief* was filed on January 16, 2018;[16] while the plaintiff's *Pre-Trial Brief* was submitted on January 30, 2018.[17]

On February 19, 2018, the parties filed their JSFI.[18] In the Pre-Trial Order dated on February 27, 2018,[19] the Court deemed the pre-trial terminated.

[10] Part II, Pars. 7 and 10, JSFI, Docket, pp. 143 to 144.
[11] Part II, Par. 8, JSFI, Docket, p. 143.
[12] Docket, pp. 8 to 14.
[13] Docket, pp. 73 to 76.
[14] Notice of Pre-Trial Conference dated December 14, 2017, Docket, pp. 85 to 86.
[15] Minutes at the hearing held on, and Order dated, February 1, 2018, Docket, pp. 136 to 137.
[16] Docket, pp. 87 to 89.
[17] Docket, pp. 107 to 114.
[18] Docket, pp. 142 to 146.
[19] Docket, pp. 148 to 154.

Trial of the case ensued.

During trial, the plaintiff presented its documentary and testimonial evidence. As for its testimonial evidence, the plaintiff offered the testimonies of the following individuals, namely: (1) Ms. Ma. Paz Arcilla,[20] Revenue Officer IV-Chief, Billing Section at the Assessment Division, BIR-Manila; (2) Ms. Edna A. Ortalla,[21] Chief, Assessment Section at the Assessment Division, BIR-Manila; and (3) Mr. Benhur Nacorda,[22] BIR employee assigned at the Administrative Division of Revenue Region No. 6, BIR-Manila.

Plaintiff's Formal Offer of Evidence was filed on July 9, 2018.[23]

On July 24, 2018, defendant filed a *Motion For Leave of Court To File Demurrer To The Evidence.*[24]

In the Resolution dated August 17, 2018,[25] the Court admitted all of plaintiff's offered exhibits, and granted defendant's *Motion For Leave of Court To File Demurrer To The Evidence.*

Thus, on August 29, 2018, defendant filed its *Demurrer To Evidence.*[26] However, in the Resolution dated October 9, 2018,[27] the same was denied.

Defendant likewise presented its documentary and testimonial evidence. Its witnesses are: (1) Ms. Grace G. Sucksuphan,[28] defendant's representative; and (2) Ms. Evelyn Nones,[29] the Accountant of defendant.

[20] Exhibit "P-39", Docket, pp. 115 to 118; Minutes of the hearing held on, and Order dated, May 2, 2018, Docket, pp. 174 to 175.
[21] Exhibit "P-40", Docket, pp. 128 to 131; Minutes of the hearing held on, and Order dated, May 28, 2018, Docket, pp. 176 to 177.
[22] Exhibit "P-41", Docket, pp. 180 to 183; Minutes of the hearing held on, and Order dated, June 11, 2018, Docket, pp. 199 to 200.
[23] Docket, pp. 203 to 206.
[24] Docket, pp. 208 to 209.
[25] Docket, pp. 211 to 213.
[26] Docket, pp. 214 to 215.
[27] Docket, pp. 218 to 222.
[28] Exhibit "D-5", Docket, pp. 103 to 106; Minutes of the hearing held on, and Order dated, November 19, 2018, Docket, pp. 223 to 224 (cc: Minutes of the hearing held on, and Order dated, January 21, 2019, Docket, pp. 228 to 230).
[29] Exhibit "D-6", Docket, pp. 99 to 102; Minutes of the hearing held on, and Order dated, January 21, 2019, Docket, pp. 228 to 230.

On January 25, 2019, defendant filed a *Formal Offer of Evidence*,[30] to which plaintiff filed a *Comment To Formal Offer of Evidence* on February 4, 2019.[31] In the Resolution dated March 7, 2019,[32] the Court admitted defendant's exhibits, *except* for Exhibits "D-2A", "D-2B", "D-2C", and "D-2D", for failure to present the originals for comparison.

The *Memorandum For The Defendant* and *Amended Memorandum For The Defendant* were filed on April 11, 2019,[33] and April 15, 2019,[34] respectively. The plaintiff, however, failed to file its memorandum.[35]

In the Resolution dated April 30, 2019, [36] the case was considered submitted for decision.

THE ISSUE

The parties raised the following issue for this Court's resolution, to wit:

> "1. Whether or not defendant is liable to plaintiff to pay the amounts of P315,680.28, P10,397,181.78 and P20,129.15, respectively representing deficiency income tax, value-added tax and expanded withholding tax for taxable year 2008 plus 20% deficiency and delinquent interest[s] per annum in accordance with Section 249 of the NIRC of 1997."[37]

Plaintiff's arguments:

Plaintiff argues that the FANs and the corresponding FLD with *Details of Discrepancies* were sent to defendant on September 19, 2011, and thus, the BIR's right to collect the subject taxes may be enforced within the five (5) years therefrom or until September 19, 2016; that the BIR has duly served upon defendant the *Warrants of*

[30] Docket, pp. 231 to 232.
[31] Docket, pp. 250 to 251.
[32] Docket, pp. 253 to 254.
[33] Docket, pp. 255 to 257.
[34] Docket, pp. 258 to 261.
[35] Records Verification dated April 16, 2019 issued by the Judicial Records Division of this Court, Docket, p. 262.
[36] Docket, p. 263.
[37] Part III, JSFI, Docket, p. 144.

Distraint and/or Levy on March 2, 2012 and July 16, 2013, respectively, but no property owned by the said defendant could be located; that the period to collect the subject taxes was suspended at the time of service of the said *Warrants of Distraint and/or Levy* pursuant to Section 223 of the NIRC of 1997, as amended; and that in view of the suspension of the period to collect the subject taxes on March 2, 2012, plaintiff's right to collect the taxes due may still be enforced, and hence, the present suit for collection of taxes is not yet barred by prescription.

Defendant's counter-arguments:

Defendant argues that the LOA dated July 27, 2009 was an invalid LOA, for it was re-assigned by way of *Memorandum*, and not duly signed by the Commissioner of Internal Revenue or his duly authorized representative.

Moreover, defendant avers that during the initial presentation of evidence, witness Ma. Paz Arcilla failed to show any proof of return card from the Post Office and has no personal knowledge if the FAN, with corresponding Demand Letter was received by defendant.

Furthermore, defendant points out that plaintiff's witness, Ms. Edna A. Ortalla, mentioned that she only reviewed the findings of RO John Paulo, who conducted the investigation on defendant for taxable year 2008; that Ms. Ortalla has no personal knowledge with regard to the investigation conducted by RO Leonardo; that RO Leonardo, RO Cecill Dy, and GS Andres Bisares did not testify during trial, considering that they are the ones who conducted the investigation by way of a *Memorandum of Assignment*; and that Mr. Benhur Nacorda has no personal knowledge whether or not the mail matters were actually delivered and received by defendant.

Finally, defendant contends that plaintiff failed to satisfactorily discharge its burden of proving that the requirements set forth under Section 228 of the NIRC of 1997 and Revenue Regulations No. 12-99 in serving FAN/FLD were strictly complied with.

THE COURT'S RULING

The present *Complaint* must fail.

It is clear that the present case is an action for the collection of taxes against the defendant. As already settled, however, the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.[38] Thus, We shall primarily determine whether the subject tax assessments are valid.

Defendant effectively argues that the subject tax assessments are void for lack of authority of the RO to conduct the examination.

We agree with defendant.

The audit process normally commences with the issuance by respondent of an 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 <u>designated</u> RO** to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[39]

The authority of an RO to examine a taxpayer derives from Section 6(A) of the NIRC of 1997, which reads:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)* yc

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[38] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016; *Commissioner of Internal Revenue vs. Menguito*, G.R. No. 167560, September 17, 2008.
[39] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

Based on the foregoing provision, an authority emanating from respondent or his duly authorized representative is required **before an examination and an assessment may be made against a taxpayer**.

In connection with the above-quoted provision, Section 13 of the NIRC of 1997 provides that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> "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." *(Emphasis and underscoring supplied.)*

Hence, a grant of authority, through an LOA, must be made assigning an RO, to perform tax assessment functions, in order that such officer may examine taxpayers and **collect the correct amount of tax**, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* ("*Medicard* case"),[40] the Supreme Court held:

> **"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**

[40] G.R. No. 222743, April 5, 2017.

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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** 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.
>
> x x x x (Emphasis and underlining Ours)

Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, 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 <u>without prior authority</u>.**

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,*[41] the Court said that: *Je*

[41] 649 Phil. 519 (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**. (Emphasis and underlining ours)

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Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**

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That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**." *(Emphases and underscoring supplied)*

Based on the foregoing doctrinal pronouncements, an RO must be authorized, **through an LOA**, in order that the said officer may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

It must be noted that the Commissioner of Internal Revenue himself, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018,[42] recognized the ruling in the *Medicard* case, in this wise:

> "The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, <u>through an LOA</u>. The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
>
> xxx xxx xxx
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." *(Emphasis and underscoring supplied)*

It is clear from the foregoing, that any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and therefore void.

In the present case, it is admitted that the RO and GS named under LOA No. 00037842 dated July 27, 2009, Mr. Jose Francisco David, Jr. and Felix M. Roy, respectively, were not the ones who actually examined petitioner's books of accounts and other accounting records for taxable year 2008. On the basis of the said admission,[43] and according to the PAN dated August 18, 2011 itself, the said tax examination was conducted by RO Cecille D. Dy.[44]

[42] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.
[43] Part II, Par. 6, JSFI, Docket, p. 143.
[44] Exhibit "P-16", Docket, pp. 132 to 135.

Furthermore, it was even testified to by plaintiff's witness, Ms. Edna A. Ortalla, Chief, Assessment Section at the Assessment Division, BIR-Manila, that she is the one who reviewed the findings of RO John Paul Leonardo, who in turn reviewed the findings of RO Cecille D. Dy; and that it was RO John Paul Leonardo who prepared the said PAN.[45]

Clearly, ROs Cecille D. Dy and John Paul Leonardo, as well as Ms. Edna A. Ortalla, were not authorized through an LOA. Not having an LOA to investigate, examine, and review petitioner's tax returns and records in the first place, the subject tax assessments issued by the BIR are inescapably void; and thus, bear no valid fruit.[46] Such being the case, plaintiff may not collect the subject taxes, since the collection thereof is not premised on valid tax assessments.

In view of the invalidity of the subject deficiency assessments, there is no need to address the other arguments raised by the parties.

WHEREFORE, the present *Complaint* is **DISMISSED**.

SO ORDERED.

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

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[45] Q6&A to Q9&A, Exhibit "P-40", Docket, pp. 129 to 130.
[46] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018, G.R. No.197945 citing *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

WE CONCUR:

CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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