REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

CONCEPCION INDUSTRIES, INC., *Petitioner,*	**CTA CASE NO. 10305**
-versus-	Members: **UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 24 2022 8:02 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition"), filed by petitioner, **CONCEPCION INDUSTRIES, INC.**, against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), pursuant to ***Section 7 (1) of Republic Act No. 1125, as amended by Section (7) (a) (1) of Republic Act No. 9282 ("RA 1125")***, seeks to declare the assessments issued by respondent against petitioner for deficiency Income Tax ("IT"), Value Added Tax ("VAT"), Expanded Withholding Tax ("EWT"), Documentary Stamp Tax ("DST"), and Improperly Accumulated Earnings Tax ("IAET") for the taxable year ("TY") 2013, in the aggregate amount of Php1,151,079,115.37, as null and void.[1]

Also for the Court's resolution is respondent's Motion for Reconsideration of the Court's Resolution granting Summary Judgment, filed on 2 February 2022.

[1] See pars. 13-14, Petition, Records, pp. 9-10.

The Parties

Petitioner is a corporation registered with the Bureau of Internal Revenue ("BIR") under Tax Identification Number ("TIN") 000-158-908.[2]

Respondent is the head of the BIR, the government agency tasked to, among others, collect all national internal revenue taxes. As CIR, respondent 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 of 1997, as amended ("NIRC")***, other tax laws, and rules and regulations. He holds office at BIR National Office, Diliman, Quezon City.[3]

The Facts

On 26 September 2014, Letter of Authority ("LOA") No. 116-2014-00000173 was issued by the OIC-Assistant Commissioner of the Large Taxpayers ("LT") Service, Nestor S. Valeroso, in favor of Revenue Officers ("RO") Maria Gracielle Cecilia San Pedro-Anaban and Riza Budano and Group Supervisor ("GS") Allan Maniego of LT Regular Audit Division 1, authorizing them to audit and examine petitioner's books of accounts and other accounting records for the purpose of determining any deficiency tax liability for the period from 1 January 2013 to 31 December 2013.[4]

Thereafter, the Chief of the LT Regular Audit Division 1, Cesar D. Escalada, sent a Letter to petitioner informing it that RO Arnaldo T. Ancheta and Tito R. Monforte are authorized to assist, under GS Maniego, in the examination of petitioner's books.[5]

On 30 May 2016, Letter Notice No. 116-C-RLFTRS-13-00-0012 was issued by respondent requesting petitioner to reconcile the discrepancies found by the BIR's computerized matching system.[6]

On 27 February 2017, respondent issued a Preliminary Assessment Notice ("PAN") finding petitioner liable for deficiency IT, VAT, EWT, DST, and IAET.[7]

Petitioner filed a Reply to the PAN on 10 March 2017.[8]

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2 Annex "A", *id.*, p. 26.
3 Par. 2, *id.*, p. 7.
4 Annex "B", *id.*, p. 27; Exhibit "R-1", BIR Records, p. 4.
5 Annex "D", Petition, Records, p. 30; BIR Records, p. 1.
6 Annex "H", Petition, Records, pp. 36-38.
7 Annex "I", *id.*, pp. 39-46.
8 Annex "J", *id.*, pp. 47-80.

On 29 March 2017, respondent issued the Formal Letter of Demand ("FLD") and Formal Assessment Notices ("FAN").[9] The FAN sought to collect the following deficiency taxes from petitioner:

Tax Type	Amount Due (inclusive of surcharge and interest, exclusive of compromise penalty)
IT	Php379,115,270.32
VAT	117,106,506.20
EWT	9,413,857.84
DST	5,695,336.43
IAET	416,189,691.35

Notably, the FAN did not indicate any due date: the space provided for it was left blank by respondent.[10]

Petitioner filed its Protests to the FLD and to the FAN on 27 April 2017 and 27 June 2017, respectively.[11]

On 18 June 2020, respondent issued the Final Decision on Disputed Assessment ("FDDA") denying petitioner's Protests to the FLD/FAN. In total, the FDDA assessed petitioner the following:[12]

Tax Type	Amount Due (inclusive of surcharge and interest, inclusive of compromise penalty)
IT	Php490,555,272.50
VAT	142,075,190.16
EWT	11,624,996.43
DST	7,038,073.47
IAET	499,785,582.82
Total	Php1,151,079,115.37

Thus, petitioner was constrained to file the instant Petition on 17 July 2020.

On 16 October 2020, this Court issued Summons to respondent to file an Answer to the Petition.[13] Respondent filed his Answer on 22 December 2020.[14]

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[9] Annex "K", *id.*, pp. 81-88.
[10] Annexes "K-1", "K-2", "K-3", "K-4", "K-5" and "K-6", *id.*, pp. 89-94.
[11] Annexes "L" and "M", *id.*, pp. 95-117.
[12] Annexes "N", "N-1", "N-2", "N-3", "N-4", "N-5" and "N-6", *id.*, pp. 118-133.
[13] Records, p. 279.
[14] *Id.*, pp. 287-326.

In a Resolution, dated 6 January 2021, this Court referred the instant case to mediation.[15] However, the parties failed to agree on a settlement.[16]

On 26 January 2021, respondent elevated all of the BIR Records appurtenant to the case.[17]

On 17 June 2021, petitioner filed a Motion for Summary Judgment, alleging that a Summary Judgment is proper in light of respondent's failure to raise a genuine issue as to any material fact.[18] To this, respondent filed a Comment/Opposition (On Petitioner's Motion for Summary Judgment) on 5 July 2021.[19] Similarly, petitioner filed a Reply (to Respondent's Comment/Opposition to Petitioner's Motion for Summary Judgment).[20]

This Court then granted petitioner's Motion for Summary Judgment on 17 December 2021.[21]

On 2 February 2022, respondent filed a Motion for Reconsideration of the Court's Resolution granting Summary Judgment,[22] alleging that: a) the Court erred in granting petitioner's Motion for Summary Judgment without conducting summary hearing; and b) the Court erred in ruling that petitioner satisfied the twin elements to render a Summary Judgment, namely: that 1) there is no genuine issue on material facts pertaining to the validity of the assessment in the instant case; and 2) petitioner is entitled to a judgment as a matter of law.

On 7 March 2022, petitioner filed its Comment/Opposition (to Respondent's Motion for Reconsideration [of the Resolution dated 17 December 2021]),[23] counter-arguing as follows: a) a summary hearing is not an indispensable requirement in resolving Petitioner's Motion for Summary Judgment; b) the Court correctly ruled that petitioner satisfied the twin requirements for rendering a summary judgment; and c) no genuine issue on material facts has been presented by respondent, hence, the issues left for this Court to resolve are purely legal questions.

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15 *Id.*, pp. 327-329.
16 *Id.*, p. 336.
17 *Id.*, p. 331-334.
18 *Id.*, pp. 340-415.
19 *Id.*, pp. 517-541.
20 *Id.*, pp. 542-556.
21 *Id.*, pp. 560-568.
22 Records.
23 *Ibid.*

<u>Ruling on respondent's Motion for Reconsideration</u>

Before this Court can proceed in deciding the instant case, it must first resolve respondent's Motion for Reconsideration. Following a studied review of the arguments presented by the parties, we rule to deny respondent's Motion for Reconsideration.

At the onset, it must be stressed that a summary hearing is not an indispensable requirement before this Court may grant a Motion for Summary Judgment. This was stressed in the case of ***Carcon Development Corporation v. Court of Appeals***, *viz.*:[24]

> "The theory of summary judgment is that although an answer may on its face appear to tender issues-requiring trial-yet if it is demonstrated by affidavits, depositions, or admissions that those issues are not genuine, but sham or fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for plaintiff. The court is expected to act chiefly on the basis of the affidavits, depositions, admissions submitted by the movant, and those of the other party in opposition thereto. **<u>The hearing contemplated (with 10-day notice) is for the purpose of determining whether the issues are genuine or not, not to receive evidence on the issues set up in the pleadings. A hearing is not thus de riguer.</u>** The matter may be resolved, and usually is, on the basis of affidavits, depositions, admissions. This is not to say that a hearing may be regarded as a superfluity. It is not, and the Court has plenary discretion to determine the necessity therefor. Under the circumstances of this case, however, a hearing would have served no purpose, and was clearly unnecessary. The summary judgment here was justified, considering the absence of opposing affidavits to contradict the sworn declarations of Univet's officials, which demonstrate that the issues raised in the answer are sham, not genuine."
> (Emphasis and underscoring, Ours.)

Consequently, respondent's contention that this Court erroneously granted petitioner's Motion for Summary Judgment without a summary hearing is unmeritorious. This Court has discretion whether or not to hold summary hearings in order to determine whether a genuine issue of fact exists that necessitates the need for a full-blown trial. If it can already be determined that no genuine issue of fact exists on a particular case on the basis solely of the affidavits, depositions, and admissions submitted by the parties, then there is no longer any need to conduct a summary hearing as the same would merely be superfluous.

Further, respondent, in his Motion for Reconsideration, failed to dispute this Court's findings that no genuine issue of fact exists in the case at bar. There is no genuine issue of fact on the authority of the ROs who conducted the audit and investigation of petitioner. In the Motion for Reconsideration, ℓ

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[24] G.R. No. 88218, Resolution, dated 19 December 1989.

respondent insists that a full-blown trial is still necessary in order for him to present evidence that RO San Pedro-Anaban has the requisite authority to conduct an audit and examination of petitioner's books of accounts and to give him the opportunity to present documentary evidence on the authority of the other ROs to conduct the audit and examination of petitioner's books of accounts and other accounting records.

This is terribly misplaced. No genuine issue of fact exists with respect to the alleged authority of the ROs who conducted the audit and examination of petitioner's books of accounts and other accounting records.

First, there is no question that RO San Pedro-Anaban was one of the ROs named in the LOA who were authorized to audit and examine petitioner's books of accounts and other accounting records. Petitioner does not even deny this. Hence, there is no factual issue on this matter that requires the presentation of evidence.

Second, there are no factual issues raised by either parties with respect to the due execution of the subject LOA as well as the names of the parties indicated in the LOA.

Third, with respect to the other ROs (not named in the LOA) who likewise audited and examined petitioner's books of accounts and other accounting records, respondent did not deny that they were not particularly named in the LOA. Instead, he posited that these ROs are likewise authorized to audit petitioner through other documents other than a LOA, which he intends to present before this Court.

Simply put, respondent wants to convince this Court that ROs may be authorized to audit the books of a taxpayer through means other than a LOA. This is not a factual issue; it is a *legal* question. This does not necessitate the presentation of documentary evidence. Hence, no material factual issue is involved.

Likewise, there is no genuine factual issue involved as to the issues of (1) whether the FLD/FAN issued by respondent had a definite computation of tax liability; and (2) whether the FLD/FAN had a demand to pay the tax liabilities contained therein within a prescribed period or due date. Respondent neither questioned the due execution of the FLD/FAN being presented by petitioner. In fact, the FLD/FAN presented by petitioner is the same as those in the BIR Records.[25] Both petitioner's and respondent's copies of the FLD/FAN contain the phrase "[p]lease note that the interest and total amount due will have to be adjusted if paid beyond April 28, 2017", and lack a definite due date. Accordingly, the only questions that remain are whether

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[25] BIR Records, pp. 243-248.

the FLD/FAN contained no definite computation of tax liability and whether the lack of due date in the FLD/FAN constitute a lack of demand to pay the tax liabilities contained therein. These questions are not factual but legal ones. Hence, there is no need for evidence to be presented on these matters.

Given the foregoing, this Court's Resolution, dated 17 December 2021, granting petitioner's Motion for Summary Judgment stands. Petitioner has adequately proven its entitlement to a Summary Judgment as no genuine issue of fact exists that necessitates a full-blown trial.

Hence, this Decision.

The Issue

WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE ASSESSED TOTAL AGGREGATE AMOUNT OF PHP1,151,079,115.37 (INCLUSIVE OF SURCHARGES, INTERESTS AND COMPROMISE PENALTIES), AS DEFICIENCY IT, VAT, EWT, DST AND IAET, FOR TY 2013.

Arguments of the Parties

Petitioner's Arguments[26]

Petitioner avers the following in its Petition:

a) The FLD and FAN are void for failure to indicate a definite amount of tax liabilities and due date for payment as required under ***Section 228 of the NIRC***; and

b) The ROs who conducted the audit of petitioner's 2013 books of accounts did not have the requisite authority.

Respondent's Counter-Arguments[27]

Respondent counter argues the following in his Answer:

a) No new issues may be raised on appeal regarding issues on lack of authority of the investigating revenue officers and alleged issues on lack of demand for payment;

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[26] Petition, Records, pp. 10-18.

[27] Answer, *id.*, pp. 288-309.

b) Petitioner was afforded due process during the administrative proceedings;

c) The FLD is a final demand for payment;

d) The Decision on the invalidity of FLD (*i.e.*, ***Commissioner of Internal Revenue v. Fitness by Design***[28]) should not be applied in the instant case as this was promulgated (*i.e.*, 9 November 2016) after the subject FLD was issued (*i.e.*, 23 June 2014); and

e) Petitioner is liable for the deficiency taxes assessed.

The Ruling of the Court

The instant Petition is impressed with merit.

The Court has jurisdiction to entertain issues which have not been raised in the administrative level.

Respondent claims that the Court has no jurisdiction to entertain the questions which have not been raised at the administrative level. This is terribly misplaced.

The Court of Tax Appeals is a court of record,[29] and it conducts *trial de novo.*[30] Considering this, party-litigants are duty-bond to prove every minute aspect of their case.[31] Moreover, the Court need not limit itself to the issues stipulated by the parties to be resolved upon but may also rule on related issues necessary for the orderly disposition of the case.[32]

Given this, even if petitioner failed to raise the issues of: a) the lack of authority of the ROs who conducted an audit and examination of its books of accounts and other accounting records; b) the FLD/FAN's lack of definite amount of tax liability; and c) the FLD/FAN's lack of a due date, this Court is still mandated to look upon the said issues as the same are necessary for the orderly disposition of the case.

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[28] G.R. No. 215957, 9 November 2016.

[29] Section 8, RA 1125.

[30] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019; Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

[31] Wellform Trading Corp. v. Commissioner of Internal Revenue, G.R. No. 252424, 27 July 2020.

[32] Section 1, Rule 14, Revised Rules of the Court of Tax Appeals (A.M. No. 05-11-07-CTA).

And if the Court is duty-bound to look into these issues even if not raised by the parties, more so should the Court resolve these issues if actually raised by any of the parties.

Hence, petitioner's failure to raise the invalidity of an assessment as an issue during the administrative level is not fatal to its cause. This does not preclude the Court from ruling on these issues.

Consequently, this Court may rule on the issues of: a) lack of authority of the ROs who conducted audit and examination of petitioner's books of accounts and other accounting records; b) the FLD/FAN's lack of definite amount of tax liability; and c) the FLD/FAN's lack of a due date for payment, all of which are essential to determine the validity of the subject assessment.

A LOA as an instrument of due process should particularly name the ROs who are authorized to conduct an audit.

ROs conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with a LOA. This is a principle undeterred under our tax laws. A LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in auditing a taxpayer.

The importance of a LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court in the ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[33] to wit:

> **"An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
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> > **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

[33] G.R. No. 222743, 5 April 2017, citing Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010.

> (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.

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Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> 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**.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

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That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority**

> **<u>to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."</u>**
> (Emphasis and underscoring, Ours.)

In fact, the Supreme Court even went further in highlighting the importance of a Letter of Authority as an instrument of due process when it recently ruled in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp. ("McDonald's Case").***[34] that a Letter of Authority should specifically name the ROs who will pursue the tax audit, to wit:

> "A. **<u>Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation</u>**
>
> The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In Medicard Philippines, Inc. v. Commissioner of Internal Revenue, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that '[d]ue process demands xx x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.' The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.
>
> To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **<u>Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.</u>**
>
> We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, 'any' revenue officer may then act under such validly issued LOA.

[34] G.R. No. 242670, 10 May 2021.

> The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers, pursuant to Sections 6, 10(c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, i.e., a revenue officer. Hence, petitioner is mistaken to characterize the LOA as a document 'issued' to the taxpayer, and that once so issued, 'any' revenue officer may then act pursuant to such authority."
> (Emphasis and underscoring, Ours.)

A taxpayer has the right to know the specific ROs who are authorized to examine his or her books of accounts and other accounting records. Consequently, a LOA must particularly state the names of the ROs authorized to audit/investigate a particular taxpayer. Given this, new ROs assigned to audit a taxpayer must be issued a LOA which specifically names him or her as authorized to examine the taxpayer, even if he or she is merely assigned to assist the ROs originally named in a previous LOA. Otherwise, any resulting assessment arising from the audit conducted by the new ROs is null and void.

The Letter issued by the Chief of the LT Regular Audit Division 1, Cesar D. Escalada, does not qualify as a LOA that validly authorized ROs Ancheta and Monforte to assist in the audit of petitioner's books of accounts and other accounting records.

In the ***McDonald's Case***, the Supreme Court declared that a Letter informing a taxpayer that the audit of its book of accounts and other accounting records is being referred to a new set of ROs cannot be a substitute for a LOA. These Letters simply notify a taxpayer of the referral of an audit/investigation to another set of ROs. Unlike a LOA, these correspondences do not show that the new set of ROs who will pursue the audit are properly authorized to do so. A LOA is a special grant of authority to a specific set of revenue officers to examine a taxpayer's books of accounts and other accounting records for purposes of determining the taxes due. The Supreme Court ruled, as follows:

> "B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA
>
> **It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and**

> **transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But **an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**
>
> The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives."
> (Emphasis, Ours.)

In the present case, LOA No. 116-2014-00000173 was issued by the OIC-Assistant Commissioner of the LT Service, Nestor S. Valeroso, in favor of ROs San Pedro-Anaban and Budano, and GS Maniego of LT Regular Audit Division 1 authorizing them to audit and examine petitioner's books of accounts and other accounting records for the purpose of determining any deficiency tax liability for the period from 1 January 2013 to 31 December 2013.[35] Subsequently, the Chief of the LT Regular Audit Division 1, Cesar D. Escalada, sent a Letter to petitioner informing it that ROs Ancheta and Monforte are authorized to assist, under GS Maniego, in the examination of petitioner's books.[36] However, records are bereft of any LOA specifically authorizing ROs Ancheta and Monforte to proceed with the audit of petitioner's accounting records.

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[35] Annex "B", Petition, Records, p. 27; Exhibit "R-1", BIR Records, p. 4.

[36] Annex "D", Petition, Records, p. 30; BIR Records, p. 1.

Through the assistance of ROs Ancheta and Monforte, a Memorandum, dated 13 February 2017, was issued, recommending the issuance of a PAN against petitioner. ROs Ancheta and Monforte signed the said Memorandum indicating that they participated in the audit of petitioner resulting in the issuance of said Memorandum.[37] Similarly, through the assistance of ROs Ancheta and Monforte in the audit of petitioner, a Memorandum, dated 17 March 2017, was issued recommending the issuance of a FLD/FAN against petitioner assessing it with deficiency IT, VAT, EWT, DST, and IAET. ROs Ancheta and Monforte signed this Memorandum as well, signifying their participation in the examination of petitioner's books of accounts that resulted in the issuance of such Memorandum.[38]

In totality, ROs Ancheta and Monforte were able to audit, examine, and inspect petitioner's books of accounts and other accounting records (which then lead to deficiency tax assessments against respondent) through a mere Letter and without authorization via valid LOAs, despite the clear requirement that all revenue officers conducting an audit/investigation of a taxpayer should be properly authorized with an LOA.

It is noteworthy that assessments issued without the requisite LOA are inescapably void.[39]

Consequently, due to the absence of a LOA authorizing ROs Ancheta and Monforte to examine petitioner, the deficiency tax assessments issued by respondent are void.

The Letter, which authorized ROs Ancheta and Monforte to assist in the audit of petitioner, cannot be treated as a valid LOA.

To be effective, a LOA must be issued either by respondent himself or by his duly authorized representative. Under ***Section 13 of the NIRC***, the duly authorized representative is the Revenue Regional Director. Under ***Section D (4) of RMO No. 43-90***, respondent expanded the list of duly authorized representatives who may issue LOAs:

> "1. Regional Directors;
> 2. Deputy Commissioners;
> 3. Commissioner; and
> 4. Other officials that may be authorized by the Commissioner for the exigencies of service."[40]

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[37] Exhibit "R-5", BIR Records, pp. 168-171.

[38] Exhibit "R-7", *id.*, pp. 223-225.

[39] Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, 5 April 2017.

[40] Commissioner of Internal Revenue v. Sugar Crafts, Inc., CTA EB No. 1757; CTA Case No. 8738, Resolution, dated 10 September 2019.

Using this line of thought, a mere Letter may be considered a valid and effective LOA, provided that it was issued by any of the persons named above.

In the present case, the subject Letter was issued by a mere Chief of the LT Regular Audit Division 1, Cesar D. Escalada,[41] who is not among those listed above. Hence, the subject Letter cannot qualify as a valid LOA.

Consequently, the instant deficiency tax assessment is null and void due to the fact that some ROs (*i.e.,* ROs Ancheta and Monforte) who examined and audited petitioner's books of accounts and other accounting records were not authorized by properly issued LOAs. As the instant assessment is void, no tax collection can be pursued in relation thereto.

The FLD/FAN is void for failure to provide a definite due date and demand for the payment of tax liabilities.

The assessment issued by respondent against petitioner is also void for failure to provide a definite due date for the payment of tax liabilities. For a taxpayer to be liable for deficiency assessment, it must first be issued a valid assessment. An assessment can only be valid if there is a due date and a demand for payment of the tax liabilities contained therein.

The significance of due date and demand for payment within a prescribed period in the FLD and FAN cannot be overemphasized. The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.[42] A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof."[43] This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies". Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."[44]

The absence of a due date in the assessment notices negates demand for payment. This was emphasized by the Supreme Court in ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.,***[45] *viz.*:

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[41] Annex "D", Petition, Records, p. 30; BIR Records, p. 1.

[42] Commissioner of Internal Revenue v. Menguito, 581 Phil. 234, 256 (2008).

[43] *Ibid.*

[44] Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, G.R. No. 128315, June 29, 1999, 368 Phil. 714.

[45] G.R. No. 215957, 9 November 2016.

> "The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.
>
> A pre-assessment notice 'do[es] not bear the gravity of a formal assessment notice.' A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.
>
> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> xxx xxx xxx
>
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
>> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay."

In the case at bar, the FLD expressly provided that petitioner is "requested to pay [its] aforesaid deficiency tax liabilities... within the time shown in the enclosed assessment notice." Conversely, the FANs attached to the FLD did not provide any due date as the space provided was left blank by respondent.[46]

As the FLD/FAN did not contain a due date, there was no demand for payment within a prescribed period. The FLD and FAN thus do not constitute a valid assessment.

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[46] Annex "K", Petition, Records, pp. 81-88; BIR Records, pp. 243-248.

WHEREFORE, respondent's Motion for Reconsideration [of the Resolution dated 17 December 2021]) is hereby **DENIED**. The Resolution, dated 17 December 2021 is **AFFIRMED**. Meanwhile, in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** The PAN, FLD/FAN, and FDDA issued against petitioner are declared **NULL AND VOID.** The deficiency IT, VAT, EWT, DST, and IAET assessments issued against petitioner for TY 2013, in the aggregate amount of Php1,151,079,115.37, are hereby **CANCELLED** and **SET ASIDE.** Respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice