REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA *EB* No. 2243** (CTA Case No. 9067)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID**, *JJ.*
FIRST PHILIPPINE POWER SYSTEMS, INC., Respondent.	
	Promulgated: FEB 03 2022 2:06 pm

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* posted by the Commissioner of Internal Revenue (CIR) on June 30, 2020 and received by the Court on July 8, 2020,[1] which seeks to reverse and set aside the Decision dated September 9, 2019 and Resolution dated February 14, 2020[2], both rendered by the Special Third Division of this Court (Court in Division) in CTA Case No. 9067, entitled *"First Philippine Power Systems, Inc. vs. Commissioner of Internal Revenue."*

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[1] EB Docket, pp. 7-32.
[2] EB Docket, pp. 39 to 66 and pp. 68 to 74, respectively.

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We quote the dispositive portions of the assailed Decision and Resolution as follows:

Decision dated September 9, 2019:

"**WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED.** Accordingly, the Final *(sic)* Letter of Demand and Final Assessment Notice for deficiency income tax, value-added tax, expanded withholding tax, final tax, documentary stamp tax and miscellaneous taxes, inclusive of interest, surcharge and penalties for the taxable year (TY) 2009, in the total amount of P17,236,413.95 are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED."

Resolution dated February 14, 2020:

"**WHEREFORE,** premises considered, respondent's Motion for Reconsideration (Re: Decision dated 09 September 2019) is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner CIR is the duly appointed head of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. His principal office address is at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with legal processes of this Court.

Respondent First Philippine Power Systems, Inc, is a domestic corporation registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Enterprise and primarily engaged in the business of supplying dry-type transformers to global manufacturers of uninterrupted power supply devices and to original equipment manufacturers, as well as to domestic, commercial, and industrial establishments.[3]

THE FACTS

On May 28, 2010, a Letter of Authority (LOA) No.116-2010-00000057 dated May 14, 2010 was issued by then CIR, Joel Tan Torres, authorizing revenue officers (ROs) Walter Batoon, Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Henry Manalo and Group Supervisor (GS) Erlinda Ulgado and Marion Cabance, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for taxable year (TY) 2009.

During the audit examination of respondent's accounting records, both parties executed several Waivers of the Defense of Prescription (Waivers) to extend the assessment periods for TY 2009.

On May 23, 2014, petitioner issued a Preliminary Assessment Notice (PAN) which respondent received on even date.

Respondent filed a protest against the PAN on June 6, 2014.

On June 16, 2014, respondent received a Formal Letter of Demand (FLD) with Final Assessment Notices (FLD/FANs) from petitioner.

On July 15, 2014, respondent filed a protest by way of a Request for Reinvestigation against the FLD/FANs and submitted documents in support thereof, on September 12, 2014.

On May 7, 2015, a Final Decision on Disputed Assessment (FDDA) was issued by petitioner which respondent received on May 12, 2015. The FDDA reiterated the deficiency assessments for TY 2009 in the total amount of Php17,236,413.95 consisting

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[3] Parties' Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, pp. 305-313.

of the following taxes:

1. Income Tax;
2. Value-added Tax (VAT);
3. Withholding Tax on Compensation (WC);
4. Expanded Withholding Tax (EWT);
5. Final Withholding Tax (FT);
6. Documentary Stamp Tax (DST); and
7. Miscellaneous Taxes.

On June 11, 2015, respondent filed a Petition for Review with the Court and was raffled to the Special Third Division and docketed as CTA Case No. 9067 entitled *"First Philippine Power Systems, Inc. vs. Commissioner of Internal Revenue"*

On September 1, 2015, petitioner filed his Answer to the Petition for Review reiterating the grounds for the denial embodied in the FDDA.

On October 16, 2015, petitioner and respondent simultaneously filed their pre-trial briefs.

The pre-trial conference was held on February 2, 2016

On February 17, 2016, the parties filed their Joint Stipulation of Facts and Issues (JSFI) after which a Pre-Trial Order was issued by the Court on March 31, 2016.

On September 7, 2016, respondent filed its Formal Offer of Evidence.

On November 24, 2016, the Court issued a Resolution admitting all of respondent's exhibits.

On April 18, 2018, petitioner filed his Formal Offer of Evidence offering exhibits "R-1 to "R-16."

The Court in a Resolution dated July 2, 2018, admitted all of petitioner's exhibits.

On August 29, 2018, petitioner filed his Memorandum while respondent filed its Memorandum on September 4, 2018.

On September 19, 2019, the Court in Division rendered the assailed Decision granting respondent's Petition for Review in

CTA Case No. 9067 and consequently cancelled the FLD/FANs issued for TY 2009.

On September 26, 2019, petitioner filed a Motion for Reconsideration (Re: Decision dated 09 September 2019).

In the assailed Resolution dated February 14, 2020, the Court in Division denied petitioner's Motion for Reconsideration, for lack of merit.

Petitioner received the assailed Resolution on February 19, 2020 denying his Motion for Reconsideration.

On March 3, 2020, petitioner filed a Motion for Extension of Time to File Petition for Review praying for an extension of fifteen (15) days from March 5, 2020 or until March 20, 2020 within which to file his Petition for Review with the Court *En Banc.*

In a Minute Resolution dated March 6, 2020, the Court granted petitioner's Motion for Extension of Time to File Petition for Review and gave petitioner a non-extendible period of fifteen (15) days from March 5, 2020 or until March 20, 2020, within which to file his Petition for Review.

On June 30, 2020, petitioner posted the instant Petition for Review which was received by the Court on July 8, 2020.

In a Resolution dated October 7, 2020, the Court *En Banc* directed respondent to file its comment to the Petition for Review within ten (10) days from notice.

On October 28, 2020, respondent filed its *Comment-Opposition (to the Petition for Review dated July 01, 2020).*

On November 10, 2020, the Court issued a Resolution submitting the case for mediation for the possibility of reaching an amicable settlement.

On December 3, 2020, the parties executed a *No Agreement to Mediate* which was attested to by Ms. Avigail B. Sanchez, the Mediation Staff Assistant of the Philippine Mediation Center Unit- Court of Tax Appeals (PMC-CTA).

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In a Resolution dated January 6, 2021, the Court *En Banc* submitted the instant case for decision.

THE ISSUE

The grounds raised by the petitioner in his Petition for Review are quoted as follows:

> "I.
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> "The Honorable Court in Division erred in granting a relief that ws not prayed for by respondent. The issue on the alleged want of authority of the revenue officer was never part of the issues raised during trial and even on appeal. Petitioner's basic right to fair play and due process was violated."
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> II.
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> Assuming for the sake of argument that the Honorable Court may rule on an issue that was not part of the trial nor found in the pleadings, the Honorable Court in Division erred in ruling on an undisputed issue.
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> III.
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> Assuming for the sake of argument that the Honorable Court may rule on an issue that was not part of the trial nor found in the pleadings, the Honorable Court in Division erred in ruling that the assessments are void because the revenue officers who conducted the audit were allegedly not authorized through a Letter of Authortity (LOA)."

Petitioner's arguments:

It is petitioner's submission that the Court in Division erred in ruling on an issue which was not raised during trial and granted a relief that was never prayed for by respondent in its Petition for Review. Petitioner refers to the issue of lack of authority of the ROs who conducted the audit/investigation of respondent's accounting records for TY 2009 which led to the cancellation of the FLD/FAN in the assailed Decision dated September 9, 2019. Petitioner contends that this is a clear violation of his right to procedural and substantive due process as he was neither heard nor given the opportunity to be heard on this particular issue. Petitioner cited several decisions of the Supreme Court which reiterated the well-settled rule that "points of law, issues and arguments not brought out in the proceedings below may not be considered by the reviewing court" because this would be "offensive to the basic rules of fair play, justice and due process."

Petitioner argues that the purpose of a pre-trial is to achieve an orderly disposition of cases, hence, it should not be taken for granted. The fact that the issue of lack of authority of the ROs was not tackled during the pre-trial of the case and was not mentioned in the Court's pre-trial order should cancel out any disposition on the matter. Petitioner asserts that to rule on an undisputed issue which was not even raised in respondent's original Petition for Review nor during trial is to sanction disorder which is anathema to the purpose of the Rules of Court to ensure an orderly and speedy administration of justice.

Even on the assumption that the Court can indeed rule on the authority of the ROs despite not having been raised by respondent in its Petition for Review filed with the Court in Division, petitioner claims that Revenue Memorandum Order (RMO) No. 8-2006 provides that in cases of reassignment of the ROs and the GS named in the original LOA, a memorandum to that effect shall be issued by the investigating office addressed to the concerned taxpayer and to the new RO and/or GS. Petitioner contends that the Memorandum of Assignment (MOA) directing RO Guimbao and Gomez and GS-Olivia Aviles to continue the audit /examination of respondent's accounting records for TY 2009 validly clothed them with the requisite authority to continue and finish the audit examination. Petitioner asserts that to rule otherwise would lead to a bizarre situation where the ROs named in the original LOA must complete their assignment regardless of any unforeseen circumstances.

As to respondent's contention in the original Petition for Review that his right to assess deficiency taxes for TY 2009 has prescribed, petitioner maintains that waivers were validly executed which extended the period to assess. Petitioner invokes the principle of estoppel to counter respondent's arguments that the person who signed the same allegedly on behalf of the latter, had no authority to do so. More so, when respondent did not contest the extension of the period to assess during the period of examination and in its protest to the FLD/FANs on the strength of the waivers supposedly signed by their representatives.

Respondent's counter-arguments:

In its Comment-Opposition, respondent contravenes the contention of petitioner that it never raised the issue of lack of authority of the ROs in the Petition for Review filed with the Court in Division because it allegedly anchored its arguments on the irregularities relative to the conduct of the audit and asserted quite clearly the BIR's violation of its right to due process. Nonetheless, respondent defends the ruling of the Court in Division invalidating the subject FLD/FANs for TY 2009 because it could not simply ignore the patent invalidity of the assessments based on the records and evidence submitted in Court. Respondent claims that it is well-established that the Court has the power to resolve related issues which are necessary for the orderly disposition of the case citing Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) and that there is nothing therein which limits the Court's power to resolve only issues that were raised by the parties.

On the issue of lack of authority of the ROs who conducted the audit/investigation of its accounting records for TY 2009, respondent avers that the issuance of a MOA does not authorize the new set of ROs to conduct the audit if they were not named in the original LOA.

Respondent counters that RMO 12-07 which is a later issuance than RMO 8-06 cited by petitioner, purportedly prohibits the practice of issuing mission orders, correspondences, referral memoranda and other similar orders for the purpose of audit examination and assessment of internal revenue taxes. Respondent invokes the Supreme Court decision in the case of *Commissioner of Internal Revenue vs. Composite Materials, Inc.*[4] *(Composite* case*)* where it was supposedly ruled that a Referral Memorandum issued by a Revenue District Officer (RDO) directing another RO to continue the audit investigation, is not equivalent to an LOA nor does it cure the RO's lack of authority. Respondent further cites the ruling in the case of *Commissioner of Internal Revenue vs. Sony Philippines Inc.,*[5] *(Sony case)* where the Supreme Court emphasized the importance of an LOA which empowers the ROs to examine the books of account and other accounting records of the taxpayer for the purpose of collecting the correct amount of tax. Respondent argues even further that only the revenue officers named in the LOA are allowed to conduct the examination of

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[4] G.R. No 238352, September 12, 2018 .
[5] G.R. No. 178697, November 17, 2010.

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taxpayers and that an equivalent document that complies with the requisites in the issuance of an LOA may be considered valid only if such "substitute" document is issued and signed by the Commissioner of Internal Revenue or the Revenue Regional Director or the Assistant Commissioner/Head Revenue Examiner, as the case may be.

Respondent also objects to the claim of petitioner that the waivers effectively extended his right to assess deficiency taxes for TY 2009 on the ground that said waivers were defective for lack of proper authorization of the signatory (Mr. Ariel Ong) to sign on its behalf. Moreover, respondent claims that with respect to the second and fourth waivers, copies of the same indicating the acceptance of petitioner could not be found in petitioner's records. Respondent avers that the acceptance by the BIR together with the date of acceptance is an indispensable requirement, the absence of which would invalidate said waivers.

THE COURT *EN BANC'*S RULING

We shall first rule on the timeliness of the appeal filed by petitioner with the Court *En Banc*.

The evidence shows that petitioner CIR received the assailed Resolution dated February 14, 2021 (denying its Motion for Reconsideration) on February 19, 2020 and consequently filed a Motion for Extension of Time to File Petition for Review on March 3, 2020, requesting for an additional period of fifteen (15) days from March 5, 2020 or until March 20, 2020 within which to file an appeal with the Court *En Banc*.

The Court *En Banc* granted the said motion of petitioner and gave the latter until March 20, 2020 within which to file his Petition for Review.

However, due to the physical closure of the courts located in areas under Modified Enhanced Community Quarantine (MECQ), including those located in the National Capital Region (NCR), the Supreme Court (SC) issued Administrative Circular No. 39-2020 to the effect that the filing of petitions, appeals, complaints, motions, pleadings and other court submissions falling due up to May 31, 2020 is extended for thirty (30) calendar days counted from June 1, 2020.

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Counted from June 1, 2020, the Petition for Review posted by petitioner on June 30, 2020 is considered timely filed.

The Court shall now address the primary issue raised by petitioner on the alleged violation of his right to due process.

Petitioner submits that the failure of respondent to raise the issue of lack of authority of the ROs to conduct the audit/investigation of its books of accounts and other accounting records in the administrative level and in the Petition for Review precludes the Court *En Banc* from ruling on the same. Petitioner avers that to rule on undisputed issues and consequently grant a relief not prayed for, violates his right to due process.

The legal issue raised is not novel.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals, provides, thus:

> **"Rule 14**
> **Judgement, its Entry and Execution**
>
> Section 1. – *Rendition of Judgment.-*
>
> **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**." (Emphasis supplied)

The Court of Tax Appeals as a court of record has the authority to determine issues raised by the parties even if these were not raised in the administrative level to achieve a judicious administration of justice. To stretch this ruling further, the Court may even resolve issues that were not raised by both parties both in the administrative and judicial levels to achieve an orderly disposition of the case, and we quote the decision of the Supreme Court in the case of *CIR vs. Lancaster*,[6] to wit:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but**

[6]G.R. No. 183408, July 12, 2017.

> **may also rule upon related issues necessary to achieve an orderly disposition of the case**." xxx xxx xxx (emphasis supplied)

Further, in the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,*[7] the Supreme Court ruled in this manner, thus:

> "The general rule is that the appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
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> xxx xxx xxx
>
> **"The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.** Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time: The appellate court, may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. xxx xxx xxx
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> xxx xxx xxx
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> Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance." (emphasis supplied)

In the Petition for Review filed by respondent with the Court in Division, respondent actually raised the invalidity of the subject deficiency assessments for TY 2009 due to the alleged

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[7] G.R. No. 163835, July 7, 2010.

lack of due process as seen from the "Statement of Issues" embodied therein, and we quote:

> **"ISSUES**
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> xxx xxx xxx
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> B.
>
> Whether or not petitioner was afforded due process in the issuance of the Formal Letter of Demand and Final Assessment Notice."

Further, in the parties' JSFI[8] dated February 17, 2016, one of the issues stipulated by the parties for resolution of the Court is whether or not petitioner was afforded due process in the issuance of the disputed deficiency tax assessments, which goes into the heart of the validity of the subject FLD/FANs.

Thus, the validity of the subject FLD/FANs was directly put in issue during trial which contradicts petitioner's contention that the Court ruled on an issue which was never raised during trial and granted a relief that was never prayed for by respondent. Even if not raised, the validity of such deficiency assessments for TY 2009 is also a matter of public importance because, taxpayers cannot be held liable under invalid or void tax assessments following the doctrine that a void assessment bears no valid fruit.[9]

Given the above premises, the Court is not prohibited from resolving the issue of lack of authority of the ROs to conduct an audit of respondent's books of accounts and other accounting records prior to the determination of the merits of the deficiency assessments.

We now proceed to address the issue of the alleged lack of authority of the ROs who conducted the audit of respondent's accounting records for TY 2009.

We quote the narration of the Court in Division as to what transpired prior to the issuance of the PAN and the FLD/FANs, against respondent thus:

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[8] Division Docket, Volume I, pp. 305-313.

[9] *Samar-I Electric Cooperative vs. CIR*, G.R. No. 193100, December 10, 2014.

> "Mr. Joel L. Tan-Torres, then CIR, issued LOA No. 116-2010-00000057 dated May 14, 2010, authorizing RO- Walter Batoon, Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Henry Manalo and GS-Erlinda Ulgado and Marlon Cabance to examine petitioner' books of accounts and other accounting records for internal revenue taxes for TY 2009. It was later re-assigned to RO- Rogelio Gonzales and GS-Marivic Bautista pursuant to Memorandum of Assignment (MOA) No, LOA-116-2011-428 issued on June 28, 2011 by Mr. Edralin Silario, OIC, Chief, LT Regular Audit Division 1. Then, on February 13, 2013, Mr. Cesar Escalada, LT Regular Audit Division1, issued MOA No, LOA-115-2013-0224 to authorize RO Felina Guimbao and GS Olivia Aviles to continue the audit/investigation and to cancel the previously issued MOA No, LOA-116-2011-428 issued to ROs Gonzales and Bautista. Thereafter, Mr. Escalada, Chief, RLTAD 1 authorized RO Jessa Gomez to assist RO Guimbao through a letter dated July 8, 2013."

In finding that the ROs who conducted the audit were not armed with sufficient authority to continue the audit of respondent's accounting records for TY 2009, the Court in Division took note of the fact that ROs Guimbao, Gomez and GS-Oliva Aviles who continued the audit were not named in the original LOA but whose authority emanated only from MOA No. LOA-116-2013-0224 issued on February 13, 2013 and letter dated July 8, 2013 and was signed by Mr. Cesar Escalada, Chief of the Regular Large Taxpayers Audit Division 1.

This is now the center of the controversy, i.e., whether or not the MOA issued and signed by Mr. Cesar Escalada clothed ROs Guimbao and Gomez with the authority to conduct the audit of respondent's accounting records for TY 2009.

It is already well-established that the issuance of a valid LOA is a prerequisite to a valid assessment because it forms part of the due process rights of a taxpayer as clearly elucidated by the Supreme Court in the case of *Medicard Philippines, Inc. vs. CIR,*[10] where it was ruled that the absence of an LOA violated Medicard's right to due process."

As provided by law, an LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of accounts and other accounting records of a taxpayer for the purpose of

[10]G.R. No. 222743, April 5, 2017, *supra*.

collecting the correct amount of tax.[11] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[12]

Therefore, there must be a grant of authority before any RO can conduct an examination or assessment. 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 respondent himself or his duly authorized representatives.[13] This is explicitly provided under Sections 6 (A) and 13 of the 1997 NIRC, as amended, which provide as follows:

> "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: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis added)*
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> "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." (Emphasis supplied)

Based on the afore-quoted provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[14] Clearly, there must be a grant of authority before any revenue officer can conduct an

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[11] *CIR vs. Sony Phils., Inc.,* G.R. No.. 178697, November 17, 2010*; Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.
[12] *Commissioner of Internal Revenue vs. De La Salle University, Inc., etseq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[13] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[14] *Ibid.*

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examination or assessment.[15] In the absence of such an authority, the assessment or examination is a nullity.[16]

The law grants the CIR the power to authorize the examination of any taxpayer and such power may be delegated to his or her authorized representatives. Section 7 of the 1997 NIRC, as amended, provides as follows:

> Section 7. *Authority of the Commissioner to Delegate Power.*- The Commissioner **may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with rank equivalent to a division chief or higher,** subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner:" xxx xxx xxx (emphasis supplied)

Section 10 of the 1997 NIRC, as amended, identifies the revenue official who has the power to issue LOAs aside from the CIR, and we quote:

> "Section 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:
>
> xxx xxx xxx
>
> (c) Issue Letters of Authority for the examination of taxpayers within the region. "

Suffice it to state that the power to issue LOAs may be delegated to a Revenue Regional Director.

Under RMO 29-07, the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, and we quote portions of said RMO 29-07:

> "II. AUDIT POLICIES AND GUIDELINES
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> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the

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[15] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178797, supra.
[16] *Ibid.*

> amount of gross sales/ receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner /Head Revenue Executive Assistants."** (emphasis supplied)

Based on the aforequoted provisions of the law and administrative issuances, the Court agrees with the Court in Division when it held that Mr. Cesar Escalada, the Chief of the Regular LT Audit Division 1, is not an authorized signatory to the MOA designating ROs Guimbao, Gomez and GS- Olivia Aviles to continue the audit examination. This Court does not find it violative of the law and implementing regulations for a MOA to be issued instead of an LOA for the continuance of an audit, as long as said MOA is issued and signed by the proper official which may be the Regional Director or the Assistant Commissioner/Head Revenue Executive Assistant in the Large Taxpayers Service. We quote with approval, the rationale provided by the Court in Division when it concluded that a MOA may have the same effect as a LOA provided it fulfills the requirements inherent in the latter:

> "Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First,* the only directive under Section 13 of the NIRC of 1997, as amended, which requires that assessment may be done by ROs pursuant to an LOA, is that the grant of authority be done in writing. In fact, an "agency may be oral, unless the law requires a specific form.
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> Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties. The title of the contract does not necessarily determine its true nature. In fact, this Court has time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor

> of the words therein despite the absence of the words "Final Decision on Disputed Assessment" in the title of the document."

Using the standards set by law, implementing regulations and jurisprudence, the Court finds that the MOA assigning the continuation of the audit of respondent's records for TY 2009 to ROs Guimbao, Gomez and GS Aguila does not pass the test of validity, hence, the FLD/FANs issued as a result thereof, are void.

In the recently decided case of *CIR vs, McDonald's Philippines Realty Corp.*[17] *(McDonald's* case) the Supreme Court reiterated the doctrine enunciated in the *Medicard* case that the issuance of an LOA prior to an examination and assessment is a requirement of due process and the result of the absence of an LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process. The Supreme Court in the *McDonald's* case, considered the practice of reassigning ROs and substituting them with a new set of ROs (without a separate LOA) as a usurpation of the statutory power of the CIR, and we quote:

> "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."

WHEREFORE, premises considered, the Petition for Review filed by the CIR is **DENIED**.

Accordingly, the Decision dated September 9, 2019 and Resolution dated February 14, 2020 of the Special Third Division of this Court are **AFFIRMED.**

Consequently, petitioner is **ENJOINED** and **PROHIBITED** from collecting against respondent the amounts representing the assessed deficiency taxes for TY 2009 in the total amount of Php 17,236,413.95.

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[17] G.R. No. 242670, May 10, 2021.

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SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
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