



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE
PHILIPPINES,

G.R. No. 256868

Petitioner, .

Present:

- versus -

CORAZON C. GERNALE,
Respondent.

LEONEN,* J., Chairperson,
LAZARO-JAVIER, Acting Chairperson,
M. LOPEZ,
J. LOPEZ, and
KHO, JR., JJ.

Promulgated:

OCT 04 2023

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DECISION

KHO, JR., J.:

Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court are the Decision² dated July 30, 2020 and the Resolution³ dated May 27, 2021 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Crim. No. 063, which upheld the Resolution⁴ dated December 17, 2018 of CTA Special Third Division (CTA Division) in CTA Crim. Case No. O-336 denying the Partial Motion for Reconsideration filed by petitioner People of

* On Leave, left a vote pursuant to Section 4, Rule 12 of the Supreme Court Internal Rules.

¹ *Rollo*, pp. 8-27.

² *Id.* at 32-45. Penned by Presiding Justice Roman G. Del Rosario with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro, concurring.

³ *Id.* at 46-53.

⁴ CTA Records, pp. 47-50. Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Esperanza R. Fabon-Victorino, concurring.

the Philippines (petitioner) on the civil aspect of the case filed against respondent Corazon C. Gernale (respondent).

The Facts

This case stemmed from an Information⁵ filed before CTA charging respondent, as the alleged treasurer and responsible officer of Gernale Electrical Contractor Corporation (GECC), with violation of Section 255, in relation to Section 253(d) of the National Internal Revenue Code (NIRC) of 1997, as amended:

That on or about July 31, 2006, in the City of Manila, Philippines, the said accused, being then the Treasurer and responsible officer of Gernale Electrical Contractor Corporation with business address at 1384 Gomez St., Paco, in said City, having filed her [sic] internal revenue tax of the latter for the year 2003 and after examination and audit of the same, it has been found that there is due collectibles from said Gernale Electrical Contractor Corporation the following, to wit:

Kind of Tax	Amount
Deficiency Income Tax	[PHP] 7,317,380.55
Deficiency VAT	[PHP] 2,346,474.98
TOTAL	<u>[PHP] 9,663,855.53</u>

for the said year under BIR Assessment/Demand No. 34-2003, did then and there willfully and unlawfully fail and refuse and neglect to pay said taxes and without formally appealing the same despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the total amount of [PHP] 9,663,855.53, Philippine Currency.

Contrary to law.⁶

The prosecution alleged that Revenue Officer Anita T. Marinas (Marinas) conducted an audit on GECC by virtue of a letter notice (LN) L.N. No. 034-R-03-00S000098 dated October 27, 2004 relative to GECC's discrepancy in sales per tax returns filed as against the summary list of purchases submitted by its customers for taxable year 2003. To initiate the audit, the subject LN was served upon GECC at GECC Bldg., 1384 Gomez St., Paco, Manila to a certain Arvy G. Gutlay. Subsequently, a Notice of Informal Conference was likewise served upon GECC to a certain Julio Basilio. Based on the LN, Marinas found an under-declaration of sales leading to income tax and value-added tax deficiencies, and thus, referred the audit to the Assessment Division. Accordingly, on May 3, 2006, the Assessment Division prepared a Preliminary Assessment Notice (PAN) for mailing to GECC. Subsequently, on June 28, 2006, the Assessment Division issued to GECC Final Assessment Notice No. 34-2003 (FAN) for the respective tax

⁵ *Rollo*, p. 33.

⁶ *Id.*

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deficiencies and the formal letter of demand, which were transmitted to the Administrative Division for mailing to GECC.⁷

In her defense, respondent alleged that the PAN and FAN issued against GECC were sent to her residential address instead of sending them to GECC's principal place of business rendering the service thereof invalid. Moreover, she alleged that despite the preparation of the PAN for mailing, there was no evidence on the part of the prosecution that the same was properly served upon GECC. Lastly, she also alleged that the prosecution failed to prove that GECC likewise received a copy of the LN.⁸

The CTA Special Third Division Ruling

In a Decision⁹ dated September 26, 2018, the CTA Division dismissed the case for petitioner's failure to prove respondent's guilt beyond reasonable doubt, resulting in the acquittal of respondent of the charge of violating Section 255, in relation to Section 253(d) of the NIRC.¹⁰

In so ruling, the CTA Division ruled that the subject assessment was void due to the prosecution's failure to prove that the PAN was either personally received by GECC's authorized representative or was mailed to GECC. Considering the lack of a valid assessment, the CTA Division thus ruled that respondent cannot be held liable for the non-payment of the deficiency taxes.¹¹

Aggrieved, petitioner moved for the partial reconsideration on the civil aspect of the case, which was denied in a Resolution¹² dated December 17, 2018. *Unsatisfied, petitioner filed a Petition for Review¹³ before the CTA En Banc with regard to respondent's liability on the civil aspect of the case.*

The CTA *En Banc* Ruling

In a Decision¹⁴ dated July 30, 2020, the CTA *En Banc* denied the Petition for Review for lack of merit and affirmed the decision and resolution of the CTA Division on the aspect of respondent's solidary civil liability with GECC for the latter's tax deficiencies.¹⁵

⁷ *Id.* at 11-12.

⁸ *Id.* at 36-37.

⁹ CTA Records, pp. 24-45.

¹⁰ *Id.* at 45.

¹¹ *See id.* at 43-44.

¹² *Id.* at 47-50.

¹³ *Id.* at 5-23.

¹⁴ *Rollo*, pp. 32-45.

¹⁵ *Id.* at 44.

Mainly upholding the findings of the CTA Division, the CTA *En Banc* ruled that respondent cannot be made solidarily liable with GECC for the tax deficiencies due to the failure to convert the LN into a letter of authority (LOA). According to the CTA *En Banc*, an LOA is an indispensable requirement prior to the conduct of an audit and the validity of an assessment. As found by the CTA *En Banc*, the FAN merely arose from an LN, without an audit conducted pursuant to a valid LOA, thereby making the FAN at issue void. With the FAN's invalidity, the CTA *En Banc* held that there can be no valid source of obligation for GECC – or respondent for that matter – to pay the deficiency taxes. Even assuming that the FAN is valid, the CTA *En Banc* further ruled that respondent cannot be held liable for her refusal to pay deficiency taxes assessed against GECC because the civil liability of GECC cannot be enforced against corporate officers, such as respondent in this case.¹⁶

Not satisfied, petitioner moved for reconsideration, which was denied in a subsequent Resolution¹⁷ dated May 27, 2021; hence, this Petition.

The Issue Before the Court

The issue for the Court's resolution is whether the CTA *En Banc* committed any reversible error in affirming the findings of the CTA Division in finding that respondent is not civilly liable for the tax deficiencies of GECC.

The Court's Ruling

The petition lacks merit.

Preliminarily, petitioner argues that the CTA *En Banc* erred in determining the existence of an LOA in relation to the validity of the assessment made by the Bureau of Internal Revenue (BIR). It argued that the issue was not raised by the parties and ruling on such issue was a violation of its due process. Thus, it is necessary to determine whether the CTA can rule on issues that were not raised by the parties.¹⁸ The Court rules on the affirmative.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc. (Lancaster)*,¹⁹ the Court, speaking through Justice Samuel R. Martires, categorically ruled that the CTA is allowed to rule on issues not stipulated by the parties to achieve an orderly disposition of the case pursuant to Rule 14,

¹⁶ *See id.* at 37-44.

¹⁷ *Id.* at 45-53.

¹⁸ *See id.* at 16-21.

¹⁹ 813 Phil. 622 (2017) [Per J. Martires, Second Division].

Section 1 of the Revised Rules of the CTA.²⁰ In *Lancaster*, the Court held that the CTA Division was within its authority to determine the scope of authority of the revenue officers named in the LOA considering that the issue raised therein involved the determination of the validity of the assessment, as in this case.²¹

Here, the Court rules that the issue of the validity of the assessment against GECC necessarily requires the determination of whether an LN is sufficient to comply with the requisites of due process in the issuance of the PAN and FAN, even though the parties had not raised the same in their pleadings nor memoranda. As will be discussed below, the Court finds that an LN cannot substitute the issuance of a valid LOA in making a valid assessment to hold GECC and/or respondent civilly liable to pay the assessment.

A taxpayer is still civilly liable to pay one's tax liability despite their acquittal.

In determining whether respondent should be held solidarily liable to pay the deficiency tax incurred by GECC, the Court first finds it necessary to clarify whether respondent's acquittal from the criminal charge against her necessarily affects respondent's civil liability. This is premised on the fact that petitioner partially moved for the reconsideration of respondent's civil liability upon the CTA Division's finding that petitioner failed to prove respondent's guilt beyond reasonable doubt.

In *Gaw v. Commissioner on Internal Revenue*,²² the Court, speaking through Justice Noel G. Tijam, held that "what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action."²³ It reiterated that "***the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.***"²⁴

Hence, in tax evasion cases, the acquittal of the taxpayer does not operate to discharge the taxpayer from paying taxes due to the government

²⁰ *Id.* at 639, citing Rule 14, Section 1 of A.M. No. 05-11-07-CJA. See also *Republic v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022 [Per J. J. Lopez, First Division]; and *Prime Mill Steel, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].

²¹ *Id.*

²² 836 Phil. 773 (2018) [Per J. Tijam, First Division].

²³ *Id.* at 788-789; citation omitted.

²⁴ *Id.* at 789; citation omitted, emphasis supplied.

because such duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment, as in this case.²⁵ Here, it is undisputed that respondent has been acquitted from the criminal charge against her. In this relation and considering petitioner's partial motion for reconsideration, it is clear that the issue with regard to the civil liability of GECC and/or respondent still subsists for the Court's determination.

Respondent cannot be held solidarily liable to pay the deficiency tax assessment.

In holding that respondent cannot be held civilly liable to pay the deficiency tax assessment of GECC, the CTA *En Banc* reasoned that: (a) the assessment is defective because of BIR's failure to convert the subject LN into an LOA; and (b) taxes assessed on corporations cannot be imposed upon the corporation's corporate officers. Here, the Court finds that the CTA *En Banc* did not err in ruling in favor of respondent, as will be explained below.

A letter notice cannot substitute a letter of authority.

As a requirement of due process, the Court in *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*,²⁶ speaking through Justice Jhosep Y. Lopez, held that a revenue officer must secure an LOA before proceeding with the further examination and assessment of the taxpayer. Otherwise stated, the absence of the LOA renders the examination and assessments null and void based on the violation of the respondent's right to due process.²⁷

In this relation, in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue (Medicard)*,²⁸ the Court, speaking through Justice Bienvenido L. Reyes, categorically ruled that the issuance of an LN to a taxpayer is not sufficient for the examination and assessment of a taxpayer's liability. Differentiating between an LN and an LOA, the Court held:

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically

²⁵ See *Republic v. Patanao*, 127 Phil. 105, 109 (1967) [Per J. Angeles, *En Banc*].

²⁶ G.R. No. 242670, May 10, 2021 [Per J. J. Lopez, Third Division].

²⁷ See *id.*

²⁸ 808 Phil. 528 (2017) [Per J. Reyes, Third Division].

requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. ***Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.*** Unfortunately, this was not done in this case.

Contrary to the ruling of the CTA en banc, ***an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made.*** The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.²⁹ (Emphases supplied)

Applying *Medicard*, a review of the records shows that there were no attempts on the part of the BIR to issue an LOA addressed to GECC and/or respondent to make a tax assessment against the corporation. As discussed in the facts of the case, the issuance of the PAN and FAN were only made pursuant to the issuance of an LN. Thus, the Court finds that respondent and GECC cannot be held civilly liable for the deficiency taxes, as an LN cannot effectively substitute an LOA – thereby rendering the issued PAN, FAN, and final letter of demand null and void. To rule otherwise would be tantamount to a violation of GECC and respondent's right to due process.

Respondent cannot be held solidarily liable to GECC's tax liability.

Even assuming that a valid assessment has been made against GECC, the Court finds that respondent cannot be made solidarily liable to pay GECC's deficiency tax despite being the latter's corporate officer.

²⁹ *Id.* at 544-545.

In *Proton Pilipinas Corporation v. Republic*,³⁰ the Court, speaking through Justice Minita Chico-Nazario, ruled that taxes are personal to the corporate taxpayer and may not be imposed upon its corporate officers – otherwise, to hold corporate officers liable would violate the principle that a corporation has personality separate and distinct from the persons constituting it.³¹ However, this is to distinguish from to the imposition of criminal liability against corporate taxpayers where corporate officers are held liable to suffer the criminal liability imposed upon the corporation, pursuant to Section 253(d) of the Tax Code.³²

In other words, a corporate officer's liability with respect to the acts of a corporation is dependent on the nature of the latter's liability. In cases of the civil liability to pay taxes, a corporate officer may not be held liable based on the principle of a corporation's separate juridical personality. On the other hand, a corporate officer may suffer the criminal penalty imposed on the corporation, provided that they are part of the list enumerated in Section 253(d) of the Tax Code.

Considering that the issue in the present case is limited to GECC's civil liability to pay the deficiency tax assessed against it, the Court agrees with the CTA *En Banc*'s ruling that respondent cannot be made liable over GECC's liability. As correctly observed by the CTA *En Banc*, records show that respondent was merely a corporate officer of GECC.

In view of the foregoing considerations, the Court finds no cogent reason to depart from the findings of the CTA *En Banc* in holding that respondent cannot be held civilly liable for the alleged deficiency taxes assessed against GECC considering that: (a) the deficiency assessment is void for lack of a valid LOA; and (b) GECC's liability cannot be imposed on respondent as a corporate officer.

ACCORDINGLY, the Petition for Review on *Certiorari* is **DENIED** for lack of merit. The assailed Decision dated July 30, 2020 and the Resolution dated May 27, 2021 of the Court of Tax Appeals *En Banc* in CTA EB Crim. No. 063 are hereby **AFFIRMED**.

³⁰ 535 Phil. 521 (2006) [Per J. Chico-Nazario, First Division].

³¹ *Id.* at 537; citation omitted.

³² Section 253. *General Provisions.* –

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

SO ORDERED.


ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:

On leave but left his vote by Alexander
MARVIC M.V.F. LEONEN
Senior Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice
Acting Chairperson


MARION LOPEZ
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

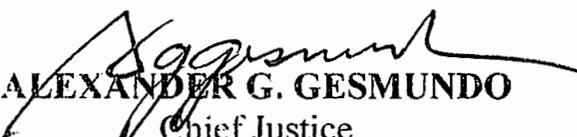
ATTESTATION

I attest 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.


AMY C. LAZARO-JAVIER
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Constitution, Article VIII, Section 13 and the Acting Division Chairperson's Attestation, 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