

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

THIRD DIVISION

**ROBBIE STYLOGRAPHIC AND CTA Case No. 9774
DEVELOPMENT CORPORATION,**

Petitioner,

Members:

UY, Chairperson,
RINGPIS-LIBAN, and
MODESTO-SAN PEDRO, JJ.

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

NOV 17 2020

11:30 a.m.

X ----- X

DECISION

UY, J.:

Before this Court is a *Petition for Review*¹ filed by Robbie Stylographic and Development Corporation (RSDC), petitioner, against the Commissioner of Internal Revenue (CIR), respondent, praying that the Decision of the CIR upholding the Final Decision on Disputed Assessment (FDDA) and Final Assessment Notices (FAN)/Formal Letter of Demand (FLD), which assessed RSDC for alleged deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST), as well as compromise penalty in the aggregate amount of ₱17,746,889.90, be cancelled and/or withdrawn for being void and/or erroneous.

THE FACTS

Petitioner RSDC is a corporation organized and existing under the laws of the Philippines, with principal business address at 235

¹ Docket, pp. 10 to 33 

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J.P. Rizal Street, Project 4, Quezon City. It is a BIR-registered VAT entity with Tax Identification Number 000-142-796-000.²

Respondent CIR is impleaded in his official capacity as the head of the BIR and as the official who signed the decision dated January 25, 2018. He may be served with processes of the Honorable Court at Room 501 of the BIR National Office Building, Agham Road, Diliman, Quezon City.³

On December 4, 2012, RSDC received a Preliminary Assessment Notice (PAN). Thereafter, the CIR demanded payment of deficiency taxes embodied in its FAN and FLD, all bearing Demand No. 040-B115-09, all dated January 15, 2013, with the corresponding Details of Discrepancy.⁴

On February 6, 2013, RSDC filed its *Protest*,⁵ requesting for the cancellation of the deficiency tax assessments due to lack of factual and legal basis.

On September 4, 2014, an FDDA⁶ was issued against RSDC.

On January 23, 2015, RSDC filed its *Request for Reconsideration*⁷ before the CIR, requesting for reconsideration of the BIR computation of deficiency taxes due to lack of factual and legal basis.

On January 10, 2018, the CIR issued the assailed *Final Decision*,⁸ denying RSDC's *Request for Reconsideration* for being a pro forma appeal.

On February 26, 2018, RSDC filed the instant *Petition for Review*,⁹ praying for the cancellation and/or withdrawal of the Decision of the CIR upholding the FDDA and FAN/FLD, which

² Petition for Review, par. 2.01, Docket, p. 11; Answer, par. 1, Docket, p. 74.

³ Petition for Review, par. 2.02, Docket, p. 11; Answer, par. 1, Docket, p. 74.

⁴ *Parties Joint Pre-Trial Brief*, Docket, pp. 158 to 168, at 159; *Pre-Trial Order*, Docket, pp. 170 to 177, at 171.

⁵ Exhibit "P-1," Docket, pp. 311 to 314.

⁶ Exhibit "P-4," Docket, p. 323; Exhibits "R-21" and "R-22," Docket, pp. 408 to 412.

⁷ Exhibit "P-3," Docket, pp. 319 to 322.

⁸ Common Exhibit : Exhibit "P-2" for petitioner, Docket, pp. 315 to 318; Exhibit "R-23" for respondent, Docket, pp. 413 to 416.

⁹ Docket, pp. 10 to 33.



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assessed RSDC for alleged deficiency IT, VAT, EWT, DST, as well as compromise penalty in the aggregate amount of ₱17,746,889.90, for being void and/or erroneous.

Respondent filed his *Answer*¹⁰ on April 30, 2018, stating, among others, that: (1) collection proceedings can be initiated, notwithstanding the filing of a Petition for Review with this Court, pursuant to Section 218 of the NIRC of 1997, as amended; and (2) well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith.

The Pre-Trial Conference was held on July 31, 2018¹¹ and the parties were granted ten (10) days or until August 10, 2018 to file their Joint Stipulation of Facts and Issues (JSFI). It appears however that instead of filing a JSFI, the parties filed their "*Parties Joint Pre-Trial Brief*"¹² on August 23, 2018. Thereafter, the Court issued the *Pre-Trial Order*¹³ dated September 10, 2018.

