

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA EB No. 2426
(CTA Case No. 9538)

Present:

-versus-

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

GOLDEN BREW
MARKETING, INC.,
Respondent.

Promulgated:

OCT 06 2022

[Signature]
11:15 am

x-----x

DECISION

REYES-FAJARDO, J.:

This Petition for Review¹ dated February 3, 2021, seeks to overturn the Decision² dated March 2, 2020 and Resolution³ dated December 16, 2020 in CTA Case No. 9538, whereby the Court in Division invalidated the Commissioner of Internal Revenue's assessment for Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST), and compromise penalties, issued against Golden Brew Marketing, Inc., for taxable year (TY) 2010.

¹ *Rollo*, pp. 1-13.

² *Id.* at pp. 21-39.

³ *Id.* at pp. 41-45.

[Handwritten mark]

The facts follow.

Petitioner is the Commissioner of Internal Revenue who holds office at the 5th Floor, Bureau of Internal Revenue (BIR), National Office Bldg., BIR Road, Diliman, Quezon City.

Respondent is a domestic corporation registered with the Securities and Exchange Commission (SEC) under Company Registration No. ASO91-194649. Its primary purpose is to engage in, conduct, and carry on the business of buying, selling, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale or retail and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indenter, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products whether natural or artificial.

On September 23, 2011, petitioner, through Alfredo Misajon, Officer in Charge – Assistant Commissioner for Large Taxpayers Service (OIC ACIR-LTS), issued a Letter of Authority (LOA) No. 116-2011-00000107, authorizing Revenue Officers (ROs) Zenaida Paz, Myrna Ramirez, Ma. Salud Maddela, Cletofel Parungao, Allan Maniego, Joel Aguila, and Group Supervisor (GS) Glorializa Samoy, of the Large Taxpayer Regular Audit Division I (LTRAD I) of the BIR, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for TY 2010.

On February 25, 2013, a Memorandum of Assignment (MOA) No. LOA-116-2013-0431 was issued by Cesar D. Escalada, Chief of Regular LT Audit Division I (Chief Escalada) of the BIR, authorizing RO Arnaldo T. Ancheta (RO Ancheta) and GS Juvy S. Dela Peña to continue the audit/investigation of respondent.

In the meantime, respondent's President, Rolando Abesamis, executed seven (7) Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC), as follows:

Waiver	Date Executed by Respondent	Effectivity	Date Accepted by the BIR
First Waiver	April 3, 2013	Until December 31, 2013	April 15, 2013
Second Waiver	October 11, 2013	Until June 30, 2014	October 29, 2013
Third Waiver	May 29, 2014	Until December 31, 2014	June 24, 2014
Fourth Waiver	November 13, 2014	Until June 30, 2015	November 28, 2014
Fifth Waiver	May 29, 2015	Until December 31, 2015	June 17, 2015
Sixth Waiver	December 3, 2015	Until June 30, 2016	December 15, 2015
Seventh Waiver	May 20, 2016	Until December 31, 2016	May 26, 2016

On May 16, 2016, Chief Escalada issued another MOA No. LOA-116-2016-1252, authorizing RO Tito R. Monforte (RO Monforte) and GS Allan M. Maniego (GS Maniego), to continue the audit/investigation of respondent in view of the transfer of RO Ancheta.

On June 9, 2016, LTS Assistant Commissioner Nestor S. Valeroso issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies and Schedules, assessing respondent of deficiency IT, VAT, EWT, and DST for TY 2010.

On June 27, 2016, respondent received an undated Formal Letter of Demand (FLD) with Details of Discrepancies and Final Assessment Notices (FAN), assessing it for deficiency IT, VAT, EWT, and DST, in the aggregate amount of ₱180,041,148.07, inclusive of interests and compromise penalty for TY 2010, as shown below:

Nature of Tax	Basic Tax	Interest	Compromise	Total
Income Tax	₱65,316,932.51	₱69,146,473.00		₱134,463,405.51
VAT	20,795,988.22	22,915,469.00		43,711,457.22
EWT	826,649.06	915,428.90		1,742,077.96
DST	1,660.00	1,847.38		3,507.38
Compromise Penalty			₱120,700.00	120,700.00
Total	₱86,941,229.79	₱92,979,218.28	₱120,700.00	₱180,041,148.07

On July 27, 2016, respondent protested the FLD/FAN by way of a request for reconsideration.

On February 22, 2017, respondent filed a Petition for Review before the Court in Division, citing petitioner's inaction on its administrative protest as ground therefor.

On March 2, 2020, the Court in Division rendered the assailed Decision, disposing the case as follows:

WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, the subject assessment for income tax, VAT, EWT, DST, and compromise penalties, issued by [petitioner] against [respondent], in the aggregate amount of P180,041,148.07, inclusive of increments, for taxable year 2010 is **CANCELLED** and **SET ASIDE**, for being void.

SO ORDERED.

On July 1, 2020, petitioner filed a Motion for Reconsideration [re: Decision dated March 2, 2020].⁴

On December 16, 2020, the Court in Division issued the equally assailed Resolution, denying petitioner's Motion for Reconsideration in this wise:

WHEREFORE, the [petitioner's] *Motion for Reconsideration* [re: Decision dated March 2, 2020] is **DENIED**.

SO ORDERED.

Hence, this Petition.

Petitioner ascribes error to the Court in Division's ruling that the BIR conducted an illegal examination against respondent. He or she explains that such matter was neither advanced in the parties' pleadings, nor in the pre-trial proceedings before the Court in Division. Hence, the Court in Division addressed an issue not raised by the parties, violative of his or her due right to due process.

Assuming the Court in Division has authority to rule on the propriety of the BIR's audit and examination against respondent for TY 2010, petitioner nonetheless claims that said audit and examination is valid. He or she asserts that RO Monforte, the one who conducted respondent's audit and examination for TY 2010 is under the Office of the Commissioner of Internal Revenue; hence, the issuance of an LOA may be dispensed with. Further, due to the transfer of the previous handling ROs, Chief Escalada is permitted to

⁴ Docket (CTA Case No. 9538), pp. 1030-1048.

issue the MOA dated May 16, 2016 in favor of RO Monforte, to continue the audit or examination of respondent for TY 2010. Besides, since GS Maniego was named in the LOA dated September 23, 2011, his alleged review of RO Monforte's findings, clothes validity to the latter's examination of respondent for TY 2010.

On these accounts, petitioner concludes that the BIR's tax assessment issued against respondent for TY 2010 must be upheld.

By way of Comment dated March 31, 2021,⁵ respondent counters that Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA),⁶ allows the Court to rule on issues not raised by the parties to arrive at an orderly disposition of the case. Since the validity of the tax assessment herein is 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 during the pre-trial.

Respondent ripostes that the BIR conducted an invalid examination against it for TY 2010. Specifically, RO Monforte's authority to examine respondent sprung from the MOA dated May 16, 2016, issued by Chief Escalada. No authority to examine was conferred by the CIR, or his or her duly authorized representatives to RO Monforte. Thus, RO Monforte's recommendation of deficiency taxes for TY 2010, as well as the tax assessment for TY 2010 based thereon are void.

OUR RULING

We deny the Petition.

Petitioner argues that the Court in Division erred in declaring the BIR's audit and examination conducted against respondent for TY 2010 void, given that the same was not raised as an issue in the parties' pleadings, nor advanced during the pre-trial proceedings before the Court in Division.

The argument is not well-founded.

⁵ *Id.* at pp. 54-62.

⁶ A.M. No. 05-11-07-CTA.

One of the issues jointly raised by petitioner and respondent before the Court in Division is:

Whether [petitioner's] imposition of alleged deficiency taxes against [respondent] for taxable year 2010, amounting to ₱180,041,148.07, inclusive of interests and penalties, have factual and legal bases.⁷

Indeed, the Court in Division may not be faulted in addressing the propriety of the BIR's audit and examination conducted against respondent for TY 2010 since among the legal bases crucial to the validity of BIR's tax assessment is the legality of the BIR's examination against the taxpayer, under Sections 6(A), 10, and 13 of the NIRC, as amended.⁸

Besides, notwithstanding the parties' failure to raise the specific matter involving the propriety of the audit and examination conducted by petitioner's tax agents against respondent for TY 2010, the Court in Division may rule on the same, because it is determinative of the validity of petitioner's tax assessment issued against respondent for TY 2010. Section 1, Rule 14, of the RRCTA is on point:

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.

Now, the merits.

Section 6(A) of the NIRC, as amended, confines the authority to examine any taxpayer for correct determination of tax liabilities to petitioner, or his or her duly authorized representatives. By way of exception, petitioner, or his or her duly authorized representatives,

⁷ Issues, Joint Stipulation of Facts and Issues (JSFI). Docket (CTA Case No. 9538), p. 187. Boldfacing supplied.

⁸ These provisions are expressly cited in pages 6-7 of this decision.

may authorize the examination of any taxpayer for the correct determination of tax liability:

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 [or her] duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: ...

...

Sections 10(c) and 13 of the NIRC, as amended, allows the Revenue Regional Directors (RDs) 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 [or herself].



Section D(4) of Revenue Memorandum Order (RMO) No. 43-90⁹ also provides that deputy commissioners of internal revenue (DCIRs), and other BIR officials authorized by the petitioner are permitted to issue an LOA.¹⁰ Among the BIR officials expressly authorized¹¹ by petitioner 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 [or her] authorized representatives to the ROs 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 RO.¹² 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*.¹³ Contrariwise, the absence of such an authority renders the assessment or examination a patent nullity.¹⁴

On September 23, 2011, an LOA No. 116-2011-00000107, was issued by Alfredo Misajon, OIC ACIR-LTS, authorizing ROs Zenaida Paz, Myrna Ramirez, Ma. Salud Maddela, Cletofel Parungao, Allan Maniego, Joel Aguila, and GS Glorializa Samoy, of the BIR LTRAD I, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for TY 2010.

On the other hand, RO Monforte recommended the issuance of the FLD/FAN against respondent for TY 2010.¹⁵ RO Monforte was not named in the LOA dated September 23, 2011. RO Monforte, too,

⁹ 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.*

¹⁰ 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.

¹¹ No. 2, Roman Number II of RMO No. 29-2007 permits assistant commissioners and head revenue executive assistants to issue LOAs.

¹² See *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, G.R. No. 242670, May 10, 2021.

¹³ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

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

¹⁵ Answer to Question No. 59, Judicial Affidavit of Revenue Officer Tito Monforte dated July 16, 2018. Exhibits "R-22" and "R-22-A." Docket (CTA Case No. 9538), pp. 889-890.

admitted that he has no LOA in his name.¹⁶ The latter's authority to examine respondent emanated from a MOA dated May 16, 2016, issued by Chief Escalada.¹⁷ Chief Escalada of Regular LT Audit Division I is not authorized by petitioner, or by law to issue authority to examine taxpayers. Only petitioner, the RDs, DCIRs, ACIRs, and HREAs may issue an authority to examine a taxpayer. Therefore, petitioner's FLD/FAN issued against respondent for TY 2010, based thereon, is void.

Petitioner contends that since RO Monforte is under the Office of the Commissioner of Internal Revenue, the issuance of an LOA in his name may be dispensed with.

The contention is not well-taken.

The issuance by petitioner, or his or her duly authorized representatives of an LOA to ROs doing assessment functions as a precondition for the validity of examination and assessment is *not* based on the office *where* the ROs are stationed or detailed. Rather, the necessity for the issuance thereof depends on the persons *who* would perform the audit and examination of the taxpayer. If petitioner himself, or any of the BIR officials duly authorized by law or petitioner, *i.e.*, RDs, DCIRs, ACIRs, and HREAs personally conduct the examination of the taxpayer, then the issuance of an LOA may be dispensed with. RO Monforte is not one of the persons just mentioned. Thus, the issuance of a valid LOA by petitioner, or his or her duly authorized representatives, in favor of RO Monforte is a prerequisite for the validity of the latter's tax examination, and resulting assessment.¹⁸

Petitioner argues that due to the transfer of the previous handling ROs, Chief Escalada is permitted to issue the MOA dated May 16, 2016 in favor of RO Monforte, to continue the audit or examination of respondent for TY 2010.

We disagree.

¹⁶ Transcript of Stenographic Notes of hearing held on September 17, 2018, pp. 9-11.

¹⁷ Exhibit "R-14." BIR Records, p. 484-C.

¹⁸ See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021; and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.



Again, only petitioner, the RDs, DCIRs, ACIRs, and HREAs may issue an authority to examine a taxpayer. Chief Escalada of Regular LT Audit Division I is not one of them. Therefore, Chief Escalada's issuance of the MOA dated May 16, 2016 to RO Monforte to continue the audit and examination of respondent for TY 2010 is a usurpation of the statutory authority of petitioner, or his or her duly authorized representatives to permit examination of taxpayers, which may not be allowed. *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*¹⁹ is apropos:

...

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority to any revenue officer. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.

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 usurpation of the statutory power of the CIR or his [or her] 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 [or her] 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 [herself] or his duly authorized representatives.

Petitioner nonetheless asserts that the findings of RO Monforte was reviewed by GS Maniego, a person named in the LOA dated September 23, 2011. Thus, the tax assessment for TY 2010 based on RO Monforte's findings, as reviewed by GS Maniego, is valid.

We differ.

¹⁹ G.R. No. 242670, May 10, 2021.



For one, Article 2254 of the Civil Code²⁰ ordains that “[n]o vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others.”

In *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque)*,²¹ San Roque Power Corporation (SRPC)’s petition for review was filed before the CTA, *sans* non-observance of the 120 (now 90) + 30 days mandatory and jurisdictional periods as required by Section 112(C) of the NIRC, as amended. The Supreme Court held that SRPC may not claim any right on said petition for failure to adhere with said provision of the law:

It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." **For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition.** Thus, San Roque’s petition with the CTA is a mere scrap of paper.

...²²

The quintessence of *San Roque* is that one may not claim any right from an act in violation of the law. Similarly, RO Monforte conducted an audit and examination of respondent for TY 2010 *sans* proper authority to do so, from petitioner, or his or her duly authorized representatives, offensive of Sections 6, 10, and 13 of the NIRC, as amended. Hence, despite the alleged review of a person named in the LOA dated September 23, 2011, *i.e.*, GS Maniego, petitioner may not utilize RO Monforte’s findings as basis of the FLD/FAN, issued against respondent, for TY 2010.

For another, Article 5 of the Civil Code ordains that “[a]cts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.”

²⁰ Republic Act No. 386.

²¹ G.R. No. 187485, February 12, 2013.

²² Boldfacing supplied.

In *Commissioner of Internal Revenue v. Unioil Corporation (Unioil)*,²³ it was found that the BIR violated: *one*, Section 228 of the NIRC, as amended, for its failure to prove that it issued a PAN to Unioil Corporation, and failure to state factual and legal basis in the assessment; and *two*, Section 203 of the same Code, for failure to issue the assessment for withholding taxes within the three (3)-year prescriptive period to assess. In holding the assessment void, the Supreme Court pronounced:

The CIR's lack of adherence to due process in its failure to demonstrate issuance of the PAN is the pith of the CTA's uniform rulings in this case.

In fine, We rule that the assessment is void for not stating the factual and legal bases therefor and the three-year period for assessment has already prescribed.

Indeed, while the government cannot be estopped by the negligence or omission of its agents, the mandatory provisions on Sections 203 and 228 of the NIRC cannot be rendered nugatory by the mere act of the CIR.

Article 5 of the Civil Code is explicit: "[a]cts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

...

Just as the BIR's assessment in *Unioil* may not be legitimized for failure to comply with the unequivocal mandate of Sections 203 and 228 of the NIRC, as amended, so too must the same standard be applied in the finding and recommendation of RO Monforte of deficiency taxes against respondent, *sans* valid authority to examine the latter as required by Sections 6(A), 10, and 13 of the same Code. The reason is obvious— both are violations of mandatory provisions of the NIRC, as amended; and no law authorizes their validity.

To repeat, RO Monforte conducted an illegal examination on respondent for TY 2010, violative of Sections 6(A), 10, and 13 of the NIRC, as amended. Being so, RO Monforte's findings are void, and may not be cured through a subsequent review by GS Maniego, despite the latter being named in the LOA dated September 23, 2011. Indeed, there was nothing for GS Maniego to review or check, since

²³ G.R. No. 204405, August 4, 2021.

the matter submitted for review or validation by RO Monforte is a patent nullity.

