REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

MA. ERLINDA T. ONG,
Respondent.

CTA *EB* NO. 2785
(CTA Case No. 10100)

Present:

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

Promulgated:
AUG 05 2024 4:05pm

x - x

DECISION

MANAHAN, *J.:*

Before the Court *En Banc* is a *Petition for Review* filed on August 10, 2023[1] by the Commissioner of Internal Revenue (CIR), which seeks to reverse and set aside the Decision[2] dated January 16, 2023 of the Court of Tax Appeals (CTA) Special Second (2nd) Division, and praying for the Court to order respondent to pay the assessed deficiency taxes in the total amount of Php8,051,975.31.

For easy reference, the dispositive portion of the January 16, 2023 Decision reads:

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[1] EB Docket, pp. 7-25.
[2] Penned by Associate Justice Jean Marie A. Bacorro-Villena, with Associate Justice Lanee S. Cui-David concurring, EB Docket, pp. 33-47.

"**WHEREFORE**, the foregoing considered, the Petition for Review of petitioner Ma. Erlinda T. Ong filed on 01 July 2019 is hereby **GRANTED**. Accordingly, the Final Assessment Notice and/or Formal Letter of Demand dated 10 December 2013 and the Final Decision on Disputed Assessment dated 17 April 2015 are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes arising therefrom.

SO ORDERED."[3]

FACTS

The following are the facts as found by the Court in Division:

"Petitioner is a registered taxpayer assigned with Tax Identification Number (**TIN**) 109-012-043-000 with residential address at Sol's Subdivision, Legazpi City, and herein represented by Ria A. Sablon (**Sablon**), petitioner's attorney-in-fact.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (**BIR**), vested with the power to assess and collect taxes, and rule on disputed assessments, among others.

On 07 March 2011, petitioner received electronic Letter of Authority (**eLA**) No. eLA201000022394/LOA-067-2011-00000089 dated 28 February 2011, issued by Regional Director (**RD**) Diosdado R. Mendoza (**Mendoza**). The eLA authorized Revenue Officer (**RO**) Leila Olitoquit (**Olitoquit**) and Group Supervisor (**GS**) Josephine Gomez (**Gomez**) to audit petitioner for all deficiency internal revenue taxes for TY 2009.

[3] See Note 2, pp. 45-46.

On 17 April 2013, a Notice of Informal Conference (**NIC**) was issued. Later, on 21 November 2013, RD Esmeralda M. Tabule (**RD Tabule**) issued a Preliminary Assessment Notice (**PAN**) to petitioner which the latter received on 16 December 2013.

Thereafter, on 19 December 2013, petitioner also received a Final Assessment Notice (**FAN**) with a Formal Letter of Demand (**FLD**) issued by RD Tabule on 10 December 2013.

On 23 December 2013, petitioner filed a Protest to the FAN where it asserted that the assessment against it had already prescribed on 15 April 2013. In a Reply dated 02 October 2014, RD Tabule countered that a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (**WDP**), as amended, was executed on 06 January 2011 which thus extended the period of assessment. The Reply further stated that a certain RO Daisy Justiniana (**RO Justiniana**) was authorized under an alleged Memorandum of Assignment (**MOA**) to continue petitioner's assessment.

In response to RD Tabule's Reply, petitioner sent a Letter dated 27 October 2014 maintaining the invalidity of the assessment.

On 29 May 2015, petitioner received the Final Decision on Disputed Assessment (**FDDA**) issued by RD Tabule on 17 April 2015, denying petitioner's protest. On 29 June 2015, petitioner filed a Protest to the FDDA before the office of respondent CIR, then Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**). On 05 June 2019, petitioner received the CIR's Decision denying its Protest to the FDDA (issued by RD Tabule).

Aggrieved, petitioner filed the present petition challenging the assessment made against it.

On 08 July 2019, the Court issued Summons on respondent ordering it to file his or her answer. On 13 September 2019, respondent filed the Answer to petitioner's petition essentially contending that: (**1**) the

MOA was issued pursuant to a valid Letter of Authority (**LOA**); (**2**) the WDP validly extended the period of assessment; and, (**3**) the assessment of petitioner was carried out consistent with the pertinent law and rules.

On 18 September 2019, the Court issued a Notice of Pre-Trial Conference. On 07 October 2019, petitioner and respondent filed their respective Pre-Trial Briefs (**PTBs**).

On 10 October 2019, with the agreement of both parties, the case was referred to the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**) for a possible amicable settlement.

In a Resolution dated 11 November 2019, the Court noted the PMC-CTA's Report that the parties failed to enter into any amicable settlement. The Court then set the pre-trial conference and ordered the parties to submit their Joint Stipulation of Facts and Issues (**JSFI**) within thirty (30) from notice thereof.

On 16 December 2020, *via* electronic mail, petitioner filed a 'Manifestation of Failure to Stipulate' (**Manifestation**). In a Resolution dated 13 January 2021, the Court noted the said Manifestation and deemed the same as a waiver of the parties' right to file the JSFI.

Thereafter, on 14 January 2021, the Court issued a Pre-Trial Order and set the presentation of petitioner's evidence on 03 February 2021. When trial ensued, petitioner offered the testimony of its sole witness, Sablon, who testified through her Judicial Affidavit.

In her Judicial Affidavit, Sablon testified to being petitioner's authorized representative and tax consultant from the year 2013 up to the present. She also attested to petitioner's receipt of the LOA, NIC, PAN, WDP, FAN, FLD and FDDA. According to Sablon, she assisted petitioner in preparing the protests to the FAN and to the FDDA. She further stated that, upon scrutiny of the documents, she found that the WDP was served prior to the issuance of the

LOA rendering thus the assessment against petitioner invalid and prescribed.

After Sablon's cross-examination, the Court directed petitioner to file a Formal Offer of Evidence (**FOE**) within twenty (20) days. Respondent was also granted an equal period from its receipt of the FOE to file its comment/opposition thereto.

On 22 February 2021, petitioner filed an FOE submitting to the Court the following pieces of documentary evidence:

xxx xxx xxx

On 15 March 2021, respondent filed its 'Comment on Petitioner's Formal Offer of Evidence.' In a Resolution dated 26 May 2021, the Court admitted all of petitioner's exhibits.

As for respondent's witnesses, the presentation of Atty. Katrina Dapula-Balbastre (**Atty. Balbastre**) was dispensed after petitioner's counsel stipulated on the contents of the said witness' supposed testimony; particularly, on the issuance of the WDP. Accordingly, the Court ordered respondent to file his or her FOE within ten (10) days from such order. Petitioner was also given a similar period from receipt of the FOE within which to file a comment/opposition thereto.

On 09 July 2021, respondent offered the following documents:

xxx xxx xxx

On 19 July 2021, petitioner filed a 'Comment to Respondent's Formal Offer of Evidence.' In a Resolution dated 30 September 2021, the Court admitted all of respondent's exhibits and ordered the parties to submit their memoranda within 30 days from receipt of such order.

On 04 November 2021, respondent filed a Manifestation adopting the contents of his or her Answer in lieu of a memorandum. On 09 February 2022, petitioner filed a Manifestation likewise adopting the contents of its Petition for Review as opposed to filing a memorandum.

Considering the parties' manifestations, the Court submitted the instant case for decision in a Resolution dated 24 February 2022."[4]

On January 16, 2023, the CTA Special Second (2^{nd}) Division rendered the assailed Decision.

On February 3, 2023, petitioner posted its Motion for Reconsideration (Re: Decision dated 16 January 2023).[5] On June 26, 2023,[6] the CTA Special Second (2^{nd}) Division issued a Resolution denying petitioner's Motion for Reconsideration for lack of merit.

On July 26, 2023, petitioner filed his Motion for Extension of Time to File Petition for Review,[7] which was granted by the Court En Banc in a Minute Resolution[8] dated July 28, 2023.

On August 10, 2023,[9] petitioner posted the present Petition for Review.

On September 19, 2023,[10] the Court *En Banc* issued a Resolution directing respondent to file her Comment to the Petition for Review. As per Records Verification dated October 26, 2023,[11] respondent failed to file the same.

On November 13, 2023,[12] the Court *En Banc* issued a Resolution submitting the case for decision.

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[4] See Note 2, pp. 34-39.
[5] Division Docket, pp. 546-562.
[6] Division Docket, pp. 571-577.
[7] EB Docket, pp. 1-4.
[8] EB Docket, p. 6.
[9] See Note 1.
[10] EB Docket, p. 56.
[11] EB Docket, p. 57.
[12] EB Docket, p. 58.

ISSUES

Petitioner raised the following Assignment of Errors:

I. The Honorable Court in Division erred in ruling that respondent is not liable for deficiency taxes.

II. The Honorable Court in Division erred in ruling that the assessment issued against respondent is void.[13]

Petitioner's Arguments

Petitioner argues that Revenue Memorandum Order (RMO) No. 8-2006 provides that "[I]n case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned Revenue Officer (RO) and/or Group Supervisor (GS)." Pursuant to the said RMO, petitioner asserts that the Memorandum of Assignment (MOA) is merely for the continuation of the audit which was already authorized under the Letter of Authority (LOA). What is important is that the audit of the taxpayer must be sanctioned by an LOA which had been previously issued.

RULING OF THE COURT

The Court *En Banc* finds the Petition bereft of merit.

RO Justiniana is not duly authorized to continue the audit and examination of respondent's books of account and other accounting records

The reassignment of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit investigation

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[13] See Note 1, Assignment of Errors, p. 10.

As previously mentioned, under electronic Letter of Authority (eLA) No. eLA201000022394/LOA-067-2011-00000089 dated February 28, 2011 and issued by Regional Director (RD) Mendoza, RO Olitoquit and GS Gomez were authorized to audit respondent for all deficiency internal revenue taxes for taxable year (TY) 2009. Subsequently, in RD Tabule's Reply dated October 2, 2014 to respondent's protest filed on December 23, 2013, it was stated that RO Justiniana was authorized to continue petitioner's assessment.

Section 13 of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> "**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." *(Emphasis supplied)*

With respect to the importance of an LOA as part of the due process requirement in the Bureau of Internal Revenue (BIR) audit investigation, the Supreme Court had already made various pronouncements, as follows:

(1) In ***Commissioner of Internal Revenue v. Sony Philippines, Inc.***,[14] the Supreme Court ruled that:

> "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
>
> 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

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

beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity."

(2) In ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[15] the Supreme Court ruled that:

"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:

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.

xxx xxx xxx

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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[15] G.R. No. 222743, April 5, 2017.

(3) In ***Commissioner of Internal Revenue v. Opulent Landowners, Inc.***,[16] the Supreme Court pertinently ruled that:

> "xxx. Likewise, the CTA *EB* correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers."

(4) In ***Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.***,[17] the Supreme Court described in detail the "disturbing trend of tax audits or investigations," which facts are also attendant in this case. The Supreme Court exhaustively discussed, as follows:

> "This case is an occasion for the Court to rule on a disturbing trend of tax audits or investigations conducted by revenue officers who are not specifically named or authorized in the LOA, under the pretext that the original revenue officer authorized to conduct the audit or investigation has been reassigned or transferred to another case or place of assignment, or has retired, resigned or otherwise removed from handling the audit or investigation.
>
> This practice typically occurs as follows: (i) a valid LOA is issued to an authorized revenue officer; (ii) the revenue officer named in the LOA is reassigned or transferred to another office, case or place of assignment, or retires, resigns, or is otherwise removed from handling the case covered by the LOA; (iii) the revenue district officer or a subordinate official issues a memorandum of assignment, referral memorandum, or such equivalent document to a new revenue officer for the continuation of the audit or investigation; and (iv) the new revenue officer continues the audit or investigation, supposedly under the authority of the previously issued LOA.
>
> This practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been the subject of several CTA decisions, including *Ithiel Corporation v. CIR*, *Strawberry Foods Corporation v. CIR*, *Sugar Crafts, Inc. v. CIR*, *CIR v. Marketing Convergence, Inc.*, *Exclusive Networks-PH Inc. v. CIR*, and the decision in the court *a quo*.

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[16] G.R. Nos. 249883-84, January 27, 2020.
[17] G.R. No. 242670, May 10, 2021.

The Court hereby puts an end to this practice.

xxx xxx xxx

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 x x 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. 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.

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."

Meanwhile, petitioner asserts that:

"That is the reason why either a memorandum, referral memorandum and/or memorandum of assignment are given to other revenue officers to continue the audit investigation

> made by other revenue officers. Their authority to audit is not derived from the original Letter of Authority but from the written authority given by the Commissioner/Representative. Thus, the memorandum of assignment issued by the Commissioner gives them authority to continue an audit which was already previously authorized under the Letter of Authority. This ensures the objective of Section 13 of the NIRC that revenue officers may only perform their duly authorized assessment functions pursuant to an LOA at all times"[18]

With regard to petitioner's above-quoted assertion, *i.e.*, the issuance of a MOA *vis-à-vis* the authority to conduct examination, the Supreme Court also has this to say in *Mcdonald's*:

> "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."[19]

(5) Finally, in the more recent case of ***Commissioner of Internal Revenue v. Wellington Investment & Manufacturing Corporation***,[20] the Supreme Court reiterated its recent ruling in *Mcdonald's* in this wise:

> "We recently ruled in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* that (1) the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation; (2) the use of a memorandum of assignment, referral memorandum, or such equivalent document, directing the continuation of audit or

[18] EB Docket, p. 14.
[19] See Note 15.
[20] G.R. No. 249795, November 29, 2022.

investigation by an unauthorized RO usurps the functions of the LOA; and (3) Revenue Memorandum Order (RMO) No. 43-90 expressly and specifically requires the issuance of a new LOA if ROs are reassigned or transferred. We declared:

> The practice of reassigning or transferring revenue officers originally named in the Letter of Authority *(LOA)* and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue *(CIR)* or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue *(BIR)* rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.

In ***Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue***, the examination of the taxpayer's books of accounts was reassigned to another RO sans issuance of a new LOA; the authority of the subsequent RO therein was anchored only upon the MOA signed by the revenue district officer. We thus declared void the assessments against the taxpayer for having been issued without an LOA by the CIR or his duly authorized representative.

The RMOs cited by petitioner, namely RMO Nos. 08-2006 and 69-2010, merely provide additional regulations in case of reassignment of revenue officers and should not be interpreted to remove the requirement of an LOA. Rather, the MOA, referral memorandum, or any equivalent document are issued for the purpose of reassignment and transfer of cases of revenue officers, and not for the purpose of vesting authority on an RO to examine a taxpayer's books of accounts, which is the function of an LOA."

Clearly, as early as the *Sony Philippines* case in 2010, the Supreme Court had already emphasized the importance of an LOA as a grant of authority before any RO can conduct an examination or assessment. Then, the *Medicard* case in 2017 also echoed the importance of an LOA, where the Supreme Court stated that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. This same doctrine was revisited in *Opulent* case in 2020. Finally, in the *Mcdonald's* case and the subsequent *Wellington* case in 2021 and 2022, respectively, the Supreme Court already recognized the said practice of the BIR, *i.e.*, 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, as in this case. Thus, the Supreme Court categorically stated that the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement of an RO to continue the audit or investigation.

Consequently, "[i]n cases where the BIR conducts an audit without a valid LOA, or in excess of authority duly provided therefor, the resulting assessment shall be void and ineffectual."[21]

Considering that the factual issues in the present petition were already addressed by the above-cited cases decided by the Supreme Court, the Court *En Banc* finds no compelling reason to reverse or modify the findings of the Court in Division in cancelling the subject disputed assessment.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

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[21] *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020, citing *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, see Note 15.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

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MA. ERLINDA T. ONG, Respondent.	Promulgated: AUG 05 2024 4:05 PM

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit. As aptly found by the Court in Division, which was affirmed by the *ponencia*, Revenue Officer Daisy Justiniana is not named in the Letter of Authority and is thus not duly authorized to continue the audit and examination of respondent's books of account and other accounting records.

I wish to point out that upon examination of the records, it appears that the Final Assessment Notice with Formal Letter of Demand (FAN/FLD)[1] in this case was prematurely issued on December 10, 2013. Respondent only received the **Preliminary Assessment Notice (PAN)**[2] dated November 21, 2013 on **December**

[1] Exhibit "P-4", Division Docket, pp. 359-368.
[2] Exhibit "P-3", Division Docket, pp. 354-358.

16, 2013. Thus, petitioner had fifteen (15) days therefrom or until January 2, 2014[3] within which to respond to the PAN pursuant to Revenue Regulations (RR) No. 12-99,[4] as amended.

In *Prime Steel Mill Incorporated vs. Commissioner of Internal Revenue*,[5] the Supreme Court highlighted the importance of the PAN and rendered an assessment void for failure to strictly comply with the fifteen (15)-day period to reply to the PAN provided under RR No. 12-99, as amended, before issuing the FAN, *viz.*:

> "In several cases, this Court has enjoined **strict observance by the BIR of the prescribed procedure for the issuance of assessment notices in order to uphold the taxpayers' constitutional rights.**
>
> In the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, the Court held that the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules.
>
> **The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.**
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> xxx xxx xxx
>
> As the Court also held in Yumex, **'[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment.'** 'Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response.'
>
> In the same vein, **it is beside the point that petitioner was able to submit a 'well-prepared protest letter.' The fact remains** that **respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.**
>
> Well-settled is the rule that **an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect.**" (*Boldfacing supplied*)

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[3] The last day fell on December 31, 2013 which is a holiday. The next working day is January 2, 2014.
[4] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty.
[5] G.R. No. 249153, September 12, 2022.

Considering that petitioner issued the **FAN/FLD on December 10, 2013** even before respondent's receipt of the PAN on December 16, 2013, respondent was not given the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN nor the chance to explain its side by responding to the PAN. Thus, respondent's right to due process has been violated. Correspondingly, the FAN/FLD dated December 10, 2013 is void. Needless to say, a void assessment bears no fruit[6] and must be slain at sight.

All told, I VOTE to DENY the present Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

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CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
AUG 05 2024

x - x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Catherine T. Manahan, denying petitioner Commissioner of Internal Revenue's Petition for Review, however, on the sole ground that the said petition was filed out of time. Thus, the Division Decision of 16 January 2023 became final and executory.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals[1] (**RRCTA**) provides that a party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing before it a petition for review within fifteen (15) days from receipt of a copy of the questioned decision or resolution. Alternatively, upon **proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before**

[1] A.M. No. 05-11-07-CTA.

the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen (15) days from the expiration of the original period within which to file the petition for review.

In the recent case of *Claudine Monette Baldovino-Torres v. Jasper A. Torres, et al.*[2] (**Torres**), reiterating the cases of *National Power Corporation v. National Labor Relations Commission, et al.*[3] (**NAPOCOR**) and *Commissioner of Customs v. Court of Tax Appeals, et al.*[4] (**COC v. CTA**), the Supreme Court clarified that the reckoning point of the 15-day reglementary period to file an appeal and determining whether a decision had attained finality is service on the Office of the Solicitor General (**OSG**) the latter being the representative of the government, its agencies and instrumentalities:

> ...
>
> In the case of *National Power Corporation v. National Labor Relations Commission* (*NAPOCOR*), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG.** In holding so, the **Court emphasized that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.**
>
> The *NAPOCOR* case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**
>
> In the same vein, **the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision on April 4, 2017.** Consequently, the filing by the OSG of its Motion for Reconsideration questioning the RTC Decision on April 18, 2017 was well within the reglementary period for filing such motion. **The counting of the period for its filing should be reckoned from the date of receipt of the assailed decision by the OSG and not by the public prosecutor.** This is because the public prosecutor acted as a mere

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[2] G.R. No. 248675, 20 July 2022.
[3] G.R. Nos. 90933-61, 29 May 1997.
[4] G.R. No. 132929, 27 March 2000.

> representative of the OSG which, in turn, retained supervision and control over the former.[5]
>
> ...

A perusal of the case records reveals that OSG received the Resolution of 26 June 2023 on **03 July 2023**.[6] Counting 15 days therefrom, applying thus the cases of *NAPOCOR*, *COC v. CTA* and *Torres*, petitioner had until **18 July 2023** to file a Petition for Review (and in this case, a Motion for Extension of Time to File Petition for Review). However, as the latter motion was only filed on 26 July 2023, or eight (8) days past the reglementary period, the same was hence belatedly filed.

With the foregoing, I vote to **DISMISS** the Petition for Review for being filed out of time.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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5 Citations omitted, emphasis supplied and italics in the original text.
6 See Notice of Resolution, Division Docket, p. 570.