REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MONTALBAN METHANE POWER CORPORATION,
Respondent.

CTA EB NO. 2170
(CTA Case No. 9408)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO
REYES-FAJARDO, *and,*
CUI-DAVID, *JJ.*

Promulgated:
MAR 3 0 2022
1:36 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Assailing the Special First Division's Decision dated 14 June 2019[1] (**assailed Decision**) and Resolution dated 18 October 2019[2] (**assailed Resolution**) in CTA Case No. 9408, entitled *Montalban Methane Power Corporation v. Commissioner of Internal Revenue,* petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the instant Petition for Review[3] pursuant to Section 3(b)[4], Rule 8, in relation to

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1 Division Docket, pp. 688-719; Penned by Associate Justice Cielito N. Mindaro-Grulla (Ret.), with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy, concurring.
2 Id., pp. 801-809.
3 Filed on 02 December 2019, *Rollo*, pp. 6-25.
4 **SEC. 3**. *Who may appeal; period to file petition.*

Section 2(a)(1)[5], Rule 4 of the Revised Rules of the Court of Tax Appeals[6] (**RRCTA**).

PARTIES OF THE CASE

Petitioner is the head of the Bureau of Internal Revenue (**BIR**), which is the government agency vested with the power and duty to assess and collect national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines.[7]

Respondent Montalban Methane Power Corporation (**respondent/MMPC**) is a corporation organized and existing under Philippine laws, with office address at the 5th Floor, BMMC Building, 143 Dela Rosa Street corner Adelantado Street, Legaspi Village, Makati City.[8] It is registered with the BIR with Tax Identification Number (**TIN**) 006-604-154-000.[9]

FACTS OF THE CASE

On 21 May 2010, respondent received Letter of Authority (**LOA**) No. LOA-121-2010-00000019 dated 14 May 2010[10], together with the Checklist of Requirements[11], authorizing Revenue Officers (**ROs**) Reynante Martirez (**Martirez**), Resurreccion Ang (**Ang**), Teresa Divina Holgado (**Holgado**) and Criscela Lacsamana (**Lacsamana**) and Group

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

5 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
...

6 A.M. No. 05-11-07-CTA.

7 Admitted Facts, Pre-Trial Order, Division Docket, pp. 375-376.

8 Exhibits "P-1" and "P-2", id., pp. 452-470.

9 Exhibit "P-3", id. p. 471.

10 Exhibit "R-1", BIR Records, p. 34.

11 Exhibit "R-2", id., pp. 32-33.

Supervisor (**GS**) Ma. Luisa Lim (**Lim**), all from the Large Taxpayers (**LT**) Excise Audit Division I[12], to examine respondent's books of accounts and other accounting records for the period 01 January 2009 to 31 December 2009 (**CY 2009**).

On 30 June 2011 and 05 September 2011, respondent filed its Applications for Tax Credits/Refunds (BIR Form No. 1914)[13] for the second (2^{nd}) quarter and jointly for the third (3^{rd}) and fourth (4^{th}) quarters, all for CY 2009, in the amounts of ₱38,352.78 and ₱2,299,886.78, respectively. However, petitioner issued a letter[14] to respondent stating that its application for value-added tax (**VAT**) refund/tax credit cannot be given due course for lack of legal and factual bases.

On 15 December 2011, respondent received from petitioner a Notice of Informal Conference (**NIC**) with Details of Discrepancies dated 14 December 2011.[15]

On 26 December 2011, respondent executed a Waiver of the Defense of Prescription of the Statute of Limitations under the National Internal Revenue Code[16] (**first waiver**), extending the period to assess not later than 31 December 2012.

On 24 October 2012, respondent received a Preliminary Assessment Notice (**PAN**) with Details of Discrepancies[17], assessing respondent for alleged deficiency VAT, final tax (**FT**), withholding tax on compensation (**WTC**), expanded withholding tax (**EWT**), documentary stamp tax (**DST**), and administrative penalties in the aggregate amount of ₱31,883,489.33.

On 19 November 2012, respondent executed another waiver[18] (**second waiver**), extending the period to assess not later than 31 December 2013.

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12 Used interchangeably with Excise LT Audit Division I.
13 Exhibits "P-15" and "P-16", Division Docket, pp. 491-492.
14 Exhibit "P-17", id., p. 493.
15 Exhibit "R-5", BIR Records, pp. 526-528.
16 Exhibit "R-6", id., p. 530.
17 Exhibit "R-8", id., pp. 617-627.
18 Exhibit "R-9", id., p. 628.

On 20 March 2013, respondent received a letter dated 04 March 2013[19] informing it of the reorganization and realignment of its existing office structure, resulting in the regrouping of ROs and reassignment of cases. Thus, ROs Evangeline M. Casipe (**Casipe**), Denver M. Gomez (**Gomez**), Roque G. Doloiras, Jr. (**Doloiras**), and Edalyn Naty T. Dayacap (**Dayacap**), under the direct supervision of GS Lanie C. Luna (**Luna**), were directed to replace RO Lacsamana. The same was further supported by Memorandum of Assignment (**MOA**) No. D-02-13-061 dated 28 February 2013[20] signed by Sarah B. Mopia (**Mopia**), Chief, Excise LT Audit Division I.

On 08 November 2013, respondent executed another waiver[21] (**third waiver**), extending the period to assess not later than 31 December 2014.

On 16 December 2013, respondent filed its Reply to the PAN dated 13 December 2013.[22] Subsequently, respondent submitted a letter dated 27 February 2014[23], requesting for an additional period of sixty (60) days from 15 February 2014, or until 16 April 2014, within which to submit the relevant supporting documents relative to its 13 December 2013 [Reply].

On 20 May 2014, respondent received a Formal Letter of Demand (**FLD**) with Details of Discrepancies together with the Assessment Notices[24] (**ANs**) for the total amount of ₱36,444,280.19. Respondent filed its protest[25] to the FLD on 19 June 2014.

On 22 September 2014, respondent filed a letter dated 12 September 2014[26] agreeing to pay on 15 September 2014 the principal amounts of the assessed tax liabilities totalling ₱9,503,079.97. Respondent also requested that it be allowed to pay the corresponding interest, compromise and administrative penalties imposed on said tax liabilities amounting to ₱10,619,244.48 within one (1) year from 15

19 Exhibit "R-11", id., p. 632.
20 Exhibit "R-10", id., p. 631.
21 Exhibit "R-12", id., p. 637.
22 Exhibits "P-21", "P-21-1" and "P-21-2", Division Docket, p. 524.
23 Exhibit "R-13", BIR Records, pp. 647-648.
24 Exhibit P-19", Division Docket, pp. 505-515; Exhibits "R-15" and "R-16" to "R-16-1" to "R-16-5", BIR Records, pp. 724-734.
25 Exhibits "P-22" to "P-22-3", Division Docket, pp. 525-529.
26 Exhibits "P-23" to "P-23-3", id., pp. 530-531.

September 2014, or until 15 September 2015, payable in twelve (12) equal monthly installments every fifteenth (15th) day of each month. Respondent likewise manifested that the said letter is without prejudice to the protest it previously filed.

On 30 June 2016, respondent received petitioner's Final Decision on Disputed Assessment[27] (**FDDA**), which considered the payments made by respondent, thus, reducing the alleged tax liabilities to ₱3,598,193.07.

PROCEEDINGS BEFORE THE FIRST DIVISION

As a result, respondent filed the prior Petition for Review[28] on 01 August 2016.

In petitioner's Answer[29], the following special and affirmative defenses were raised, to wit: (1) the assessments did not prescribe since valid waivers were executed by and between respondent and petitioner; (2) petitioner observed both procedural and substantive due process in issuing the assessments; (3) the assessments are valid and lawful; and, (4) the assessments have factual and legal bases.

After the trial, the Special First Division[30] promulgated the assailed Decision.[31] The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency VAT and EWT assessments for taxable year 2009 under the Formal Letter of Demand/Final Assessment Notice issued on May 20, 2014 and the Final Decision on Disputed Assessment issued on June 30, 2016 are **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**
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> ...

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27 Exhibit "P-20", id., pp. 516-519.
28 Id., pp. 6-28.
29 Filed on 09 November 2016; id., pp. 132-143.
30 Reorganized pursuant to Administrative Circular No. 02-2018 dated 18 September 2018.
31 Supra at note 1.

In the assailed Decision, the Special First Division found that a new set of ROs replaced the previous RO without issuing a new LOA to such a new set of ROs. Considering that the assessments resulted from an examination conducted by ROs who were not authorized pursuant to an LOA, the assessments were considered void.

Aggrieved, petitioner filed a Motion for Reconsideration[32] (**MR**) on 04 July 2019, to which respondent filed its Opposition[33] on 27 August 2019.

Subsequently, the Special First Division promulgated the assailed Resolution[34] denying petitioner's MR. The dispositive portion of which reads:

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> **WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** is hereby **DENIED** for lack of merit and the assailed Decision is hereby **AFFIRMED**.
>
> **SO ORDERED.**
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> ...

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied, petitioner filed the instant Petition for Review[35] on 02 December 2019, to which respondent filed its Comment[36] on 10 February 2020.

On 26 February 2020, the Court *En Banc* directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for conciliation proceedings.[37] Unfortunately, the parties decided not to mediate[38]; hence, the case was submitted for decision on 19 May 2021.[39]

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[32] Division Docket, pp. 720-741.
[33] Id., pp. 762-787.
[34] Supra at note 2.
[35] Supra at note 3.
[36] *Rollo*, pp. 82-98.
[37] See Resolution dated 26 February 2020, id., pp. 101-102.
[38] PMC-CTA Form 5 – Mediator's Report, id., p. 111.
[39] See Resolution dated 19 May 2021, id., pp. 119-120.

ISSUES

Petitioner raises the following grounds in support of the instant petition:

I.

THE HONORABLE COURT'S SPECIAL FIRST DIVISION ERRED IN RULING THAT FAILURE OF THE REASSIGNED REVENUE OFFICER (RO) TO SECURE A NEW LETTER OF AUTHORITY (LOA), AS PROVIDED IN REVENUE MEMORANDUM ORDER (RMO) NO. 43-90, RESULTS IN THE LACK OF AUTHORITY OF THE REVENUE OFFICERS (ROs) OR RENDERS THE ASSESSMENT INVALID;

II.

THE HONORABLE COURT'S SPECIAL FIRST DIVISION ERRED IN RULING THAT A NEW LETTER OF AUTHORITY (LOA) MUST BE ISSUED TO THE REASSIGNED REVENUE OFFICER (RO); AND,

III.

THE HONORABLE COURT'S SPECIAL FIRST DIVISION ERRED IN RULING THAT THE MEMORANDUM OF ASSIGNMENT (MOA) WAS NOT SUFFICIENT TO GRANT THE REVENUE OFFICER (RO) AUTHORITY TO CONDUCT THE AUDIT.

Petitioner contends that Revenue Memorandum Order (**RMO**) No. 43-90[40] is not an implementing rule of any statute. According to petitioner, it is error for this Court to assume that the same is the implementing rule for Section 13[41] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, because RMO No. 43-90 was promulgated on 20 September 1990 or seven (7) years prior to the enactment of the NIRC of 1997, as amended. Neither can it be said that RMO No. 43-90 is the implementing rule of the equivalent provision in the NIRC of 1977[42] as the LOA was not yet in the statute books back then.

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

41 **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.

42 Presidential Decree No. 1158 entitled "A Decree to Consolidate and Codify All the Internal Revenue Laws of the Philippines".

Petitioner adds that, prior to the NIRC of 1997, as amended, LOA was merely an administrative tool which was devised to account for audit activities under audit program and not a statutory requirement. As such, petitioner submits that RMO No. 43-90 was overtaken by the NIRC of 1997, as amended, and its present applicability is now suspect. Moreover, RMO No. 43-90 is merely a statement of policies, as there are no penal provisions or punitive clauses contained therein.

Petitioner thus insists that it is a clear fallacy for the Court to hold that a 1990 internal work procedure implemented a law that will be promulgated seven (7) years in the future.

Petitioner adds that this Court has already noticed the said fallacy in the case of *Orient Overseas Container Line Ltd., represented by OOCL (Philippines), Inc. v. Commissioner of Internal Revenue*[43] (**OOCLL**), where the Second Division held that "[a] duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision."

In fact, in the more recent RMO No. 8-2006[44], it is stated that "[i]n case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS."

Petitioner further avers that it is not a statutory requirement to indicate the names of the ROs in the LOA as it is just an internal procedure which has been incorporated in the form used therefor. Petitioner thus submits that the law merely requires that the examination of the RO be done "pursuant to" an LOA but it is not necessary to specifically identify the RO in the LOA itself.

[43] CTA Case No. 9179, 02 August 2018.

[44] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

In this case, it also apparent that the MOA issued specifically states that the assignment of ROs Casipe, Gomez, Doloiras and Dayacap is "pursuant to LOA No. LOA-121-2010-00000019 dated May 14 2010" which is fully compliant with the law.

Furthermore, there would be no substantial difference if instead of two (2) extra LOAs, a memorandum is issued instead to notify the taxpayer of such change in the ROs. With that, and as in this case, petitioner maintains that respondent was not deprived of its property without due process of law and its rights were not prejudiced.

For petitioner, RMO No. 8-2006 even provides that "[o]nly one (1) LA shall be issued to the same taxpayer, for the same tax type and period, except where an LA was issued for a specific tax type only and subsequently, another LA was issued to the same taxpayer by the same or another office covering the investigation of all internal revenue taxes (AIRT) for the same taxable period."

It was also an error for the Special First Division to hold that even if the MOA derives its validity from the LOA, it was already ineffective at that time was for lack of revalidation, in accordance with the General Audit Procedures and Documentation (**GADP**). According to petitioner, the GADP does not even provide for the LOA's invalidity if not duly revalidated. It only provides that if the RO cannot finish the report within one hundred twenty (120) days, the said RO must submit a progress report and have the LOA revalidated. Accordingly, revalidation is merely prescribed, but without fatal consequence; thus, the so-called invalidity is merely this Court's own concoction.

Moreover, revalidation was already scrapped in RMO No. 44-2010[45], which states that "[b]eginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the LA even if the prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions."

[45] Electronic Issuance of Letters of Authority.

Lastly, in the case of *Bisazza Philippines, Inc. v. Commissioner of Internal Revenue*[46] (**Bisazza**), even the Second Division of this Court held that "... failure to revalidate the LOA within the required period does not nullify the LOA but merely subjects the revenue officer to disciplinary action."

On the other hand, respondent contends that RMO No. 43-90 is a valid procedural rule of the BIR. It is in the nature of new or additional legal provisions which have the force and effect of law as an administrative issuance. As such, petitioner and the ROs must strictly comply with the BIR's own rules.

It is likewise immaterial that RMO No. 43-90 was issued before the enactment of the NIRC of 1997, as amended, as long as the same is not inconsistent with the provisions of the Constitution or the laws.

Respondent also counters that the Court *En Banc*, in fact, affirmed the *OOCLL* case that petitioner cited where it held that absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned *per* RMO No. 43-90, the reassigned RO has no authority to conduct the investigation or audit.

According to respondent, petitioner's reliance on the case of *Bisazza* is likewise misplaced as the Court *En Banc*, in the appealed case therefrom[47], subsequently held that the scope of the issuance of the MOA under RMO No. 8-2006 should be taken to pertain only to the "disposition of dockets" of a reassigned or transferred case to another RO and, therefore, not tantamount to an LOA. Additionally, petitioner's interpretation runs counter to Section 6(A)[48] of the NIRC of 1997, as amended, and the judicial pronouncement of the Supreme

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46 CTA Case No. 9372, 07 March 2018.

47 *Commissioner of Internal Revenue v. Bisazza Philippines, Inc.*, CTA EB No. 1870 (CTA Case No. 9372), 02 September 2019.

48 **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.
...

Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[49] (**Medicard**).

It is also misleading for petitioner to claim that only one (1) LOA shall be issued because RMO No. 8-2006 does not totally prohibit petitioner from issuing a new LOA inasmuch as when an LOA is issued twice, petitioner will have to determine which LOA shall prevail and which will be cancelled.

Petitioner also errs in arguing that the RO need not be identified in the LOA, citing the case of *Medicard*, where it was held that an LOA is the authority given to the appropriate RO assigned to perform assessment functions and it empowers the said RO to examine the books of account and other accounting records of a taxpayer.

Moreover, assuming for the sake of argument that the MOA issued is sufficient, the subject LOA became ineffective for lack of revalidation. Citing *GS MTE Grains Corporation v. Commissioner of Internal Revenue*[50], this Court's First Division ruled that "[b]y continuing with the audit beyond the prescribed 120-day period, without submission of a Progress Report and without the surrender of the LOA for revalidation, RO Sophia D. Dipatuan had therefore acted without authority."

Lastly, also assuming for the sake of argument that a mere MOA suffices, the same was not issued by an authorized person as it was issued only by Mopia, the Chief of the Excise LT Audit Division I, who is not among those authorized to issue LOAs.

<u>RULING OF THE COURT *EN BANC*</u>

After a careful consideration of the arguments raised by the parties vis-à-vis the pertinent laws, rules and jurisprudence, the Court *En Banc* finds no merit in the instant petition.

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49 G.R. No. 222743, 05 April 2017.
50 CTA Case No. 8837, 19 March 2018.

Here, petitioner argues in sum that: (1) RMO No. 43-90 cannot be used as a basis for requiring the issuance of a new LOA as same cannot be an implementing rule of a statute that would be enacted seven (7) years after its issuance; (2) there is no need to specifically indicate the names of the ROs as there is no requirement to that effect; and, (3) issuance of an MOA is sufficient to confer authority upon the substitute ROs.

We do not agree. The above arguments are the very same arguments passed upon and rejected by the Supreme Court in the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[51], to wit:

> ...
> This case is an occasion for the Court to rule on a disturbing trend of tax audits or investigations conducted by revenue officers who are not specifically named or authorized in the LOA, under the pretext that the original revenue officer authorized to conduct the audit or investigation has been reassigned or transferred to another case or place of assignment, or has retired, resigned or otherwise removed from handling the audit or investigation.
>
> This practice typically occurs as follows: (i) a valid LOA is issued to an authorized revenue officer; (ii) the revenue officer named in the LOA is reassigned or transferred to another office, case or place of assignment, or retires, resigns, or is otherwise removed from handling the case covered by the LOA; (iii) the revenue district officer or a subordinate official issues a memorandum of assignment, referral memorandum, or such equivalent document to a new revenue officer for the continuation of the audit or investigation; and (iv) the new revenue officer continues the audit or investigation, supposedly under the authority of the previously issued LOA.
> ...
>
> The Court hereby puts an end to this practice.
> ...
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> Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. 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. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. The

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[51] G.R. No. 242670, 10 May 2021; Citations omitted.

revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.

...

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, "any" revenue officer may then act under such validly issued LOA.

...

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.
...

The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the law it supposedly implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.

The petitioner is mistaken. Section 291 of the NIRC states:

> **SECTION 291.** In General. - All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.

Section D(5) of RMO No. 43-90 dated September 20, 1990 is not contrary to or inconsistent with the NIRC. In fact, the NIRC codifies the LOA requirement in RMO No. 43-90. While RMO No. 43-90 was issued under the old tax code, nothing in Section D(5) RMO No. 43-90 is repugnant to Sections 6(A), 10 and 13 of the NIRC. Hence, pursuant to Section 291 of the NIRC, RMO No. 43-90 remains effective and applicable.

> ...
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> 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.
>
> ...

In this case, RO Casipe continued the audit of respondent by virtue solely of an MOA[52] without the required LOA. In addition, the said MOA was issued only by the Chief of Excise LT Audit Division I, an official who is not among those authorized to issue LOAs pursuant to existing laws and regulations; particularly, Section 13[53] in relation Section 10(c)[54] of the NIRC of 1997, as amended, Item D(4)[55] of RMO No. 43-90[56] and Item II(2)[57] of RMO No. 29-2007.[58]

From the foregoing, We do not find that the Special First Division erred in declaring that the assessment against respondent is void for lack of LOA.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 02 December 2019 is hereby **DENIED** for lack of merit. Accordingly,

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52 See Question & Answer (Q&A) Nos. 8-10, Exhibit "R-21", Division Docket, p. 311.

53 Supra at note 41.

54 **Sec. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...

(c) Issue Letters of Authority for the examination of taxpayers within the region[.]

...

55 D. Preparation and issuance of L/As.

...

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.

56 Supra at note 40.

57 II. AUDIT POLICIES AND GUIDELINES.

...

2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/ Head Revenue Executive Assistants.

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

the Decision dated 14 June 2019 and Resolution dated 18 October 2019, respectively, of the Special First Division in CTA Case No. 9408, entitled *Montalban Methane Power Corporation v. Commissioner of Internal Revenue,* are hereby **AFFIRMED.**

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes assessed against petitioner as provided in the Final Decision on Disputed Assessment received on 30 June 2016 in the total amounts of ₱527,782.24, ₱58,658.40, ₱69,814.39 and ₱2,941,938.04, representing deficiency value-added tax, withholding tax on compensation, documentary stamp tax and expanded withholding tax, respectively, all for the calendar year 2009.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(with Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2170** (CTA Case No. 9408)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
MONTALBAN METHANE POWER CORPORATION, Respondent.	Promulgated: MAR 3 0 2022 1:36 p.m.

x- -x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue ("Petitioner") for lack of authority of the examining Revenue Officers ("ROs"), but for the reasons to be discussed below.

In my humble opinion, a new letter of authority ("LOA") is not needed in case of re-assignment as long as the authority given to the new RO is signed by the Commissioner of Internal Revenue ("CIR") or his duly authorized representative. This is permissible under the laws of agency under the Civil Code.

In the case at bar however, the Memorandum of Authority (MOA) was issued not by the duly authorized representative of Petitioner, the Assistant Commissioner or Head Revenue Executive Assistant of the Large Taxpayers

Division[1], but by Ms. Sarah B. Mopia, Chief of the Excise Large Taxpayers Audit Division I. Hence, the ROs who audited the books of account of Respondent are without any valid authority to do so.

I am also of the firm belief that the ruling of the Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[2] ("*Mcdonald's*") should not be haphazardly applied in cases regarding the validity or invalidity of an RO's authority. A perusal of the case discloses that *Mcdonald's* invalidated the practice of reassigning ROs through a Revalidation Notice or Memorandum of Reassignment or any equivalent letter, only because it was presumed that these documents are issued by a subordinate official and not by the CIR or his duly authorized representative, to wit:

> "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 <u>not issued by the CIR or his duly authorized representative</u> for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. <u>It is issued by the revenue district officer or other subordinate official</u> for the purpose of reassignment and transfer of cases of revenue officers.**
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.
>
> The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do

[1] The position equivalent to a Revenue Regional Director for the Large Taxpayers Division, who is authorized to issue the LOA, is identified in Revenue Memorandum Order No. 29-07 (September 26, 2007) as the Assistant Commissioner or Head Revenue Executive Assistant.

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

> 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.**[3]

The Supreme Court in the said case did not consider instances where the Revalidation Notice or Memorandum of Reassignment or any equivalent letter is issued by the CIR himself or his duly authorized representative. Thus, it seems that the assumptions from which *Mcdonald's* derived the conclusion that there should be issuance of a new LOA if a RO is reassigned or transferred, is incomplete and as such should not be applied.

From all the foregoing, I vote to **AFFIRM** the Decision dated June 14, 2019 and Resolution dated October 18, 2019 of the court *a quo*.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[3] *Emphasis and underscoring supplied.*