On the assumption that the BIR conducted a valid examination on respondent for TY 2010, the FLD/FAN would still be void.

Section 6(A) of the NIRC, as amended, provides that the tax or deficiency tax so assessed shall be paid upon notice and demand from petitioner, or his or her duly authorized representative.²⁴ An assessment is described as a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.²⁵

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,²⁶ the tax assessment therein was invalidated for lack of due dates in the assessment notices,²⁷ along with failure to provide a fixed and determinate amount of taxes due. These defects pervade petitioner's FLD/FAN in this case. For instance:

First, petitioner's undated FLD alluded respondent's period to pay the deficiency IT, VAT, EWT, and DST for TY 2010, within the time shown in the enclosed assessment notices.²⁸ Yet, the due dates on the FAN for IT,²⁹ VAT,³⁰ EWT,³¹ and DST³² remained

²⁴ SEC. 6. *Power of the Commissioner to Make 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: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

... (Boldfacing supplied)

²⁵ *Commissioner of Internal Revenue v. Megabucks Merchandising Corp.*, CTA EB No. 1974, February 12, 2020, citing *Adamson v. Court of Appeals*, G.R. No. 120935, May 21, 2009.

²⁶ G.R. No. 215957, November 9, 2016.

²⁷ The principle that an assessment is void because of lack of due dates thereon was applied in the recent case of *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022.

²⁸ Last paragraph, petitioner's undated FLD. Exhibit "P-22." Docket (CTA Case No. 9538), p. 847.

²⁹ Exhibit "P-22-2." *Id.* at p. 853.

³⁰ Exhibit "P-22-3." *Id.* at p. 854.

³¹ Exhibit "P-22-4." *Id.* at p. 855.

³² Exhibit "P-22-5." *Id.* at p. 856.

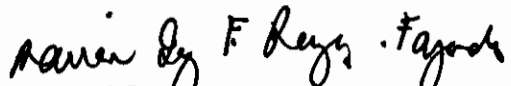
unaccomplished. *Ergo*, petitioner's tax assessments issued against respondent for TY 2010 lack the requisite demand for payment of tax liabilities.

Second, said undated FLD bears a notation "Please note that the interest and total amount due will have to be adjusted if paid beyond July 29, 2016."³³ Since the total amount due is subject to adjustment, depending on respondent's date of payment, petitioner's tax assessments failed to contain a fixed and determinate amount of tax liabilities.

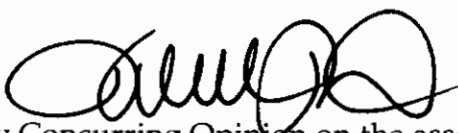
In fine, the Court in Division declared petitioner's tax assessments issued against respondent for TY 2010 void. So must it be.

WHEREFORE, the Petition for Review dated February 3, 2021, filed by the Commissioner of Internal Revenue, is **DENIED**. The Decision dated March 2, 2020 and Resolution dated December 16, 2020, in CTA Case No. 9538 are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:


I reiterate my Concurring Opinion on the assailed Decision
ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice

³³ Exhibit "P-22." *Id.* at pp. 846-847.



I join Justice Villena's SCO
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

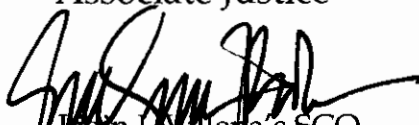


I join J. JBV's SCO
CATHERINE T. MANAHAN
Associate Justice

5



With Separate Concurring Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice



I join J. Villena's SCO
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



I join J. Villena's Separate Concurring Opinion
LANEE S. CUI-DAVID
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,

Petitioner,

CTA EB NO. 2426
(CTA Case No. 9538)

Present:

DEL ROSARIO, P.L.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, Jl.

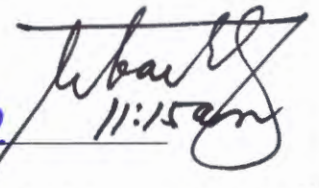
- versus -

GOLDEN BREW MARKETING,
INC.,

Respondent.

Promulgated:

OCT 06 2022


11:15 am

x ----- x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the Petition for Review¹ filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**), on the ground that petitioner's assessment for deficiency taxes against respondent Golden Brew Marketing, Inc. (**respondent/GBMI**) for the taxable year (**TY**) 2010 is void for the following reasons:

- (1) No Letter of Authority (**LOA**) was issued to revenue officer Tito Monforte (**RO Monforte**), who continued the tax audit or examination

¹ Rollo, pp. 1-13.

of respondent and recommended² the issuance of the Preliminary Assessment Notice³ (PAN) and Formal Letter of Demand⁴ (FLD), and RO Monforte was authorized merely through Memorandum of Assignment (MOA) dated 16 May 2016⁵, signed by Cesar D. Escalada, Chief of Regular LT Audit Division 1 (**Chief Escalada**), who is not among the Bureau of Internal Revenue (BIR) officials conferred with authority to permit the examination of taxpayers for deficiency taxes; and,

- (2) The undated FLD⁶ with Details of Discrepancies⁷ and Assessment Notices⁸ (ANs) do not contain any due date for the payment of the assessed deficiency taxes.

In the *ponencia* of our esteemed colleague, Associate Justice Marian Ivy F. Reyes-Fajardo, it was stated that, with respect to the notation on the undated FLD⁹, i.e., “[p]lease note that the interest and total amount due will have to be adjusted if paid beyond July 29, 2016”, “[s]ince the total amount due is subject to adjustment, depending on respondent’s date of payment, petitioner’s assessment failed to contain a fixed and determinate amount of tax liabilities.”

However, with due respect to the *ponencia*, I wish to clarify that the aforesaid notation on the undated FLD¹⁰ merely means that the interest (and not the basic deficiency tax) will be adjusted if the taxpayer fails to pay on the due date specified in the assessment notices. The interest, and *only* the interest, may be adjusted if the taxpayer pays before or after the due date. The basic deficiency tax liability remains the same.

Nonetheless, petitioner’s assessment for deficiency taxes is still void as the subject undated FLD¹¹ failed to provide a definite due date for payment. Consistent with the Supreme Court’s ruling in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*¹² (**Fitness by Design**) and contrary to petitioner’s view, the date stated in the notation on the undated

² Exhibits “R-16” (Memorandum dated 14 April 2016) and “R-18 (Memorandum dated 15 June 2016), BIR Records, pp. 495-501 and 515, respectively.
³ Exhibit “P-21”, Division Docket, Volume I, pp. 279-281.
⁴ Exhibit “P-22”, id., Volume II, pp. 846-848.
⁵ Exhibit “R-14” (Memorandum of Assignment dated 16 May 2016), BIR Records, p. 484-C.
⁶ Supra at note 4.
⁷ Exhibit “P-22-1”, Division Docket, Volume II, pp. 849-852.
⁸ Exhibit “P-22-2” to “P-22-5”, id., pp. 853-858.
⁹ Supra at note 4.
¹⁰ Supra at note 4.
¹¹ Supra at note 4.
¹² G.R. No. 215957, 09 November 2016.

FLD (*i.e.*, 29 July 2016) is not the due date for payment of tax liabilities as it only signifies the reckoning date of accrual of penalties and surcharges.

Similar to *Fitness by Design*, there are no due dates in the subject ANs¹³, which negates petitioner’s demand for payment. Further, the last paragraph of the undated FLD¹⁴ states that the due dates for payment were supposedly reflected in the attached assessment, *viz*: “[i]n view thereof, you are *requested to pay* your aforesaid deficiency tax liabilities through eFPS using BIR Payment Form (BIR Form 0605) *within the time shown in the enclosed assessment notice*.” Clearly, as found by the Court in Division and affirmed by the Court *En Banc*, petitioner’s assessment for deficiency taxes lacked the requisite demand for payment of tax liabilities as the “due date” portion in the enclosed assessment (*i.e.*, ANs¹⁵) referred to in the undated FLD remained blank or unaccomplished.

All told, I vote to **DENY** the Petition for Review.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

¹³ Supra at note 8.
¹⁴ Supra at note 4.
¹⁵ Supra at note 8.