During trial, petitioner RSDC presented the following witnesses: 1) Rommel B. Benitez, Vice President of RSDC,¹⁴ and 2) Ofelia T. Oliveros, a certified public accountant engaged in public accounting practice.¹⁵

On April 12, 2019, RSDC filed its *Formal Offer of Exhibits*,¹⁶ which were mostly admitted in the Resolution¹⁷ dated July 3, 2019, with the exception of Exhibit "P-11," for failure to identify the said exhibit.

For his part, the CIR presented Revenue Officer (RO) Susan S. Ferrer,¹⁸ and filed his *Formal Offer of Evidence*¹⁹ on August 1, 2019. In the Resolution²⁰ dated October 14, 2019, all of respondent's evidence were admitted, subject to this Court's final evaluation and/or

¹⁰ Docket, pp. 74 to 76.

¹¹ Docket, pp. 147 to 148.

¹² Docket, pp. 158 to 168.

¹³ Docket, pp. 170 to 177.

¹⁴ Exhibit "P-12," Docket, pp. 366 to 372.

¹⁵ Exhibit "P-13," Docket, pp. 373 to 384.

¹⁶ Docket, pp. 307 to 310.

¹⁷ Docket, pp. 388 to 389.

¹⁸ Exhibit "R-24," Docket, pp. 393 to 397.

¹⁹ Docket, pp. 422 to 425.

²⁰ Docket, pp. 434 to 435.



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appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in the case.

In view of the filing of RSDC's *Memorandum for Petitioner*²¹ on December 9, 2019, and Records Verification Report²² dated January 20, 2020 issued by the Judicial Records Division of this Court, stating that respondent failed to file his Memorandum, the case was submitted for Decision on January 31, 2020.²³

Hence, this Decision.

THE ISSUES

The parties presented the following issues²⁴ for this Court's resolution, to wit:

“1. Whether or not the CIR/respondent correctly assessed Income Tax, including interest, in the total amount of ₱14,799,933.49;

2. Whether or not CIR/respondent correctly assessed the petitioner for alleged VAT, including interest, in the total amount of ₱2,209,616.01;

3. Whether or not CIR/respondent correctly assessed the petitioner for alleged Expanded Withholding Tax, including interest, in the total amount of ₱398,245.54;

4. Whether or not CIR/respondent correctly assessed the petitioner for alleged DST, including interest and surcharges, in the total amount of ₱323,094.86;

5. Whether or not CIR/respondent correctly assessed the petitioner for alleged compromise fee of ₱16,000.00; and

6. Whether or not CIR/respondent can initiate collection proceedings during the pendency of the petition.”

²¹ Docket, pp. 442 to 463.

²² Docket, p. 465.

²³ Docket, p. 467.

²⁴ *Pre-Trial Order*, Docket, p. 173.



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Petitioner's arguments:

Petitioner RSDC argues that the CIR has no factual and legal basis for the assessment of deficiency IT, VAT, EWT, DST, and compromise fees in the aggregate amount of ₱17,746,889.90, for the following reasons: the assessment for income tax is not valid because the BIR incorrectly assessed petitioner for alleged unrecorded sales not subjected to income tax in the amount of P1,082,052.09; there is no undeclared revenue arising from alleged unaccounted source of cash; petitioner has no obligation to withhold as a member of the top 20,000 private corporations and thus there is no ground to disallow deductions; the VAT assessments are erroneous because there is no undeclared sales; no additional revenue arising from alleged Unaccounted Source of Cash; and no details of the disallowed input tax credit claimed.

Further petitioner claims that it is not liable for deficiency expanded withholding tax because it had no obligation to withhold as a member of the top 20,000 corporation in 2009 as it was not formally informed then. And as alternative defense, petitioner invokes the defense of prescription pursuant to Section 203, in relation to RR 2-98, as amended implementing Sec. 58 of the Tax Code.

Petitioner also submits that the initiation of collection proceedings was premature as there is no finality yet of the assessments.

Respondent's counter-arguments:

Respondent counter-argues that collection proceedings can be initiated, notwithstanding the filing of a Petition for Review with this Court, pursuant to Section 218 of the NIRC of 1997, as amended which provides that Injunction is not available to restrain collection of tax.

Well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith (*Cagayan Robina Sugar Milling Co. vs. Court of Appeals*, 342 SCRA 671). It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise.



THE COURT'S RULING

Based on the stipulated issues submitted by the parties for this Court for its resolution, it is apparent that the issue on the appropriate authority of the revenue officer who conducted and continued the audit and investigation of RSDC was not raised. Nevertheless, this Court finds it necessary to make a determination thereon because of its significant effect on the validity of the subject tax assessment.

This Court is empowered to rule on related issues necessary to achieve an orderly disposition of the case.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, reads as follows:

"RULE 14

JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. *Rendition of judgment.* — x x x

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. *(Emphasis supplied)*

Clearly from the foregoing rule, this Court is not limited to resolve only the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.

Such power of the Court was recognized in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,²⁵ and We quote:

"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

²⁵ G.R. No. 183408, July 12, 2017.



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Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

‘SECTION 1. *Rendition of judgment.* - x x x

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.’

The above section 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." (*Emphasis and underscoring supplied*)

From the foregoing jurisprudential pronouncement, the Supreme Court not only affirmed this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case; but also specifically stated that this Court may consider the question on the scope of the authority of the revenue officers named in the LOA. In effect therefore, this Court is likewise empowered to determine whether or not the revenue officer who conducted the audit and investigation of a taxpayer's books of accounts, is duly authorized to do so through a Letter of Authority.

RO Susan S. Ferrer, the revenue officer who continued the audit and reinvestigation of RSDC, was not validly authorized to examine the latter's books of accounts and other tax records thereby making the subject tax assessment void.



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The purpose and significance of a Letter Of Authority, and the authority it confers upon a revenue officer, relative to the performance of assessment functions, was elucidated in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,²⁶ to wit:

"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 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, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** 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.

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Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, through an LOA**, 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

²⁶ G.R. No. 222743, April 5, 2017.



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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 without prior authority.**

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

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 supplied.*)

Based on the foregoing jurisprudential pronouncements, revenue officers are required to be specifically authorized by a valid LOA, prior to the exercise of their assessment functions, such as the examination of books of accounts and accounting records of the taxpayer. In the absence of a valid LOA issued specifically in favor of a revenue officer who conducted the audit investigation, and who subsequently issued the corresponding tax assessments against such taxpayer shall be void.

Relative thereto, Section 13 of the NIRC of 1997, as amended, provides as follows:

“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 supplied.*)



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Accordingly, in order for a Revenue Officer to validly examine taxpayers and perform tax assessment and collection functions, the said Revenue Officer must first be clothed with authority to do so by way of a valid LOA.

The paramount importance of the LOA and the authority it confers upon the Revenue Officer, is further highlighted in RMO No. 43-90, which prescribes the revised policy guidelines for the audit/investigation and issuance of letters of authority to audit. Specifically, it requires that all audits/investigations should be conducted under a Letter of Authority, and requires the issuance of a **new LOA in case of any reassignment or transfer of cases to another Revenue Officer**, to wit:

“C. Other policies for issuance of L/As.

1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

xxx xxx xxx

5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.”

In this case, RO Susan S. Ferrer testified²⁷ that she was tasked to conduct the investigation of RSDC's tax liabilities for TY 2009, pursuant to Memorandum of Assignment (MOA) No. 040-0030 dated March 11, 2013. Pursuant thereto, she issued the following:

1. Revenue Officer's Audit Report on Income Tax;²⁸
2. Revenue Officer's Audit Report on VAT;²⁹
3. Revenue Officer's Audit Report on Expanded Withholding Tax;³⁰
4. Revenue Officer's Audit Report on Documentary Stamp Tax;³¹ and
5. Memorandum, recommending the issuance of an FDDA.³²

²⁷ Exhibit “R-24,” Docket, pp. 393 to 397, at 394.

²⁸ Exhibit “R-16,” Docket, p. 403.

²⁹ Exhibit “R-17,” Docket, p. 404.

³⁰ Exhibit “R-18,” Docket, p. 405.

³¹ Exhibit “R-19,” Docket, p. 406.

³² Exhibit “R-20,” Docket, p. 407.



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A perusal of MOA No. 040-0030 dated March 11, 2013,³³ shows that it was issued in favor of RO Susan Ferrer and Group Supervisor (GS) Emmanuel Macalino, for purposes of conducting an audit/verification of RSDC for taxable year 2009, pursuant to eLA2010-00017530³⁴ dated September 21, 2010. Upon verification thereof however, it appears that eLA2010-00017530 authorizes RO Julieta Supan and GS Severita Dela Cruz to conduct the audit, and not RO Susan Ferrer and GS Emmanuel Macalino.

From the foregoing, it is clear that RO Susan S. Ferrer's authority stems only from MOA No. 040-0030.³⁵ However, she was not validly authorized by a new LOA, when she exercised assessment functions, such as, but not limited to, issuing the Revenue Officer's Audit Reports and Memorandum recommending the issuance of an FDDA.

Considering that RO Susan S. Ferrer, the revenue officer who audited RSDC's case was not properly clothed with a requisite Letter of Authority, the subject tax assessment arising from her investigation, audit, and recommendation are consequently void.

As the amount stated in the Formal Letter of Demand (FLD) remains indefinite, the subject tax assessment is void for failing to set and fix the tax due, as required by law.

In addition to the investigating revenue officer's lack of authority, which renders the subject tax assessments void, this Court also notes another infirmity affecting its validity, which is the lack of a definite amount of tax liability for which the taxpayer is being assessed.

An assessment "refers to the determination of amounts due from a person obligated to make payments."³⁶ In the context in which it is used in the NIRC, an assessment is a written notice and demand

³³ Exhibit "R-13", Docket, p. 400.

³⁴ BIR Records, p. 1.

³⁵ Exhibit "R-13", Docket, p. 400.

³⁶ *SMI-ED Phil. Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.



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made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.³⁷

Under the NIRC of 1997, as amended, tax assessments are required to be communicated to the taxpayer, in a Formal Letter of Demand and Assessment Notice, in accordance with Section 3.1.4 of Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-13.

In this case, the *Formal Letter of Demand*³⁸ dated January 15, 2013 issued by the CIR against RSDC, states that the interest and total amount due will be adjusted if paid beyond February 15, 2013, to wit:

"Please note that the interest and the total amount due will have to be adjusted if paid beyond February 15, 2013." (Underscoring supplied.)

A perusal of the foregoing reveals that while the FLD presented computations of the supposed tax liabilities of RSDC, it states that the interest and total amount due would still be subject to adjustment if payment is made beyond February 15, 2013. The foregoing uncertainty cannot be countenanced, since it falls short of the requirement that the written notice contain a demand to the taxpayer for the "*settlement of a due tax liability that is there definitely set and fixed.*"³⁹

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,⁴⁰ the Supreme Court held that a Final Assessment Notice that lacks the definite amount of tax liability for which the taxpayer is accountable, is not a valid assessment, to wit:

" The disputed Final Assessment Notice is not a valid assessment.

First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal

³⁷ *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.

³⁸ Exhibit "P-6," Docket, pp. 329 to 330.

³⁹ *Adamson, et al. vs. Court of Appeals, et al.*, *supra*.

⁴⁰ G.R. No. 215957, November 9, 2016.



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Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' **Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.** Thus:

'The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.**'

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Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. **It is not a mere formality.** Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (*Emphasis supplied.*)

From the foregoing, it is clear that a Formal Letter of Demand which contains the statement that the "*interest and total amount due will have to be adjusted if paid beyond xxx xxx*," will not be considered as a valid assessment, as the amount of tax due therein remains indefinite because it is subject to modification, depending on the date of payment.

Applying the foregoing to this case, the amount of tax liability due from RSDC, as stated in the subject FLD remains indefinite, and renders the subject tax assessment void and of no effect.



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Considering the above-stated incurable infirmities of the subject tax assessments, this Court is bound to its duty to declare the same as void and of no effect, as a void assessment bears no fruit.⁴¹ Correspondingly, it becomes unnecessary to address the other issues raised by RSDC in the instant *Petition for Review*.

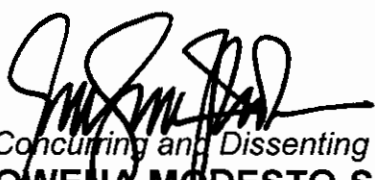
WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Final Decision promulgated on January 18, 2018 assessing petitioner for deficiency income tax, value added tax, expanded withholding tax, documentary stamp tax, and compromise penalty in the total amount of ₱17,746,889.91 for Taxable Year 2009, including interests that may have accrued thereon until actual payment thereof, is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


(*With Separate Concurring Opinion*)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


(*With Concurring and Dissenting Opinion*)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

⁴¹ *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.nd Fi

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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.


ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

ROBBIE STYLOGRAPHIC and
DEVELOPMENT CORPORATION,
Petitioner,

CTA CASE NO. 9774

Members:

- versus -

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *Jl.*

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

NOV 17 2020

C. 11:30 a.m.

x-----x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *L.*:

I concur in the *ponencia* in granting the Petition for Review filed by Robbie Stylographic and Development Corporation (“Petitioner”). For one, the examining Revenue Officer (“RO”) was without any authority when she continued the examination or audit of Petitioner.

However, I am of the firm belief that notwithstanding the absence of a new Letter of Authority (“LOA”) issued in her favor, RO Susan S. Ferrer may be given the authority to continue the audit and examination of Petitioner’s books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, by the Regional Director, upon the replacement of RO Julieta Supan who was originally named in the LOA.

I submit that this could be validly done under the National Internal Revenue Code (“NIRC”) of 1997, as amended and the laws on agency under the Civil Code.

[Signature]

The power of the Commissioner of Internal Revenue ("CIR") to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

"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, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer 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."¹

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz*:

"SEC. 7. Authority of the Commissioner to Delegate Power. – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and

¹ *Emphasis and underscoring supplied.*

district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.”

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

“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:

xxx

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

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(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.”²**

To implement said provision, Revenue Memorandum Order (“RMO”) No. 36-99³ was issued, entitled as “Guidelines and Procedures in the Issuance of Letters of Authority, Approval of Audit Reports and Issuance of Assessment Notices and Amending Certain Provisions of Revenue Memorandum Order (RMO) Nos. 26-94, 37-94 and 23-97”. The RMO clearly emphasized that it is the Revenue Regional Directors who have the authority to issue LOAs for all audit cases within their regional jurisdiction, *viz*:

“I. OBJECTIVES

² *Emphasis and underscoring supplied.*

³ February 09, 1999.

1. To delineate the power to issue Letters of Authority (LAs) to the Revenue Regional Directors pursuant to Sec. 10 (c) of the Tax Code.

2. To prescribe the revised guidelines and procedures in the issuance of LAs, approval of audit reports and issuance of assessment notices.

II. GUIDELINES AND PROCEDURES

1. Section E of RMO No. 26-94 is hereby amended to read as follows:

The Revenue Regional Director shall approve and sign LAs for all audit cases within his regional jurisdiction...

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2. Section C.2.2.1 of RMO No. 23-97 is hereby amended to read as follows:

The Regional Director shall issue the corresponding Letter of Authority if indications of fraud have been established, and the same has been confirmed by the Regional Tax Fraud Committee (RTFC), composed of the following:

- a. Regional Director — Chairman
- b. Assistant Regional Director — Vice-Chairman
- c. Chief, SID — Member
- d. Chief, Assessment Division — Member
- e. Chief, Legal Division — Member

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6. The following additional guidelines on the issuance of LAs shall be observed:

6.1 **All LA forms for use by the Revenue District Offices and Special Investigation Divisions shall be requisitioned by the Regional Director from the Accountable Forms Divisions in the National Office.**

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6.6 **The Regional Director shall maintain an LA Register for all LAs issued by him. All issuances, revalidations, cancellations, case closures, assessments and other matters in**



relation to LAs should be entered in the LA Register. Entries in the LA Register must be complete and updated.”⁴

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where “a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.”

In the case of *Spouses Fernando and Lourdes Vilorio v. Continental Airlines, Inc.*⁵, the Supreme Court had the occasion to expound on the elements of agency, to wit:

“The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it.”⁶

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Regional Director, his agent.

Now, may the Regional Director, the CIR’s agent, appoint a sub-agent, in this case, the RO named in the LOA? Article 1892 of the Civil Code says that he can. The said provision states:

“Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so;** but he shall be responsible for the acts of the substitute:

- (1) When he was not given the power to appoint one;



⁴ *Emphasis and underscoring supplied.*

⁵ G.R. No. 188288, January 16, 2012.

⁶ *Emphasis supplied.*

- (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)”⁷

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to RO Supan who was originally named in the LOA may be revoked, transferred and reassigned to RO Ferrer, for continuance of audit.

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,⁸ which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done *in writing*. In fact, an “[a]gency may be oral, unless the law requires a specific form.”⁹

Second, although the document may not be entitled “Letter of Authority” but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.¹⁰ The title of the contract does not necessarily determine its true nature.¹¹ In fact, this Court has, time and again, declared certain documents emanating from the CIR as his “Final Decision” on a Disputed Assessment based on the tenor of the words therein despite the absence of the words “Final Decision” in the title of the document.

In interpreting what a “Letter of Authority” is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied

⁷ *Emphasis supplied.*

⁸ SEC. 13. Authority of a Revenue Officers. - 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 supplied*).

⁹ Civil Code of the Philippines, Article 1869.

¹⁰ Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

¹¹ Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.¹² Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.¹³

I am not unaware of RMO No. 43-90¹⁴ which states that “[a]ny re-assignment/transfer of cases to another RO(s)...shall require the issuance of a new L/A” However, I humbly stress and emphasize that an administrative issuance must conform, not contradict, the provisions of the enabling law. Any rule that is not consistent with the law is null and void.¹⁵

It is for the reasons above that, in my opinion, RO Ferrer who conducted the examination of Petitioner’s records may be deemed authorized to do so without need for a new LOA, only if said letter or notice or memorandum was signed by the Regional Director.

In the instant case however, the Memorandum of Assignment¹⁶ was only signed by Revenue District Officer Edgar B. Tolentino. Therefore, RO Ferrer was without authority to continue the audit.

From all the foregoing, I vote for the **GRANT** of the Petition for Review filed by Petitioner.



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

¹² Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).

¹³ Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.

¹⁴ Issued September 20, 1990.

¹⁵ Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.

¹⁶ Docket, Exhibit “R-13”, p. 400.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

ROBBIE STYLOGRAPHIC AND CTA Case No. 9774
DEVELOPMENT CORPORATION,

Petitioner,

-versus-

Members:

UY, Chairperson,

RINGPIS-LIBAN, and

MODESTO-SAN PEDRO, JJ.

COMMISSIONER OF INTERNAL REVENUE, Promulgated:

Respondent.

NOV 17 2020

11:30 a.m.

X

X

CONCURRING AND DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With all due respect, I join the Separate Concurring Opinion (hereinafter referred to as “Opinion”) of my esteemed colleague, Associate Justice Ma. Belen M. Ringpis-Liban in so far as it concurs with the *ponencia* granting the Petition for Review finding the tax assessment void for want of authority of the revenue officer who conducted petitioner’s audit.

However, I am constrained to interpose my objection with the conclusion reached in the *ponencia* finding the amount stated in the Formal Letter of Demand (“FLD”) indefinite and thus, rendering the tax assessment void due to the following statement, specifically:

“Please note that the interest and the total amount due will have to be adjusted if paid beyond FEBRUARY 15, 2013.”¹

In addressing the first issue, the Supreme Court in the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*² defined a Letter of Authority (“LOA”) as “the authority given to the appropriate revenue

¹ Emphasis supplied.

² G.R. No. 178697, 17 November 2010.

officer assigned to perform assessment functions” in accordance with the power given to respondent under ***Section 6(a) of the Tax Code***.

Based on the aforementioned, I am of view that an LOA is synonymous to a contract of agency. Being so, a document such as a Memorandum of Assignment (“MOA”) may be construed as an acceptable equivalent of an LOA, provided that it contains all the elements necessary to establish a contract of agency between the CIR or his duly authorized representative and a revenue officer. Included in these elements is the authority of the person issuing the said document.

Aside from the CIR, ***Section 10(C) of the Tax Code*** names the Revenue Regional Director as one of the authorized representatives charged with authority to issue an LOA, to wit:

“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:

xxx

xxx

xxx

(c) Issue Letters of authority for the examination of taxpayers within the region;”³

Applying the foregoing discussions in this case, it is clear that the audit investigation of petitioner was conducted by Revenue Officer Susan S. Ferrer pursuant to MOA No. 040-0030 dated 11 March 2013 which was only signed by Revenue District Officer Edgar B. Tolentino and not the Revenue Regional Director.

Therefore, consistent with our discussion, Revenue Officer Susan S. Ferrer has no authority to continue the audit of petitioner.

As for the second issue, the *ponencia* ruled that the aforementioned statement rendered the tax liability indefinite since the said amount is still subject to modification. It cited the case of ***Commissioner of Internal Revenue v. Fitness By Design, Inc., (hereinafter referred to as “Fitness Case”)***⁴ as basis for its conclusion where the Supreme Court ruled, to wit: ¶

³ Emphasis supplied.

⁴ G.R. No. 215957, 9 November 2016.

The disputed Final Assessment Notice is not a valid assessment.

First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there: definitely set and fixed." Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.**⁵

However, a close reading of the statement written on the assessment in the Fitness Case proves that its import or meaning is not the same with the statement found in this case.

In the Fitness Case, there was no fixed amount due since the final tax liability was dependent on when the taxpayer would settle the assessment, regardless if paid before or after the due date.

In the instant case, the statement in the assessment merely serves as a reminder to the taxpayer that the interest will increase if the assessment will not be paid within the due date provided in the assessment.

Given the foregoing reasons, it is my opinion that the statement found in the assessment issued against the petitioner did not affect the validity of the assessment.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

⁵ Emphasis supplied.