REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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METRO MAIN STAR ASIA CORP., Petitioner,	**CTA Case No. 9302**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 26 2022 10:00 a.m.

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DECISION

UY, *J*.:

Before this Court is the *Petition for Review*[1] filed on March 18, 2016 by petitioner Metro Main Star Asia Corp. against respondent Commissioner of Internal Revenue, praying to set aside the *Revised Final Decision on Disputed Assessment* dated February 17, 2016, which found petitioner liable for deficiency income tax, value-added tax and expanded withholding tax for taxable year (TY) 2010, in the total amount of ₱453,678,169.69, inclusive of interest and penalties.

THE FACTS

As culled from the records of the case, evidence presented in Court, and as stipulated by the parties in their *Joint Stipulation of Facts and Issues* (JSFI)[2], the following are the facts of the case.

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[1] Docket – Vol. 1, pp. 10 to 80.
[2] Docket – Vol. 2, pp. 660 to 669.

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It is primarily engaged in the retail/wholesale trading of merchandise, such as apparels, shoes, accessories and other items.[3]

On the other hand, respondent is being sued in his official capacity as the Commissioner of Internal Revenue (CIR), duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code.[4] He holds office and may be served with summons and other court processes at the 5th Floor, BIR National Office, BIR Building, Agham Road, Diliman, Quezon City.[5]

On September 20, 2011, respondent, through Alfredo V. Misajon, OIC-Assistant Commissioner for the Large Taxpayers Service (LTS), issued *Letter of Authority* (LOA) No. 116-2011-00000055[6] authorizing Revenue Officers (RO) Ma Salud Maddela, Myrna Ramirez, Zenaida Paz, Cletofel Parugao, Allan Maniego, Joel Aguila and Group Supervisor (GS) Glorializa Samoy, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from January 1 to December 31, 2010.

On February 25, 2013, Cesar D. Escalada, Chief, Regular LT Audit Division 1, issued *Memorandum of Assignment* (MOA) No. LOA-116-2013-0451[7], referring the case to RO Rosario A. Arriola (RO Arriola) and GS Rolando M. Balbido (GS Balbido), for the continuation of the audit/investigation of petitioner's tax liabilities for TY 2010.

Thereafter, petitioner executed various *Waivers of the Statute of Limitation under the National Internal Revenue Code.*[8]

[3] paragraph 7, *Petition for Review*, Docket – Vol. 1, p. 11.
[4] Par. 2, Admitted Facts, *JSFI*, Docket – Vol. 2, p. 660.
[5] Par. 3, Admitted Facts, *JSFI*, Docket – Vol. 2, p. 660.
[6] Par. 4, Admitted Facts, *JSFI*, Docket – Vol. 2, p. 661; Exhibit "R-2", BIR Records – Folder 1, p. 956.
[7] Exhibit "R-1", BIR Records – Folder 1, p. 959.
[8] Exhibit "R-6", BIR Records – Folder 1, p. 1042; Exhibit "R-7", BIR Records – Folder 1, p. 1043; Exhibit "R-8", BIR Records – Folder 1, p. 1044; Exhibit "R-9", BIR Records – Folder 1, p. 1044-A; Exhibit "R-10", BIR Records – Folder 1, p. 1045.

On November 28, 2014, petitioner received a *Preliminary Assessment Notice*[9] (PAN) dated November 25, 2014, assessing petitioner for deficiency taxes for TY 2010, detailed as follows:

Tax Type	Amount
Income Tax	₱ 515,699,322.64
Value Added Tax (VAT)	263,819,598.71
Withholding Tax on Compensation	5,104,646.72
Expanded Withholding Tax (EWT)	29,352,535.45
Penalties for Late Remittance	132,704.22
Documentary Stamp tax (DST)	1,376,096.95
Improperly Accumulated Earnings Tax (IAET)	25,535,651.74
TOTAL	**₱841,020,556.43**

On December 18, 2014, petitioner received a *Formal Letter of Demand*[10] (FLD) dated December 16, 2014, with attached Details of Discrepancies[11] and Assessment Notice Nos. IT-116-LOA-000055-10-14-1312[12], VT-116-LOA-000055-10-14-1313[13], WC-116-LOA-000055-10-14-1314[14], WE-116-LOA-000055-10-14-1315[15], WE-116-LOA-000055-10-14-1316[16], DST-116-LOA-000055-10-14-1317[17], IAET-116-LOA-000055-10-14-1318[18] issued by Nestor S. Valeroso, OIC-Assistant Commissioner for the LTS, assessing petitioner for deficiency taxes for TY 2010 in the total amount of ₱841,020,556.43, inclusive of interests and penalties, detailed as follows:

Tax Type	Amount
Income Tax	₱515,699,322.64
VAT	263,819,598.71
EWT	29,352,535.45
WTC	5,104,646.72
Penalties for late Remittance of EWT	132,704.22

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[9] Exhibit "R-12", BIR Records – Folder 1, pp. 1173 to 1179.
[10] Par. 5, Admitted Facts, *JSFI*, Docket – Vol. 1, p. 661; Exhibit "R-14", BIR Records – Folder 2, pp. 775 to 778.
[11] Exhibit "R-15-b", BIR Records – Folder 2, pp. 764 to 767.
[12] Exhibit "R-15", BIR Records – Folder 2, p. 774.
[13] Exhibit "R-15-a", BIR Records – Folder 2, p. 773.
[14] Exhibit "R-15-b", BIR Records – Folder 2, p. 772.
[15] Exhibit "R-15-c", BIR Records – Folder 2, p. 771.
[16] Exhibit "R-15-d", BIR Records – Folder 2, p. 770.
[17] Exhibit "R-15-e", BIR Records – Folder 2, p. 769.
[18] Exhibit "R-15-f", BIR Records – Folder 2, p. 768.

DST	1,376,096.95
IAET	25,535,651.74
TOTAL	**₱841,020,556.43**

On January 20, 2015, petitioner filed its *Protest Letter*[19] to the FLD, questioning the validity of the assessment.

On November 5, 2015, petitioner received the *Final Decision on Disputed Assessment* (FDDA) [20], with attached Details of Discrepancy[21], and Assessment Notice Nos. IT-116-LOA-000055-10-14-1312[22], WE-116-LOA-000055-10-14-1315[23], VT-116-LOA-000055-10-14-1313[24], WE-116-LOA-000055-10-14-1316[25], issued by Assistant Commissioner-LTS Nestor S. Valeroso denying petitioner's *Protest Letter* in part and demanding the payment of deficiency taxes, penalties and interest for TY 2010, amounting to ₱452,313,905.49, detailed as follows:

Tax Type	Amount
Income Tax	₱257,815,428.08
VAT	175,751,082.26
EWT	18,739,655.37
Penalties for late Remittance of EWT	7,739.78
TOTAL	**₱452,313,905.49**

On December 4, 2015, petitioner filed its *Motion for Reconsideration*[26] before the CIR, appealing the FDDA and requesting the cancellation of the assessment.

On February 17, 2016, petitioner received the Revised FDDA[27], issued by the CIR, with attached Details of Discrepancy[28], and

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19 Par. 1, Admitted Facts, *JSFI*, Docket – Vol. 2, p. 660; BIR Records – Folder 2, pp. 575 to 643.
20 Par. 6, Admitted Facts, *JSFI*, Docket – Vol. 2, p. 661; Exhibit "R-17", BIR Records – Folder 3, pp. 42 to 44.
21 BIR Records – Folder 3, pp. 38 to 41.
22 Exhibit "R-18", BIR Records – Folder 3, p. 37.
23 Exhibit "R-18-a", BIR Records – Folder 3, p. 36.
24 Exhibit "R-18-b", BIR Records – Folder 3, p. 35.
25 Exhibit "R-18-c", BIR Records – Folder 3, p. 34.
26 Par. 7, Admitted Facts, *JSFI*, Docket – Vol. 2, pp. 661 to 662; BIR Records – Folder 3 pp. 493 to 532.
27 Par. 8, Admitted Facts, *JSFI*, Docket – Vol. 2, p. 662; Exhibit "R-20", BIR Records – Folder 4 pp. 42 to 44.
28 BIR Records – Folder 4, pp. 38 to 41.

Assessment Notice Nos. IT-116-LOA-000055-10-14-1312[29], VT-116-LOA-000055-10-14-1313[30], WE-116-LOA-000055-10-14-1315[31], WE-116-LOA-000055-10-14-1316[32], denying petitioner's *Motion for Reconsideration* filed on December 4, 2015 and demanding the immediate payment of petitioner's deficiency taxes, penalties and interests for TY 2010, amounting to ₱453,678,169.69, detailed as follows:

Tax Type	Amount
Income Tax	₱261,295,080.69
VAT	173,342,133.21
EWT	19,040,256.61
Penalties for late Remittance of EWT	699.18
TOTAL	**₱453,678,169.69**

Aggrieved, petitioner filed the instant *Petition for Review*[33] on March 18, 2016.

Respondent filed his *Answer* on May 23, 2016,[34] interposing, among others, the following special and affirmative defenses: that he has the power to obtain information from other sources to ascertain the correctness of any return; and that the assessment has basis both in fact and in law. According to respondent, petitioner is liable for deficiency income tax and VAT resulting from its unaccounted purchases and expenses, undeclared income, sales discrepancy, and income payments not subjected to EWT. Further, respondent claims that petitioner is liable for deficiency VAT on disallowed input tax due to violation of invoicing requirements. As regards the deficiency EWT, respondent alleges that a comparison of income payments/purchases per Financial Statement/Income Tax Return as against the alpha list of payees disclosed items not subjected to withholding tax. Respondent also points out that petitioner is liable for penalties due to its failure to withhold and remit taxes pursuant to Revenue Memorandum Order (RMO) No. 19-2007 and Section 249 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended; and for compromise penalty and deficiency interest.

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[29] Exhibit "R-21", BIR Records – Folder 4, p. 37.
[30] Exhibit "R-21-a", BIR Records – Folder 4, p. 36.
[31] Exhibit "R-21-b", BIR Records – Folder 4, p. 35.
[32] Exhibit "R-21-c", BIR Records – Folder 4, p. 34.
[33] Docket, pp. 10 to 80.
[34] Docket - Vol. 2, pp. 555 to 571.

On May 27, 2016, respondent filed a *Motion to Defer the Transmittal of BIR Records*[35], praying that the transmittal of the BIR Records be deferred until after the filing of his witness' affidavit. The same was granted in the Resolution[36] dated June 7, 2016.

After the Pre-Trial Conference held on December 6, 2016[37], the parties submitted their *JSFI*[38] on January 6, 2017. Subsequently, the Court issued the *Pre-Trial Order*[39] on January 20, 2017.

During trial, petitioner presented the following witnesses:

(1) Kathleen L. Cheng[40], the Accounting Manager of SM Mart, Inc., an affiliate of petitioner. She handled the accounts payable of the department store group, of which petitioner is a part of.

(2) Jezaida B. Cargullo[41], petitioner's Assistant Vice President-Accounting Department; and

(3) Maria Christina Josefina B. Ocampo[42], the Court-commissioned Independent Certified Public Accountant (ICPA).

Petitioner filed its *Formal Offer of Evidence*[43] on June 19, 2018; while respondent filed his *Comment with Manifestation (Re:Petitioner's Formal Offer of Evidence)*[44] on June 29, 2018.

In the Resolution[45] dated February 6, 2019, the Court admitted most of petitioner's exhibits but denied the others for failure to have the exhibits identified and for not being found in the records.

