REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

EXPEDITORS PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 9257**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
HON. KIM S. JACINTO-HENARES – IN HER CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 29 2023; 3:10PM

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DECISION

MANAHAN, *J.:*

The *Petition for Review* prays that the Court reverse and set aside the *Final Decision on Disputed Assessment* (FDDA) rendered by respondent Commissioner of Internal Revenue, for complete and utter lack of merit, and, in lieu thereof, render judgment ordering the cancellation and withdrawal of deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding taxes (EWT), final withholding taxes (FWT), final withholding value-added tax (FWVAT), and documentary stamp tax (DST) assessments, for taxable year ended December 31, 2009, in the total amount of ₱435,347,248.15, inclusive of interest and compromise penalties.[1]

THE FACTS

Petitioner Expeditors Philippines, Inc. is a domestic corporation duly organized and validly existing under the laws of the Philippines, with principal office at the Pascor Bldg., 111

[1] Summary of the Case, Pre-Trial Order dated December 7, 2016, Docket – Vol. 1, p. 469.

Pascor Drive, Sto. Niño, Parañaque City.[2] It is engaged primarily in the business of logistics and freight forwarding.[3]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including, among others, the power to cancel disputed assessments.[4]

Petitioner received from the Bureau of Internal Revenue (BIR) the *Letter of Authority* (LOA) No. LOA-122-2010-00000107 dated September 20, 2010,[5] authorizing Revenue Officers Ricardo Calma and Ma. Teresa Espino, and Group Supervisor Monica Zamora, to conduct an examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2009 to December 31, 2009.[6]

On June 14, 2012, petitioner executed a *Waiver of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code*, which respondent accepted through Mr. Alfredo V. Misajon, OIC, Assistant Commissioner Large Taxpayer Service on June 20, 2012.[7]

Thereafter, on March 25, 2013, petitioner received the letter dated January 15, 2013 (notice of informal conference) with *Details of Discrepancy.*[8]

Subsequently, petitioner executed two (2) more *Waivers of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code,*[9] as follows:

Date executed	***Date accepted by respondent***	***Accepted through:***
April 12, 2013	April 19, 2013	Mr. Alfredo V. Misajon, OIC, Assistant Commissioner Large Taxpayer Service

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[2] Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p.461.
[3] Par. 2, Stipulated Facts, JSFI, Docket – Vol. 1, p. 461.
[4] Par. 3, Stipulated Facts, JSFI, Docket – Vol. 1, p. 461.
[5] Annex A, *Petition for Review,* Docket – Vol. 1, p. 29.
[6] Par. 4, Stipulated Facts, JSFI, Docket – Vol. 1, pp. 461 to 462.
[7] Exhibits "P-9" and "P-9-1", Docket – Vol. 3, p. 990; Exhibit "R-2", BIR Records, p. 606.
[8] Exhibits "R-3" and "R-3-A", BIR Records, pp. 708 to 715.
[9] Exhibits "P-10", "P-10-1", "P-11", and "P-11-1", Docket – Vol. 3, p. 992 to 995; Exhibits "R-4" and "R-5", BIR Records, pp. 724 to 725, and 727 to 728, respectively.

November 20, 2013	November 27, 2013	Mr. Alfredo V. Misajon, OIC, Assistant Commissioner Large Taxpayer Service

On April 21, 2014, petitioner received from respondent the *Preliminary Assessment Notice* (PAN) dated April 14, 2014, with *Details of Discrepancies*,[10] for deficiency income tax, improperly accumulated earnings tax (IAET), WTC, EWT, VAT, FWT, FWVAT and DST, allegedly due for taxable year 2009.

Subsequently, respondent issued the *Formal Letter of Demand* (FLD) with *Details of Discrepancies* and *Audit Results/Assessment Notices*, all dated May 30, 2014, which petitioner received on June 2, 2014,[11] assessing the latter for deficiency income tax, IAET, WTC, EWT, VAT, FWT, FWVAT and DST in the amount of ₱288,508,185.13, ₱23,717,518.08, ₱2,708,071.51, ₱21,137,249.02, ₱28,928,391.64, ₱25,173,653.19, ₱9,169,964.80, and ₱109,974.59, respectively, inclusive of increments, for taxable year 2009.

On July 1, 2014, petitioner, through counsel, filed its protest letter.[12] Petitioner also filed its position paper (further explaining its protest) on September 1, 2014.[13]

Respondent then issued the assailed FDDA dated January 12, 2016, which was received by petitioner on January 15, 2016,[14] denying the protest of petitioner, and requesting the latter to pay for deficiency income tax, WTC, EWT, VAT, FWT, FWVAT, and DST, in the amounts of ₱333,439,317.00, ₱3,164,848.23, ₱24,685,526.16, ₱33,823,806.27, ₱29,400,317.59, ₱10,706,933.67, and ₱126,499.23, respectively.

Petitioner filed the present *Petition for Review (Re: Final Disputed Decision on Disputed Assessment)* on February 12,

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[10] Exhibits "P-2" and "P-2-1", Docket – Vol. 3, pp. 955 to 963; Exhibits "R-6" and "R-6-A", BIR Records, pp. 779 to 787.
[11] Exhibits "P-3", "P-3-1", "P-4", "P-4-1", "P-4-2", "P-4-3", "P-4-4", "P-4-5", "P-4-6", and "P-4-7", Docket – Vol. 3, pp. 964 to 980; Exhibits "R-8" and "R-8-A, BIR Records, pp. 809 to 825.
[12] Exhibits "P-5" and "R-10", BIR Records, pp. 829 to 832.
[13] Exhibit "P-6", Docket – Vol. 3, pp. 981 to 989.
[14] Exhibits "P-7", "R-12", "R-12-A", "P-8", "P-8", "P-8-1", "P-8-2", "P-8-3", "P-8-4", "P-8-5", and "P-8-6", BIR Records, pp. 940 to 954.

2016.[15] This case was initially raffled to this Court's Third Division.

On April 28, 2016, respondent posted his *Answer*.[16] Petitioner filed its *Reply* on May 10, 2016.[17] Thereafter, respondent transmitted to the Court the *BIR Records* on the assessment case of petitioner, consisting of 967 pages.[18]

The Pre-Trial Conference was initially set on August 9, 2016.[19]

On June 24, 2016, respondent posted a *Motion to Reset Pre-Trial Conference*,[20] which the Court granted in its Resolution dated July 19, 2016.[21] Thus, the Pre-Trial Conference was reset to and held on October 18, 2016.[22] Prior thereto, *Respondent's Pre-Trial Brief* was filed on October 11, 2016,[23] while *Pre-Trial Brief (for the Petitioner)* was filed on October 13, 2016.[24]

Subsequently, on November 7, 2016, the parties submitted their *Joint Stipulation of Facts and Issues*.[25] The Court then issued the Pre-Trial Order dated December 7, 2016.[26]

Trial ensued.

During trial, the parties respectively presented their documentary and testimonial evidence.

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[15] Docket – Vol. 1, pp. 10 to 28.
[16] Docket – Vol. 1, pp. 204 to 207.
[17] Docket – Vol. 1, pp. 218 to 221.
[18] *Compliance*, Docket – Vol. 1, p. 227.
[19] Notice of Pre-Trial Conference dated April 29, 2016, Docket – Vol. 1, pp. 212 to 213.
[20] Docket – Vol. 1, pp. 234 to 236.
[21] Docket – Vol. 1, p. 239.
[22] *Id.*; Minutes of the hearing held on, and Order dated, October 18, 2016, Docket – Vol. 1, pp. 454, and 456 to 457, respectively.
[23] Docket – Vol. 1, pp. 240 to 242.
[24] Docket – Vol. 1, pp. 243 to 250.
[25] Docket – Vol. 1, pp. 461 to 465.
[26] Docket – Vol. 1, pp. 469 to 475.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Ria P. Abanto,[27] the Court-commissioned Independent Certified Public Accountant (ICPA);[28] (2) Mr. Rommel Ramirez,[29] petitioner's Information Services Manager; and (3) Ms. Aileen Dela Cruz,[30] Accounting Manager of petitioner.

The ICPA *Report* and *Consolidated Report* were submitted on April 20, 2017 and May 3, 2017, respectively.[31]

Petitioner's *Formal Offer of Exhibits* was filed on May 17, 2018.[32] Respondent posted his *Comment (To Petitioner's Formal Offer of Evidence)* on May 22, 2018.[33]

In the Order dated September 20, 2018,[34] the present case was transferred to this Court's First Division.

In the Resolution dated February 21, 2019,[35] the Court admitted petitioner's offered exhibits, *except* for the following:

1. Exhibits "P-46.2.34", "P-55.2.237" to "P-55.2.239", "P-55.2.475" to "P-55.2.479", "P-55.2.826", "P-55.2.1327", "P-55.2.1947" to "P-55.2.1949", "P-55.2.2074", "P-55.2.2086" to "P-55.2.2144", "P-55.2.2477" to "P-55.2.2478", "P-55.2.2492", "P-55.2.3440" to "P-55.2.3449", "P-55.2.4160" to "P-55.2.4169", "P-55.2.4333", "P-55.2.5194", "P-56.2.228", "P-56.2.681" to "P-56.2.689", "P-56.2.897" to "P-56.2.922", "P-56.2.990" to "P-56.2.998", "P-56.2.1122", "P-57.2.211", "P-57.2.442" to "P-57.2.443", "P-57.2.646", "P-57.2.1100" to "P-57.2.1999", "P-57.2.2120" to "P-57.2.2219", "P-57.2.2333", "P-57.2.2362" to "P-57.2.2363", "P-58.2.546", "P-58.2.571" to "P-58.2.579", "P-64.3.755", "P-

[27] Exhibit "P-71", Docket – Vol. 2, pp. 769 to 789; Minutes of the hearing held on, and Order dated, July 3, 2017, Docket – Vol. 2, pp. 852 to 854.
[28] *Oath of Commission* dated February 6, 2017, Docket – Vol. 2, p. 500-A; Minutes of the hearing held on, and Order dated, February 6, 2017, Docket – Vol. 1, p. 500, and Docket – Vol. 2, p. 501, respectively.
[29] Exhibit "P-39", Docket – Vol. 2, pp. 524 to 528; Minutes of the hearing held on, and Order dated, April 3, 2017, Docket – Vol. 2, p. 704 to 705.
[30] Exhibit "P-37", "P-38", and "P-72", Docket – Vol. 2, pp. 531 to 561, 699 to 703, and 875 to 880, respectively; Minutes of the hearing held on, and Order dated, April 3, 2017, Docket – Vol. 2, p. 704 to 705; Minutes of the hearing held on, and Order dated, February 5, 2018, Docket – Vol. 2, p. 885 to 886.
[31] Exhibits "P-41" and "P-41-2", Docket – Vol. 2, pp. 711 to 735, and 738 to 763, respectively.
[32] Docket – Vol. 3, pp. 928 to 954.
[33] Docket – Vol. 3, pp. 1083 to 1085.
[34] Docket – Vol. 3, p. 1103.
[35] Docket – Vol. 3, pp. 1116 to 1120.

64.3.1111", and "P-64.3.1176", for not being found in the records of the case; and

2. Exhibits "P-73" to "P-82.3", for failure to present the originals for comparison, and Exhibits "P-79.3628", are not in the records.

Petitioner then filed its *Urgent Omnibus Motion 1. To Order the ICPA to Submit Documentary Exhibits; 2. To Allow the Remarking of Documents and Set Commissioner's Hearing for the Purpose; 3. To Approve Petitioner's Tender of excluded Evidence* on April 1, 2019.[36] However, respondent failed to file his comment thereto.[37]

In its Resolution dated January 27, 2020,[38] the Court: (1) denied the *Motion To Order the ICPA to Submit Documentary Exhibits*; (2) set two (2) commissioner's hearings for the purpose of correcting the markings in exhibits; and (3) noted petitioner's tender of excluded evidence, namely, Exhibits "P-73" to "P-82.3".

For his part, respondent offered the testimony of Ms. Asela E. Sese, Group Supervisor of the BIR.[39]

The Court received respondent's *Formal Offer of Evidence* on February 9, 2021.[40] Petitioner, however, failed to file its comment thereto.[41] In the Resolution dated March 18, 2022,[42] the Court admitted all of respondent's offered exhibits.

On May 4, 2022, petitioner filed a *Motion for Extension to File Memorandum*.[43] In the Resolution dated May 30, 2022,[44] the said *Motion for Extension* was expunged from the records, for being a prohibited motion.

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[36] Docket – Vol. 2, pp. 1126 to 1133.
[37] Records Verification dated May 31, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1140.
[38] Docket – Vol. 3, pp. 1144 to 1147.
[39] Exhibit "R-13", Docket – Vol. 3, pp. 1172 to 1183; Order dated November 26, 2020, Docket – Vol. 3, pp. 1237 to 1238.
[40] Docket – Vol. 3, pp. 1251 to 1256.
[41] Records Verification dated December 3, 2021 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1275.
[42] Docket – Vol. 3, pp. 1281 to 1282.
[43] Docket – Vol. 3, pp. 1283 to 1284.
[44] Docket – Vol. 3, p. 1288.

Respondent likewise failed to file his memorandum.[45]

The present case was submitted for decision on May 30, 2022, *sans* the parties' memoranda.[46]

THE ISSUE

The parties stipulated the following issue for this Court's consideration, *viz.*:

> "Whether Petitioner can be held liable for the deficiency income tax in the total amount of Three Hundred Thirty Three Million, Four Hundred Thirty Nine Thousand Three Hundred Seventeen Pesos (Php333,439,317); deficiency Value-added tax in the total amount of Thirty Three Million Eight Hundred Twenty Three Thousand Eight Hundred Six and Twenty Seven Centavos (Php33,823,806.27); deficiency withholding tax on compensation in the total amount of Three Million One Hundred Sixty Four Thousand Eight Hundred Forty Eight Pesos and Twenty Three Centavos (Php3,164,848.23); deficiency expanded withholding tax in the total amount of Twenty Four Million Six Hundred Eighty Five Thousand Five Hundred Twenty Six pesos and Sixteen centavos (Php24,685,526.16); deficiency final withholding tax in the total amount of Twenty-Nine Million Four Hundred Thousand Three Hundred Seventeen Pesos and Fifty Nine centavos (Php29,400,317.59); deficiency final withholding VAT in the total amount of Ten Million Seven Hundred Six Thousand Nine Hundred Thirty Three Pesos and Sixty Seven Centavos (Php10,706,933.67) and deficiency documentary stamp tax in the amount of One Hundred Twenty-Six Thousand Four Hundred Ninety Nine Pesos and Twenty Three Centavos (Php126,499.23) for taxable year 2009."[47]

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[45] Records Verification dated May 12, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1286.
[46] Resolution dated May 30, 2022, Docket – Vol. 3, p. 1288.
[47] Stipulated Issue, JSFI, Docket – Vol. 1, p. 462.

Notwithstanding the foregoing issue raised by the parties herein, this Court raises the following issue, which shall be primarily resolved, to wit:

> "Whether petitioner was denied due process in the issuance of the subject tax assessments."

Petitioner's arguments:

Petitioner argues that respondent's right to assess the 1st quarter VAT, withholding taxes (expanded, compensation and final), and withholding VAT for January to June 2009, has already prescribed; and that there exist legal and factual defenses to the items raised in the details of the discrepancies warranting cancelation and withdrawal of the deficiency.

Respondent's counter-arguments:

Respondent avers that the assessment for the 1st quarter VAT has not yet prescribed for having filed false VAT returns due to substantial underdeclaration of sales; that the deficiency assessments for withholding taxes (expanded, compensation and final) for the months of January to May of taxable year 2009 have not yet prescribed, even if the waiver of the statute of limitations was issued beyond the three-year prescriptive period which is on June 14, 2012, for having filed false withholding tax returns, considering that certain income payments were not subjected to corresponding withholding tax; that in this case, the applicable period of limitation within which to assess petitioner is ten (10) years; that assessments are *prima facie* presumed correct and made in good faith; that the taxpayer has the duty of proving otherwise; that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed; and that petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance.

THE COURT'S RULING

The present *Petition for Review* is granted.

Legal bases to resolve an issue not raised by the parties.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals reads as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**." *(Emphasis added)*

Based on the foregoing provision, this Court is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[48] Such authority of this Court is confirmed and recognized by the Supreme Court in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[49] *viz:*

> "On whether the CTA can resolve an issue which was not raised by the parties, **we rule in the affirmative**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but **may also rule upon related issues necessary to achieve an orderly disposition of the case**. The text of the provision reads:
>
> **SECTION 1. *Rendition of judgment.* – xxx**
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**

[48] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[49] G.R. No. 183408, July 12, 2017.

> **The above section is clearly worded.** xxx." *(Emphases added)*

The Supreme Court has applied the foregoing provision in *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*,[50] wherein it held the following:

> "As the CTA *En Banc* held, **the CTA Division was justified in ruling on the issue that respondent was denied due process <u>even though it was not expressly raised by respondent in its petition for review</u>**. xxx." *(Emphasis and underscoring added)*

Furthermore, in *Comilang vs. Burcena, et al.*,[51] the Supreme Court held:

> "Once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law. Indeed, the Rules of Court recognize the broad discretionary power of an appellate court to consider errors not assigned.
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> xxx xxx xxx
>
> **Thus, an appellate court is clothed with ample opportunity to review rulings even if they are not assigned as errors in the appeal in these instances**: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; **(c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice**; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; **(e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent**."[52] *(Emphases added)*

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[50] G.R. No. 222476, May 5, 2021.
[51] G.R. No. 146853, February 13, 2006.
[52] Cited also in *M/V "Don Martin Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, et al. vs. Hon. Secretary of Finance, et al.* (G.R. No. 160206, July 15, 2015), wherein the Supreme Court recognizes this Court's jurisdiction to determine an issue not raised by the parties.

On the basis of the foregoing jurisprudential pronouncements, it is clear that this Court, as an appellate court, is clothed with ample opportunity to review rulings even if they are not assigned as errors in the appeal in certain instances. To be sure, although the issue of whether petitioner was denied due process in the issuance of the subject tax assessments was not specifically raised or assigned as an error in the present case, **the consideration thereof is necessary in arriving at a just decision and complete resolution of the case**.

Furthermore, it must be emphasized that the issue on the violation of petitioner's right to due process is inextricably linked to the validity of the assessment. It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment. This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit. Moreover, a resolution on the apparent violation of petitioner's right to due process for an orderly and comprehensive disposition of this case.[53]

Thus, We see no legal obstacle to resolve the above-stated issue raised by this Court.

The revenue officer and group supervisor who continued the audit of petitioner were not authorized by a valid LOA

The Revenue Officer (RO) assigned to examine a taxpayer's books must be authorized by an LOA. Section 6(A) of the 1997 National Internal Revenue Code (NIRC), as amended, states:

> Sec. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination

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[53] *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022.

> 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.

Section 13, of the same 1997 NIRC, as amended, also states:

> 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.

Based on the foregoing, a **revenue officer needs to be authorized through a validly issued LOA before conducting an examination of a taxpayer's accounts**. In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[54] the Supreme Court also explained the necessity for a new LOA for the substitution or replacement of ROs to continue the audit or investigation of a taxpayer's books of accounts. The Supreme Court stated:

> **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 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.**
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> xxx xxx xxx

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

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.

xxx xxx xxx

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

xxx xxx xxx

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. xxx **The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process**.

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. xxx **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 a valid assessment**.

xxx xxx xxx

The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers, pursuant to Sections 6, 10(c) and 13 of the NIRC. xxx

xxx xxx xxx

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

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

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

> supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives. (*emphasis added*)

We now review the authorities of the ROs who examined petitioner's books of accounts and other accounting records.

To recall, petitioner received from the Bureau of Internal Revenue (BIR) the *Letter of Authority* (LOA) No. LOA-122-2010-00000107 dated September 20, 2010,[55] authorizing ROs Ricardo Calma and Ma. Teresa Espino, and GS Monica Zamora, of the LT District Office-Makati, to conduct an examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2009 to December 31, 2009.[56] The said LOA was signed by Zenaida G. Garcia, Assistant Commissioner, Large Taxpayers Service Excise.

Respondent presented in evidence a Memorandum Report,[57] dated April 15, 2014, to prove the factual and legal bases of the assessment. Said Memorandum Report contained the recommendation for the issuance of the PAN, submitted by ROs Jesus DS. Reyes, Ma. Theresa V. Carillo, and Daisy C. Dajao. It also stated:

> This docket previously referred to Revenue Officer Ricardo B. Calma was reassigned to the herein Revenue Officer pursuant to Memorandum of Assignment No. 122-REA-13-00290 dated March 7, 2013.

Based on the foregoing, it is apparent that the investigation of petitioner's books of accounts was reassigned pursuant to a mere Memorandum of Assignment (MOA).[58] However, there is nothing in the records which show that a new LOA was issued authorizing ROs Jesus DS. Reyes, Ma. Theresa V. Carillo, and Daisy C. Dajao, to continue the audit and investigation of petitioner's books of accounts.

Pursuant to the *McDonald's case*, quoted above, the MOA No. 122-REA-13-00290, dated March 7, 2013, **did not clothe**

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[55] Annex A, *Petition for Review,* Docket – Vol. 1, p. 29.
[56] Par. 4, Stipulated Facts, JSFI, Docket – Vol. 1, pp. 461 to 462.
[57] Exhibit "R-1", BIR Records, pp. 751-764.
[58] See BIR Records, p. 700.

ROs Jesus DS. Reyes, Ma. Theresa V. Carillo, and Daisy C. Dajao, with the requisite authority to continue the examination of petitioner's books of accounts and other accounting records for taxable year 2009. If the ROs who conducted the examination of the taxpayer are not duly authorized to do so, the assessment is inescapably void. A void assessment bears no fruit.

WHEREFORE, the Petition for Review is **GRANTED**. The FLD with Details of Discrepancies and Audit Results/ Assessment Notices, all dated May 30, 2014, for deficiency income tax, IAET, WTC, EWT, VAT, FWT, FWVAT and DST; and, the FDDA dated January 12, 2016, all for taxable year 2009, are **CANCELLED** and **SET ASIDE**.

The Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the foregoing assessments. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
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

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