

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB No. 2690
INTERNAL REVENUE, (CTA Case No. 9945)
Petitioner,

Present:

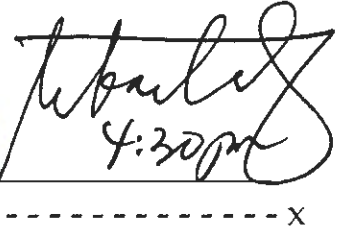
-versus-

DEL ROSARIO, PL
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and,
ANGELES, JJ.

HARD ROCK CAFE
(MAKATI CITY) INC.,
Respondent.

Promulgated:

APR 12 2024


4:30pm

x-----x

DECISION

REYES-FAJARDO, J.:

The Petition for Review¹ filed on September 21, 2022, challenges the Decision² dated December 10, 2021 and Resolution³ dated August 17, 2022 in CTA Case No. 9945, whereby the Court in Division cancelled and set aside the deficiency income tax (IT), percentage tax (PT) and expanded withholding tax (EWT) in the amount of ₱53,148,347.05, for calendar year (CY) 2014, issued by the Commissioner of Internal Revenue (CIR) against Hard Rock Cafe (Makati City), Inc.

¹ Rollo, pp. 1-15.

² Id. at pp. 17-44.

³ Id. at pp. 46-54.

91

PARTIES

Petitioner is the duly-appointed CIR, vested with authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997 (NIRC), as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Level III, Glorietta 3, Ayala Center, Makati City. It is registered with the BIR with Tax Identification No. 004-730-226-000 and Certificate of Registration No. OCN9RC0000218609 issued on 31 January 1996.

FACTS

On August 12, 2015, Regional Director Jonas DP Amora issued a Letter of Authority (LOA) No. AUDR03/003456/2015 (SN: eLA201200033989), authorizing Revenue Officer (RO) Dianah Lynn Karim (Karim) and Group Supervisor (GS) Ferdinand Apalisoc (Apalisoc), to examine respondent's books of accounts and other accounting records for all internal revenue taxes for CY 2014.

On May 19, 2016, Revenue District Officer⁴ Atty. Shirley A. Calapatia (RDO Calapatia) issued Memorandum of Assignment (MOA) No. 0516-427, directing RO Kadapi Manarondong (RO Manarondong) and GS Josephine Elarmo (GS Elarmo) to continue the audit and investigation of respondent, and replace the previously assigned RO who transferred to another office.

⁴ Revenue District Officer of RDO 047-East Pasig.

00

On March 6, 2017, Revenue District Officer⁵ Florante R. Aninag (RDO Aninag) issued MOA No. RR8-047-0317-220, directing RO Junaid Domaub (RO Domaub) and GS Kadapi Manarondong (GS Manarondong) to continue the audit and investigation of respondent, and replace the previously assigned RO who was designated as group supervisor.

On November 11, 2017, respondent received a *Preliminary Assessment Notice* (PAN) dated October 11, 2017, with attached Details of Discrepancies, containing the proposed deficiency tax assessments for CY 2014, detailed as follows:

Tax Type	Basic	Interest	Surcharge	Total
IT	₱9,419,654.33	₱4,846,605.71	₱-	₱14,266,260.04
PT	20,467,061.12	11,427,909.74	5,116,765.28	37,011,736.14
EWT	819,437.63	462,028.12	-	1,281,465.75
Total	₱30,706,153.08	₱16,736,543.57	₱5,116,765.28	₱52,559,461.93

On November 24, 2017, respondent filed its *Reply* to the PAN.

On December 15, 2017, respondent received a *Formal Assessment Notice* (FAN) dated November 28, 2017, with attached Details of Discrepancies, assessing respondent for deficiency IT, PT and EWT for CY 2014, detailed as follows:

Tax Type	Basic	Interest	Surcharge	Total
IT	₱9,419,654.33	₱5,027,256.61	₱-	₱14,446,910.94
PT	20,467,061.12	11,820,428.72	5,116,765.28	37,404,255.12
EWT	819,437.63	477,743.36	-	1,297,180.99
Total	₱30,706,153.08	₱17,325,428.69	₱5,116,765.28	₱53,148,347.05

On January 12, 2018, respondent filed its *Protest* to the FAN, requesting for a reinvestigation, and praying that the findings of tax deficiency be cancelled and withdrawn. On March 13, 2018, it submitted additional documents in support of its protest against the FAN.

⁵ Revenue District Officer of RDO 047-East Pasig.

2

On October 9, 2018, respondent filed a Petition for Review before the Court in Division, docketed as CTA Case No. 9945. Its judicial recourse was on account of petitioner's inaction on its request for reinvestigation.

On December 10, 2021, the Court in Division rendered the assailed Decision, the dispositive portion of which states:

WHEREFORE, premises considered, the present Petition for Review filed on 09 October 2018 by [respondent] Hard Rock Café (Makati City), Inc. is hereby **GRANTED**. Accordingly, the assailed Final Assessment Notice (FAN) dated 28 November 2017, holding petitioner liable for deficiency income tax (IT), percentage tax (PT) and expanded withholding tax (EWT) in the aggregate amount of P53,148,347.05, for calendar year (CY) 2014, is hereby **CANCELLED** and **SET ASIDE**. Consequently, [petitioner] Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against [respondent].

SO ORDERED.

On February 2, 2022, petitioner filed a Motion for Reconsideration to the assailed Decision dated December 10, 2021.⁶

On August 17, 2022, the Court in Division rendered the equally assailed Resolution, denying petitioner's Motion for Reconsideration as follows:

WHEREFORE, in view of the foregoing, [petitioner's] Motion for Reconsideration, filed on 02 February 2022, is hereby **DENIED** for lack of merit and for being *pro forma*.

SO ORDERED.

⁶ Docket (CTA Case No. 9945), pp. 1232-1242.

9

On September 21, 2022, petitioner filed a Petition for Review with the Court *En Banc*, docketed as CTA EB No. 2690,⁷ to which respondent filed its comment on November 21, 2022.⁸

Under Resolution dated April 12, 2023, CTA EB No. 2690 was submitted for decision.⁹

ISSUE

Did the Court in Division err in declaring petitioner's deficiency tax assessments for CY 2014 against respondent void for being a product of an illegal examination and audit?

ARGUMENTS

Petitioner argues that once the LOA is served upon respondent, any revenue officer, such as RO Domaub, may now conduct an audit or examination of the taxpayer, pursuant to such LOA. Petitioner believes that nothing in the law states that the RO must be identified in the LOA to have authority to examine and audit the pertinent taxpayer.

Petitioner, as well, maintains that under Revenue Memorandum Order (RMO) No. 8-2006,¹⁰ in case of reassignment of the RO and GS, a MOA shall be issued to inform the taxpayer that a new set of ROs who perform assessments functions will continue the already authorized audit or investigation. Thus, by reason of re-assignment, RO Karim, the MOA issued by RDO Aninag, replacing RO Karim, with RO Domaub under GS Manarondong, to continue with the audit and examination of respondent for CY 2014 is proper.

⁷ *Rollo*, pp. 1-15. Filed within the extended period granted, per Minute Resolution dated September 23, 2022.

⁸ *Id* at, pp. 68-85.

⁹ *Id* at, pp. 92-93.

¹⁰ Subject: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

91

Given that RO Domaub, is endowed with proper authority to examine respondent for CY 2014, the findings of deficiency taxes, based on RO Domaub's findings, must be sustained.

Petitioner, too, faults the Court in Division's ruling that the BIR conducted an illegal examination against respondent. He explains that such matter was neither advanced in the parties' pleadings, in the pre-trial before the Court in Division, nor in the administrative proceedings before the BIR. Hence, respondent is now barred by estoppel from raising such issue.

By way of Comment,¹¹ respondent counters that the Petition contains merely a reiteration of arguments raised in petitioner's Motion for Reconsideration which were already passed upon and resolved in the assailed Decision and Resolution.

Respondent retorts that RMO No. 43-90¹² commands the issuance of a new LOA in cases of re-assignment or transfer of cases to another RO. In this case, no new or substituted LOA was issued by petitioner or his duly authorized representatives, authorizing RO Domaub and GS Manarondong to continue the audit and investigation of respondent for CY 2014. Hence, the resultant deficiency tax assessments are void.

RULING

The Petition lacks merit.

Section 6(A) of the NIRC, as amended, requires an authority from the CIR or from his duly authorized representative before an examination of any taxpayer and the assessment of the correct amount of tax may be made:¹³

¹¹ Respondent's Comment (RE: Petition for Review dated September 21, 2022) *Rollo*, pp. 68-85.

¹² Subject: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit

¹³ See *Medicard Philippines, Inc., v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

21

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, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: ...¹⁴

Sections 10(c) and 13 of the NIRC, as amended, permits the Revenue Regional Directors to issue LOAs in favor of ROs performing assessment functions in their respective region and district offices for the examination of any taxpayer within such region:

SEC. 10. *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...

(c) Issue Letters of authority for the examination of taxpayers within the region;

...

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.**¹⁵

¹⁴ Boldfacing supplied.

¹⁵ Boldfacing supplied.

an

In addition, Section D(4) of RMO No. 43-90¹⁶ provides that deputy commissioners (DCIRs), and other BIR officials authorized by the CIR himself are permitted to issue an LOA.¹⁷ Among the BIR officials expressly authorized¹⁸ by the CIR to issue an LOA are the Assistant Commissioners (ACIRs) and Head Revenue Executive Assistants (HREAs).

Indeed, the LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers pursuant to Sections 6, 10(c) and 13 of the NIRC, as amended. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, a revenue officer.¹⁹ It 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.²⁰ Conversely, the absence of such an authority renders the assessment or examination a patent nullity.²¹

In this case, RD Amora issued an LOA dated August 12, 2015,²² authorizing RO Karim under GS Apalisoc, to examine respondent's books of accounts and other accounting records of all internal revenue taxes for CY 2014.

Meanwhile, it was RO Domaub and GS Manarondong who undertook the actual examination of respondent and recommended

¹⁶ SUBJECT: *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.*

¹⁷ For proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For exigencies of service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

¹⁸ No. 2, Roman Number II of RMO No. 29-2007 permits assistant commissioners and head revenue executive assistant to issue LOAs.

¹⁹ See *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, G.R. No. 242670, May 10, 2021.

²⁰ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

²¹ See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

²² Exhibit "R-1," BIR Records, p. 3.

ad

the issuance of a PAN²³ and FAN²⁴ for CY 2014. RO Domaub and GS Manarondong's respective names do *not* appear in the LOA dated August 12, 2015. Their authority to examine and audit respondent's deficiency IT, PT, and EWT for CY 2014 emanated from a MOA dated March 6, 2017,²⁵ issued by RDO Aninag, a person not authorized by petitioner, or by law to issue authority to examine taxpayers. It means that the examination and audit conducted by RO Domaub and GS Manarondong on respondent for CY 2014 is illegal. Therefore, petitioner's deficiency tax assessments issued against respondent for CY 2014, based thereon, are also void.

Neither may RDO Aninag's MOA dated March 15, 2017 cure the invalidity of the examination and audit conducted by RO Domaub and GS Manarondong against respondent for CY 2014. Pursuant to Section D(4) RMO No. 43-90²⁶ and RMO No. 29-2007,²⁷ only the Regional Directors, DCIRs, ACIRs/HREAs (for large taxpayers) and other officials but only upon prior authorization by petitioner himself may legally authorize the examination of any taxpayer. RDO Aninag is not one of them.

When RDO Aninag issued the subject MOA, he, in effect, usurped the statutory power of respondent and his duly authorized representatives to permit examination of the taxpayer.

*Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp. (McDonalds)*²⁸ explains:

...

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a

²³ Exhibit "R-12," BIR Records, pp. 898-900; Answer to Question No. 32, Judicial Affidavit of Revenue Officer Junaid Domaub dated March 12, 2020. Exhibits "R-30" and "R-30-A," Docket, pp. 1051-1061.

²⁴ Answer to Question No. 57, Judicial Affidavit of Revenue Officer Junaid Domaub dated March 12, 2020. Exhibits "R-30" and "R-30-A," Docket, pp. 1051-1061.

²⁵ Exhibit "R-8," BIR Records, p.711.

²⁶ *Supra* at note 16.

²⁷ Subject: Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

²⁸ G.R. No. 242670, May 10, 2021.

2

usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives. ...

To be sure, tax assessments issued in violation of the due process rights of a taxpayer are null and void.²⁹ In effect, the MOA dated March 15, 2017 endowed *no* legal authority in favor of RO Domaub and GS Manarondong to examine respondent for CY 2014.

Petitioner also faults the Court in Division in declaring the BIR's audit and examination for CY 2014 void, given that the same was not raised as in issue in the parties' pleadings, advanced during the pre-trial proceeding before the Court in Division, nor in the administrative proceedings before the BIR.

Section 1, Rule 14 of the Revised Rules of the CTA provides:

RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 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.

Guided by the foregoing, the Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,³⁰ affirmed the authority of

²⁹ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

³⁰ G.R. No. 183408, July 12, 2017.

or

the CTA to rule on issues not raised by the parties to arrive at orderly disposition of the case:

[Section 1, Rule 14 of the Revised Rules of the CTA] 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.

Moreover, *Himlayang Pilipino Plans, Inc., v. Commissioner of Internal Revenue*³¹ pronounced that the failure to raise at the earliest opportunity, the lack of the revenue officer's authority, does not preclude the Court from considering the same because the said issue goes into the intrinsic validity of the assessment itself.

Since the validity of the tax assessments herein are anchored on the legality of the examination conducted by the BIR against it, the Court in Division may address the propriety thereof, despite the parties' failure to raise the same in their pleadings and pre-trial.

In view of the foregoing, the Court *En Banc* finds no reversible error committed by the Court in Division when it annulled the BIR's deficiency tax assessments, issued against respondent for CY 2014.

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue on September 21, 2022 is **DENIED** for lack of merit. The Decision dated December 10, 2021 and Resolution dated August 17, 2022, in CTA Case No. 9945, are **AFFIRMED.**

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

³¹ G.R. No. 241848, May 14, 2021.

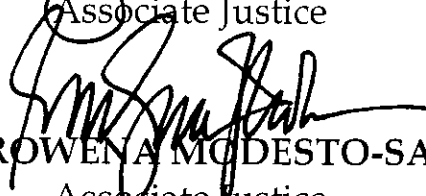
We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
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