



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HIMLAYANG PILIPINO PLANS, G.R. No. 241848
INC.,

Petitioner, Present:

GESMUNDO, C.J.,
Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

COMMISSIONER OF INTERNAL REVENUE, Promulgated:

Respondent.

MAY 14 2021

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DECISION

CARANDANG, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the Decision² dated February 12, 2018 and the Resolution³ dated July 24, 2018 rendered by the Court of Tax Appeals (CTA) *En Banc* in EB Case No. 1513. The CTA *En Banc* affirmed the ruling of the CTA Second Division in dismissing Himlayang Pilipino Plains, Inc.'s (petitioner) prayer for the nullification and cancellation of the Formal Letter of Demand (FLD) issued by the Commissioner of Internal Revenue (CIR) for the assessment of petitioner's deficiency income tax amounting to ₱7,263,190.35; deficiency value-added tax (VAT) amounting to ₱4,179,258.23; deficiency expanded withholding tax (EWT) in the amount of ₱231,150.35; deficiency documentary stamp tax (DST) in the amount of ₱94,974.98; and a compromise penalty of ₱25,000.00 or a total of ₱11,793,573.91 for taxable year 2009.

¹ *Rollo*, pp. 42-75.

² *Id.* at 9-22.

³ *Id.* at 31-36.

9

Facts of the Case

On July 9, 2010, petitioner received a manual Letter of Authority (LOA) No. 2009-00031349 dated June 24, 2010 with First Notice for Presentation of Records- Checklist Requirements.⁴

On September 29, 2010, Jonas Amora, Officer-In-Charge (OIC) Regional Director of Quezon City issued an electronic LOA SN: eLA201000017400 LOA-039-2010-00000072, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2009 to December 31, 2009. Petitioner received the LOA on October 12, 2010.⁵

Petitioner submitted pertinent documents relevant to the examination of its books of accounts for taxable year 2009 on different dates. However, the revenue officers who conducted the examination found that petitioner has deficiency taxes for taxable year 2009.⁶

Thereafter, on December 14, 2012, the CIR issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies. Petitioner received the PAN and the attached Details of Discrepancies on even date.⁷

Petitioner contested the PAN on December 28, 2012. However, on January 14, 2013, an FLD dated January 4, 2013 with Final Assessment Notices (FAN) and Details of Discrepancies dated January 14, 2013 were issued against petitioner, which petitioner received on January 14, 2013.⁸

Petitioner administratively protested the FAN on February 14, 2013. Petitioner likewise submitted documents in support of its administrative protest on April 12, 2013. Due to the alleged inaction of respondent on its protest, petitioner filed a Petition for Review on November 7, 2013 to the CTA in Division.⁹

On December 16, 2013, the CIR filed its Answer arguing that the assessment has become final, executory, and demandable; therefore, the CTA no longer has jurisdiction over the petition. The CIR likewise raised that tax assessments made by examiners are presumed correct and in good faith.¹⁰

Thereafter, pre-trial and trial ensued.¹¹

⁴ Id. at 45.
⁵ Id. at 10-11.
⁶ Id. at 11.
⁷ Id.
⁸ Id.
⁹ Id.
¹⁰ Id. at 11-12.
¹¹ Id.

9

On April 10, 2014, upon motion of petitioner, Enrico T. Pizarro was commissioned by the Court as the Independent Certified Public Accountant for the case.¹²

During trial, petitioner presented Leah Laxamana and Enrico T. Pizarro as its witnesses. On the other hand, the CIR presented as witnesses, Bernard R. Bugausan and Bacolor D. Yaming.¹³

The CTA declared the case submitted for decision on July 20, 2015, after the filing of the parties' respective Memoranda.¹⁴

Ruling of the CTA Second Division

On July 1, 2016, the CTA Second Division rendered its Decision dismissing the petition for lack of jurisdiction.¹⁵

According to the CTA Second Division, there was no disputed assessment in this case because petitioner's protest against the FAN and FLD were filed out of time. The CTA Second Division found that petitioner received the FAN and FLD on January 14, 2013 but only filed the protest on February 14, 2013 or 31 days from the receipt thereof. The National Internal Revenue Code (NIRC) and Revenue Regulation No. 12-99 are clear that the FAN and FLD should have been disputed within 30 days. The CTA Second Division concluded that the failure to file a protest on time made the assessment final, executory, and demandable.¹⁶

Petitioner moved for reconsideration. However, the CTA Second Division denied the same through a Resolution dated August 22, 2016. Hence, petitioner elevated the case to the CTA *En Banc*.¹⁷

Ruling of the CTA *En Banc*

On February 12, 2018, the CTA *En Banc* issued its Decision¹⁸ affirming the ruling of the CTA Second Division.¹⁹

The CTA *En Banc* concurred with the CTA Second Division that the tax court has exclusive appellate jurisdiction to review by appeal a decision of, or inaction by, the CIR only in cases involving disputed assessments, among others. In this case, petitioner was not able to controvert the subject tax assessments because it failed to file its administrative protest on time.

¹² Id. at 12.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 13.

¹⁶ Id. at 268-269.

¹⁷ Id. at 13.

¹⁸ Id. at 9-22.

¹⁹ Id. at 21.

Hence, there is no “disputed assessment” to which the CTA has jurisdiction to review.²⁰

However, in Presiding Justice Roman G. Del Rosario’s (Presiding Justice Del Rosario) dissenting opinion²¹ on the CTA *En Banc*’s decision, he submitted that the FLD with Details of Discrepancies and Assessment Notices issued against petitioner are void. Presiding Justice Del Rosario noted that the revenue officers who conducted the examination of petitioner’s books of accounts and other accounting records were not authorized by a valid LOA.²²

Taking a hint from the dissenting opinion of Presiding Justice Del Rosario, petitioner moved for the reconsideration of the CTA *En Banc*’s decision and raised for the first time that the FAN and FLD issued against it were null and void because of the lack of authority of the revenue officers who conducted the audit. However, the motion was denied in a Resolution²³ dated July 24, 2018. According to the CTA *En Banc*, petitioner’s belated attempt to question the authority of the revenue officers was fatal to its case.²⁴

Undaunted, petitioner filed this Petition for Review on *Certiorari*²⁵ under Rule 45 of the Rules of Court reiterating that the assessment made against it was null and void. Petitioner explained that the tax audit was commenced through LOA-039-2010-00000072 dated September 29, 2010 and signed by OIC Regional Director of Quezon City, Jonas Amora. The LOA authorized revenue officer Ruby Cacdac (Cacdac) and group supervisor Bernardo Andaya (Andaya) to examine the books of accounts of petitioner for taxable year 2009. However, contrary to the LOA, it was not Cacdac who conducted the audit, but it was revenue officer Bernard Bagausan (Bagausan) who examined the books of accounts of petitioner pursuant to BIR Memorandum of Assignment No. 039-1011-00340 dated October 28, 2011 and signed by revenue district officer Clavelina Nacar (Nacar).²⁶ According to petitioner, while at the onset, the tax investigation was valid pursuant to LOA-039-2010-00000072, this became irregular and fatally defective later when another revenue officer was tasked to conduct the audit without a valid LOA.²⁷ Petitioner insists that any reassignment or transfer of cases to another revenue officer shall require the issuance of a new LOA.²⁸ Without a new LOA, the assessment against petitioner was void *ab initio*.²⁹

²⁰ Id. at 18.
²¹ Id. at 23-29.
²² Id. at 23-24.
²³ Id. at 31-36.
²⁴ Id. at 33-34.
²⁵ Id. at 42-75.
²⁶ Id. at 54-56.
²⁷ Id. at 58.
²⁸ Id. at 59.
²⁹ Id. at 62.

In its Comment,³⁰ the CIR, through the Office of the Solicitor General (OSG), countered that the tax assessments against petitioner are valid and binding.³¹

Issue

The issue in this case is whether the assessment conducted against petitioner was null and void.

Ruling of the Court

The petition is meritorious.

Revenue Officer Baguisan who conducted the audit of petitioner's books of accounts was not authorized pursuant to a valid LOA.

A perusal of the records of the case discloses that electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 issued against petitioner specifically authorized revenue officer Cacdac and group supervisor Andaya, to examine the books of accounts of petitioner for taxable year 2009, to wit:

SIR/MADAM/GENTLEMEN:

The bearer(s) hereof, **RO-RUBY CACDAC/GS-BARNARDO ANDAYA** of **Revenue District No. 039 of Quezon City** is/are authorized to examine your books of accounts and other accounting records for **INTERNAL REVENUE TAXES** for the period from **January 1, 2009** to **December 31, 2009** pursuant to **REGULAR AUDIT PROGRAM FOR 2010**. The Revenue Officer(s) identified herein are provided with the necessary identification card(s) which shall be presented to you upon request.

x x x x

Very truly yours,

Sgd.

JONAS DP. AMORA
OIC REGIONAL DIRECTOR

QUEZON CITY³² (Emphasis and underscoring in the original)

However, it appeared that Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Baguisan who audited petitioner by virtue of a memorandum of assignment signed by revenue district officer Nacar, which reads:

³⁰ Id. at 388-402.

³¹ Id. at 394.

³² Id. at 131.

MEMORANDUM TO:

Revenue Officer(s): **BERNARD R. BAGAUISAN**
 Group Supervisor: **NORA U. FLORES**

Subject: Audit/Verification of the **All Internal Revenue Tax Liabilities** for Taxable Year/Period **2009** of **HIMLAYANG PILIPINO PLANS, INC.** with **TIN #000-845-616-000** pursuant to **eLA No. 00000072** dated September 29, 2010.

Referred/Returned to you is the subject case/docket for:

[x] Continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who transferred to another district office.

x x x x

For your information and strict compliance.

Sgd.

CLAVELINA S. NACAR
Revenue District Officer³³ (Emphasis and underscoring in the original)

The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 from revenue officer Cacdac to revenue officer Bagausan necessitates the issuance of a new LOA. This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit," which provides that:

C. Other policies for issuance of L/As.

x x x x

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.

Here, there was no new LOA issued naming Bagausan as the new revenue officer who would conduct the examination of petitioner's books of accounts. The authority of Bagausan is anchored only upon the memorandum of assignment signed by revenue district officer Nacar.

³³ Id. at 133.

Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer:

Section 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)

In addition, under RMO No. 43-90, only the following officers may validly issue a LOA:

D. Preparation and issuance of L/As.

x x x x

4. For the 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 the exigencies of the service, other officials **may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself**. (Emphasis supplied)

Thus, revenue officer Baguisan is not authorized by a new LOA to conduct an audit of petitioner's books of accounts for taxable year 2009.

The lack of a valid LOA authorizing Revenue Officer Baguisan to conduct an audit on petitioner makes the assessment void.

A 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.³⁴

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*³⁵ the Court nullified the deficiency VAT assessment made against Sony Philippines because the revenue officers went beyond their authority when they based the assessment on records from January to March 1998 or using the fiscal year

³⁴ *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 649 Phil. 519, 529-530 (2010).

³⁵ *Id.*

which ended in March 31, 1998 when the LOA covered only “the period 1997 and unverified prior years”. According to the Court:

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**.³⁶ (Emphasis supplied)

In *Medicard Philippines, Inc. v. CIR*,³⁷ the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. The Letter of Notice earlier sent to Medicard Philippines was not validly converted into a LOA. According to the Court in *Medicard Philippines*:

What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**.³⁸ (Emphasis supplied)

Here, as comprehensively discussed, there was no new LOA issued by the CIR or his duly authorized representative giving revenue officer Bagausan the power to conduct an audit on petitioner’s books of accounts for taxable year 2009. The importance of the lack of the revenue officer’s authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.

Lastly, as stated in Presiding Justice Del Rosario’s dissenting opinion on the CTA *En Banc*’s decision, the failure of petitioner to raise at the earliest opportunity, the lack of the revenue officer’s authority, does not precluded the Court from considering the same because the said issue goes into the intrinsic validity of the assessment itself.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision dated February 12, 2018 and the Resolution dated July 24, 2018 rendered by the Court of Tax Appeals *En Banc* in EB Case No. 1513 are **SET ASIDE**. The Formal Letter of Demand with Details of Discrepancies and Assessment Notices issued against petitioner Himlayang Pilipino Plans, Inc. are hereby **DECLARED UNAUTHORIZED** for having been issued without a Letter of Authority by the Commissioner of Internal Revenue or his duly authorized representative.

³⁶ Id. at 530.

³⁷ 808 Phil. 528 (2017).

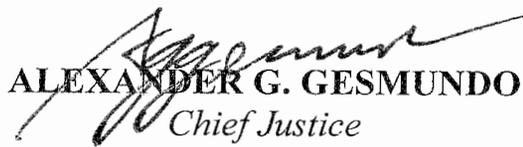
³⁸ Id. at 546.

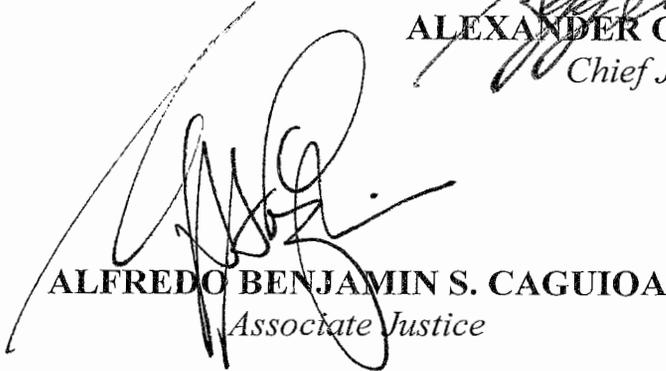


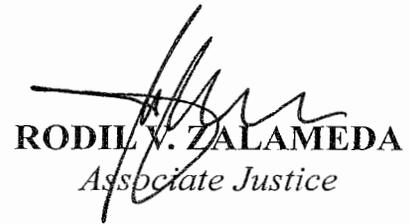
SO ORDERED.

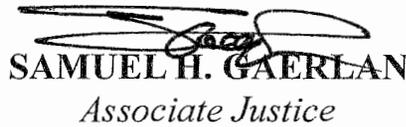

ROSMARID D. CARANDANG
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

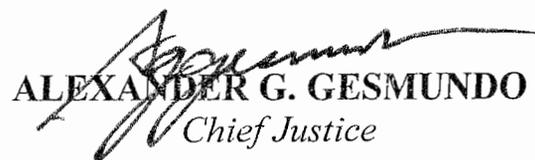

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice