REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

SELLERY PHILS. ENTERPRISES, INC.,
Respondent.

CTA EB No. 2756
(CTA Case No. 10047)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
AUG 05 2024 2:30

x - x

DECISION

MANAHAN, *J.:*

Before the Court *En Banc* is a *Petition for Review* filed on May 25, 2023[1] by the Commissioner of Internal Revenue, which seeks to reverse and set aside the Decision[2] dated May 24, 2022 of the CTA Third (3rd) Division.

For easy reference, the dispositive portion of the May 24, 2022 Decision reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The subject IT and VAT assessments issued against petitioner for TY 2013 in the amounts of Twenty Two Million Six Hundred Fifty Two

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[1] EB Docket, pp. 1-8.
[2] Penned by Associate Justice Maria Rowena Modesto-San Pedro, with Retired Associate Justice Erlinda P. Uy and Associate Justice Ma. Belen M. Ringpis-Liban concurring, EB Docket, pp. 14-33.

Thousand Nine Hundred Fourteen and Eighty Nine Centavos (Php22,652,914.89) and Twenty Seven Million Four Hundred Thirty Seven Thousand Nine Hundred and Twenty Four Centavos (Php27,437,900.24), respectively, or in the aggregate amount of Fifty Million Ninety Thousand Eight Hundred Fifteen and Thirteen Centavos (Php50,090,815.13), are hereby declared **NULL AND VOID**. Accordingly, the subject FLD/FAN, the PCL, FNBS, the WDLs, the Warrants of Garnishment, the Notice of Encumbrance sent to the LTO, Notice of Tax Lien sent to the City Government of Pasay, and the Letters, dated 22 January 2019 sent to petitioner's incorporators seeking to assess and collect petitioner of the above mentioned deficiency IT and VAT assessment, are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED."[3]

FACTS

The following are the facts as found by the Court in Division:

"Sometime in 2011, petitioner ceased its business operations. Subsequently, on 14 April 2015, its Board of Directors decided to permanently dissolve the company.

On 20 May 2015, petitioner filed an Application for Registration Information Update with the Bureau of Internal Revenue ('BIR') Revenue District Office ('RDO') No. 25-A for a) cessation of petitioner's BIR registration effective 5 May 2015 and b) cancellation of petitioner's Tax Identification Number ('TIN').

Upon receiving the closure application, respondent issued three (3) Letters of Authority ('LOA') on 25 August 2015 authorizing revenue officer ('RO') Jayson Baello and group supervisor ('GS') Marita Panteriori to conduct a mandatory audit of petitioner's books of accounts and other accounting records to determine any tax liability for TY 2012-2014.

On 18 May 2016, a Memorandum of Assignment was issued by Revenue District Officer of RDO No. 25-A, Carlos

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[3] See Note 2, pp. 31-32.

S. Salazar, in favor of RO Cristina C. Yu and GS Rodolfo M. Roldan, Jr. to continue the audit of petitioner's accounting records in light of the previous RO and GS' resignation/retirement/transfer to another RDO.

During the audit, respondent attributed certain sales made by petitioner's affiliates, HomeAid and Buildex, to Robinsons Handyman, Inc., Waltermart Handyman, Inc., Handyman Expressmart, Inc., and other entities under the Robinsons Group (collectively, 'Robinsons Group') as petitioner's own sales. According to petitioner, this occurred because Robinsons Group erroneously used petitioner's TIN in its Summary List of Purchases ('SLP') for its purchases from HomeAid or Buildex (*i.e.*, the purchases were declared under the names of HomeAid or Buildex but the TIN used was that of petitioner). To address this issue, petitioner submitted Certifications from Robinsons Group attesting that the latter's purchases were made from HomeAid or Buildex and not from petitioner and that it improperly used petitioner's TIN instead of HomeAid and Buildex's respective TINs in declaring these purchases.

On 9 June 2016, respondent issued a Letter Notice ('LN') finding certain discrepancies in the amount of sales declared by petitioner as compared to the SLP filed by its alleged customers.

Subsequently, a Memorandum was issued by RO Yu recommending the issuance of a Preliminary Assessment Notice ('PAN') against petitioner assessing the latter for deficiency IT and VAT.

Following this recommendation, a PAN was issued by respondent on 17 July 2017 finding petitioner liable for deficiency IT and VAT in the amounts of Twenty One Million Seven Hundred Thousand One Hundred Eighty Seven and Seventy Seven Centavos (Php21,700,189.77) and Twenty Six Million Three Hundred Seventy Five Thousand Sixty Seven and Forty Five Centavos (Php26,375,067.45), respectively. A copy of the PAN was sent by RO Yu to petitioner via registered mail at the address '78 C. Jose Street, Malibay, Pasay City' on 21 July 2017 under Registry Receipt No. RD 761 120 173 zz.

Afterwards, respondent issued a Formal Letter of Demand with its corresponding Assessment Notices ('FAN/FLD') on 6 September 2017, assessing petitioner for deficiency IT and VAT in the amounts of Twenty Two Million Six Hundred Fifty Two Thousand Nine Hundred Fourteen and Eighty Nine Centavos (Php22,652,914.89) and Twenty Seven Million Four Hundred Thirty Seven Thousand Nine Hundred and Twenty Four Centavos (Php27,437,900.24), respectively. A copy of the FAN/FLD was sent by RO Yu to petitioner through registered mail at the address '78 C. Jose Street, Malibay, Pasay City' on 28 September 2017.

On 22 January 2018, respondent issued a Preliminary Collection Letter ('PCL') against petitioner seeking the collection of alleged deficiency IT and VAT in the amounts as stated in the FAN/FLD. These were sent by respondent to petitioner through registered mail on 24 January 2018 to two addresses, namely '78 C. Jose Street, Malibay, Pasay City' and 'Violeta Village, Ilang-Ilang St., Guiguinto, Bulacan.'

On 5 February 2018, respondent issued a Final Notice Before Seizure ('FNBS') against petitioner seeking the collection of the amount as stated in the FAN/FLD. This document was sent through registered mail by respondent on 15 February 2018 to the same addresses where the PCL was sent.

On 8 May 2018, a Warrant of Distraint and/or Levy ('WDL') was issued against petitioner, seeking the collection of the amount as provided in the FAN/FLD. The WDL was served constructively as petitioner could not be located.

On 17 August 2018, respondent issued Warrants of Garnishment. These were sent to various banks, seeking the collection of the alleged deficiency IT and VAT assessment against petitioner. However, no bank account could be found under petitioner's name.

Through Access Letters sent to the Land Transportation Office ('LTO') and the City Government of

Pasay, respondent found out that certain motor vehicles and real property were still under the name of petitioner.

Considering this, a Notice of Encumbrance was sent by respondent to the LTO on 8 October 2018 to annotate respondent's claim for deficiency IT and VAT against petitioner. Likewise, on 12 February 2019, respondent issued a Notice of Tax Lien to the City Government of Pasay to establish the lien or encumbrance in favor of the government over petitioner's real properties located with the aforesaid local government unit in relation to the former's claim for deficiency IT and VAT against the latter.

On 22 January 2019, respondent issued letters to petitioner's incorporators seeking from them the payment of the deficiency IT and VAT assessed in the FAN/FLD. These were served through registered mail on 6 February 2019.

When petitioner's former president, Mr. Lloyd Nicholai Uyliapco, received the letter on 15 February 2019, he then asked petitioner's former Chief Financial Officer, Mr. Alex G. Halili, to coordinate with respondent. On the same date, Mr. Halili instructed his accounting staff to meet with the Collection Division of Revenue Region No. 5 ('RR 5'). According to petitioner, it was only when its representatives went to the Collection Division of RR 5 on 15 February 2019 that it learned of the existence of the PAN and FAN/FLD.

Hence, upon being informed of the presence of the FAN/FLD on 15 February 2019, petitioner filed the instant Petition with Urgent Motion to Suspend Tax Collection on 15 March 2019 to question the validity of the deficiency IT and VAT being assessed against it.

Summons were issued to respondent requiring him to file an Answer to the Petition.

On 2 May 2019, petitioner submitted the Judicial Affidavit of Mr. Alex G. Halili in support of its Urgent Motion to Suspend Tax Collection. He was presented before this Court during the hearing on 7 May 2019.

Upon motion by petitioner, this Court allowed the presentation of another witness from the Robinsons Group to testify in support of petitioner's Urgent Motion to Suspend Tax Collection. The witness chosen by petitioner was Ms. Jessica Bugnot. She was presented during the hearing on 19 June 2019.

On 17 June 2019, respondent filed his Answer.

On 24 June 2019, petitioner filed its Formal Offer of Documentary Exhibits in support of its Urgent Motion to Suspend Tax Collection. xxx

xxx xxx xxx

On 7 October 2019, respondent elevated the BIR Records.

On 18 October 2019, respondent filed his Pre-Trial Brief. On the same date, respondent submitted the Judicial Affidavit of RO Yu and RO Arjen Mars M. Mirabuna.

On 28 November 2019, petitioner submitted the Judicial Affidavit of Nida B. Rinon. On the next day, petitioner filed its Pre-Trial Brief.

The Pre-Trial Conference then proceeded on 3 December 2019. Petitioner manifested during the said proceedings that it will be adopting the testimonies of Mr. Alex G. Halili and Ms. Jessica Bugnot during the hearings for the Urgent Motion to Suspend Tax Collection.

On 10 January 2020, this Court granted petitioner's Urgent Motion to Suspend Tax Collection with the bond requirement dispensed with.

The parties filed their Joint Stipulation of Facts and Issues on 16 January 2020.

Thereafter, this Court issued a Pre-Trial Order.

On 23 June 2020, petitioner's witness, Ms. Nida B. Rinon, testified before this Court. During the same hearing, petitioner moved and was allowed to file a Supplemental Judicial Affidavit of Mr. Alex G. Halili.

On 8 July 2020, petitioner filed the Supplemental Judicial Affidavit of Mr. Alex G. Halili. Mr. Alex G. Halili once again testified before this Court on 23 July 2020. Likewise, during the hearing, petitioner moved to adopt all Exhibits presented and offered during the Urgent Motion to Suspend Tax Collection as evidence for the main case.

On 20 August 2020, petitioner filed its Supplemental Formal Offer of Evidence.

On 15 October 2020, respondent presented his witness, RO Yu.

On 19 November 2020, RO Mirabuna testified.

On 27 November 2020, respondent filed his Formal Offer of Evidence, to which petitioner filed a Comment/Opposition. xxx

On 3 March 2021, respondent filed his Memorandum. Meanwhile, petitioner filed its Memorandum on 18 March 2021.

As such, on 25 May 2021, this Court issued a Resolution submitting the instant Petition for decision."[4]

On May 24, 2022, the CTA 3rd Division rendered the assailed Decision.

On July 7, 2022, petitioner filed his Motion for Reconsideration (Notice of Decision promulgated on May 24, 2022).[5] On April 11, 2023,[6] the CTA Special 3rd Division issued a Resolution denying petitioner's Motion for Reconsideration for lack of merit.

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[4] See Note 2, pp. 34-39.
[5] Division Docket, Vol. 4, pp. 1648-1653.
[6] Division Docket, Vol. 4, pp. 1679-1682.

On May 25, 2023,[7] petitioner filed the present Petition for Review.

On July 11, 2023,[8] the Court *En Banc* issued a Resolution directing respondent to file its Comment to the Petition for Review. On August 4, 2023, respondent filed its Comment (To Petitioner's Petition for Review dated 23 May 2023).[9]

On January 3, 2024,[10] the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

ISSUE

Petitioner raised the following ground:

> "The 3rd Division of this Honorable Court erred in ruling that no Letter of Authority was issued for the examination of the Books of Accounts of the Respondent."[11]

RULING OF THE COURT

The Court *En Banc* finds the Petition bereft of merit.

RO Cristina C. Yu and GS Rodolfo M. Roldan, Jr. are not duly authorized to continue the audit and examination of respondent's books of accounts and other accounting records

The reassignment of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO

[7] See Note 1.
[8] EB Docket, p. 45.
[9] EB Docket, p. 46.
[10] EB Docket, p. 56.
[11] See Note 1, The Ground, p. 3.

to continue the audit investigation

In ruling against petitioner, the CTA 3rd Division found that:

> "A perusal of the case records will show that LOA No. LOA-25A-2015-00000050, dated 25 August 2015, signed by then OIC-Regional Director of RR 5, Mr. Gerardo R. Florendo, was issued to RO Jayson Baello and GS Marita Panteriori, of RDO No. 25-A, authorizing them to perform an audit of petitioner's books of accounts and other accounting records for the purpose of determining the correct amount of taxes due from petitioner for TY 2013. Thereafter, on 18 May 2016, a Memorandum of Assignment was issued by the Revenue District Officer of RDO No. 25-A, Mr. Carlos S. Salazar, in favor of RO Cristina C. Yu and GS Rodolfo M. Roldan, Jr. to continue the audit of petitioner's accounting records in light of the previous RO and GS' resignation/retirement/transfer to another RDO.
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> Through the Memorandum of Assignment, RO Yu was able to a) audit and examine petitioner's books of accounts and other accounting records; b) determine through audit results and findings that deficiency IT and VAT is due from petitioner; c) recommended the issuance of the PAN through a Memorandum; and d) convince respondent to issue a PAN and FAN/FLD. In totality, the aforementioned RO was able to audit, examine, and inspect petitioner's books of accounts and other accounting records (which then lead to the present deficiency IT and VAT assessment against petitioner) through a mere Memorandum of Assignment, despite the clear mandate of ***RMO 43-90*** requiring the issuance of a new LOA for the revenue officers to whom the audit of a taxpayer has been re-assigned.
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> It is clear from the foregoing that RO Yu examined petitioner's books of accounts and other accounting records without the requisite authority emanating from a prior issued LOA. This was confirmed in her testimony, *viz.*:
>
> 'ATTY. APAYA
>
> Good morning, Ms. Witness.
>
> Q You identified in your Judicial Affidavit a document marked as Exhibit R-3.
>
> REVENUE OFFICER YU
>
> A Yes, sir.

ATTY. APAYA

Q In the said Memorandum of Assignment marked as R-3, can you please tell the court who signed the said document?

REVENUE OFFICER YU

A It was signed by our Revenue District Officer Carlos Salazar and it was assigned to me.

ATTY. APAYA

Thank you, ma'am. That would be all, your Honors.

JUSTICE LIBAN

Re-direct?

ATTY. CORRO

None, your Honors.

JUSTICE LIBAN

All right. So we're done with this, you have a question, yes.

JUSTICE SAN PEDRO

Just one question, Ms. Witness. You have no letter of authority in your name, just the Memorandum of Assignment?

JUSTICE LIBAN

In your name ha.

JUSTICE SAN PEDRO

In your name.

REVENUE OFFICER YU

The letter of authority is issued . . . interrupted

JUSTICE SAN PEDRO

No. My question is, Is there a letter of authority bearing your name?

REVENUE OFFICER YU

None. None, your Honors.

JUSTICE SAN PEDRO

Only the Memorandum of Assignment. Is there a letter of authority bearing the name of your Group Supervisor Rodolfo Roldan, Jr.?

REVENUE OFFICER YU

None, your Honors.

JUSTICE SAN PEDRO

Thank you.

JUSTICE LIBAN

All right. So the only letter of authority here is your Exhibit R-2? There is only one letter of authority and that's Exhibit R-2, tama ba? R-2? It's attached to your affidavit.

REVENUE OFFICER YU

Yes, your Honor.'

Following these, no other conclusion can be reached aside from finding that RO Yu conducted an audit, examination and inspection of petitioner's books of accounts and other accounting records without an LOA authorizing her to do so. She merely relied on a Memorandum of Assignment as source of her authority to examine petitioner.

It is noteworthy that an LOA is a safeguard against abuses that may be perpetrated by revenue officers against taxpayers. An LOA guarantees a taxpayer that only persons named therein are allowed to examine his books of accounts and other accounting records. Hence, he or she has a right to deny other revenue officers not so named from auditing him or her for potential deficiency tax assessments.

Due to the absence of an LOA authorizing RO Yu to examine petitioner, the deficiency IT and VAT assessments issued against it are void. Consequently, no tax collection can be pursued based on this deficiency VAT assessment."[12]

Section 13 of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

"**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,

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[12] See Note 2, pp. 28-30.

> **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)*

With respect to the importance of an LOA as part of the due process requirement in the BIR audit investigation, the Supreme Court had already made various pronouncements, as follows:

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[13] the Supreme Court ruled that:

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx
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> 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."

In *Medicard Philippines, Inc.* v. *Commissioner of Internal Revenue*,[14] the Supreme Court ruled that:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

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[13] G.R. No. 178697, November 17, 2010.
[14] G.R. No. 222743, April 5, 2017.

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

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Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at .the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority."

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,[15] the Supreme Court pertinently ruled that:

"xxx. Likewise, the CTA EB correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers."

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[16] the Supreme Court described in detail the "disturbing trend of tax audits or investigations," whose facts are also attendant in this case. The Supreme Court exhaustively discussed, as follows:

"This case is an occasion for the Court to rule on a disturbing trend of tax audits or investigations conducted by revenue officers who are not specifically named or authorized in the LOA, under the pretext that the original revenue officer authorized to conduct the

[15] Resolution, G.R. Nos. 249883-84, January 27, 2020.
[16] G.R. No. 242670, May 10, 2021.

audit or investigation has been reassigned or transferred to another case or place of assignment, or has retired, resigned or otherwise removed from handling the audit or investigation.

This practice typically occurs as follows: (i) a valid LOA is issued to an authorized revenue officer; (ii) the revenue officer named in the LOA is reassigned or transferred to another office, case or place of assignment, or retires, resigns, or is otherwise removed from handling the case covered by the LOA; (iii) the revenue district officer or a subordinate official issues a memorandum of assignment, referral memorandum, or such equivalent document to a new revenue officer for the continuation of the audit or investigation; and (iv) the new revenue officer continues the audit or investigation, supposedly under the authority of the previously issued LOA.

This practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been the subject of several CTA decisions, including *Ithiel Corporation v. CIR, Strawberry Foods Corporation v. CIR, Sugar Crafts, Inc. v. CIR, CIR v. Marketing Convergence, Inc., Exclusive Networks-PH Inc. v. CIR*, and the decision in the court *a quo*.

The Court hereby puts an end to this practice.

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The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that '[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.' The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, 'any' revenue officer may then act under such validly issued LOA.

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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 of revenue officers. 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."

Finally, in the more recent case of *Commissioner of Internal Revenue v. Wellington Investment & Manufacturing Corporation*,[17] the Supreme Court reiterated its recent ruling in *McDonald's* in this wise:

"We recently ruled in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* that (1) the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation; (2) the use of a memorandum of assignment, referral memorandum, or such equivalent document, directing the continuation of audit or investigation by an unauthorized RO usurps the functions of the LOA; and (3) Revenue Memorandum Order (RMO) No. 43-90 expressly and specifically requires the issuance of a new LOA if ROs are reassigned or transferred. We declared:

The practice of reassigning or transferring revenue officers originally named in the Letter of Authority *(LOA)* and substituting or replacing them with new revenue officers to

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[17] Resolution, G.R. No. 249795, November 29, 2022.

> continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue *(CIR)* or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue *(BIR)* rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.
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> In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, the examination of the taxpayer's books of accounts was reassigned to another RO sans issuance of a new LOA; the authority of the subsequent RO therein was anchored only upon the MOA signed by the revenue district officer. We thus declared void the assessments against the taxpayer for having been issued without an LOA by the CIR or his duly authorized representative.
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> The RMOs cited by petitioner, namely RMO Nos. 08-2006 and 69-2010, merely provide additional regulations in case of reassignment of revenue officers and should not be interpreted to remove the requirement of an LOA. Rather, the MOA, referral memorandum, or any equivalent document are issued for the purpose of reassignment and transfer of cases of revenue officers, and not for the purpose of vesting authority on an RO to examine a taxpayer's books of accounts, which is the function of an LOA."

Clearly, as early as the *Sony Philippines* case in 2010, the Supreme Court had already emphasized the importance of an LOA as a grant of authority before any RO can conduct an examination or assessment. Then, the *Medicard* case in 2017 also echoed the importance of an LOA, where the Supreme Court stated that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. This same doctrine was revisited in *Opulent* case in 2020. Finally, in the *McDonald's* case and the subsequent *Wellington* case in 2021 and 2022, respectively, the Supreme Court already recognized the disturbing practice of the BIR, as in this case. Thus, the Supreme Court categorically stated that the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation.

Here, the Court *En Banc* agrees with the findings of the Court in Division. Based on the evidence presented and the above-quoted testimonies of the witness, the BIR conducted the audit examination without the requisite LOA. Hence, the assessment is invalid.

Further review of the records reveal that petitioner also violated respondent's right to due process when he did not afford respondent the opportunity to respond to the PAN and FLD/FAN.

As per evidence on record, the PAN[18], FLD[19] and FANs[20] were all sent by petitioner to respondent through registered mail. However, petitioner failed to present evidence that respondent actually received the said notices and to show the date of their receipt.

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[21] the Supreme Court held that:

> "Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from **receipt** of the PAN to file a response. If the taxpayer fails to do so within the prescribed period, it will be considered in default and only then shall petitioner or his duly authorized representative issue to the taxpayer an FLD/FAN demanding payment of the assessed deficiency tax, surcharges, and penalties. In the instant case though, the BIR did not ascertain respondent's date of receipt of the PAN before issuing the FLD/FAN, but merely invoked Sec. 3.1.7 of RR No. 12-99 on constructive service, which states that '[i]f the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer.'
>
> However, considering that Sec. 3.1.2 of RR No. 12-99 specifically governs the PAN while Sec. 3.1.7 of the same regulations pertains generally to the constructive service of notices, the former takes precedence in application to the instant case in determining the period allotted for the taxpayer to respond to a PAN. It is a rule of statutory construction that a special and specific provision prevails over a general provision irrespective of their relative position in the statute. *Generalia specialibus non derogant.* Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.
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> Moreover, the reliance by petitioner and the BIR on constructive service of notice is unavailing and not justified by the

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[18] Exhibit "R-9", BIR Records, pp. 102-103.
[19] Exhibit "R-13", BIR Records, pp. 108-109.
[20] Exhibits "R-11" and "R-12", BIR Records, pp. 110-111.
[21] G.R. No. 222476, May 5, 2021.

> circumstances. The PAN was posted through registered mail so there are easily records available by which the BIR could have determined whether or not respondent actually received the notice and the date of such receipt. The BIR did not offer any explanation as to why it did not verify first these details with the post office, which would have been the more prudent thing to do instead of immediately considering respondent to have already constructively received the PAN for purposes of issuing the FLD/FAN. Petitioner's insistence on constructive notice is unwarranted and arbitrary when there is uncontroverted evidence of respondent's date of actual receipt of the PAN on January 18, 2011, simultaneously with the FLD/FAN.
>
> Ultimately, the IAET assessment issued in this case by the BIR against respondent in violation of the latter's right to due process is null and void."

In the instant case, respondent only presented evidence that the subject notices were sent through registered mail.[22] However, as stated earlier, no evidence was presented to prove the actual receipt and date of receipt of the said notices by respondent.

As such, pursuant to the *Yumex* case, the assessments issued by petitioner are in violation of respondent's right to due process. Thus, the same are null and void.

Considering the foregoing, the Court *En Banc* finds no reason to deviate from the ruling of the Court in Division. Hence, the denial of the present petition is in order.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[22] Exhibit "R-10", pp. 104-105; Exhibit "R-14", pp. 112-113.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice