REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2589** (CTA CASE NO. 9960)
	Present:
-versus-	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*
CASAS + ARCHITECTS, *Respondent.*	Promulgated: JUL 28 2023 3:10 p.m.

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DECISION

RINGPIS-LIBAN, *J.:*

The Case

Before the Court *En Banc* is the Petition for Review filed by the Commissioner of Internal Revenue (CIR) under Section 18 of Republic Act No. 1125 (RA 1125), as amended,[1] assailing the August 23, 2021 Decision[2] and the February 24, 2022 Resolution[3] of the First Division.

The dispositive portion of the assailed decision reads:

> "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.

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[1] Petition for Review, *Rollo*, p. 5
[2] *Rollo,* pp. 21-40.
[3] *Id.*, pp. 42-48.

> **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of Demand with Details of Discrepancies and Assessment Notices, all dated January 13, 2017, are **CANCELLED** and **WITHDRAWN**.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 on Disputed Assessment with attached Details of Discrepancies and Amended Assessment Notices, all dated September 18, 2018.
>
> **SO ORDERED**."

The dispositive portion of the assailed resolution reads:

> "**WHEREFORE**, premises considered, respondent's 'Motion for Reconsideration' posted on October 5, 2021 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

The Parties

Petitioner 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 of 1997 (NIRC), as amended, and other tax laws, rules and regulations. Respondent is represented by the Legal Division of Revenue Region No. 8, Makati City, 2/F BIR Building, 313 Sen. Gil Puyat Avenue, Makati City.[4]

Respondent taxpayer, 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 principal office at Paseo Center, 8757 Paseo de Roxas, Bel-Air, Makati City.[5]

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[4] Decision, *Rollo*, p. 22.
[5] *Id., Rollo*, p. 21.

Respondent's primary purpose, as stated in Article V of its Amended Articles of Partnership 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.'[6]

The Facts

Proceedings Before the BIR

On August 26, 2014, the BIR issued a Letter of Authority (LOA) No. 050-2014-00000309 dated August 26, 2014 and 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 the taxpayer's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2013 to December 31, 2013 (taxable year 2013).[7]

Subsequently, the Revenue District Officer of RDO No. 50, Rosita U. Meniano, issued a Memorandum of Assignment (MOA) dated June 17, 2016, authorizing RO Angeline S. Ifurung and GS Ma. Carmen V. Sy to continue the audit/investigation of the taxpayer.[8]

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

On January 20, 2017, the taxpayer received a Formal Letter of Demand (FLD) with attached Details of Discrepancies and Assessment Notices, all dated

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[6] *Id.*, p. 22.
[7] *Id*; Amended Pre-Trial Order dated January 3, 2020, Division Docket, Vol. III, p. 1614-1615; Exhibit R-1, BIR Records, p. 3.
[8] *Id.*, p. 23.
[9] *Id.*

January 13, 2017, which demanded 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 and 81/100 Pesos (PhP24,357,544.81), inclusive of interest and surcharge.[10]

On February 17, 2017, the taxpayer filed a Letter Protest to the Formal Assessment Notice (FAN) contesting the alleged deficiency taxes and compromise penalty.[11]

On September 25, 2018, the taxpayer received a Final Decision on Disputed Assessment (FDDA) with attached Details of Discrepancies and Amended Assessment Notices for VAT, EWT, and compromise penalty, all dated September 18, 2018, *partially granting* its Letter Protest. However, the FDDA still demanded the payment of the deficiency taxes and compromise penalty for taxable year 2013 in the total amount of Twenty-Eight Million Four Hundred Three Thousand Four Hundred Thirty-Three and 97/100 Pesos (PhP28,403,433.97), inclusive of interest and surcharge, broken down as follows:[12]

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

Proceedings Before the Court of Tax Appeals (CTA) First Division

Aggrieved, the taxpayer filed a Petition for Review on October 24, 2018 with the court *a quo*.[13]

On December 20, 2018, the CIR filed his Answer through registered mail setting forth special and affirmative defenses.[14]

On January 25, 2019, the taxpayer filed its Reply (Re: Respondent's Answer dated December 20, 2018).[15]

On February 1, 2019, the court *a quo* issued a Resolution referring the case to the Philippine Mediation Center - Court of Tax Appeals (PMC-CTA).[16]

[10] *Id.*
[11] *Id.*
[12] *Id.*, p. 24.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*

On February 21, 2021, the court *a quo* received PMC-CTA Form No. 6 - No Agreement to Mediate.[17]

On May 24, 2019, the parties filed their respective Pre-Trial Briefs.[18]

On May 30, 2019, the Pre-Trial Conference was held. The parties subsequently filed their Joint Stipulation of Facts and Issues on June 19, 2019. Thereafter, the court *a quo* issued a Pre-Trial Order on July 31, 2019, which terminated the Pre-Trial Conference.[19]

