

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA EB No. 2411
(CTA Case No. 8913)

Present:

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

-versus-

EDS MANUFACTURING,
INC.,
Respondent.

Promulgated:

APR 26 2022

[Signature] 3:22 p.m.

x-----x

DECISION

REYES-FAJARDO, *J*:

This Petition for Review¹ dated February 10, 2021 challenges the Decision² dated June 25, 2020 and Resolution³ dated January 5, 2021 in CTA Case No. 8913, whereby the Court in Division nullified the Commissioner of Internal Revenue's Final Decision on Disputed Assessment (FDDA) dated September 22, 2014, and the deficiency tax assessments issued against EDS Manufacturing, Inc. for Fiscal Year (FY) ending March 2010.

¹ *Rollo*, pp. 7-19.

² *Id.* at pp. 26-47.

³ *Id.* at pp. 48-53.

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The facts follow.

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR). He was duly appointed and is empowered to perform the duties of his office, including, among others, the power to decide, cancel, and abate tax liabilities pursuant to Section 204(B) of the Tax Code, as amended by Republic Act (RA) No. 8424, otherwise known as the "Tax Reform Act" of 1997, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent is a corporation registered with the BIR.

On November 3, 2010, respondent received a Letter of Authority (LOA) dated October 26, 2010 issued by then Assistant Commissioner (ACIR) Nestor S. Valeroso of the BIR's Large Taxpayer Service Regular (LTSR), authorizing Revenue Officers (ROs) Reynoso Bravo, Daniella Gabaon, Maribel Serafica, Olivia Sison and Group Supervisor (GS) Erlinda Ulgado to examine its books of account and other accounting record for all internal revenue taxes covering the period of April 1, 2009 to March 31, 2010.

During the conduct of the audit and upon the request of petitioner's examiners, respondent's Vice President Mr. Tatsuo Karasaki, executed several *Waivers of the Defense of Prescription Under the Statute of Limitations of the NIRC*, granting a period of until July 31, 2014 to conduct examination on respondent.⁴

On September 26, 2013, petitioner issued a *Notice of Informal Conference*.

⁴

a. On June 11, 2012, Mr. Karasaki executed a *Waiver*, which was accepted by LTSR-ACIR Alfredo V. Misajon on June 19, 2012. The *first Waiver* extended the period granted to petitioner to conduct examination of respondent until July 15, 2013.

b. On January 21, 2013, Mr. Karasaki executed another *Waiver*, which was accepted by LTSR-ACIR Alfredo V. Misajon on January 24, 2013. The *second Waiver* extended the period granted to petitioner to conduct examination of respondent until December 31, 2013.

c. On November 7, 2013, Mr. Karasaki executed a third *Waiver*, which was accepted by LTSR-ACIR Alfredo V. Misajon on November 30, 2013. The *third Waiver* extended the period granted to petitioner to conduct examination of respondent until July 31, 2014.

On October 25, 2013, respondent received petitioner's *Preliminary Assessment Notice (PAN)*, finding respondent liable for deficiency taxes in the total amount of ₱223,828,301.77, inclusive of interest and penalties. The PAN stemmed from the recommendation of ROs Reynante P. Martinez, Rosario A. Arriola, Carolyn V. Mendoza and Shella C. Samaniego.

On November 8, 2013, respondent filed its reply to the PAN, contending that the assessments are null and void.

On December 3, 2013, respondent received petitioner's undated Formal Letter of Demand (FLD) and Assessment Results/ Assessment Notices (FAN), assessing it for deficiency taxes in the total amount of ₱221,204,721.86, inclusive of interest and penalties.

On December 27, 2013, respondent protested the FLD/FAN by way of reinvestigation, claiming that the same are null and void and have no basis both in fact and in law, followed by its submission of documents in support thereof on February 25, 2014.

On September 22, 2014, respondent received petitioner's FDDA of even date, which it appealed to the Court in Division on October 22, 2014.

On June 25, 2020, the Court in Division rendered the challenged Decision, the dispositive portion of which states:

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, FDDA dated September 22, 2014 and the Assessments made by (petitioner) against (respondent) for deficiency taxes of ₱228,909,376.19, inclusive of interest and penalties, for fiscal year ending March 2010, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

On August 20, 2020, petitioner filed a Motion for Reconsideration to the challenged Decision dated June 25, 2020.

On January 5, 2021, the Court in Division issued the equally challenged Resolution, the dispositive portion of which states:



WHEREFORE, premises considered, (petitioner's) Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

In his Petition for Review dated February 10, 2021, petitioner argues that under Section 13 of the National Internal Revenue Code (NIRC), as amended, the requirement of prior issuance of a valid LOA before proceeding with tax investigation of a taxpayer only applies to ROs in the Revenue District Office. Since the individuals who performed the audit and examination on respondent are ROs under the Office of the Commissioner of Internal Revenue (OCIR) - LTS, the issuance of a valid LOA may be dispensed with.

Petitioner further claims that under Revenue Memorandum Order (RMO) No. 8-2006, if both the RO and GS cease employment, or were detailed in another revenue region, the continuation of the examination of a taxpayer may be re-assigned to another RO and GS within the same revenue district office (RDO). Given that the revenue officers named in the subject LOA were transferred or reassigned, the alleged Memorandum of Assignments (MOAs) dated April 26, 2012 and January 23, 2014 respectively issued by Edralin M. Silario and Cesar D. Escalada vested RO Reynante DP. Martinez and GS Rolando M. Balbido with authority to examine respondent and consequently recommend the issuance of tax assessments against it.

Petitioner concedes that the MOAs dated April 26, 2012 and January 23, 2014 were not properly identified by a competent witness. He nonetheless asserts that the Court in Division should have accorded evidentiary weight to said documents as they form part of the BIR Record duly submitted to the Court.

Capping up his arguments, petitioner believes that respondent should be held accountable for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, final withholding tax, documentary stamp tax amounting to ₱228,909,376.19, plus statutory increments for FY ending March 2010.

In its Comment (Re: Petition for Review dated 10 February 2021) dated March 12, 2021,⁵ respondent counters that the matter regarding the validity and regularity of the subject LOA was not raised before the Court in Division, hence, may not be considered for the first time on appeal before the Court *En Banc*.

Respondent further counters that Section 6(A) of the NIRC, as amended, and jurisprudence command that the ROs performing the examination and audit of the taxpayer must have a prior valid LOA issued petitioner or his duly authorized representatives. Otherwise, the assessment will be declared void. As there was no valid LOA issued by petitioner or his duly authorized representatives authorizing the individuals who undertook the actual examination and audit of respondent, the Court in Division is correct in nullifying petitioner's FDDA dated September 22, 2014 and the assessments for deficiency taxes, and corresponding interest and penalties for FY ending March 2010.

Respondent as well points out that petitioner's reliance on the MOAs dated April 26, 2012 and January 23, 2014 is misplaced since the BIR Record from which said documents were contained was not identified by a competent witness. Even granting that such MOAs were duly admissible in evidence, it nonetheless argues that said documents were not approved by the Assistant Commissioner of Internal Revenue (ACIR) or Head Revenue Executive Assistant (HREA). As such, the MOAs may not be a valid source from which the right of ROs to legally examine and audit a taxpayer may arise.

To conclude, respondent states that the Court in Division is correct in invalidating petitioner's FDDA dated September 22, 2014 and the assessments for deficiency taxes of ₱228,909,376.19, inclusive of interest and penalties, for FY ending March 2010 issued against it.

THE RULING OF THE COURT

The Petition lacks merit.

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

⁵ *Rollo*, at pp. 75-89.



exception, petitioner or his duly authorized representatives 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 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 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.

In addition, Section D(4) of RMO No. 43-90⁶ provides that deputy commissioners and other BIR officials authorized by the CIR himself are permitted to issue an LOA.⁷ Among the BIR officials expressly authorized⁸ by the CIR to issue an LOA are the Assistant Commissioners (ACIRs) and Head Revenue Executive Assistant (HREA).

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. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, a revenue officer.⁹ 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*.¹⁰ Conversely, the absence of such an authority renders the assessment or examination a patent nullity.¹¹

Here, ACIR Nestor S. Valeroso issued an LOA dated October 26, 2010, authorizing ROs Reynoso Bravo, Daniella Gabaon, Maribel Serafica, and Olivia Sison, and GS Erlinda Ulgado to examine respondent's books of account and other accounting record for all internal revenue taxes covering FY ending March 2010.¹² However, the ROs who undertook the actual examination of respondent and recommended the issuance of a PAN against it were Reynante P. Martirez, Rosario A. Arriola, Carolyn V. Mendoza and Shella C. Samaniego, individuals not found in such LOA.¹³ Since the examination they conducted on respondent is invalid, petitioner's

⁶ 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*

⁷ 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.

⁸ No. 2, Roman Number II of RMO No. 29-2007 permits assistant commissioners and head revenue executive assistant to issue LOAs.

⁹ *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.

¹⁰ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

¹¹ See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

¹² Exhibit "P-64," docket (CTA Case No. 8913), p. 4307.

¹³ Exhibit "R-12," BIR Record, pp. 536-555.



FDDA dated September 22, 2014 and his deficiency tax assessments covering FY ending March 2010 issued against it were also void.

There is no merit in petitioner's claim that since the ROs who audited respondent are allegedly part of OCIR-LTS, they may conduct examination of respondent without any valid LOA pursuant to Section 13 of the NIRC, as amended. The issuance by petitioner or his 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 is premised on the persons who would perform the audit and examination of the taxpayer. To be precise, except when petitioner himself, or the BIR officials duly authorized by law or petitioner who conducts the examination of the taxpayer, the issuance of a valid LOA by petitioner or his duly authorized representatives in favor of ROs performing assessment functions is a pre-requisite for the validity of their tax examination and assessment.¹⁴

Equally unconvincing is petitioner's assertion that the Court in Division failed to take into account the MOAs dated April 26, 2012 and January 23, 2014, the documents establishing the proper authority of the ROs who actually examined respondent.

In the challenged Decision¹⁵ and Resolution,¹⁶ the Court in Division addressed the propriety of the MOAs dated April 26, 2012¹⁷ and January 23, 2014.¹⁸ Specifically, it was found that the respective signatories therein, *i.e.*, Edralin M. Silario, OIC-Chief, LT Regular Audit Division I (Chief Silario) and Cesar D. Escalada, Chief, Regular LT Audit Division I (Chief Escalada), are BIR personnel devoid of authority to issue an LOA. To repeat, only the CIR or his duly authorized representatives may issue the LOA. These authorized representatives include the Revenue Regional Director, Deputy Commissioners, ACIR and HREA. By Chief Silario and Escalada's issuance of the subject MOAs, they arrogated upon themselves the statutory authority to permit examination of the taxpayer solely

¹⁴ See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, *supra*, at note 11; and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

¹⁵ Page 21, Decision dated June 25, 2020. *Rollo*, p. 46.

¹⁶ Resolution dated January 5, 2021 (Resolution on respondent's [now petitioner's] Motion for Reconsideration), pp. 4-6, *id.* at pp. 51-53.

¹⁷ Marked as Exhibit "R-5."

¹⁸ Marked as Exhibit "R-7."

belonging to petitioner or his duly authorized representatives which should not be permitted. *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*¹⁹ is on point:

...

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 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.

Besides, the Court may not consider the MOAs dated April 26, 2012 and January 23, 2014 respectively, in this appeal. Section 40, Rule 132 of the Rules of Court states the procedure to be observed so that excluded evidence may be entertained in appellate proceedings:

Section 40. Tender of excluded evidence. – If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

¹⁹ G.R. No. 242670, May 10, 2021.

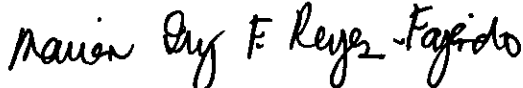
In *Batino Realty Corporation v. Commissioner of Internal Revenue*,²⁰ the Court discussed the concept of, and the adverse consequence for a party's failure to tender excluded evidence in this wise:

Jurisprudence tells us that if an exhibit sought to be presented in evidence is rejected, the party producing it should ask the court's permission to have the exhibit attached to the record. These procedures are known as offer of proof or tender of excluded evidence and are made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence. Conversely, where documentary evidence was rejected by the lower court and the offeror did not move that the same be attached to the record, the same cannot be considered by the appellate court, as documents forming no part of proofs before the appellate court cannot be considered in disposing the case.²¹

The Court in Division denied²² the admission of the MOAs dated April 26, 2012 and January 23, 2014 as petitioner's evidence since the documents were not identified by a competent witness. However, petitioner failed to make an offer of proof or tender of excluded evidence for such denied documentary exhibits. For this reason, the MOAs dated April 26, 2012 and January 23, 2014 may not be considered in petitioner's appeal.

WHEREFORE, the Petition for Review dated February 10, 2021 filed by the Commissioner of Internal Revenue is **DENIED**. The challenged Decision dated June 25, 2020 and Resolution dated January 5, 2021 both rendered by the Court in Division in CTA Case No. 8913 are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice


²⁰ CTA EB No. 1885, January 3, 2020.

²¹ Citations omitted.


²² Resolution dated October 19, 2017 (Resolution on respondent's [now petitioner's] Formal Offer of Evidence). Docket (CTA Case No. 8913), pp. 4686-4689.


We Concur:



ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice



ERLINDA P. UY
Associate 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

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