

Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, **CTA EB NO. 2375**
(CTA Case No. 9624)

Petitioner,

Present:

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

-versus-

AUTOSTRADA MOTORE, INC.,
Respondent.

Promulgated:

JUL 21 2022

3:40 pm

X ----- X

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a **Petition for Review**, filed by petitioner Commissioner of Internal Revenue (“CIR”) via registered mail on 27 November 2020,¹ with respondent Autostrada Motore, Inc.’s **Comment/Opposition [To Petition for Review dated November 27, 2020]**, filed on 8 February 2021.² Petitioner prays for the reversal and setting aside of the Decision, dated 10 July 2020 (“Assailed Decision”), and Resolution, dated 15 October 2020 (“Assailed Resolution”), and for the promulgation of a new Decision ordering respondent to pay the assessed deficiency excise tax, value added tax (“VAT”), and administrative penalties in the aggregate amount of ₱341,366,828.70 plus 50% surcharge and 20% deficiency and delinquency interest for late payment until fully paid.³

¹ *EB Records*, pp. 7-24.

² *Id.*, pp. 60-75.

³ *Id.*, p. 21.

The Parties

Petitioner, who may be served with summons and other court processes at the 5th floor of the Bureau of Internal Revenue Building, Agham Road, Diliman, Quezon City, is the Commissioner of the government agency tasked to, among others, collect all national internal revenue taxes and has the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising from the ***National Internal Revenue Code of 1997 (“Tax Code”), as amended***, or other laws or portions thereof administered by the Bureau of Internal Revenue (“BIR”).⁴

Respondent is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 32nd Street corner 4th Avenue, Fort Bonifacio, Taguig City.⁵ Its primary purpose is to engage in the business of importation and distribution of motor vehicles, to sell or purchase new or used cars at wholesale or retail level, to generally deal or engage in any commerce relating to automobiles, cars, and all kinds of vehicles, automobile products, motor vehicles parts and accessories, or automotive equipment or machinery, and, in general, to perform any and all acts or works which may be necessary to, advisable for, or incidental to the above businesses, such as maintaining and operating motor vehicle centers within respondent’s object.⁶

The Facts

Respondent received a copy of Mission Order MSO2001 0010054, dated 22 October 2014, on 27 October 2014. Signed by Nestor G. Valeroso, then OIC-Assistant Commissioner of the Large Taxpayers Service, said Mission Order directed Group Supervisor (“GS”) Emilie C. Peig and Revenue Officers (“RO”) Marianne P. Pascual and Emmanuel G. Viardo to validate and verify respondent’s Importer’s Sworn Statement and inspect its books of accounts pertaining to its importation/sales of automobiles, pursuant to ***Sec. 15 of Revenue Regulation (“RR”) 25-2003*** for the period from 2011 to 2013.⁷

Then, on 9 March 2015, respondent received a Preliminary Assessment Notice (“PAN”), dated 26 January 2015, with Details of Discrepancies attached, both signed by OIC-Assistant Commissioner Valeroso. The PAN informed petitioner that through the validation and verification conducted in compliance with the aforementioned Mission Order, discrepancies were found in respondent’s declared taxable base for excise tax purposes and that respondent was found liable for excise tax and VAT in the amount of 

⁴ Joint Stipulation of Facts & Issues, Division Records Vol. 1, p. 267.

⁵ Exhibit “P-1”, Division Records Vol. 2, p. 738.

⁶ *Id.*, p. 737.

⁷ Exhibit “P-3”, *id.*, p. 745; Exhibit “R-1”, BIR Records, P. 641.

₱291,060,156.70 for taxable years (“TYs”) 2011 to 2013.⁸ Respondent opposed the assessments contained in the PAN through a Reply, dated 19 March 2015 and filed with petitioner on 23 March 2015.⁹

On 24 November 2016, respondent received a Formal Letter of Demand (“FLD”), dated 10 October 2016, with Details of Discrepancies attached, both signed by then OIC-Assistant Commissioner Teresita M. Angeles. The FLD reiterated the findings stated in the PAN but adjusted the interest imposed, administrative penalties, and compromise penalties, finding respondent liable for deficiency taxes in the total amount of ₱341,366,628.70.¹⁰ Respondent protested the FLD via a Protest/Request for Reconsideration, dated 22 December 2016 and filed with petitioner on even date.¹¹

On 14 March 2017, respondent received a Final Decision on Disputed Assessment (“FDDA”), dated 20 February 2017 and signed by then OIC-Assistant Commissioner Angeles. The FDDA denied respondent’s protest and requested the payment of the assessed deficiency taxes.¹² Respondent then filed a Protest/Request for Reconsideration to the FDDA on 11 April 2017,¹³ but this was denied by petitioner in a letter, dated 11 May 2017 and received by respondent on 29 May 2017.¹⁴

Aggrieved, respondent filed a Petition for Review with the Court in Division on 28 June 2017.¹⁵ Petitioner filed his Answer to said Petition on 4 October 2017.¹⁶

On 10 July 2020, the Court in Division granted respondent’s Petition through the Assailed Decision,¹⁷ the dispositive portion of which reads:

“**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice dated January 26, 2015, Formal Letter of Demand dated October 10, 2016, Final Decision on Disputed Assessment dated February 20, 2017 assessing petition of deficiency taxes in the aggregate amount of ₱341,366,628.70, inclusive of interest and penalties for taxable years 2011, 2012, and 2013, and the Letter of the Commissioner of Internal Revenue dated May 11, 2017, are **CANCELLED** and **SET ASIDE**.”¹⁸

SO ORDERED.¹⁸


⁸ Exhibits “P-6” and “R-5”, BIR Records, pp. 650-653.

⁹ Exhibit “P-10”, *id.*, pp. 661-663.

¹⁰ Exhibits “P-8” and “R-7”, *id.*, pp. 668-671.

¹¹ Exhibit “P-10-A”, Division Records Vol. 2, pp. 749-765.

¹² Exhibit “P-9”, Division Records Vol. 1, pp. 82-83; Exhibit “R-9”, BIR Records, pp. 701-702.

¹³ Exhibit “P-10-B”, Division Records Vol. 2, pp. 766-792.

¹⁴ Exhibit “P-10-C”, Division Records Vol. 1, p. 111; Exhibit “R-11”, BIR Records, p. 733.

¹⁵ Division Records Vol. 1, pp. 10-41.

¹⁶ *Id.*, pp. 227-232.

¹⁷ Division Records Vol. 3, pp. 1481-1499.

¹⁸ Decision, dated 10 July 2020, *id.*, p. 1498.

To protest the Assailed Decision, petitioner filed a Motion for Reconsideration on 30 July 2020,¹⁹ but this was denied by the Court in the Assailed Resolution, dated 15 October 2020,²⁰ as the Motion for Reconsideration was filed out of time.²¹

Aggrieved, petitioner filed his Petition for Review with the Court *En Banc* via registered mail on 27 November 2020²² within the extended period²³ allowed by the Court *En Banc*. Respondent then filed its Comment/Opposition on 8 February 2021.²⁴

On 2 March 2021, the Court *En Banc* referred this case to the Philippine Mediation Center—Court of Tax Appeals (“PMC-CTA”) for mediation,²⁵ but the parties decided not to have their case mediated.²⁶ As such, this case was submitted for decision on 7 July 2021.²⁷

Hence, this Decision.

Issue²⁸

The sole issue submitted for the Court *En Banc*’s resolution is:

Whether the Honorable Court in Division erred in ruling that the assessments issued by petitioner against respondent are void.

Arguments of the Parties

Petitioner’s Arguments²⁹

Petitioner argues that, *first*, an LOA is not necessary to conduct the assessment in the present case as the audit was conducted by the Office of the CIR. He advances the theory that a distinction should be made between an LOA and a Mission Order: the former applies only to revenue officers in Revenue District Offices, pursuant to ***Section 13 of the Tax Code, as amended***. According to petitioner, the issuance of such LOA is not necessary

¹⁹ *Id.*, pp. 1500-1506.

²⁰ *Id.*, pp. 1525-1527.

²¹ Resolution, dated 15 October 2020, *id.*, p. 1526.

²² *EB* Records, pp. 7-24.

²³ *EB* Records, p. 6.

²⁴ *Id.*, pp. 60-75.

²⁵ Resolution, dated 2 March 2021, *id.*, pp. 78-79.

²⁶ PMC-CTA Form 6, dated 17 June 2021, *id.*, p. 80.

²⁷ Resolution, dated 7 July 2021, *id.*, 83-84.

²⁸ See Assignment of Error, Petition for Review, *EB* Records, p. 11.

²⁹ See Discussion, Petition for Review, *EB* Records, pp. 11-22.

when the audit investigation is conducted by the Office of the CIR pursuant to its power provided under **Section 6(A) of the Tax Code, as amended**, such as in the present case. Petitioner refers to the organizational chart of the BIR which shows that the OIC-Assistant Commissioner for Large Taxpayers Service, who issued the Mission Order in the instant case, is directly under the Office of the CIR.

Second, petitioner insists that the audit investigation conducted pursuant to the subject Mission Order is valid. Allegedly, the revenue officers involved in the present case were duly authorized to validate and verify respondent's Importer's Sworn Statement and inspect the books of accounts pertaining to importations/ sales of automobiles pursuant to **Section 13 of Revenue Regulations ("Rev. Regs.") No. 25-2003**.³⁰ Petitioner claims that **Rev. Regs. No. 25-2003** allows him or his duly authorized representative to examine the accuracy and correctness of the subject documents and assess deficiency excise taxes, inclusive of surcharges and interest if these do not accurately reflect the prices of automobiles.

Third, petitioner avers that the PAN, FLD/FAN, and FDDA state the facts and the law on which it was based in compliance with **Section 228 of the Tax Code, as amended**. Petitioner maintains that respondent was apprised of the tax assessment and was, in fact, able to effectively protest the tax assessment. Petitioner thus concludes that respondent's right to due process was not violated.

Fourth, the right of petitioner to assess has not yet prescribed considering that petitioner committed substantial under-declaration which constitutes fraud and justifies the application of the ten (10)- year prescriptive period. Petitioner cites **Section 222(a) of the Tax Code, as amended**, which provides that the reckoning point for prescription of assessment is the time of discovery of the falsity.

Fifth, petitioner maintains that respondent is liable for the payment of deficiency excise tax, VAT, and administrative penalties in the aggregate amount of ₱341,366,628.70

Respondent's Arguments³¹

Meanwhile, respondent contends that, *first*, the revenue officers were not authorized to conduct an audit or to issue the assessment. Respondent points out that the issue on the authority of the revenue officers is an issue that

³⁰ Amended Revenue Regulations Governing the Imposition of Excise Tax on Automobiles Pursuant to the Provisions of Republic Act No. 9224, An Act Rationalizing the Excise Tax on Automobiles, Amending for the Purpose the National Internal Revenue Code of 1997, and for Other Purposes, 16 September 2003.

³¹ See Arguments and Discussion, Comment/ Opposition [To Petitioner's Petition for Review dated November 27, 2020], EB Records, pp. 61-73.

has been previously raised by petitioner and duly passed upon by this Court. Nonetheless, respondent maintains that the revenue officers were not duly authorized to conduct an audit or issue an assessment against respondent for the subject TYs citing **Section 13 of the Tax Code, as amended**, which expressly requires an LOA. Respondent highlights that **Section 13 of the Tax Code, as amended**, expressly refers to an LOA and makes no mention of a mission order.

Respondent clarifies that **Section 13 of Rev. Regs. No. 25-2003** merely provides that the BIR may verify the contents of the Importer's Sworn Statement and other documents pertaining to respondent's importation of automobiles. Nowhere therein states that the issuance of an LOA may be dispensed with. Even assuming that it expressly mentions that an LOA is not necessary, it cannot modify the provisions of **Section 13 of the Tax Code, as amended**. Being an executive issuance, respondent maintains that a revenue regulation cannot disregard the provisions of a statute such as the Tax Code. Absent any express directive under the law which grants an exemption from requiring the issuance of an LOA, respondent concludes that the compliance with **Section 13 of the Tax Code, as amended**, remains indispensable.

Citing the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* ("**Medicard Case**"),³² respondent argues that similar to a Letter Notice, a Mission Order is also not found in **Section 13 of the Tax Code, as amended**. As such, it cannot take the place of an LOA. Respondent further avers that a mere Mission Order cannot be a source of an investigation that will ripen to an assessment under the present rules of the BIR as its function is limited to surveillance of tax compliance of business ventures. Respondent highlights petitioner's statement in the Petition for Review that an LOA is different from a Mission Order as the former is issued to authorize a Revenue Officer to conduct and audit taxes while the latter is issued for a specific purpose.

In further support of its position that an LOA should have been issued, respondent refers to **Revenue Memorandum Order ("RMO") No. 003-2009**,³³ which purportedly requires the issuance of an LOA for the investigation of the taxpayer should the surveillance indicate that the taxpayer had not been correctly reporting its income for tax purposes and that the veracity of its accounting records is not reliable. Respondent then cites **RMO No. 12-2007**³⁴ and *McDonald's Philippine Realty Corporation v. Commissioner of Internal Revenue*,³⁵ which strictly prohibited the issuance

³² G.R. No. 222743, 5 April 2017.

³³ Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business, 15 January 2009.

³⁴ 2007 Audit Program for Revenue District Offices, 3 July 2007.

³⁵ CTA Case No. 8655, 1 June 2016.

of mission orders for purposes of examination and assessment of internal revenue taxes.

Second, respondent argues that the power of the CIR is vested upon him and that any delegation to any person other than him should be in accordance with the law. Respondent faults petitioner's argument that an examination by the Large Taxpayers Service, as an office service under the Office of the Commissioner, is considered an examination by the CIR himself. According to respondent, following ***Section 6 of the Tax Code, as amended***, the CIR is empowered to personally examine himself the examination of any taxpayer. An examination by any person other than the CIR must be duly authorized by law or expressly assigned by the CIR.

Respondent points out that based on petitioner's organizational chart, the Large Taxpayers Office is not the only office under the Office of the Commissioner. The Office of Deputy Commissioner, and consequently the Revenue Regional Offices and Revenue District Offices, are also under the Office of the Commissioner. Following petitioner's admission that Revenue Regional Offices and Revenue District Offices are covered by ***Section 13 of the Tax Code, as amended*** requiring an LOA, respondent maintains that all offices which are under the Office of the Commissioner still require issuance of an LOA to be authorized to conduct audit.

Respondent then faults petitioner's focus on ***Section 6 of the Tax Code, as amended***, and refusal to acknowledge ***Sections 7, 10, and 13*** thereof. This, according to respondent, is contrary to the well-recognized principle that a statute must be so construed as to harmonize and give effect to all its provisions.

Third, respondent reiterates that it is not liable for deficiency excise tax, VAT, and administrative penalties contending that, even assuming the revenue officers were duly authorized to conduct audit and issue an assessment, the period to assess the said taxes has long prescribed. Respondent claims that petitioner failed to provide supporting evidence to establish the existence of falsity. Finally, respondent maintains that there is no basis in petitioner's claim that respondent should be made monetarily liable administratively in the form of penalties. Respondent submits that compromise penalties implies mutual consent which is absent in the present case.

The Ruling of the Court *En Banc*

The Court *En Banc* has no jurisdiction over the present Petition for Review.

**Petitioner's failure to file a timely
Motion for Reconsideration divests
this Court of jurisdiction over the
present Petition.**

Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA") requires that the Petition for Review filed before the Court *En Banc* must be preceded by a timely motion for reconsideration or new trial with the Court in Division:

"RULE 8
PROCEDURE IN CIVIL CASES

SECTION 1. Review of cases in the Court *en banc*. – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division **must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.**"
(Emphasis and underscoring supplied.)

Thus in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*,³⁶ the Supreme Court held that an appeal to the CTA *En Banc* must be preceded by filing a timely motion for reconsideration or new trial with the CTA Division. The absence thereof is a ground for the dismissal of the appeal. The Supreme Court thus held:

***"An appeal to the CTA En Banc
must be preceded by the filing of a
timely motion for reconsideration or
new trial with the CTA Division.***

Section 1, Rule 8 of the Revised Rules of the CTA states:

...

Thus, in order for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.

The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as "[a]ny action modifying or reversing a decision of the Court *en banc* or in Division." As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.

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³⁶ G.R. Nos. 201530 & 201680-81, 19 April 2017.

In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA En Banc. Thus, the CTA En Banc did not err in denying the CIR's appeal on procedural grounds.

Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.

As the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons.”

(Emphasis supplied; citations omitted.)

Records show that petitioner failed to timely file a Motion for Reconsideration prescribed by *Section 1, Rule 52 of the Rules of Court*, which was adopted in *Section 1, Rule 15 of the RRCTA*. *Section 1, Rule 52 of the Rules of Court* requires that the motion for reconsideration be filed within fifteen (15) days from notice:

RULE 52
Motion for Reconsideration

Section 1. Period for filing. — A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

In the Assailed Resolution, the Court in Division found that petitioner (then respondent) filed its motion for reconsideration one (1) day late:

“Contrary to respondent's claim that he received the assailed Decision on July 15, 2020, a perusal of the records, particularly the Notice of Decision, shows that respondent received the assailed Decision on July 14, 2020. Respondent had fifteen (15) days or until July 29, 2020 within which to file his motion for reconsideration. **However, respondent posted his Motion for Reconsideration [Decision dated July 10, 2020] only on July 30, 2020, or one (1) day late.**

Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. **Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.**

Moreover, even assuming that respondent's motion for reconsideration was filed on time, the Court notes that no new argument has been adduced to warrant the reconsideration sought. The arguments interposed by respondent are mere rehash of the arguments he raised in his Answer filed on October 4, 2017 and Memorandum filed on December 19, 2019 which have all been squarely passed upon and resolved by the Court.”

(Emphasis supplied.)

Petitioner's failure to file a timely Motion for Reconsideration with the Court in Division resulted in the finality of the Assailed Decision. Consequently, petitioner may no longer question the merits of the Assailed Decision before the Court *En Banc*.

The Court in Division did not err in declaring the assessments void for lack of authority of the tax agents who conducted the audit.

Even assuming that petitioner timely filed the requisite Motion for Reconsideration before the Court in Division, and that, consequently, the Court *En Banc* could take cognizance of the present Petition for Review, petitioner still failed to raise new arguments that would warrant the modification of the Assailed Decision and Assailed Resolution.

An audit and examination of a taxpayers books and accounting records, to be valid, must be based on a valid LOA. The Supreme Court categorically pronounced in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*³⁷ that the absence of an LOA violates the taxpayer's right to due process and renders the entire assessment void:

“An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —

(A) Examination of Return and Determination of Tax Due. — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

xxx xxx xxx (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, **through an LOA**, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where

³⁷ G.R. No. 222743, 5 April 2017.

the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. (Emphasis and underlining ours).

..."

(Emphasis supplied.)

In the more recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,³⁸ the Supreme Court further emphasized that due process requires the identification of tax agents authorized to continue the tax audit or investigation through an LOA:

"The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that "[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case." The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.

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

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³⁸ G.R. No. 242670, 10 May 2021.

assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. **In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**" (Emphasis supplied.)

Following the jurisprudential pronouncement in the *McDonald's Case*, due process requires that the taxpayer should be informed of the names of the tax agents who are duly authorized to conduct examination and assessment of the taxpayer's books and accounting records through an LOA. It is a jurisdictional requirement of a valid audit and therefore a valid assessment. There has to be a link between the LOA and the revenue officer who will conduct an examination of the taxpayers books of accounts and accounting records.

In the present case, petitioner does not dispute the absence of an LOA but, instead, argues that an LOA is not required in the present case. Petitioner avers that an audit investigation pursuant to a Mission Order is valid.

Petitioner's contention is untenable.

The purpose of a Mission Order is different from an LOA. A Mission Order is issued to authorize the surveillance pursuant to *Section 6(C) of the Tax Code, as amended*, not the audit and assessment, of the taxpayer. The allowable acts covered by a Mission Order include the tax agent's observation/ surveillance of the taxpayer's business operations, verification of specific documents, and his/her determination of whether the taxpayer complies with the pertinent Tax Laws and Regulations without conducting a full-blown audit.

Records show that the Mission Order³⁹ in the present case directed ROs Marianne P. Pascual and Emmanuel G. Viardo and GS Emilie C. Peig to perform the powers of the CIR under *Section 6(C) of the Tax Code, as amended*. The Mission Order pertinently provides:

"Pursuant to the provisions of Section 6(c) of the National Internal Revenue Code, you are hereby directed to conduct the following activities marked X below:

Name of Taxpayer	AUTOSRADA MOTORE, INC.
Address	32 nd Street 4 th Avenue, Crescent Park, West Bonifacio Global City, Taguig City

- ☐ 1. To monitor sales and/or place of business establishment mentioned above under observation or surveillance for violation of bookkeeping rules and regulations, particularly on non-issuance of sales invoice or receipts.

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³⁹ Exhibit "P-3", Division Records Vol. 2, p. 745

- ☐ 2. To take an inventory on the number of active units of cash register/point-of-sale machines authorized to issue receipts in lieu of the regular sales invoices or receipts and check taxpayer's compliance with the provisions of Revenue Regulations (RR) No. 4-80, as amended by RR No. 10-99, governing the use of cash register and point-of-sale machines in lieu of registered sales invoices or receipts.
- ☐ 3. To apprehend violators of revenue laws and regulations governing the activities mentioned in the preceding paragraphs 1 and 2.
- ☐ 4. To conduct immediate inventory-taking of the goods on hand by the aforementioned taxpayer and reconcile the same with his/its inventory lists as of _____, 20____.
- ☒ 5. Others: To validate/ verify Importer's Sworn Statement and inspect books of accounts pertaining to importation/sales of automobiles pursuant to Sec. 13 of RR 25-2003

Your duties must be carried out with utmost courtesy in recognition of the taxpayer's rights and within the tenets of good public office.

A report hereon must be submitted within thirty (30) days after the end of the conduct of the above activity.

This Order covers the period from 2011 to 2013 and shall be effective unless specifically revoked."

Given the foregoing, the authority of the revenue officers is limited to the exercise of the CIR's verification and surveillance powers provided in ***Section 6(C) of the Tax Code, as amended.***

In fact, petitioner's own issuance, ***RMO No. 003-2009***,⁴⁰ provides that if the result of the surveillance made indicates that the veracity of the taxpayer's accounting records is not reliable, an LOA must still be issued in order to cause the audit and assessment of the taxpayer, to wit:

"V. GUIDELINES AND PROCEDURES

A. Surveillance Activities

...

4. Action on Surveillance Results

If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided for under Section 115 of the NIRC, as amended, a recommendation shall be made to effect such closure.

If the result of the surveillance made likewise indicates that the taxpayer had not been, in fact, correctly reporting income for tax purposes, and that the veracity of his accounting records is not reliable,

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⁴⁰ Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business, 15 January 2009.

the Commissioner or Regional Director concerned shall issue a Letter of Authority (LA) for the investigation of the taxpayer. The Revenue Officer named in the LA shall proceed with the audit and cause the assessment of the taxpayer's internal revenue tax liabilities, based either on: (1) surveillance, pursuant to Section 6 [C]; (2) best evidence rule, as provided under Section 6 [B], NIRC as amended; and/or (3) the result of the tax audit."

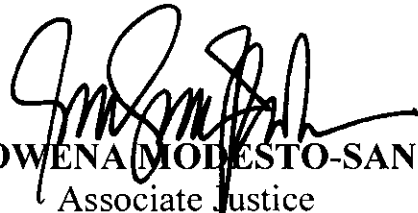
(Emphasis and underscoring supplied.)

The Court *En Banc* thus echoes the conclusion of the Court in Division in the Assailed Decision that "the revenue officers involved in this case were not authorized by virtue of an LOA to conduct an examination and inspection of petitioner's books of accounts, their authority having emanated from a Mission Order, the assessments resulting therefrom are inescapably void and must be slain at sight. Needless to say, void assessments bear no valid fruit."

All told, the Court *En Banc* finds no justifiable reason to reverse, much less modify, the Assailed Decision and Assailed Resolution of the Court in Division.

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by Commissioner of Internal Revenue is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



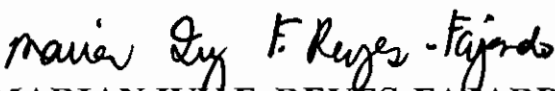
ERLINDA P. UY
Associate Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIAN IV 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