REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Second Division

THE EUROPEAN HAIR FACTORY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10534

Members:

RINGPIS-LIBAN, *P.J., Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JAN 2? 20??
3:10pm.

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DECISION

RINGPIS-LIBAN, P.J.:

The Case

The *Petition for Review* prays that the Court:

1) give due course to the present *Petition for Review*; and

2) cancel respondent Commissioner of Internal Revenue's *Final Decision on Disputed Assessment* ("FDDA") dated February 26, 2021, assessing petitioner for alleged deficiency taxes in the amount of Php19,703,825.16.[1]

The Facts

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[1] Statement of the Case, Pre-Trial Order dated August 15, 2022, Docket – Vol. IV, p. 1698.

Petitioner The European Hair Factory is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office at Blk 1 Lot 9, Southpoint Subdivision, Brgy. Banay-Banay, Cabuyao, Laguna.[2] It is duly registered with the Securities and Exchange Commission, with Company Registration No. CS200608023 issued on January 5, 2017.[3]

Petitioner is also duly registered with the Bureau of Internal Revenue ("BIR"), as shown in its BIR *Certificate of Registration* No. 3RC0001004498, and was assigned with Taxpayer Identification No. 242-858-821-000.[4]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested under appropriate laws, with office address at BIR, Room 703, BIR Bldg., Diliman, Quezon City.[5]

On July 31, 2015, OIC-Regional Director Albino M. Galenza, issued the *Letter of Authority* ("LOA") No. eLA201200012634/LOA-057-2015-00000240,[6] authorizing Revenue Officer ("RO") Samera Lalia and Group Supervisor ("GS") Emily Singson 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.[7] Revenue District Officer Ramer D. Narvaez issued a *Checklist of Requirements* dated August 3, 2015.[8] He also issued the *First Request for Presentation of Records* on September 17, 2015.[9]

Subsequently, on June 20, 2016, RO Grace N. Nario-Mangubat issued a *Memorandum*, with attached *Revenue Officer's Audit Report*,[10] addressed to the Regional Director, stating therein the result of her investigation.[11]

Revenue District Officer Venus T. Gaticales issued the *Memorandum of Assignment* ("MOA") with No. 057-LA-00133-6/9/2017 dated June 9, 2017,[12] referring the case of petitioner to RO Grace N. Nario-Mangubat[13] for

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2 Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. IV, p. 1631.
3 Exhibit "P-2", Docket – Vol. 6, pp. 2869 to 2882.
4 Exhibit "P-15", Docket – Vol. 6, p. 3010.
5 Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1631.
6 Par. 3c, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1631.
7 Exhibit "R-1", BIR Records (Exhibit "R-12"), p. 2.
8 Par. 3c, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632; Exhibit "R-3", BIR Records (Exhibit "R-12"), p. 1.
9 Par. 3d, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632; Exhibit "R-4", BIR Records (Exhibit "R-12"), p. 446.
10 Par. 3e, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632.
11 Exhibit "R-5", BIR Records (Exhibit "R-12"), pp. 495 to 497.
12 Exhibit "R-2", BIR Records (Exhibit "R-12"), p. 490.
13 Married name of Grace Mangubat, as per Exhibit "R-13", Docket – Vol. 7, pp. 3139 to 3148.

"[c]ompliance with the review/reporting requirements of Regional Assessment Division, Office of the Regional Director. xxx"

Thereafter, OIC Regional Director Manuel V. Mapoy issued a *Preliminary Assessment Notice* ("PAN") dated December 11, 2017,[14] finding petitioner liable for deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), documentary stamp tax ("DST"), and compromise penalties, for taxable year 2014.[15]

On January 11, 2018, petitioner filed its protest to the PAN, stating, among others, that it did not receive any LOA with regard to the financial year examined.[16]

Regional Director Manuel V. Mapoy then issued the *Formal Letter of Demand* with attached *Details of Discrepancies and Audit Results/Assessment Notices* ("FLD/FAN") and other supporting documents on January 5, 2018,[17] assessing petitioner of deficiency income tax, VAT, EWT, DST, and compromise penalties, for taxable year 2014, in the aggregate amount of Php19,062,924.73, inclusive of surcharges and interests.[18]

On February 14, 2018, petitioner filed a *Request for Reconsideration* dated February 13, 2018.[19]

OIC-Regional Director Albino M. Galenza issued LOA No. eLA201200049826/LOA-057-2019-00000279 dated September 9, 2019, [20] authorizing RO – SJ Abigail Tiapson and GS Grace N. Nario-Mangubat to examine the books of accounts and other accounting records of petitioner for the period from January 1, 2014 to December 31, 2014.[21]

Thereafter, Revenue District Officer Timm B. Renomeron informed petitioner through the letter dated February 27, 2020[22] of the result of the reinvestigation.

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14 Par. 3f, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632.
15 Exhibit "P-5", Docket – Vol. 6, pp. 2921 to 2927; Exhibits "R-6" to "R-6-A", BIR Records (Exhibit "R-12"), pp. 518 to 524.
16 Exhibit "R-14", BIR Records (Exhibit "R-12"), pp. 557 to 558.
17 Par. 3g, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632.
18 Exhibits "P-6", Docket – Vol. 6, pp. 2928 to 2934; Exhibits "R-7" to "R-7-B", BIR Records (Exhibit "R-12"), pp. 509 to 503 and 514.
19 Exhibit "P-7", Docket – Vol. 6, pp. 2935 to 2953; Exhibit "R-8", BIR Records (Exhibit "R-12"), p. 596.
20 Par. 3h, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632.
21 Exhibit "P-8", Docket – Vol. 6, p. 2954; Exhibit "R-8", BIR Records (Exhibit "R-12"), p. 596.
22 Exhibit "P-9", Docket – Vol. 6, pp. 2955 to 2956.

On June 1, 2020, RO SJ Abigail Tiapson issued a *Memorandum*, with attached *Revenue Officer's Audit Report*,[23] addressed to Revenue District Officer, recommending the indorsement of petitioner's case to Collection Section for the preparation of Authority to Cancel Assessment.[24]

Subsequently, Regional Director Ricardo B. Espiritu issued the FDDA dated February 26, 2021,[25] which partially denied petitioner's *Protest*.[26] Petitioner then filed with respondent a *Request for Reconsideration* to the FDDA on August 30, 2019.[27]

RO Mari Jasmin Cycle Q. Briñas then issued a *Memorandum* dated February 26, 2021,[28] addressed to the Regional Director, recommending the forwarding of petitioner's docket to the Chief, Collection Division, for the enforcement of collection.[29]

On May 24, 2021, petitioner filed the present *Petition for Review*.[30]

Petitioner posted its *Urgent Motion to Suspend Collection and Lift Warrant of Distraint and/or Levy* on November 19, 2021,[31] to which respondent filed his *Comment and Opposition (Re: Petitioner's Urgent Motion to Suspend Collection and Lift Warrant of Distraint and/or Levy dated 18 November 2021)* on February 2, 2022.[32]

At the hearing held for the said *Urgent Motion to Suspend Collection and Lift Warrant of Distraint and/or Levy*, petitioner presented the testimony of Mr. John Mark M. Amita,[33] its Financial Controller.

On May 2, 2022, petitioner filed *via* private courier its *Formal Offer of Evidence with Motion to Cancel and Mark Exhibits (Re: Urgent Motion to Suspend*

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[23] Par. 3i, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632.
[24] Exhibits "R-9" to "R-9-A", BIR Records (Exhibit "R-12"), pp. 614 to 617.
[25] Par. 3j, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632.
[26] Exhibit "P-1", Docket – Vol. 6, pp. 2865 to 2868; Exhibit "R-10", BIR Records (Exhibit "R-12"), pp. 631 to 635.
[27] Exhibit "P-38-2", Docket – Vol. 5, pp. 2370 to 2389.
[28] Par. 3k, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632.
[29] Exhibit "R-11", BIR Records (Exhibit "R-12"), pp. 636 to 637.
[30] Docket – Vol. I, pp. 12 to 53; Docket – Vol. II, pp. 531 to 532 (amended *Verification and Certification Against Forum Shopping*).
[31] Docket – Vol. II, pp. 643 to 655.
[32] Docket – Vol. II, pp. 682 to 694.
[33] *Direct Testimony by Way of Judicial Affidavit of John Mark M. Amita* dated March 21, 2022, Docket – Vol. II, pp. 909 to 921; Minutes of the hearing held on, and Order dated, April 21, 2022, Docket – Vol. III, pp. 990 to 992.

Collection and Warrant of Distraint and/or Levy dated 19 November 2021),[34] to which respondent submitted his *Comment (Re: Formal Offer of Evidence with Motion to Cancel and Mark Exhibits dated 02 May 2022)* on May 19, 2022.[35] In the Resolution dated June 22, 2022,[36] the Court admitted petitioner's offered exhibits, *except* Exhibit "P-7", for failure to have the same marked.

The Court granted petitioner's *Urgent Motion to Suspend Collection and Lift Warrant of Distraint and/or Levy* in its Resolution dated September 14, 2022,[37] thereby lifting the *Warrant of Distraint and/or Levy* dated October 19, 2021, and suspending the collection of taxes.

Within the period granted by the Court,[38] respondent filed his *Answer (Re: Petition for Review dated 24 May 2021)* on February 11, 2022,[39] interposing the following defenses, to wit: (1) the assessment of petitioner's deficiency taxes were made pursuant to a valid LOA; (2) the assessments against petitioner were issued within the period prescribed by law; (3) the assessments were made in accordance with prevailing law and rules; and (4) petitioner is liable for deficiency income tax, VAT, EWT, DST, and compromise penalties.

The Pre-Trial Conference was set and held on May 19, 2022.[40] Prior thereto, *Respondent's Pre-Trial Brief* was filed on May 11, 2022,[41] while petitioner's *Pre-Trial Brief* was submitted on May 16, 2022.[42]

During the Pre-Trial Conference held on May 19, 2022,[43] the parties were ordered to immediately proceed and personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals ("PMC-CTA") on June 7, 2022. However, the PMC-CTA issued the *No Agreement To Mediate* dated June 21, 2022,[44] stating that the parties decided not to have their case mediated.

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[34] Docket – Vol. III, pp. 1323 to 1332.
[35] Docket – Vol. IV, pp. 1624 to 1626.
[36] Docket – Vol. IV, pp. 1643 to 1644.
[37] Resolution dated September 14, 2022, Docket – Vol. IV, pp. 1746 to 1757.
[38] Respondent's *Motion for Extension of Time to File Answer* dated January 11, 2022, and Resolution dated February 28, 2022, Docket – Vol. II, pp. 718 to 720, and 724, respectively.
[39] Docket – Vol. II, pp. 696 to 713.
[40] Notice of Pre-Trial Conference dated February 21,2022, Docket – Vol. II, pp. 716 to 717; Minutes of the hearing held on, and Order dated, May 19, 2022, Docket – Vol. IV, pp. 1614 to 1617.
[41] Docket – Vol. III, pp. 1295 to 1300.
[42] Docket – Vol. III, pp. 1305 to 1321.
[43] Minutes of the hearing held on, and Order dated May 19, 2022, Docket – Vol. IV, pp. 1614 to 1617.
[44] Docket – Vol. IV, p. 1641.

Respondent transmitted the *BIR Records* of this case on May 18, 2022, consisting of two (2) folders.[45]

On June 20, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[46] which was admitted and approved by the Court in its Resolution dated June 24, 2022,[47] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated August 15, 2022 was then issued.[48]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Jane Frances S. Delfin,[49] petitioner's Finance Head; and (2) Mr. Romeo A. De Jesus,[50] the Court-commissioned Independent Certified Public Accountant ("ICPA").[51]

The *Report* of the ICPA was submitted on April 11, 2023.[52]

On May 22, 2023, petitioner filed *via* accredited courier its *Formal Offer of Evidence*.[53] Respondent submitted his *Comment (Re: Formal Offer of Evidence)* on June 1, 2023,[54] while petitioner filed a *Reply (Re: Respondent's Comment dated 01 June 2023)* on June 20, 2023.[55] In the Resolution dated March 8, 2024,[56] the Court admitted all of petitioner's offered exhibits.

For his part, respondent presented the testimony of RO IV Grace N. Nario-Mangubat.[57]

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45 Respondent's *Compliance* dated May 16, 2022, Docket – Vol. IV, pp. 1609 to 1611.
46 Docket – Vol. IV, pp. 1631 to 1635.
47 Docket – Vol. IV, pp. 1646 to 1647.
48 Docket – Vol. IV, pp. 1698 to 1708.
49 Exhibit "P-24", Docket – Vol. IV, pp. 1770 to 1792; Minutes of the hearing held on, and Order dated, January 31, 2023, Docket – Vol. 6, pp. 2754 and 2758 to 2759, respectively.
50 Exhibit "P-24", Docket – Vol. 6, pp. 2814 to 2828; Minutes of the hearing held on, and Order dated, April 20, 2023, Docket – Vol. 6, p. 2843 and Docket – Vol. 7, p. 3091.
51 *Oath of Commission* dated January 31, 2023, Docket – Vol. 6, p. 2757; Minutes of the hearing held on, and Order dated, January 31, 2023, Docket – Vol. 6, pp. 2754 and 2758 to 2759, respectively.
52 Docket – Vol. 6, pp. 2773 to 2789.
53 Docket – Vol. 6, pp. 2846 to 2863.
54 Docket – Vol. 7, pp. 3093 to 3096.
55 Docket – Vol. 7, pp. 3098 to 3101.
56 Docket – Vol. 7, pp. 3124 to 3125.
57 Exhibit "R-13", Docket – Vol. 7, pp. 3139 to 3148; Minutes of hearing held on, and Order dated, December 26, 2024, Docket – Vol. 7, pp. 3149 to 3150.

On October 9, 2024, respondent filed his *Formal Offer of Evidence,*[58] to which petitioner submitted its *Comment/Opposition (Re Respondent's Formal Offer of Evidence dated 09 October 2024) via* accredited courier on October 21, 2024.[59] In the Resolution dated November 29, 2024,[60] the Court admitted all of respondent's offered exhibits.

On January 10, 2025, petitioner filed a *Manifestation,* stating that he is adopting the arguments he raised in his *Answer* dated February 10, 2022 as his *Memorandum,*[61] while petitioner submitted its *Memorandum via* accredited courier on January 17, 2025.[62]

The present case was considered submitted for decision on February 3, 2025.[63]

<u>The Issues</u>

As agreed between the parties and affirmed by the Court during the Pre-Trial Conference dated May 19, 2022, the following issues shall be resolved, to wit:

a. Whether or not the FLD/FAN and FDDA which the BIR issued are null and void due to lack of authority of the BIR examiners to conduct the tax audit;

b. Whether or not respondent's right to assess petitioner for alleged deficiency taxes covering the year 2014 has already prescribed; and

c. Whether or not petitioner is liable to pay for deficiency income tax, VAT, EWT, DST, and compromise penalties in the total amount of Php19,703,825.16 for taxable year 2014.[64]

Petitioner's arguments:

58 Docket – Vol. 7, pp. 3152 to 3158.
59 Docket – Vol. 7, pp. 3164 to 3166.
60 Docket – Vol. 7, pp. 3171 to 3172.
61 Docket – Vol. 7, pp. 3174 to 3176.
62 Docket – Vol. 7, pp. 3180 to 3216.
63 Minute Resolution dated February 3, 2025, Docket – Vol. 7, p. 3219.
64 Issues, JSFI, Docket – Vol. IV, pp. 1032 to 1033.

Petitioner argues that the absence of a valid LOA renders the FDDA null and void; that respondent's right to assess petitioner for alleged deficiency taxes had already prescribed since the invalid FLD and FDDA failed to toll the prescriptive period; and that petitioner's alleged deficiency income tax, VAT, EWT, and compromise penalties in the respective amounts of Php18,398,114.35, Php1,022,910.05, Php200,538.01, and Php80,000.00, lack factual and legal bases.

Respondent's counter-arguments:

In his *Answer*, respondent contends that the assessments of petitioner's deficiency taxes were made pursuant to a valid LOA; that the assessments against petitioner were issued within the period prescribed by law; that the assessments were made in accordance with the prevailing law and rules; and that petitioner is liable for deficiency income tax, VAT, EWT, DST, and compromise penalties.

Discussion/Ruling

The present *Petition for Review* has merit.

The Court has jurisdiction over the instant case.

Sections 7(a)(1) and (2), and 11 of Republic Act ("RA") No. 1125,[65] as amended by RA No. 9282,[66] confers jurisdiction to this Court relative to decisions and inactions of respondent, and states the manner of appealing the same, respectively, to wit:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (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,

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[65] An Act Creating The Court Of Tax Appeals, June 16, 1954.
[66] An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Of Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30 2004.

or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(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;"[67]

"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."[68]

Based on the foregoing provisions, this Court has appellate jurisdiction over decisions, rulings or inactions of respondent. The appeal must be filed within thirty (30) days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

In this case, petitioner allegedly received the FDDA dated February 26, 2021 on March 17, 2021.[69] This was not contested by respondent, and no evidence to the contrary was submitted. Hence, petitioner has indeed until April 16, 2021 within which to file its *Petition for Review*.

However, the Supreme Court issued the following administrative circulars ordering the physical closure of courts and extending the filing of petitions and appeals, complaints, motions, pleadings, and court submissions in the National Capital Judicial Region and nearby provinces due to the surge of Covid-19 cases, *viz.*:

Administrative Circular (AC) No.	Date Issued	Subject Matter/Content

[67] *Emphasis supplied.*
[68] *Emphasis supplied.*
[69] Par. 4.10, Statement of Material Facts and Antecedent Proceedings, Petition for Review, Docket – Vol. 1, p. 10.

AC No. 21-2021	April 10, 2021	**Re: Extension of Physical Closure of Courts** "Considering the unabated rise of Covid-19 cases, the requests of the judges and court personnel, and upon the concurrence of the members of the Court en banc, ALL the courts and judicial offices in the National Capital Judicial Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) shall remain physically closed until 18 April 2021. They may be reached through their hotlines and email addresses as posted in the Supreme Court website. xxx The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 22-2021	April 14, 2021	**Re: Physical Closure of Courts in Enhanced Community Quarantine and Modified Enhanced Community Quarantine Areas** "Considering that the National Capital Region, and the provinces of Abra, Bulacan, Cavite, Laguna, Quirino and Rizal, and Santiago City are under Modified Enhanced Community Quarantine (MECQ) until 30 April 2021, the physical closure of courts in the said areas is likewise extended to 30 April 2021. xxx The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 29-2021	April 30, 2021	**Re: Work Arrangements in Courts on 3 – 14 May 2021** "Considering that the National Capital Region, the provinces of Abra, Bulacan, Cavite, Laguna, Quirino and Rizal, and Santiago City, Isabela

		continue to be under Modified Enhanced Community Quarantine (MECQ) until 14 May 2021, **ALL** first and second level courts, and appellate collegiate courts, and their judicial offices in the said areas shall continue to be physically closed until 14 May 2021. xxx The time for filing and service of pleadings and motions during this period in these areas is SUSPENDED and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court."

Thus, the thirty (30)-day reglementary period to file petition before this Court was suspended from April 17, 2021, and resumed only after seven (7) days from May 17, 2021 or on May 24, 2021.

Correspondingly, the *Petition for Review* filed on May 24, 2021[70] was within the reglementary period. Hence, this Court has jurisdiction to entertain the present case.

The Court shall now proceed to discuss the merits of the case.

RO Grace N. Nario-Mangubat, who conducted the audit/investigation of petitioner, was not duly authorized to do so, and thus, the subject tax assessments are void.

Petitioner argues that, at the time RO Grace N. Nario-Mangubat conducted an examination of petitioner's books of accounts and other accounting records, and issued the 2016 *Memorandum,* preliminarily documenting her findings against petitioner for taxable year ending December 31, 2014, the latter did not have any authority to do so as there was no LOA designating her as the RO assigned to conduct an audit of petitioner's books of accounts.

Petitioner likewise claims that while a subsequent MOA was issued, re-assigning the case of petitioner to RO Grace N. Nario-Mangubat, such MOA is

[70] Docket – Vol. I, pp. 12 to 53; Docket – Vol. II, pp. 531 to 532 (amended *Verification and Certification Against Forum Shopping*).

not tantamount to authority to conduct an examination of petitioner's books pursuant to *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*[71] *(Mcdonald's* case). Thus, the PAN and the subsequent issuances based thereon are considered null and void.

Moreover, petitioner points out that the FLD issued in 2018 was likewise based on the examination and assessment conducted by RO Inciong and GS Zaporteza, who were never authorized to examine petitioner's books of accounts and other accounting records for the year 2014, as the first LOA received by petitioner specifically authorized RO Samera Lalia and GS Emily Singson to conduct the tax audit.

In view thereof, petitioner, citing the *Mcdonald's* case, claims that respondent failed to comply with the jurisdictional requirement of issuing the proper LOA prior to the conduct of an audit examination and assessment. Thus, any assessment conducted without the proper authority as contained in a validly executed LOA is void.

On the other hand, respondent argues that the subject of the instant petition is petitioner's deficiency tax assessments for taxable year 2014, and the first LOA was issued on July 31, 2015. Thus, he is only following the prevailing law and rules at that time and yet petitioner is relying on the decisions promulgated by the Supreme Court in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* on April 5, 2017,[72] and by the Court *En Banc* in *Commissioner of Internal Revenue vs. Alvez*[73] on October 8, 2020 and *Sunnyphil, Incorporation vs. Commissioner of Internal Revenue*[74] on October 9, 2019, pointing out technicalities on the letters and notices issued by respondent. According to respondent, said Decisions, except for *Medicard* case, are not yet jurisprudence which forms part of the law of the land referred to under Article 8 of the Civil Code. Thus, these decisions are accordingly not binding on the present case. Respondent continues that assuming that these decisions are considered precedents, the same cannot be applied retroactively.

The Court agrees with petitioner.

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

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[71] G.R. No. 242670, May 10, 2021.
[72] G.R. No. 222743, April 5, 2017.
[73] CTA EB Case No. 2076, October 8, 2020.
[74] CTA Case No. 9421, October 9, 2019.

the correct amount of tax.[75] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[76] An LOA addressed to an RO is specifically required under the NIRC before an examination of a taxpayer may be had.[77]

As a corollary, there must be a grant of authority before any RO can conduct an examination or assessment. Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[78] The importance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the ROs is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.[79]

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[80] the Supreme Court held the following:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer*' and issue an assessment against him.
>
> That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.'
>
> **In cases where the BIR conducts an audit without a valid LOA,** or in excess of the authority duly provided therefor,

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75 *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
76 *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
77 *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
78 *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
79 *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. 241848, May 14, 2021.
80 G.R. No. 222133, November 4, 2020.

the resulting assessment shall be void and ineffectual. xxx." *(Emphasis and underscoring added)*

Moreover, in the *McDonald's* case, the Supreme Court has made the following ruling relative to the necessity of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation, to wit:

"***B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA***

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. **The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts.** It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But **an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**

> **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 <u>a usurpation of the statutory power of the CIR or his duly authorized representative</u>.** 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.**" *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, it is clear that an LOA is not a general authority to any RO, but a <u>special authority</u> granted to a particular RO; that the practice of reassigning or transferring ROs, who are the original authorized officers named in the LOA, and subsequently substituting them with new ROs who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the respondent or his duly authorized representative; and that the issuance of a MOA, 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 respondent or his duly authorized representatives.

The above jurisprudential pronouncement is likewise consistent with the ruling of the Supreme Court in *Republic of the Philippines vs. Robiegie Corporation*,[81] wherein it was clarified that **the LOA is the statutorily designated means by which respondent delegates its investigative powers to the BIR revenue officers**. The pertinent portions of the said case read:

> "xxx. The Republic's construction of Section 13 of the NIRC to mean that an LOA is not an authorization but a mere notice of investigation to the taxpayer is blatantly contrary to the text of the law. First, the concept of *authorization* is inherent in the very language of Sections 6(A) and 13 of the NIRC, which speak of a 'duly authorized representative' and a 'Letter of Authority.' Second,

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[81] G.R. No. 260261, October 3, 2022.

> the phrase '*pursuant to*' in Section 13 means 'in the course of carrying out, in conformance to or agreement with, [or] according to.' **Thus, an RO *may* only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a <u>validly issued LOA</u>. Stated differently, under the NIRC, the investigatory powers of the ROs flow from the <u>LOA</u>, which is the <u>statutorily designated means</u> by which the CIR delegates its investigative powers to the BIR revenue officers.**
>
> xxx xxx xxx
>
> 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. **<u>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</u>**. 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." *(Emphases and underscoring added)*

Clearly, a MOA, referral memorandum, or any equivalent document, cannot be given effect so as to give a new RO the authority to continue the audit and investigation of a taxpayer. Since an LOA is a special authority granted to a particular RO, a new LOA must be subsequently issued, in case the original ROs are being replaced by a new RO to continue the examination and investigation, and even reinvestigation, of a taxpayer.

In this case, the LOA No. eLA201200012634/LOA-057-2015-00000240 dated July 31, 2015,[82] which was issued by Regional Director Jose N. Tan, authorized RO Samera Lalia and GS Emily Singson to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from January 1, 2014 to December 31, 2014.

[82] Exhibit "R-1", BIR Records (Exhibit "R-12"), p. 2.

The BIR, through Revenue District Officer Venue T. Gaticales, then issued a MOA No. 057-LA-00133-6/9/2017 dated June 9, 2017[83] to RO Grace N. Nario-Mangubat to continue such investigation due to the transfer of the previously assigned RO,[84] without issuing another LOA.

Earlier, RO Grace N. Nario-Mangubat prepared a *Memorandum* dated June 20, 2016,[85] with attached *Revenue Officer's Audit Report*,[86] addressed to the Regional Director, recommending that her audit report be approved and the corresponding PAN be issued to petitioner. This, in turn, resulted to the eventual issuance of the subject PAN dated December 11, 2017,[87] FAN dated January 5, 2018,[88] and FDDA dated February 26, 2021.[89] Pertinent portions of her Judicial Affidavit are herein quoted for ready reference, to wit:[90]

"12.	**Q:**	**How was petitioner informed that the audit/investigation was authorized?**
	A:	At the outset, a Letter of Authority ('LOA') with Serial No. eLA201200012634/LOA-057-2015-00000240 dated 31 July 2015 was issued to the taxpayer authorizing Revenue Officer Samera Lalia and Group Supervisor Emily Singson to investigate all internal revenue taxes of petitioner for the period 01 January 2014 to 31 December 2014. Thereafter, a Memorandum of Assignment with Serial No. 057-LA-00133-6/9/2017 dated 09 June 2017 was issued authorizing me to continue the audit/investigation, considering that the previously assigned Revenue Officers have been transferred. The Checklist of Requirements dated 03 August 2015 of was served together with the LOA.
		xxx xxx xxx
22.	**Q:**	**After the First Request for Presentation of Records was served to petitioner, what happened next if any?**

N

83 Exhibit "R-2", BIR Records (Exhibit "R-12"), p. 490.
84 Q&A No. 12, Exhibit "R-13", Docket – Vol. 7, p. 3141.
85 Exhibit "R-5", BIR Records (Exhibit "R-12"), pp. 495 to 497.
86 Exhibit "R-5-A", BIR Records (Exhibit "R-12"), pp. 491 to 492.
87 Par. 3f, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632; Exhibit "P-5", Docket – Vol. 6, pp. 2921 to 2927; Exhibits "R-6" to "R-6-A", BIR Records (Exhibit "R-12"), pp. 518 to 524.
88 Par. 3g, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632; Exhibits "P-6", Docket – Vol. 6, pp. 2928 to 2934; Exhibits "R-7" to "R-7-B", BIR Records (Exhibit "R-12"), pp. 503 to 514.
89 Par. 3j, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632; Exhibit "P-1", Docket – Vol. 6, pp. 2865 to 2868; Exhibit "R-10", BIR Records (Exhibit "R-12"), pp. 631 to 635.
90 Q&A Nos. 12, 22, 29, 32, and 35, Exhibit "R-13", Docket – Vol. 7, pp. 3141 to 3145.

	A:	Petitioner complied with the First Request for Presentation of Records and thus we were able to continue our audit based on the documents that we were able to obtain and the results of our audit revealed that petitioner is liable for deficiency taxes. And so, on 20 June 2016 we issued a Memorandum with attached Revenue Officer's Audit Report recommending the issuance of a Preliminary Assessment Notice ('PAN').
		xxx xxx xxx
29.	**Q:**	**After the Preliminary Assessment with attached Details of Discrepancy was issued against petitioner, what happened next if any?**
	A:	Petitioner disagreed with our findings and submitted a letter contesting the same. In light of this, we reexamined the case taking into consideration petitioner's allegations. However, after doing so, it is still our position that petitioner is liable for the deficiency taxes we have assessed. Hence, on 05 January 2018, a Formal Letter of Demand ('FLD') with attached Details of Discrepancies and Audit Results/Assessment Notices was issued against petitioner.
		xxx xxx xxx
32.	**Q:**	**After the Formal Letter of Demand with attached Details of Discrepancies and Audit Results/Assessment Notices was issued to petitioner, what happened next if any?**
	A:	Petitioner again disagreed with our findings in the FLD and submitted a letter contesting the same and requesting for reinvestigation of the assessment. However, after doing so, it is still our position that petitioner is liable for the assessed deficiency taxes. Hence, on 09 September 2019, a new Letter of Authority with Serial No. eLA201200049826/ LOA-057-2019-00000279 was issued and served to petitioner authorizing me and Revenue Officer SJ Abigail Tiapson to investigate all internal revenue taxes including documentary stamp tax and other taxes of petitioner for the period 01 January 2014 to 31 December 2014.
		xxx xxx xxx
35.	**Q:**	**After the new LOA dated 09 September 2019 was issued and served to petitioner, what happened next if any?**
	A:	On 01 June 2020, we issued a Memorandum with attached Revenue Officer's Audit Report

		recommending the issuance of a Final Decision on Disputed Assessment ('FDDA')."

Moreover, during the hearing held on September 26, 2024, RO Grace N. Nario-Mangubat further elaborated her participation in the conduct of audit/investigation in this wise:[91]

> "The original case was transmitted to Assessment Division for review with the recommendation that Preliminary Assessment Notice be issued recommended by previous officer, then RO Samira Lalia, however, she was transferred to another District Office and I was transferred to RDO 57 during that time, and it was returned by the Assessment Division to reflect some review findings. The assessment was to reduce some of the figures in the income tax and documentary stamp tax. So, I just made a Memorandum concurring to the review findings to reflect the reduction on the assessment. Then, I forwarded it back to the Assessment Division for issuance of PAN.
>
> xxx xxx xxx
>
> ATTY. ALBANO:
>
> Ms. Witness, you mentioned to this Honorable Court what you meant when you said that you reflected certain revision on the findings. But just to clarify, Ms. Witness, during that time, the LOA authorizing you to conduct the investigation has not yet been issued. Is that correct?
>
> WITNESS:
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> Yes, Attorney."

Based on the foregoing, it is clear that prior to the issuance the subject PAN and FLD, RO Grace N. Nario-Mangubat was not yet armed with an LOA, as she was then only authorized by Revenue District Officer Venus T. Gaticales, through a MOA No. 057-LA-00133-6/9/2017 dated June 9, 2017,[92] to continue the audit/investigation due to the transfer of the previously assigned ROs.

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[91] Transcript of Stenographic Notes during the hearing held on September 26, 2024, pp. 15 and 19.

[92] Exhibit "R-2", BIR Records (Exhibit "R-12"), p. 490.

Perforce, RO Grace N. Nario-Mangubat could not have validly conducted an audit of petitioner's books of accounts and accounting records for taxable year 2014 as she was not the RO authorized to conduct the tax audit since the new LOA, *i.e.,* eLA201200049826/LOA-057-2019-00000279 dated September 9, 2019,[93] reflecting her name was only issued after petitioner filed its *Request for Reconsideration*[94]on February 14, 2018. It logically then follows that any finding resulting from her tax audit was tainted with illegality.

It must also be pointed out that Revenue District Officer Venus T. Gaticales' issuance of the above-stated MOA, in effect, usurps the statutory power of respondent and his duly authorized representative, which in this case is the Regional Director. In issuing the same MOA, Revenue District Officer Venus T. Gaticales, in effect, exercised a power which was not vested in her, specifically, the power to amend or modify the LOA earlier issued by a BIR official who is higher in rank than her.

Consequently, the PAN and FAN, which are the result of the said audit/investigation, without the required new LOA, finding petitioner liable for deficiency income tax, VAT, WTC, EWT, DST, and compromise penalties, are void.

As a corollary, due to 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, it becomes unnecessary to discuss the other arguments raised by the parties.

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

For being void, the FAN dated January 5, 2018, assessing petitioner of deficiency income tax, VAT, EWT, DST, and compromise penalties for taxable year 2014, is **CANCELLED** and **SET ASIDE**.

Furthermore, the FDDA dated February 26, 2021, assessing petitioner for deficiency income tax, VAT, EWT, DST, and compromise penalties in the total amount of **Php19,703,825.16** inclusive of interests and surcharges, for taxable year 2014, is **REVERSED, CANCELLED** and **SET ASIDE**.

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[93] Par. 3h, Summary of Admitted Facts, JSFI, Docket – Vol. IV, p. 1632; Exhibit "P-8", Docket – Vol. 6, p. 2954; Exhibit "R-8", BIR Records (Exhibit "R-12"), p. 596.

[94] Exhibit "P-7", Docket – Vol. 6, pp. 2935 to 2953.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice