CTA Form No. 8

23-000124-0089

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 11116

FLEXO MANUFACTURING CORPORATION
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. KARL KENNY M. RAMO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR Main Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DU-BALADAD & ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **July 2, 2026,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 6, 2026.**

Atty. Mary Grace S. Ringpis
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

FLEXO MANUFACTURING CORPORATION,
Petitioner,

CTA Case No. **11116**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 02 2026 10:50 AM

x - x

DECISION

BACORRO-VILLENA, J.:

This resolves the Petition for Review[1] filed by petitioner Flexo Manufacturing Corporation (**petitioner**) on 31 March 2023, pursuant to Section 3(a),[2] Rule 8 in relation to Section 3(a)(1),[3] Rule 4 of the Revised

[1] Division Docket, Volume I, pp. 7-72.

[2] **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.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Rules of the Court of Tax Appeals (**RRCTA**). It assails respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Final Decision on Disputed Assessment[4] (**FDDA**) dated 13 February 2023 against petitioner totaling **₱284,397,125.83**. The amount represents petitioner's alleged deficiency income tax and compromise penalty for the calendar year (**CY**) ended 31 December 2017 (**2017**), broken down as follows:

Tax Type/Fee	Total
Income Tax	₱284,347,125.83
Compromise Penalty	50,000.00
Total	**₱284,397,125.83**

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at 275 A. Mabini Street, Caloocan City, Metro Manila, Philippines. It is represented by its counsel Du-Baladad & Associates with office address at the 20th floor, Chatham House, Rufino corner Valero Street, Salcedo Village, Makati City, where it may be served with notices and other processes.[5]

Respondent is the Commissioner of the Bureau of Internal Revenue (**BIR**), the government agency vested with the authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all internal revenue taxes, fees and charges.[6]

(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[.]

4 Exhibit "P-1", Division Docket, Volume I, pp. 81-90; Exhibit "R-11", BIR Records, Folder 3, pp. 658-667.

5 Pars. 1-2, II. The Parties, Petition for Review, supra at note 1.

6 See Par. 1, I. Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), id., Volume III, p. 1074.

FACTS OF THE CASE

On 05 June 2018, respondent issued Letter of Authority (**LOA**) No. eLA201600038613[7] (also designated as AUDRO1/020379/2018) (**first LOA**), authorizing Revenue Officers (**ROs**) Jan Andre Abellera (**Abellera**) and Michael Vincent Arias (**Arias**), with Group Supervisor (**GS**) Gilquin Tolentino (**Tolentino**), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2017. Petitioner received the said LOA on 25 June 2018.[8]

On 13 September 2018, respondent issued another LOA, bearing reference number eLA201600040972/LOA-LV1-2018-00000032,[9] (**second LOA**) covering petitioner's value-added tax (**VAT**) liabilities for the same CY, authorizing ROs Jonessa Galo (**Galo**) and Trisha Margaret Valdez (**Valdez**), and GS Prescila Pagayonan (**Pagayonan**).

On 20 March 2019, respondent issued another LOA, bearing reference number eLA201600056711/LOA-116-201900000007,[10] (**third LOA**) authorizing ROs Ma. Theresa V. Carrillo (**Carrillo**) and Michelle V. Dela Cruz (**dela Cruz**), with GS Nicasio Lumagui Jr. (**Lumagui**), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes — except VAT — including documentary stamp tax (**DST**) and other miscellaneous taxes, for the same CY. Petitioner received the said LOA on 27 March 2019.[11]

On 21 March 2019, Officer-in-Charge (**OIC**) Chief of the Revenue Large Taxpayers Audit Division 1 (**RLTAD-1**), Analynsia C. Alarde (**Alarde**) issued a Letter/Memorandum of Assignment (**MOA**),[12] authorizing ROs Ma. Clarissa D. Calaoagan (**Calaoagan**) and Leoriz B. Laquindanum (**Laquindanum**) to assist in the examination of petitioner's books of accounts and other accounting records for all internal revenue tax liabilities for CY 2017.

On 29 May 2020, respondent issued a Notice of Informal Conference (**NIC**) with Details of Discrepancies,[13] informing petitioner

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7 Exhibit "P-6", id., Volume II, p. 486.
8 Exhibit "P-6-2", id.
9 Exhibit "P-43", BIR Records, p. 342.
10 Exhibit "P-12", Division Docket, Volume II, p. 494.
11 Exhibit "P-12-2", id., p. 494.
12 Exhibit "P-13", id., p. 495.
13 Exhibit "P-14", id., pp. 496-498.

of the alleged deficiencies found during the examination of its books of accounts and accounting records for CY 2017. Petitioner received the NIC on 19 June 2020.[14] Petitioner responded to the NIC on 17 July 2020,[15] and subsequently submitted two (2) addenda to its reply,[16] setting forth its explanations, justifications and supporting documents.

On 29 July 2020, respondent issued a Preliminary Assessment Notice[17] (**PAN**) against petitioner, covering alleged deficiency taxes for CY 2017 in the total amount of ₱240,368,174.15. Petitioner received the PAN on 21 October 2020,[18] and thereafter filed its "Protest to the PAN – [CY 2017]"[19] (**Reply**) on 05 November 2020.

On 25 January 2021, respondent, through then Deputy Commissioner (**DepComm**) Arnel S.D Guballa (**Guballa**), issued a Formal Letter of Demand with Final Assessment Notice[20] (**FLD/FAN**), demanding payment of alleged deficiency income tax and miscellaneous tax for CY 2017 in the total amount of ₱245,536,910.12, inclusive of interest, surcharges and penalties. Petitioner received the FLD/FAN on 14 April 2021.

On 14 May 2021, petitioner filed a "Protest to the [FLD/FAN] [LOA] No. 116-2019-0000007 [CY] 2017"[21] (**Protest**) against the FLD/FAN. On 12 July 2021, petitioner filed a "Supplemental [Protest],"[22] reiterating its defenses and attaching additional supporting documents.

On 13 February 2023, respondent issued an FDDA,[23] maintaining the assessment against petitioner for alleged deficiency income tax and compromise penalty for CY 2017. The FDDA increased the total amount of the alleged deficiency income tax to ₱284,397,125.83, inclusive of interest, surcharges and penalties. Petitioner received the FDDA on 01 March 2023.[24] The FDDA computed the alleged deficiency income tax based on the following principal adjustments to petitioner's declared

[14] Exhibit "P-14-1", id., p. 496.
[15] Exhibit "P-15", id., pp. 499-501.
[16] Exhibits "P-16" and "P-17", id., pp. 503-506.
[17] Exhibit "P-19", id., pp. 509-512.
[18] Exhibit "P-19-1", id., p. 511.
[19] Exhibit "P-20", id., pp. 554-574.
[20] Exhibit "P-21", id., pp. 575-581.
[21] Exhibit "P-22", id., pp. 582-597.
[22] Exhibit "P-23", id., pp. 598-602.
[23] Exhibit "P-1", supra at note 4.
[24] Id.

gross income for CY 2017: (1) a discrepancy on cost of sales (**COS**) of ₱17,997,646.84, representing the alleged variance between petitioner's declared COS and respondent's audit figure; (2) an alleged understatement of raw materials in the amount of ₱747,997,924.84, representing the alleged difference between petitioner's Inventory Under Inspection (**IUI**) account and its Raw Materials (**RM**) account; and (3) disallowed expenses on account of alleged non-withholding in the amount of ₱16,743,165.00. After applying a thirty percent (30%) income tax rate against the resulting taxable income and deducting petitioner's tax credit payments, respondent computed income tax still payable at ₱179,860,496.55, to which interest was added to arrive at the total amount assessed.[25]

On 22 March 2023, petitioner filed a Request for Reconsideration before respondent, seeking the reversal of the FDDA.[26]

PROCEEDINGS BEFORE THE COURT

Undaunted, petitioner filed the instant Petition for Review[27] with "Urgent Motion to Suspend the Collection of Tax and Dispense with Payment of Bond" (**MTS**) on 31 March 2023, assailing respondent's deficiency tax assessments. In support thereof, petitioner asserted the following grounds: (1) the ROs who conducted the audit were not authorized under a valid LOA; (2) it was examined more than once in a taxable year in violation of Section 235[28] of the National Internal Revenue Code (**NIRC**) of 1997, as amended; (3) respondent failed to consider petitioner's defenses and evidence in upholding the assessment; (4) respondent failed to state the facts and law upon which the assessments were based; and (5) the LOA and the assessment arising therefrom are unenforceable.

Initially, the case was raffled to the Court's Second Division. On 18 April 2023, summons was issued to respondent, directing him or her to file an Answer within 30 days from the date of receipt thereof, *i.e.*, 19 May 2023.[29]

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25 Id.
26 Exhibit "P-24", Division Docket, Volume II, pp. 603-620.
27 Petition for Review, supra at note 1.
28 SEC. 235. *Preservation of Books of Accounts and Other Accounting Records.*
29 Division Docket, Volume I, p. 157.

In the *interim*, petitioner filed its "Supplemental [MTS]"[30] (**Supplemental MTS**), informing the Court that during the pendency of the case, on 28 April 2023, respondent issued Warrant of Distraint and/or Levy (**WDL**) No. 116-2023-026,[31] authorizing the seizure of petitioner's personal property to satisfy the alleged deficiency tax.

On 18 May 2023, respondent filed a "Motion for Extension of Time to File Answer."[32] In a Resolution dated 23 May 2023,[33] the Court granted the motion and gave respondent a non-extendible period of thirty (30) days from 19 May 2023, or until 18 June 2023, within which to file his or her Answer. In the same Resolution, respondent was likewise ordered to transmit the entire BIR records of the case within ten (10) days from the filing of the Answer, pursuant to Section 5(b), Rule 6 of the RRCTA.

Meanwhile, on 26 May 2023, petitioner filed its "Second Supplemental [MTS]"[34] (**Second Supplemental MTS**).

Pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023, the case was transferred to this Court's First Division on 29 May 2023.[35]

In a Resolution dated 07 June 2023,[36] the Court ordered respondent to file comment or opposition to petitioner's: (1) MTS; (2) Supplemental MTS; and (3) Second Supplemental MTS, within a non-extendible period of five (5) days from receipt thereof. The hearing on the foregoing motions was initially set on 19 July 2023 but was subsequently cancelled and reset to 11 July 2023.[37]

On 19 June 2023, respondent filed his or her Answer,[38] denying the material allegations of the petition and asserting, as special and affirmative defenses, that the assessment is presumed correct, that petitioner's right to due process was not violated, and that petitioner is liable for the full amount assessed.

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30 Id., pp. 159-177.
31 Annex A, id., p. 178.
32 Id., pp. 179-183.
33 Id., p. 186.
34 Id., pp. 187-201.
35 Id., p. 208.
36 Id., pp. 211-212.
37 See Notice of Resetting dated 29 June 2023, id., p. 248.
38 Id., pp. 215-246.

Thereafter, on 05 July 2023, respondent filed a Manifestation,[39] stating that he or she is adopting the Answer as comment to petitioner's MTS, Supplemental MTS and Second Supplemental MTS, together with a Compliance transmitting the BIR Records consisting of two (2) folders and one (1) binder.

On 07 July 2023, petitioner filed its "Third Supplemental [MTS] (with Motion for Issuance of Temporary Suspension Order)"[40] (**Third Supplemental MTS**). A day earlier, on 06 July 2023, petitioner likewise filed a "Motion to Admit Supplemental Judicial Affidavit of Catherine Anne G. Lancero [**Lancero**] (With Attached Supplemental Judicial Affidavit of [Lancero] dated July 6, 2023)"[41] (**Motion to Admit**). During the hearing on 11 July 2023 for petitioner's Urgent Motion to Suspend, Supplemental MTS, Second Supplemental MTS, Third Supplemental MTS and Motion to Admit, petitioner presented Lancero, who testified by way of Judicial Affidavit (**JA**) dated 30 March 2023[42] and Supplemental JA dated 06 July 2023.[43]

On the witness stand, Lancero, petitioner's Chief Financial Officer (**CFO**) testified that in connection with the FDDA[44] appealed to this Court, petitioner received three (3) separate LOAs issued by Teresita M. Dizon (**Dizon**), OIC, Assistant Commissioner, Large Taxpayers Service (**OIC-ACIR LTS**), namely:

(1) first LOA[45] dated 05 June 2018 which petitioner received on 25 June 2018 for CY 2017;

(2) second LOA[46] dated 13 September 2018 which petitioner received on 21 September 2018 likewise, for CY 2017; and

(3) third LOA[47] dated 20 March 2019 received on 27 March 2019 also for CY 2017.

[39] Id., pp. 251-254.
[40] Id., pp. 356-364.
[41] Id., pp. 260-265.
[42] Exhibit "P-38", id., pp. 114-155.
[43] Exhibit "P-44", id., pp. 273-286.
[44] Exhibit "P-1", id., supra at note 4.
[45] Exhibit "P-6", supra at note 7.
[46] Exhibit "P-43", supra at note 9.
[47] Exhibit "P-12", supra at note 10.

Lancero further testified that petitioner received another MOA[48] dated 21 March 2019, which was allegedly issued pursuant to the third LOA naming a different set of ROs to conduct petitioner's audit in violation of the latter's due process rights. She also stated that, at any rate, if the collection of its alleged tax deficiencies were to proceed, it would not be able to continue its operations as the amount of tax due exceeds its current cash assets.

During her cross-examination, Lancero further clarified that: (1) petitioner's revenues were on an uptrend; (2) proportionately, its operating expenses were also increasing; and (3) estimated sales for CY 2022 were around ₱2 billion, which was more than enough to cover the alleged deficiency taxes.[49]

On redirect examination, Lancero stated that after deducting direct costs and other operating costs for CY 2022, petitioner's net profit was only ₱46,205,528.00.[50]

No re-cross examination was conducted.[51]

Upon the termination of her testimony, petitioner was given five (5) days, or until 17 July 2023, to file its Formal Offer of Evidence (**FOE**), and respondent was granted the same period from receipt to file comment thereto, after which petitioner's FOE would be submitted for resolution. Upon resolution on petitioner's FOE, petitioner's motions to suspend collection would likewise be submitted for resolution.[52]

Immediately following the 11 July 2023 hearing, on 17 July 2023, petitioner filed its FOE,[53] with respondent's "Comment (on petitioner's [FOE])"[54] filed on 21 July 2023.

In a Resolution dated 18 August 2023,[55] the Court admitted petitioner's exhibits, with the exception of provisionally marked

48 Exhibit "P-13", supra at note 12.
49 TSN dated 11 July 2023, pp. 9-14.
50 Id., pp. 14-15.
51 Id., p. 15.
52 See Minutes of the Hearing dated 11 July 2023, Division Docket, Volume II, pp. 430-433.
53 Id., pp. 445-455.
54 Id., Volume III, pp. 818-821.
55 Id., pp. 825-827.

Exhibits "**P-5**", "**P-10**", and "**P-11**", the originals of which were not produced in court. Accordingly, petitioner's MTS, Supplemental MTS, Second Supplemental MTS and Third Supplemental MTS were submitted for resolution.

Subsequently, in a Resolution dated 10 November 2023,[56] the Court denied all four (4) of petitioner's motions to suspend collection of tax for lack of merit and set the case for Pre-Trial Conference (**PTC**) on 01 February 2024.

On 04 December 2023, petitioner filed a "Motion for Reconsideration (Re: Resolution dated November 10, 2023)"[57] (**MR to MTS**). In a Resolution dated 05 January 2024,[58] the Court noted the motion and granted respondent a non-extendible period of five (5) days from receipt to file his or her comment. In compliance thereof, respondent filed his or her "Comment/Opposition (Re: Petitioner's [MR to MTS] dated 04 December 2023)"[59] (**Comment to MTS**) on 16 January 2024. Thereafter, in a Resolution dated 23 January 2024,[60] the Court submitted the MR to MTS for resolution and cancelled the PTC previously set on 01 February 2024 until further orders.

Pending resolution of the foregoing incident, petitioner filed its Pre-Trial Brief[61] on 19 January 2024. Respondent, on the other hand, filed his or her Pre-Trial Brief[62] on 26 January 2024. In a Resolution dated 02 February 2024,[63] the Court took note of these submissions.

In a Resolution dated 20 February 2024,[64] the Court denied petitioner's MR to MTS for lack of merit.

On 19 March 2024, the Court reset the PTC to 30 May 2024.[65] During the PTC, the parties agreed to submit their Joint Stipulation of

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56 Id., pp. 829-841.
57 Id., pp. 842-872.
58 See Notice of Resolution dated 05 January 2024, id., p. 874.
59 Id., pp. 876-887.
60 See Notice of Resolution dated 23 January 2024, id, p. 919.
61 Id., pp. 889-909.
62 Id., pp. 912-916.
63 See Notice of Resolution dated 02 February 2024, id, p. 972.
64 Id., pp. 976-980.
65 See Notice of the Hearing dated 19 March 2024, id., p. 985.

Facts and Issues (**JSFI**) within 30 days, or until 01 July 2024.[66] Petitioner was also given 30 days, or until 01 July 2024, to file its Motion to Commission an Independent Certified Public Accountant (**ICPA**).[67]

In compliance thereof, on 28 June 2024, both parties jointly filed their JSFI[68] and petitioner separately filed a "Motion to Avail of the Provisions of Rule 13 of the [RRCTA]"[69] (**Motion to Commission ICPA**). In a Resolution dated 08 July 2024,[70] the Court noted petitioner's motion, approved the JSFI, terminated the pre-trial proceedings and directed the issuance of a Pre-Trial Order (**PTO**). Thereafter, the Court issued the PTO[71] on 29 July 2024.

On 26 July 2024, petitioner filed a "Motion to Admit [JA] of Katherine O. Constantino [**Constantino**] (with attached Submission dated July 24, 2024)"[72] and Constantino's corresponding JA dated 24 July 2024.[73]

As scheduled, during the 30 July 2024 hearing, the Court granted petitioner's Motion to Commission ICPA and consequently, admitted Constantino's JA.[74] Finding merit, the Court granted petitioner's Motion to Commission ICPA. ICPA Constantino took her oath and was given forty-five (45) days, or until 13 September 2024, to submit her ICPA Report.[75] Thereafter, petitioner presented its second witness, Lancero, who testified using her same JA previously identified during the motion hearing, *i.e.*, 11 July 2023.[76]

No cross-examination was conducted.[77]

On 13 September 2024, ICPA Constantino filed her ICPA Report,[78] which was noted by this Court on 30 September 2024.[79]

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66 See Minutes of the Hearing dated 30 May 2024, id., pp. 1042-1045.
67 Id.
68 Id., pp. 1074-1096.
69 Id., pp. 1068-1071.
70 Id., p. 1102.
71 Id., pp. 1148-1171.
72 Id., pp. 1103-1111.
73 Exhibit "P-44", id., pp. 1113-1120.
74 See Order dated 30 July 2024, id., pp. 1174-1176.
75 Id.
76 Id.
77 See Minutes of Hearing dated 30 July 2024, id., pp. 1172-1172-B.
78 Exhibit "P-100", id., pp. 1190-1229.
79 See Notice of Resolution dated 30 September 2024, id., p. 1283.

During the hearing on 02 October 2024, petitioner presented ICPA Constantino, who testified by way of her JA dated 26 September 2024.[80]

On the witness stand, ICPA Constantino testified that: (1) the instant case involves a petition for cancellation and nullification of alleged deficiency income tax and miscellaneous tax for CY 2017 in the total amount of ₱284,397,125.83, inclusive of penalties and interest; (2) after her commission, she and her team immediately conducted an audit, examination, verification and comparison of petitioner's accounting records and supporting documents, culminating in the preparation of the ICPA Report dated 12 September 2024;[81] (3) as to the BIR-assessed "Gross Income *per* Return" of ₱16,743,165.00, ICPA Constantino confirmed that the "Taxable Income" presented in Line 34, Part IV of the CY 2017 Annual Income Tax Return (**ITR**) ties up with the BIR figure *per* FDDA; and (4) as to the alleged "Discrepancy in [COS]" of ₱17,997,646.84, ICPA Constantino identified the following specific sub-issues:

(a) upon recomputation of the "*Per* Audit" figures in the FDDA, she noted a footing error in the computation of raw materials used, which erroneously inflated the BIR's assessment by ₱6,376,125.00. She concluded that this amount should not form part of the assessment;

(b) after tracing the "Management Fee/Storage Fee" schedule to the "General Ledger (GL Codes 1180020000 and 1180040000)," she found that ₱1,389,086.45 thereof pertained to service fees paid to a supplier for reimbursement of importation taxes, handling fees and delivery fees relative to the purchase of raw materials, properly supported by original sales invoices[82] and original tax invoices,[83] and were validly classified as raw materials in the CY 2017 audited financial statements (**AFS**). Only ₱10,708.64, which lacked supporting documentation, properly remained subject to disallowance; and

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[80] See Minutes of Hearing dated 02 October 2024, id., pp. 1284-1284-A.
[81] Exhibit "P-100", supra at note 78.
[82] Exhibits "P-109 to P-109-42", USB.
[83] Exhibit "P-130", id.

(c) ICPA Constantino found that the BIR used the Audited Trial Balance *per* the Computerized Accounting System (**CAS**), rather than the ITR figures, to compute "Direct Labor" and "Manufacturing Overhead." She established that the "Direct Labor" *per* ITR of ₱52,016,991.00 — not the AFS figure of ₱52,564,184.00 — should govern the analysis, the ₱547,193.00 difference consists of retirement benefit expense and amortization of past service cost not deducted for ITR purposes. She further found that the BIR disregarded ₱12,595,157.93 in depreciation of factory and machinery equipment attributable to the cylinder making, printing, laminating, finishing, and main support operations, all of which constitute COS. After recomputation, the proper "Cost of Goods Manufactured and Sold"/COS stood at ₱1,145,129,647.67 — not the BIR's figure of ₱1,127,282,502.16.

ICPA Constantino further testified that: (1) as to the alleged understatement of raw materials of ₱747,997,924.84, ICPA Constantino declared that this amount will not form part of the exposure, explaining that it is a presumptive revenue arising from an undeterminable base amount of ₱1,536,614,992.83 which was not the total raw materials purchased or received for inspection. She emphasized that the amount failed to satisfy the three-pronged test for recognizing income: (*i*) there must be gain or profit; (*ii*) such gain or profit must be realized or received, actually or constructively; and (*iii*) it must not be exempted by law or treaty — and that income tax may only be imposed when income is clearly received by the taxpayer, not merely upon an underdeclaration of purchases; (2) as to the alleged understatement of operating expenses of ₱21,736,404.16, ICPA Constantino found that the BIR's classification of numerous cost centers as Operating Expenses (**OPEX**) was erroneous. The misclassified accounts — bearing labels such as "Sup Chain" (renamed "Mat Mgt" in 2018), "Purchasing" (renamed "Strategic" in 2018), cylinder making, printing, laminating, finishing, shipping, warehouse, quality control, research and development, and engineering — all pertain to production processes and should properly be classified as COS. She also noted that the BIR's OPEX figure included export brokerage costs incurred to deliver finished goods to customers, which likewise belong to COS. Only selling and administrative expenses reflected as ordinary allowable deductions in the 2017 Annual ITR were properly classified as OPEX; (3) as to prior year's excess credits of ₱15,251,831.00 and tax credit *per* BIR Form 2307 of ₱11,872,967.00, ICPA Constantino confirmed that both figures tie up with the amounts reported in the CY 2017 Annual ITR filed through electronic filing and payment system (**eFPS**), and therefore no issue existed as to these items; and (4) in summary, ICPA Constantino concluded that petitioner has no income tax due for CY 2017, as it is in a loss position of ₱97,630,492.67.[84]

In her cross-examination, ICPA Constantino clarified that the documents they examined do not bear any signs that they were the same documents submitted to the BIR or were submitted to the BIR at all.[85]

No redirect examination followed.[86]

There being no more witnesses to present, petitioner was given fifteen (15) days, or until 17 October 2024, to file its FOE. Respondent was given five (5) days from receipt thereof to file comment, after which petitioner's FOE would be submitted for resolution.[87] Respondent's presentation of evidence was maintained on 14 January 2025 for the testimony of RO Dela Cruz.[88]

On 16 October 2024, petitioner filed its FOE.[89] On 18 October 2024, respondent filed his or her "Comment (on petitioner's [FOE])."[90]

In a Resolution dated 07 November 2024, the Court submitted petitioner's FOE for resolution.[91]

In the meantime, on 26 April 2024, petitioner filed a Petition for *Certiorari* before the Supreme Court, docketed as G.R. No. 273050, assailing the interlocutory resolutions of this Court denying petitioner's motions to suspend collection.[92]

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[84] See JA of Katherine O Constantino dated 26 September 2024, Exhibit "P-131", id., pp. 1237-1277.
[85] TSN dated 02 October 2024, pp. 12-14.
[86] Id., p. 14.
[87] See Order dated 02 October 2024, Division Docket, Volume III, pp. 1285-1286.
[88] Id.
[89] Id., Volume IV, pp. 1292-1311.
[90] Id., pp. 1347-1350.
[91] See Notice of Resolution dated 07 November 2024, id., p. 1354.
[92] Id., Volume III, pp. 989-1034.

For lack of quorum, respondent's presentation of evidence for the testimony of RO Dela Cruz — previously set on 14 January 2025 — was cancelled and reset to 18 February 2025.[93]

In a Resolution dated 28 January 2025,[94] the Court, acting on petitioner's FOE, admitted petitioner's exhibits, *except* for Exhibits "**P-10**" and "**P-11**",[95] for failure to submit the originals for comparison; and "**P-28**" and "**P-131-2**",[96] for not being found in the case records.

On 14 February 2025, petitioner filed a "Motion for Reconsideration (Re: Resolution dated January 28, 2025) (with Motion to Correct Description of Exhibit)."[97]

During the hearing on 18 February 2025, the Court denied the prayer for the admission of the excluded Exhibits "**P-10**" and "**P-11**", but granted the prayer to correct the description of Exhibit "**P-131-2.**"[98] Respondent thereafter presented his or her witness, RO Dela Cruz, who testified by way of her JA dated 25 January 2024.[99]

On the witness stand, RO Dela Cruz testified that the audit was authorized by the third LOA, which informed petitioner that an audit of its books of accounts and other accounting records CY 2017 would be conducted. Prior to the reassignment to her, the audit had been originally assigned to ROs Abellera, Arias and GS Tolentino, but was subsequently reassigned to her and her colleagues due to the original officers' transfer to other places of assignment. Following the issuance of the third LOA, a "First Notice for the Presentation of Records"

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93 See Notice of Resetting dated 10 January 2025, id., Volume IV, p. 1356.

94 Id., pp. 1361-1365.

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Exhibit No.	Description
"P-10"	Printed image of a compact disc attached to the Letter dated 22 August 2018.
"P-11"	Second and Final Notice from Respondent dated 01 October 2018 pursuant to LOA No. eLA2016000040972/LOA-LV1-2018-00000032 dated 13 September 2018.

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Exhibit No.	Description
"P-28"	Schedule of Comparison between Respondent's Schedule 5 (Attached to FDDA) and the Amount Reported per Petitioner's Cost/ Expense Account.
"P-131-2"	USB Flash Drive containing exhibits marked by the ICPA.

97 Division Docket, Volume IV, pp. 1366-1376.

98 See Order dated 18 February 2025, id., pp. 1379-1381.

99 Id.

(**First Notice**) dated 25 March 2019 was served upon petitioner, requiring it to allow the ROs to conduct the required examination at its office and to grant special access to view and inquire into its system data. According to her, petitioner partially complied with the First Notice, prompting the issuance of a Letter dated 08 January 2020[100] requiring petitioner to submit the lacking documents within fifteen (15) days. Petitioner again partially complied, after which the BIR proceeded with its audit investigation. She added that the audit examination revealed that petitioner was liable for deficiency taxes. Later on, respondent issued and served an NIC[101] dated 29 May 2020 upon petitioner, requesting it to appear for an informal conference within 30 days from receipt. However, instead of appearing at the informal conference, petitioner filed a reply refuting the BIR's initial findings. Still later, after evaluation of petitioner's arguments, respondent maintained that petitioner remained liable for deficiency taxes.

RO Dela Cruz continued to declare that, consequently, she recommended in a Memorandum dated 28 July 2020,[102] the issuance of a PAN which was favorably acted upon, hence a PAN[103] dated 29 July 2020 with attached Details of Discrepancy, was issued and served upon petitioner. Meanwhile, petitioner executed a "Waiver of the Defense of Prescription under the Statute of Limitations of the [NIRC]"[104] dated 27 October 2020, thereby extending petitioner's audit for CY 2017. Petitioner thereafter filed its Reply.[105] After evaluation, respondent still found petitioner liable for deficiency taxes. In a Memorandum dated 25 January 2021,[106] she recommended the issuance of the FLD/FAN[107] which was issued on 25 January 2021. Petitioner then filed a Protest[108] which was subsequently granted. As a result of the reinvestigation, petitioner settled its deficiency Expanded Withholding Tax (**EWT**) and portion of petitioner's compromise penalty. However, despite the recomputations made taking into account petitioner's protest, petitioner remained liable for other deficiency taxes. Accordingly, she recommended in a Memorandum dated 29 November 2022,[109] the

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[100] Exhibit "R-3", BIR Records, Folder 1, pp. 368-369.
[101] Exhibit "R-4", id., pp. 476-478; Exhibit "P-14", supra at note 13.
[102] Exhibit "R-5", id., pp. 538-541.
[103] Exhibit "R-6", id., pp. 550-553; Exhibit "P-19", supra at note 17.
[104] Exhibit "R-7", id., p. 574.
[105] Exhibit "P-20", supra at note 19.
[106] Exhibit "R-8", BIR Records, Folder 1, pp. 1050-1055.
[107] Exhibit "R-9", id., pp. 1154-1160; Exhibit "P-21", supra at note 20.
[108] Exhibit "P-22", supra at note 21.
[109] Exhibit "R-10", BIR Records, Folder 2, pp. 585-589.

issuance of the FDDA; and (11) consequently, an FDDA[110] was issued on 13 February 2023.[111]

In her cross-examination, RO Dela Cruz admitted that aside from the officers named in LOA dated 20 March 2019 — she herself, RO Carrillo, and GS Lumagui — a MOA was signed on 21 March 2019 by Alarde, OIC-Chief of RLTAD-1, authorizing ROs Calaoagan and Laquindanum to assist in the audit, both of whom are assigned at the same RLTAD office as she is, and both of whom she knows personally. Pursuant to the MOA, ROs Calaoagan and Laquindanum did indeed assist her in the audit of petitioner's books for CY 2017. In petitioner's reply to the NIC,[112] Reply[113] and Protest,[114] petitioner provided explanations and reconciliations — both substantive and legal — against each item of assessment, and submitted various supporting documents in support of its defenses. According to her, notwithstanding petitioner's replies and protests, the findings on discrepancy on COS remained unchanged from the FLD to the FDDA, and the findings on understatement of raw materials likewise remained the same from the NIC all the way to the FDDA. Additionally, she declared that the NIC was issued more than one (1) year after the issuance of the LOA dated 20 March 2019 — a fact she confirmed after initially seeking clarification as to which LOA was being referred to, given that she was not the first RO assigned to the case.[115]

On redirect examination, RO Dela Cruz clarified that while ROs Calaoagan and Laquindanum were authorized to assist, they were not part of the third LOA *per se*, but were authorized by their chief, Alarde, to assist in view of the fact that they were newly hired at that time; that her role was to take charge of the audit, while ROs Calaoagan and Laquindanum were merely there to learn from the audit and perform ministerial tasks — such as assisting in retrieving documents which were voluminous — but not to conduct the audit proper. She stated that she alone made the assessment, and that all ROs Calaoagan and Laquindanum did was assist her in retrieving the voluminous documents. Lastly, the reason the assessment remained the same from

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110 Exhibit "R-11", id., pp. 658-667; Exhibit "P-1", supra at note 4.
111 See JA of RO Michelle Dela Cruz dated 25 January 2024, Exhibit "R-13", id., Volume III, pp. 925-934.
112 Exhibit "P-15", supra at note 15.
113 Exhibit "P-20", supra at note 19.
114 Exhibit "P-22", supra at note 21.
115 TSN dated 18 February 2025, pp. 15-19.

the FLD to the FDDA was because the documents submitted by petitioner were not sufficient to drop any of the findings — as far as she could recall, what petitioner submitted were merely computations or reconciliations, which she did not find adequate to warrant a reduction of the deficiency assessment.[116]

Upon re-cross examination, RO Dela Cruz revealed that despite her earlier explanation that ROs Calaoagan and Laquindanum performed only ministerial tasks, she confirmed that they did still assist her in examining the voluminous documents, *albeit* not all the time.[117]

Upon clarificatory questions, RO Dela Cruz further disclosed the following: (1) she confirmed that the discrepancy on COS appearing in the PAN, the FLD, and the FDDA is absolutely the same across all three issuances; and (2) when asked whether she had made any specific reference in the FLD or in the FDDA to petitioner's arguments and whether she had discussed why petitioner's computations were unjustified, RO Dela Cruz stated that as far as she could recall, petitioner submitted only computations or reconciliations — which is why she stood by her audit findings.[118] When pressed further, she acknowledged that in Part B of the Details of Discrepancy, she indicated that the COS was recomputed giving credits to the submitted documents supporting expenses classified as COS, and showing how the computation was derived — found in Annex "A" of the FLD.

Respondent was then given five (5) days, or until 24 February 2025, to file his or her FOE.[119] In compliance, on even date, respondent filed his or her FOE.[120] On 03 March 2025, petitioner filed a "Comment (On Respondent's [FOE] dated February 24, 2025."[121]

Meanwhile, in a Resolution dated 15 January 2025, the Supreme Court dismissed petitioner's Petition for *Certiorari* in G.R. No. 273050 for failure to sufficiently show that any grave abuse of discretion was committed by this Court in rendering the challenged resolutions, which, on the contrary, appeared to be in accord with the facts and the

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116 Id., pp. 20-21.
117 Id., pp. 21-22.
118 Id., pp. 22-24.
119 See Order dated 18 February 2025, supra at note 98.
120 Division Docket, Volume IV, pp. 1383-1389.
121 Id., pp. 1393-1398.

applicable law and jurisprudence.[122] On 09 May 2025, petitioner filed a "Motion for Reconsideration (Re: Resolution dated January 15, 2025)"[123] (**MR**) of the Supreme Court Resolution.

In a Resolution dated 28 April 2025,[124] the Court, acting on respondent's FOE, admitted respondent's exhibits. Accordingly, as previously ordered, the parties were granted 30 days from notice to file their respective memoranda, after which the case would be submitted for decision.[125]

On 29 May 2025, petitioner filed its Memorandum.[126] Following that, respondent filed a Manifestation on 30 May 2025,[127] manifesting that respondent's counsel is adopting the arguments raised in the Answer as respondent's Memorandum.

In a Resolution dated 08 July 2025,[128] the Court submitted the case for decision, taking into consideration petitioner's Memorandum and respondent's Manifestation.

In the *interim*, in a Resolution dated 11 August 2025, the Supreme Court denied petitioner's MR in G.R. No. 273050 with finality, no substantial arguments having been raised to warrant a reconsideration thereof, and directed the immediate issuance of entry of final judgment.[129]

At this juncture, it bears emphasis that the foregoing proceedings before the Supreme Court pertain solely to petitioner's challenge against this Court's interlocutory resolutions denying suspension of the collection of taxes. The Supreme Court's denial of the Petition for Certiorari and the finality of the Entry of Judgment therein do not foreclose the resolution of the merits of the instant Petition for Review, which remains for this Court's consideration.

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122 Id., p. 1411.
123 Id., pp. 1413-1447.
124 Id., pp. 1409-1410.
125 Id.
126 Id., pp. 1477-1532.
127 Id., pp. 1534-1536.
128 See Notice of Resolution dated 08 July 2025, id., p. 1540.
129 Id., p. 1543.

ISSUE

As can be gleaned from the parties' JSFI,[130] the issue for this Court's resolution is –

> WHETHER PETITIONER FLEXO MANUFACTURING CORPORATION IS LIABLE FOR DEFICIENCY INCOME TAX AND COMPROMISE PENALTY FOR CALENDAR YEAR (CY) 2017.

ARGUMENTS

Petitioner submits that it is not liable for the assessed deficiency income tax and compromise penalty in the total amount of ₱284,397,125.83 for CY 2017. It advances six (6) grounds for nullification of the FDDA and the related WDL which are discussed below, in *seriatim*.

Firstly, petitioner argues that the ROs who participated in the audit of its books were not authorized by a valid LOA, in violation of Section 13[131] of the NIRC of 1997, as amended. It invokes the settled principle that a grant of authority in the form of an LOA is an indispensable prerequisite before any RO may conduct an examination of a taxpayer's books and records, and that any examination conducted — and any assessment issued — in the absence of such authority is a nullity.

Petitioner contends that the phrase 'to assist in the examination' is not a mere clerical or ministerial function — it is substantive participation in the audit itself. To draw a distinction between 'assisting' and 'assisting in the examination' would amount to an illicit circumvention of the LOA requirement. Petitioner further points out that the OIC-Chief of RLTAD-1 is not among the BIR officials authorized to issue LOAs — only the CIR, the Revenue Regional Director, and the Assistant Commissioner/Head Revenue Executive Assistant are so authorized. Consequently, the MOA signed by the OIC-Chief of RLTAD-1 cannot be treated as an equivalent of an LOA, and the assignment of ROs Calaoagan and Laquindanum is bereft of legal authority.

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[130] See supra at note 68.

[131] SEC. 13. *Authority of a Revenue Officer.*

Secondly, petitioner argues that it was subjected to examination more than once for CY 2017, in violation of Section 235[132] of the NIRC of 1997, as amended. Section 235 categorically provides that for income tax purposes, the examination and inspection of a taxpayer's books and records shall be made only once in a taxable year, citing *The Professional Services, Inc. v. Commissioner of Internal Revenue*[133] (**TPSI**).

Petitioner adds that Section 235 prohibits repeated examinations — not merely repeated assessments — and that the filing of successive LOAs covering overlapping taxes for the same year is itself the proscribed act, regardless of whether a report has been finalized under the earlier LOA.

Thirdly, petitioner contends that the assessment is unenforceable because the examination was conducted beyond the allowable 240-day period provided under Revenue Memorandum Order (**RMO**) No. 19-2015,[134] which requires the revenue officer to submit his report of investigation within 240 days from the taxpayer's receipt of the LOA. The third LOA was issued on 20 March 2019, and the report recommending the issuance of the PAN was dated 28 July 2020 — well beyond the 240-day period. No revalidation was sought or obtained.

Fourthly, petitioner claims respondent violated due process in two (2) ways under Section 228[135] of the NIRC of 1997, as amended and Revenue Regulations (**RR**) No. 12-99,[136] as amended by RR No. 18-13:[137] *first*, by not genuinely considering or answering its defenses and evidence at the informal conference, PAN, FLD and FDDA stages; and *second*, by failing to state in the FLD and FDDA the specific facts and law supporting the assessment.

Fifthly, without prejudice to its procedural defenses, petitioner addresses each respondent's substantive finding.

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132 Supra at note 28.

133 CTA Case No. 9502, 13 August 2019.

134 BIR Audit Program.

135 SEC. 228. *Protesting of Assessment*.

136 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.

137 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

As to discrepancy on COS, petitioner echoes ICPA Constantino's finding that respondent's computation is wrong because it includes a footing error of ₱6,376,125.00 and excludes ₱14,594,172.68 in Management/Storage Fees, which petitioner says are properly part of COS. On petitioner's corrected computation, COS *per* ICPA matches COS as reported, so there is no actual discrepancy.

As to understatement of raw materials, petitioner explains that its IUI account is only a clearing account. Raw materials are first debited to IUI upon receipt, then credited out of IUI and moved to Raw Materials once they pass quality control, so the debits and credits offset each other. Petitioner argues that respondent improperly used only the gross debits to IUI and ignored the corresponding credits, creating an artificial understatement; it further contends that a supposed expense discrepancy cannot be automatically treated as undeclared revenue absent competent proof of actual revenue receipt.

As to the compromise penalty, petitioner argues that it is dependent on the validity and finality of the underlying deficiency tax assessment. Since petitioner claims the primary assessment is void, the penalty should fall with it.

Lastly, petitioner submits that WDL No. 116-2023-026 dated 28 April 2023 was prematurely issued. Under Section 207(A)[138] of the NIRC of 1997, as amended, a WDL may be issued only upon the failure of a person to pay a delinquent tax at the time required. A tax assessment becomes delinquent only upon the occurrence of any of the circumstances enumerated under RR No. 4-2019:[139] (**a**) failure to pay the tax due in the FAN/FLD which has not been protested within 30 days from receipt; (**b**) failure to file an appeal to the Court of Tax Appeals (**CTA**) or an administrative appeal before the CIR within 30 days from receipt of the denial of a request for reconsideration or reinvestigation; or (**c**) failure to file an appeal to the CTA within 30 days from receipt of the FDDA.

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138 SEC. 207. *Summary Remedies.* –
(A) *Distraint of Personal Property.*

139 Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act," Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.

Respondent maintains that the assessment is valid and that petitioner is liable for the assessed amounts.

Firstly, respondent argues that the statutory LOA requirement under Section 13[140] of the NIRC of 1997, as amended, applies only to ROs in Revenue District Offices (**RDOs**), not to the LTS, which he or she says derives authority directly from Section 6(A)[141] of the NIRC of 1997, as amended, and treats the LOA as merely administrative. He or she further claims that the operative LOA is the third LOA naming only the officers therein, while the MOA merely assigned ROs Calaoagan and Laquindanum to clerical or ministerial assistance, so no separate LOA was needed for them; he or she adds that the named officers remained the ones who recommended the PAN, FLD and FDDA. Additionally, respondent argues that any defect was cured when the CIR, himself or herself, issued the FDDA and later confirmed authority in his or her Answer, which respondent treats as ratification.

Secondly, respondent disputes that the issuance of multiple LOAs constituted a prohibited re-examination under Section 235[142] of the NIRC of 1997, as amended. Respondent distinguishes the *TPSI* case on the ground that in that case, a report had already been finalized and an assessment issued under the first LOA before a second LOA was issued. In the present case, no report was ever finalized under the first LOA because the RO authorized thereunder was transferred to another place of assignment, necessitating the issuance of a new LOA. Without a prior finalized report and prior assessment, there can be no 'second examination' under Section 235 of the NIRC of 1997, as amended. With respect to the second LOA, which is a VAT LOA, respondent reiterates that it pertains to a distinct tax type administered by a separate division, that no VAT assessment was issued in this case, and that the subject matter of this petition excludes VAT entirely. Accordingly, the issuance of the second LOA does not constitute an examination of petitioner for the second time.

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140 Supra at note 131.

141 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.*

142 Supra at note 28.

Thirdly, respondent invokes RMO No. 19-2015[143] to argue that the failure of an RO to revalidate an LOA within the prescribed period does not nullify the LOA or render the resulting assessment void. At most, such failure exposes the RO to administrative sanctions and demerit in performance rating.

Fourthly, respondent submits that petitioner's due process rights were observed throughout the assessment process. Petitioner received notices at every stage — the NIC, PAN, FLD and FDDA — and was given the opportunity to file replies and protests at each stage. Respondent acknowledges that he or she is not obligated to give credence to petitioner's explanations, particularly when they fail to substantiate petitioner's claims. The ROs evaluated petitioner's contentions as reflected in the Details of Discrepancy: for the COS finding, respondent gave credit for documents submitted but maintained a residual discrepancy; for the raw materials finding, respondent considered petitioner's explanation of the IUI account but found that the accounting trail was insufficiently documented and that petitioner failed to submit a certificate of deductibility, photographs of destroyed inventory and a reconciliation of physical count *versus* books of account. Respondent further invokes the presumption of correctness of tax assessments — tax assessments by revenue examiners are presumed correct and made in good faith, and upon introduction of the assessment in evidence, a *prima facie* case of liability is made. Petitioner bears the burden of overcoming this presumption. Failure on the part of petitioner to satisfactorily overcome the same would mean that the presumption still stands. Consequently, the Court would be bound to uphold the assessments.

Lastly, on the merits, respondent maintains that the findings as reflected in the FDDA are correct and petitioner failed to substantiate each claim.

RULING OF THE COURT

Before delving into the merits of the case, We find it propitious to first resolve whether this Court has jurisdiction over the instant petition.

[143] Supra at note 134.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

At the outset, it should be emphasized that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[144] Sections 7 and 11 of Republic Act (**RA**) No. 1125,[145] as amended by RA 9282,[146] provides:

> ...
>
> **SEC.** 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.]
>
> ...
>
> **SEC.** 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**[147]
>
> ...

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144 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019 citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

145 AN ACT CREATING THE COURT OF TAX APPEALS.

146 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.

147 Emphasis supplied and italics in the original text.

Moreover, Section 3(a), Rule 8 of the RRCTA, provides the following:

> ...
>
> 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.[148]
>
> ...

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a Petition for Review with the CTA.

Here, it is undisputed that petitioner received respondent CIR's FDDA on 01 March 2023,[149] denying petitioner's Protest (which is the adverse decision appealable to this Court). It, thus, had 30 days from the said date, or until 31 March 2023, to file a Petition for Review with this Court. Clearly, petitioner timely filed the instant Petition for Review on 31 March 2023.[150]

Proceeding to the merits of the case and after a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds merit in the instant petition.

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148 Italics in the original text, emphasis supplied.
149 Exhibit "P-1", supra at note 4.
150 Supra at note 1.

THE DEFICIENCY ASSESSMENTS FOR CALENDAR YEAR (CY) 2017 ARE NULL AND VOID FOR WANT OF A VALIDLY CONSTITUTED EXAMINING AUTHORITY.

I. LETTER OF AUTHORITY (LOA) REQUIREMENT APPLIES TO ALL REVENUE OFFICERS (ROs) WHO EXAMINE TAXPAYERS, INCLUDING THOSE UNDER THE LARGE TAXPAYER SERVICE (LTS)

Respondent asseverates that Section 13[151] of the NIRC of 1997, as amended, applies only to RDOs and not to the LTS.

We reject this without hesitation.

Section 13 of the NIRC of 1997, as amended, is unambiguous in its command:

> ...
>
> 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.
>
> ...

Respondent reads the phrase "in any district" as a jurisdictional limitation that excludes LTS ROs from the statute's reach. This is a reading so strained as to invert the purpose of the law. The provision does not exempt any class of taxpayer or any division of the BIR from the LOA requirement. It simply uses the revenue district as the paradigm for the allocation of examining authority, precisely because

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[151] Supra at note 131.

that is respondent's primary operational unit.[152] The LTS, by contrast, operates under the Office of the Commissioner — and examinations conducted thereunder must therefore be authorized by the CIR or his or her duly authorized representative 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 [or her] <u>duly authorized representative</u> may authorize the examination of any taxpayer and the assessment of the correct amount of tax**, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[153]
>
> ...

The Supreme Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[154] (**Medicard**) made the principle luminously clear:

> ...
>
> An LOA is the **<u>authority given to the appropriate revenue officer assigned to perform assessment functions</u>**. 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.**
>
> ...

The requirement of a valid LOA thus flows from the nature of the power being exercised — the examination of a taxpayer — and not from the particular office of the BIR where the examining officer is stationed. Whether an RO works from an RDO in the provinces or from the offices of the LTS in Quezon City, his or her authority to examine a taxpayer's

[152] See NIRC of 1997, as amended, Section 9; *cf.* Section 10(c).
[153] Italics in the original text, emphasis and underscoring supplied.
[154] G.R. No. 222743, 05 April 2017; Citation omitted, emphasis and underscoring supplied.

books is derivative: it must trace back to the CIR himself or to a duly designated representative, through the form the law prescribes — an LOA.

To accept respondent's position is to fashion a two-tiered system of taxpayer protection: robust for ordinary taxpayers in revenue districts, and hollow for large taxpayers whose accounts are examined by officers of the LTS. There is no justification in the Constitution, in the NIRC of 1997, as amended, or in reason for such an invidious distinction. The statute admits of no such division. Neither shall this Court.

II. THE MEMORANDUM OF AGREEMENT (MOA) SIGNED BY THE OFFICER-IN-CHARGE-CHIEF OF RLTAD-1 IS NOT A LETTER OF AUTHORITY (LOA), AND CANNOT BE TREATED AS ONE

We turn to the central factual dispute: the legal standing of the MOA of 21 March 2019, by which the OIC-Chief of RLTAD-1 directed ROs Calaoagan and Laquindanum to assist in the examination of petitioner.

The governing rule on who may issue an LOA is stated with precision in Section D(4) of RMO No. 43-90:[155]

> ...
> D. Preparation and issuance of [LOAs].
> ...
>
> 4. 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.
> ...

155 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

In relation thereto, RMO No. 29-2007[156] also authorizes Assistant Commissioner/Head Revenue Executive Assistants to issue LOAs relative to Large Taxpayers.

Summing up the foregoing rules, only the following officials are properly conferred with authority to permit the examination of taxpayers for deficiency taxes:

1. CIR;
2. Regional Directors;
3. Deputy Commissioners;
4. Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and
5. Other officials but only upon prior authorization by the CIR himself or herself.

The OIC-Chief of RLTAD-1 is not among the aforementioned officials. There is also no showing in the record that the CIR himself or herself specially authorized her to issue LOAs or their equivalent. The MOA she signed is thus a document issued by an official bereft of the requisite authority — a nullity that cannot confer upon ROs Calaoagan and Laquindanum what the law reserved exclusively for the LOA.

We are not unmindful of respondent's characterization of ROs Calaoagan and Laquindanum as having rendered only "clerical and ministerial" assistance. But this characterization is unsupported by the record. RO Dela Cruz herself testified that these officers assisted in the audit of petitioner's books of accounts, to wit:

...

ATTY. REYES:

Q. In the LOA dated March 20, 2019 which you identified in question and answers no. 7 and 10 of your Judicial Affidavit as Exhibit "R-1," you, RO Michelle Dela Cruz, RO Theresa Carrillo and Group Supervisor Nicasio Lumagui, Jr. were authorized to conduct the investigation. After the issuance of the LOA or on March 21, 2019, a Letter was signed by Analynsia C. Alarde, OIC-Chief of RLTAD[-1], which was issued to authorize RO Ma. Clarissa Calaoagan and RO Leoriz Laquindanum **to assist in**

156 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

the audit. And RO Ma. Clarissa Calaoagan and RO Leoriz Laquindanum are in the same office with you at RLTAD office, correct?

MS. DELA CRUZ:

A. Yes, [A]tty.

ATTY. REYES:

Q. Are you familiar with these people, Ms. Witness? Yes, or no.

MS. DELA CRUZ:

A. Yes.

ATTY. REYES:

Okay.

Q. So, based on this Letter RO Ma. Clarissa Calaoagan and RO Leoriz Laquindanum were authorized to assist you in the audit of petitioner's books of accounts for taxable year 2017? Yes, or no, Ms. Witness.

MS. DELA CRUZ:

A. Yes.

ATTY. REYES:

Okay. Moving on to my next point.

Q. Based on this Letter, **did Revenue Officers Ma. Clarissa D. Calaoagan and RO Leoriz B. Laquindanum assist you in the audit** of petitioner's books of accounts for taxable year 2017? Yes, or no, Ms. Witness.

MS. DELA CRUZ:

A. **Yes**.

...

JUSTICE VILLENA:

Re-cross, Atty. Reyes?

ATTY. REYES:

Q. Ms. Witness, did they still assist you in **<u>examining</u> the voluminous documents**, RO Leoriz Laquindanum and RO Ma. Clarissa Calaoagan? Yes, or no, Ms. Witness.

MS. DELA CRUZ:

A. **Yes, but not all the time.**

ATTY. REYES:

Thank you, Ms. Witness. That's all, your Honors.[157]

...

An audit is not a clerical undertaking. It requires the examination, verification and analysis of financial records — precisely the functions that the LOA requirement is designed to channel through properly authorized hands. To "assist in the examination" is to examine, no less. The label affixed to the function cannot determine its legal character; the function itself does so.

The Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[158] declared in categorical terms:

> ...
> 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.
> ...

157 TSN dated 18 February 2025, pp. 15-16 and 21-22; Emphasis supplied.
158 G.R. No. 242670, 10 May 2021; Italics in the original text.

Also, in *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,[159] the Supreme Court further reiterated that only the ROs **actually named** in the LOA are authorized to examine the taxpayer, to wit:

> ...
> 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 [the] revenue officers **with authority to <u>examine</u> taxpayers**. It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer. . . . In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.
> ...

"Assist in the examination" is simply a softer phrase for a harder reality: the conduct of examination by officers other than those named in the LOA. The Supreme Court did not carve out an exception for those who examine in a supporting capacity. Neither do We.

Furthermore, Section C(5) of RMO No. 43-90[160] states without equivocation:

> ...
> C. Other policies for issuance of [LOAs].
>
> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of [LOAs] which have already expired, shall require the issuance of a new [LOA], with the corresponding notation thereto, including the previous [LOA] number and date of issue of said [LOAs].
>
> ...

No new LOA was ever issued in the names of ROs Calaoagan and Laquindanum. This is not a disputed fact. The omission is fatal.

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159 G.R. Nos. 249883-84, 27 January 2020 (Resolution); Citations omitted, emphasis and underscoring supplied.

160 Supra at note 155.

III. THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) AND THE FILING OF THE ANSWER DID NOT RATIFY OR CURE THE DEFECTIVE EXAMINATION

Respondent argues that the CIR's issuance of the FDDA and the filing of the Answer[161] constituted after-the-fact authorization.

We disagree.

Respondent mistakes the nature of the defect and the remedy that ratification may lawfully supply.

It is a settled doctrine, forged through long jurisprudential labor, that the defect of an unauthorized examination strikes at the root of the assessment process itself.[162] *Medicard* teaches that the LOA is not a mere procedural nicety imposed as an afterthought upon a substantive examination.[163] It is the very instrument through which the CIR delegates his or her examination power — a power that the statute vests in the CIR alone, and which may be exercised by others only through the mechanism the law designates. Stated plainly — without a valid LOA, there is no valid delegation; without a valid delegation, there is no valid examination; and without a valid examination, there is no valid assessment upon which any FDDA can operate.

What the CIR ratified by issuing the FDDA, and filing the Answer, was nothing more than the legal consequence of a void examination — a consequence that cannot be converted into a valid one by the mere affixing of a signature or the articulation of a defense. One cannot ratify a nullity. To hold otherwise is to allow the government to cure, by the stroke of a pen at the conclusion of an audit, the very due process violations that the LOA requirement was designed to prevent at the audit's commencement. Such a rule would render the LOA requirement

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161 Supra at note 38.

162 See *People of the Philippines v. E & D Parts Supply, Inc. and Margaret L. Uy*, G.R. No. 259284, 24 January 2024; See *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, supra at note 158; See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 154.

163 See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, id.

entirely toothless: BIR could authorize whomever he or she wished, in whatever form he or she chose, and then repair the statutory breach by issuing an FDDA. This Court declines to sanction that proposition.

As the Supreme Court observed in *Medicard*:

> ...
> The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same **whether or not the CIR conducts a <u>physical examination</u> of the taxpayer's records**: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[164]
> ...

The revenue of the State is a legitimate and pressing concern. This Court does not minimize it. But the protection of the taxpayer from unauthorized intrusion into its books and records is not a technicality to be sacrificed on the altar of fiscal expediency.[165] It is a guarantee embedded in the NIRC of 1997, as amended, and vindicated time and again by the Supreme Court. The government's assessment powers, vast as they are, must be exercised through lawful channels.[166] The large taxpayer is not less entitled to that protection than the smallest enterprise operating in a provincial district.

When the BIR conducts an examination through officers it never properly authorized, it does not merely commit a procedural error that a subsequent FDDA can cure. It commits a jurisdictional transgression

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164 Supra at note 154; Emphasis and underscoring supplied.

165 See *Commissioner of Internal Revenue v. Fort 1 Global City Center, Inc.*, G.R. No. 263811, 26 November 2024.

166 See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, 03 October 2018.

that voids the entire edifice of the audit. The assessment built upon that void examination is itself void *ab initio*, without legal effect, and incapable of giving rise to any enforceable liability.

WHEREFORE, the foregoing premises considered, the present Petition for Review filed by petitioner Flexo Manufacturing Corporation on 31 March 2023 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue's Final Decision on Disputed Assessment dated 13 February 2023 against petitioner totaling is declared **VOID** and henceforth **CANCELLED**. Consequently, the Warrant of Distraint and/or Levy No. 116-2023-026, covering the assessed deficiency tax liabilities against petitioner for the calendar year 2017, in the aggregate amount of ₱284,397,125.83, inclusive of surcharge, interest and compromise penalty, is also **CANCELLED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from pursuing any action against petitioner relative to the above-mentioned void assessments.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 1st Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st Division Acting 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice