22-000102-0043

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**FIRST DIVISION**

**CTA CASE NO. 10798**

**DELSAN TRANSPORT LINES, INC.,**
Petitioner,

- versus -

**NOTICE OF DECISION**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**To:**

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

**ATTY. CARLO LUIGI M. SORIANO**
**ATTY. NADINE FRANCESCA P. DE LEON**
**ATTY. LORNA SB. CRUZ**
Bureau of Internal Revenue-Revenue Region No.5
New BIR Building, 9th Floor Legal Division
140 Calaanan, EDSA, Caloocan City

**AGAN MONTENEGRO MALASAGA & CO.**
7th Floor, Electra House Building
115-117 Esteban St., Legazpi Village
1229 Makati City

***GREETINGS:***

You are hereby notified by these presents that on **March 7, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 12, 2025.**

**Atty. Margarette Y. Guzman**
Executive Clerk of Court III

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## FIRST DIVISION

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|---|---|
| **DELSAN TRANSPORT LINES, INC.,** *Petitioner,* | **CTA CASE NO. 10798** |
| | *Members:* |
| -versus- | **DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: MAR 07 2025 2:45PM |

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## DECISION

***CUI-DAVID, J.:***

Before this Court is a *Petition for Review*[1] filed on March 7, 2022, by petitioner Delsan Transport Lines, Inc. ("**Petitioner**"), against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), seeking the cancellation and withdrawal of the assessment issued by respondent against petitioner for its alleged deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST) and Compromise Penalty (MC) for taxable year (TY) 2011 in the aggregate amount of ₱124,485,424.14.

## THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.[2] It is registered with the Bureau of Internal Revenue (**BIR**) under Tax Identification No. (**TIN**) 000-257-128-000, with registered address at 992 M. Naval St., San Jose, Navotas City.[3]

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[1] Docket, pp. 6–13, including annexes.
[2] *Id.* at 115–121, Joint Stipulation of Facts and Issues (JSFI), Facts Admitted, par. 1.
[3] *Id.* at 152, Exhibit "P-1".

Respondent is the duly appointed Commissioner of Internal Revenue, 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, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other tax laws, rules, and regulations.[4]

## THE FACTS

On October 16, 2012, respondent issued Letter of Authority (**LOA**) No. 026-2012-00000299, authorizing Revenue Officer Jocelyn Bacorro (**RO Bacorro**) and Group Supervisor Jerry Arce (**GS Arce**) of Revenue District No. 026 – Malabon-Navotas, to examine petitioner's books of accounts and other accounting records for TY 2011. The LOA was signed by Regional Director Tomas C. Rosales of Revenue Region No. 005 – Valenzuela, Metro Manila.[5]

On January 14, 2013, respondent issued the *First Request for Presentation of Records*.[6] This was followed by the issuance of the *Second and Final Notice* on January 18, 2013.[7]

On March 26, 2013, respondent issued a *Subpoena Duces Tecum*.[8]

Two *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* were executed. The details of the *Waivers* are as follows:

| | **Date of Execution** | **Last Day to Assess** |
|---|---|---|
| First Waiver[9] | October 3, 2014 | December 31, 2015 |
| Second Waiver[10] | December 10, 2015 | December 31, 2016 |

On October 13, 2016, Memorandum of Assignment (**MOA**) No. 026-LA-RD-10-2016 was issued to RO Flor Theresa Sengco (**RO Sengco**) and GS Rosita Quito (**GS Quito**), referring petitioner's case for "compliance with the review/reporting requirements of Regional Assessment Division [sic]". The MOA

[4] *Id.* at 115–121, JSFI, Facts Admitted, par. 2.
[5] *Id.* at 58, Exhibit "R-1"; 115–121, JSFI, Facts Admitted, par. 7.
[6] *Id.* at 60, Exhibit "R-2".
[7] *Id.* at 61, Exhibit "R-3".
[8] *Id.* at 62, Exhibit "R-4".
[9] *Id.* at 63, Exhibit "R-5".
[10] *Id.* at 64, Exhibit "R-6".

was signed by Revenue District Officer Alfredo P. Santos (**RDO Santos**).[11]

On December 6, 2016, respondent issued the Preliminary Assessment Notice (**PAN**),[12] allegedly served via registered mail to petitioner's registered address at 992 M. Naval St., San Jose, Navotas City on December 19, 2016.[13] The PAN assessed petitioner of the following deficiency taxes:

| Tax Type | Basic Tax | Surcharge | Interest | Compromise | Total |
|---|---|---|---|---|---|
| Income tax | ₱33,592,098.92 | ₱16,796,049.46 | ₱31,107,203.93 | | ₱81,495,352.31 |
| VAT | 15,982,296.55 | 7,991,148.28 | 15,509,395.72 | | 39,482,840.55 |
| EWT | 619,939.96 | | 604,993.46 | ₱30,000.00 | 1,254,933.42 |
| DST | 275,453.51 | 68,863.38 | 270,321.77 | 35,000.00 | 649,638.66 |
| Miscellaneous Tax | 12,000.00 | | | | 12,000.00 |
| Total | ₱50,481,788.94 | ₱24,856,061.11 | ₱47,491,914.88 | ₱65,000.00 | ₱122,829,764.94[14] |

On December 29, 2016, respondent issued the Formal Letter of Demand with Final Assessment Notices (**FLD/FAN**),[15] allegedly served via registered mail to petitioner's registered address on January 6, 2017.[16] The FLD/FAN assessed petitioner of the following deficiency taxes:

| Tax Type | Basic Tax | Surcharge | Interest | Total |
|---|---|---|---|---|
| Income tax | ₱33,592,098.92 | ₱16,796,049.46 | ₱32,184,589.97 | ₱82,572,738.35 |
| VAT | 15,982,296.55 | 7,991,148.28 | 16,023,850.52 | 39,997,295.35 |
| EWT | 619,939.96 | | 624,961.47 | 1,244,901.43 |
| DST | 275,453.51 | 68,863.38 | 279,172.12 | 623,489.01 |
| Compromise penalty | 47,000.00 | | | 47,000.00 |
| Total | ₱50,516,788.94 | ₱24,856,061.11 | ₱49,112,574.08 | ₱124,485,424.13 |

On January 21, 2022, respondent issued a *Decision* denying petitioner's request for reconsideration/reinvestigation on the ground that the assessment against it had already become final, executory, and demandable.[17] This was allegedly received by petitioner on February 7, 2022.[18]

[11] *Id.* at 59, Exhibit "R-1A"; 115–121, JSFI, Facts Admitted, par. 8.
[12] *Id.* at 65–66, Exhibit "R-7".
[13] BIR Records, p. 436.
[14] Actual sum is lower by ₱0.01. Amount reflected is the amount stated in the PAN.
[15] Docket, pp. 69–79, Exhibits "R-9", "R-10", "R-11", "R-12", "R-13", and "R-14".
[16] *Id.* at 90–94, Annex "R-25", Decision.
[17] Exhibit "R-23", BIR Records, pp. 708–712; Docket, pp. 90–94, Annex "R-25", Decision.
[18] Docket, pp. 6–13, Petition for Review, Timeliness of Petition, par. 3.

## PROCEEDINGS BEFORE THE COURT

On March 7, 2022, petitioner filed a *Petition for Review.*[19]

On March 14, 2022, *Summons* was issued to respondent.[20]

On April 18, 2022, respondent filed a *Motion for Extension of Time to File Answer,* [21] which the Court granted in an *Order* dated April 19, 2022.[22] Respondent subsequently filed his *Answer* on May 17, 2022,[23] and submitted the *BIR Records* of the case, consisting of 713 pages in one folder, to the Court on May 27, 2022.[24]

*Petitioner's Pre Trial Brief* was filed on June 30, 2022,[25] while *Respondent's Pre-Trial Brief* was submitted on August 1, 2022.[26] The pre-trial conference was held on August 10, 2022,[27] followed by the filing of the parties' *Joint Stipulation of Facts and Issues* on August 18, 2022.[28] The Court issued the *Pre-Trial Order* on September 15, 2022.[29]

Trial ensued.

On February 15, 2023, petitioner presented its sole witness, Ms. Nila N. Mendiola (**Ms. Mendiola**).[30] On March 22, 2023, petitioner filed its *Formal Offer of Evidence,* [31] which the Court resolved on May 5, 2023.[32] On May 23, 2023, petitioner filed a *Motion for Reconsideration,*[33] which the Court granted,[34] and Ms. Mendiola was recalled to the witness stand on September 28, 2023.[35]

On February 13, 2024, respondent presented his witness, RO Bacorro, who testified by way of a Judicial Affidavit.[36] On March 5, 2024, another witness, RO Sengco, testified by way of

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19 *Id.* at 6–13, including annexes.
20 *Id.* at 28.
21 *Id.* at 30–32.
22 *Id.* at 33.
23 *Id.* at 34–45, including annexes.
24 *Id.* at 97–98, Compliance dated May 27, 2022.
25 *Id.* at 100–104.
26 *Id.* at 105–108.
27 *Id.* at 112–114, Order dated August 10, 2022.
28 *Id.* at 115–121, approved by the Court in Resolution dated September 1, 2022; Docket, p. 123.
29 *Id.* at 126-133.
30 *Id.* at 136–137, Order dated February 15, 2023.
31 *Id.* at 148–150.
32 *Id.* at 189–190.
33 *Id.* at 191–194.
34 *Id.* at 212–213, Resolution dated August 15, 2023.
35 *Id.* at 215–216, Order dated September 28, 2023.
36 *Id.* at 229–230, Order dated February 13, 2024.

a Judicial Affidavit. Respondent filed his *Formal Offer of Respondent's Evidence/Exhibits* on March 20, 2024,[37] which the Court resolved on June 26, 2024.[38]

Petitioner filed its *Memorandum (For the Petitioner)* on July 8, 2024,[39] while the *Respondent's Memorandum* was submitted on August 5, 2024.[40]

On August 13, 2024, the case was submitted for decision.

## THE ISSUE

The parties stipulated that the sole issue for this Court's resolution is:[41]

> Whether or not petitioner is liable to pay the alleged Income Tax, Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax Deficiencies, and Compromise Penalty for taxable year 2011 in the aggregate amount of ₱124,485,424.14.

## PETITIONER'S ARGUMENTS

In its *Memorandum,* petitioner contends that the assessment is void because RO Sengco conducted the audit without proper authorization under an LOA. Petitioner asserts that an MOA does not confer such authority.

Petitioner also contends that it did not receive the PAN, FAN, and FLD, thereby depriving it of due process. Petitioner claims that this shifts the burden of proof to respondent.

Additionally, petitioner maintains that respondent failed to observe the fifteen (15)-day period for taxpayers to respond to the PAN, as the FLD/FAN was prematurely issued.

## RESPONDENT'S ARGUMENTS

In his *Answer* and *Memorandum,* respondent argues that petitioner's witness, Ms. Mendiola, does not have personal knowledge of the receipt of the assessment notices. He states

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[37] *Id.* at 232–237.
[38] *Id.* at 245–246.
[39] *Id.* at 247–275.
[40] *Id.* at 277–283.
[41] *Id.* at 126–133, Pre-Trial Order, Issue.

that these notices were properly served and received at the registered address of petitioner.

Respondent also argues that petitioner's *Petition for Review* was filed out of time, as petitioner made no timely appeal upon receipt of the FLD/FAN. As a result, respondent asserts that the assessment has become final, executory, and unappealable. Further, respondent maintains that there is a presumption of regularity in the conduct of the BIR audit.

## THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

### *The Court has jurisdiction over the instant case.*

Before delving into the merits, the Court must first determine whether it has jurisdiction over the present *Petition*.

Section 7(a)(1) of Republic Act (**RA**) No. 1125,[42] as amended by RA No. 9282,[43] confers jurisdiction on this Court over decisions of respondent and other matters arising under the NIRC of 1997, as amended, to wit:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the <u>[CIR]</u> in cases involving disputed assessments**, ..., or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis supplied)*

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, prescribes the period for filing an appeal before the CTA:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any <u>party adversely affected</u> by a decision, ruling, or inaction of the [CIR]**...may file an **appeal with the CTA within thirty (30) days after the receipt of such**

[42] An Act Creating the Court of Tax Appeals, June 16, 1954.

[43] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> **decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ...** *(Emphasis supplied)*

The above provisions are also provided under Section 3(a)(1), Rule 4,[44] and Section 3(a), Rule 8[45] of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

Accordingly, the Court has exclusive jurisdiction to review, on appeal, respondent's decision, ruling, or inaction. The appeal must be filed by the taxpayer affected, or as worded by RA No. 9282, the party adversely affected, within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

In this case, petitioner received respondent's *Decision* dated January 21, 2022, on February 7, 2022. The last paragraph of the Decision unequivocally states:

> "This constitutes the **Final Decision** of this Office on the matter." [*Emphasis supplied*]

The Court finds this explicit declaration of finality sufficient to establish that this *Decision* is the one appealable under Section 11 of RA No. 1125, as amended by RA No. 9282.

Thus, petitioner had thirty (30) days from receipt thereof, or until March 9, 2022, to file the *Petition for Review.* Accordingly, petitioner timely filed its *Petition for Review* on March 7, 2022.[46]

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[44] *Section 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.

[45] Sec. 3. Who may appeal; period to file petition. — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, 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 a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. 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 the taxes.

[46] Docket, pp. 6–13, including annexes.

***The assessment is void as the audit was conducted by unauthorized revenue officers.***

In its *Memorandum,* petitioner argues that the assessment is void because RO Sengco conducted the audit without being authorized by an LOA. Petitioner maintains that an MOA cannot confer such authority.

The Court finds merit in petitioner's arguments.

The power to assess necessarily includes the authority to examine a taxpayer to determine the correct amount of tax due.[47] Verily, the law vests the BIR with general powers in relation to the assessment and collection of all internal revenue taxes.[48] However, only the CIR or a duly authorized representative may authorize the examination of a taxpayer and issue an assessment. This authority is granted under Section 6(A) of the NIRC of 1997, as amended, which states:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **the Commissioner or 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. (*Emphasis supplied*)

An LOA is the authority given to the appropriate revenue officer (**RO**) 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.[49] The issuance of 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.[50]

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[47] *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].

[48] *Id.*

[49] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

[50] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

Section 13 of the NIRC of 1997, as amended, further clarifies this requirement:

> *Section 13. Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a 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*)

Based on the afore-quoted provisions, it is clear that no tax examination can be conducted without proper authorization from the CIR or a duly authorized representative through an LOA. The exceptions under Section 6, which allow assessments through the best evidence obtainable, inventory-taking, or surveillance, do not dispense with the requirement of an 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.[51]

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. The Supreme Court, in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* (*McDonalds* case),[52] emphasized the important relation of the receipt of an LOA by the taxpayer to the due process requirement, *viz.*:

> **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

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51 *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017 [Per J. Reyes, Third Division].
52 G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

> 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**. (*Emphasis supplied*)

In the instant case, respondent issued LOA No. 026-2012-00000299, authorizing RO Bacorro and GS Arce to examine petitioner's books of accounts and other accounting records for TY 2011.[53] However, records reveal that RO Bacorro "was not able to make an assessment based on the LOA as she was transferred to another district."[54] Moreover, it was RO Sengco, under GS Quito, who actually conducted the audit of petitioner.[55]

RO Sengco and GS Quito were not named in the LOA. Instead, an MOA, signed by RDO Santos,[56] was issued on October 13, 2016, referring petitioner's case to them for "compliance with the review/reporting requirements of Regional Assessment Division."

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[53] Docket, p. 58, Exhibit "R-1"; 115–121, JSFI, Facts Admitted, par. 7.

[54] TSN, RO Jocelyn A. Bacorro, February 13, 2024, pp. 20–21 & 25–26:

(page 20–21)
ATTY. JOSE CARLITO M. MONTENEGRO:
Q. Now, I would like to jump to your answer to Question No. 5. Ms. Witness, in your answer, you identified an LOA dated October 16, 2012. Now, were you able to conduct the actual audit based on this Letter of Authority?
REVENUE OFFICER JOCELYN A. BACORRO:
A. Attorney, I was not able to make an assessment based on the Letter of Authority because I was already transferred to another district.
ATTY. JOSE CARLITO M. MONTENEGRO:
Q. In 2016?
REVENUE OFFICER JOCELYN A. BACORRO:
A. Yes. Effective April 2016.

(page 25-26)
ASSOCIATE JUSTICE LANEE S. CUI-DAVID:
So, how about the PAN? The Preliminary Assessment Notice, the Formal Letter of Demand and the Final Assessment Notices issued in the instant case?
REVENUE OFFICER JOCELYN A. BACORRO:
A. I was not able to make a Preliminary Assessment Notice because I already received my Travel Order going to another district.
ASSOCIATE JUSTICE LANEE S. CUI-DAVID:
So, in short, you have no participation in the preparation and issuance of the Preliminary Assessment Notice as well the Formal Letter of Demand and Final Assessment Notices issued in the instant case?
REVENUE OFFICER JOCELYN A. BACORRO:
A. I have no actual participation, Your Honors, but I endorsed the whole docket to the next Revenue Officer.

[55] Docket pp. 52–57, Exhibit "R-17".

[56] *Id.* at 59, Exhibit "R-1A"; 115–121, JSFI, Facts Admitted, par. 8.

Subsequently, the PAN dated December 6, 2016, with the names and initials of RO Sengco and GS Quito,[57] and the FLD with FANs dated December 29, 2016, were served via registered mail to petitioner's registered address on December 19, 2016, and January 6, 2017, respectively.[58]

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[59] the Supreme Court clarified that an MOA is not a substitute for an LOA and does not satisfy the legal requirement for its issuance.

> ***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**

[57] *Id.* at 65–67, Exhibit "R-7".
[58] Respondent's Memorandum, par. 6.
[59] G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

**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.**

***C. Revenue Memorandum Order No. 43-90 dated September 20, 1990 Expressly and Specifically Requires the Issuance of a New LOA if Revenue Officers are Reassigned or Transferred***

Section D (5) of RMO No. 43-90 dated September 20, 1990 provides:

> 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.

....

***D. Revenue Officer Marcellano Was Not Authorized to Continue the Audit of the Respondent's Books of Accounts for C.Y. 2006, Rendering the Assessment Void***

....

> In summary, We rule that **the practice of reassigning or transferring revenue officers originally named in the LOA and substituting 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 CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990**. (*Emphasis and underscoring supplied*)

Thus, an MOA merely facilitates the reassignment of cases and does not confer the authority required by law to conduct an examination and assessment. In contrast, an LOA constitutes a specific grant of authority to a designated revenue officer. The practice of reassigning ROs without issuing a separate or amended LOA usurps the authority of the CIR, infringes upon the taxpayer's right to due process, violates BIR regulations, and renders any audit or investigation conducted by unauthorized ROs void.[60]

Furthermore, the subject MOA was signed only by a Revenue District Officer, *i.e.* RDO Santos.

Sections 10 and 13 of the NIRC of 1997, as amended, provide that a Revenue Regional Director shall issue the LOA.[61] Further, Section D(4) of Revenue Memorandum Order (RMO) No. 43-1990[62] reads:

> For the proper monitoring and coordination of the issuance of Letter of Authority, the *only* BIR officials authorized to issue and sign Letters of Authority are the **Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself. (*Emphasis supplied*)

[60] *Id.*

[61] Sections 10 (c) and 13 of the NIRC of 1997, as amended, provides:

> SECTION 10. Revenue Regional Director. — ...... the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others: ......
>
> (c) Issue Letters of Authority for the examination of taxpayers within the region. Section 13 of the NIRC provides:
>
> SECTION 13. Authority of a Revenue Officer. — ... 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, ...

[62] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.

Clearly, a Revenue District Officer, such as RDO Santos in this case, is not among those authorized to issue LOAs.

Given these circumstances, the Court finds that the audit conducted by RO Sengco and GS Quito, who lacked the required LOA, violated petitioner's right to due process, rendering the assessment null and void.

***Even if the revenue officers were duly authorized, the assessment remains void due to violations of due process.***

Even assuming, for the sake of argument, that RO Sengco and GS Quito were properly authorized to conduct the audit, the assessment would still be void due to additional due process violations, as follows: a) respondent's failure to establish petitioner's receipt of the assessment notices, and b) the premature issuance of the FLD/FAN.

***a) Respondent's failure to establish petitioner's receipt of the PAN and FLD/FAN.***

Petitioner asserts that it did not receive the PAN, FAN, and FLD; thus, it was not afforded the benefit of due process. According to petitioner, this denial shifts the burden of proof to respondent.[63] In response, respondent argues in his *Answer* and *Memorandum* that petitioner's witness, Ms. Mendiola, lacks personal knowledge of the receipt of the assessment notices. He further states that the assessment notices were served and received at petitioner's registered address.

Section 228 of the NIRC of 1997, as amended, provides that when the CIR or his duly authorized representative finds that proper taxes should be assessed, the taxpayer must be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void.

In the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.* (*Metro Star*),[64] the Supreme Court emphasized that a taxpayer must first be informed that he is

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[63] Docket, pp. 6–16, Petition for Review, pars. 5 & 11; Memorandum (For the Petitioner), pars. 17–18.
[64] G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].

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liable for deficiency taxes through the sending of a PAN and that its issuance and service to the taxpayer is part of the due process requirement.

Section 3.1.6, Revenue Regulations (**RR**) No. 18-2013,[65] amending RR No. 12-1999,[66] prescribes the modes of service for assessment notices as follows:

> 3.1.6 **Modes of Service**. — The notice (**PAN/FAN/FLD**/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through **personal service** by delivering personally a copy thereof **to the party** at his registered or known address or wherever he may be found. ...
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) **Substituted service** can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> The notice may be left at the party's registered address, **with his clerk or with a person having charge thereof**.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left **with his clerk or with a person having charge thereof**.
>
> ... ... ...
>
> If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. ...
>
> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. ... (*Emphasis supplied*)

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[65] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.

[66] 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, September 6, 1999.

Section 3.1.6, reiterated in RMO No. 40-2019,[67] states that notices may be served by *personal service* to the party. If personal service is not practicable, the assessment notices may be served by mail.

Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[68] The burden of proof in establishing the fact of receipt of the assessment notice is shifted from the taxpayer to the BIR.

Here, the Court finds that the CIR failed to refute petitioner's claim that it did not receive the PAN[69] and the FLD/FAN[70] which were allegedly served via registered mail.[71] The FLD/FAN was marked "Return to Sender" as petitioner was no longer at its registered address.[72] RO Sengco testified that the PAN was sent via registered mail but "was returned to sender due to the fact that petitioner cannot be found in its registered BIR address."[73] This confirms that the BIR was aware that petitioner had not received the PAN and yet RO Sengco continued to send the FLD/FAN to the same address[74] where she knows that the taxpayer is no longer residing.

Service by registered mail does not create a presumption of receipt, particularly when respondent had knowledge that petitioner was not present at the registered address.

In *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*,[75] the Supreme Court, citing *Metro Star*, held that:

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[67] Prescribing Procedures for Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of RR No. 18-2013, May 30, 2019.

[68] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 157064 [Per J. Chico-Nazario, First Division], August 7, 2006; *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016 [Per J. Peralta, Third Division].

[69] BIR Records, p. 436.

[70] *Id.* at 453.

[71] Docket, pp. 277–283, Respondent's Memorandum, par. 6; BIR Records, p. 436.

[72] Docket, pp. 90–94, Annex "R-25", Decision.

[73] Docket pp. 52–57, Exhibit "R-17"; TSN, RO Flor Theresa R. Sengco, March 5, 2024, p. 11:

ATTY. JOSE CARLITO M. MONTENEGRO:
Q. Okay. Now, you said in your answer that the PAN, Preliminary Assessment Notice, was returned to sender. Does that mean that the petitioner was not able to receive a copy of the PAN?
REVENUE OFFICER FLOR THERESA R. SENGCO:
A. When registered mail is returned to sender, the should be recipient was not able to receive the letter.

[74] BIR Records, p. 437 & 456.

[75] G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc. (Metro Star),* the Court also had the occasion to resolve the issue of whether **the failure to strictly comply with <u>notice requirements</u> prescribed under Sec. 228 of the 1997 NIRC and RR No. 12-99 is tantamount to a denial of due process.** The Court held that the failure of the CIR to send the PAN stating the facts and the law on which the assessment was made as required by Sec. 228 of R.A. No. 8424, renders its assessment void. The Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. **The law imposes a substantive, not merely a formal, requirement**. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence. (*Emphasis supplied*)

In line with the above ruling in *Metro Star,* which highlights the taxpayer's right to both substantive and procedural due process, the Court finds that the CIR's failure to strictly comply with the requirements laid down by law and the BIR rules constitutes a denial of the taxpayer's right to due process.[76]

Consequently, respondent's improper service of the PAN and FLD/FAN amounts to a violation of petitioner's right to due process. It is a settled rule that tax assessments issued in violation of the taxpayer's right to due process are null and void and bear no fruit.[77]

***b) Respondent's premature issuance of the FLD/FAN.***

Section 228 of the NIRC of 1997, as amended, and its implementing rule, Section 3.1.1 of RR No. 12-1999, as amended by RR No. 18-2013, provide:

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[76] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].

[77] *Id.*

> **SEC. 228. *Protesting of Assessment*.** — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> ....
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice**. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. (*Emphasis added*)
>
> **SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment*.** —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules, and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be *issued*** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, **an FLD/FAN shall be *issued* within fifteen (15) days from filing/submission of the taxpayer's response**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. (*Emphasis supplied)*

The above provisions unequivocally establish that a taxpayer has 15 days from receipt of the PAN to submit a response. If the taxpayer fails to respond within this period, he/she/it is deemed in default, and an FLD/FAN may then be issued. Conversely, if the taxpayer files a response within the

15-day period, the FLD/FAN must be issued within 15 days from the filing/submission of the reply.

Thus, the FLD/FAN may only be issued under two circumstances: (1) After the taxpayer submits a response to the PAN, or (2) if the taxpayer fails to respond within the 15-day period and is deemed in default.

Notably, RR No. 12-1999, as amended, deliberately uses the term "issued" rather than "served," presumably in recognition of the intent behind the due process right to respond.[78]

The PAN is a part of due process and gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without the need to issue a FAN.[79] Due process demands that taxpayers receive the PAN *and* that they are given 15 days upon its receipt to respond thereto. [80]

In *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue (Prime Steel Mill)*,[81] citing *Commissioner of Internal Revenue v. Yumex Philippines Corp. (Yumex)*, [82] the Supreme Court emphasized that the 15-day period for responding to a PAN under RR No. 12-1999 must be strictly observed by the CIR, *viz.*:

> In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that **the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR.** The Court highlighted that **"[o]nly <u>after</u> receiving the taxpayer's response or in case of the taxpayer's default <u>can respondent issue the FLD/FAN</u>."**
>
> ....
>
> 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."**

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[78] *People v. Court of Tax Appeals-Third Division*, G.R. No. 248802 (Notice), June 21, 2021 [Per Resolution, Second Division].

[79] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division], cited in *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

[80] *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc.*, G.R. No. 227616 (Notice), June 19, 2019 [Per Resolution, Second Division].

[81] G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].

[82] G.R. No. 222476, May 5, 2021 [Per C.J. Gesmundo, First Division].

> 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.** (*Emphases added*)

In *Yumex,* the Supreme Court underscored that the FLD/FAN may be issued only after the taxpayer submits a response or, in case of default, after the 15-day period has lapsed. The Court further clarified that a taxpayer's ability to protest the FLD/FAN does not cure a prior due process violation. Compliance with the 15-day period is **mandatory,** and failure to observe it **renders the assessment void.**

In this case, the PAN dated December 6, 2016,[83] was allegedly *served* by the BIR at petitioner's registered address via registered mail on *December 19, 2016.*[84] However, petitioner denied receiving the PAN, along with the FLD and FAN.[85]

Even assuming petitioner received the PAN on December 19, 2016, the date it was mailed, it had 15 days, or until **January 3, 2017**, to file a response. However, the BIR issued the FLD/FAN on **December 29, 2016**, barely 10 days after mailing and before the 15-day period had lapsed, thereby depriving petitioner of the opportunity to respond to the PAN before the FLD/FAN was issued.

This was also observed during the hearing dated March 5, 2024, *viz.*:

> PRESIDING JUSTICE ROMAN G. DEL ROSARIO:
> The Court is just wondering, the Preliminary Assessment Notice was mailed only on December 19, 2016. Yet, even before the expiration of fifteen days, or even before you get hold of the information that the Preliminary Assessment Notice has not been received, there was already a Final Assessment Notice dated December 29, 2016. So, is it not that a Preliminary Assessment Notice, upon receipt by the taxpayer, is just a notice to him to respond or to reply and that the taxpayer is usually given fifteen days. Is it not?

[83] Docket, pp. 65–66, Exhibit "R-7".
[84] Docket, pp. 277–283, Respondent's Memorandum, par. 6; BIR Records, p. 436; Docket p. 54, Exhibit "R-17".
[85] Docket, pp. 247–275, Memorandum (For the Petitioner), pars. 17–24.

REVENUE OFFICER FLOR THERESA R. SENGCO:
A. Yes, Your Honors.

PRESIDING JUSTICE ROMAN G. DEL ROSARIO:
So, even before you came to know that the Preliminary Assessment Notice was not received by the taxpayer, there was already a Formal Letter of Demand dated December 29, 2016? That's the actual situation, correct?

REVENUE OFFICER FLOR THERESA R. SENGCO:
A. Yes, Your Honors.[86]

Accordingly, by disregarding the mandatory 15-day period and issuing the FLD/FAN prematurely, the BIR failed to comply with due process, rendering the assessment void and without legal effect.

The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standards must be the overriding concern of government agencies.[87] While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly and always in strict adherence to the requirements of the law and of the BIR's own rules.[88]

In sum, the assessment issued against petitioner is void due to multiple violations of due process. *First,* the audit was conducted by revenue officers who lacked proper authority, invalidating the assessment from the outset. *Second,* respondent failed to establish that petitioner received the PAN and FLD/FAN, depriving it of the opportunity to properly respond. *Finally,* the premature issuance of the FLD/FAN before the lapse of the prescribed period further underscores the disregard for procedural due process. These violations collectively nullify the assessment, reinforcing the above-cited principle that tax authorities must strictly adhere to the law and their own rules to ensure fairness in tax assessments.

**WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **GRANTED**.

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86 TSN, RO Flor Theresa R. Sengco, March 5, 2024, p. 17.
87 *Mabuhay Textile Mills Corp. v. Ongpin*, G.R. No. L-67784, February 28, 1986 [J. Gutierrez, Jr., First Division].
88 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

Accordingly, the Formal Letter of Demand with Assessment Notices dated December 29, 2016 are **CANCELLED** and **SET ASIDE**. Further, the Decision of respondent Commissioner of Internal Revenue dated January 21, 2022 finding petitioner Delsan Transport Lines, Inc. liable for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, and Documentary Stamp Tax, including interests and surcharges in the amount of ₱124,485,424.13 for taxable year 2011, is **REVERSED** and **SET ASIDE.**

Furthermore, respondent is **ENJOINED** from proceeding with the collection of taxes in the above-captioned case.

**SO ORDERED.**

**LANEE S. CUI-DAVID**
Associate Justice

*WE CONCUR:*

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JEAN MARIE A. BACORRO-VILLENA**
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's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice