REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

EBAR ABSTRACTING COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10685

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO,
ANGELES, *JJ.*

Promulgated:

OCT 16 2025
9:30 am

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DECISION

ANGELES, *J.*:

Before the Court is a *Petition for Review* filed by Ebar Abstracting Company, Inc. (petitioner) on November 23, 2021, praying that the assessments issued by the Commissioner of Internal Revenue (CIR/respondent) against petitioner, for its alleged deficiency income tax and withholding tax on compensation (WTC), in the amount of ₱17,607,283.38, for taxable year (TY) 2014, be cancelled, set aside and declared null and void.[1]

THE PARTIES

Petitioner Ebar Abstracting Company, Inc. is duly registered with the Bureau of Internal Revenue (BIR), as shown in its BIR Certificate of Registration No. 9RC0000535501, under Taxpayer Identification Number (TIN) 218-765-846-000.[2]

On the other hand, respondent is an officer/Chief of the BIR charged with, among others, the responsibility of assessing/collecting

[1] Summary of the Case, Pre-Trial Order dated November 22, 2022, Docket, p. 464.
[2] Exhibit "P-3," Docket, p. 71.

all national internal revenue taxes, acting on claims for refund and/or tax credits as provided by law.[3]

Respondent is represented by the Legal Division of Revenue Region 8A - Makati City pursuant to Executive Order No. 175 dated November 3, 1999, as implemented by the Revenue Administrative Order No. 10-2000 dated August 7, 2000. The Legal Division of Revenue Region 8A - Makati City is located at the 36th Floor ExportBank Plaza Building, Chino Roces Ave. corner Sen. Gil Puyat Avenue, Makati City.[4]

FACTS

On July 28, 2015, the BIR issued *Letter of Authority* (LOA) No. SN: eLA201200033892 (AUDM49/002403/2015),[5] signed by Regional Director Jonas DP Amora,[6] authorizing **Revenue Officer (RO) Myrabel Dela Cruz** and **Group Supervisor (GS) Arlaine Gina Lapuz** to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2014 to December 31, 2014. The said LOA was received by petitioner on August 7, 2015.

Subsequently, Revenue District Officer Atty. Shirley A. Calapatia informed petitioner, through a letter dated May 23, 2016,[7] that its case has been re-assigned to **RO Talib A. Muti III** under **GS Cadidia G. Carim** on May 20, 2016, pursuant to *Memorandum of Assignment* (MOA) No. RR8-047-REA-0516-385 dated May 19, 2016.[8]

On October 18, 2017, the BIR issued a *Preliminary Assessment Notice* (PAN),[9] which was received by petitioner on October 25, 2017, finding petitioner liable for deficiency income tax, value-added tax (VAT), WTC, expanded withholding tax (EWT), and documentary stamp tax (DST), for TY2014.[10]

Thereafter, on November 17, 2017, respondent issued a *Formal Assessment Notice* (FAN), assessing petitioner for deficiency income

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[3] Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issue* (JSFI), Docket, p. 451.
[4] Par. 2, Stipulated Facts, JSFI, Docket, p. 451.
[5] Par. 3, Stipulated Facts, JSFI, Docket, p. 451.
[6] Exhibit "P-6," Docket, p. 130; Exhibit "R-1", BIR Records, p. 1.
[7] Exhibit "P-7," Docket, p. 131.
[8] Exhibit "R-2," BIR Records, p. 235.
[9] Par. 4, Stipulated Facts, JSFI, Docket, p. 451.
[10] Exhibit "P-8," Docket, pp. 132 to 136; Exhibit "R-4," BIR Records, pp. 304 to 308.

tax, VAT, WTC, EWT, and DST, for TY2014.[11] Petitioner received the same on November 24, 2017.[12]

On December 21, 2017, petitioner filed a *Request for Re-investigation On Final Assessment Notice for the Taxable Year 2014 duly received on November 24, 2017, covered by Letter of Authority eLA201200033892* (Request for Reinvestigation),[13] disputing the validity of the assessments.

Subsequently, Regional Director Maridur V. Rosario issued LOA No. 047-2020-00000650 (SN: eLA201700033982) dated October 16, 2020, authorizing RO Talib Muti III and GS Luzviminda Sabile to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2014 to December 31, 2014 due to the transfer of the previous RO and GS to another office.[14]

On September 16, 2021, respondent issued the *Final Decision on Disputed Assessment* (FDDA), finding petitioner liable for deficiency income tax, VAT, EWT, and WTC.[15]

PROCEEDINGS BEFORE THE COURT

On November 23, 2021, petitioner filed the present *Petition for Review*.[16]

Within the period granted by the Court,[17] respondent posted his *Answer with Motion to Dismiss* on February 21, 2022.[18] Respondent then transmitted the *BIR Records* of the present case on February 24, 2022.[19]

On June 14, 2022, petitioner filed a *Motion for Summary Judgment*.[20] Respondent then posted his *Comment/Opposition (to Petitioner's Motion for Summary Judgment)* on June 20, 2022,[21]

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[11] Par. 5, Stipulated Facts, JSFI, Docket, p. 452; Exhibit "P-9," Docket, pp. 137 to 147; Exhibit "R-5," BIR Records, pp. 312 to 333.
[12] Docket, p. 288.
[13] Exhibit "P-10," Docket, pp. 148 to 171.
[14] Exhibit "P-12," Docket, p. 182; Exhibit "R-9", BIR Records, p. 385.
[15] Par. 6, Stipulated Facts, JSFI, Docket, p.452; Exhibits "P-13," and "R-11," BIR Records, pp. 435 to 439.
[16] Docket, pp. 10 to 44.
[17] Respondent's *Motion for Extension of Time to File Answer* dated January 19, 2022, and Resolution dated March 14, 2022, Docket, pp. 253 to 256, and 357, respectively.
[18] Docket, pp. 259 to 276.
[19] Respondent's *Compliance* dated February 24, 2022, Docket, pp. 250 to 251.
[20] Docket, pp. 394 to 406.
[21] Docket, pp. 425 to 432.

while petitioner filed a *Reply (To respondent's Comment/Opposition to petitioner's Motion for Summary Judgment)* on June 23, 2022.[22]

In the Resolution dated August 5, 2022,[23] the Court denied for lack of merit both respondent's *Motion to Dismiss*, incorporated in his *Answer*, and petitioner's *Motion for Summary for Judgment.*

The Pre-Trial Conference was initially set on June 2, 2022,[24] but was later reset to, and held on, September 21, 2022.[25] Prior thereto, *Respondent's Pre-Trial Brief* was filed on May 25, 2022,[26] while petitioner's *Pre-Trial Brief* was submitted on May 26, 2022.[27]

During the Pre-Trial Conference held on September 21, 2022, the Court, among others, directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals on October 10, 2022.[28] However, the mediation was declared unsuccessful per the *Mediator's Report* dated March 7, 2023 submitted on March 8, 2023.[29]

On October 17, 2022, the parties submitted their *Joint Stipulation of Facts and Issue*,[30] which was admitted and approved by the Court in its Resolution dated October 27, 2022,[31] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated November 22, 2022 was then issued.[32]

Trial then ensued, with both parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimony of the Senior Manager of its Tax Compliance Group, Mr. Eugenmar P. Morales.[33]

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22 Docket, pp. 413 to 423.
23 Docket, pp. 437 to 446.
24 Notice of Pre-Trial Conference dated March 24, 2022, Docket, pp. 356 to 357.
25 Notice of Resetting dated May 30, 2022, Docket, p. 410; Resolution dated August 5, 2022, Docket, pp. 437 to 446; Minutes of the hearing held on, and Order dated, September 21, 2022, Docket, pp. 448 to 450.
26 Docket, pp. 364 to 372.
27 Docket, pp. 376 to 382.
28 Minutes of the hearing held on, and Order dated, September 21, 2022, Docket, pp. 448 to 450.
29 Docket, p. 484.
30 Docket, pp. 451 to 453.
31 Docket, p. 459.
32 Docket, pp. 464 to 469.
33 Exhibit "P-1," Docket, pp. 47 to 60; Minutes of the hearing held on, and Order dated, September 13, 2023, Docket, pp. 495, and 497 to 498, respectively.

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On September 27, 2023, petitioner filed its *Formal Offer of Documentary Exhibits*,[34] to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence)* on September 28, 2023.[35]

In the Resolution dated December 13, 2023,[36] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-2," "P-4," "P-5," and "P-11," for failure of petitioner to present the originals for comparison.

For his part, respondent offered the testimony of RO II Talib A. Muti III.[37]

On February 8, 2024, respondent filed his *Formal Offer of Evidence*,[38] to which petitioner filed its *Comments/Objections (To the Respondent's Formal Offer of Evidence)* on February 19, 2024.[39]

In the Resolution dated May 8, 2024,[40] the Court admitted all of respondent's offered exhibits.

The *Memorandum (For petitioner EBAR Abstracting Company, Inc.)*[41] was filed on June 19, 2024. On the other hand, respondent's *Memorandum*[42] was posted on June 19, 2024.

The present case was submitted for decision on July 4, 2024.[43]

ISSUE

As agreed upon by the parties, the issue to be resolved by the Court is whether petitioner is liable for deficiency Income Tax and Withholding Tax on Compensation in the amount of PhP17,607,283.38, for TY2014.[44]

ARGUMENTS OF THE PARTIES

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[34] Docket, pp. 499 to 507.
[35] Docket, pp. 509 to 511.
[36] Docket, pp. 515 to 516.
[37] Exhibit "R-12," Docket, pp. 340 to 353; Minutes of hearing held on, and Order dated, January 31, 2024, Docket, pp. 517 to 519.
[38] Docket, pp. 520 to 529.
[39] Docket, pp. 533 to 539.
[40] Docket, pp. 542 to 543.
[41] Docket, pp. 544 to 565.
[42] Docket, pp. 566 to 579.
[43] Minute Resolution dated July 4, 2024, Docket, p. 582.
[44] Issue to be Resolved, JSFI, Docket, p. 452.

Petitioner's arguments

Petitioner argues that it is not liable for the assessments contained in the FAN and FDDA. *First*, the assessments contained in the FAN and FDDA are null and void since the ROs who conducted the tax investigation of petitioner for TY2014 were not authorized by a valid LOA.[45] *Second*, the use of MOA, Referral Memorandum, or such equivalent document, directing the continuation of audit or investigation by an unauthorized RO usurps the functions of the LOA.[46] *Third*, Revenue Memorandum Order (RMO) No. 43-90 expressly and specifically requires the issuance of a new LOA if ROs are reassigned or transferred.[47] Lastly, even assuming that the new LOA issued on October 16, 2020 is valid, the assessments for deficiency tax contained in the FDDA are null and void for being issued beyond the three (3)-year prescriptive period.[48]

Respondent's counter-arguments

Respondent contends that the present *Petition for Review* was filed out of time.[49] He argues that the due process requirement for tax assessment was fully complied with since the ROs who conducted the tax audit possessed proper authority to examine petitioner's book of accounts and other accounting records.[50] He likewise argues that the tax assessment against the petitioner was issued within the period prescribed by law.[51] Respondent also avers that petitioner is liable for deficiency income tax and WTC for TY2014.[52]

RULING OF THE COURT

The present *Petition for Review* is meritorious.

The Court has jurisdiction over the present petition.

Petitioner avers that on October 18, 2021, it received the FDDA dated September 16, 2021. Hence, the appeal to this Court should have been filed within thirty (30) days from October 18, 2021, or until November 17, 2021. Owing to restrictions imposed during the COVID-

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[45] *Memorandum* dated June 19, 2024, Docket, p. 550.
[46] *Id.*, pp. 553 to 561.
[47] *Supra* note 44, pp. 551 to 552.
[48] *Id.*, pp. 562 to 564
[49] *Memorandum* dated May 31, 2024, Docket, pp. 568 to 570.
[50] *Id.*, pp. 570 to 573.
[51] *Id.*, pp. 573 to 576.
[52] *Id.*, pp. 576 to 578.

19 pandemic, and pursuant to Supreme Court Administrative Circular Nos. 75-2021 and 83-2021, petitioner contends that it had thirty (30) days counted from October 27, 2021, or until November 25, 2021, within which to file its Petition for Review.

On the other hand, respondent contends that petitioner failed to observe the thirty (30)-day mandatory period to appeal. He maintains that since petitioner received the FDDA on October 18, 2021, it had only until November 17, 2021, to file its Petition for Review. Thus, its filing on November 22, 2021 was six (6) days late.

Respondent further argues that Supreme Court Administrative Circular (AC) Nos. 75-2021 and 83-2021 did not suspend the running of the statutory period to appeal, it merely suspended the filing and service of pleadings before this Court. He also asserts that the BIR records show that petitioner received the FDDA on October 7, 2021, and not on October 18, 2021, making the present Petition for Review fifteen (15) days late.

Respondent's argument is untenable.

Section 228 of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides that:

> 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: xxx
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> xxx xxx xxx
>
> 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.
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> **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 the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.** (Emphasis supplied)

In this regard, Sections 7(a)(1) and (2), and 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, vest this Court with

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jurisdiction over the decisions and inactions of respondent and prescribe the procedure for appealing the same, *viz*:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
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> 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...**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.
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> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. (Emphasis supplied)

Under the foregoing provisions, this Court exercises appellate jurisdiction over the decisions, rulings, or inactions of respondent. It bears emphasis that the appeal must be filed within thirty (30) days from receipt of the assailed decision or ruling, or upon the expiration of the period prescribed by law for action.

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[53] the Supreme Court emphasized that:

> It is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed

[53] G.R. No. 168498, April 24, 2007.

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> within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.** (Emphasis supplied)

Accordingly, this Court must first resolve the issue of whether the appeal was seasonably filed, for it is only upon such determination that its jurisdiction over the present controversy may be upheld.

Records show that petitioner received the Formal Assessment Notice (FAN) dated November 17, 2017, on November 24, 2017.[54] Consequently, petitioner had thirty (30) days therefrom, or until December 26, 2017,[55] within which to file its administrative protest. Thus, petitioner's Request for Reinvestigation, filed on December 21, 2017, was seasonably filed within the prescribed period.[56]

On the other hand, petitioner's witness, Mr. Morales, testified that petitioner received the FDDA on October 18, 2021.[57] However, upon examination of the FDDA, which was a common exhibit of the parties marked as Exhibit "P-13" for petitioner and Exhibit "R-11" for respondent, the Court notes that it bears the date "10/7/21" and was signed by Joven Pajares.

This contradicts the testimony of petitioner's witness that the FDDA was received on October 18, 2021.[58]

As a rule, documentary evidence takes precedence over testimonial evidence as the latter can easily be fabricated. It also cannot be denied that the human memory on dates is frail and thus, there is no reasonable assurance of its correctness unless the date is an extraordinary or unusual one for the witness.[59]

Testimonial evidence is susceptible to fabrication and there is very little room for choice between testimonial evidence and

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[54] Exhibit "R-5," BIR Records, pp. 323 to 333; Q&A No. 12, Exhibit "P-1," Docket, p. 52.
[55] December 24, 2017, fell on a Sunday, while December 25, 2017, was a holiday.
[56] Exhibit "P-10," Docket, pp. 148 to 171.
[57] Q&A No. 15, Exhibit "P-1," Docket, pp. 52 to 53.
[58] Par. 6, Stipulated Facts, JSFI, Docket, p. 452; Exhibits "P-13," and "R-11," BIR Records, pp. 435 to 439.
[59] *Heirs of Eliseo Bagaygay v. Heirs of Anastacio Paciente*, G.R. No. 212126, August 4, 2021.

documentary evidence. Thus, in the weighing of evidence, documentary evidence prevails over testimonial evidence.[60]

Applying the foregoing pronouncements in this case, the Court cannot sustain Mr. Morales' claim that the FDDA was received on October 18, 2021. Consequently, this Court holds that the date "10/7/21" reflected on the FDDA, or October 7, 2021, constitutes the actual date of its receipt by petitioner. This being not only borne out by documentary evidence but likewise corroborated by the testimony of RO Muti III.[61]

Therefore, pursuant to Section 228 of the Tax Code and Section 11 of RA No. 1125, as amended, petitioner had thirty (30) days from October 7, 2021, or until November 8, 2021,[62] within which to file its *Petition for Review.*

However, due to the surge in COVID-19 cases, the filing of pleadings before this Court was suspended effective October 4, 2021, pursuant to Supreme Court AC No. 75-2021. The filing of pleadings thereafter resumed on October 27, 2021, or seven (7) calendar days from October 20, 2021, in accordance with Supreme Court AC No. 83-2021. Therefore, the counting of thirty (30) days within which to appeal the decision of respondent was reckoned from October 27, 2021, or until November 25, 2021.[63]

Correspondingly, the *Petition for Review* filed on November 23, 2021,[64] was seasonably filed within the reglementary period. Hence, this Court validly acquired jurisdiction over the present case.

The Court shall now resolve the issue of whether respondent observed due process in the issuance of the assessment notice.

The Revenue Officer who conducted the audit/investigation was not duly authorized to do so.

Petitioner maintains that the assessments contained in the FAN dated November 17, 2017, and the FDDA dated September 16, 2021,

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[60] *Socorro P. Cabilao v. Ma. Lorna Q. Tampan*, G.R. No. 209702, March 23, 2022.
[61] Q&A No. 69, Exhibit "R-12," Docket, p. 351.
[62] November 6, 2021, the 30th day, fell on a Saturday.
[63] Refer to Resolution dated August 5, 2022, Docket, at p. 439.
[64] Docket, pp. 10 to 46.

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are null and void, on the ground that the ROs who conducted the investigation for TY2014 were not duly authorized under a valid LOA.

Respondent, on the other hand, contends that a valid LOA dated July 28, 2015 was duly issued by the Revenue Regional Director, pursuant to which RO Muti III conducted the audit. Respondent further maintains that, assuming arguendo there was any defect in RO Muti III's authority to examine petitioner's books, such defect was subsequently cured by the issuance of a new LOA on October 16, 2020 expressly authorizing him to conduct the examination.

The Court finds merit in petitioner's contention.

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[65]

The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[66] An LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had.[67]

Section 13 of the Tax Code is clear that:

> SEC. 13. *Authority of a Revenue Officer*. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority** issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (Emphasis supplied)

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.[68]

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[65] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[66] *Commissioner of Internal Revenue v. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[67] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, *supra* note 65.
[68] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

In *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*,[69] where the ROs who undertook the audit pursuant to a MOA were completely different from the ROs designated in the LOA, the Supreme Court emphasized that:

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

This was the same conclusion reached in *Republic of the Philippines v. Robiegie Corporation*,[70] where the Supreme Court held that:

> In conclusion, we reiterate that the power of a BIR revenue officer to conduct taxpayer investigations flows from a validly issued LOA, which is the statutorily defined modality for the delegation of the investigatory powers vested in the CIR by law. **Thus, the reassignment of a taxpayer investigation to a different revenue officer must also be made pursuant to a LOA, the one-LOA-per-taxpayer rule notwithstanding. When a taxpayer investigation is transferred from one revenue officer to another, the responsible BIR official with authority to issue LOAs shall issue a new LOA to the new revenue officer assigned to the investigation.** The old LOA in favor of the reassigned revenue officer shall be deemed cancelled, and the new LOA issued to the subsequently designated revenue officer shall prevail, in accordance with the provisions of RMO No. 8-2006, issued on February 1, 2006. (Emphasis supplied)

Here, the Supreme Court categorically ruled that when the RO originally named in the LOA is replaced by a new RO, a new LOA must be issued to the new RO assigned to the investigation.

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[69] G.R. No. 242670, May 10, 2021.
[70] G.R. No. 260261, October 3, 2022.

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In *Commissioner of Internal Revenue v. Manila Medical Services Inc.*,[71] the Supreme Court reiterated that:

> Evidently, contrary to the CIR's argument, **if the revenue officers that were previously indicated in a LOA were reassigned or transferred to another case and as such, a new revenue officer will handle the case that was previously assigned to them, the issuance of a new LOA in favor of the new handling revenue officer is required**. Therefore, without the new LOA, RO Evangelista was not authorized to conduct the examination and assessment of the tax liabilities of MMS because LOA No. 2007-0034491, dated July 14, 2009, was issued to "RO E. Demadura/J. Macuha and Group Supervisor J. Tabor of the Special Investigation and Division," and not to her.
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> To emphasize, the Court has consistently held that in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual. Hence, as a result of RO Evangelista's lack of authority, the assessment against MMS was therefore void. (Emphasis supplied)

In the above cited case, the RO who conducted the audit of the taxpayer's books was also different from the RO originally named in the LOA. The Supreme Court held that a new LOA must be issued and, absent such, the resulting assessment is void.

Therefore, it is settled that a new LOA must be issued whenever the ROs and the GS originally designated therein are wholly substituted or replaced by other ROs and GS.

In this case, LOA No. SN: eLA201200033892 (AUDM49/002403/2015),[72] issued by Regional Director Jonas DP Amora, authorized **RO Myrabel Dela Cruz** and **GS Arlaine Gina Lapuz** to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2014 to December 31, 2014.

However, by virtue of the MOA No. No. RR8-047-REA-0516-385 dated May 19, 2016,[73] issued by Revenue District Officer Atty. Calapatia, petitioner's case for TY2014 was reassigned to **RO Talib A. Muti III** under **GS Cadidia G. Carim** for the *"[c]ontinuation of the audit/investigation to replace the previously assigned Revenue Officer MYRABEL DELA CRUZ due to transfer of the assigned RO per RTAO No. 4-2016 dated January 5, 2016."*

[71] G.R. No. 255473, February 13, 2023.
[72] Exhibit "P-6," Docket, p. 130; Exhibit "R-1," BIR Records, p. 1.
[73] Exhibit "R-2," BIR Records, p. 235.

Pursuant thereto, **RO Muti III** prepared a *Memorandum* dated June 30, 2017,[74] addressed to the Regional Director, which subsequently gave rise to the issuance of the subject PAN dated October 18, 2017,[75] and FAN dated November 17, 2017.[76] Pertinent portions of his Judicial Affidavit are quoted below:[77]

> 6. Q: How did you come to know the petitioner, Ebar Abstracting Company, Inc.?
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> A: I came to know the petitioner when the **petitioner's case was assigned to me through Memorandum of Assignment (MOA) No. RR8-047-REA-0516-385 dated 19 May 2016** issued pursuant to electronic Letter of Authority (eLOA) No. SN:eLA201200033892 dated 28 July 2015, authorizing me to continue the audit/investigation of Ebar Abstracting Company, Inc. for Taxable Year 2014 and to replace the previously assigned Revenue Officer Myrabel Dela Cruz due to transfer of the assigned RO per RTAO No. 4-2016 dated 5 January 2016. (Emphasis supplied)
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> xxx xxx xxx
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> 17.Q: What happened next, if there is any?
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> A: I prepared and submitted a Memorandum Report dated 30 June 2017 recommending the issuance of the Preliminary Assessment Notice (PAN).
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> xxx xxx xxx
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> 28.Q: What happened next, if there is any?
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> A: On 17 November 2017, Final Assessment Notice (FAN) with details of discrepancies and Assessment Notice, was issued and personally served to the petitioner.

RO Muti III likewise conceded that he was not originally named in the LOA and that his authority to conduct the subject investigation was derived solely from the MOA, *viz*: [78]

> Atty. Omnes: Mr. Witness, can you kindly refer to Exhibit "R-1" in the BIR records for the Letter of Authority dated July 28, 2015? Mr. Witness, the question is **do you confirm that the BIR Officers named in that Letter of Authority dated July 28, 2015 are Revenue Officer**

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[74] Exhibit "R-3," BIR Records, pp. 275 to 277.
[75] Par. 4, Stipulated Facts, JSFI, Docket, p. 451; Exhibit "P-8," Docket, pp. 132 to 136; Exhibit "R-4," BIR Records, pp. 304 to 308.
[76] Par. 5, Stipulated Facts, JSFI, Docket, p. 452; Exhibit "P-9," Docket, pp. 137 to 147; Exhibit "R-5," BIR Records, pp. 323 to 333.
[77] Q&A Nos. 6, 17 and 28, Exhibit "R-12," Docket, pp. 341 to 342, 343, and 345, respectively.
[78] Transcript of Stenographic Notes during the hearing held on January 31, 2024, pp. 7 to 8.

	Myrabel Dela Cruz and Group Supervisor Arlene G. Nilabos?
RO Muti III:	**Yes, Your Honor.** (Emphasis supplied)
Atty. Omnes:	And Mr. Witness, **do you also confirm that you are not one of those Revenue Officers named in that Letter of Authority which authorizes the conduct of tax examination of petitioner Ebar for taxable year 2014?**
RO Muti III:	**Yes, Your Honor.** (Emphasis supplied)
Atty. Omnes:	Thank you, Mr. Witness. Now, because of the Memorandum of Assignment you conducted the tax examination of petitioner Ebar for taxable year 2014, correct?
RO Muti III:	Yes, Your Honor.
Atty. Omnes:	And during the course of the examination you caused the issuance of a Formal Assessment Notice (FAN) with details of discrepancy dated November 17, 2017, correct?
RO Muti III:	Yes, Your Honor.

He further admitted that it was only after the completion of his audit that a new LOA was subsequently issued.[79]

It bears emphasis that the circumstances of the present case are analogous to the cases earlier cited. To reiterate, **RO Dela Cruz** and **GS Lapuz** were the officers expressly authorized under the LOA to examine petitioner's books for TY2014.

However, following the transfer of **RO Dela Cruz**, the case was subsequently reassigned to **RO Muti III** under **GS Carim**. Since neither of the officers originally named in the LOA remained in the investigation, it became imperative that a new LOA be issued in favor of the newly assigned RO and GS to validly authorize them to conduct the audit.

Considering that Revenue District Officer Atty. Calapatia merely notified petitioner, though the letter dated May 23, 2016,[80] that the audit of its case will be continued by a new officer, **RO Muti III**, who was armed solely with MOA No. RR8-047-REA-0516-385 dated May

[79] Transcript of Stenographic Notes during the hearing held on January 31, 2024, pp. 13 to 14.
[80] Exhibit "P-7," Docket, p. 131.

19, 2016,[81] the investigation he conducted, as well as the assessments emanating therefrom, are void for lack of authority, he not having been duly clothed with a valid LOA.

Significantly, the new LOA, *i.e.*, LOA No. 047-2020-00000650 (SN: eLA201700033982) dated October 16, 2020,[82] reflecting the name of **RO Muti III**, was only issued after petitioner filed a *Request for Re-investigation* on December 21, 2017. It bears emphasis that at the time the PAN and FAN were issued and served upon petitioner, **RO Muti III** was without authority to examine petitioner's books of accounts.

To reiterate, an LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[83] Accordingly, it is imperative that an LOA be issued prior to the initiation of the audit, precisely because it is the LOA that triggers the commencement of the audit process. This requirement finds explicit support in Section C (1) of Revenue Memorandum Order (RMO) No. 43-90, which categorically provides that all audits and investigations must be conducted under the authority of an LOA.

In contrast, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[84] Since the assessment embodies the BIR's determination of the taxpayer's alleged liability, it necessarily presupposes the conduct of a valid audit or investigation. Hence, it must be preceded by a duly issued LOA.

In *Commissioner of Internal Revenue v. Transitions Optical Philippines Inc.*,[85] the Supreme Court clarified that the assessment contemplated in Sections 203 and 222 of the Tax Code refer to the service of the FAN, *viz*:

> **Considering the functions and effects of a PAN *vis a vis* a FAN, it is clear that the assessment contemplated in Sections 203 and 222 of the National Internal Revenue Code refers to the service of the FAN** upon the taxpayer.
>
> On the other hand, **a FAN contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount**

[81] Exhibit "R-2," BIR Records, p. 235.
[82] Exhibit "P-12," Docket, p. 182; Exhibit "R-9", BIR Records, p. 385.
[83] *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. Nos. 196596, 198841 & 198941, November 9, 2016.
[84] *Adamson v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009.
[85] G.R. No. 227544, November 22, 2017.

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> **assessed and demanded.** It also signals the time when penalties and interests begin to accrue against the taxpayer. Thus, the National Internal Revenue Code imposes a 25% penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% *per annum*, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for payment until the amount is fully paid. Failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable. (Emphasis supplied)

To recall, in the present case, the LOA authorizing **RO Muti III** to examine petitioner's books was issued only on October 16, 2020, or long after petitioner filed its *Request for Re-investigation* on December 21, 2017. At the time **RO Muti III** prepared the Memorandum that gave rise to the issuance of the PAN and FAN, he was not validly authorized to do so.

A void act cannot be the subject of ratification.[86] At the risk of sounding repetitive, the issuance of an LOA is an indispensable prerequisite to the conduct of any audit, as it marks the commencement of the assessment process. The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality.[87] Simply put, the conduct by the RO of the audit cannot precede the issuance of the LOA since the RO's authority to conduct the audit is based on an LOA.

In *Medicard Philippines, Inc. v. CIR,*[88] the Supreme Court struck down the deficiency VAT assessment since the CIR issued a PAN and FAN without the requisite LOA.

Consequently, the subsequent issuance of a new LOA to reflect the name of RO Muti III, who was not originally designated therein, after the FAN has already been issued and served cannot cure the defect nor be given any legal effect. The absence of a valid LOA at the time of the audit renders the resulting PAN and FAN void. Hence, the belated issuance of a new LOA in favor of an RO who had already undertaken the audit without prior authority, and only after an assessment had been made, is devoid of any legal effect and cannot cure or validate the defect.

Moreover, it must be pointed out that Revenue District Officer Atty. Calapatia's issuance of the above-stated MOA, effectively constituted an encroachment upon the statutory authority of

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[86] *Bernas v. Cinco*, G.R. Nos. 163356-57 & 163368-69, July 1, 2015.
[87] *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp., supra* note 69.
[88] *Supra* note 65.

respondent and his duly authorized representative, the Regional Director.

The following provisions of the Tax Code enumerate the officers who may validly issue an LOA:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) Examination of Return and Determination of Tax Due. - After a return has been filed as required under the provisions of this Code, the **Commissioner** or **his duly authorized representative** may authorize the examination of any taxpayer and the assessment of the correct amount of tax. (Emphasis supplied)
>
> SEC. 10. *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
>
> xxx xxx xxx
>
> (c) Issue Letters of authority for the examination of taxpayers within the region;
>
> xxx xxx xxx
>
> Section 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (Emphasis supplied)

In addition, Section D(4) of RMO No. 43-90 provides that:

> 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**. (Emphasis supplied)

Based on the foregoing, only the Commissioner, Deputy Commissioners, Regional Directors, and other officials as may be duly

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authorized by the Commissioner who may issue a valid LOA. Hence, by issuing the subject MOA, RDO Atty. Calapatia effectively arrogated unto herself a power not vested in her by law, specifically, the authority to amend or alter an LOA earlier issued by a BIR official of higher rank.

Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment.[89]

The importance 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 such authority due to the absence of an LOA results in a void assessment.[90]

Consequently, the PAN and FAN, which resulted from the said audit conducted without the requisite LOA, holding petitioner liable for deficiency income tax, VAT, WTC, EWT, and DST is void. Corollarily, given the invalidity of the subject PAN and FAN, the subsequently issued FDDA is likewise void.

In view of the finding that the audit was conducted without an LOA resulting to the invalidity of the subject tax assessments, the Court deems it unnecessary to discuss the other arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, for being void, the FAN dated November 17, 2017, assessing petitioner of deficiency income tax, VAT, WTC, EWT, and DST for taxable year 2014, is **CANCELLED** and **SET ASIDE**. Furthermore, the FDDA dated September 16, 2021, assessing petitioner for deficiency income tax, VAT, EWT and WTC, in the total amount of **₱17,642,029.58**,[91] inclusive of interests, for taxable year 2014, is **REVERSED** and **SET ASIDE**.

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[89] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue, supra* note 65.
[90] *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.
[91]

Type of Tax		**Amount Due**
Income Tax	₱	15,929,492.45
VAT	₱	10,502.58
EWT	₱	24,243.62

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

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

ATTESTATION

I attest 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's Division.

CATHERINE T. MANAHAN
Associate Justice
Third Division Chairperson

WTC	₱	1,677,790.93
Total Amount Due	₱	**17,642,029.58**

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's *Attestation*, 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice