REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2671** (CTA Case No. 9018)
- versus -	Present: **DEL ROSARIO,** ***P.J.,*** **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
FIRST PHILIPPINE INDUSTRIAL PARK, INC., Respondent.	Promulgated: FEB 28 2024 4:05

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) pursuant to Section 11[2] of

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[1] Filed on 07 September 2022, *Rollo*, pp. 6-21.

[2] **Sec. 11.** Section 18 of the same Act is hereby amended as follows:
SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* - No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc.*

Republic Act (**RA**) No. 9282.[3] It seeks to reverse and set aside the Decision dated 18 March 2022[4] (**assailed Decision**) and the Resolution dated 20 July 2022[5] (**assailed Resolution**) of this Court's Third Division[6] in CTA Case No. 9018, entitled *"First Philippine Industrial Park, Inc. v. Commissioner of Internal Revenue"*. Both assailed Decision and Resolution granted respondent First Philippine Industrial Park, Inc.'s (**respondent**'s) prior Petition for Review before the Third Division and cancelled the Final Decision on Disputed Assessment[7] (**FDDA**) with attached Assessment Notices[8] (**AN**s) and the Formal Letter of Demand (**FLD**)[9] that the Bureau of Internal Revenue (**BIR**) had issued against it.

PARTIES OF THE CASE

Petitioner is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended or other laws or portions thereof administered by the BIR.[10] He or she holds office at the BIR, National Office Building, BIR Road, Diliman, Quezon City.

Respondent, on the other hand, is a domestic corporation primarily engaged in the business of acquiring, developing and managing industrial estates. It is registered with the Philippine Economic Zone Authority (**PEZA**) as the developer/owner of First Philippine Industrial Park (**FPIP**), a special economic zone.[11] Its principal office is located at the Administration Building, FPIP-Special Economic Zone, R.S. Diaz Avenue cor. 1st Street, Barangay Sta. Anastacia, Sto. Tomas, Batangas.[12]

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3 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

4 Division Docket, Volume IV, pp. 1808-1821.

5 Id., pp. 1883-1889.

6 Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred by (Ret.) Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro.

7 Dated 07 May 2015, Exhibit "R-16", BIR Records, Folder 2, pp. 490-492.

8 Dated 07 May 2015, Exhibits "R-17", "R-17-A", "R-17-B", "R-17-C", "R-17-D", id., pp. 478-482.

9 Dated 30 July 2014, Exhibit "P-3"/Exhibit "R-13", id., pp. 378-380.

10 Paragraph 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 499.

11 Par. 2, id., pp. 499-500.

12 See Amended Articles of Incorporation (AOI) of First Philippine Industrial Park, Inc. id., Volume III, p. 1282.

FACTS OF THE CASE

On 28 May 2010, respondent received Letter of Authority (**LOA**) No. LOA-116-2010-00000055 dated 14 May 2010[13], authorizing Revenue Officers (**ROs**) Walter Batoon (**Batoon**), Reynoso Bravo (**Bravo**), Daniella Gabaon (**Gabaon**), Julieta Tubilla (**Tubilla**), Maribel Serafica (**Serafica**), Olivia Sison (**Sison**), Aileen Grace Parra (**Parra**), Laurel Eleda (**Eleda**), Group Supervisors (**GSs**) Erlinda Ulgado (**Ulgado**) and Ana Marie Perez (**Perez**) of Large Taxpayer (**LT**) Audit Division 1, to examine respondent's books of accounts for all internal revenue taxes for the period of 01 January 2009 to 31 December 2009, or for taxable year (**TY**) 2009.

During the assessment process, respondent's Assistant Vice-President for Finance, Victor Z. Montinola (**AVP Montinola**), executed a series of Waivers of the Defense of Prescription (**waivers**) under the Statute of Limitations of the NIRC, as follows:

a. On 05 September 2012, respondent executed the first (**1st**) waiver to extend the period of assessment until 31 December 2012. It was accepted by then Officer-in-Charge - Assistant Commissioner for LT Services Alfredo V. Misajon (**OIC-ACIR Misajon**) on 25 September 2012.[14]

b. On 19 December 2012, respondent executed the second (2nd) waiver to extend the period of assessment until 30 June 2013. Then OIC-ACIR Misajon accepted it on 21 December 2012.[15]

c. On 15 January 2013, respondent executed a third (3rd) waiver to extend the period of assessment until 31 December 2013. Then OIC-ACIR Misajon accepted it on 25 January 2013.[16]

d. On 19 September 2013, respondent executed a fourth (4th) waiver to extend the period of assessment until 30 June 2014. Then OIC-ACIR Misajon accepted it on 02 October 2013.[17]

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13 Exhibit "P-42"/Exhibit "R-1", BIR Records, Folder 1, p. 300.
14 Exhibit "R-4", id., pp. 391-392.
15 Exhibit "R-6", id., pp. 393-394.
16 Exhibit "R-7", id., p. 400.
17 Exhibit "R-9", id., p. 404.

e. On 23 January 2014, respondent executed a fifth (5th) waiver to extend the period of assessment until 31 December 2014. Then OIC-ACIR Misajon accepted it on 28 January 2014.[18]

In the *interim*, or on 11 December 2012, respondent received the Notice of Informal Conference (**NIC**) dated 26 November 2012[19] (with the attached Details of Discrepancies).

Thereafter, or on 01 March 2013, petitioner, through the Chief of Regular LT Audit Division 1, Cesar D. Escalada (**Chief Escalada**), issued Memorandum of Assignment (**MOA**) No. LOA-116-2013-0422 dated 25 February 2013[20], assigning RO Josa C. Gomez (**Gomez**) and GS Olivia F. Aviles (**Aviles**) to continue the audit and/or investigation of respondent's books of account for TY 2009 and to replace the previously assigned ROs and GSs.

Later, on 24 September 2013, petitioner issued a Preliminary Assessment Notice (**PAN**) Part I[21], with Details of Discrepancies, and PAN Part II[22], which both found respondent liable for alleged deficiency income tax (**IT**), value-added tax (**VAT**), withholding tax on compensation (**WTC**), expanded withholding tax (**EWT**), final withholding tax (**FWT**), documentary stamp tax (**DST**) and compromise penalty. On 09 October 2013, in disagreement with the deficiency assessments, respondent filed its Reply to the PAN.[23]

On 11 June 2014, petitioner issued a revised PAN Part I which reduced the deficiency assessments of VAT, WTC, EWT and FWT. The DST liability, on the other hand, was removed.[24]

On 25 June 2014, respondent filed its Reply to the Revised PAN.[25] Acting on the Reply, petitioner issued the FLD[26] with Details of

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18 Exhibit "R-11", id., p. 406.
19 Exhibit "R-5", id., pp. 386-389.
20 Exhibit "R-8", id., p. 403.
21 Exhibit "P-43"/"R-10", id., pp. 450-456.
22 Id., pp. 448-449.
23 Exhibit "P-44", id., Folder 2, pp. 267-270.
24 Exhibit "P-45"/"R-12", id., pp. 316-318.
25 Exhibit "P-46", Division Docket, Volume III, pp. 1364-1367.
26 Supra at note 9.

Discrepancies and the ANs[27], all dated 30 July 2014. Unable to agree with the BIR's issuances, respondent filed its Protest (by way of a request for reconsideration) against the FLD on 29 August 2014.[28]

After the lapse of 180 days from the time it filed the Protest, respondent did not receive petitioner's response. Thus, within 30 days from the lapse of the 180-day period (or on 27 March 2015), respondent (then petitioner) filed its Petition for Review[29] before this Court. The same was docketed as CTA Case No. 9018 and it was raffled to the Court's Third Division.

While the case was pending before the Third Division, petitioner issued the FDDA[30] with Details of Discrepancies[31] and the ANs[32] on 07 May 2015. The FDDA denied the Protest to the FLD and demanded the payment of the alleged deficiency taxes of ₱13,658,919.62. Subsequently, on 01 June 2015, petitioner (then respondent) filed his or her Answer to respondent's Petition for Review before this Court.[33]

The Pre-Trial Conference was set on 15 September 2015.[34] Petitioner filed his or her Pre-Trial Brief on 07 September 2015[35] while respondent filed its Pre-Trial Brief on 10 September 2015.[36] After the Pre-Trial Conference[37], the parties submitted their Joint Stipulation of Facts and Issues (**JSFI**) on 13 October 2015.[38] The Court then issued the Pre-Trial Order[39] on 16 November 2015 which adopted the JSFI and set the hearing dates for the reception of evidence.

During the trial proper, respondent presented its witnesses, namely: (1) AVP Montinola; (2) Precila B. Belgira (**Belgira**), the Senior Land Acquisition Manager; (3) Lydia Potestades (**Potestades**), FPIP's

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27 Exhibits "R-14", "R-14-A", "R-14-B", "R-14-C" and "R-14-D", BIR Records, Folder 2, pp. 368-372.
28 Exhibit "P-47", Division Docket, Volume III, pp. 1377-1422.
29 Id., Volume I, pp. 10-61.
30 Supra at note 7.
31 Exhibit "R-16-A", BIR Records, pp. 483-488.
32 Supra at note 8.
33 Division Docket, Volume I, pp. 310-325.
34 See Order dated 22 July 2015, id., p. 432.
35 Id., pp. 435-440.
36 Id., pp. 467-476.
37 See Resolution dated 23 September 2015, id., pp. 488-489.
38 Id., Volume II, pp. 499-507.
39 Id., pp. 528-535.

Treasury Manager; and, (4) Ma. Fedna B. Parallag (**Parallag**), the Court-commissioned Independent Certified Public Accountant (**ICPA**).

AVP Montinola was the first to assume the witness stand where he identified his Judicial Affidavit[40] and testified that: (1) the FDDA is void for having been issued beyond the three (3)-year prescriptive period to assess under the NIRC of 1997, as amended; (2) all the waivers are defective since he was not duly authorized to sign them on respondent's behalf; (3) OIC-ACIR Misajon is not petitioner's authorized representative; and, (4) there is no factual basis for the FWT deficiency assessment since the marketing services (where the assessment was based) were performed outside the Philippines. Expounding thereon, AVP Montinola stated that based on a marketing agreement with Sumitomo Corporation, the latter shall secure potential investors for the former through its marketing services conducted outside of the Philippines. As compensation, respondent pays a fixed monthly fee for the said services.

On cross-examination, AVP Montinola stated that when he signed the waivers, he was unaware of the need to secure the approval of respondent's Board of Directors (**BOD**) to validly execute the waivers. He, however, explained that there were some acts that he could do without the BOD's assent. When the Court inquired about petitioner's expenses for the marketing services, AVP Montinola answered that Sumitomo's services of obtaining potential investors were performed mainly in Japan.[41]

On redirect examination, AVP Montinola declared that he executed the waivers to accommodate the ROs' request for additional time to conduct the investigation.[42] No re-cross examination was conducted.

As for Potestades, she declared, through her Judicial Affidavit[43], that: (1) respondent filed all tax returns for TY 2009; (2) it was after the execution of four (4) waivers that she communicated with petitioner's RO; (3) during the assessment, respondent received the PAN, Revised

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40 Exhibit "P-64", Judicial Affidavit (of Mr. Victor Z. Montinola), id., pp. 662-671.
41 TSN dated 08 March 2016, pp. 13-18.
42 Id., pp. 18-22.
43 Exhibit "P-65", Judicial Affidavit (of Ms. Lydia Potestades), Division Docket, Volume II, pp. 722-737.

PAN, and FLD; (4) upon receipt of the said documents, respondent filed its Reply to the PAN, Reply to the Revised PAN, and Protest to the FLD, respectively; (5) after the lapse of the 180-day period and without any response to its Protest to the FLD, respondent filed its prior Petition for Review within 30 days from the end of the 180-day period; and, (6) after 41 days of filing the petition, respondent received the FDDA.

On cross-examination[44], Potestades explained that she only participated in the execution of the 5th waiver. On redirect examination, she further clarified that she has no knowledge or participation in the execution of the 1st to 4th waivers.[45] No re-cross examination was conducted.

As for Belgira, she testified, through her Judicial Affidavit[46], that: (1) the FDDA is void for having been issued beyond the prescriptive period to assess under the NIRC of 1997, as amended; (2) she explained that petitioner, through RO Bravo, communicated with respondent only after two (2) years from the issuance of the LOA; (3) RO Bravo's communication consisted of an email containing a copy of the waiver that respondent executed; (4) after the execution of the 1st waiver, the BIR issued the NIC; (5) petitioner's delayed actions violated Revenue Memorandum Order (**RMO**) No. 62-10[47] which mandates the issuance of a report within 180 days from the LOA's release; and, (6) the manual LOA was not replaced by an electronic LOA (**eLOA**) in violation of the RMO No. 69-10.[48]

On cross-examination[49], Belgira declared that after she received the email, she read the contents of the waiver and witnessed the execution thereof. On redirect examination[50], she clarified that the waiver which RO Bravo sent extended the period of assessment to until 31 December 2013. Upon the Court's query, she also explained that it was petitioner, through the ROs, who requested respondent to execute the waivers.[51] No re-cross examination was conducted.

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44 TSN dated 25 July 2016, pp. 6-8.
45 Id., p. 11.
46 Exhibit "P-66", Division Docket, Volume II, pp. 626-636.
47 Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.
48 Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices and Memoranda of Assignment.
49 TSN dated 07 February 2017, pp. 4-7.
50 Id., pp. 7-9.
51 Id., pp. 9-18.

Parallag was the last to take the witness stand. In her Judicial Affidavit[52], she declared that: (1) she is the court-commissioned ICPA; (2) she performed audit procedures to verify documents in relation to respondent's petition to set aside petitioner's deficiency assessments; (3) in her examination, she verified the execution of five (5) waivers and noted that AVP Montinola executed them without any notarized written authority to do so; (4) the results of her audit were summarized in the ICPA Report dated 27 February 2016[53]; and, (5) based on her audit, she provided two (2) recommendations: *first*, on the assumption that the assessments are prescribed, the same should be cancelled; and *second*, on the assumption that they are valid, respondent's estimated total basic deficiency taxes composed of IT, VAT, WTC, EWT and FWT amounts to ₱1,281,786.96.

During her cross-examination[54], Parallag explained that respondent failed to provide any notarized Board Resolution to prove that AVP Montinola was authorized to execute the waivers. On the audit procedure she had performed, Parallag stated that the expenses (in relation to the assessment) were checked individually. No redirect examination was conducted.

Later, Belgira and Parallag again testified on their Supplemental Judicial Affidavits[55] to identify additional documents which respondent had claimed to be relevant to the case.[56] Subsequently, respondent filed its Formal Offer of Evidence[57] (**FOE**) on 15 March 2018; to which petitioner filed his or her Comment thereto.[58] In a Resolution dated 11 April 2019[59], the Third Division denied some of respondent's exhibits.[60]

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52 Exhibit "P-68", Judicial Affidavit (of Ms. Ma. Fedna B. Parallag, CPA), Division Docket, Volume III, pp. 999-1017.

53 Filed on 26 February 2016, id., Volume II, pp. 565-621.

54 TSN dated 07 November 2016, pp. 12-16.

55 Exhibit "P-113", Supplemental Judicial Affidavit [of Ms. Precila B. Belgira], Division Docket, Volume III, pp. 1121-1125; Exhibit "P-114", Supplementary Judicial Affidavit [of Ms. Ma. Fedna B. Parallag, CPA], id., pp. 1145-1150.

56 See Order dated 05 March 2018, id., pp. 1156-a-1156-b.

57 Id., pp. 1230-1276.

58 See Comment (on Petitioner's Formal Offer of Evidence) filed on 26 March 2018, id., pp. 1465-1466.

59 Id., Volume IV, pp. 1550-1559.

60 The denied exhibits are the following:

1. Exhibit "P-87" - for failure to present its original for comparison;
2. Exhibits "P-104-PPPP", "P-104-WWWW", "P-107-HHHH", "P-109-EE", "P-109-FF", "P-109-GG", "P-109-HH", "P-109-II", "P-109-JJ", "P-109-KK", "P-109-UU", "P-109-VV", "P-109 WW", "P-109-XX", "P-109-YY", "P-109-ZZ", "P-109-AAA", "P-109-CCC", "P-109-DDD", "P-109-EEE", "P-109-FFF", "P-109-GGG", "P-109-HHH", "P-109-III", "P-109-KKK",

Respondent moved for partial reconsideration of the denied exhibits.[61] Petitioner did not file any comment within the allowed period.[62] Subsequently, the Court admitted some of respondent's exhibits except those that did not correspond with the scanned documents.[63]

After respondent rested its case, petitioner presented his or her lone witness, GS Aviles, who testified that: (1) respondent's books of account for TY 2009 was subjected to an audit pursuant to LOA No. LOA-116-2010-00000055; (2) she was reassigned to continue the audit of respondent's books pursuant to MOA No. LOA-116-2013-0422; (3) during the course of the audit, respondent executed waivers which petitioner accepted; and, (4) based on her investigation, she recommended the issuance of the PAN, Revised PAN, FLD and FDDA.

On cross-examination[64], GS Aviles confirmed that her name was not included in LOA No. LOA-116-2010-00000055 and she was reassigned to continue the audit by virtue of MOA No. LOA-116-2013-0422 signed by Chief Escalada. She also declared that there were no attached Board Resolutions for the executed waivers.

On redirect examination, GS Aviles stated that respondent never questioned her authority to conduct the audit nor the authority of AVP Montinola to sign the waivers.[65] No further examinations were conducted. As to the Court's query on whether the other ROs who performed the audit (ROs Gomez, Felina Quiambao and Juvy Dela Peña) were included in the original LOA, GS Aviles replied in the negative.[66]

"P-109-LLL", "P-109-MMM", "P-109-NNN", "P-109-OOO", "P-109-PPP", "P-109-QQQ", "P-109-SSS", "P-109-TTT", "P-109-UUU", "P-109-VVV", "P-109-WWW", "P-109-XXX" and "P-109-YYY" - for not being found in the records of the case; and,

3. Exhibits "P-104-SSSS", "P-104-TTTT", "P-104-UUUU", "P-104-VVVV", "P-109-B", "P-109-C", "P-109-D", "P-109-E", "P-109-F", "P-109-H", "P-109-I", "P-109-J", "P-109-K", "P-109-L", "P-109-M", "P-109-N", "P-109-O", "P-109-P", "P-109-Q", "P-109-R", "P-109-U", "P-109-V", "P-109-Y", "P-109-Z", "P-109-AA", "P-109-DD", "P-109-TT", "P-109-BBB", "P-109-JJJ" and "P-109-RRR" - for failure of the offered exhibits to correspond with the document scanned.

[61] See Motion for Partial Reconsideration [Re: Resolution dated April 11, 2019] filed on 17 May 2019, Division Docket, Volume IV, pp. 1560-1568.

[62] See Records Verification Report dated 07 August 2018, id., p. 1571.

[63] See Resolution dated 26 June 2020, id., pp. 1585-1591. The Court still denied Exhibits "P-109-UU", "P-109-VV", "P-109-WW", "P-109-XX", "P-109-YY", "P-109-ZZ", "P-109-AAA", "P-109-CCC", "P-109-DDD", "P-109-EEE", "P-109-FFF", "P-109-GGG", "P-109-HHH", "P-109-III", "P-109-KKK", "P-109-LLL", "P-109-MMM", "P-109-NNN", "P-109-OOO," "P-109-PPP", "P-109-QQQ", "P-109-SSS", "P-109-TTT", "P-109-UUU", "P-109-VVV", "P-109-WWW", "P-109-XXX" and "P-109-YYY" for failure of the offered exhibits to correspond with the documents scanned.

[64] TSN dated 20 October 2020, pp. 4-9.

[65] Id., pp. 9-11.

[66] Id., p. 11.

On 30 October 2020, petitioner filed his or her FOE.[67] After respondent filed its Comment[68], the Third Division admitted petitioner's exhibits and directed the parties to file their respective memoranda.[69] Petitioner filed his or her Memorandum on 01 March 2021[70] while respondent filed its Memorandum on 22 March 2021.[71] On 25 May 2021, the Third Division submitted the case for decision.[72]

Later, or on 18 March 2022, the Third Division promulgated its assailed Decision[73] cancelling and setting aside petitioner's deficiency assessments against respondent. The dispositive portion reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **GRANTED.**
>
> Accordingly, the deficiency tax assessments embodied in the FLD-FAN dated July 30, 2014 issued against [respondent] for taxable year 2009, and the FDDA dated May 7, 2015, with the accompanying *Audit Result/Assessment Notices*, indicating [respondent's] supposed deficiency tax liabilities in the aggregate amount of ₱13,658,919.62, including surcharge, interests, and compromise penalties, for the same taxable year, are all **CANCELLED** and **SET ASIDE.**
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> [Petitioner] is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from [respondent].
>
> **SO ORDERED.**
>
> ...

In resolving respondent's Petition for Review, the Third Division ruled that an MOA may authorize the replacement or reassignment of the previously assigned officers with new ROs, provided that an authorized person signed it. It held that, under RMO No. 29-07[74], the authorized persons to sign an MOA are the CIR, Regional Director (**RD**), ACIR and the Head Revenue Executive Assistant (**HREA**). In this case, however, the MOA revealed that it was signed by Chief Escalada.

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67 See [Petitioner's] Formal Offer of Evidence, Division Docket, Volume IV, pp. 1688-1693.
68 See Comment and/or Opposition (To [Petitioner's] Formal Offer of Evidence) filed on 04 December 2020, id., pp. 1707-1715.
69 See Resolution dated 20 January 2021, id., pp. 1717-1719.
70 Id., 1720-1745.
71 Memorandum (For [Respondent] First Philippine Industrial Park, Inc.), id., pp. 1748-1804.
72 See Resolution dated 25 May 2021, id., p. 1806.
73 Supra at note 4.
74 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

According to the Third Division, Chief Escalada, as Chief of Regular LT Audit Division 1, had no power to authorize the examination of respondent's books. As a result, the assessments against respondent were void for lack of authority of RO Gomez and GS Aviles to continue the audit.

Expectedly, petitioner filed his or her Motion for Reconsideration[75] (**MR**) on 21 April 2022. Unfortunately, the Third Division remained unswayed and still denied relief to petitioner.[76] Applying the principle laid down in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[77] (**McDonald's**), it ruled that a separate or amended LOA should have been issued when RO Gomez and GS Aviles replaced the previously assigned ROs. Therefore, absent a new or amended LOA, the assessments against respondent are null and void.

The Third Division also reiterated the fact that the MOA was not valid as to authorize the examination of respondent's books (since it was not issued by one of the authorized persons under the relevant RMOs). Further, the Third Division pointed out that petitioner cannot collect taxes based on a void assessment.

Aggrieved by the Third Division's actions, petitioner filed his or her Petition for Review before the Court *En Banc* on 07 September 2022. After respondent filed its Comment[78], the case was referred to the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for mediation.[79] The parties, however, decided not to have the case mediated.[80] Subsequently, the instant petition was submitted for decision.[81]

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75 See Motion for Reconsideration [re: Decision dated 18 March 2022], Division Docket, Volume IV, pp. 1823-1838.
76 Supra at note 5.
77 G.R. No. 242670, 10 May 2021.
78 See Comment/Opposition (to the Petition for Review dated September 6, 2022), *rollo*, pp. 54-71.
79 See Resolution dated 06 December 2022, id., pp. 74-75.
80 See PMC-CTA Form 6 – No Agreement to Mediate dated 07 February 2023, id., p. 76.
81 See Resolution dated 01 March 2023, id., pp. 78-80.

ISSUE

Before Us, the main issue for resolution is —

WHETHER REVENUE OFFICER (RO) JOSA C. GOMEZ AND GROUP SUPERVISOR (GS) OLIVIA F. AVILES HAVE THE PROPER AUTHORITY TO CONTINUE THE AUDIT AND EXAMINATION OF THE BOOKS OF ACCOUNT OF RESPONDENT FIRST PHILIPPINE INDUSTRIAL PARK, INC.'S INTERNAL REVENUE TAX LIABILITIES FOR TAXABLE YEAR (TY) 2009.

In support of the above issue, petitioner contends that under Section 7[82] of the NIRC of 1997, as amended, the powers which the CIR may *not* delegate have been delineated clearly. Since the issuance of the MOA is not in the list (of those that could not be delegated), the same is deemed allowed following the principle of *expressio unius est exclusio alterius.*[83]

In relation to the foregoing argument, petitioner avers that under RMO No. 8-06[84], an MOA shall be issued by the Head of the Investigating Office; while under RMO No. 62-10[85], an MOA shall follow the required format. Hence, the MOA which Chief Escalada signed complied with the requisites under the said issuances.

Petitioner further claims that the issuance of a new LOA is not a requirement when it is the Office of the CIR that conducts the audit and/or investigation of taxpayer's books pursuant to Section 6(A)[86] of the NIRC of 1997, as amended. As the original LOA was issued by the ACIR of the LTS, it is not required to issue a new or amended LOA for the continuation of the audit of respondent's books for TY 2009.

Lastly, petitioner alleges that the Third Division erred in prohibiting him or her to collect the deficiency tax assessments. Citing

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82 SEC. 7. *Authority of the Commissioner to Delegate Power.* – ...

83 Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others.

84 Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

85 Supra at note 47.

86 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. – ...

Section 218[87] of the NIRC of 1997, as amended and *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines, et al.*[88], he or she maintains that courts are barred from granting an injunction to restrain the collection of taxes absent strong evidence to show that respondent will be prejudiced or suffer irreparable injury with the collection thereof.

Assuming there exists a ground to suspend the collection, the Third Division erred in not requiring respondent to file a bond or make a deposit. According to petitioner, a bond was necessary since the assailed Decision of 18 March 2022 and assailed Resolution of 20 July 2022 are not yet final and executory.

Respondent, on the other hand, counters that the arguments in the instant petition are mere reiterations of those that the Third Division had passed upon in the assailed Decision and assailed Resolution. Notwithstanding all the arguments that petitioner forwarded, he or she still failed to prove that RO Gomez and GS Aviles were authorized with an LOA to conduct the audit of respondent's books.

Relying on the cases of *McDonald's*[89], and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[90] (**Medicard**), respondent reiterates that an LOA is the authority given to the appropriate RO to perform assessment functions, and the issuance thereof stems from the power that belongs only to the CIR or his or her authorized representatives. Hence, a resulting assessment from an audit that was conducted without a valid LOA is inevitably void, such as in this case.

RULING OF THE COURT *EN BANC*

Before the Court *En Banc* proceeds to discuss the issues raised, We deem it propitious to state at the outset that the instant petition was filed on time.

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87 SEC. 218. *Injunction not Available to Restrain Collection of Tax.* – …

88 G.R. No. 158540 (Resolution), 03 August 2005.

89 Supra at note 77.

90 G.R. No. 222743, 05 April 2017.

As the records show, petitioner received the assailed Resolution of 20 July 2022 on 08 August 2022. Pursuant to Section 3(b)[91], Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**)[92], counting fifteen (15) days from the receipt of the assailed Resolution, petitioner had until 23 August 2022 to file the instant petition. On even date, petitioner filed a Motion for Extension to File Petition for Review[93] requesting for an additional 15 days within which to file the petition. *Per* the Court *En Banc*'s approval[94] and within the extended period, petitioner filed the instant petition on 07 September 2022. Thus, We have jurisdiction over the case.

Proceeding to the merits of the case, it is worth mentioning that the instant Petition for Review contains a mere rehash of the basic issues raised in the prior MR which were already exhaustively passed upon, duly considered and resolved in the assailed Resolution and assailed Decision. Nevertheless, for emphasis, We will oblige to discuss the main points that led us to ultimately decide on the denial of the instant petition.

In *seriatim*, We set forth below the reasons for the denial.

REVENUE OFFICER (RO) JOSA C. GOMEZ AND GROUP SUPERVISOR (GS) OLIVIA F. AVILES WERE NOT DULY AUTHORIZED TO CONTINUE WITH THE EXAMINATION AND INVESTIGATION OF RESPONDENT'S BOOKS FOR TAXABLE YEAR (TY) 2009.

Responding to the central issue in this present petition and contrary to petitioner's claim (that an MOA sufficiently clothes an RO with authority to examine and investigate a taxpayer's tax liability, or an

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91 **SEC. 3**. *Who may appeal; period to file petition.*

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

92 A.M. No. 05-11-07-CTA.

93 *Rollo*, pp. 1-3.

94 See *En Banc* Minute Resolution dated 26 August 2022, id., p. 5.

LOA is not required in audits performed by the Office of the CIR), the Court *En Banc* finds that the MOA did not validly vest unto RO Gomez and GS Aviles any authority to continue with respondent's audit.

Consistently, We have held that the RO tasked to examine the books of accounts of taxpayers must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

> ...
>
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> > (A) *Examination of Return and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative** may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided*, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[95]
>
> ...

Section 10(c) of the NIRC of 1997, as amended, provides:

> ...
>
> **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[.][96]
>
> ...

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95 Emphasis supplied.
96 Emphasis supplied.

Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books of accounts must be armed with an LOA, *viz*:

> ...
>
> **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.[97]
>
> ...

Under the said provision, an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon petitioner CIR.

Corollarily, Section D(4) of RMO No. 43-90[98] dated 20 September 1990, provides:

> ...
>
> D. Preparation and issuance of L/As.
>
> ...
>
> 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.[99]
>
> ...

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97 Emphasis supplied.

98 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated 20 September 1990.

99 Emphasis supplied.

From the foregoing, only the CIR and his or her duly authorized representatives (*i.e.*, Deputy Commissioners, the Revenue [RDs], and such other officials as may be authorized by the CIR) may issue the LOA. Here, the authority of RO Gomez and GS Aviles merely sprung from an MOA that Chief Escalada issued. It is also noted that the MOA No. LOA-116-2013-0422 dated 25 February 2013 and the corresponding change in the RO and GS (to continue with respondent's audit) happened prior to the issuance of the PAN, Revised PAN and FAN on 24 September 2013, 11 June 2014, and 30 July 2014, respectively.

In addition, **petitioner's own rules, specifically Section C(5) of RMO No. 43-90**[100]**, mandate the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.** It reads —

> ...
>
> C. Other policies for issuance of L/As.
>
> ...
>
> 5. **Any reassignment/transfer of cases to another RO(s),** and revalidation of [LOAs] which have already expired, **shall require the issuance of a new [LOA]**, with the corresponding notation thereto, including the previous [LOA] number and date of issue of said [LOAs].[101]
>
> ...

Also, in the case of *McDonald's*[102], the Supreme Court has already highlighted the difference between an MOA and an LOA in this wise:

> ...
>
> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers**. However, **notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not**

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100 Supra at note 98.
101 Emphasis and underscoring supplied.
102 Supra at note 77; Emphasis supplied.

> **issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**
>
> 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 of a validly issued LOA. 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 equivalent 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.**
>
> ...

Incidentally, while it may be gainsaid that *McDonald's* does not do away with the reassignment by the CIR himself or herself, such is not the case here.

In *Medicard*[103], the Supreme Court underscored the importance of an LOA, *viz*:

> ...
>
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers**

103 Supra at note 90; Citation omitted and emphasis supplied.

> **or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. ...**
>
> ...
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**
>
> ...
>
> ... 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 Supreme Court, citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[104], went on to state:

> ...
>
> 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.**
>
> ...

Further, the Supreme Court in *McDonald's*[105] concluded that:

> ...
>
> In summary, **We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and**

[104] G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

[105] Supra at note 77; Emphasis and underscoring supplied.

> **substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.**
>
> ...

In the case at bar, the records indisputably show that RO Gomez and GS Aviles continued the audit and/or investigation of respondent's books of account solely by virtue of an MOA.[106] Furthermore, only Chief Escalada (an official who is *not* among those authorized to issue LOAs pursuant to existing laws and regulations, particularly Section 13[107] in relation to Section 10(c)[108] of the NIRC of 1997, as amended, Item D(4) of RMO No. 43-90[109] and Item II(2)[110] of RMO No. 29-07[111]) signed the said MOA.

As earlier stated, RO Gomez and GS Aviles could not be deemed to have been validly clothed with the proper authority to continue the audit and recommend the issuance of the assessments against respondent. Considering the absence of a new and valid LOA authorizing RO Gomez and GS Aviles to examine respondent's books of accounts and other accounting records (as a result of the reassignment/transfer of the case to them), the deficiency tax assessments issued against respondent are inescapably void.

Lastly, We do not share petitioner's sentiment that We should have required respondent to post or file a surety bond as he or she was prohibited from collecting taxes. It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment. This, in turn, proceeds from the basic truism that a void assessment bears no valid

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106 Supra at note 20.
107 Supra at pp. 15-16.
108 Supra at p. 15.
109 Supra at p. 16.
110 **II. AUDIT POLICIES AND GUIDELINES.**
...
2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/ Head Revenue Executive Assistants.
111 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

fruit.[112] As the Third Division correctly ruled, there is no valid or legal basis for the collection of deficiency taxes in the instant case.[113]

WHEREFORE, with the foregoing, petitioner Commissioner of Internal Revenue's Petition for Review filed on 07 September 2022 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 18 March 2022 and Resolution dated 20 July 2022, of the Third Division in CTA Case No. 9018, entitled *First Philippine Industrial Park, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

Accordingly, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ENJOINED** from pursuing any actions against respondent First Philippine Industrial Park, Inc. relative to herein case.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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112 *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, 12 September 2022.

113 Page 7 of the Resolution dated 20 July 2022, supra at note 5.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON OFFICIAL BUSINESS

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ON OFFICIAL BUSINESS

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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