REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CASAS + ARCHITECTS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9960

Members:

DEL ROSARIO, *P.J., Chairperson*, and **MANAHAN**, *JJ.*

Promulgated:

AUG 2 3 2021 1:47 pm

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Review filed on October 24, 2018 by petitioner Casas + Architects, praying that judgment be rendered cancelling the assessments issued against petitioner for taxable year 2013 for alleged deficiency value-added tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, and compromise penalty, in the aggregate amount of Twenty-Eight Million Four Hundred Three Thousand Four Hundred Thirty-Three Pesos and 97/100 (₱28,403,433.97), inclusive of interest and surcharge.

THE PARTIES

Petitioner Casas + Architects is a duly registered professional partnership existing under the laws of the Philippines, with Securities and Exchange Commission (SEC) Registration No. A1996-6511; and, with principal office at Paseo Center, 8757 Paseo de Roxas, Bel-Air, Makati City.[1]

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), CTA Docket, Vol. II, p. 1128, Exhibit "P-1", CTA Docket, Vol. III, p. 1275.

Petitioner's primary purpose, as stated in Article V of its Amended Articles of Partnership (Partnership Articles) is as follows:

> "To provide architectural services requiring application of the science, art, or profession of planning sites, planning or designing buildings or architectural structures and their related facilities, interior design and decoration, landscaping, land development by and under the direct supervision of certified architects and other licensed personnel, and do any and all things which a partnership of this kind may lawfully do, including, without limitations, consultation, investigation, evaluation, planning, design, preparation of instruments of services such as drawings and specifications, and the supervision of construction insofar as customarily performed by architects."[2]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Chief of the Bureau of Internal Revenue (BIR), vested by law with the authority to carry out the functions, duties and responsibilities of his Office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations. Respondent is primarily represented in the present case by the Legal Division of Revenue Region No. 8, Makati City, 2/F BIR Building, 313 Sen. Gil Puyat Avenue, Makati City.[3]

THE FACTS

On August 26, 2014, the BIR issued Letter of Authority[4] (LOA) No. 050-2014-00000309 dated August 26, 2014 signed by Mr. Jonas DP. Amora, Revenue Regional Director of Revenue Region No. 8-Makati City, authorizing Revenue Officer (RO) Joey Fragrante, under the supervision of Group Supervisor (GS) Roderick Cantillana, of Revenue District Office (RDO) No. 50 – South Makati, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2013 to December 31, 2013.[5]

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[2] Par. 1.1, JSFI, CTA Docket, Vol. II, pp. 1128-1129.
[3] Par. 2, JSFI, CTA Docket, Vol. II, p. 1129.
[4] BIR Records, p. 3.
[5] Par. 3, JSFI, CTA Docket, Vol. II, p. 1129.

Subsequently, the Revenue District Officer of RDO No. 50, Rosita U. Meniano, issued a Memorandum of Assignment[6] (MOA) dated June 17, 2016, authorizing RO Angeline S. Ifurung and GS Ma. Carmen V. Sy to continue the audit/investigation of petitioner.

As a result of the audit and examination of petitioner's records, respondent issued on December 28, 2016, a Preliminary Assessment Notice[7] (PAN), with attached Details of Discrepancies,[8] which proposed to assess petitioner for value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), documentary stamp tax (DST), and compromise penalty for taxable year 2013. Petitioner received the PAN on January 9, 2017.

On January 20, 2017, petitioner received a Formal Letter of Demand (FLD),[9] with attached Details of Discrepancies,[10] and Assessment Notices,[11] all dated January 13, 2017, which demanded from petitioner the payment of the alleged VAT, EWT, WTC, DST, and compromise penalty for taxable year 2013, in the total amount of Twenty-Four Million Three Hundred Fifty-Seven Thousand Five Hundred Forty-Four Pesos and 81/100 (₱24,357,544.81), inclusive of interest and surcharge.

On February 17, 2017, petitioner filed a Letter Protest[12] to the Formal Assessment Notice (FAN) contesting the alleged deficiency VAT, EWT, WTC, DST, and compromise penalty for taxable year 2013.[13]

On September 25, 2018, petitioner received a Final Decision on Disputed Assessment (FDDA)[14] with attached Details of Discrepancies[15] and Amended Assessment Notices[16] for VAT, EWT, and compromise penalty, all dated September 18, 2018, partially granting petitioner's Letter Protest. The FDDA still demanded from petitioner the payment of the deficiency VAT, EWT, WTC, DST, and compromise penalty for taxable year 2013 in the total amount of

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[6] Exhibit "R-2", BIR Records, p. 406.
[7] Exhibit "P-2", CTA Docket, Vol III, pp. 1284-1285.
[8] *Id., pp.* 1286-1287.
[9] Exhibit "P-3", CTA Docket, Vol III, pp. 1288-1289.
[10] *Id.*, pp. 1291-1293.
[11] Exhibit "P-3-a", CTA Docket, Vol III, pp. 1294-1298.
[12] Exhibit "P-4", CTA Docket, Vol III, pp. 1299-1321.
[13] Par. 4, JSFI, CTA Docket, Vol. II, p. 1129.
[14] Exhibit "P-5", Docket III, pp. 1322-1323.
[15] *Id.*, pp. 1327-1330.
[16] *Id.*, pp. 1324-1326.

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Twenty-Eight Million Four Hundred Three Thousand Four Hundred Thirty-Three Pesos and 97/100 (₱28,403,433.97), inclusive of interest and surcharge[17] broken down as follows:

Tax Type	Amount
VAT	₱ 5,368,542.26
EWT	₱ 21,955,917.46
WTC	₱ 751,610.88
DST	₱ 322,363.37
Compromise Penalty	₱ 5,000.00
Total:	**₱ 28,403,433.97**

Aggrieved, petitioner filed the present Petition for Review[18] on October 24, 2018.

On December 20, 2018, respondent filed his Answer[19] through registered mail setting forth special and affirmative defenses.[20]

On January 25, 2019, petitioner filed its Reply (Re: Respondent's Answer dated December 20, 2018).[21]

On February 1, 2019, the Court issued a Resolution referring the case to the Philippine Mediation Center – Court of Tax Appeals for mediation.[22]

On February 21, 2021, the Court received PMC-CTA Form No. 6 – No Agreement to Mediate.[23]

On May 24, 2019, respondent filed his Pre-Trial Brief;[24] while petitioner posted its Pre-Trial Brief[25] *via* registered mail on even date.

The Pre-Trial Conference was held on May 30, 2019.[26] The parties filed their Joint Stipulation of Facts and Issues on June 19,

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[17] Par. 6, JSFI, CTA Docket, Vol. II, p. 1130.
[18] CTA Docket, Vol. I, pp. 10-40.
[19] CTA Docket, Vol. I, pp. 355-358.
[20] Respondent's special and affirmative defenses are quoted under "Parties' Arguments".
[21] CTA Docket, Vol. I, pp. 371-384.
[22] CTA Docket, Vol. I, p. 386.
[23] CTA Docket, Vol. I, p. 387.
[24] CTA Docket, Vol. I, pp. 408-411.
[25] CTA Docket, Vol. II, pp. 748-762.

2019.[27] The Pre-Trial Order[28] was issued on July 31, 2019. The Court also terminated the Pre-Trial Conference in the same Order.

During trial, petitioner presented documentary and testimonial evidence. It presented the following witnesses: Bernadith B. Nañaga,[29] and Independent Certified Public Accountant Madonna Mia S. Dayego[30] who testified by way of their respective Judicial Affidavits. Petitioner's formally offered exhibits, as contained in its Formal Offer of Documentary Exhibits posted on October 30, 2019 *via* registered mail,[31] were admitted in evidence in the Resolution[32] dated December 6, 2019.

Respondent also presented his documentary and testimonial evidence. Respondent offered the testimony of Angeline S. Ifurung, who testified by way of her Judicial Affidavit.[33] Respondent's formally offered exhibits, as contained in his Formal Offer of Exhibits filed on February 27, 2020,[34] were admitted in the Resolution dated July 1, 2020.[35]

Petitioner filed its Memorandum[36] on September 3, 2020, while respondent failed to file his memorandum[37] despite due notice. The case was submitted for decision on September 21, 2020.[38]

On May 21, 2021, petitioner filed a Motion for Reconsideration (Re: Decision dated March 9, 2021)[39] which the Court merely noted in the Resolution dated June 9, 2021[40] since the motion was

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[26] Minutes of the Hearing dated May 30, 2019, CTA Docket, Vol. II, pp. 1069-1072; Order dated May 30, 2019, CTA Docket, Vol. II, pp. 1074-1076.
[27] CTA Docket, Vol. II, pp. 1128-1137.
[28] CTA Docket, Vol. II, pp. 1176-1187.
[29] Exhibits "P-18" and "P-18-A", Judicial Affidavit executed on June 10, 2019, CTA Docket, Vol. II, pp. 1098-1115.
[30] Exhibits "P-39" and "P-39-A", Judicial Affidavit executed on September 5, 2019, CTA Docket, Vol. II, pp. 1217-1227.
[31] CTA Docket, Vol III, pp. 1262-1274.
[32] CTA Docket, Vol III, pp. 1608-1611.
[33] Exhibits "R-7" and "R-7-A", Judicial Affidavit dated May 22, 2019, CTA Docket, Vol. I, pp. 414-419.
[34] CTA Docket, Vol III, pp. 1630-1634.
[35] CTA Docket, Vol III, pp. 1643-1644.
[36] CTA Docket, Vol III, pp. 1652-1685.
[37] Records Verification dated September 11, 2020, CTA Docket, Vol. III, p. 1686.
[38] CTA Docket, Vol. III, p. 1688.
[39] CTA Docket, Vol. III, *unpaginated.*
[40] CTA Docket, Vol. III, *unpaginated.*

obviously improperly filed as no decision has yet been reached in the present case.

THE ISSUE[41]

The sole issue for consideration of the Court, as stipulated by the parties is whether or not the deficiency assessments issued by respondent to petitioner for taxable year 2013 are valid.

THE PARTIES' ARGUMENTS

Petitioner puts forth the following arguments:

(i) The FAN is void for violating petitioner's right to due process;

(ii) Respondent issued the FAN before the lapse of the fifteen (15)-day period for petitioner to respond to the PAN;

(iii) The revenue officer, who conducted the audit of the books of accounts and other accounting records of petitioner for taxable year 2013, had no valid and legitimate authority to conduct the audit; rendering the assessment void; and,

(iv) Petitioner is not liable for deficiency VAT, EWT, WTC, DST, and compromise penalty for taxable year 2013.

Respondent, on the other hand, advances the following counter-arguments:

(i) Petitioner was afforded due process as it was able to reply and file a protest to the notices that were issued to it;

(ii) Petitioner's sales are subject to VAT as it failed to present proof to support its claims that said sales are zero-rated pursuant to Section 105 of the NIRC of 1997, as amended, in relation to Section 4.106-5 and Section 4.113-1 of Revenue Regulations (RR) No. 16-2005;

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[41] JSFI, CTA Docket, Vol. II, p. 1132; Pre-Trial Order, CTA Docket, Vol. II. 1180.

(iii) Petitioner is liable for EWT as it failed to withhold and remit the correct EWT on its income/payments;

(iv) Petitioner is liable for WTC as it failed to support its argument by substantial evidence that it engages architecture graduates from selected universities under a valid apprenticeship program;

(v) Petitioner is liable for DST when it failed to file and pay the DST due on advances from related parties pursuant to Section 179 of the NIRC of 1997, as amended;

(vi) Assessments are *prima facie* presumed correct and made in good faith; and,

(vii) Taxes are the lifeblood of the government and should be collected without unnecessary hindrance.

THE COURT'S RULING

The Petition for Review was timely filed; hence, the Court has jurisdiction over the case

Before delving into the merits of the case, the Court shall first determine whether the Petition for Review was filed within the prescribed period under the NIRC of 1997, as amended.

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner upon which tax deficiency assessments should be issued and protested, *viz.*:

> "**SEC. 228**. ***Protesting of Assessment***. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice**. If the taxpayer fails to respond, the Commissioner or

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his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**

If the protest is denied in whole or in part, or is **not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days** from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.** (*Boldfacing supplied*)

Corollary thereto, Section 3 of RR No. 12-99, as amended by RR No. 18-13, provides:

"**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —***

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 ***Preliminary Assessment Notice (PAN)***. — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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3.1.4 ***Disputed Assessment.*** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) **Request for reconsideration** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

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If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

xxx" (*Boldfacing supplied*)

In *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue*,[42] the Supreme Court enumerated the remedies a taxpayer may avail when the CIR or his authorized representative wholly or partially denies its protest, *viz.*:

> 1. **If the protest is wholly or partially denied by the CIR *or* his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
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> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
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> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

Relatedly, Section 11 of Republic Act No. 1125,[43] as amended, in relation to Section 3(a), Rule 8 of the Revised Rules of the CTA,[44] provides that a party adversely affected by the decision or inaction of the CIR may appeal to the CTA by a petition for review within thirty (30) days after the expiration of the period fixed by law for the CIR to act on the disputed assessment.

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[42] G.R. No. 208731, January 27, 2016.

[43] SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. xxx

[44] SEC. 3. Who may appeal; period to file petition. –
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (n)

In this case, petitioner received the FDDA dated September 18, 2018 on September 25, 2018. Petitioner had thirty (30) days therefrom, or until October 25, 2018 within which to file its Petition for Review. The Petition for Review was timely filed on October 24, 2018. Thus, the Court has acquired jurisdiction to take cognizance of the present case.

RO and GS who continued the audit of petitioner were not authorized by a valid LOA; hence, the assessments issued pursuant thereto are void ab initio

Petitioner argues that the RO and GS who conducted the audit of the books of accounts and other accounting records of petitioner had no valid and legitimate authority to conduct the audit; rendering the assessment void.

As aforementioned, on August 26, 2014, petitioner received LOA No. 050-2014-00000309 dated August 26, 2014, authorizing RO Fragrante, under the supervision of GS Cantillana, of RDO No. 50 – South Makati to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period of January 1, 2013 to December 31, 2013.[45] Subsequently and before the issuance of the PAN, **Revenue District Officer Meniano of RDO No. 50 issued MOA No. RR8-050-REA-062016-727**[46] dated June 17, 2016 authorizing **RO Ifurung and GS Sy** to **continue** the audit/investigation of petitioner.

Undeniably, there was no LOA signed by the Revenue Regional Director authorizing RO Ifurung and GS Sy to continue the audit of petitioner's books of accounts and other accounting records for the taxable year 2013.

To be sure, the NIRC of 1997, as amended, is clear and categorical in requiring an authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be made.[47] Section 6 of the NIRC provides:

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[45] *Supra* Note 5.
[46] *Supra* Note 6.
[47] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

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> "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. xxx" (*Boldfacing supplied*)

In addition, Section 13 of the NIRC of 1997, as amended, mandates that an RO assigned to audit a taxpayer's books of accounts and other accounting records must be authorized by an LOA issued no less than by the **Revenue Regional Director**, *viz.*:

> *"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, **<u>pursuant to a Letter of Authority</u>** issued by the **<u>Revenue Regional Director</u>**, 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." *(Boldfacing and underscoring supplied)*

An RO cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose, at the very least, by the Revenue Regional Director.

Revenue Memorandum Order (RMO) No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It is explicit that the continuation of audit by an RO other than the RO named in a previous LOA, **requires the issuance of a new LOA**:

> "C. Other policies for issuance of L/As.
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> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
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> 5. **<u>Any re-assignment/transfer of cases to another RO(s)</u>**, and revalidation of L/As which have already expired, **<u>shall require the issuance of a new L/A</u>, with the corresponding**

> **notation thereto, including the previous L/A number and date of issue of said L/As**." *(Boldfacing and underscoring supplied)*

The Supreme Court's pronouncement in *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[48] on the significance of a valid authority of ROs to conduct an audit and examination of the taxpayer is very instructive, *viz.*:

> "***The absence of an LOA violated MEDICARD's right to due process***
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> **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:
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> xxx xxx
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> **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 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 vs. Sony Philippines, Inc.*, the Court said that:
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> > "Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. xxx. **In the absence of such an authority, the assessment or examination is a nullity**." (Emphasis and underlining ours)
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[48] G.R. No. 222743, April 5, 2017.

> xxx xxx xxx In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**
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> **That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" (*Boldfacing and additional underscoring supplied*)

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.,*[49] the Supreme Court was likewise categorical in saying that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Revenue Regional Director and emphasized that the Referral Memorandum issued by the Revenue District Officer directing another RO to continue with the examination of Composite Materials, Inc.'s records is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.*:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, **the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
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> Here, the CTA *en banc* found that **the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void**.

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[49] G.R. No. 238352, September 12, 2018.

> Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum** issued by a **Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**." *(Boldfacing and underscoring supplied)*

The issuance of an LOA is not just a plain ministerial act but calls for the exercise of discretion by the Revenue Regional Director. The authority to issue LOAs, which was delegated to the Revenue Regional Director under Section 13 of the NIRC of 1997, as amended, cannot be further delegated to the Revenue District Officer. On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation*[50] is instructive, *viz.*:

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. **Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility**.
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> Xxx, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:
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>> **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another**.
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> xxx." *(Citations omitted; Boldfacing supplied)*

There is no denying that no new LOA was ever issued to RO Ifurung and GS Sy in relation to the audit of petitioner's tax liability.

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[50] G.R. No. 156208, September 26, 2006.

While MOA No. RR8-050-REA-062016-727 dated June 17, 2016 was issued by **Revenue District Officer Meniano**, the same cannot be regarded as a valid LOA within the context of the law as it was not issued by the Revenue Regional Director.

Verily, RO Ifurung and GS Sy's authority to continue the audit and examination of petitioner's books of account and other records for taxable year 2013 cannot be given any legal effect. MOA No. RR8-050-REA-062016-727 issued by Revenue District Officer Meniano was not sufficient to clothe RO Ifurung and GS Sy with authority to continue the audit. The absence of a validly issued LOA authorizing RO Ifurung and GS Sy to audit petitioner rendered the assessments issued against it void. Needless to say, a void assessment bears no fruit, and must be slain at sight.[51]

Respondent did not wait for the lapse of the fifteen (15)-day period from petitioner's receipt of the PAN before issuing the FLD; hence, petitioner's right to due process was violated

Petitioner argues that respondent's issuance of the FLD before the lapse of the fifteen (15) day period for petitioner to respond to the PAN violated its right to due process; hence, the assessment is void.

Section 228 of the 1997 NIRC, as amended, provides:

> "**SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative **finds that proper taxes should be assessed**, he shall **first notify** the taxpayer of his findings: provided, however, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner**

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[51] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.

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or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

xxx xxx xxx."

Corollary thereto, Section 3.1.2 of Revenue Regulations No. 12-99[52] provides:

"3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, **it is determined that there exists sufficient basis to assess the taxpayer** for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based..... **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN**, he shall be considered in default, in which case, **a formal letter of demand and assessment notice shall be caused to be issued** by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx"

Based on the aforequoted law and revenue regulation, a taxpayer is given a period of fifteen (15) days from receipt of the PAN to file a protest thereto. In this case, records show that petitioner received the PAN dated December 28, 2016 on **January 9, 2017**. Counting fifteen (15) days therefrom, petitioner had until **January 24, 2017** within which to file its protest to the PAN.

Respondent, without waiting for the lapse of the fifteen-day period, issued the FLD on **January 13, 2017** or four (4) days from petitioner's receipt of the PAN. The FLD and Assessment Notices were clearly issued prematurely, thereby depriving petitioner of the opportunity to be heard on the PAN, in complete violation of the due process requirement in issuing tax assessments.

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[52] Dated September 6, 1999.

Needless to say, the PAN is an important part of due process. It gives both the taxpayer and respondent the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.[53] To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment.

Truth to tell, the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. On this point, the eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[54] and *Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[55] relative to the utmost importance of observing due process in issuing deficiency tax assessments is edifying, *viz.*:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void**. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and **always with regard to the basic tenets of due process**.
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.** Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> x x x
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99**. *(Citations omitted; additional boldfacing supplied)*

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[53] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017, citing *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[54] G.R. Nos. 201398-99, October 3, 2018.
[55] G.R. Nos. 201418-19, October 3, 2018.

In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,*[56] the Supreme Court categorically ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz.*:

> "In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued**. Xxx." *(Boldfacing and underscoring supplied)*

The fatal infirmity that attended the issuance of the FLD and Assessment Notices prior to the lapse of the fifteen (15)-day period to respond to the PAN was not cured by petitioner's filing of a protest to the FLD and Assessment Notices.

In view of the palpable violation of petitioner's right to procedural due process, the FLDs, Assessment Notices, and Amended Assessment Notices - - being fatally infirm - - should be considered void; and must perforce be cancelled and set aside.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Casas + Architects is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancies and Assessment Notices, all dated January 13, 2017, are **CANCELLED** and **WITHDRAWN**. The Final Decision on Disputed Assessment with attached Details of Discrepancies and Amended Assessment Notices, all dated September 18, 2018, which demanded from petitioner the payment of the alleged value-added tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, and compromise penalty for taxable year 2013 in the total amount of Twenty-Eight Million Four Hundred Three Thousand Four Hundred Thirty-Three Pesos and 97/100 (₱28,403,433.97), inclusive of interest and surcharge, are **SET ASIDE**.

Respondent Commissioner of Internal Revenue, his authorized representatives or any other person acting on his behalf are hereby **ENJOINED** from enforcing the collection of aforesaid taxes covered by the Formal Letter of Demand with Details of Discrepancies and Assessment Notices, all dated January 13, 2017 and Final Decision

[56] G.R. No. 172598, December 21, 2007.

on Disputed Assessment with attached Details of Discrepancies and Amended Assessment Notices, all dated September 18, 2018.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

CATHERINE T. MANAHAN
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