On February 26, 2019, petitioner filed a *Motion for Partial Reconsideration [of the Resolution promulgated on February 6,*

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[35] Docket - Vol. 2, pp. 577 to 580.
[36] Docket - Vol. 2, p. 584.
[37] Minutes of Hearing, Docket – Vol. 2, p. 653; Order, Docket – Vol. 2, pp. 655 to 656.
[38] JSFI, Docket – Vol. 2, pp. 660 to 669.
[39] Docket - Vol. 2, pp 673 to 682.
[40] Exhibit "P-25", Docket - Vol. 3, pp 1252 to 1277.
[41] Exhibit "P-13", Docket – Vol. 2, pp. 699 to 719.
[42] Exhibit "P-14," Docket – Vol. 3, pp. 1060 to 1068; Exhibit "P-226", Docket – Vol. 4, 1584 to 1665.
[43] Docket – Vol. 4, pp. 1681 to 1715.
[44] Docket – Vol. 4, pp. 1938 to 1939.
[45] Docket – Vol. 4, pp. 1947 to 1950.

2019][46], praying that it be allowed to submit a new flash drive from the ICPA; that the Court admit the exhibits which were scanned and copied in the new USB; if found necessary, that the Court set a Commissioner's Hearing for the presentation and proper marking of missing documents and the new USB; and that the Court allow petitioner to submit a *Supplemental Formal Offer of Evidence.*

On March 18, 2019, respondent filed his *Comment [Re: Petitioner's Motion for Partial Reconsideration]*[47], stating that the soft copies of some of petitioner's exhibits do not appear in the USB.

In the Resolution[48] dated May 20, 2019, the Court granted petitioner's *Motion for Partial Reconsideration [of the Resolution promulgated on February 6, 2019]* and held that the new USB shall be taken into consideration in resolving its motion. In the same Resolution, the Court admitted some of petitioner's exhibits.

Thereafter, respondent presented as his sole witness, RO Rosario A. Arriola[49]. Respondent filed his *Formal Offer of Evidence*[50] on August 16, 2019.

On September 5, 2019, petitioner simultaneously filed its *Supplemental Formal Offer of Evidence*[51] and *Comment [On the Respondent's Formal Offer of Evidence]*[52]. On September 13, 2019, respondent filed his *Comment (Re: Supplemental Formal Offer of Evidence dated 5 September 2019).*[53]

In the Resolution[54] dated November 20, 2019, the Court admitted all of respondent's exhibits and petitioner's exhibits listed in its *Supplemental Formal Offer of Evidence*; and ordered both parties to file their respective memoranda.

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[46] Docket – Vol. 4, pp. 1953 to 1959.
[47] Docket – Vol. 4, pp. 1965 to 1967.
[48] Docket – Vol. 4, pp. 1978 to 1980.
[49] Exhibit "R-23", Docket – Vol. 2, pp. 611 to 624.
[50] Docket – Vol. 4, pp. 1984 to 1992.
[51] Docket – Vol. 4, pp. 1999 to 2004.
[52] Docket – Vol. 4, pp. 2005 to 2015.
[53] Docket – Vol. 4, pp. 2018 to 2020.
[54] Docket – Vol. 4, pp. 2022 to 2023.

On December 18, 2019, petitioner filed a *Motion for Extension of Time to Submit Petitioner's Memorandum*[55], requesting for an extension of thirty (30) days from December 25, 2019 or until January 24, 2020, to file its memorandum. On December 20, 2019, respondent filed a *Motion for Additional Time to File Memorandum*[56] praying for an additional thirty (30) days from December 26, 2019 or until January 25, 2020, to file his memorandum. Both *Motions* were granted in the Resolutions dated December 26, 2019[57] and January 9, 2020[58], respectively.

On January 24, 2020, petitioner filed a *Motion for Suspension of Proceedings,*[59] stating that it intends to negotiate for the possible compromise settlement of this case and praying that the proceedings in the instant case be suspended to give the parties reasonable time within which to discuss and reach an amicable settlement.

On January 27, 2020, petitioner filed its *Memorandum.*[60] On even date, respondent filed a *Motion for Extension of Time to File Memorandum*[61], praying for an extension of another thirty (30) days from January 25, 2020 or until February 24, 2020, within which to file his memorandum.

On February 14, 2020, respondent filed his *Comment [Re: Petitioner's Motion for Suspension of Proceedings]*[62] stating that he has no objection to the motion and will defer resolution of the same to the sound discretion of the Court.

On March 10, 2020, the Court issued a Resolution[63] granting petitioner's *Motion for Suspension of Proceedings* and suspending the proceedings in the instant case for a period of thirty (30) days from March 16, 2020 or until April 15, 2020. In the same Resolution, the Court directed the parties to submit a report on the progress of their judicial compromise within five (5) days from April 15, 2020. M

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[55] Docket – Vol. 4, pp. 2024 to 2026.
[56] Docket – Vol. 4, pp. 2027 to 2029.
[57] Docket – Vol. 4, p. 2032.
[58] Docket – Vol. 4, p. 2034.
[59] Docket – Vol. 5, pp. 2035 to 2038.
[60] Docket – Vol. 5, pp. 2039 to 2123.
[61] Docket – Vol. 5, pp. 2125 to 2127.
[62] Docket – Vol. 5, pp. 2132 to 2134.
[63] Docket – Vol. 5, pp. 2159 to 2160

Meanwhile, on February 26, 2020, respondent filed a *Motion for Leave to Admit Attached Memorandum*[64], submitting his *Memorandum*[65] and stating that he failed to submit his memorandum despite the period given due to voluminous workload; and praying that the Court admit his Memorandum. On July 27, 2020, petitioner filed its *Comment (on Respondent's Motion for Leave to Admit Memorandum)*[66] stating that it has no objection to the filing of the said motion.

In the Resolution[67] dated September 18, 2020, the Court granted respondent's a *Motion for Leave to Admit Attached Memorandum*, and admitted respondent's *Memorandum*. In the same Resolution, the Court directed the parties to make a manifestation if they still intend to amicably settle the case and to file a progress report within five (5) days from notice.

On December 18, 2020, the Judicial Records Division of this Court issued a *Records Verification Report*[68] stating that the parties failed to comply with the Resolution dated September 18, 2020.

Accordingly, the instant case was submitted for Decision in the Resolution[69] dated February 1, 2021.

Hence, this Decision.

THE ISSUES

The parties stipulated the following sole issue[70] for this Court's resolution, *to wit*:

> "Whether or not petitioner is liable for the assessed deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax in the aggregate amount of ₱453,678,169.69, inclusive of interest and penalties."

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[64] Docket – Vol. 5, pp. 2136 to 2139
[65] Docket – Vol. 5, pp. 2141 to 2155.
[66] Docket – Vol. 5, pp. 2167 to 2169.
[67] Docket – Vol. 5, pp. 2173 to 2174.
[68] Docket – Vol. 5, p. 2175.
[69] Docket – Vol. 5, pp. 2177 to 2178.
[70] Par. 9, Issues, *JSFI*, Docket – Vol. 2, p. 662.

Petitioner's arguments:

Petitioner argues that RO Arriola was not duly authorized to conduct the audit investigation and to recommend the assessment of any deficiency taxes due to petitioner for TY 2010. Allegedly, the authority of RO Arriola was based merely on an MOA.

Further, petitioner maintains that an MOA is not a substitute for an LOA in cases where there is reassignment or transfer of cases to 0another revenue officer and that the issuance of an MOA runs counter to the provision of RMO No. 43-90.

As regards to the deficiency income tax assessment, petitioner posits that the said assessment is purely speculative and has no basis. According to petitioner, the use of the Annual Alpha list of Payees and the Audit Information, Tax Exemption and Incentives Division (AITEID) data is questionable; that such information from the BIR system cannot be considered as coming from third party sources unless certified and verified by competent evidence; and that respondent failed to support the AITEID data with sworn confirmatory statements from the alleged thirtd party sources.

Petitioner also avers that the assumed undeclared purchases used as basis for deficiency income tax and VAT is erroneous and that respondent's use of the gross profit ratio or percentage method has no factual or legal basis.

Allegedly, the matching of purchases per Summary List of Purchases (SLP) against income payments per annual alpha list of EWT involving purchases of services will result to discrepancy due to timing difference in recognizing the input tax and remitting the EWT on the purchases of services.

With respect to the assessments resulting from the comparison of the supposed third-party information and petitioner's report, petitioner asserts that these are mere naked assessments in view of the absence of sworn statements from said thirtd-party sources.

Moreover, petitioner disputes the assessment for undeclared purchases and expenses. Allegedly, respondent failed to prove that an income was received by petitioner or that a gain/profit was realized. Petitioner stresses that an assessment cannot be based on mere presumptions.

Lastly, petitioner asserts that the imposition of compromise penalty without conformity of the taxpayer is illegal and unauthorized.

Respondent's counter-arguments:

Respondent counter-argues that the assessment has basis both in fact and in law. According to respondent, the Tax Code does not limit the audit investigation to the appreciation of the records or documents provided by the taxpayer as it grants respondent the power to obtain information from other sources to ascertain the correctness of any return.

Allegedly, petitioner is being assessed for deficiency income tax and VAT resulting from the gross profit from its unaccounted purchases and expenses; undeclared income, sales discrepancy, and income not subjected to EWT.

According to respondent, discrepancy reports on sales and purchases can be generated to uncover undeclared income and over claimed purchases through the consolidation and cross-referencing of third-party information. Likewise, discrepancy reports can be also generated to uncover violations of tax rules and regulations such as underdeclaration of income, non-declaration of income, under-remittance and/or non-remittance of taxes withheld, to name a few, also through the consolidation and cross-referencing of data from withholding agents and declaration of income recipients.

Further, respondent claims that a comparison of income payments/purchases per FS/ITR as against the alpha list of payees from whom taxes were withheld and AITEID data disclosed amounts not yet subjected to withholding tax, hence, petitioner is liable for EWT.

Penalties were likewise imposed on petitioner for its alleged failure to withhold and remit taxes pursuant to RMO No. 19-2007 and Section 249 (A) of the NIRC of 1997, as amended.

Finally, respondent maintains that petitioner is liable for compromise penalty and deficiency interest. MY

THE COURT'S RULING

Petitioner argues that RO Arriola was not duly authorized to conduct the audit investigation of petitioner for TY 2010 since her authority was based merely on an MOA.

We agree with petitioner.

Section 6(A) of the NIRC of 1997, as amended, lays down the power of the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, *to wit*:

> "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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

Based on the foregoing, an authority emanating from respondent CIR or his duly authorized representative is required before an examination and an assessment may be made.

Relative thereto, Section 13 of the NIRC of 1997, as amended, provides that the authority of a RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to a LOA, *to wit*:

> "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, <u>pursuant to a Letter of Authority issued by the Revenue Regional</u>**

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> **<u>Director,</u> 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 and underscoring supplied.)*

Evidently, a grant of authority, through an LOA, must be issued assigning a revenue officer to perform tax assessment functions, in order that such officer may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[71] the Supreme Court elucidated on the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, *viz*:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. 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. Section 6 of the NIRC clearly provides as follows:
>
>> 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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** and the assessment of the correct amount of tax: Provided, however, That failure to file a return

[71] G.R. No. 222743, April 5, 2017.

> shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> xxx xxx xxx
>
> Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, 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**.
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> xxx xxx xxx
>
> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:
>
> > 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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (*Emphasis and underlining Ours, citations omitted.)*

Based on the foregoing, ROs must be authorized, through an LOA, in order that said officers may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void. MY

A perusal of the records of the case shows that pursuant to LOA No. 116-2011-00000055[72], only ROs Ma Salud Maddela, Myrna Ramirez, Zenaida Paz, Cletofel Parugao, Allan Maniego, Joel Aguila and GS Glorializa Samoy, were authorized to conduct the audit investigation of petitioner for TY 2010.

Thereafter, on February 25, 2013, MOA No. LOA-116-2013-0451[73] was issued by Cesar D. Escalada, Chief, Regular LT Audit Division 1, referring the case to RO Rosario A. Arriola and GS Rolando M. Balbido, for the continuation of the audit/investigation of petitioner's tax liabilities for TY 2010.

Notably, it was RO Arriola who recommended the issuance of the PAN[74], FLD[75], FDDA[76] and Revised FDDA[77]. This was confirmed by RO Arriola in her Judicial Affidavit[78], *to wit*:

> "8Q: Why are you familiar with the case?
>
> 8A: I am familiar with the case because I was tasked to continue the conduct of the audit/examination of petitioner for taxable year 2010 after the lead examiner was transferred to another division.
>
> 9Q: You mentioned that you were tasked to continue the audit of petitioner for taxable year 2010, under what authority were you tasked to continue the audit and examination of petitioner?
>
> 9A: **I was authorized under Memorandum of Assignment (MOA) No. 116-2013-0451 dated 25 February 2013.**
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[72] Par. 4, Admitted Facts, *JSFI*, Docket – Vol. 2, p. 661; Exhibit "R-2", BIR Records – Folder 1, p. 956.
[73] Exhibit "R-1", BIR Records – Folder 1, p. 959.
[74] *Memorandum* dated November 7, 2014, Exhibit "R-11", BIR Records – Folder 1, pp. 1165 to 1168.
[75] *Memorandum* dated December 1, 2014, Exhibit "R-13", BIR Records – Folder 1, pp. 1243 to 1246.
[76] *Memorandum* dated July 24, 2015, Exhibit "R-16", BIR Records – Folder 2, pp. 795 to 801.
[77] *Memorandum* dated January 26, 2016, Exhibit "R-19", BIR Records – Folder 3, pp. 547 to 552.
[78] Exhibit "R-23", Docket – Vol. 2, pp. 611 to 624.

38Q: After petitioner executed a Waiver of the Defense of Prescription on 06 November 2017, what happened next, if any?

38A: We continued the audit of petitioner and result of our investigation revealed that petitioner is liable for deficiency taxes. **Hence, on 07 November 2014, we recommended through a Memorandum the issuance of the Preliminary Assessment Notice (PAN).**

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45Q: After the Preliminary Assessment Notice (PAN) was issued, what happened next, if any?
45A: Petitioner did not file its reply to the PAN, **hence, on 01 December 2014, we recommended through a Memorandum, the issuance of the Formal Letter of Demand (FLD)?**

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53Q: After petitioner requested for reinvestigation on the Formal Letter of Demand, what happened next if any?

53A: After considering the arguments raised by petitioner, we still found it liable for deficiency taxes. **Hence, on 24 July 2015, we recommended through a Memorandum that the Final Decision on Disputed Assessment (FDDA) be issued.**

xxx xxx xxx

61Q: After petitioner filed a Motion for Reconsideration on the FDDA, what happened next if any?

61A: Based on our evaluation, petitioner was not able to refute our audit findings**, hence, on 26 January 2016, we recommended through a Memorandum that petitioner's Motion be denied**."*(Emphasis and underscoring supplied)*

It evident from the foregoing, that the supposed authority of RO Arriola to conduct the audit investigation of petitioner for TY 2010 and

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to recommend the issuance of the assessment notices, was merely based on an MOA and not an LOA. As a corollary, it bears noting that there is no showing that a new LOA was issued specifically authorizing RO Arriola to continue the audit investigation of petitioner following the reassignment and transfer of the case.

It must be emphasized that the failure of respondent to issue a new LOA runs counter to RMO No. 43-90 dated September 20, 1990, which lays down the guideline for the audit/investigation and issuance of LOA, pertinent portions of which states, *to wit*:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> xxx xxx xxx
>
> 5. **<u>Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A</u>**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." *(Emphasis and underscoring supplied.)*

Based on the foregoing, all audit investigations must be conducted by a duly designated RO authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA. In case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA shall be issued with the corresponding notation thereto. In the absence of such an authority, the assessment or examination is a nullity.[79]

In *Commissioner of Internal Revenue vs. Opulent Landowners Inc.*[80], the Supreme Court emphasized that only revenue officers actually named under the LOA are authorized to examine the taxpayer. It also reiterated that any reassignment or transfer of cases shall require the issuance of a new LOA, otherwise, the resulting assessments are void.

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[79] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[80] G.R. Nos. 249883-84, Resolution dated January 27, 2020.

Further, in the recent case of *Commissioner of Internal Revenue vs. Mcdonald's Philippines Realty Corp.*[81], the Supreme Court ruled that a MOA or any equivalent document is **not** a proof of the existence of authority of the substitute or replacement revenue officer; and that the use of such document by an unauthorized revenue officer usurps the functions of the LOA. The Supreme Court likewise pronounced that the practice of reassigning or transferring revenue officers originally named in the LOA and 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 present case, it is undisputed that no new LOA was issued to RO Arriola to continue the audit investigation and that the only basis for her authority was the MOA. Accordingly, RO Arriola was not duly authorized to conduct the audit investigation of petitioner for TY 2010.

Even assuming *arguendo* that an MOA may be considered as an LOA, the same is still insufficient to authorize the revenue officer to continue the audit investigation in this case.

Under RMO No. 29-07[82] dated September 26, 2007, the BIR officers who are authorized to issue and approve LOAs for the conduct of audit investigation of taxpayers under the Large Taxpayers Services are enumerated as follows:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 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 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

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[81] G.R. No. 242670, May 10, 2021.
[82] SUBJECT: *Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.*

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 <u>Assistant Commissioner/Head Revenue Executive Assistants</u>**." (*Emphasis and underscoring supplied.*)

Based on the foregoing, the LOA shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants (HREA).

In the instant case, however, the MOA addressed to RO Arriola for the continuation of the audit investigation of petitioner's taxes for TY 2010 were signed and issued not by the Assistant Commissioner/HREA, but by the Chief, Regular LT Audit Division 1, Cesar D. Escalada. Evidently, the subject MOA was signed by a BIR officer who is **<u>not</u>** authorized to issue an LOA. Hence, RO Arriola has no authority to continue the audit investigation.

In sum, since RO Arriola was not duly authorized by a valid LOA, the subject tax assessments, which came about as a result of her examination of petitioner's books of accounts and accounting records for TY 2010, are void. *Apropos*, it is well-settled that a void assessment bears no valid fruit.[83]

With the foregoing, it becomes unnecessary to address the remaining arguments raised by the parties in this case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Revised FDDA dated February 16, 2017 and Assessment Notice Nos. IT-116-LOA-000055-10-14-1312, VT-116-LOA-000055-10-14-1313, WE-116-LOA-000055-10-14-1315,WE-116-LOA-000055-10-14-1316, issued against petitioner for deficiency taxes for TY 2010 in the amount of ₱453,678,169.69, inclusive of interest and penalties, are **CANCELLED** and **SET ASIDE** for being null and void. M

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[83] *Commissioner of Internal Revenue vs. Azucena T. Reyes; Azucena T. Reyes vs. Commissioner of Internal Revenue,* G.R. Nos. 159694 & 163581, January 27, 2006.

Consequently, respondent Commissioner of Internal Revenue or any person acting on his behalf is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against petitioner during the pendency of the instant case.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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