REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2699** *(CTA Case No. 9846)*
- versus -	Present: **DEL ROSARIO**, *PJ*, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO**, *and* **CUI-DAVID,** **FERRER-FLORES,** **ANGELES**, *JJ.*
ORO DARE LOGISTICS CORPORATION, *Respondent.*	**Promulgated:** MAY 10 2024 3:38 p.m.

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DECISION

REYES-FAJARDO, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) on October 24, 2022, assailing the Decision[2] and Resolution[3] of the Third Division of this Court (Court in Division) in CTA Case No. 9846, promulgated on May 19, 2022 and September 14, 2022, respectively. In the assailed issuances, the Court in Division cancelled the CIR's deficiency Income tax and Value-Added Tax (VAT) assessments and corresponding collection measures issued against respondent Oro Dare Logistics Corporation (Oro Dare) relative to taxable year 2010, *viz.*:

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1 *Rollo*, pp. 7-22.
2 Penned by CTA Associate Justice Maria Rowena Modesto-San Pedro with Associate Justices Erlinda P. Uy and Ma. Belen M. Ringpis-Liban concurring. *Rollo*, pp. 30-47.
3 Penned by CTA Associate Justice Maria Rowena Modesto-San Pedro with Associate Justices Erlinda P. Uy and Ma. Belen M. Ringpis-Liban concurring. *Rollo*, pp. 49-52.

Assailed Decision

> **WHEREFORE,** in light of the foregoing considerations, the Petition for Review filed by petitioner Oro Dare Logistics Corporation is hereby **GRANTED**. Accordingly, the CIR's Notice of Denial, dated 21 June 2017, is hereby **ANNULLED, REVERSED,** and **SET ASIDE**. The FNBS, dated 24 May 2018, FLD/ANs, dated 24 October 2014, assessing petitioner for alleged deficiency income taxes in the amount of P3,220,514.10 and deficiency VAT of P3,179,424.77 or a total amount of P6,399,938.87 for the taxable year 2010, and the PCL, dated 24 February 2015, enforcing collection for the total amount of P6,399,938.87, are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

Assailed Resolution

> **WHEREFORE,** respondent's Motion for Reconsideration (Re: Decision promulgated on 19 May 2022) is hereby DENIED for lack of merit.
>
> **SO ORDERED.**

FACTS

Oro Dare Logistics Corporation is engaged primarily as a freight and cargo forwarder of all classes of goods and merchandise.[4] It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 006-240-237-000.[5]

On April 25, 2012, respondent Oro Dare received **Letter Notice Nos. 098-RLF-10-00-00181**[6] **and 098-TRS-10-00-00058**,[7] signed by petitioner CIR, relative to taxable year 2010. The Letter Notices informed respondent of the discrepancy arising from the Reconciliation of Listing for Enforcement-Summary List of Sales and

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4 Paragraph 1, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 421.
5 Paragraph 3, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 421.
6 Exhibit "P-36," Docket – Vol. 2, p. 524.
7 Exhibit "P-36," Docket – Vol. 2, p. 525.

Purchases (RELIEF) as against the Tax Reconciliation System (TRS),[8] whereby tax authorities conducted a "computerized matching" of information/data provided by third party sources against Oro Dare's VAT returns.

On February 8, 2013, the officer-in-charge of BIR Revenue District Office (RDO) No. 98 wrote a letter, to follow up and remind Oro Dare of the discrepancy noted in the Letter Notices.[9] This led to the issuance of a **Notice of Informal Conference (NIC)** on October 16, 2013, relative to alleged deficiency taxes for taxable year 2010 in the aggregate amount of ₱5,858,393.58, computed as follows:[10]

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	₱1,440,458.93	₱720,229.47	₱720,229.47	₱25,000.00	₱2,905,917.87
VAT	1,394,036.05	697,018.03	836,421.63	25,000.00	2,952,475.71
Total	₱2,834,494.98	₱1,417,247.50	₱1,556,651.10	₱50,000.00	**₱5,858,393.58**

Still pursuant to the above-mentioned Letter Notices, the NIC was followed by the issuance of a **Preliminary Assessment Notice (PAN)**[11] on September 12, 2014, relative to alleged deficiency taxes in the aggregate amount of ₱6,327,375.80,[12] computed as follows:

	Income Tax	VAT	Total
Basic	₱1,440,458.93	₱1,394,036.05	₱2,834,494.98
Surcharge (50%)	720,229.47	697,018.02	1,417,247.49
Interest (20% p.a.)	997,949.95	1,027,683.38	2,025,633.33
Compromise Penalty	25,000.00	25,000.00	50,000.00
Total	₱3,183,638.35	₱3,143,737.45	**₱6,327,375.80**

On October 8, 2014, Oro Dare wrote a letter to the Office of the Regional Director to *request for a reinvestigation* of the subject assessments.[13] However, on October 24, 2014, BIR Revenue Region No. 16-Cagayan de Oro City issued a **Formal Letter of Demand and Assessment Notices (FLD/ANs)**, charging respondent with alleged deficiency taxes in the aggregate amount of ₱6,399,938.87, computed as follows:[14]

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8 Paragraph 4, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 421.
9 Paragraph 5, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, pp. 421-422.
10 Paragraph 6, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 422.
11 Exhibit "P-39," Docket – Vol. 2, p. 530.
12 Paragraph 7, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 422.
13 Paragraph 8, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 422.
14 Paragraph 9, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 422.

	Income Tax	VAT	Total
Basic	*₱1,440,458.93*	*₱1,394,036.05*	*₱2,834,494.98*
Surcharge (50%)	*720,229.47*	*697,018.02*	*1,417,247.49*
Interest (20% p.a.)	1,034,825.70	1,063,370.70	2,098,196.40
Compromise Penalty	*25,000.00*	*25,000.00*	*50,000.00*
Total	₱3,220,514.10	₱3,179,424.77	**₱6,399,938.87**

Respondent received the FLD/ANs by registered mail on October 30, 2014.[15]

Thereafter, BIR RDO No. 98 issued a **Preliminary Collection Letter (PCL)** directing Oro Dare to pay the above-detailed deficiency taxes within ten days from receipt thereof.[16] Saying that its business at that time was in crisis,[17] Oro Dare requested the BIR to allow payment of 40% of the basic tax due per FLD/ANs.[18] When the BIR agreed to this, Oro Dare issued a *Promissory Note* dated June 25, 2015[19] in the amount of ₱1,133,798.04,[20] representing 40% of the basic tax as assessed, payable in six monthly installments.[21]

Later on, Oro Dare offered this amount as a compromise by filing *Applications for Compromise Settlement* (BIR Form No. 2107)[22] grounded on the "doubtful validity of the assessment." Respondent pointed out[23] that it qualifies for a 40% compromise settlement because the BIR had issued a *jeopardy assessment*,[24] pursuant to Revenue Regulations (RR) No. 30-2002.[25] However, through a **Notice of Denial**[26] dated June 21, 2017, the CIR disapproved the aforementioned applications for compromise and requested Oro Dare to pay the outstanding balance of the tax assessments (₱5,266,140.83)[27] plus all the increments relative

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15 Paragraph 10, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 422.
16 Paragraph 11, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 422.
17 Letter dated May 25, 2015, Exhibit "P-43," Docket – Vol. 2, p. 544.
18 Paragraph 12, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 422.
19 Exhibit "P-45," Docket – Vol. 2, p. 546.
20 There is a ₱0.50 discrepancy between the amount per Promissory Note (₱1,133,798.04) and 40% of total basic taxes per FLD/ANs (₱1,133,797.99 = ₱2,834,494.98 x 40%).
21 Paragraph 13, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 423; Letter dated June 25, 2015, Exhibit "P-44," Docket – Vol. 2, p. 546.
22 Exhibit "P-46" and "P-47," Docket – Vol. 2, 547-548.
23 In a Letter dated August 8, 2016, Docket – Vol. 2, pp. 549-550.
24 Paragraph 14, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 423.
25 Petitioner cited RR No. 20-2002 (see Letter dated August 8, 2016, Docket – Vol. 2, p. 549). However, the correct issuance number of the Revenue Regulation relied upon is RR No. 30-2002, "SUBJECT : Revenue Regulations Implementing Sections 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001;" December 16, 2002.
26 Exhibit "P-49," Docket – Vol. 2, p. 551.
27 Outstanding Balance = Total assessment per FLD/ANs and PCL less Amount per Promissory Note dated June 25, 2015 = ₱6,399,938.87 – ₱1,133,798.04 = ₱5,266,140.83.

to the delinquency.[28] Oro Dare received a copy of said denial on May 23, 2018.[29]

This prompted Oro Dare to file a *Petition for Review* before the CTA on June 4, 2018, seeking the cancellation of the FLD/ANs, PCL, and Notice of Denial.[30] This was docketed as CTA Case No. 9846.

Meanwhile, on June 14, 2018, Oro Dare received the BIR's[31] **Final Notice Before Seizure (FNBS)**[32] dated May 24, 2018, advising respondent to settle its tax liability, with a warning that, should it fail to do so, the tax authorities will be constrained to take appropriate civil remedies or legal action.[33]

In view of this, Oro Dare filed an *Amended Petition for Review* to include the cancellation of the FNBS in its prayer.[34]

DECISION OF THE COURT IN DIVISION

In the Assailed Decision, the Court in Division ruled in favor of Oro Dare, annulling and setting aside the FNBS, FLD/ANs, and PCL. It ruled as follows: *First*, the CTA has jurisdiction over the CIR's decisions on compromise applications, pursuant to Section 7(a)(1) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, and Section 3(a)(1) of the Revised Rules of the CTA (RRCTA). *Second*, guided by the Supreme Court's pronouncements in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[35] and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* (*Medicard*),[36] the tax assessments against Oro Dare are void for lack of a valid Letter of Authority; Letter Notice Nos. 098-RLF-10-00-00181 and 098-TRS-10-00-00058 are not equivalent to an LOA.

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28 Notice of Denial dated June 21, 2017, Docket – Vol. 2, p. 551.
29 Paragraph 15, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 423.
30 Docket – Vol. 1, p. 21.
31 Signed by Estela M. Laga-ac, Chief, Collection Division, BIR Revenue Region 16, Cagayan de Oro City.
32 Exhibit "P-74," Docket – Vol. 2, p. 576.
33 Paragraph 16, Pre-Trial Order dated February 21 2019, Docket – Vol. 1, p. 423.
34 Docket – Vol. 1, p. 112.
35 G.R. No. 242670, May 10, 2021.
36 G.R. No. 222743, April 5, 2017, 808 PHIL 528-556.

In the Assailed Resolution, the Court in Division denied the CIR's subsequent motion for reconsideration. Hence, it filed the present petition.

The CIR's Arguments

Petitioner imputes error upon the Court in Division and insists as follows: *First*, the CTA does not have jurisdiction over cases involving tax compromises.[37] *Second*, the subject tax assessments have become final, executory, and demandable because Oro Dare failed to file a valid protest against the FLD/ANs. After receiving the FLD/ANs on November 14, 2014, instead of filing a formal protest thereto within 30 days, Oro Dare submitted a Letter-Request dated May 25, 2015 to be allowed to pay 40% of the basic tax per assessments.[38] Respondent's failure to question the validity of the assessments in a timely manner amounts to the finality of the assessments, which, in turn, may no longer be the subject of judicial scrutiny.[39] *Third*, as there was no actual examination of the books of respondent, an LOA is not required; the issuance of a Letter Notice is sufficient, as it serves as notice of audit and investigation, pursuant to Revenue Memorandum Circular (RMC) No. 40-03.[40] The subject Letter Notice contains all the elements to establish a contract of agency between the CIR and revenue officer assigned to examine the books of Oro Dare.[41] *Fourth*, the subject assessments are valid and lawful. Even assuming that the issuance of Letter Notices *in lieu* of LOA is against BIR policy, this lapse should only merit sanction against the revenue officers and head of offices concerned; it does not affect the assessment's validity. All presumptions are in favor of the correctness of tax assessments.[42]

Oro Dare's Arguments

In its Comment and Opposition,[43] respondent points out that the CIR's arguments are a mere rehash of those averred in its Memorandum dated March 9, 2021 filed before the Court in Division. The instant petition fails to raise new matters and/or compelling

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37 *Rollo*, pp. 10-11.
38 *Rollo*, pp. 13-14.
39 *Rollo*, pp. 15-16.
40 *Rollo*, p. 17.
41 *Rollo*, p. 18.
42 *Rollo*, pp. 18-19.
43 *Rollo*, pp. 53-64.

reasons which would warrant reversal of the assailed issuances; particularly, the CIR did not present any documentary and testimonial evidence, including evidence that will show that the revenue officers in charge of the case were authorized to conduct the audit.[44] In addition, it raises the following counter-arguments: *First*, an LOA is required by statute in order to clothe revenue officers with authority to examine taxpayers. The subject assessment was void due to the absence of an LOA and, thus, could not have become final and executory.[45] *Second*, the CTA has jurisdiction to rule on the validity of the Notice of Denial.[46]

ISSUES

Based on the parties' submissions, We restate the issues as follows:

I. Did the Court in Division err in taking cognizance of Oro Dare's Petition for Review, which assailed the CIR's denial of the application for compromise?

   - Does the CTA have jurisdiction to review the CIR's disapproval of an offer to compromise, which was coupled with a request to pay alleged deficiency taxes against the taxpayer?

II. Did the Court in Division err in invalidating the subject FNBS, FLD/ANs, and PCL issued by the CIR against Oro Dare?

   - Does a Letter Notice take the place of a Letter of Authority?

RULING

The Petition for Review is unmeritorious.

At the outset, the parties' respective positions and arguments are the same as those submitted to and already passed upon by the Court

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[44] *Rollo*, pp. 54-55.
[45] *Rollo*, pp. 55-56.
[46] *Rollo*, p. 57.

in Division. There being no cogent, much less compelling, reason to reverse or modify the findings and conclusions made by the Court in Division, We deny the present petition.[47]

The Court in Division correctly took cognizance of Oro Dare's Petition for Review.

Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282, and Section 3(a)(1) of the RRCTA vest the CTA with authority to take cognizance of "other matters," arising from the National Internal Revenue Code of 1997, as amended (Tax Code), and other laws administered by the BIR, which necessarily includes rules, regulations, and measures on the **collection of tax**. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.[48]

Oro Dare filed its Petition for Review before the Court in Division after receiving a copy of the CIR's Notice of Denial on May 23, 2018.[49] Aside from assailing the CIR's disapproval of its offer to compromise, Oro Dare's Petition for Review, as amended, also sought for the cancellation of the FLD/ANs, PCL, and FNBS.

While its appeal to the CTA was immediately preceded by the CIR's rejection of its offer to compromise, the Petition for Review, as amended, was lodged mainly to contest the collection measures implemented by the tax authorities against Oro Dare. To be sure, the FLD/ANs, and PCL, **as well as the Notice of Denial, all contained requests for the payment of alleged deficiency taxes**. Significantly, Oro Dare was even constrained to amend its original Petition for Review in view of the CIR's issuance of the FNBS, **giving notice that the tax authorities will be implementing summary administrative collection measures** under Section 205 of the Tax Code[50] if Oro Dare fails to settle its tax liability.

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47 See *Spouses Reyes v. Spouses Chung*, G.R. No. 228112, September 13, 2017, 818 PHIL 225-239.

48 *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 227049, September 16, 2020; *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. Nos. 197945 & 204119, July 9, 2018.

49 Paragraph 15, Pre-Trial Order dated February 21 2019, Docket - Vol. 1, p. 423.

50 SECTION 205. Remedies for the Collection of Delinquent Taxes. — The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be: (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and

The Court in Division correctly cancelled the subject assessments and invalidated the subsequent collection measures.

At the outset, We are mindful that the filing of the present petition was prompted by the CIR's Notice of Denial and the simultaneous attempt to collect alleged deficiency taxes from Oro Dare; matters that fall within the Court's jurisdiction over "other matters," as discussed above.

Whether an offer to compromise is acceptable or not is subject to the CIR's sole discretion. However, certainly, this authority is not absolute. In this regard, the scope of Our review includes the correctness of the CIR's ruling relative to the compromise, *in which an attempt to collect had been incorporated*, and the attendance of any grave abuse of discretion.[51]

To recall, the CIR denied Oro Dare's Applications for Compromise Settlement, which, in turn, were grounded on the "doubtful validity of the assessment." Thus, to determine whether the CIR was correct in denying Oro Dare's application or whether there had been any abuse of discretion, it is necessary to, first, inquire into the assessment's validity. Furthermore, the existence of a valid assessment shall also be determinative of the propriety of the CIR's summary administrative collection measures[52] embodied in the PCL *and* the Notice of Denial.

The CIR is authorized to make an assessment based on the best evidence obtainable when there is reason to believe that the information declared by the taxpayer is false, incomplete, or erroneous.[53] In which case, it may resort to methods of examination, other than the traditional taxpayer audit, in order to ascertain the correct amount of tax. However, any such examination, whether traditional or otherwise, shall be undertaken only by express authority of the CIR or its duly authorized representative.[54]

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interest in and rights to personal property, and by levy upon real property and interest in or rights to real property x x x

51 *Philippine National Oil Co. v. Court of Appeals*, G.R. Nos. 109976 & 112800, April 26, 2005, 496 PHIL 506-636. Also see *Fernandez v. Dulay*, C.T.A. Case No. 9908, March 24, 2023.

52 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. Nos. 197945 & 204119, July 9, 2018.

53 Section 6(B), Tax Code.

54 Section 6(A), Tax Code.

The tax assessments in this case were based on the results of the implementation of a "no-contact-audit-approach," whereby data (e.g., sales, purchases, importations, etc.) submitted by VAT taxpayers under the RELIEF System were matched with information from third party sources. The CIR issued Letter Notice Nos. 098-RLF-10-00-00181 and 098-TRS-10-00-00058 to inform Oro Dare of the discrepancies extracted from the BIR's matching/cross-referencing procedures. Significantly, it is no longer disputed that the subsequent preliminary and formal assessments were issued only on the strength of said Letter Notices, *without an LOA*.

This practice violates the BIR's own procedure set out in Revenue Memorandum Order No. 32-05.[55] In *Medicard*, the Supreme Court explained the nature of a Letter Notice and why it cannot take the place of an LOA, *viz.*:

> The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. **Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it.** In fact, Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The Supreme Court further explained in *Medicard* that an LOA is equally needed under the BIR's RELIEF System:

> The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. **In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR**

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[55] SUBJECT: Prescribing Guidelines and Procedures in Handling Letter Notices for Deployment via the Information Delivery Portal in the Years 2005 Onwards for Audit and Enforcement Purposes (November 24, 2005).

> **conducts a physical examination of the taxpayer's records**: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. **The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.** (Emphasis supplied)

The CIR recognized the above-cited pronouncement **in Revenue Memorandum Circular No. 075-18,**[56] where it expressly declared, "Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void[,]' x x x [A]ny examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions."

In sum, the lack of the requisite LOA renders the subject assessments (FLD/ANs) void. Without a valid formal assessment, the subsequent resort to summary administrative collection remedies (e.g., PCL and FNBS) is likewise invalid.[57]

As a final note, We cannot turn a blind eye to the unauthorized examination of the taxpayer. The Court cannot be precluded from considering the revenue officer's patent lack of authority to investigate the taxpayer, inasmuch as this matter goes into the intrinsic validity of the assessment.[58] A defective LOA invalidates the consequent tax investigation. When the underlying audit examination is unauthorized, any resulting assessment shall be a nullity.[59] It is settled that a void assessment bears no valid effect[60] and, thus, cannot attain finality; any attempt to collect taxes premised thereon must be stricken down.

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[56] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority (September 5, 2018).

[57] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. Nos. 197945 & 204119, July 9, 2018.

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

[59] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.

[60] *Commissioner of Internal Revenue v. Unioil Corp.*, G.R. No. 204405, August 4, 2021; *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016, 799 PHIL 391-420.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed the Decision promulgated on May 19, 2022 and Resolution promulgated on September 14, 2022, both rendered by the Court in Division in CTA Case No. 9846, are **AFFIRMED**.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, see my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

(With Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2699** *(CTA Case No. 9846)*
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, and **ANGELES**, *JJ.*
ORO DARE LOGISTICS CORPORATION, Respondent.	Promulgated: MAY 1 0 2024 3:38 p.m.

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CONCURRING OPINION

***DEL ROSARIO, P.J.*:**

In 2022, I concurred in the decision of the Court *En Banc* in *Commissioner of Internal Revenue vs. New Farmers Plaza, Inc.*,[1] declaring that the Petition for Review therein, which appealed a Notice of Denial of an offer of compromise, strictly involves a challenge to the correctness of the denial by the Commissioner of Internal Revenue (CIR). The Court *En Banc* remanded the case to the Court in Division with a directive to focus only on the manner by which the CIR exercised his discretionary power to enter into compromise, i.e., whether or not the parameters set by law were properly observed, or whether the CIR abused his discretion in denying or approving the compromise.

[1] CTA EB No. 2290 (CTA Case No. 9475), May 6, 2022.

In *Commissioner of Internal Revenue vs. Oriental Assurance Corporation*,[2] the Supreme Court explained that in the absence of any grave abuse of discretion, the authority of the CIR to compromise is purely discretionary and the courts cannot interfere with his exercise of discretionary functions.

Very recently, in *Commissioner of Internal Revenue vs. Tridharma Marketing Corporation*,[3] the Supreme Court elucidated that "although Tridharma's initial petition pertained to the CIR's Notice of Denial regarding its application for a compromise settlement, the CTA Second Division was justified in nullifying the assessments against Tridharma based on its finding of the absence of a valid [Letter of Authority]." Said the Supreme Court:

> At this juncture, the Court wishes to elucidate that, although Tridharma's **initial petition pertained to the CIR's Notice of Denial regarding its application for a compromise settlement**, the CTA Second Division was **justified in nullifying the assessments** against Tridharma based on its finding of the absence of a valid LOA.
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> To reiterate, 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.
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> The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the intrinsic validity of the assessment itself. **The lack of authority of the revenue officers is tantamount to the absence of an LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.**
>
> Such is the importance of having the requisite LOA, that **even if a taxpayer fails to raise at the earliest opportunity the lack of the revenue officer's authority, the Court is not precluded from considering the same because the said issue goes into the intrinsic validity of the assessment itself.**
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> Furthermore, Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, empowers the CTA to rule upon related issues necessary to achieve an orderly disposition of a case. The said provision reads:
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> SECTION 1. Rendition of judgment. – xxx
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> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon

[2] G.R. No. 251677, July 28, 2021 (Notice of Resolution).
[3] G.R. No. 261787, October 4, 2023 (Notice of Resolution).

> related issues necessary to achieve an orderly disposition of the case. xxx
>
> Ultimately, in light of the **inherent significance and essentiality of the requirement pertaining to the issuance of an LOA**, the CTA Second Division correctly and judiciously acknowledged the matter and **rendered the appropriate decision to cancel and set aside the assessments** issued by the CIR against Tridharma.

Considering the aforecited cases, I submit that with regard to the CIR's exercise of his authority to compromise the general rule is that the Court cannot interfere with such purely discretionary exercise, absent grave abuse of discretion. Nonetheless, the CTA has sufficient authority to nullify an assessment subject of the offer of compromise in cases where the assessment is intrinsically void regardless of the basis of the offer of compromise whether it is doubtful validity of the assessment or financial incapacity of the taxpayer.

Thus, upon re-evaluation of my position, I submit that the Court has jurisdiction over both the Notice of Denial of respondent's offer of compromise as well as on the validity of the Final Letter of Demand/Assessment Notices dated October 24, 2014, Preliminary Collection Letter dated February 24, 2015, and Final Notice Before Seizure dated May 24, 2018.

Since the assessments involved in the present controversy are undisputedly fraught with a fatal infirmity, **specifically for lack of a Letter of Authority**, the Court should not allow the government to benefit therefrom. **Like a void judgment, a void assessment produces no legal effect; it never attains finality and – akin to an outlaw – it should be slain <u>whenever</u> and <u>wherever</u> it exhibits its head.**[4]

ALL TOLD, I VOTE to DENY the present Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] *Rene H. Imperial and Nidsland Resources and Development Corporation vs. Hon. Edgar L. Armes, Presiding Judge of Branch 4, Regional Trial Court, 5th Judicial Region, Legazpi City*, G. R. Nos. 178842 and 195509, January 30, 2017.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2699
(CTA Case No. 9846)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

-*versus*-

ORO DARE LOGISTICS CORPORATION,
Respondent.

Promulgated:
MAY 10 2024 3:38 p.m.

x - x

DISSENTING OPINION

MANAHAN, *J.:*

With due respect, I disagree with the conclusion reached in the *ponencia* nullifying the Final Letter of Demand/Assessment Notices (FLD/ANs) dated October 24, 2014, Preliminary Collection Letter (PCL) dated February 24, 2015 and Final Notice Before Seizure (FNBS) dated May 24, 2018.

In ruling favorably with respondent, the *ponencia* reasoned that the subject assessments were invalid due to lack of Letter of Authority (LOA).

Upon careful review, respondent did not file any protest to the FLD/ANs. Without the administrative protest, the subject assessment necessarily became final and executory. Consequently, the Court of Tax Appeals (CTA) has no jurisdiction to examine the validity of an assessment that had

already become final and executory. Thus, the CTA cannot exercise its power to examine the merits of the subject assessment.

Even assuming, for argument's sake, that the CTA possesses jurisdiction to rule on the validity of the subject assessment and proceed with ruling on the propriety of petitioner's denial of the Offer of Compromise, still, the instant petition should be denied considering that the subject deficiency tax cannot be the subject of a compromise settlement.

In this regard, Section 2, paragraph 2 of Revenue Regulations (RR) No. 30-2002 explicitly provides:

> "SECTION 2. *Cases which may be Compromised.* — The following cases may, upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations, be the subject matter of compromise settlement, *viz.*:
>
> 2. Cases under administrative protest *after issuance of the Final Assessment Notice to the taxpayer which are still* pending in the Regional Offices, Revenue District Offices, Legal Service, Large Taxpayer Service (LTS), Collection Service, Enforcement Service and other offices in the National Office;"

As previously discussed, respondent did not file any administrative protest to the FLD/Ans. Therefore, the subject deficiency tax assessment cannot be the subject of a valid compromise agreement because the same was not ***under administrative protest after issuance of the Final Assessment Notice***.

Meanwhile, I am aware of the Supreme Court's ruling in *Commissioner of Internal Revenue v. Tridharma Marketing Corporation.*[1] In the said case, respondent filed an appeal before this Court after receipt of the Notice of Denial of its Offer to Compromise. Ruling in favor of respondent, the Supreme Court said that the assessments were invalid due to the absence of a valid LOA.

In *Tridharma,* it is noteworthy that on July 25, 2013, respondent therein first filed an Affidavit of Protest after

[1] G.R. No. 261787, October 4, 2023 (Notice of Resolution).

receiving a Formal Letter of Demand (FLD). Thereafter, in a letter dated July 31, 2013, the Bureau of Internal Revenue (BIR) informed respondent that it disregarded the said Affidavit of Protest, which respondent considered as an adverse decision on its protest to the FLD. As such, on August 29, 2013, respondent elevated its protest to the Commissioner of Internal Revenue (CIR). Then, on August 30, 2013, respondent filed its application for compromise settlement.

Based on the foregoing, the taxpayer in *Tridharma* actively pursued its available remedies under the law.

While the *Tridharma* case seems to apply in the instant case, it is nevertheless *inapplicable* considering that herein respondent failed to file an administrative protest. In other words, respondent cannot resort to an offer of compromise as a substitute for a lost remedy, *i.e.*, administrative protest. Otherwise, an offer of compromise may unwittingly become an additional or alternative remedy in case a taxpayer fails to file a protest in accordance with the parameters set forth by the 1997 National Internal Revenue Code (NIRC), as amended.

Considering the foregoing, I **VOTE** to **GRANT** the instant petition.

CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ORO DARE LOGISTICS CORPORATION,
Respondent.

CTA EB NO. 2699
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REYES-FAJARDO, *and*
CUI-DAVID,
FERRER-FLORES,
ANGELES, *JJ.*

Promulgated:
MAY 1 0 2024 3:38 p.m.

x - x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the denial of the present Petition for Review for lack of merit, thereby affirming the Third Division's assailed Decision of 19 May 2022 and Resolution of 14 September 2022. The *ponencia* aptly stated that the absence of the requisite Letter of Authority (**LOA**) renders the subject assessment against Oro Dare Logistics Corporation (**respondent**) void.

A thorough examination of the case's records bolsters this finding, where it is observed that the present assessment was commenced through the issuance of Letter Notices (**LNs**) signed by the Commissioner of Internal Revenue (**petitioner/CIR**).[1] The *ponencia* has sufficiently demonstrated the implications of this lapse in its discussions citing *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[2] case. Further, after perusing the said

[1] Exhibits "P-35" and "P-36", BIR Records, pp. 9-10.
[2] G.R. No. 222743, 05 April 2017.

LNs, they do not appear to be equivalents of a valid LOA. The LNs do not bear the essential information necessary to apprise the concerned taxpayer of the circumstances surrounding the investigation of its records.

With the foregoing considered, the Court has since sufficiently established that the deficiency assessment is void. A void assessment bears no valid fruit.[3] To my mind, the proceedings that emanate therefrom are equally a nullity. Consequently, no tax collection efforts could have been validly initiated pursuant to such an assessment.

In the Dissenting Opinion of our esteemed colleague, Hon. Associate Justice Catherine T. Manahan, she underscored that the *ponencia* oversteps the Court's authority in the present case. There, Justice Manahan opined that the Court *En Banc* is bereft of jurisdiction to rule on the validity of the assessment following respondent's failure to file any protest to the FLD/ANs. According to the Dissenting Opinion, the assessment became final and executory as a result.

On this score, I forward a different disquisition below.

As aptly raised in the *ponencia*, a review of the assessment's validity logically follows the review of the validity of the Applications for Compromise Settlement, where the latter is grounded upon the "doubtful validity of the assessment." A determination of the doubtful validity of the assessment is a necessary consequence of such a review.

Meanwhile, I believe that this Court is constrained to take cognizance of and rule on the finding beyond doubtful validity uncovered over the course of said review, that the assessment was, in fact, void. This Court may rule upon related issues as necessary to achieve a complete and orderly disposition of the case.[4] Well-entrenched are the doctrines that in the absence of the requisite authority (as herein examiners were not clothed with the requisite LOA), the assessment or examination is a nullity; and, a void assessment bears no fruit.[5] As such, the Court rightfully set aside not only the Notice of Denial, but also the Final Notice Before Seizure (**FNBS**), Formal Letter of Demand and Assessment Notices (**FLD/ANs**), and Preliminary Collection Letter (**PCL**).

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

4 See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017.

5 See *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

This is exemplified in *Commissioner of Internal Revenue v. Azucena T. Reyes*[6], where the Supreme Court swerved from a determination of the perfection of a compromise settlement after a finding that the corresponding assessment was void:

> ...
>
> Under the present provisions of the Tax Code and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. **Being invalid, the assessment cannot in turn be used as a basis for the perfection of a tax compromise.**
>
> ...
>
> **It would be premature for this Court to declare that the compromise** on the estate tax liability **has been perfected and consummated, considering the earlier determination that the assessment** against the estate **was void**. Nothing has been settled or finalized. Under Section 204(A) of the Tax Code, where the basic tax involved exceeds one million pesos or the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the NEB composed of the petitioner and four deputy commissioners.
>
> Finally, as correctly held by the appellate court, this provision applies to all compromises, whether government-initiated or not. *Ubi lex non distinguit, nec nos distinguere debemos*. Where the law does not distinguish, we should not distinguish.
>
> ...

In the above-cited case, the CIR had moved to dismiss Reyes' Petition for Review before this Court because the assessment against the estate was already final and executory. Reyes had filed the Petition subsequent to an offer of compromise, long after the issuance of a final estate tax assessment notice. Collection efforts were ongoing, with a PCL, Warrant of Distraint and/or Levy (**WDL**) and Notices of Levy having since been served.

The Supreme Court nonetheless struck down the validity of the assessment upon defective assessment notices that failed to lay down the law and facts on which the assessment was based. The case also partook of a dispute as to whether there was already a perfected compromise agreement.

I respectfully forward that, with the absence of the requisite LOA constituting a much graver violation of the taxpayer's rights to due process,

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6 G.R. Nos. 159694 & 163581, 27 January 2006; Emphasis supplied and italics in the original text.

We cannot dismiss the above case's parallels with the one presented before Us.

All told, in the absence of reversible error in the Third Division's actions, I vote for the denial of the present Petition for Review for lack of merit.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice