REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

ABS-CBN FILM PRODUCTIONS, INC. [Surviving Entity of the Merger Among Star Songs, Inc., Star Recording, Inc., and ABS-CBN Film Productions, Inc.], *Petitioner,*	**CTA Case No. 9982** *Members:* **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** DEC 03 2021 ; 8:10 am

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Review[1] filed on December 6, 2018 by petitioner ABS-CBN Film Productions, Inc. [Surviving Entity of the Merger Among Star Songs, Inc., Star Recording, Inc., and ABS-CBN Film Productions, Inc.] against respondent Commissioner of Internal Revenue, praying that a judgment be rendered setting aside the Final Decision on Disputed Assessment (FDDA) which ordered Star Songs, Inc. to pay the alleged deficiency internal revenue taxes for the period January 1, 2013 to June 30, 2014 in the total amount of ₱65,318,859.63.

THE PARTIES

Petitioner ABS-CBN Film Productions, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal business address at 2nd Floor, Eugenio Lopez Jr. Communications Center, Eugenio Lopez Drive, Quezon City. Petitioner is the surviving

[1] CTA Docket Vol. I, pp. 12-50.

entity of the merger among Star Songs, Inc., Star Recording, Inc., and petitioner pursuant to a Plan of Merger on April 21, 2014, and assumed all the rights and obligations of the absorbed corporations.[2] Petitioner is a duly registered taxpayer of the Bureau of Internal Revenue (BIR) with Taxpayer Identification No. (TIN) 224-121-984-000.[3]

Respondent Commissioner of Internal Revenue (CIR) is the head of the BIR, the government agency tasked to, among others, assess and collect all national internal revenue taxes. He has the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended.[4] He may be served with pleadings, notices, and other process at BIR National Office Bldg., BIR Road, Diliman, Quezon City.[5]

THE FACTS

Star Songs, Inc. was a corporation duly organized and existing under Philippine laws.[6] It was formed to engage in the business of, among others, obtaining, acquiring or disposing of, any and all copyrights on songs, lyrics and musical compositions.[7] It was a registered taxpayer of the BIR with TIN 230-053-844-000.[8]

On April 21, 2014, Star Songs, Inc. executed a Plan of Merger[9] with petitioner and Star Recording, Inc., with petitioner as the surviving entity. The merger was approved by the Securities and Exchange Commission (SEC) on June 24, 2014.[10]

On June 9, 2015, petitioner received a Letter of Authority (LOA) No. LOA-116-2015-00000012 dated May 29, 2015 signed by OIC Assistant CIR Nestor S. Valeroso of the Large Taxpayers Service (LTS), authorizing Revenue Officers (ROs) Reynante Martirez and Shella Samaniego, and Group Supervisor (GS) Rolando Balbido of the Regular Large Taxpayers Audit Division 1 (RLTAD 1), to examine the

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[2] Exhibits "P-4" and "P-5", CTA Docket Vol. II, pp. 1313-1315 and 1316-1335.
[3] Exhibit "P-6", CTA Docket Vol. II, p. 1336.
[4] Par. A (1), Joint Stipulation of Facts and Issues (JSFI), CTA Docket Vol. II, p. 926.
[5] Par. 5, Parties, Petition for Review, CTA Docket Vol. I, p.13 vis-à-vis Par. 1, Answer, CTA Docket Vol. I, p. 366.
[6] Exhibit "P-1", CTA Docket Vol. II, pp. 1302-1304.
[7] Exhibit "P-2-A", CTA Docket Vol. II, p. 1305.
[8] Exhibit "P-3", CTA Docket Vol. II, p. 1312.
[9] Exhibit "P-5", CTA Docket Vol. II, pp. 1316-1335.
[10] Exhibits "P-4" and "P-5", CTA Docket Vol. II, p. 1313-1334.

books of accounts and other accounting records of Star Songs, Inc. for all internal revenue taxes including Documentary Stamp Tax (DST) and other taxes for the period January 1, 2013 to June 30, 2014 pursuant to a mandatory audit because of the merger/consolidation.[11]

Petitioner, through its Chief Finance Officer, Ms. Beverly S. Fernandez, executed three (3) Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code extending the period to assess until June 30, 2017, *viz:*

	Date Executed	Date Accepted by CIR	CIR Representative	Deadline of Extended Prescriptive Period
1st Waiver[12]	March 3, 2016	April 21, 2016	ACIR Valeroso	June 30, 2016
2nd Waiver[13]	May 31, 2016	June 6, 2016	ACIR Valeroso	December 31, 2016
3rd Waiver[14]	December 2, 2016	December 6, 2016	OIC-ACIR Teresita Angeles	June 30, 2017

On November 18, 2016, Ms. Shirley A. Calapatia, Chief of RLTAD 1, issued a Memorandum of Assignment (MOA) No. LOA-116-2016-1914 referring the continuation of the audit/verification of Star Songs, Inc.'s internal revenue tax liabilities for the period January 1, 2013 to June 30, 2014, pursuant to LOA No. 116-2015-0000012 dated May 29, 2015, to RO Carolyn V. Mendoza and GS Rosario A. Arriola.[15]

On December 9, 2016, petitioner received the Preliminary Assessment Notice (PAN) dated December 9, 2016[16] issued against Star Songs, Inc. with Details of Discrepancy[17] from respondent.

On December 14, 2016, petitioner received a Letter dated December 6, 2016, signed by OIC-ACIR, LTS, Teresita M. Angeles, informing petitioner that the audit/examination of Star Songs, Inc.'s AIRT[18] pursuant to LOA No. 116-2015-00000012 dated May 29, 2015 was reassigned to RO Carolyn V. Mendoza.[19]

On December 27, 2016, petitioner filed a Protest to the PAN dated December 27, 2016.[20]

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[11] Exhibits "R-1" and "P-63", BIR Records Folder 1, p. 1.
[12] Exhibit "R-22", BIR Records Folder 1, p. 365-A.
[13] Exhibit "R-22", BIR Records Folder 1, p. 365-B.
[14] Exhibit "R-22", BIR Records Folder 1, p. 365-C.
[15] Exhibit "R-4", BIR Records Folder 1, p. 401.
[16] Exhibits "R-7" to "R-8" and "P-65", BIR Records Folder 1, pp. 414-418.
[17] Exhibit "R-9", BIR Records Folder 1, pp. 409-413.
[18] All internal revenue taxes.
[19] Exhibit "P-64", CTA Docket, Vol. I. p. 618; Exhibit "R-5", BIR Records Folder 1, p. 419.
[20] Exhibit "P-66", CTA Docket Vol. I, pp. 635-661.

On June 8, 2017, petitioner received a Formal Letter of Demand[21] with Details of Discrepancy[22] and Assessment Notices (FLD/FAN), all dated June 8, 2017, assessing Star Songs, Inc. of deficiency Income Tax (IT), Value-Added Tax, (VAT), Expanded Withholding Tax (EWT), Final Withholding Tax (FWT) and DST for taxable year (TY) 2013[23] and for the period January 1, 2014 to June 30, 2014.[24]

On July 7, 2017, petitioner filed its Protest to the FLD/FAN dated July 7, 2017.[25] On September 5, 2017, petitioner likewise filed a Supplemental Protest to the FLD/FAN dated September 5, 2017.[26]

On May 28, 2018, petitioner received the Final Decision on Disputed Assessment (FDDA)[27] with Details of Discrepancy[28] and Assessment Notices[29] all dated May 21, 2018 issued by respondent through OIC-ACIR of the LTS, Ms. Teresita M. Dizon, assessing Star Songs, Inc. for deficiency IT, VAT, EWT, FWT, DST and compromise penalty for TY 2013 and for the period January 1, 2014 to June 30, 2014.[30]

On June 27, 2018, petitioner filed with respondent a Request for Reconsideration dated June 26, 2018 requesting for reconsideration of the said FDDA and its attached Assessment Notices.[31]

On November 9, 2018, petitioner received the Final Decision of respondent dated November 8, 2018 denying its aforesaid request for reconsideration.[32]

Aggrieved, petitioner filed the present Petition for Review on December 6, 2018.[33]

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[21] Exhibits "R-11" and "P-67", BIR Records Folder 2, pp. 24-27.
[22] Exhibit "R-13", BIR Records Folder 2, pp. 7-13.
[23] Exhibits "R-12", "R-12-A", "R-12-B", "R-12-C", "R-12-D" and "R-12-E", BIR Records Folder 2, pp. 18-23.
[24] Exhibits "R-12-F", "R-12-G", "R-12-H", "R-12-I", and "R-12-J", BIR Records Folder 2, pp. 13-17.
[25] Exhibit "P-68", CTA Docket Vol. I, pp. 684-729.
[26] Exhibit "P-69", CTA Docket Vol. I, pp. 730-767.
[27] Exhibit "R-16", BIR Records Folder 2, pp. 215-219.
[28] Exhibit "R-18", BIR Records Folder 2, pp. 198-203.
[29] Exhibits "R-17", "R-17-A", "R-17-B", "R-17-C", "R-17-D", "R-17-E", "R-17-F", "R-17-G", "R-17-H", "R-17-I", and "R-17-J", BIR Records Folder 2, pp. 204-214.
[30] Exhibit "P-70", CTA Division Docket, Vol. I, pp. 52-77.
[31] Exhibit "P-71", CTA Division Docket, Vol. I, pp. 794-815.
[32] Exhibit "P-72", CTA Division Docket, Vol. I, pp. 78; Exhibit "R-21", BIR Records Folder 2, p. 290.
[33] CTA Docket Vol. I, p. 12.

On March 6, 2019, within the extended period,[34] respondent filed his Answer, raising therein his special and affirmative defenses.[35]

Respondent's Pre-Trial Brief[36] was filed on May 23, 2019, while the Pre-Trial Brief (For the Petitioner)[37] was filed on May 24, 2019. The Pre-Trial Conference was held on May 30, 2019.[38]

During the Pre-Trial Conference, the Court directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on June 6, 2019 pursuant to A.M. No. 11-1-5-SC-PHILJA (Re: Interim Guidelines for Implementing Mediation in the Court of Tax Appeals).[39]

On June 19, 2019, the parties filed their Joint Stipulation of Facts and Issues[40] which was approved by the Court in the Resolution dated July 5, 2019 thereby terminating the Pre-Trial.[41]

On June 24, 2019, the Court received the "No Agreement to Mediate" dated June 21, 2019 stating that the parties decided not to have their case mediated by the PMC-CTA.[42]

Upon motion[43] of petitioner, the Court commissioned Mr. Edwin F. Ramos as Independent Certified Public Accountant (ICPA) on July 18, 2019.[44]

On July 22, 2019, the Court issued the Pre-Trial Order.[45]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Maria Geraldine M. De Guzman,[46] petitioner's Tax Management Officer; and, Mr. Edwin

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[34] Order dated January 11, 2019 and Resolution dated February 11, 2019, CTA Docket Vol. I, pp. 356 and 365.
[35] CTA Docket Vol. I, pp. 366-393.
[36] CTA Docket Vol. I, pp. 427-431.
[37] CTA Docket Vol. II, pp. 858-875.
[38] CTA Docket Vol. II, pp. 880-883.
[39] CTA Docket Vol. II, pp. 888-889.
[40] CTA Docket Vol. II, pp. 926-941.
[41] CTA Docket Vol. II, pp. 949-950.
[42] CTA Docket Vol. II, p. 943.
[43] CTA Docket Vol. II, pp. 921-924.
[44] CTA Docket Vol. II, pp. 966-969.
[45] CTA Docket Vol. II, pp. 982-999.
[46] Exhibit "P-75", CTA Docket Vol. I, pp. 441-476; and Minutes of Hearing dated August 6, 2019, CTA Docket Vol. II, pp.1009-1011.

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F. Ramos,[47] the Court-commissioned ICPA.

On October 24, 2019, petitioner filed its "Formal Offer of Evidence."[48] Petitioner's exhibits were all admitted in evidence in the Resolution dated February 6, 2020.[49]

Thereafter, respondent presented his lone witness, RO Rosario A. Arriola.[50] On October 5, 2020, "Respondent's Formal Offer of Evidence" was filed.[51] In the Resolution[52] dated December 11, 2020, the Court admitted all of respondent's formally offered evidence.

Respondent filed his Memorandum[53] on February 3, 2021, while petitioner filed its Memorandum[54] on February 9, 2021. Thereafter, the case was submitted for decision on February 22, 2021.[55]

ISSUES

The parties failed to stipulate a common issue and submitted the following respective issues for the Court's resolution:[56]

"For the Petitioner:

1. Whether the Letter of Authority issued in the present case which covers the period 01 January 2013 to 30 June 2014 is void.

2. Whether the deficiency tax assessments are null and void considering that the revenue officer who conducted the examination of petitioner's books of accounts and accounting records and recommended the issuance of the deficiency assessments for the subject period, had no authority to do so under Letter of Authority No. 116-2015-00000012 dated May 29, 2015.

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[47] Exhibit "P-76", CTA Docket Vol II, pp. 1188-1192; and Minutes of Hearing dated September 24, 2019, CTA Docket Vol. II, pp. 1268-1271.
[48] CTA Docket Vol. II, pp. 1283-1301.
[49] CTA Docket Vol. II, pp. 1451-1452.
[50] Exhibit "R-23", CTA Docket Vol. I, pp. 411-426; and Minutes of Hearing dated September 15, 2020, CTA Docket Vol. III, pp. 1456-1458.
[51] CTA Docket Vol. III, pp. 1465-1483.
[52] CTA Docket Vol. III, pp. 1499-1500.
[53] CTA Docket Vol. III, pp. 1501-1532.
[54] CTA Docket Vol. III, pp. 1534-1620.
[55] CTA Docket Vol. III, p. 1622.
[56] Par. B, JSFI, CTA Docket vol. II, p. 927.

3. Whether or not petitioner is liable for deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, documentary stamp tax, and compromise penalties for the period covering 01 January 2013 to 31 December 2013.

4. Whether or not petitioner is liable for deficiency income tax, value-added tax, expanded withholding tax, documentary stamp tax, and compromise penalties for the period covering 01 January 2014 to 30 June 2014.

For Respondent:

Whether or not petitioner is liable for deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, documentary stamp tax, and compromise penalties, plus interest and surcharges, for the period from 01 January 2013 to 30 June 2014 in the aggregate amount of ₱65,318,859.63."

PARTIES' ARGUMENTS

Petitioner argues that: (i) the LOA in the present case is null and void as it covers more than one (1) taxable year; (ii) a Re-Assignment Notice is not equivalent to an LOA; and, (iii) the FLD/FAN for the period covering January 1, 2013 to December 31, 2013 are void for lack of factual and legal bases.[57]

Respondent, on the other hand, counter-argues that: (i) an LOA is not a requirement when the audit investigation is conducted by the LTS which is under the Office of the CIR; (ii) assuming *arguendo* that an LOA is required, the subject LOA was validly issued, thus, the assessment is likewise valid and not contrary to law; (iii) the LOA covering a period of more than one (1) taxable year is valid; (iv) the assessment was issued pursuant to a valid LOA; (v) the reassignment of the audit to another set of ROs does not invalidate the assessment; (vi) the decision in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[58] does not squarely apply to the present case; (vii) petitioner should not be allowed to raise issues for the first time on

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[57] Memorandum for the Petitioner, CTA Docket Vol. III, pp. 1534-1620.
[58] G.R. No. 222743, April 5, 2017.

appeal; (viii) the assessments have bases both in law and in fact; and, (ix) petitioner failed to overturn the presumption that tax assessments are presumed to be valid.[59]

THE COURT'S RULING

Timeliness of the Petition for Review

The Court shall first determine the timeliness of the filing of the present Petition for Review.

Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), pertinently states in part:

> "SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx"

Petitioner received respondent's Final Decision dated November 8, 2018, denying its Request for Reconsideration, on November 9, 2018.[60] Pursuant to the afore-quoted provision of the RRCTA, petitioner had until December 9, 2018 within which to file its Petition for Review. Thus, the filing of the present Petition for Review on December 6, 2018 was timely made.

The RO and GS who continued the audit of Star Songs, Inc. were not authorized by a valid LOA; hence, the assessments issued pursuant to said audit are void ab initio

As borne by the records, the continuation of the audit and examination of Star Songs, Inc.'s books of accounts and other accounting records for TY January 1, 2013 to December 31, 2013 and for the period January 1, 2014 to June 30, 2014 was undertaken by

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[59] Special and Affirmative Defenses, Answer, CTA Docket Vol. I, pp. 366-393.
[60] Exhibit "P-72", CTA Division Docket, Vol. I, pp. 78; Exhibit "R-21", BIR Records Folder 2, p. 290.

RO Mendoza and GS Arriola pursuant to MOA No. LOA-116-2016-1914 dated November 18, 2016 issued by Ms. Shirley A. Calapatia, Chief of RLTAD 1.[61]

Petitioner argues that the assessments issued against Star Songs, Inc. are void as RO Mendoza and GS Arriola were not duly authorized, through a valid LOA, to continue the aforestated audit and examination of Star Songs, Inc.

On the other hand, respondent contends that petitioner failed to raise the issue of the lack of authority of RO Mendoza and GS Arriola to continue the audit of Star Songs, Inc. at the administrative level. Hence, respondent insists that petitioner should not be allowed to raise this issue for the first time on appeal.

The Court finds respondent's contention bereft of merit.

To begin with, the power of the Court of Tax Appeals (CTA) to exercise its appellate jurisdiction allows it to consider issues and arguments raised by the parties in the petition and answer, albeit the same were not raised before the administrative level.

Accordingly, as a court of justice, it is vested with jurisdiction to decide the issue on the lack of authority of RO Mendoza and GS Arriola to continue the audit and examination of Star Songs, Inc. as this issue has been raised by petitioner in its Petition for Review and both parties were duly heard thereon.

Section 1, Rule 14 of the RRCTA provides that:

> "Rule 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. Rendition of judgment – Xxx xxx xxx.
>
> xxx xxx xxx
>
> In deciding cases, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

While the parties failed to stipulate, as a common issue, the authority of RO Mendoza and GS Arriola to continue the audit and

[61] Exhibit "R-4", BIR Records Folder 1, p. 401.

examination of Star Songs, Inc., there is no denying that the resolution of this issue is relevant in determining the validity of the subject disputed assessments. The necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and necessarily, to the validity of the assessment, that may be issued after said audit.

Truth to tell, in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[62] the Supreme Court affirmed the authority of the CTA to resolve the issue involving the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda. As previously stated, the issue on the lack of authority of RO Mendoza and GS Arriola to conduct the audit and examination of Star Songs, Inc. was raised by petitioner before this Court. Thus, this Court has more reason to rule thereon.

Perusal of the BIR Records shows that LOA No. LOA-116-2015-00000012 dated May 29, 2015 authorized ROs Martirez and Samaniego and GS Balbido to examine the books of accounts and other accounting records of Star Songs, Inc. for the period from January 1, 2013 to June 30, 2014.[63] The issuance of the PAN, FAN and FDDA, however, was made upon the recommendation[64] of RO Mendoza and GS Arriola, who were authorized to continue the investigation through MOA No. LOA-116-2016-1914 dated November 18, 2016, issued by Ms. Calapatia, the Chief, RLTAD 1.

Notably, respondent failed to present a new LOA authorizing RO Mendoza and GS Arriola to continue the aforestated audit of Star Songs, Inc., albeit respondent argues that an LOA is not a requirement when the audit investigation is conducted by the LTS which is under the Office of the CIR.

Contrary to respondent's argument, the requirement of an LOA before examination of a taxpayer is not dispensed with even if the investigation is conducted by the LTS. While all offices of the BIR are under the CIR, who is the head of the BIR, the law is clear and categorical that the examination of any taxpayer, when delegated to any RO by the CIR or his duly authorized representative, must be pursuant to a valid LOA.

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[62] G.R. No. 183408, July 12, 2017.
[63] Exhibits "R-1" and "P-63", BIR Records Folder 1, p. 1.
[64] Exhibits "R-6", "R-10" and "R-15", BIR Records Folder 1, pp. 391-396 and 491-499 and BIR Records Folder 2, pp. 179-188.

Section 6 of the NIRC of 1997, as amended, is clear and categorical in requiring a specific authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be made, to wit:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." (*Boldfacing supplied*)

A revenue officer cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose. Section 13 of the NIRC of 1997, as amended, states:

> "SEC. 13. Authority of a Revenue Officer. – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a <u>Letter of Authority</u> issued by the <u>Revenue Regional Director</u>**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or **to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Boldfacing and underscoring supplied*)

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[65] the Supreme Court was clear in holding that the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment, to wit:

> "Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx

[65] G.R. No. 178697, November 17, 2010.

> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**." *(Boldfacing and underscoring supplied)*

This principle was also reiterated in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[66] to wit:

> "Based on the afore-quoted provision, **it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes." (*Boldfacing supplied*)

Moreover, RMO No. 43-90 is explicit in requiring the issuance of a new LOA when an audit is continued by a revenue officer other than the officer named in a previous LOA, *viz.*:

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

Furthermore, in the recent case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[67] the Supreme Court held that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations on the requirement of an LOA in the grant of

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[66] Supra Note 58.
[67] G.R. No. 242670, May 10, 2021.

authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.

Thus, it is erroneous for the CIR to insist that the reassignment of the audit to a new set of ROs does not invalidate the assessment. A new LOA must be issued in case of reassignment of the audit/investigation to other ROs. Even if the Court considers the MOA as equivalent to a new LOA and a valid source of authority for RO Mendoza and GS Arriola to audit Star Songs, Inc., the same will not suffice since the MOA in this case was not signed or issued by the CIR or his duly authorized representative.

As previously mentioned, an LOA can only be issued either by the CIR or his duly authorized representative, as identified in Section 10 (C) of the NIRC of 1997, as amended, to be the Revenue Regional Director, to wit:

> "SEC. 10. Revenue Regional Director. - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
>
> xxx xxx xxx
>
> (c) Issue Letters of authority for the examination of taxpayers within the region;" (*Boldfacing supplied*)

The position equivalent to a Revenue Regional Director for the LTS is the Assistant Commissioner/Head Revenue Executive Assistants. RMO No. 29-07[68] provides:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants.**" (*Boldfacing supplied*)

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[68] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service, September 26, 2007.

The power to issue an LOA by the LTS may not be delegated by the Assistant Commissioner/Head Revenue Executive Assistants of the LTS to any other officer. On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA), et al. vs. The National Power Corporation (NPC), et al.*[69] is instructive, *viz.*:

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility.
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> xxx [T]he rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:
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> > **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another.**" (*Boldfacing supplied*)

In the present case, the MOA was signed and issued by Ms. Calapatia, Chief of RLTAD 1.[70] She is neither the CIR, Revenue Regional Director, nor an Assistant Commissioner/Head Revenue Executive Assistant of the LTS. She had no authority to issue the MOA, thus, the assessments resulting therefrom are void.

In fine, neither the LOA No. LOA-116-2015-00000012 dated May 29, 2015 nor the MOA No. LOA-116-2016-1914 dated November 18, 2016 validly authorized RO Mendoza and GS Arriola in conducting the audit/investigation of Star Songs, Inc. for the TY January 1, 2013 to December 31, 2013 and for the period from January 1, 2014 to June 30, 2014.

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[69] G.R. No. 156208, September 26, 2006.
[70] Exhibit "R-4", BIR Records Folder 1, p. 401.

The conduct of the audit of Star Songs, Inc. was legally flawed, and as a consequence thereof, the assessments issued against Star Songs, Inc. are inescapably void. Needless to say, a void assessment bears no fruit[71] and must be slain at sight.

In light of the foregoing, the Court need not belabor the other issues raised by the parties.

WHEREFORE, premises considered, the present Petition for Review is **GRANTED**. Accordingly, the Final Decision of respondent Commissioner of Internal Revenue dated November 8, 2018 and the Final Decision on Disputed Assessment with attached eleven (11) Assessment Notices all dated May 21, 2018 are **SET ASIDE**. The Formal Letter of Demand and the eleven (11) Assessment Notices covering the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Final Withholding Tax, Documentary Stamp Tax and the assessed compromise penalties, all dated June 8, 2017, issued against Star Songs, Inc. are **CANCELLED AND SET ASIDE** for being void ab initio.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Final Withholding Tax, Documentary Stamp Tax and the assessed compromise penalties against ABS-CBN Film Productions, Inc., as the surviving entity in the merger among Star Songs, Inc., Star Recording, Inc., and ABS-CBN Film Productions, Inc. arising from the Formal Letter of Demand and the eleven (11) Assessment Notices issued against Star Songs, Inc., all dated June 8, 2017, and the Final Decision on Disputed Assessment with attached eleven (11) Assessment Notices, all dated May 21, 2018, issued against Star Songs, Inc. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[71] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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