During trial, the taxpayer presented the following witnesses: Bernadith B. Nañaga, and Independent Certified Public Accountant Madonna Mia S. Dayego. Then it filed its Formal Offer of Documentary Exhibits on October 30, 2019 via registered mail. Its exhibits were admitted in evidence in the Resolution dated December 6, 2019.[20]

On the other hand, the CIR presented the testimony of Angeline S. Ifurung. Respondent's exhibits, which were contained in his Formal Offer of Exhibits filed on February 27, 2020, were admitted in the Resolution dated July 1, 2020.[21]

Although the taxpayer filed its Memorandum on September 3, 2020, the CIR failed to file his Memorandum despite due notice.[22]

On September 21, 2020, the case was finally submitted for decision.[23]

On August 23, 2021, the court *a quo* promulgated the assailed decision which *voided*, *cancelled* and *set aside* the CIR's FLDs, Assessment Notices and Amended Assessment Notices.[24]

In its February 24, 2022 Resolution, the court *a quo* denied the CIR's Motion for Reconsideration for lack of merit.[25]

Hence, the appeal before the Court *En Banc*.

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[17] *Id.*
[18] *Id.*
[19] *Id.*, pp. 24-25.
[20] *Id.*, p. 25.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*, p. 39.
[25] *Id.*, p. 47.

Proceedings Before the CTA En Banc

On March 23, 2022, the CIR filed a Motion for Extension of Time to File Petition for Review by registered mail.[26]

On April 7, 2022, the CIR filed a Petition for Review before the Court *En Banc* also by registered mail.[27]

On May 4, 2022, the Court issued a Resolution, which granted the CIR's motion and directed the taxpayer to file its comment within ten (10) days from notice.[28]

Accordingly, on May 23, 2022, the taxpayer filed its Comment (Re: Petitioner's Petition for Review dated April 7, 2012).[29]

On June 13, 2022, the Court issued a Resolution, which referred the parties to PMC-CTA for mediation.[30] However, the PMC-CTA issued a No Agreement to Mediate dated July 21, 2022.[31]

In a Resolution dated August 23, 2022, the Court noted the No Agreement to Mediate and finally submitted the case for decision.[32]

The Issues

As grounds for its appeal, the CIR stated that the Court *a quo* erred:

1. In resolving that the revenue officer and group supervisor who continued the audit were not authorized by a valid LOA;

2. In resolving issues which were not raised by the taxpayer in its Letter Protest to the FAN and in its Petition for Review; *and*,

3. In resolving that the taxpayer was not afforded due process.[33]

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[26] *Rollo*, pp. 1-3.
[27] *Id.*, pp. 5-19.
[28] *Id.*, pp. 58-59.
[29] *Id.*, pp. 60-75.
[30] *Id.*, pp. 76-77.
[31] *Id.*, p. 78.
[32] *Id.*, pp. 80-81.
[33] Petition for Review, *Rollo*, pp. 9-10.

The Arguments of the Parties

The CIR's Arguments

Petitioner CIR assails the decision and resolution of the court *a quo* on the grounds that the (a) LOA issued by the RD created a principal-agent relationship between the RD and the ROs named therein, thus, the authority of the RO can be ratified or cured tacitly by the RD;[34] (b) Court *a quo* cannot grant relief that was never prayed for by the taxpayer;[35] and finally, (c) Taxpayer was afforded reasonable time and opportunity to assail the assessment.[36]

The Taxpayer's Arguments

Respondent taxpayer asserts that the CIR merely rehashed his arguments in the Motion for Reconsideration dated October 5, 2021.[37] In general, no cogent reason exists to warrant the reversal of the assailed decision and resolution of the court *a quo*.[38] In particular, the (a) CIR violated the taxpayer's right to due process when it issued the FAN only four (4) days after the latter received the PAN;[39] (b) Assessments are void for lack of authority of the ROs who conducted/continued the audit;[40] (c) Reassignment or transfer of the audit or investigation of taxpayer's books of account and other accounting records requires the issuance of a new LOA;[41] and, (d) MOA signed by RDO Rosita U. Meniano did not clothe RO Angeline S. Ifurung and GS Ma. Carmen V. Uy with authority to conduct and/or continue the audit.[42]

The Ruling of the Court *En Banc*

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*,[43] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

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[34] Petition for Review, *Rollo*, pp. 11-13.
[35] *Id.*, pp. 13-16.
[36] *Id.*, pp. 16-17.
[37] Comment (Re: Petitioner's Petition for Review dated April 7, 2012), *Rollo*, p. 60.
[38] *Id.*
[39] *Id.*, pp. 61-68.
[40] *Id.*, pp. 68-70.
[41] *Id.*, pp. 70-71.
[42] *Id.*, pp. 72-74.
[43] G.R. No. 188016, January 14, 2015, citing *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001.

In this case, petitioner CIR does *not* dispute the findings of fact of the court *a quo* and quoted, without raising any issue, the narration in the assailed decision.[44]

However, petitioner finds issue with the assailed decision, which *granted* the taxpayer's petition and *cancelled* and *set aside* the FLDs, Assessment Notices and Amended Assessment Notices issued against the taxpayer.[45] Yet the petition raised no new contentions which, as the respondent taxpayer already noted, were merely echoed from previous ones.[46]

The petition, thus, fails to persuade.

The petition was timely filed.

As stated, this is an appeal under Section 18 of RA 1125, as amended, from the August 23, 2021 Decision of the court *a quo*, which *voided*, *cancelled* and *set aside* the CIR's FLDs, Assessment Notices and Amended Assessment Notices and the February 24, 2022 Resolution, which denied the CIR's Motion for Reconsideration for lack of merit.

From the records, petitioner received the assailed resolution on March 8, 2022.

Rule 8, Section 3(b) of the RRCTA provides:

> "(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial <u>may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution</u>. <u>Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review</u>. (*Rules of Court, Rule 42, sec. 1a*)" (*Underscoring supplied*)

Under the RRCTA, the CIR had fifteen (15) days from receipt of the questioned resolution or until March 23, 2022 to file the petition. Accordingly, the Motion for Extension of Time to File Petition for Review filed on March 23, 2022 was filed within the reglementary period.

The motion, furthermore, asked for another fifteen (15) days from March 23, 2022 or until April 7, 2022 to file the petition.

The CIR finally filed the petition on April 7, 2022.

[44] Please see the Petition for Review, *Rollo*, pp. 7-9.
[45] *Rollo*, p. 39.
[46] Resolution dated February 24, 2022, *Rollo*, p. 43.

In the May 4, 2022 Resolution, the Court considered petitioner's motion as *deemed granted* in the interest of substantial justice.[47]

Accordingly, based on the foregoing, insofar as petitioner filed the motion before the expiration of the original 15-day reglementary period and paid the full amount of the docket and fees, the petition filed on April 7, 2022, which was within the second 15-day period covered by the extension, was *seasonably filed.*

The RO and GS, who continued the audit, were not authorized by a valid LOA which, thus, rendered the assessment void.

The facts remain undisturbed.

LOA No. 050-2014-00000309 dated August 26, 2014 and signed by Mr. Jonas DP. Amora, Revenue Regional Director of Revenue Region No. 8-Makati City, authorized RO Joey Fragrante, under the supervision of GS Roderick Cantillana of RDO No. 50 - South Makati, to examine the taxpayer's books of accounts and other accounting records for all internal revenue taxes for taxable year 2013.[48]

Thereafter, the Revenue District Officer of RDO No. 50, Rosita U. Meniano, issued a MOA dated June 17, 2016, authorizing *a new* RO Angeline S. Ifurung and *a new* GS Ma. Carmen V. Sy to continue the examination of the taxpayer.[49]

Thus, it appeared that the original RO was *not* the examiner who actually conducted the audit but the new RO and GS, by virtue of this MOA.

In this case, no new LOA was issued specifying the new RO Angeline S. Ifurung and the new GS Ma. Carmen V. Sy as the new examiners and clothing them with authority. Their authority was anchored only on the MOA, which was signed only by the Revenue District Officer and which, in effect, amended the LOA that was signed by no less than the Revenue Regional Director, a higher ranking official of the BIR.

Section 13 of the NIRC requires that an RO must be validly authorized by a LOA before conducting an audit of a taxpayer:

> "**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, <u>a Revenue Officer assigned to</u>

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[47] *Rollo*, p. 59.
[48] Decision, *Rollo*, p. 22; Amended Pre-Trial Order dated January 3, 2020, Division Docket, Vol. III, p. 1614-1615; Exhibit R-1, BIR Records, p. 3.
[49] *Id.*, p. 23.

> 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." (*Underscoring supplied*)

Considering that a LOA clothes the RO with the authority to assess and examine the books of account and records of a taxpayer, such power is necessarily subject to reasonable limitations. In particular, Section C(5) of RMO NO. 43-90,[50] mandates that any re-assignment/transfer of cases to another RO *requires the issuance of a new LOA* and Section D(5) limits the officials who may validly issue a LOA to only the CIR, Deputy Commissioners and Revenue Regional Directors:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> 2. The duplicate of each internal revenue tax which is specifically indicated in the L/A shall be attached thereto, unless a return is not required under the Tax Code to be filed therefor or when the taxpayer has not filed a return or the Assessment Branch has certified that no return is on file therein or the same cannot be located.
>
> 3. A Letter of Authority should cover a taxable period not exceeding one taxable year. The practice of issuing L/As covering audit of 'unverified prior years' is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.
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> 4. The maximum workload for a revenue officer shall, at any one time, not exceed 10 cases in the case of field audit and 30 in the case of office audit. If his pending cases are less than ten for field audit cases or thirty for office audit cases, whichever is applicable, (excluding reported cases which were returned to him by audit reviewers for further compliance with certain requirements), he may be assigned additional tax returns or cases to replenish those cases the audit of which were terminated and report thereon submitted to the Revenue District Officer for field cases and Chief, Assessment Branch for office audit cases. For purposes of determining the workload of each RO, each L/A shall be counted as one case. Thus, a L/A for income tax examination and a L/A for VAT which may be assigned to a RO shall be counted as two (2) cases. The workload limitation shall not apply to cases pending in the hands of a RO who was transferred to another district and such cases are re-assigned to other ROs in the same district. If, however, a return is assigned to more than one RO for purposes of team audit under only one L/A, each RO who is a member of the team or group shall be considered as having been assigned one case in determining the maximum number of cases to be assigned to each RO.

[50] Subject: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.
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> 6. The audit of VAT returns by qualified ROs must strictly comply with examination policy prescribed in RMO No. 18-90 announcing the results of the VAT Audit Proficiency Examination.
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> D. Preparation and issuance of L/As.
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> 1. All L/As for cases selected and listed pursuant to RMO No. 36-90 to be audited in the revenue regions shall be prepared and signed by the Regional Director (RD).
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> 2. The Regional Director shall prepare and sign the L/As for returns recommended by the RDO for assignment to the ROs, indicating therein the name and address of the taxpayer, the name of the RO(s) to whom the L/A is assigned, the taxable period and kind of tax; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.
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> 3. The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the procedures in the preceding paragraph, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue.
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.
>
> 5. All issued L/As shall be monitored in accordance with RMO No. 4-89 and 12-89." (*Underscoring supplied*)

Clearly, since *no new* LOA was issued covering them, the new RO and GS were *not* authorized to conduct an audit of the taxpayer's books of accounts.

Recently, in *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue* (Himlayang Pilipino),[51] the Supreme Court *invalidated* a CY 2009 BIR assessment for lack of an LOA authorizing the RO, thus:

> "***The lack of a valid LOA authorizing Revenue Officer Bagauisan to conduct an audit on petitioner makes the assessment void.***

[51] G.R. No. 241848, May 14, 2021.

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.

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.* the Court nullified the deficiency VAT assessment made against Sony Philippines because the revenue officers went beyond their authority when they based the assessment on records from January to March 1998 or using the fiscal year which ended in March 31, 1998 when the LOA covered only 'the period 1997 and unverified prior years.' According to the Court:

> 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 supplied*)

In *Medicard Philippines, Inc. v. CIR*, the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. The Letter of Notice earlier sent to Medicard Philippines was not validly converted into a LOA. According to the Court in *Medicard Philippines*:

> 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.** (*Emphasis supplied*)

<u>Here, as comprehensively discussed, there was no new LOA issued by the CIR or his duly authorized representative giving revenue officer Bagauisan the power to conduct an audit on petitioner's books of accounts for taxable year 2009. The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit</u>.

Lastly, as stated in Presiding Justice Del Rosario's dissenting opinion on the CTA *En Banc*'s decision, the failure of petitioner to raise at the earliest opportunity, the lack of the revenue officer's authority, does not preclude the Court from considering the same because the said issue goes into the intrinsic validity of the assessment itself.

WHEREFORE, the Petition for Review on Certiorari is hereby **GRANTED**. The Decision dated February 12, 2018 and the Resolution dated July 24, 2018 rendered by the Court of Tax Appeals En Banc in EB Case No. 1513 are **SET ASIDE**. The Formal Letter of Demand with Details of Discrepancies and Assessment Notices issued against petitioner Himlayang Pilipino Plans, Inc. are hereby **DECLARED UNAUTHORIZED** for having been issued without a Letter of Authority by the Commissioner of

> Internal Revenue or his duly authorized representative." (*Underscoring supplied and citations omitted*)

In *Commissioner of Internal Revenue v. McDonald's Realty Philippines Corp.* (McDonald's),[52] the Supreme Court decided in favor of the taxpayer in connection with the reassignment of a RO and affirmed the CTA in *invalidating* the CY 2006 assessment. It held that:

> "The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (LOA) and substituting or replacing them with new revenue officers to continue the audit or investigation *without a separate or amended LOA* (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue (CIR) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (*BIR*) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts." (*Underscoring supplied*)

