REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CONTACT CENTERS ASSOCIATION OF THE PHILIPPINES, INC. (CCAP), Petitioner,	**CTA EB NO. 2405** (CTA Case No. 9666)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 06 2025 4:22pm

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RESOLUTION

FERRER-FLORES, J.:

For this Court's resolution is the **Motion for Reconsideration (Re: Decision Promulgated on December 15, 2023)** *(Motion for Reconsideration)* filed by petitioner Contact Centers Association of the Philippines, Inc. (CCAP/petitioner) on January 8, 2024, with **Comment [Against Petitioner's Motion for Reconsideration (Re: Decision Promulgated on December 15, 2023]** *(Comment)* filed by Commissioner of Internal Revenue (CIR/respondent) on February 5, 2024 and *Reply (Re: Respondent's Comment dated February 5, 2024) (Reply)* filed by the petitioner on February 12, 2024.

In the instant *Motion for Reconsideration*, CCAP prays for the Court *En Banc* to reverse and set aside its *Decision* dated December 15, 2023 (assailed Decision),[1] wherein the Court partially granted CCAP's *Petition for Review*, the dispositive portion of which reads:

> **WHEREFORE**, premised considered, the *Petition for Review* is **PARTIALLY GRANTED,** insofar as the taxability of membership fees for income tax purposes is concerned. Accordingly, the assailed Decision dated July 8, 2020, and assailed *Resolution* dated December 11, 2020 in CTA Case No. 9666 are **AFFIRMED** with the dispositive portion of the assailed Decision modified as follows:
>
> > "**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. The assessment for deficiency compromise penalty is **CANCELLED AND SET ASIDE**. The assessments for basic deficiency income tax, VAT and EWT are **MODIFIED**. Accordingly, petitioner is **ORDERED TO PAY** the amounts of **₱6,052,992.37, ₱7,247,252.73 and ₱348,262.17** representing deficiency income tax, VAT and EWT, respectively, or the total amount of **₱13,648,507.27**, inclusive of the 25% surcharge, 20% deficiency interest, and 20%/12% delinquency interest imposed thereon under Sections 248 (A) (3), and 294 (B) and (C) of the NIRC of 1997, as amended, respectively, computed until November 16, 2021 for deficiency VAT and EWT, and November 19, 2021 for deficiency Income Tax, and taking into account the partial payments made by petitioner on November 16 and 19, 2021, detailed below:

		Income Tax	VAT	EWT	Total
Basic Deficiency Tax	₱	2,379,969.73	2,669,293.56	155,508.31	5,204,771.60
Add: 25% Surcharge		594,992.43	667,323.39	38,877.08	1,301,192.90
Deficiency Interest from April 16, 2014 to February 13, 2017* (₱2,379,969.73 x 20% x 1,035/365 days)		1,349,736.26			1,349,736.26
Deficiency Interest from January 26, 2014 to February 13, 2017* (₱2,669,293.56 x 20% x 1,115/365 days)			1,630,828.67		1,630,828.67
Deficiency Interest from January 16, 2014 to February 13, 2017* (₱155,508.31 x 20% x 1,125/365 days)				95,861.29	95,861.29
Total Amount Due, February 13, 2017	₱	4,324,698.42	4,967,445.62	290,246.68	9,582,390.72
Deficiency Interest From February 14, 2017 to December 31, 2017					
(₱2,379,969.73 x 20% for 321/365 days)	₱	418,613.85			418,613.85
(₱2,669,293.56 x 20% for 321/365 days)			469,503.14		469,503.14
(₱155,508.31 x 20% for 321/365 days)				27,352.42	27,352.42
Delinquency Interest From February 14, 2017 to December 31, 2017					
(₱4,324,698.42 x 20% x 321/365 days)	₱	760,672.98			760,672.98
(₱4,967,445.62 x 20% x 321/365 days)			873,726.05		873,726.05
(₱290,246.68 x 20% x 321/365 days)				51,051.61	51,051.61
Total Amount Due, December 31, 2017	**₱**	**5,503,985.25**	**6,310,674.81**	**368,650.71**	**12,183,310.77**

[1] *Rollo*, pp. 224 to 252.

		Income Tax	VAT	EWT	Total
Delinquency Interest					
From January 1, 2018 to Date of Payment					
(₱4,324,698.42 x 12% x 1,419/365 days) [From January 1, 2018 to November 19, 2021]		2,017,560.68			2,017,560.68
(₱4,967,445.62 x 12% x 1,416/365 days) [From January 1, 2018 to November 16, 2021]			2,312,516.05		2,312,516.05
(₱290,246.68 x 12% x 1,416/365 days) [From January 1, 2018 to November 16, 2021]				135,119.77	135,119.77
Total Amount Due, November 16 and 19, 2021	**₱**	**7,521,545.93**	**8,623,190.86**	**503,770.48**	**16,648,507.27**
Less: Payments made on November 16 and 19, 2021		1,468,553.56	1,375,938.13	155,508.31	3,000,000.00
Total Amount Still Due	**₱**	**6,052,992.37**	**7,247,252.73**	**348,262.17**	**13,648,507.27**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) computed from November 17, 2021 for deficiency VAT and EWT, and from November 20, 2021 for deficiency Income Tax, until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

Tax	Amount
Income Tax	₱ 2,856,144.86
VAT	₱ 3,591,507.49
EWT	₱ 134,738.37

SO ORDERED."

SO ORDERED. *(Footnotes omitted)*

To recall, in the assailed Decision, this Court held that the petitioner failed to discharge the burden of proof that the registration fees, sponsorship fees and other collections were not subject to income tax for these were not derived from its real or personal properties, or from any activity conducted for profit. On the other hand, petitioner was able to prove that the annual membership fees were not subject to income tax. As such, only the deficiency income tax assessment on the annual membership fees were cancelled while the rest were upheld by the Court. As to the deficiency value-added tax (VAT) assessment, the Court found that petitioner's receipts pertaining to registration, sponsorships, and other collections are subject to VAT inasmuch as the same are paid in exchange for services or some kind of benefit from the petitioner. Thus, the deficiency VAT assessment was upheld.

In its bid to have the assailed Decision reversed, petitioner raises the following grounds in its *Motion for Reconsideration*:

I. Petitioner was deprived of its right to due process;
   A. The Letter of Authority (LOA) was invalidly served upon petitioner;
   B. The audit or investigation was continued by unauthorized revenue officers not named in the LOA;
   C. The Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN) were signed by an Officer-in-Charge (OIC) not authorized under the law;
   D. The PAN and FAN were served to an unauthorized representative of the petitioner; and,
   E. The assessment is void for failure to state the facts and the law on which the assessment is made;

II. Petitioner's revenues are not subject to income tax;

III. Petitioner's receipts are not subject to VAT;

IV. Petitioner's other expenses and alleged unaccounted expenses are not subject to 2% expanded withholding tax (EWT);

V. There was erroneous imposition of 25% surcharge; and,

VI. There was erroneous imposition of delinquency interest.

On the other hand, the CIR counters that the issues and arguments raised in the instant *Motion for Reconsideration* were already thoroughly discussed and passed upon by the Court in Division. As to the issues raised belatedly and for the first time on appeal, the CIR argues that the failure of petitioner's counsel to raise said issues is binding upon petitioner. Finally, the CIR claims that petitioner is guilty of laches.

In order to further address the CIR's allegations, CCAP filed its *Reply* wherein it countered that:

A. The instant *Motion for Reconsideration* was properly filed;

B. The Court is not precluded in considering arguments raised in the *Motion for Reconsideration* even for the first time;

C. Technical rules are jurisdictional. Thus, can be raised anytime and relaxed to prevent injustice to a litigant;

D. Petitioner is not guilty of laches;

E. Petitioner is presenting evidence already on record; and,

F. The presumption of the correctness of the assessment does not apply when it is arbitrarily issued, without foundation and rational basis.

We resolve.

After a careful evaluation of the arguments raised by the parties, this Court finds petitioner's *Motion for Reconsideration* bereft of merit.

At the outset, the Court notes that, except for the *first* ground, the rest of the assigned errors raised by petitioner in the present *Motion* are mere repetitions of the matters already considered and exhaustively discussed by the Court *En Banc* in the assailed Decision. Hence, it is unnecessary to re-discuss these arguments in view of the pronouncement of the Supreme Court in the case of *Social Justice Society (SJS) Officers, et al. vs. Alfredo S. Lim, in his capacity as Mayor of the City of Manila*,[2] wherein it was ruled:

> The grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to "cut and paste" pertinent portions of the Decision or re-write the *ponencia* in accordance with the outline of the instant motion.
>
> As succinctly put by then Chief Justice Andres R. Narvasa in *Ortigas and Co. Ltd. Partnership v. Judge Velasco* on the effect and disposition of a motion for reconsideration:
>
>> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant

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[2] G.R. Nos. 187836 and 187916, March 10, 2015.

> reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.

With regard to the *first* ground, petitioner now claims that its right to due process was violated based on several alleged procedural lapses. On the other hand, respondent counters that such issue cannot be raised belatedly and for the first time on appeal.

Notably, the Court is not precluded from ruling on an issue, although not raised by the parties, if the same is a related issue necessary for the orderly disposition of the case. Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals (CTA) or the RRCTA provides:

> SECTION 1. *Rendition of judgment.* – xxx
>
> xxx xxx xxx
>
> In deciding the case, the **Court may not limit itself to the issues stipulated by the parties but may also <u>rule upon related issues necessary to achieve an orderly disposition of the case</u>**. *(Emphasis and underscoring supplied)*

In relation thereto, the case of *Prime Steel Mill, Inc. vs. Commissioner of Internal Revenue* (*Prime Steel* case)[3] is instructive. In said case, the Supreme Court delved into the propriety of the CTA *En Banc's* action of entertaining therein petitioner's <u>additional arguments</u>, including the alleged violation of its right to due process, which were <u>raised for the very first time on appeal</u>. Such additional arguments were raised only in Prime Steel's *Supplemental Memorandum* filed before the CTA *En* Banc. Pertinent portions of the discussion of the Supreme Court are quoted below:

> As correctly held by the CTA *En Banc*, in deciding a case, the tax court "may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." However, this authority of passing upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues submitted during the pre-trial stage is not unbridled. As the CTA *En Banc* itself recognized, such issues "should be dealt with, based not only on substantive law but in light of the relevant rules of evidence."
>
> Certainly, the thrust of proscribing a change of argument on appeal rests on upholding the basic tenets of equity and fair play. "When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party."

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3 G.R. No. 249153, September 12, 2022.

This principle is also laid down in the Rules of Court which applies suppletorily to the Revised Rules of the CTA, *viz.*:

> Section 15. Questions that may be raised on appeal. — Whether or not the appellant has filed a motion for new trial in the court below he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

Hence, in other civil cases, this Court has allowed derogation from this principle only in exceptional cases and only if the factual bases of the new theory would not require presentation of further evidence:

> In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.

For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.* that "[t]he appellate court may, in the interest of justice, properly take into consideration in deciding the case **matters of record** having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."

Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.

From the foregoing, the Court so holds that the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: ***one*, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and *two*, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case**. *(Emphasis supplied)*

In sum, pursuant to Section 1, Rule 14 of the RRCTA, the CTA can rule on arguments raised for the first time on appeal if these are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case. In resolving these arguments, however, the

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Court should be guided by these parameters laid down in *Prime Steel*, that the resolution of these new arguments:

(1) Should not require the presentation of additional evidence, and,
(2) Must rely solely on factual bases that are already matters of record in the case.

Inasmuch as the issues raised by CCAP for the first time on appeal relate to the validity of the assessment and resolution of the same is necessary to achieve an orderly disposition of the case, the Court can therefore rule on these issues, subject, however to the aforementioned conditions.

The Court shall discuss the alleged procedural lapses invoked by petitioner considering the parameters laid down in the *Prime Steel* case.

Whether the LOA, PAN, and FAN were validly served

Petitioner avers that the LOA did not indicate the name and designation of the person who received the same and only bears the signature of the person who received the same with the date of receipt. Thus, the LOA was allegedly invalidly served as there was no proof that the same was served upon CCAP and/or its authorized representative.

As to the PAN and FAN, petitioner likewise maintains that the notices did not indicate a statement regarding the recipient's authority to act for and in behalf of CCAP.

We are not convinced.

The Court finds that the validity of the service of the LOA, PAN, and FAN is no longer in issue. An examination of the records reveals that CCAP had admitted, in multiple occasions, the receipt of the LOA, PAN, and FAN without assailing the authority of the person who received the same.[4] In fact, petitioner's witness, Mr. Joselito J. Uligan, the President of Association, also admitted the receipt of the LOA, PAN, and FAN in this wise:[5]

Q19. Would you please relate how this case began?

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[4] Par. 14 and 15, *IV. Facts, Petition For Review*, Division Docket – Vol. I, p. 14; Par. 9 and 10, *II. Summary of Admitted Facts*, Petitioner's *Pre-Trial Brief*, Division Docket – Vol. I, p. 195; Par. 6 and 7, *I. Admitted Facts, Joint Stipulation of Facts and Issues*, Division Docket – Vol. I, p. 382;

[5] Exhibit "P-18", *Judicial Affidavit of Joselito J. Uligan*, Division Docket – Vol. I, p. 214;

> A19. **We received Letter of Authority No. No. LOA – 050-2014-0000387 on November 3, 2014**, authorizing Revenue Officer Kadapi Manarondong and Group Supervisor Josephine Elarmo of Revenue District Office (RDO) No. 50-South Makati to conduct an examination of our Association's books of accounts and other accounting records for the taxable period 1 January 2013 to 31 December 2013.
>
> Thereafter, on **15 December 2016, we received a Preliminary Assessment Notice (PAN)**, with Details of Discrepancies and supporting schedules, which was **shortly followed by a Final Assessment Notice (FAN), on January 12, 2017**, together with attached Details of Discrepancies xxx *(Emphasis supplied)*

Clearly, the validity of the service of the LOA, PAN, and FAN was no longer in issue in view of the admissions by the petitioner. Thus, the Court finds it unnecessary to address this issue.

Even assuming *arguendo* that there is a dispute in the authority of the person who received the LOA, PAN, and FAN, the Court cannot address such issue on appeal on the basis of the LOA and the notices alone without affording opportunity to the respondent to rebut the same or present evidence to contravene the allegation.

This finds support in the *Prime Steel* case where the Supreme Court quoted with approval the rationale behind the parameters applied by the CTA *En Banc* in the resolution of arguments raised on appeal, to wit:

> It bears stressing that the aforementioned parameters were employed by the CTA *En Banc* when it deigned to pass upon the issue on respondent's supposed lack of authority to conduct the audit investigation in this case. This Court quotes with approbation the following disquisition of the CTA *En Banc* in the assailed *Resolution*:
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>> It is not the failure of the party to raise the issue during the trial stage that renders it futile to raise it on appeal but the lack of opportunity of the other party to rebut or present evidence to contravene the same during the trial of the case that makes it objectionable for a court to rule on this issue at this stage of appeal. The allegation of the lack of an LOA or invalidity thereof conjures up secondary issues and factual matters that need to be adjudicated upon based on evidence or lack thereof. x x x
>>
>> This is the reason why we cannot entertain such issue at this stage, especially so when it was raised for the first time in [petitioner's] *Supplemental Memorandum* at the *En Banc* level. x x x

Whether the investigation was conducted by officers named in the LOA

Petitioner claims that the audit was conducted by unauthorized ROs not named in the LOA. In support thereof, petitioner referred to the **(1)** *Memorandum*[6] submitted by Revenue Officer (RO) Marvin C. Ibanez (RO Ibanez) containing the results of investigation conducted pursuant to LOA No. 201100080502 dated November 25, 2014 ("Memorandum Report" for brevity), and **(2)** *Memorandum of Assignment No. MOA0502014LOA10436*[7] (MOA) dated April 18, 2016 stating that RO Ibanez and Group Supervisor (GS) Faisal G. Mamacotao (GS Mamacotao) were to continue with the ongoing audit of petitioner's books of account for TY 2013.

Sections 6, 10(c), and 13 of the NIRC of 1997, as amended, provide as follows:

> **SECTION 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 <u>his duly authorized representative</u> may authorize the examination of any taxpayer and the assessment of the correct amount of tax**, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> xxx xxx xxx
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> **SECTION 10.** ***Revenue Regional Director.*** — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
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> xxx xxx xxx
>
> (c) **Issue Letters of Authority for the examination of taxpayers within the region**
>
> xxx xxx xxx
>
> **SECTION 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 <u>Letter</u>**

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[6] *BIR Records*, pp. 317.
[7] *BIR Records*, pp. 304.

> **of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. *(Emphasis and underscoring supplied)*

From the foregoing provisions, it is clear that, before an examination can be conducted by a revenue officer, he must first be authorized through an LOA issued by the CIR or his duly authorized representative.

In the instant case, RO Manarondong and GS Elarmo were the officers authorized under the LOA but were allegedly not the officers who actually conducted the examination based on the *Memorandum Report* and *MOA* dated April 18, 2016; however, these documents were not formally offered in evidence by either of the parties.

As a general rule, courts cannot consider any evidence that has not been formally offered.[8] Under Section 8 of Republic Act (R.A.) No. 1125,[9] the CTA is categorically described as a court of record. As cases filed before this Court are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA.[10]

This rule, however, admits to an exception. In *Sabay vs. People*,[11] the Supreme Court relaxed the application of said rule subject to twin requirements, to wit:

> The cases of *People v. Napat-a, People v. Mate, and The Heirs of Romana Saves, et al. v. The Heirs of Escolastico Saves, et al.*, to cite a few, enumerated the requirements so that evidence, not previously offered, can be admitted, namely: ***first*, the evidence must have been duly identified by testimony duly recorded and, *second*, the evidence must have been incorporated in the records of the case.** *(Emphasis supplied)*

Based on the foregoing, in order for the exception to apply, the evidence must have been **identified** and **incorporated** in the records of the case.

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[8] Section 34, Rule 132 of the Revised Rules on Evidence reads:
SECTION 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[9] An Act Creating the Court of Tax Appeals.

[10] *Dizon v. Court of Tax Appeals*, G.R. No. 140944, 30 April 30, 2008.

[11] G.R. No. 192150, October 1, 2014.

Here, although the *Memorandum Report* and the *MOA* dated April 18, 2016 were **incorporated** in the records of the case (i.e., forming part of the *BIR Records*), the said documents were **not identified** by any witnesses. Consequently, the Court cannot consider the said documents in determining as to who conducted the audit of CCAP's books of account for TY 2013.

In view of the foregoing, the Court is left with no evidence upon which it can determine if the audit was indeed conducted by officers not named in the LOA and, in turn, invalidate the assessments.

Whether the PAN and FAN were signed by an officer not authorized under the law

Petitioner also assails the validity of the PAN and FAN on the ground that the same were signed by Ms. Clavelina S. Nacar, a mere Officer-in-Charge (OIC) not considered as a duly authorized representative of the CIR under the law.

We disagree.

Section 3 of Revenue Regulations (RR) No. 12-1999,[12] as amended, provides that the PAN and FAN, among others, shall be issued by the CIR or his duly authorized representative. The term "duly authorized representative" mentioned in the said RR has been clarified by the BIR through Revenue Memorandum Circular (RMC) No. 11-2014[13] to refer to Revenue Regional Directors, Assistant Commissioner-Large Taxpayers Service, and Assistant Commissioner-Enforcement and Advocacy Service.

Upon examination of the PAN and the FAN, it is observed that these were signed by "Clavelina S. Nacar" in her capacity as the OIC of Revenue Region No. 8 – Makati City.

Revenue Memorandum Order (RMO) No. 09-2016[14] issued by the BIR on March 10, 2016 provides as follows:

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[12] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[13] SUBJECT: Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to Revenue Regulations (RR) 12-99, as Amended by RR 18-2013.

[14] SUBJECT: Duties and Responsibilities of Personnel Holding Position in an Officer-In-Charge (OIC) Capacity.

> For the uniform understanding of all concerned, it is hereby reiterated and clarified that **all internal revenue personnel holding positions in an OIC capacity shall exercise authority and discharge duties and assume responsibilities as if they are holding the employment item for the particular office**, subject to the limitations under the law and pertinent internal revenue issuances.
>
> Accordingly, **the person holding an OIC-Regional Director position is equally authorized to and responsible as that of a regular Regional Director for issuing** electronic Letters of Authority (eLA) and **assessment/demand notices**, among others. xxx *(Emphasis supplied)*

Based on the foregoing, an officer holding the position of Regional Director (RD) in an OIC capacity also exercises the authority of an RD which includes, among others, the issuance of assessment notices such as a PAN and FAN.

Thus, the PAN and FAN were validly issued by the OIC of Revenue Region No. 8 – Makati City in her exercise of the same authority as a Regional Director and duly authorized representative of the CIR.

Whether the assessment is void for failure to state the facts and the law on which the assessment is made

Petitioner asserts that the assessment against it is void for failure of the respondent to state the factual and legal bases on why it arrived at the assessed amount per PAN and FAN.

Section 228 of the NIRC of 1997, as amended, requires that the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

A cursory reading of the PAN and FAN reveals that the factual and legal bases of the assessment were stated therein.

The factual basis of the amounts in the assessment notices, although not explained in detail, can be traced to CCAP's own Audited Financial Statements (AFS) and tax returns for 2013.

With regard to the legal basis, both notices and related *Details of Discrepancies* indicated the relevant Sections 32, 34(K), 105 and 108 of the NIRC of 1997, as amended, and RR No. 2-1998, as amended, as the bases for the assessment.

Thus, the Court finds that respondent substantially complied with the requirement that the taxpayer be informed in writing of the factual and legal bases upon which the assessment was made.

In light of the foregoing disquisitions, petitioner still failed to present any convincing argument to warrant the cancellation of the assessment.

All told, the Court *En Banc* finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (Re: Decision Promulgated on December 15, 2023)* is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With Concurring and Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I join Justice Bacorro-Villena's CDO.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

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COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 06 2025 4:22pm

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I preface my discussions with an apposite manifestation that I was not able to vote in the Court *En Banc*'s Decision (subject for reconsideration in the instant Resolution) as I was out on official business on the day of its promulgation. Nonetheless, CTA *En Banc* Resolution No. 07-2013 dated 13 June 2013 unequivocally permits my participation herein, thus –

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> 2. A justice who did not participate in the rendition of a decision or resolution of the Court *En Banc* may, nonetheless, participate in the resolution of the motion for reconsideration of the decision or resolution of the Court *En Banc.*
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> ...

Hence, this Opinion.

I concur with the ruling of my esteemed colleague, Associate Justice Corazon G. Ferrer-Flores (over petitioner Contact Centers Association of the Philippines, Inc.'s [**petitioner's/CCAP's**] "Motion for Reconsideration (Re: Decision Promulgated on December 15, 2023)" [**MR**] for lack of merit, thereby affirming the Court *En Banc*'s Decision dated 15 December 2023 and partially modified the First Division's Decision dated 08 July 2020 [**assailed Decision**] and Resolution dated 11 December 2020 [**assailed Resolution**]), which declared: (1) that the validity of the service of the initial Letter of Authority (**LOA**), Preliminary Assessment Notice (**PAN**), and Final Assessment Notice (**FAN**) are no longer in issue in view of petitioner's admissions; (2) that, as to the authority of a Regional Director (**RD**) in an Officer-in-Charge (**OIC**) capacity, the PAN and FAN were validly issued; and (3) that respondent Commissioner of Internal Revenue (**respondent/CIR**) substantially complied with the legal requirement to inform the taxpayer in writing of the assessment's factual and legal bases.

However, *with all due respect*, I am constrained to register my dissent to the instant Resolution's declaration that the Court should uphold the validity of the assessment in the absence of evidence showing that the audit was conducted by officers not named in the LOA.

The instant Resolution and the assailed Decision (and assailed Resolution on an MR thereto) similarly found petitioner liable for deficiency income tax (**IT**), value-added tax (**VAT**), and expanded withholding tax (**EWT**). Respectfully, I submit that the PAN and FAN issued against petitioner are void *ab initio* for having been issued by respondent without a valid LOA. In turn, the assessment itself is *inescapably void*.

The legal grounds for my dissent are essayed below, in *seriatim*.

The instant Resolution ruled that while specific pieces of evidence are present in the case's Bureau of Internal Revenue (**BIR**) Records, **the Court, as a general rule, cannot consider any evidence that has not been formally offered. Moreover, the Court may relax application of the said rule subject to twin requirements, *i.e.*, that the evidence must have been *identified* and *incorporated* in the records of the case.**

To recall, petitioner received LOA No. "LOA-050-2014-00000387/ SN: eLA201100080502" dated 25 November 2014[1], which authorized Revenue

[1] Exhibit "P-3", BIR Records, p. 1. Marked as Exhibit "R-4".

Officer Kadapi Manarondong (**RO Manarondong**) and Group Supervisor Josephine Elarmo (**GS Elarmo**) to examine petitioner's books and accounting records for the taxable year (**TY**) ended 31 December 2013.

Available in the BIR Records are the following: (1) a Memorandum[2] submitted by RO Marvin DC. Ibanez (**RO Ibanez**) and noted by GS Faisal G. Mamacotao (**GS Mamacotao**) reporting the results of their investigation of petitioner for TY 2013, pursuant to "LOA No. 201100080502 dated 25 November 2014", and accordingly recommending the issuance of a PAN (**Memorandum Report**); and, (2) Memorandum of Assignment (**MOA**) No. MOA0502014LOA10436[3] (issued in connection with the same LOA) signed by Revenue District Officer Rosita U. Meniano (**RDO Meniano**), directing RO Ibanez and GS Mamacotao to continue the audit in *lieu* of the previously-assigned officers who have since been re-assigned to another district office.

The MOA further indicated that the previous handling officers were RO Manarondong and GS Elarmo. RDO Meniano later issued a "Notice to Taxpayer" dated 03 May 2016[4] to petitioner, to inform the latter of the change, though there was no new LOA to authorize the incoming audit team.

In the proceedings before this Court's First Division, respondent, in his or her Pre-Trial Brief[5], initially intended to offer evidence (which notably includes the LOA and the Memorandum Report) and reserved the right to present witnesses. However, later in the said proceedings, respondent manifested that he or she would no longer present any documentary nor testimonial evidence.[6]

While the pieces of evidence in question were ***incorporated*** in the records of the case (in their forming part of the BIR Records), the documents were ***not identified*** by any witnesses. As a result, the Court could not give weight to the same, and is thus left with no evidence upon which it can conclude that the audit was carried out by officers not duly clothed with the authority conferred by a valid LOA.

I, respectfully, disagree.

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[2] Id., p. 317. Marked as Exhibit "R-3".
[3] Id., p. 304.
[4] Id., p. 305.
[5] Division Docket, Volume I, pp. 361-366.
[6] Minutes of the Hearing dated 09 July 2019, id., Volume II, p. 620-C.

In *Commissioner of Internal Revenue v. Jerry Ocier*[7], the Supreme Court carefully took heed of the procedural nuances in the recognition of evidentiary weight in evidence not offered, but nevertheless found compelling reason to relax the technical rules:

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> In our view, the CTA *En Banc* thereby correctly ruled that the petitioner did not establish that an actual sale of the shares of stocks from the respondent to Tan had occurred because it had not formally offered its evidence. Such offer of evidence was indispensable to the consideration of the evidence by the trial court. The necessity of the formal offer of evidence has been suitably stressed in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.* thusly:
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>> Under Section 8 of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record. As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction. Moreover, as cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Thus, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
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>>> SEC. 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
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>> Although in a long line of cases, we have relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court, we exercised extreme caution in applying the exceptions to the rule, as pronounced in *Vda. de Oñate v. Court of Appeals*, thus:
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>>> From the foregoing provision, **it is clear that for evidence to be considered, the same must be formally offered.** Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385, 388-389 (1990)], we had the occasion to make a distinction between identification of

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[7] G.R. No. 192023, 21 November 2018; Citations omitted, underscoring supplied, emphasis and italics in the original text.

> documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
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> However, in *People v. Napat-a* [179 SCRA 403 (1989)] citing *People v. Mate* [103 SCRA 484 (1980)], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz.*: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.**
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> The evidence may, therefore, be admitted provided the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.
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> In the case at bar, petitioner categorically admitted that it failed to formally offer the PANs as evidence. Worse, it advanced no justifiable reason for such fatal omission. Instead, it merely alleged that the existence and due execution of the PANs were duly tackled by petitioner's witnesses. We hold that such is not sufficient to seek exception from the general rule requiring a formal offer of evidence, since no evidence of positive identification of such PANs by petitioner's witnesses was presented. Hence, we agree with the CTA *En Banc*'s observation that the 1994 and 1998 PANs for EWT deficiencies were not duly identified by testimony and were not incorporated in the records of the case, as required by jurisprudence.
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> While we concur with petitioner that the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of PANs as evidence of the taxpayer's liability is not mere procedural technicality. It is a means by which a taxpayer is informed of his liability for deficiency taxes. It serves as basis for the taxpayer to answer the notices, present his case and adduce supporting evidence. More so, the same is the only means by which the CTA may ascertain and verify

the truth of respondent's claims. We are, therefore, constrained to apply our ruling in *Heirs of Pedro Pasag v. Spouses Parocha, viz.*:

> x x x. **A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial.** Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, **this allows opposing parties to examine the evidence and object to its admissibility**. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.

Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice."

Nonetheless, the petitioner's failure to establish the nature of the transaction as a sale between the respondent and Tan due to the non-offer of the evidence did not prevent the CTA *En Banc* from resolving the issue *in favor* of the petitioner. There was enough proof extant in the records on which to base a ruling *against* the respondent. The CTA *En Banc* had the positive duty as a court of law to consider and give due regard to *everything* on record *relevant* and *competent* to its resolution of the ultimate issue presented for its adjudication. Even if the CTA *En Banc* could not validly consider and appreciate any matter that had not been formally offered by the petitioner, it could not turn a blind eye as to disregard the record that showed the transfer of shares that gave rise to the tax liability on the part of the respondent, including the evidence formally offered by the respondent himself as well as his admission. The CTA *En Banc* was all too aware of the presence of such proof in the records because it precisely declared that "the Court need no longer look into whether or not the subject BW shares were actually transferred, as this was clearly not controverted." Thus, the CTA *En Banc* gravely erred in upholding the ruling of the CTA in Division.

...

Applying the wisdom of the foregoing pronouncements to the present case, as laid out in the instant Resolution, there is sufficient proof in the BIR Records to establish the lack of authority of the officers who conducted the examination of petitioner's books and eventually recommended the issuance of the PAN and FAN.

Echoing the Supreme Court, the Court *En Banc* has the positive duty as a court of law to consider "everything on record **relevant** and **competent** to its resolution of the ultimate issue". This Court, thus, may not turn a blind eye and disregard the pieces of evidence which were not offered when they strongly support the foregoing conclusion that leads to the assessment's invalidity. The relevance and competence of the Memorandum Report and Memorandum of Assignment *vis-à-vis* the issued PAN and FAN are without question, being part of the BIR Records.

It is evident from the BIR Records (by appreciating the substance and sequence of the LOA, MOA, Notice to Taxpayer, Memorandum Report, PAN, and FAN) that the original audit team composed of RO Manarondong and GS Elarmo had been transferred to a different district office and that the new team of RO Ibanez and GS Mamacatao were tasked to take over, albeit without a valid LOA and armed merely by a MOA. The new team carried out the investigation of petitioner's records, as directed, upon which they later reported their findings and recommended the issuance of the PAN.

These circumstances amount to a **violation of petitioner's due process rights** with the issuance of the subject PAN.

The Supreme Court made this abundantly clear in *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*[8], *viz:*

> ...
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> The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (*LOA*) and substituting or replacing 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 Commissioner of Internal Revenue (*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 Bureau of Internal Revenue (*BIR*) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.
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> ...

[8] G.R. No. 242670, 10 May 2021; Emphasis and italics in the original text.

> ***D. Revenue Officer Marcellano Was Not Authorized to Continue the Audit of the Respondent's Books of Accounts for C.Y. 2006, Rendering the Assessment Void***
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> Applying the above principles to the case at bar, it is clear that Marcellano was not authorized under a new and separate, or amended, LOA to continue the audit or investigation of the respondent's books of accounts for C.Y. 2006. The August 31, 2007 LOA was originally issued to revenue officers Eulema Demadura, Lover Loveres, Josa Gomez, and Emalyn dela Cruz. The original revenue officer, Demadura, was transferred to another assignment. Pursuant to a mere referral memorandum, revenue officer Marcellano continued the audit of the respondent's books of accounts. No new LOA was issued in the name of Marcellano to conduct the audit of the respondent's books of accounts. Moreover, the August 31, 2007 LOA was not amended or modified to include the name of Marcellano. Hence, the authority under which Marcellano continued the audit or investigation was not pursuant to the statutory power of the CIR or his duly authorized representative to grant the authority to examine the taxpayer's books of accounts.
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> ...

It is also worth highlighting that the power of the Court *En Banc* to act upon issues delving into the patent invalidity of an assessment, raised **as late as the MR before the Court *En Banc***, is not unprecedented.

In *Commissioner of Internal Revenue v. Medtecs International Corporation Limited*[9] citing *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*[10], the Supreme Court held that the taxpayer-petitioner's failure of to raise at the earliest opportunity the RO's lack of authority is not fatal to its case:

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> Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, clearly allows the CTA *En Banc* to rule on related issues necessary to achieve an orderly disposition of the case[.]
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> ...
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> In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue,* the taxpayer questioned the authority of the RO only in their Motion for Reconsideration before the CTA *En Banc*. We held in that

[9] G.R. No. 241068-69 (Notice), 20 February 2023; Citations omitted, italics in the original text and emphasis supplied.

[10] G.R. No. 241848, 14 May 2021.

> case that the **failure of the petitioner to raise at the earliest opportunity the RO's lack of authority does not preclude the Court from considering the same because the said issue goes into the intrinsic validity of the assessment itself.**
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> ...

Lastly, I wish to stress the strong evidentiary value afforded outright to the BIR Records mandatorily transmitted to this Court. By their very nature, the due execution and genuineness of public documents is recognized without need for further proof thereof.[11]

A public document is defined in Section 19, Rule 132[12] of the Revised Rules on Evidence[13], as follows:

> ...
> SEC. 19. *Classes of Documents.* — For the purpose of their presentation [in] evidence, documents are either public or private.
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> Public documents are:
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> (a) **The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;**
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> (b) Documents acknowledged before a notary public except last wills and testaments;
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> (c) Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source; and
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> (d) Public records, kept in the Philippines, of private documents required by law to be entered therein.
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> All other writings are private.[14]
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> ...

In the consolidated cases of *Heirs of Jose Marcial K. Ochoa namely: Ruby B. Ochoa, Michaela B. Ochoa and Jomar B. Ochoa v. G & S Transport Corporation*[15], the Supreme Court has held that the term 'public documents'

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11 See *Ernesto L. Salas v. Sta. Mesa Market Corporation, et al.*, G.R. No. 157766, 12 July 2007.
12 PRESENTATION OF EVIDENCE.
13 A.M. No. 19-08-15-SC or the 2019 Amendments to the 1989 Revised Rules on Evidence.
14 Emphasis supplied.
15 G.R. Nos. 170071 & 170125, 16 July 2012; Citations omitted, italics in the original text, emphasis and underscoring supplied.

under Section 19(a), Rule 132 of the Revised Rules on Evidence refer to those recording made by a public officer, to wit:

> ...
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> **Paragraph (a) of [Sec. 19, Rule 132 of the Rules of Court] classifies the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country, as public documents.** As mentioned in our March 9, 2011 Decision, USAID is the principal United States agency that extends assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms and that it is an independent federal government agency that receives over-all foreign policy guidance from the Secretary of State of the United States. A further research on said agency shows that it was created through Executive Order 10973 by President John F. Kennedy on November 3, 1961 pursuant to the Foreign Assistance Act of 1961. It is headed by an Administrator and Deputy Administrator, both appointed by the President of the United States and confirmed by its Senate. From these, there can be no doubt that the USAID is an official government agency of a foreign country, the United States. Hence, Cruz, as USAID's Chief of the Human Resources Division in the Philippines, is actually a public officer. Apparently, Cruz's issuance of the subject USAID Certification was made in the performance of his official functions, he having charge of all employee files and information as such officer. In view of these, it is clear that **the USAID Certification is a public document pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court**. Hence, and consistent with our above discussion, **the authenticity and due execution of said Certification are already presumed. Moreover, as a public document issued in the performance of a duty by a public officer, the subject USAID Certification is *prima facie* evidence of the facts stated therein**. And, there being no clear and sufficient evidence presented by G & S to overcome these presumptions, the RTC is correct when it admitted in evidence the said document. The USAID Certification could very well be used as basis for the award for loss of income to the heirs.
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> ...

The BIR Records include official letters, notices, and communications sent by the BIR to taxpayers regarding their tax matters. These documents, when properly kept and maintained by the BIR, are considered entries in public records made in the performance of a duty by a public officer. Accordingly, the Memorandum Report and MOA found in the BIR records are *prima facie* evidence of the facts stated therein, pursuant to Section 23[16], Rule 132 of the Revised Rules on Evidence.

As such, I see it as a disservice to the ends of justice to ignore the glaring facts laid out therein amidst the hurdle of procedural technicalities.

With the foregoing disquisitions, I submit that the Court *En Banc* is **not** hand-tied, neither barred from declaring the subject assessment void. There is ample compelling evidence on record. The constraints of the technical rules of evidence should not force the Court turn a blind eye to the grave injustice upon petitioner stemming from the lapses by respondent.

All told, I vote to: (1) **GRANT** the present *Motion for Reconsideration* and thereby **REVERSE** and **SET ASIDE** the Court *En Banc*'s Decision dated 15 December 2023 and the First Division's Decision dated 08 July 2020 and Resolution dated 11 December 2020; and (2) **CANCEL** and **SET ASIDE** the Preliminary Assessment Notice with Details of Discrepancies (both dated 09 December 2016) and Final Assessment Notices with Details of Discrepancies (all dated 11 January 2017), all issued against petitioner Contact Centers Association of the Philippines, Inc.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

16 Sec. 23. *Public documents as evidence.* — **Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.** All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter. (Emphasis supplied)