REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

KOKOLOKO NETWORK CORPORATION,
Respondent.

CTA EB NO. 2197
(CTA Case No. 9574)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:
JUN 03 2021
2:18 p.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) on December 11, 2019 to seek nullification of the Decision[1] dated September 24, 2019 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, the present Petition for Review is **GRANTED**. Accordingly, the deficiency assessment against petitioner for income tax, VAT, EWT, and IAET for taxable year 2012 as well as the Collection Letters issued pursuant thereto are **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

[1] Rollo, CTA EB Case No. 2197, pp. 20-45.

and the Resolution[2] dated November 18, 2019 (assailed Resolution) of the same Second Division of the Court (Court in Division) denying the CIR's Motion for Reconsideration, the dispositive portion thereof reads:

> "**WHEREFORE**, respondent's *Motion for Reconsideration* (Decision dated 24 September 2019) is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner CIR is the head of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the 1997 National Internal Revenue Code (NIRC) and other tax laws, rules and regulations. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

Respondent Kokoloko Network Corporation (KNC) is a corporation duly organized and registered under the laws of the Philippines, with its principal address at San Francisco Street corner Arayat Boulevard, Angeles City, Pampanga. It is primarily engaged in trading, marketing, distribution, marketing at wholesale and retail of all kinds of petroleum products, as shown in its Articles of Incorporation. Petitioner is registered with the BIR, as evidenced by its BIR Certificate of Registration bearing Tax Identification No. 007-038-539-000 and numbered OCN 3RC0000539565.[4]

THE FACTS

The facts of the case as found by the Court are as follows:

On August 6, 2014, KNC received from the BIR a Letter of Authority (LOA) dated May 19, 2014 with Reference No. eLA 201100068137/LOA-43B-2014-00000164[5] and a Letter Notice (LN) dated June 4, 2014.[6]

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[2] Rollo, pp. 59-63.
[3] Decision, p. 2.
[4] Ibid. p. 2.
[5] Exhibit P-19.
[6] Exhibit P-20.

On January 3, 2017, KNC received a Collection Notice dated December 15, 2016[7] issued by the CIR demanding payment of the alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and improperly accumulated earnings tax (IAET) amounting to One Hundred Five Million Eight Hundred Ninety-Nine Thousand Six Hundred Twenty-Four Pesos and 10/100 (P105,899,624.10).

On January 6, 2017, KNC filed a protest letter[8] on the Collection Notice assailing the assessment and requesting for the cancellation of the tax deficiencies previously demanded by respondent.

On January 16, 2017, KNC submitted the Quarterly VAT Return (1st to 4th Quarters for taxable year (TY) 2012), Monthly VAT Returns (TY 2012), Expanded Withholding Tax Returns (TY 2012) and Annual Income Tax Return and Audited Financial Statements (TY 2012), in support of its letter to the BIR dated January 6, 2017.[9]

On March 13, 2017, KNC received the BIR's reply-letter dated February 20, 2017 demanding it to settle the alleged assessment within five (5) days from notice thereof.[10]

On April 11, 2017, KNC filed before the Court in Division a Petition for Review praying that after due notice and hearing, judgment be rendered finding KNC not liable for deficiency taxes for taxable year 2012, and ordering the CIR and his agents to cancel and terminate the corresponding tax assessments and collection letter issued against it for taxable year 2012.[11]

On July 17, 2017, the CIR filed his Answer[12] on the Petition for Review.

On July 31, 2017, KNC filed its Reply[13] to the Answer.

The Pre-Trial Conference of the case was held on August 17, 2017.[14]

On September 19, 2017, KNC filed a Motion to Admit Amended Petition for Review with attached Amended Petition for Review.[15] The said

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[7] Exhibit P-21.
[8] Exhibit P-24.
[9] Joint Stipulation of Facts and Issues, paragraph 7.
[10] Annex R of the Petition for Review, Docket pp. 99-100.
[11] Docket, CTA Case No. 9574, pp. 14-39.
[12] Ibid., pp. 113-116.
[13] Ibid., pp. 126-129.
[14] Ibid. p.298.
[15] Ibid., pp. 318-355.

Motion to Admit was granted in the Resolution of the Court dated November 3, 2017.[16]

On November 23, 2017, the parties filed their Joint Stipulations of Facts and Issues.[17] Thereafter, the Court issued the Pre-Trial Order dated December 5, 2017.[18]

As agreed upon by the parties, the issues as stated in the Joint Stipulations of Facts and Issues presented before the Court in Division are as follows:

a. Whether or not KNC is liable for: (1) deficiency income tax in the amount of P65,302,076.18; (2) deficiency VAT in the amount of P34,346,115.47; (3) deficiency EWT in the amount of P6,033,169.94; (4) IAET in the amount of P198,262.51; and (5) compromise penalty in the amount of P20,000.00 for taxable year 2012.
b. Whether or not KNC received the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN)/ Formal Letter of Demand (FLD) issued by respondent;
c. Whether the CIR's right to assess deficiency taxes against KNC for taxable year 2012 has already prescribed;
d. Whether the Letter of Authority was served to KNC beyond 30 days from its issuance;
e. Whether automated computerized matching of third – party information is a valid basis of tax assessments; and
f. Whether or not the assessment and collection notice issued by the CIR are valid and meritorious.

Trial thereafter ensued wherein both parties presented their respective evidence. On July 30, 3019, KNC filed its Memorandum.[19] The CIR failed to file his Memorandum as per Records Verification Report of the Judicial Records Division dated July 31, 2019.[20]

In the Resolution[21] dated August 9, 2019, the Court in Division deemed the case submitted for decision.

On September 24, 2019, the Court in Division rendered the assailed Decision.[22]

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[16] Ibid., pp. 432-435.
[17] Ibid., pp. 451-454.
[18] Ibid., pp. 456-462.
[19] Ibid., pp. 1273-1315.
[20] Ibid., p. 1322.
[21] Ibid., p. 1329.
[22] Ibid., pp. 1333-1358.

On October 11, 2019, the CIR filed a "Motion for Reconsideration (Decision dated 24 September 2019)."[23]

On November 18, 2019, the Court in Division issued the questioned Resolution.[24]

Aggrieved, the CIR filed before the Court *En Banc* this Petition for Review on December 11, 2019.[25]

In the Resolution[26] dated January 9, 2020, KNC was directed by the Court *En Banc* to file its comment in this case.

On January 31, 2021, respondent filed its "Comment/Opposition [Re: Petition for Review Dated 11 December 2019].[27]

In the Resolution[28] dated February 14, 2020, the Court noted KNC's "Comment/Opposition [Re: Petition for Review Dated 11 December 2019] and ordered the parties to personally appear before Mediation Staff Assistant of Philippine Mediation Center- Court of Tax Appeals (PMC-CTA) on March 5, 2020 at 1:30 p.m., with or without the presence of their counsels for purposes of deciding whether or not they would agree to enter into mediation.

On March 5, 2020, the Court *En Banc* received PMC-CTA Form 6- No Agreement to Mediate[29] stating that the parties decided not to have their case mediated by the Philippine Mediation Center Unit- CTA.

On June 8, 2020, the Court *En Banc* issued a Resolution[30] noting PMC-CTA Form No. 6- No Agreement to Mediate. Accordingly, the instant case was deemed submitted for decision.

THE ISSUE

The main issue in this case is whether or not the Court in Division erred in granting the Petition for Review filed by KNC, which cancelled the deficiency assessment against the latter for income tax, VAT, EWT, and IAET for taxable year 2012 as well as the Collection Letters issued pursuant thereto.

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[23] Docket, CTA Case No. 9574, pp. 1361-1372.
[24] Ibid., pp. 1388-1392.
[25] Ibid., pp. 1 15.
[26] Rollo, CTA EB No. 2197, pp. 65-66.
[27] Ibid., pp. 67-78.
[28] Ibid., pp. 85-85.
[29] Ibid., p. 87.
[30] Ibid., pp. 89-90.

THE ARGUMENTS

The CIR contends that the Court in Division erred in ruling that the LOA issued is invalid because it was served beyond thirty (30) days from the date of its issuance; that KNC was estopped from questioning the validity of the LOA, after it received the same even though it was served beyond 30 days; that the Court in Division erred in ruling that the Revenue Officers (RO) who conducted the audit examination has no authority to do so; that the source of authority of the ROs is not the Memorandum of Assignment (MOA) but the validly issued LOA; that the Court in Division erred in ruling that the assessment is void because of violation of KNC's due process rights.

On the other hand, KNC argues that the CIR's arguments are mere reiterations of his previous submissions that were already addressed by the Court; that there is no cogent reason to reverse the Court in Division's Decision; that that Court in Division did not err in ruling that the LOA is invalid for having been served thirty (30) days from the date of its issuance; that the CIR's failure to issue a new LOA authorizing the new RO to conduct an audit examination renders the assessment invalid; that the ROs named under LOA No. eLA 201100068137/LOA-43B-2014-00000164 were different from the ROs who actually conducted the audit examination of respondent's accounting records and books of accounts for 2012; that the MOA issued by Revenue District Officer Honorata Aguilar cannot validly grant RO Guilbert M. Bercasio and Group Supervisor (GS) Melecio F. Cantara the authority to conduct audit examination of KNC's books of accounts because an RDO is bereft of any power or capacity to authorize the examination of books or to effect any modification or amendment to previously issued LOA by the Commissioner or his duly authorized representative; and that the Court in Division did not err in ruling that the assessment is void because if violation of respondent's right to due process; that the alleged PAN and FAN were received by persons who are not employees of respondent; and that the CIR's witness admitted that the FAN was received ten (10) days earlier than the PAN.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

On September 26, 2019, the CIR received the Decision of the Court in Division. On October 11, 2019, the CIR filed a Motion for Reconsideration of the said Decision. On November 18, 2019, the Court in Division issued the assailed Resolution denying the CIR's motion. Said Resolution was received by the CIR on November 26, 2019.

From receipt of the said Resolution on November 26, 2019, the CIR had until December 11, 2019 within which to file the Petition for Review. On

December 11, 2019, the CIR filed the instant Petition for Review. Hence, this Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

After a careful review of the CIR's arguments and the records of the case, the Court *En Banc* finds that the Court in Division is correct when it ruled: a) that the ROs have no authority to conduct the examination of KNC's accounts; and b) that there is violation of KNC's due process rights. The Court *En Banc* notes that the arguments presented by the CIR are a mere rehash, in fact, quoted verbatim, of the arguments he offered in his Motion for Reconsideration before the Court in Division.

Nonetheless, the Court *En Banc* shall pass upon petitioner's arguments and will elucidate the conclusions of the Court in Division.

The Revenue Officers have no authority to conduct the audit examination.

The CIR insists that the ROs have authority to conduct the audit examination of KNC's accounts. The MOA subsequently issued derived its authority from the original LOA initially issued. The source of the RO's authority to investigate is not the Memorandum or any other document, but the validly issued LOA. Thus, the MOA directing RO Bercasio and GS Cantara to continue the audit examination of respondent for taxable year 2012 is proper.

Although the Court *En Banc* agrees with the CIR in his theory that the ROs have authority to conduct the audit based on the MOA. However, the Court *En Banc* disagrees with petitioner as regards its averments that the MOA issued in this case is a valid source of authority of RO Bercasio and GS Cantara.

The power of the CIR to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –**
>
> (A) *Examination of Returns and Determination of Tax Due. –* After a return has been filed as required under the provisions of

this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[31]

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz.:*

"SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a Regional Evaluation Board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

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[31] *Emphasis and underscoring supplied.*

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

"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

(c) **<u>Issue Letters of Authority for the examination of taxpayers</u> within the region;**

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[32]

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Regional Director, his agent. On the other hand, the Regional Director may appoint a sub-agent.

Article 1892 of the Civil Code provides:

"Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;
(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

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[32] *Emphasis and underscoring supplied.*

All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[33]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to RO Ananelia Santos and GS Josefina Lopez who were originally named in the LOA may be revoked, transferred and reassigned to RO Bercasio and GS Cantara for continuance of audit.

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[34] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[35]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[36] The title of the contract does not necessarily determine its true nature.[37] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[38] Similarly, every new

[33] *Emphasis supplied.*

[34] SEC. 13. Authority of a Revenue Officers. - 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***).

[35] Civil Code of the Philippines, Article 1869.

[36] Heirs of Dr. Mario S. Intac and Angelina Mendoza-Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 367.

[37] Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

[38] Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and

statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[39]

RO Bercasio and GC Cantara who conducted the examination of KNC's records may be deemed authorized to do so without need for a new LOA, if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.

Under RMO No. 29-07[40], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants</u>.**"[41]

In the instant case, the MOA[42] was only signed by Honorata S. Aguilar, Revenue District Officer (RDO) of BIR Revenue District Office No. 43B-West Pasig. RDO Aguilar has no power to authorize the examination of taxpayer's accounts. Therefore, RO Gilbert M. Bercasio and GS Melecio F. Cantara were without authority to continue the audit.

John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).
[39] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.
[40] Issued September 26, 2007.
[41] *Emphasis and underscoring supplied.*
[42] Exhibit "R-7," BIR Records, p. 252.

There is violation of Kokoloko Network Corporation's due process rights.

The CIR avers that KNC is estopped from denying receipt of the PAN and FAN because the previous notices sent to it by petitioner were received by respondent and that the notices sent after the alleged issuance of FAN were likewise received by respondent. Petitioner insists that respondent's denial of receipt of the PAN and FAN is a self-serving alibi that should not be given any probative value by this Court.

The Court *En Banc* agrees with the finding of the Court in Division that there is violation of respondent's due process rights. The rule is settled that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer.

In *Nava vs. Commissioner of Internal Revenue*,[43] the Supreme Court stressed the importance of proving the release, mailing or sending of the assessment notice, to wit:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), **this ruling makes it the more imperative that <u>the release, mailing, or sending of the notice be clearly and satisfactorily proved</u>.** Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." *(Emphasis and underscoring added)*

Relative thereto, Section 228 of the NIRC of 1997, as amended, and Section 3.1 of RR No. 12-99,[44] as amended by RR No. 18-2013,[45] respectively state, in part, as follows, to wit:

<u>Section 228, NIRC of 1997, as amended</u>:

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[43] G.R. No. L-19470, January 30, 1965..

[44] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[45] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

"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

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

xxx xxx xxx." *(Emphases and underscoring added)*

Section 3.1, RR No. 12-99, as amended:

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

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

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

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

> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based,** *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).
>
> 3.1.4 *Disputed Assessment.* – **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** xxx." *(Emphases and underscoring added)*

Based on the foregoing provisions, part of the due process requirements in the issuance of tax assessments is that the concerned taxpayer be informed in writing of the law and the facts upon which the assessment was made, and that the same taxpayer be given the opportunity to respond and contest the PAN and FLD/FAN or Assessment Notice. Being part of the due process requirements, these things must be accomplished before collection of the pertinent tax.

A perusal of the records of this case shows that the CIR failed to prove that the PAN and FAN were indeed received by KNC. This was aptly discussed in the assailed Decision:[46]

> "In its Amended Petition for Review, petitioner[47] categorically denies having received the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN). It also claims that the individuals who allegedly received the PAN as well as the FAN were not its employees. Given these denials, the respondent[48] has the corresponding burden to prove otherwise. However, this Court finds that respondent failed to overcome this burden.

[46] Decision, pp. 10-13, citations omitted.
[47] Herein respondent KNC.
[48] Herein petitioner CIR.

In his Answer, respondent asserts that the PAN was duly received by petitioner on May 20, 2016 while the Formal Letter of Demand (FLD) was received on June 10, 2016. To support this assertion, respondent presented RO Bercasio who testified in his Judicial Affidavit that the PAN and FAN were served on the foregoing dates. No other evidence was presented to buttress the allegation that the subject assessment notices were served on the said dates and that such notices sere indeed received by petitioner.

xxx xxx xxx

Respondent's witness basically admitted during cross-examination that the PAN was served to petitioner's alleged employee on **June 20, 2016** and not on May 20, 2016 as stated in his Affidavit of Service duly marked and presented as evidence as Exhibit R-10. Respondent's witness readily admitted that the date indicated on his Affidavit of Service was merely a typographical error. This admission essentially matches with the marking of the PAN itself wherein it appears that the same was received by *"Arthur B. Angeles, Pump Attendant, on 6-20-16."*

Moreover, respondent's witness also categorically admitted that the PAN was only served (10) days after the FLD was served on **June 10, 2016.** With these admissions, it is clear that petitioner's due process rights were violated because there is failure on respondent's part to strictly observe the mandatory procedure for issuing deficiency tax assessments. The service of FLD prior to the service of the PAN certainly violates petitioner's right to be informed of the facts and the law on which the assessment was made, as required by Section 218 of the 1997 NIRC."

Considering that these due process requirements were not shown to have been fulfilled by the BIR, the Assessment Notices are all null and void, pursuant to the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.,*[49] to wit:

"**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.**

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[49] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. Failure to **adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity**." *(Emphases and underscoring added)*

For being void, the subject deficiency tax assessments bear no valid fruit,[50] and thus, the Collection Notice dated December 15, 2016 must not be given any effect.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED for lack of merit**. Accordingly, for being void, the subject assessments issued against Kokoloko Network Corporation for taxable year 2012 for deficiency taxes are **CANCELLED** and **SET ASIDE**.

Moreover, the Collection Notice dated December 15, 2016 covering the said assessed deficiency tax liabilities against Kokoloko Network Corporation is also **CANCELLED** and **SET ASIDE**. Consequently, the CIR is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from Kokoloko Network Corporation.

SO ORDERED.

Ma. Belen ~~M. R.-L.~~

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[50] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et seq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, please see SCO)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2197** *(CTA Case No. 9574)*
	PRESENT:
-versus-	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
KOKOLOKO NETWORK CORPORATION, *Respondent.*	**PROMULGATED:** JUN 03 2021 2:18p.m.

x- -x

CONCURING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review for lack of merit.

I, however, wish to emphasize that the *"authorized representative"* contemplated under Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, who may issue a Letter of Authority (LOA) is, at the very least, no other than a Revenue Regional Director[1] pursuant to Section 13 thereof.

The power to issue an LOA may not be delegated by the Commissioner of Internal Revenue (CIR) or the Revenue Regional Director to any other officer - - much less to a Revenue District Officer.

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[1] Under Revenue Memorandum Order No. 29-07, the equivalent of a Regional Director in the Large Taxpayers Service are the Assistant Commissioner and HREA who are also authorized to issue LOAs for audit of large taxpayers.

On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation*[2] is instructive, *viz.*:

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

All told, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

KOKOLOKO NETWORK CORPORATION,
Respondent.

CTA EB NO. 2197
(CTA Case No. 9574)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ*.

Promulgated:
JUN 03 2021 2:18 p.m.

x - x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the Decision which denied the Petition for Review filed by the Commissioner of Internal Revenue (**petitioner/CIR**) on the ground that the deficiency tax assessments were invalid due to the Revenue Officers' (**ROs**') lack of authority to conduct the examination of respondent Kokoloko Network Corporation's (**respondent/KNC's**) accounts and the violation of the latter's due process rights.

In the *ponencia* of our esteemed colleague, Justice Ma. Belen M. Ringpis-Liban, it was stated that RO Guilbert M. Bercasio (**Bercasio**) and Group Supervisor (**GS**) Melecio F. Cantara (**Cantara**), who conducted the examination of respondent's records, may be deemed authorized to do so without the need for a new Letter of Authority (**LOA**), if said letter or notice or memorandum was signed by the Assistant Commissioner or Head Revenue Executive Assistant of the Large Taxpayers Service pursuant to Revenue Memorandum Order (**RMO**) No. 29-07.[1]

[1] *Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.*

However, with due respect to the *ponencia*, I wish to state that, as a rule, any reassignment or transfer of cases to another RO(s) shall require the issuance of a new LOA. Absent such new LOA issued in favor of the RO(s) who recommended the issuance of the deficiency tax assessments against the taxpayer, the resulting assessments are void.

Notwithstanding that RO Bercasio and GS Cantara were equipped with a MOA[2], as a result of reassignment or transfer, the same cannot be considered as a valid substitute for the required LOA as the law contemplates the issuance of a **new** LOA in cases of reassignment or transfer of cases to another RO. The same finds basis from the provisions of RMO 43-90[3] which pertinently provides:

> ...
>
> **Any reassignment/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.[4]
>
> ...

In *Commissioner of Internal Revenue v. Composite Materials, Inc.*[5], the Supreme Court ruled that:

> ...
>
> **As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.**
>
> Here, the CTA en banc found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> Moreover, **the Court agrees with the CTA en banc that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA.
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> ...

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2 MOA No. 2016-43B-00000199, Exhibit "R-7", BIR Records, p. 252.

3 *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.*

4 Emphasis supplied.

5 G.R. No. 238352, 12 September 2018; Citations omitted and emphasis supplied.

Likewise, in the recently issued Resolution in the case of *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[6], the Supreme Court reiterated the ruling that if the ROs are not authorized, in the absence of a new LOA in their favor, the resulting assessments are void.

Based on the foregoing, it is clear that a new LOA (and not merely an MOA) is required in case of reassignment or transfer of the case to another RO. Accordingly, the MOA[7] subsequently issued by Revenue District Officer (**RDO**) Honorata S. Aguilar (**Aguilar**) is neither tantamount to an LOA nor a supplement thereto, as to validly give the new set of RO and GS the same kind of authority vested in the LOA.

It bears to emphasize that RMO 43-90, despite its issuance seven (7) years prior to the enactment of the National Internal Revenue Code (**NIRC**) of 1997, as amended, is still a valid administrative issuance. It was not impliedly repealed by the passage of the NIRC of 1997, as amended, as there exists no irreconcilable inconsistency between their respective provisions, such that they cannot be reconciled or harmonized without nullifying one of them. Notably, the NIRC of 1997, as amended, does not deal with the particulars on the issuance of an LOA which RMO 43-90 supplies.

Furthermore, RMO 43-90 is still a valid rule, as is evident from the recent Supreme Court decisions[8] guided by RMO 43-90.

To be valid, an LOA must be issued either by the CIR himself or by his duly authorized representative, who, under Section 13[9] in relation Section 10(c)[10] of the NIRC of 1997, as amended, is the Revenue Regional Director. In addition to the authority conferred upon a Revenue Regional Director, RMO 43-90, likewise provides:

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6 G.R. Nos. 249883-84, 27 January 2020.

7 Supra at note 2.

8 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017; *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. No. 196596, 09 November 2016; and, *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

9 **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.

10 **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:

...

(c) Issue Letters of Authority for the examination of taxpayers within the region[.]

...

> ...
>
> 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.**"[11]
>
> ...

Relatedly, RMO 29-07[12] also authorizes the Assistant Commissioner/Head Revenue Executive Assistants to issue LOAs relative to large taxpayers.

Summing up the foregoing rules, only the following officials are properly conferred with authority to permit the examination of taxpayers for deficiency taxes:

1. CIR;
2. Regional Directors;
3. Deputy Commissioners;
4. Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and,
5. Other officials but only upon prior authorization by the CIR himself.

Considering that there is no new LOA issued in favor of the ROs who conducted respondent's audit and the MOA signed only by RDO Aguilar is not a valid source of such authority, the deficiency tax assessments issued against respondent are inescapably void.

All told, I vote to **DENY** the Petition for Review.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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11 Emphasis supplied.
12 Supra at note 1.