Finally, in *Republic of the Philippines v. Robiegie Corporation* (Robiegie),[53] the Supreme Court reiterated the doctrines in *Himlayang Pilipino* and *McDonald's* on the necessity of a LOA for the valid conduct of a taxpayer investigation by an RO. In *Robiegie*, the Supreme Court *affirmed* the decision of the CTA *En Banc*, which held that the RO who continued the audit of the taxpayer was not authorized by a LOA, but merely by a Memorandum Referral signed only by the Revenue District Officer, thus, the 2008 assessments were declared *void*:

> "The petition has no merit. The assessments issued against Robiegie are invalid as they are based on an unauthorized investigation into its accounts.
>
> *LOA as the source of BIR revenue officers' investigatory powers*
>
> The Republic's witnesses admitted during the trial that the investigation into Robiegie's accounts was conducted by RO Dy and reviewed by RO Leonardo, both of whom were not named in the original July 2009 LOA. The Republic's witnesses further admitted that the reassignment of the investigation to RO Dy and RO Leonardo was not made through an LOA but through a memorandum referral only.
>
> The necessity of a validly issued LOA for the valid conduct of a taxpayer investigation by an RO is a well-settled doctrine embodied in our statutory and case law. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, which involved a deficiency value-added tax assessment in the context of the BIR's electronic 'no-contact-audit approach,' we discussed the dual

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[52] G.R. No. 242670, May 10, 2021.
[53] G.R. No. 260261, October 3, 2022.

> function of an LOA as the modality for the delegation of the CIR's investigatory power and as a manifestation of due process:
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> xxx xxx xxx
>
> Just last year, in *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, which also involved the reassignment of a deficiency tax investigation to another RO without the issuance of a new LOA, we nullified the Formal Letter of Demand and Assessment Notice issued against the taxpayer on the basis of such investigation, thus:
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> xxx xxx xxx
>
> This Court was more emphatic in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* (McDonald's), which opens with this categorical declaration:
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> xxx xxx xxx
>
> In that case, the RO authorized to investigate the accounts of McDonald's Philippines Realty Corporation through a validly issued LOA was transferred to another assignment; and the investigation was reassigned to another RO through a referral memorandum, without the issuance of a new LOA. We likewise invalidated the resultant assessment and demand:
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> xxx xxx xxx
>
> The above-quoted rulings find mooring in Sections 5, 6(A) and 13 of the NIRC, which vest tax compliance investigation powers in the CIR, subject to delegation to 'duly authorized representatives' under Section 6(A). xxx.
>
> xxx xxx xxx
>
> xxx. The Republic's construction of Section 13 of the NIRC to mean that an LOA is not an authorization but a mere notice of investigation to the taxpayer is blatantly contrary to the text of the law. First, the concept of authorization is inherent in the very language of Sections 6(A) and 13 of the NIRC, which speak of a 'duly authorized representative' and a 'Letter of Authority.' Second, the phrase 'pursuant to' in Section 13 means 'in the course of carrying out, in conformance to or agreement with, [or] according to.' <u>Thus, an RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a validly issued LOA. Stated differently, under the NIRC, the investigatory powers of the ROs flow from the LOA, which is the statutorily designated means by which the CIR delegates its investigative powers to the BIR revenue officers</u>." (*Citations omitted and underscoring supplied*)

All told, the reassignment of the audit of the taxpayer to the new RO and GS, without the issuance of a new LOA, renders the assessment *void*. A *void* assessment bears no fruit.[54] It does not give rise to a *legal obligation* on the part of the taxpayer to pay any deficiency tax due. Neither does it give rise to any *legal right* on the part of the CIR to *collect* from the taxpayer by virtue of the void assessment.

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

Therefore, the court *a quo* did *not* err in finding that the RO and GS who continued the audit of the taxpayer were *not* authorized by a LOA.

No reversible error was committed when the court* a quo *resolved issues that were not raised by the taxpayer in the petition.

In its second assignment of error, petitioner raised two related points. *First*, petitioner CIR contends that respondent taxpayer "never alleged, raised or prove[d] that there was no Letter of Authority issued or served by the BIR in [its] Petition for Review ... and even through the evidence that [it] has presented."[55] *Second*, the court *a quo* therefore should not have granted relief that was *not* prayed in the pleadings in excess of what was being sought by the taxpayer, citing the case of *Chinatrust (Phils.) Commercial Bank v. Philip Turner* (Chinatrust)[56] as legal basis.

Petitioner's contentions are both inaccurate.

Contrary to petitioner's first contention, a review of the records show that the taxpayer clearly alleged that it was "subjected to an audit investigation for the period January 1, 2013 to December 31, 2013 pursuant to Letter of Authority (LOA) No. 050-2014-00000309 dated August 26, 2014" in its Petition for Review.[57] This factual allegation was also covered by the Joint Stipulation of Facts and Issues signed and then filed by the parties.[58] Thus, in concluding its Petition for Review, the taxpayer prayed for the cancellation of the assessments for taxable year 2013,[59] the relief that was eventually granted by the court *a quo* in its decision.

The matter in question that was taken up by the court *a quo* was *not* whether a LOA was issued. The existence of the LOA was never in dispute and was jointly stipulated upon. The real issue, however, as correctly appreciated by the court *a quo*, was whether the new RO and the GS were authorized by the existing LOA. As discussed, they were *not* named in the LOA but were only assigned through a MOA.

Secondly, the case law in *Chinatrust* is inapplicable to this case. *Chinatrust* held that the "[i]ssues that were not alleged or proved before the lower court cannot be decided for the first time on appeal." Since the parties jointly stipulated on the issuance of the LOA, the same is tantamount to a judicial admission under Rule 129, Section 4 and there is no need to prove the same:

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[55] Petition for Review, *Rollo*, pp. 13-16
[56] G.R. No. 191458, July 3, 2017.
[57] Division Docket, Vol. I, p. 12.
[58] Division Docket, Vol. II, p. 1129.
[59] Division Docket, Vol. I, p. 26.

"**RULE 129**

What Need Not Be Proved

xxx xxx xxx

Section 4. *Judicial admissions.* — An admission, oral or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that the imputed admission was not, in fact, made. (4a)"

In *Republic v. Sandiganbayan,*[60] the Supreme Court *En Banc* explained that stipulations made during trial are judicial admissions:

"It is settled that judicial admissions may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (c) in other stages of judicial proceedings, as in the pre-trial of the case. Thus, facts pleaded in the petition and answer, as in the case at bar, are deemed admissions of petitioner and respondents, respectively, who are not permitted to contradict them or subsequently take a position contrary to or inconsistent with such admissions. We have always adhered to the familiar doctrine that an admission made in the pleadings cannot be controverted by the party making such admission and becomes conclusive on him, and that all proofs submitted by him contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not." (*Underscoring supplied*)

Third, the court *a quo* was not bound to adjudicate cases based only on issues agreed upon by the parties. Rule 14, Section 1 of the RRCTA, expressly grants it the discretion to decide related issues necessary to achieve an orderly disposition of the case:

"**RULE 14**
JUDGEMENT, ITS ENTRY AND EXECUTION

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."

This Rule 14, Section 1 discretion was recognized and cited by the Supreme Court in the recent case of *Republic v. First Gas Power Corporation,*[61] when it affirmed the cancellation of the FAN and the FLD against the taxpayer, despite the CIR's contention that the taxpayer could not raise the issue of prescription for the first time on appeal:

[60] *Republic v. Sandiganbayan,* G.R. No. 152154, July 15, 2003.
[61] G.R. No. 214933, February 15, 2022.

"Meanwhile, petitioner's contention that respondent could not raise the issue of prescription for the first time on appeal has long been settled in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue*. Therein, it was only when the case ultimately reached this Court that the issue of prescription was brought up. Nevertheless, this Court ruled that the CIR could no longer collect the assessed tax due to prescription, thus:

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, this Court categorically ruled that the Revised Rules of the CTA clearly allowed it to rule on issues not stipulated by the parties to achieve an orderly disposition of the case, thus:

> 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. — x x x
> >
> > 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.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter. (Citations omitted)

In view of the foregoing, the CTA correctly ruled on the issue of prescription even if it was only raised for the first time on appeal." (*Citations omitted; underscoring supplied*)

The above section is clearly worded. On the basis thereof, the court *a quo* was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue examiners who were not named in the LOA.

No reversible error was committed when the court **a quo** ***concluded that***

the taxpayer was* denied *due process when the CIR failed to wait for the lapse of the fifteen- (15)-day period from the taxpayer's receipt of the PAN before issuing the FLD.

In its third and final assignment of error, petitioner CIR states that the taxpayer was afforded due process because it was given reasonable time and opportunity to assail the assessment. Specifically, petitioner maintains that from the issuance of the Notice of Informal Conference until the issuance of FAN and even through oral arguments and through pleadings, the taxpayer was given numerous opportunities to be heard and to assail the findings of the audit.

The taxpayer's remedy of protesting an assessment is found in Section 228 of the NIRC, as amended. It lays out the rules to be followed, thus:

> "**CHAPTER III**
>
> **PROTESTING AN ASSESSMENT, REFUND, ETC.**
>
> **SEC. 228.** *Protesting of Assessment.* - <u>When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings</u>: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> <u>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</u>.
>
> <u>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 his duly authorized representative shall issue an assessment based on his findings</u>.
>
> 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." (*Underscoring supplied*)

Revenue Regulations No. 12-99 (RR 12-99), as amended, implements Section 228 of the NIRC, as amended, and Section 3.1.2 thereof spells out that the taxpayer has fifteen (15) days to respond to the PAN:

> "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:
>
> xxx xxx xxx
>
> 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 the law, rules and regulations, or jurisprudence on which the proposed assessment is based. If the taxpayer fails to respondent 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 issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties." (*Emphasis supplied*)

When the taxpayer received the PAN on January 9, 2017, it had fifteen (15) days from such receipt, or until January 24, 2017, within which to respond to the PAN, under Section 3.1.2 of RR No. 12-99, as amended. However, on January 20, 2017, *before the lapse of the full 15-day period*, the taxpayer received the FLD. In other words, the CIR failed to wait for the prescribed period to end before issuing and serving the FLD. The FLD was, for that reason, issued *prematurely* thereby depriving the taxpayer of the opportunity to be heard on the PAN, in violation of the due process requirement of RR 12-99, as amended.

In 2010, in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, (Metro Star)[62] the Supreme Court affirmed the CTA, which ordered the CIR to desist from collecting taxes by applying the procedure found in Section 228 of the

[62] G.R. No. 185371, December 8, 2010.

NIRC, as amended, and as implemented by RR 12-99. It emphasized the importance of *strict compliance* with the procedural rules for the issuance of PAN:

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to *strictly comply* with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.
>
> The case of *CIR v. Menguito* cited by the CIR in support of its argument that only the non-service of the FAN is fatal to the validity of an assessment, cannot apply to this case because the issue therein was the non-compliance with the provisions of R.R. No. 12-85 which sought to interpret Section 229 of the old tax law. RA No. 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely notifying the taxpayer of the CIR's findings was changed in 1998 to informing the taxpayer of not only the law, but also of the facts on which an assessment would be made. Otherwise, the assessment itself would be invalid. The regulation then, on the other hand, simply provided that a notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form.
>
> The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit.
>
> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while 'taxes are the lifeblood of the government,' the power to tax has its limits, in spite of all its plenitude." (*Citations omitted; italics and underscoring supplied*)

Recently, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, (Avon)[63] the Supreme Court once again ruled in favor of the taxpayer after finding that the CIR failed to observe *administrative due process* in the issuance of the assessment. The Supreme Court, thus, concluded that the CIR's total disregard of due process rendered the *identical* PAN, FANs, and the Collection Letter null and void:

[63] G.R. Nos. 201398-99, October 3, 2018.

"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.

xxx xxx xxx

Xxx. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory. This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.

On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

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The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.

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I.C

The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.

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.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void. This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations that taxpayers should be able to present their case and adduce supporting evidence. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself**. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> . . . .
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the

natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate ... that the law has not been observed. (*Emphasis supplied*)

In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. This Court, nonetheless, proceeds to discuss the points raised by the Commissioner pertaining to estoppel and prescription." (*Citations omitted; italics and underscoring supplied*)

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation* (Yumex),[64] the Supreme Court ruled that the ***simultaneous receipt*** of the PAN and the FLD/FAN, without giving the taxpayer the opportunity to answer the PAN within the period provided in RR 12-99, violated the taxpayer's right to due process under the Constitution and under Section 228 of the NIRC, as amended. Consequently, it affirmed the decision of the CTA *En Banc*, which *cancelled* the deficiency improperly accumulated earnings tax assessment:

"Clearly from the aforequoted provisions, the taxpayer has fifteen (15) days from date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.

Per the evidence on record, the BIR issued a PAN dated December 16, 2010, which it posted by registered mail the next day, December 17, 2010. It then issued and mailed the FLD/FAN on January 10, 2011. Although posted on different dates, the PAN and FLD/FAN were both received by the Post Office of Dasmariñas, Cavite, on January 17, 2011, and served upon and received by respondent on January 18, 2011. Under the circumstances, respondent was not given any notice of the preliminary assessment at all and was deprived of the opportunity to respond to the same before being given the final assessment.

[64] G.R. No. 222476, May 5, 2021.

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That respondent was able to file a protest to the FLD/FAN is of no moment. In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, the BIR ignored RR No. 12-99 and did not issue to the taxpayer, Pilipinas Shell Petroleum Corporation (PSPC), a notice for informal conference and a PAN as required; and as a result, deprived PSPC of due process in contesting the formal assessment levied against it. The Court pronounced therein that '[w]hile 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.' The Court once more reminded the BIR to be more circumspect in the exercise of its functions as the power of taxation is also sometimes called the power to destroy and, therefore, should be exercised with caution to minimize injury to the proprietary rights of the taxpayer.

Neither does the payment by respondent of the other items in the FLD/FAN, particularly, the basic deficiency income and fringe benefits taxes and compromise penalty, preclude it from questioning the validity of the issuance of the assessment notices. The manner by which the assessment is issued is a distinct matter in itself from the contents of the assessment. Respondent's voluntary payment, while it may be viewed as acknowledgement of its tax deficiencies for some of the assessed items, is not necessarily an outright waiver of its right to question the impropriety of the issuance of the assessment notices, especially in this case wherein respondent consistently protested the IAET assessment against it. The fact that respondent's right to due process was violated because it was denied the opportunity to respond to the PAN remains glaringly evident and cannot be deemed erased or cured by respondent's volitional payment of other assessed items.

Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response. If the taxpayer fails to do so within the prescribed period, it will be considered in default and only then shall petitioner or his duly authorized representative issue to the taxpayer an FLD/FAN demanding payment of the assessed deficiency tax, surcharges, and penalties. In the instant case though, the BIR did not ascertain respondent's date of receipt of the PAN before issuing the FLD/FAN, but merely invoked Sec. 3.1.7 of RR No. 12-99 on constructive service, which states that '[i]f the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer.'

However, considering that Sec. 3.1.2 of RR No. 12-99 specifically governs the PAN while Sec. 3.1.7 of the same regulations pertains generally to the constructive service of notices, the former takes precedence in application to the instant case in determining the period allotted for the taxpayer to respond to a PAN. It is a rule of statutory construction that a special and specific provision prevails over a general provision irrespective of their relative position in the statute. *Generalia specialibus non derogant.* Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment." (*Underscoring supplied*)

Finally, *Yumex* was cited as basis in the 2022 case of *Prime Steel Mill, Incorporation v. Commissioner of Internal Revenue* (Prime Steel),[65] where the Supreme Court *invalidated* the tax assessment because of violation of due process when, again, the 15-day period to reply to the PAN was *not* observed:

> "***First.*** 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 is indispensable for an orderly and comprehensive disposition of this case.
>
> ***Second.*** Unlike the issue on the invalidity or non-existence of the LOA, the non-observance of the 15 -day period to reply to PAN may be resolved by an examination of the evidence on record without requiring the presentation of additional proof. Thus, the CTA *En Banc* correctly took cognizance of this new issue.
>
> ***Nevertheless, the Court disagrees with the tax court's conclusion.***
>
> There is no true disagreement that the FAN was issued well within the 15-day period for petitioner to reply to the PAN. As recounted above, the PAN was received by petitioner on 7 January 2009 and its reply thereto was filed on 22 January 2009. Without waiting to receive petitioner's reply, the BIR apparently issued the FAN on 14 January 2009, albeit it was received by petitioner only on 12 February 2009.
>
> The CTA *En Banc* noted such discrepancy but brushed this aside by saying that the requirements of due process were already substantially complied with considering that petitioner was, in any event, given an opportunity to be heard on its grounds for disputing the assessment.
>
> The respondent, through the Office of the Solicitor General, does not deny that the 15 -day period was not observed; it simply reverberates the declaration of the CTA *En Banc* that there was substantial compliance with the requirements of the due process.
>
> ***This line of reasoning does not stand judicial muster.***
>
> In several cases, this Court has enjoined strict observance by the BIR of the prescribed procedure for the issuance of assessment notices in order to uphold the taxpayers' constitutional rights.
>
> In the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, the Court held that the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules.
>
> The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR

[65] G.R. No. 249153, September 12, 2022.

> to settle the case at the earliest possible time without need for the issuance of a FAN.
>
> In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that the 15 -day period provided under Revenue Regulations No. 12 -99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that '[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.'
>
> While *Yumex* rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15 -day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.
>
> As the Court also held in Yumex, '[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment.' 'Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response.'
>
> In the same vein, it is beside the point that petitioner was able to submit a 'well-prepared protest letter.' The fact remains that respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.
>
> Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12 -99 is void and produces no effect." (*Underscoring supplied and citations omitted*)

Finally, in line with the foregoing jurisprudence, petitioner's lapse in its observance of the due process requirement in Section 228 of the NIRC, as amended, and RR 12-99, as amended, *cannot be cured* by the opportunity to be heard given to the taxpayer *subsequent* to the issuance of the PAN. Otherwise, the holdings in *Metro Star*, *Avon*, *Yumex* and *Prime Steel*, which consistently called for the *strict compliance* with the same due process requirements, would be rendered nugatory.

All told, petitioner CIR failed to raise any issue that has convinced the Court *En Banc* to modify or reverse the assailed Decision and Resolution of the Court *a quo*.

WHEREFORE, premises considered, the Petition for Review filed by petitioner is **DENIED** for lack of merit. The assailed Decision and Resolution of the court *a quo* are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA A. MODESTO-SAN PEDRO
Associate Justice

(On Official Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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