REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2388** (CTA Case No. 9178)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
ROBINSONS CONVENIENCE STORES, INC., *Respondent.*	Promulgated: MAY 13 2022 3:46 p.m.

x- x

DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] of petitioner Commissioner of Internal Revenue (CIR) filed through registered mail on December 28, 2020 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], which prays for the reversal and setting aside of the *Decision* dated June 30, 2020[3] (Assailed Decision) and the *Resolution* dated November 18, 2020[4] (Assailed Resolution) promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 9178 entitled

[1] *Rollo*, CTA EB No. 2388, pp. 6-30.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, Annex "A", pp. 38-65.
[4] *Id.*, Annex "B", pp. 66-68.

"*Robinsons Convenience Stores, Inc. vs. Commissioner of Internal Revenue*", and the issuance of a new judgment dismissing respondent's petition for review for lack of jurisdiction.

THE FACTS

Petitioner is the duly appointed CIR 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. He may be served summons, pleadings and other processes at his office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

Respondent Robinsons Convenience Stores, Inc., (RCSI) is a domestic corporation, duly organized and existing under Philippine laws, with principal office at 110 E. Rodriguez Jr. Ave. Libis, Quezon City. Petitioner is duly registered with the Bureau of Internal Revenue with Tax Identification Number (TIN) 205-728-757-000.[6]

On September 19, 2011, Letter of Authority (LOA) No. 116-2011-00000075 was issued, authorizing Revenue Officers (ROs) Meliza Wepee, Reynoso Bravo, William Sundiam, Miguel Sulit, Maribel Serafica, and Group Supervisor (GS) Wilfredo Reyes of Large Taxpayers (LT) Regular Audit Division 1, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2010 to December 31, 2010, pursuant to Audit Criteria for Taxable Years 2009 and 2010.[7]

Respondent RCSI then executed a Waiver of the Defense of Prescription under the Statute of Limitations of the 1997 NIRC, as amended, on May 23, 2013, extending the period to assess until March 31, 2014.[8]

Respondent RCSI received a copy of the Preliminary Assessment Notice (PAN) through facsimile transmission on March 29, 2014. The subject PAN proposed to assess

---

[5] *Rollo*, Decision dated June 30, 2020, p. 39.
[6] *Id.* at 38-39.
[7] *Id.* at 39.
[8] *Id.*

petitioner for deficiency taxes in the aggregate amount of P3,507,088,450.06, broken down as follows:[9]

Type of Tax	Total Amount
Income Tax (IT)	Php 2,317,218,474.19
Value Added Tax (VAT)	1,175,806,543.17
Expanded Withholding Tax (EWT)	6,689,582.96
Withholding Tax on Compensation (WTC)	7,373,849.74
TOTAL	**Php 3,507,088,450.06**

In reply to the PAN, respondent RCSI filed a protest with petitioner on April 11, 2014, requesting that the assessment be cancelled for lack of factual and legal basis.[10]

Respondent RCSI received a copy of petitioner's Formal Letter of Demand (FLD) issued by the BIR-LT Service Division, which demanded respondent to pay alleged deficiency taxes for TY 2010 in the total amount of P3,324,939,818.35, inclusive of surcharges and interest.[11]

In accordance with Section 228 of the 1997 NIRC, as amended, respondent protested the FLD within thirty (30) days from receipt hereof by filing a protest letter with the BIR, LT Service Division on June 6, 2014.[12]

Petitioner issued Final Decision on Disputed Assessment (FDDA) dated March 2, 2015 issued by Nestor S. Valeroso, OIC, Assistant Commissioner, LT Service, reiterating his finding that respondent RCSI is liable to pay alleged deficiency taxes for TY 2010 in the total amount of P3,583,693,014.79, inclusive of surcharges and interest.[13]

Respondent RCSI filed with petitioner on March 31, 2015, its request for reconsideration of the FDDA dated March 2, 2015.[14]

On October 2, 2015, respondent RCSI received a copy of petitioner's decision, denying its request for reconsideration

---

[9] *Rollo*, Decision dated June 30, 2020, p. 39.
[10] *Id.* at 40.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

and reiterating the demand for payment of alleged deficiency internal revenue taxes for TY 2010.[15]

On October 30, 2015, petitioner filed a Petition for Review praying for the cancellation and withdrawal of the assessments for deficiency IT, VAT, EWT, and WTC for the taxable year 2010, in the amount of P3,583,693,014.79, inclusive of surcharges, interest and other penalties.[16]

After trial, the Court in Division rendered the Assailed Decision where the dispositive portion reads as follow:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the subject assessment for deficiency income tax, VAT, EWT and WTC for taxable year 2010 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

Petitioner then moved for the reconsideration of the Assailed Decision but was denied anew under the Assailed Resolution where the dispositive portion reads as follows:

> "**WHEREFORE**, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Hence, the instant *Petition for Review* was filed by petitioner on December 28, 2020 after the Court granted[17] petitioner's *Motion for Extension to File Petition for Review*[18] on December 14, 2020.

On January 19, 2021, respondent was ordered to file its comment.[19]

On February 8, 2021, respondent submitted its *Comment/Opposition (Re: Petition for Review dated December 28, 2020)*.[20]

---

[15] *Rollo*, Decision dated June 30, 2020, pp. 40-41.
[16] *Id.* at 41.
[17] *Id.*, Minute Resolution dated December 14, 2020, p. 5.
[18] *Id.* at 1-3.
[19] *Id.*, Resolution dated January 19, 2021
[20] *Id.* at 96-116.

On February 19, 2021, the instant case was referred to the Philippine Mediation Center-Court of Tax Appeals. [21] However, the parties decided not to have their case mediated.[22]

Hence, the case was submitted for decision on June 30, 2021.[23]

THE ISSUE

Whether the Court in Division erred in cancelling and setting aside petitioner's assessment on respondent's alleged deficiency taxes.

Arguments of Petitioner[24]

Petitioner argues that this Court has no jurisdiction on the instant case as the assessment has attained its finality, hence, unappealable and incontestable, and assuming without conceding, that respondent received the FLD and protested it on time, still, the Court has no jurisdiction.

Petitioner also argues that the tax assessments were issued within the prescriptive period of ten (10) years after the discovery of the falsity, fraud or omission.

Petitioner insists that the Court in Division erred in ruling that the subsequent ROs who conducted the tax reinvestigation were not authorized.

He further insists that assuming this Court had jurisdiction on the case, the subject assessments have bases in fact and in law.

Argument of Respondent[25]

On the other hand, respondent argues that the grounds relied upon by petitioner are the same arguments raised in his Motion for Reconsideration (MR), hence, it deserves scant consideration from this Court as they have already been

---

[21] Rollo, Resolution dated February 19, 2021, pp. 121-122.
[22] *Id.*, No Agreement to Mediate dated June 4, 2021.
[23] *Id.*, Resolution dated June 30, 2021, pp.
[24] *Supra*, Note 1.
[25] *Supra*, Note 20.

judiciously considered and passed upon in the Assailed Resolution.

Respondent insists that this Court has jurisdiction on the instant case and that it did not file a false return, or a fraudulent return with intent to evade taxes.

Respondent also insists that the ROs who conducted the audit and subsequent reinvestigation were not duly authorized to examine its book of accounts and records.

RULING OF THE COURT

The Court has jurisdiction over the Petition for Review that was timely filed.

Section 18 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

> "SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* - No civil proceeding involving matter 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*."

Likewise, Sections 1 and 3(b), Rule 8 of the RRCTA provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
>
> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
>
> (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. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by an MR which was denied in the assailed *Resolution* dated November 18, 2020, a copy thereof was received by petitioner on November 25, 2020.

Applying the above-cited provisions, petitioner had fifteen (15) days from November 25, 2020 or until December 20, 2020. However, petitioner filed a *Motion for Extension to File Petition for Review* which was granted under this Court's Minute Resolution dated December 14, 2020 where he was given until December 25, 2020.

Considering that December 25, 2020 was a legal holiday and December 26, 2020 and December 27, 2020 fell on Saturday and Sunday, respectively, hence, the filing of the instant Petition for Review on December 28, 2020, which was the next working day, was on time.

The final investigating ROs were not clothed with a new LOA. Thus, the resultant assessments were void.

In the Assailed Decision, the Court in Division found that in LOA No. 116-2011-00000075 dated September 19, 2011, ROs Wepee, Bravo, Sundiam, Sulit, Serafica, and GS Reyes of LT Regular Audit Division 1, were authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2010 to December 31, 2010 for Taxable Years 2009 and 2010.[26]

However, based on the records of the case and as determined by the Court in Division, a different set of ROs namely: Reynante P. Martinez, Rosario A. Arriola, Carolyn V.

---

[26] *Rollo,* Decision dated June 30, 2020, p. 63.

Mendoza, Sheila C. Samaniego, and GS Rolando M. Balbido, issued the following:[27]

1. Memorandum recommending the issuance of a PAN against the respondent;
2. Memorandum recommending the issuance of an FLD against the respondent;
3. Memorandum recommending the issuance of an FDDA against the respondent; and
4. Memorandum recommending the denial of the request for reconsideration of the FDDA.

The Assailed Decision further stated that ROs Martinez, Arriola, Mendoza, Samaniego, and GS Balbido were not validly authorized by a new LOA when they exercised the assessment functions, such as, but not limited to, the recommendation for the issuance of a PAN, FLD, FDDA, and denial of the request for reconsideration of the FDDA. Hence, there was lack of authority on their part.

Sections 6(A) and 13 of the 1997 NIRC, as amended, provide:

> **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.
>
> xxx xxx xxx
>
> **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

---

[27] *Id.* at 63-64.

> deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (*Underscore ours*)

As gleaned from the abovementioned provisions, the execution of an LOA is mandatory in every conduct of an investigation or examination by the ROs on taxpayer's books of accounts and other accounting records. Otherwise, the deficiency tax assessment arising therefrom is a nullity as held in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[28], to wit:

> 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**. (*Emphasis supplied*)

Furthermore, the Supreme Court in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[29] emphasized the vital significance of issuing an LOA for the validity of an assessment, to wit:

> "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, **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.'

---

[28] G.R. No. 178697, November 17, 2010.
[29] G.R. No. 222743, April 5, 2017.

> 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.**
>
> x x x
>
> Contrary to the ruling of the CTA *en banc,* an LOA cannot be dispensed with just because none of the financial books or records being physicially kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**
>
> x x x
>
> **That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."** *(Emphases and underlining supplied)*

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 account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[30] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[31]

The importance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes

---

[30] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

[31] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

into the validity of the assessment. The lack of authority of the ROs is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.[32]

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue,*[33] the Supreme Court held:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer'* and issue an assessment against him.
>
> That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.
>
> **In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.** xxx." *(Emphasis and underscoring added)*

Moreover, in the recent case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*, [34] the Supreme Court held that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayers' right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representatives to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representatives to examine the taxpayer's books of accounts.

---

[32] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, supra.
[33] G.R. No. 222133, November 4, 2020.
[34] G.R. No. 242670, May 10, 2021.

It has been the hornbook doctrine that any tax examination conducted in violation of the taxpayer's right to due process is inescapably void since the absence of an LOA is one such index of violation of due process.

Thus, further discussion on the other issues raised by petitioner is no longer necessary.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the *Decision* dated June 30, 2020 and *Resolution* dated November 18, 2020 are hereby **AFFIRMED.**

Petitioner, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from collecting the deficiency IT, VAT, EWT, and WTC for taxable year 2010 against respondent.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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
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