CTA Form No. 8

21-000146-0057

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10498

NCR CORPORATION PHILIPPINES,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. FELIX PAUL R. VELASCO
ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. NIKI BERYL B. DELA CRUZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

AGAN MONTENEGRO MALASAGA & CO.
7th Floor, Electra House Building
115-117 Esteban Street, Legazpi Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **May 10, 2024,** Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 10, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

NCR CORPORATION PHILIPPINES, *Petitioner,*	**CTA Case No. 10498**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 10 2024 9:00 AM

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review[1] filed on May 17, 2021 by petitioner NCR Corporation Philippines praying for the cancellation and withdrawal of the assessments issued by respondent Commissioner of Internal Revenue (CIR) against petitioner for its alleged deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), final withholding tax (FWT), final withholding VAT (FWVAT), documentary stamp tax (DST), and compromise penalty in the aggregate amount of ₱425,585,430.45, for taxable year (TY) 2014.[2]

THE PARTIES

Petitioner NCR Corporation Philippines is a corporation duly registered with the Securities and Exchange Commission (SEC) with office address located at 17th Floor, 6788 Building, Ayala Avenue,

[1] CTA Docket Vol. I, pp. 8-26.
[2] Summary of the Case, Pre-Trial Order, CTA Docket Vol. I, p. 454.

Makati City.[3] Petitioner is registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. (TIN) 000-166-605-00000.[4]

Respondent, on the other hand, is the duly appointed CIR vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, other tax laws, rules and regulations. Court processes and pleadings may be served to respondent's counsel at Litigation Division, Room 703 BIR National Office Building, BIR Road [now Sen. Miriam P. Defensor-Santiago Avenue], Diliman, Quezon City.[5]

THE FACTS

On December 9, 2015, petitioner received Letter of Authority (LOA) No. AUDM50/005027/2015 SN:eLA201200042171 dated November 10, 2015,[6] issued by the BIR Large Taxpayers Service (LTS), authorizing Revenue Officers (ROs) Rosario Arriola and Shella Samaniego and Group Supervisor (GS) Rolando Balbido to examine petitioner's books of accounts and other accounting records covering all internal revenue taxes for the period January 1, 2014 to December 31, 2014, signed by LTS Assistant Commissioner Nestor S. Valeroso.

On February 13, 2017, respondent issued a Memorandum of Assignment[7] (MOA) No. LOA-116-2017-0097, signed by Ms. Shirley A. Calapatia, the Chief of the Regular LT Audit Division I, assigning RO Abigail N. Cayabyab to continue the audit of petitioner due to the designation of RO Arriola as GS.

On March 22, 2017, petitioner, through its Treasurer, Ms. Emerita Zornosa, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC[8] extending the period to assess until September 30, 2017. This was accepted by the CIR through its representative, OIC-ACIR of the LTS, Ms. Teresita M. Angeles, on March 29, 2017.

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[3] Exhibits "P-2" and "P-2-1", CTA Docket Vol. II, pp. 699-708.
[4] Exhibit "P-1", CTA Docket Vol. II, pp. 696-698.
[5] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), CTA Docket Vol. I, p. 439.
[6] Exhibit "R-2", BIR Records, p. 3.
[7] Exhibit "R-1", BIR Records, p. 230.
[8] Exhibit "R-6", BIR Records, p. 268.

On August 24, 2017, petitioner received a Preliminary Assessment Notice (PAN) with Details of Discrepancy dated August 23, 2017[9] from the BIR LTS assessing petitioner for alleged deficiency IT, VAT, WTC, EWT, FWT, FWVAT, DST and Compromise Penalty, inclusive of interest and surcharge for TY 2014, in the following amounts:

Kind of Tax	Amount (₱)
IT	257,753,691.95
VAT	76,444,793.70
WTC	2,305,347.59
EWT	1,046,261.86
FWT	78,417,212.71
FWVAT	31,366,885.08
DST	2,360,721.82
Compromise Penalty	270,000.00
TOTAL	**₱449,964,914.71**

On September 7, 2017, petitioner filed a Protest to the PAN of even date.[10]

On September 25, 2017, petitioner received the Formal Letter of Demand (FLD)[11] with Details of Discrepancy[12] and Assessment Notices,[13] all dated September 13, 2017, covering the alleged deficiency IT, VAT, WTC, EWT, FWT, FWVAT, DST and Compromise Penalty, inclusive of interest and surcharges in the aggregate amount of ₱449,964,914.71 for TY 2014 broken down as follows:

Kind of Tax	Amount (₱)
IT	257,753,691.95
VAT	76,444,793.70
WTC	2,305,347.59
EWT	1,046,261.86
FWT	78,417,212.71
FWVAT	31,366,885.08
DST	2,360,721.82
Compromise Penalty	270,000.00
TOTAL	**₱449,964,914.71**

[9] Exhibit "P-7", CTA Docket Vol. II, pp. 812-831; Exhibits "R-8" and "R-9", BIR Records, pp. 299-314 and 298.
[10] Exhibit "P-8", CTA Docket Vol. II, pp. 832-834.
[11] Exhibit "P-9", CTA Docket Vol. II, pp. 835-839; Exhibits "R-11" and "R-11-1", BIR Records, pp. 389-393.
[12] Exhibit "P-9-1", CTA Docket Vol. II, pp. 840-853; Exhibits "R-11-2", BIR Records, pp. 366-380.
[13] Exhibits "P-10", "P-10-1", "P-10-2", "P-10-3", "P-10-4", "P-10-5", "P-10-6" and "P-10-7", CTA Docket Vol. II, pp. 854-861; Exhibits "R-11-3", BIR Records, pp. 381-388.

On October 25, 2017, petitioner filed a Protest Letter[14] dated October 25, 2017 against the FLD and Assessment Notices. On December 22, 2017, petitioner filed a Letter[15] of even date submitting the relevant documents in support of its protest.

On February 26, 2021, petitioner received the Final Decision on Disputed Assessment (FDDA) signed by CIR Caesar R. Dulay[16] with Details of Discrepancies[17] and Audit Results/Assessment Notices,[18] all dated February 8, 2021, assessing petitioner in the adjusted amount of ₱425,585,430.45 representing the alleged deficiency IT, VAT, WTC, EWT, FWT, FWVAT, DST and Compromise Penalty, inclusive of interest and surcharges for TY 2014 broken down as follows:

Kind of Tax	Amount (₱)
IT	229,738,128.56
VAT	53,582,204.44
WTC	2,816,401.91
EWT	1,324,843.50
FWT	96,382,951.74
FWVAT	38,553,180.69
DST	2,917,719.62
Compromise Penalty	270,000.00
TOTAL	**₱425,585,430.46**

Thus, on May 17, 2021 petitioner filed the present Petition for Review[19] assailing the aforesaid FDDA.

On July 29, 2021, within the extended period,[20] respondent filed his Answer,[21] raising Special and Affirmative Defenses, which in a nutshell, state that the assessments issued against petitioner are valid for having been issued in accordance with laws and regulations; and that petitioner failed to overcome the presumption of validity and correctness of said assessments.

[14] Exhibit "P-11", CTA Docket Vol. II, pp. 862-890.
[15] Exhibit "P-12", CTA Docket Vol. II, pp. 891-903.
[16] Exhibit "P-13", CTA Docket Vol. II, pp. 904-907; Exhibit "R-13", BIR Records, pp. 559-562.
[17] Exhibit "R-13-1", BIR Records, pp. 552-558.
[18] Exhibit "R-13-2", BIR Records, pp. 544-551.
[19] CTA Docket Vol. I, pp. 8-26.
[20] Order dated June 30, 2021, CTA Docket Vol. I, p. 353.
[21] CTA Docket Vol. I, pp. 354-390.

Respondent's Pre-Trial Brief[22] was filed on October 21, 2021, while Petitioner's Pre-Trial Brief[23] was filed on October 24, 2021. The Pre-Trial Conference was held on February 23, 2022.[24]

On March 10, 2022, the parties filed their Joint Stipulation of Facts and Issues.[25] Thereafter, the Court issued the Pre-Trial Order on March 18, 2022.[26]

Upon motion[27] of petitioner, the Court commissioned Atty. Adan T. Delamide as Independent Certified Public Accountant (ICPA) on April 6, 2022.[28]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Marietta B. Ticagan,[29] petitioner's Tax Accountant; and, Ms. Mary Josephine D. Tesalona,[30] the Court-commissioned ICPA.

On September 2, 2022, petitioner filed its Formal Offer of Evidence.[31] In the Resolution dated November 11, 2022,[32] the Court admitted all of petitioner's exhibits, except: (i) Exhibits "P-14-16" and "P-14-17" as the same were not accompanied with a translation into English or Filipino, as required by Section 33, Rule 132 of the Rules of Court; (ii) Exhibit "P-14-17" for being merely provisionally marked; and, (iii) Exhibit "P-17-1" for not having been officially marked.

Thereafter, respondent presented his lone witness, RO Abigail Cayabyab.[33]

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[22] CTA Docket Vol. I, pp. 410-414.
[23] CTA Docket Vol. I, pp. 422-428.
[24] CTA Docket Vol. I, pp. 436 and 438.
[25] CTA Docket Vol. I, pp. 439-445.
[26] CTA Docket Vol. I, pp. 454-459.
[27] CTA Docket Vol. I, pp. 446-447.
[28] CTA Docket Vol. II, pp. 481-483.
[29] Exhibit "P-18-2", Amended Judicial Affidavit (Ms. Marietta B. Ticagan answering questions propounded by Atty. J. Carlito Montenegro), CTA Docket Vol. III, pp. 1348-1363; and, Minutes of Hearing dated April 6, 2022 and July 18, 2022, CTA Docket Vol. II, pp. 481 and 631.
[30] Exhibit "P-20", Judicial Affidavit (Atty. Adan Delamide answering questions propounded by Atty. J. Carlito Montenegro at 7th Floor, Electra House Building, Esteban St., Legaspi Village, Makati City), CTA Docket Vol II, pp. 610-628; and, Minutes of Hearing dated August 3, 2022, CTA Docket Vol. II, p. 638.
[31] CTA Docket Vol. II, pp. 654-695.
[32] CTA Docket Vol. III, pp. 1428-1431.
[33] Exhibit "R-16", Judicial Affidavit of Revenue Officer Abigail Cayabyab, CTA Docket Vol. I, pp. 392-404, and Minutes of Hearing dated March 2, 2023, CTA Docket Vol. III, p. 1432.

On April 24, 2023, Respondent's Formal Offer of Evidence was filed.[34] In the Resolution dated July 4, 2023,[35] the Court admitted all of respondent's formally offered evidence.

Respondent's Memorandum[36] was filed on August 11, 2023, while the Memorandum (For the Petitioner)[37] was filed on August 15, 2023. Thereafter, the case was submitted for decision on August 22, 2023.[38]

ISSUE

The parties stipulated on the following issue for the Court's resolution:[39]

> Whether petitioner is liable for the payment of deficiency IT, VAT, WTC, EWT, FWT, FWVAT, DST, and compromise penalty, interests and surcharges for TY 2014, in the aggregate amount of ₱425,585,430.45.

PARTIES' ARGUMENTS

Petitioner argues that:

(i) The CTA has jurisdiction over the present case;

(ii) The absence of an LOA issued to RO Abigail Cayabyab to conduct the audit of petitioner renders the present assessments void;

(iii) The assessments against petitioner for TY 2014 were issued in violation of its right to due process as the FLD dated September 13, 2017 is strikingly identical to the PAN dated August 23, 2017;

(iv) The FLD dated September 13, 2017 did not set and fix the tax liability, as it is still subject to modification or adjustment;

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[34] CTA Docket Vol. III, pp. 1444-1451.
[35] CTA Docket Vol. III, pp. 1462-1463.
[36] CTA Docket Vol. III, pp. 1464-1503.
[37] CTA Docket Vol. III, pp. 1506-1558.
[38] Minute Resolution dated August 22, 2022, CTA Docket Vol. III, p. 1559.
[39] Issues, JSFI, CTA Docket Vol. I, p. 440.

(v) The present assessments for EWT and WTC are already barred by prescription; and,

(vi) The period to collect alleged deficiency taxes has already lapsed.[40]

On the other hand, respondent counter-argues that:

(i) The issues on the absence of validly issued LOA, and lack of definite amount of deficiency tax liability in the FLD were never raised by petitioner in the administrative level. Thus, petitioner can no longer raise said issues on the ground of laches;

(ii) The conduct of the audit/investigation and the resulting assessments are valid as the same were in accordance with law and rules;

(iii) An LOA is not a requirement when the audit investigation is conducted by the Office of the CIR;

(iv) Assuming arguendo that an LOA is required, the examination of petitioner's books of accounts and other accounting records was conducted pursuant to a valid LOA;

(v) There was no violation of petitioner's right to due process;

(vi) The FLD issued by respondent is valid and in order;

(vii) The Court decisions on the invalidity of the FLD should not be applied in the instant case;

(viii) Petitioner executed a valid waiver and thus, the period to assess was effectively extended;

(ix) Petitioner is liable to pay the assessed deficiency IT, VAT, WTC, EWT, FWT, FWVAT, DST for TY 2014 plus compromise penalties, surcharges and interest, in the aggregate amount of ₱425,585,430.45; and,

(x) Petitioner failed to overcome the presumption of validity and correctness of the assessments.[41]

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[40] Memorandum (For the Petitioner), CTA Docket Vol. III, pp. 1506-1558.
[41] Memorandum, CTA Docket Vol. III, pp. 1464-1503.

THE COURT'S RULING

This Court finds the Petition for Review meritorious.

The Petition for Review was timely filed; hence, the Court has jurisdiction over the case

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

This Court is vested with authority to review respondent's FDDA pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282,[42] in relation to Section 3(a)(1), Rule 4 of Revised Rules of the Court of Tax Appeals (RRCTA), as amended.[43]

Under Section 228 of the NIRC of 1997, as amended, a taxpayer adversely affected by a decision of the CIR on the disputed assessment is given a remedy to appeal with the Court within thirty (30) days from receipt of the assailed decision, *viz.*:

> "SEC. 228. *Protesting of Assessment.* -xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of one hundred

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[42] SEC. 7. *Jurisdiction.* - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

[43] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

> eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Boldfacing supplied*)

On the other hand, under Section 11 of RA No. 1125,[44] as amended, in relation to Section 3(a), Rule 8 of the RRCTA,[45] a party adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA by way of a petition for review within thirty (30) days after receipt of the copy of such decision or ruling or within thirty (30) days after the expiration of the specific period of action.

Prescinding from the foregoing, this Court has exclusive appellate jurisdiction to review on appeal decisions of respondent involving disputed assessments. The taxpayer adversely affected by respondent's decision may file an appeal with this Court within thirty (30) days after receipt of such decision.

Considering that petitioner received respondent's FDDA dated February 8, 2021[46] on February 26, 2021, petitioner had thirty (30) days therefrom, or until March 28, 2021 within which to file its appeal before the Court. Since March 28, 2021 fell on a Sunday, petitioner had until March 29, 2021 within which to file its appeal.

The Court, however, was physically closed from March 25, 2021 to May 14, 2021 due to the various issuances of the Supreme Court that addressed the rising cases of COVID-19 at that time.[47]

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[44] Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for actions as referred to in Section 7(a)(2) herein. xxx

[45] Sec. 3. *Who may appeal; period to file petition.* –
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.

[46] Exhibit "P-13", CTA Docket Vol. II, pp. 904-907; Exhibit "R-13", BIR Records, pp. 559-562.

[47] Announcement dated March 25, 2021 Re: Physical Closure of NCJR Courts, Nearby Provinces on March 25-26, 2021; Announcement dated March 27, 2021 Re: Physical closure of courts in the National Capital Judicial Region and nearby provinces from March 29-31, 2021 and throughout the Holy Week; Administrative Circular (AC) No. 14-21 dated March 28, 2021 Re: Extension of Filing Periods for Pleadings/Court Submissions for

The Court physically reopened on May 17, 2021.[48] Under Supreme Court Administrative Circular (AC) No. 33-2021, the period for filing and service of motions, pleadings, and other court submissions shall resume seven (7) calendar days from May 17, 2021, or on May 24, 2021.

The present Petition for Review was timely filed on May 17, 2021.[49] Thus, the Court acquired jurisdiction over the present case.

The Court has the power to rule on the issue anent the absence of a validly issued LOA even though the same was not raised in the administrative level

Petitioner's failure to raise the issue on the absence of a valid LOA before the administrative level is not fatal to its case.

Truth to tell, this Court can consider issues and arguments raised by the parties in the petition and answer, albeit the same were not raised before the administrative level. On this note, the pronouncement in *Commissioner of Internal Revenue vs. Geniographics Incorporated*[50] is instructive, *viz.*:

> "Anent the alleged error of the CTA in deciding an issue not raised before the administrative level, suffice it to state that respondent's **failure to raise the absence of a valid LOA at the earliest opportunity does not preclude the CTA from considering the same because said issue delves into the intrinsic validity of the assessment itself.** Besides, **the CTA, in deciding a case, 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.**" *(Emphasis supplied)*

Courts in the National Capital Judicial Region and Nearby Provinces Placed Under Enhance Community Quarantine from March 29 to April 4, 2021; AC No. 15-2021 dated April 3, 2021 Re: Extension of the Physical Closure of Courts and the Filing Periods for Pleadings and Other Court Submissions in Light of the Further Extension of the Enhanced Community Quarantine from April 5 to April 11, 2021; AC No. 21-2021 dated April 10, 2021 Re: Extension of Physical Closure of Courts; AC No. 22-2021 Re: Physical Closure of Courts in Enhanced Community Quarantine and Modified Enhanced Community Quarantine Areas; and, AC No. 29-2021 April 30, 2021 Re: Work Arrangements in Courts on 3-14 May 2021.

[48] AC No. 33-2021 dated May 14, 2021 Re: Court Operations Starting May 17, 2021.

[49] CTA Docket Vol. I, pp. 8-26.

[50] G.R. No. 264572, July 26, 2023.

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Without doubt, the Court has the power to rule on the issue anent the absence of a validly issued LOA in this case even though the same was not raised by petitioner at the administrative level.

The FLD was issued in violation of petitioner's right to due process; hence, the same is void ab initio

(i) RO Cayabyab is not authorized to continue the audit/ investigation of petitioner

Sections 6[51] and 13[52] of the NIRC of 1997, as amended, is clear and categorical in requiring a specific authority from the CIR or from his/her duly authorized representatives before an examination of a taxpayer may be made. An officer of the BIR cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[53] and in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[54] the Supreme Court held that the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any RO is indispensable to the validity of an assessment.

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

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[51] 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.
[52] SEC. 13. Authority of a Revenue Officer. – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.
[53] G.R. No. 178697, November 17, 2010.
[54] G.R. No. 222743, April 5, 2017.

"C. Other policies for issuance of L/As.

1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.

xxx xxx xxx

5. **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 and underlining supplied*)

In *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[55] the Supreme Court held that the practice of reassigning or transferring ROs 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[/her] 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 authority by the CIR or his[/her] duly authorized representative to examine the taxpayer's books of accounts.

A perusal of the records shows that there was no new LOA issued to RO Cayabyab in relation to the audit of petitioner's tax liabilities for TY 2014. While MOA No. LOA-116-2017-0097 dated February 13, 2017[56] was issued by the Chief of the Regular LT Audit Division I, the same cannot be regarded as a valid LOA within the context of the law as the MOA was not signed by the CIR or his duly authorized representative.

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

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[55] G.R. No. 242670, May 10, 2021.
[56] Exhibit "R-1", BIR Records, p. 230.

(c) Issue Letters of authority for the examination of taxpayers within the region;"

The position equivalent to a Revenue Regional Director for the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants. RMO No. 29-07[57] 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*)

In the present case, the MOA was signed and issued by Ms. Shirley A. Calapatia, Chief of the Regular LT Audit Division I.[58] 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 which could have authorized RO Cayabyab to continue the audit/investigation of petitioner.

In fine, neither LOA No. AUDM50/005027/2015 SN:eLA201200042171 dated November 10, 2015 nor MOA No. LOA-116-2017-0097 dated February 13, 2017 validly authorized RO Cayabyab to continue the audit/investigation of petitioner.

Since the conduct of the audit of petitioner was legally flawed, the assessments issued against it are inescapably void. Needless to say, a void assessment bears no fruit[59] and must be slain at sight.

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[57] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Services, September 26, 2007.
[58] Exhibit "R-1", BIR Records, p. 230.
[59] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

(ii) The FLD dated September 13, 2017 is an exact replica of the PAN dated August 23, 2017

Even assuming that RO Cayabyab was authorized to continue the audit/investigation on petitioner, the assessments issued against petitioner are still void.

Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., and Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue[60] *(Avon)* stresses the significance of the CIR's duty to apprise the taxpayer of the legal and factual bases of the assessments issued against it, to consider the explanations or defenses raised by the taxpayer in connection with the assessments, and to communicate to the taxpayer the reason for the rejection of such explanations or defenses, lest the assessment be deemed **void**:

> "**The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; **otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void**. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. **Failure to do so would invalidate the Final Decision on Disputed Assessment.**
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> xxx xxx xxx
>
> **On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment.** xxx
>
> xxx xxx xxx
>
> **The facts demonstrate that Avon was deprived of due process.** It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, **<u>did not even comment or address the defenses and documents submitted by Avon</u>. Thus, Avon was left unaware on how the**

[60] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

xxx xxx xxx

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

xxx xxx xxx

The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99." *(Boldfacing and underscoring supplied)*

A careful perusal of the PAN dated August 23, 2017[61] and FLD dated September 13, 2017[62] issued against petitioner disclosed that the FLD is a verbatim reproduction of the wordings of the PAN, not even differing in the computation of the interest. Likewise, the Details of Discrepancies[63] attached to the FLD is a verbatim reproduction of the Details of Discrepancies[64] attached to the PAN.

Moreover, the FLD neither referred to petitioner's Protest to the PAN dated September 7, 2017[65] nor addressed the arguments therein. There is also nothing on record which would show that respondent informed petitioner of the reasons for respondent's apparent rejection of its arguments in the Protest to the PAN.

Consistent with *Avon*, respondent's omission to give due consideration to the arguments raised by petitioner in its Protest to the PAN and to communicate to petitioner his reasons for rejecting its arguments amounts to a deplorable transgression of petitioner's right to due process.

It is well settled that any assessment that failed to strictly comply with due process requirements are intrinsically void.

All told, the assessments issued against petitioner in the present case are void for: (1) having been issued *sans* a valid LOA on the part of the RO who conducted petitioner's audit/investigation; and, (2) for respondent's omission to give due consideration to petitioner's arguments in its Protest to the PAN and to communicate to petitioner his reasons for rejecting its arguments - - an omission that effectively deprived petitioner of its right to due process of law.

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

WHEREFORE, premises considered, the Petition for Review filed on May 17, 2021 by NCR Corporation Philippines is **GRANTED**.

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[61] Exhibit "P-7", CTA Docket Vol. II, pp. 812-831; Exhibits "R-8" and "R-9", BIR Records, pp. 299-314 and 298.
[62] Exhibit "P-9", CTA Docket Vol. II, pp. 835-839; Exhibits "R-11" and "R-11-1", BIR Records, pp. 389-393.
[63] Exhibit "P-9-1", CTA Docket Vol. II, pp. 840-853; Exhibits "R-11-2", BIR Records, pp. 366-380.
[64] Exhibit "P-7", CTA Docket Vol. II, pp. 820-831; Exhibits "R-8-1", BIR Records, pp. 299-310.
[65] Exhibit "P-8", CTA Docket Vol. II, pp. 832-834.

Accordingly, the Formal Letter of Demand with Details of Discrepancy and Assessment Notices, all dated September 13, 2017, the Final Decision on Disputed Assessment with Details of Discrepancies and Audit Results/Assessment Notices, all dated February 8, 2021 assessing petitioner in the adjusted amount of ₱425,585,430.45 representing the alleged income tax, value-added tax, withholding tax on compensation, expanded withholding tax, final withholding tax, final withholding VAT, documentary stamp tax, and compromise penalty, inclusive of interest and surcharges for taxable year 2014, 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 alleged deficiency tax assessments subject of the Formal Letter of Demand with Details of Discrepancy and Assessment Notices, all dated September 13, 2017, and the Final Decision on Disputed Assessment with Details of Discrepancies and Audit Results/Assessment Notices, all dated February 8, 2021, assessing petitioner of income tax, value-added tax, withholding tax on compensation, expanded withholding tax, final withholding tax, final withholding VAT, documentary stamp tax, and compromise penalty in the aggregate amount of ₱425,585,430.45, for taxable year 2014. 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

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice