REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

SUN LIFE GREPA FINANCIAL, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10080

Members:
UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
MAY 09 2023 10:08 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition"), filed by petitioner **SUNLIFE GREPA FINANCIAL, INC.** on 16 May 2019, against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), pursuant to ***Section 7 (1) of Republic Act No. 1125, as amended by Section (7) (a) (1) of Republic Act No. 9282 ("RA 1125")***, seeks the review of the denial of petitioner's request for reconsideration ("Denial Letter") relative to the percentage tax and documentary stamp tax ("DST") assessments issued against petitioner for the taxable year ("TY") 2008 and prays that judgment be rendered: a) declaring the aforesaid deficiency tax assessments null and void; b) cancelling and withdrawing such assessments aggregating to Eleven Million Four Hundred Forty-Seven Thousand One Hundred Forty and 92/100 Pesos (Php11,447,140.92); and c) prohibiting and enjoining respondent from enforcing or collecting the said assessments.[1]

[1] See Statement of the Case in the Pre-Trial Order, Records, Vol. 1, pp. 465-466.

The Parties

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at Grepalife Building, 221 Sen. Gil Puyat Avenue, Makati City.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of his Office, including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the provisions of the ***National Internal Revenue Code of 1997, as amended ("NIRC")***, other tax laws, and rules and regulations.

The Facts

On 29 June 2009, a Letter of Authority ("LOA") No. 00033788 was issued by the Officer in Charge ("OIC") – Assistant Commissioner of Internal Revenue ("ACIR"), Large Taxpayers ("LT") Service ("LTS"), Zenaida G. Garcia, in favor of Revenue Officers ("RO") Michael Anthony Caymo, Lilybeth Perez, Amelia Molinos, Mariesol Girang, and Pearl Marie Sta. Maria, and Group Supervisor ("GS") Roberto P. Castro, authorizing them to audit and examine petitioner's books of accounts and other accounting records for the purpose of determining any deficiency tax liability except DST for the period from 1 January 2008 to 31 December 2008. A copy of the LOA was received by petitioner on 15 July 2009.[3]

On 2 July 2009, the OIC-Chief, LT Assessment Division ("LTAD") 1, Conrado C. Lee, requested petitioner to submit its books of accounts and other accounting records to aid in the examination of petitioner for possible deficiency taxes for TY 2008. This request letter was received by petitioner on 15 July 2009.[4]

On 3 March 2010, a Memorandum was issued by the OIC-Chief, LT Regular Audit Division ("LTRAD") 2, Angeles C. Bautista, transferring the audit of petitioner to RO Merly D. Santiago and GS Fe F. Caling. The transfer was due to the previous ROs' assignment to other offices.[5] Petitioner was notified of this transfer through a Letter by OIC-Chief, LTRAD 2, Angeles C. Bautista, which was received by petitioner on 15 March 2010.[6]

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[2] See Stipulation of Facts in the Pre-Trial Order, *id.*, p. 466.
[3] Exhibit "P-3", BIR Records, p. 2.
[4] *Id.*, p. 1.
[5] Exhibit "P-9", *id.*, p. 3.
[6] Exhibit "P-30", *id.*, p. 4.

On 15 March 2010, OIC-Chief, LTRAD 2, Angeles C. Bautista, issued a Second Notice for Presentation of Books of Accounts and Other Accounting Records, reiterating respondent's request to petitioner to submit its books of accounts and other accounting records to determine any possible deficiency taxes for TY 2008. This notice was received by petitioner on the same date it was issued.[7]

Thereafter, petitioner submitted its accounting records.[8]

On 26 July 2011, petitioner, through its Senior Vice President – Controllers Group, Ramon G. Vizmonte, entered into a Waiver of the Statute of Limitation ("Waiver") with respondent, who was represented by ACIR, LTS, Zenaida G. Garcia, which extended the prescription to issue a deficiency tax assessment against petitioner until 30 June 2012.[9] Subsequently, on 26 March 2012, petitioner and respondent executed another Waiver further extending the prescription until 31 December 2012.[10] On 22 October 2012, the parties further extended the prescription to issue a deficiency tax assessment against petitioner through a Waiver until 30 June 2013.[11]

A Briefer was then submitted by RO Santiago and GS Caling to their superiors recommending that an informal conference be held to discuss possible deficiency tax assessments against petitioner.[12] On 5 February 2013, a Notice of Informal Conference ("NIC") was issued by OIC-ACIR, LTS, Alfredo V. Misajon, highlighting certain discrepancies found by RO Santiago and GS Caling in relation to their audit of petitioner's books of accounts and other accounting records that may result in possible deficiency tax assessments. Petitioner was also requested to clarify such discrepancies. The NIC was received by petitioner on 7 February 2013.[13]

In a Memorandum, dated 6 February 2013, RO Santiago and GS Caling requested that the audit of petitioner be re-assigned to a new set of ROs.[14] On 14 February 2013, a Memorandum of Assignment ("MOA") was issued by OIC-Chief, Regular LTAD ("RLTAD") 2, Edwin T. Guzman, reassigning the audit of petitioner to RO Manuel T. Tasarra, with the same GS, in light of RO Santiago's transfer to RLTAD 3.[15] Petitioner was informed of the re-assignment of its audit to RO Tasarra through a Letter sent by OIC-Chief, RLTAD 2, Edwin T. Guzman.[16]

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[7] Exhibit "P-29", *id.*, p. 3.
[8] *Id.*, pp. 5-790.
[9] *Id.*, pp. 791-793.
[10] *Id.*, p. 794.
[11] *Id.*, p. 795.
[12] Exhibit "P-4", *id.*, pp. 894-914.
[13] Exhibit "P-31", *id.*, pp. 915-929
[14] *Id.*, pp. 930-931.
[15] Exhibit "P-10", *id.*, p. 932.
[16] Exhibit "P-33", *id.*, p. 947.

On 20 February 2013, petitioner sent a Letter to OIC-ACIR, LTS, Misajon, requesting the re-scheduling of the informal conference to 13 March 2013.[17]

On 18 March 2013, another Waiver was executed between petitioner, as represented by its Treasurer, Ma. Josefina A. Castillo, and respondent, as represented by the OIC-ACIR, LTS, Misajon, extending the prescription to issue an assessment against petitioner until 31 December 2013.[18]

On 24 May 2013, petitioner sent its reconciliation schedules of the discrepancies found in the NIC.[19]

On 30 September 2013, another Waiver was executed further extending the prescription until 31 March 2014.[20] The prescription was further extended until 30 September 2014 through a Waiver, dated 20 February 2014.[21]

Afterwards, RO Tasarra and GS Caling submitted a Memorandum recommending the issuance of a Preliminary Assessment Notice ("PAN") against petitioner.[22] On 2 May 2014, petitioner received the PAN[23] and filed its Reply to rhe same on 16 May 2014.[24]

Subsequently, RO Tasarra and GS Caling submitted a Memorandum recommending the issuance of a Formal Letter of Demand ("FLD") and Final Assessment Notices ("FAN").[25] Respondent issued the FLD/FAN on 11 June 2014, a copy of which was received by petitioner on 16 June 2014,[26] assessing petitioner with the following deficiency taxes:

Tax Type	Amount Due (inclusive of surcharge, interest, and compromise penalty)
Income Tax ("IT")	Php80,931,900.68
Percentage Tax	2,828,160.17
Value Added Tax ("VAT")	3,202,643.85
Expanded Withholding Tax ("EWT")	23,004,861.38
Withholding Tax on Compensation ("WTC")	9,707,993.71
Fringe Benefits Tax ("FBT")	557,207.23

17 Exhibit "P-32", *id.*, p. 948.
18 *Id.*, pp. 934-935.
19 Exhibit "P-34", *id.*, p. 977.
20 *Id.*, pp. 936-938.
21 *Id.*, pp. 939-940.
22 Exhibit "P-5", *id.*, pp. 1013-1025.
23 Exhibit "P-35", *id.*, pp. 1033-1042.
24 Exhibit "P-36", *id.*, pp. 1044-1067.
25 Exhibit "P-6", *id.*, pp. 1069-1074.
26 Exhibit "P-37", *id.*, pp. 1076-1090.

DST	7,821,681.04

On 17 July 2014, petitioner filed its Protest to the FLD/FAN requesting for a reinvestigation of the assessment.[27] It then submitted its supporting documents to the Protest on 12 September 2014.

Then, RO Tasarra and GS Caling submitted a Memorandum recommending the issuance of a Final Decision on Disputed Assessment ("FDDA").[28] On 10 May 2016, respondent issued the FDDA, a copy of which was received by petitioner on 11 May 2016,[29] assessing petitioner with reduced deficiency taxes, to wit:

Tax Type	Amount Due (inclusive of surcharge, interest, and compromise penalty)
IT	Php23,945,366.65
Percentage Tax	3,332,537.55
EWT	864,180.71
DST	6,344,235.24

Still aggrieved, petitioner filed a Request for Reconsideration of the FDDA before the CIR on 10 June 2016.[30] Likewise, on 12 May 2016, petitioner paid the EWT assessment amounting to Php864,180.71.[31]

On 29 January 2019, a Memorandum was prepared for respondent CIR recommending the removal of the IT assessment in light of petitioner's payment of the EWT assessment but the retention of the percentage tax assessment, which sums up to Php3,927,222.24, inclusive of surcharge and interest and exclusive of compromise penalty in the amount of Php25,000.00, and the DST assessment, which totaled Php7,469,918.68, inclusive of surcharge and interest and exclusive of compromise penalty in the amount of Php25,000.00, or, all in all, Eleven Million Four Hundred Forty-Seven Thousand One Hundred Forty and 92/100 Pesos (Php11,447,140.92).[32] On 15 April 2019, respondent issued the Denial Letter assessing petitioner with deficiency percentage tax and DST in the aforementioned amount. A copy of said Denial Letter was received by petitioner on 16 April 2019.[33]

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[27] Exhibit "P-38", *id.*, pp. 1002-1131.
[28] Exhibit "P-7", *id.*, pp. 1495-1500.
[29] Exhibit "P-40", *id.*, pp. 1502-1511.
[30] Exhibit "P-41", *id.*, pp. 1577-1592.
[31] *Id.*, pp. 1520-1523.
[32] Exhibit "P-8", *id.*, pp. 1596-1604.
[33] Exhibit "P-42", *id.*, pp. 1618-1620.

On 16 May 2019, petitioner filed the instant Petition assailing the assessment contained in the Denial Letter.[34] This Court then issued Summons to respondent, requiring him to file an Answer to the Petition on 23 May 2019.[35] Respondent complied and filed such Answer via registered mail on 14 June 2019.[36]

In a Resolution, dated 1 July 2019, this Court referred the instant case to the Philippine Mediation Center – Court of Tax Appeals ("PMC-CTA").[37] However, a No Agreement to Mediate was submitted by the PMC-CTA on 8 August 2019.[38]

In a Resolution, dated 15 August 2019, this Court set the Pre-Trial Conference to be held on 12 November 2019, at 9:00 a.m.[39] Respondent then elevated the BIR Records relevant to this case on 24 October 2019,[40] before filing his Pre-Trial Brief on 4 November 2019.[41] Meanwhile, on 8 November 2019, petitioner filed both its Pre-Trial Brief[42] and the Judicial Affidavit of its witness, Atty. Reeno E. Febrero.[43]

Pre-Trial ensued on 12 November 2019.[44]

The parties then submitted their Joint Stipulation of Facts and Issues on 2 December 2019.[45] Afterwards, on 9 December 2019, petitioner submitted the Judicial Affidavit of its witness, Ronaldo H. Diloy,[46] in light of its manifestation during the Pre-Trial Conference that it would present another witness. On the other hand, on 20 December 2019, respondent filed a Manifestation that he would no longer present a witness as the RO selected to testify on the matter had resigned from the BIR and could not be located.[47]

This Court then issued a Pre-Trial Order on 16 January 2020.[48]

On 13 March 2020, petitioner submitted the Amended Judicial Affidavit of Mr. Diloy.[49] Petitioner presented its witnesses, Atty. Febrero and Mr. Diloy, on 14 July 2020.[50]

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[34] Records, Vol. 1, pp. 10-114.
[35] *Id.*, pp. 115-116.
[36] *Id.*, pp. 122-137.
[37] *Id.*, pp. 166-169.
[38] *Id.*, pp. 171-174.
[39] *Id.*, pp. 175-177.
[40] *Id.*, pp. 178-179.
[41] *Id.*, pp. 181-185.
[42] *Id.*, pp. 187-194.
[43] Exhibit "P-43", *id.*, pp. 203-256.
[44] *Id.*, pp. 258-262.
[45] *Id.*, pp. 263-269.
[46] *Id.*, pp. 275-450.
[47] *Id.*, pp.453-457.
[48] *Id.*, pp. 464-471.
[49] Exhibit "P-44", Records, Vol. 2, pp. 500-676.
[50] *Id.*, pp. 686-688.

On 19 August 2020, petitioner filed its Formal Offer of Evidence by registered mail.[51] In a Resolution, dated 24 November 2020, this Court admitted all of petitioner's Exhibits, except Exhibit "P-38", for failure of the Exhibit formally offered and identified to correspond with the document actually marked.[52]

On 22 December 2020, respondent filed his Memorandum on 22 December 2020.[53]

However, petitioner filed a Motion for Reconsideration with Motion to Recall Witness on 3 February 2021,[54] to which respondent later filed a Comment.[55] The Court then granted the Motion to Recall Witness on 3 June 2021.[56] Petitioner filed the Supplemental Judicial Affidavit of Mr. Diloy on 1 July 2021[57] and once again presented him as witness on 2 July 2021.[58] Following this, petitioner filed its Supplemental Formal Offer of Evidence on 29 July 2021,[59] to which respondent interposed no objection.[60] The Supplemental Offer of Evidence, and the previously filed Motion for Reconsideration, were then granted by the Court on 17 December 2021, and the offered Exhibits were admitted.[61]

The issue with its initially denied evidence resolved, petitioner filed its Memorandum on 11 April 2022.[62] Thus, on 11 May 2022, this Court issued a Resolution submitting the instant case for Decision.[63]

Hence, this Decision.

The Issue

The main issue to be resolved is whether or not petitioner is liable for deficiency percentage tax and DST for TY 2008.

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[51] *Id.*, pp. 693-770.
[52] *Id.*, pp. 776-779.
[53] *Id.*, pp. 780-805.
[54] *Id.*, pp. 809-815.
[55] *Id.*, pp. 821-825.
[56] *Id.*, pp. 828-832.
[57] Exhibit "P-51", *id.*, pp. 835-878.
[58] *Id.*, pp. 880-882.
[59] *Id.*, pp. 888-891.
[60] *Id.*, pp. 893-896.
[61] *Id.*, pp. 899-902.
[62] *Id.*, pp. 903-928.
[63] *Id.*, pp. 930-931.

Arguments of the Parties

Petitioner's Arguments[64]

Petitioner argues as follows:

a) The right of respondent to assess petitioner for deficiency percentage tax and DST for TY 2008 has already prescribed considering that:

   i. Respondent issued the FLD/FAN only on 11 June 2014 or after the three (3) year period fixed by ***Section 203 of the NIRC***;

   ii. Waivers executed by petitioner failed to extend the three (3) year period fixed by ***Section 203 of the NIRC*** since these Waivers failed to comply with the requirements of ***Revenue Memorandum Circular ("RMC") No. 06-2005***;

b) The deficiency percentage tax and DST assessments should be nullified and cancelled for being erroneous and devoid of factual and legal basis:

   i. ***RMC No. 49-2010*** should not be given retroactive application as it would unduly prejudice petitioner;

   ii. Imposition of DST on Certificates issued to individuals insured under the Group Life Insurance Policies violates the principle of double taxation; and

c) ROs Santiago and Tasarra did not have the authority to examine and audit petitioner's books of accounts and other account records for TY 2008.

Respondent's Counter-Arguments[65]

Respondent counter argues as follows:

a) The assessment issued against petitioner is valid;

   i. Contrary to petitioner's position, the period to assess taxpayer has not yet prescribed;

[64] *Id.*, pp. 912-927.
[65] *Id.*, pp. 785-802.

b) The ROs assigned to examine and audit petitioner's books of accounts and other accounting records for TY 2008 had sufficient authority to do so; and

c) Petitioner is liable for the assessed deficiency percentage tax and DST for TY 2008 in the total amount of Php11,447,140.92.

The Ruling of the Court

The instant Petition is impressed with merit.

The Court has jurisdiction over the present Petition.

Jurisdiction by this Court over the instant case is conferred by ***Section 7 (1) of RA 1125***, to wit:

> "**SEC. 7. Jurisdiction.** - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;"
> (Emphasis and underscoring, Ours.)

As clearly provided above, this Court has exclusive appellate jurisdiction over decisions by the CIR involving disputed assessments. In the present case, petitioner is appealing the Denial Letter, which partially denied petitioner's Request for Reconsideration of the FDDA filed before respondent CIR. As an appeal from a decision by the CIR over a deficiency tax assessment, this Court has jurisdiction over the instant case.

As to whether petitioner timely filed its appeal, under ***Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals***, ""[a] party adversely affected by a decision... of the Commissioner of Internal Revenue... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision." Petitioner received the Denial Letter on 16 April 2019[66] and thus had until 16 May 2019 within which to file a judicial appeal before this Court. As petitioner filed the instant Petition on 16 May 2019, this Court properly assumed jurisdiction over the present case.

[66] Exhibit "P-42", BIR Records, pp. 1618-1620.

An LOA is an instrument of due process. A taxpayer is not estopped from questioning the authority of the revenue officers even if he or she initially participated in the audit of such revenue officers.

Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with an LOA. This is a principle undeterred under our tax laws. An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in auditing a taxpayer.

The importance of an LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court in the ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[67] to wit:

> "**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:
>
> > **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*
> >
> > (A) **Examination of Return and Determination of Tax Due.**- After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x
>
> **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

[67] G.R. No. 222743, 5 April 2017, citing Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010.

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.**

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

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That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives<u>. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>"**
(Emphasis and underscoring, Ours.)

The Supreme Court further highlighted the importance of an LOA as an instrument of due process when it recently ruled in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp. ("McDonald's Case")***[68] that an LOA should specifically name the revenue officers who will pursue the tax audit, to wit:

"A. **<u>Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation</u>**

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

[68] G.R. No. 242670, 10 May 2021.

> process demands xx 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 [an] 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.
>
> The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers, pursuant to Sections 6, 10(c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, i.e., a revenue officer. Hence, petitioner is mistaken to characterize the LOA as a document 'issued' to the taxpayer, and that once so issued, 'any' revenue officer may then act pursuant to such authority."
> (Emphasis and underscoring, Ours.)

In the case at bar, respondent contends that petitioner is already estopped from questioning the authority of the ROs who audited its books since it did not raise this issue at the administrative level. This is misplaced.

The taxpayer's right to know the specific revenue officers who are authorized to examine its books of accounts and other accounting records is a due process requirement enshrined not only in the ***NIRC*** but also in the ***1987 Constitution***. It protects a taxpayer from unnecessary encroachment by the State on its person and property. As such, the principle of estoppel can never justify non-compliance with the LOA requirement. In ***Commissioner of Internal Revenue v. BASF Philippines, Inc.***,[69] the Court *En Banc* recognized the necessity of an LOA such that it may not be the subject of estoppel, *viz.*:

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[69] CTA *EB* No. 2323, CTA Case No. 9747, 2 August 2021.

> "As regards petitioner's argument that respondent is estopped from questioning the authority of the ROs, the Court *En Banc* finds the same without merit. **Estoppel cannot be applied in this case to ratify the validity of the assessments made.** The authority of the ROs who conducted the audit are vital in the assessment process. It is provided by the rules. The assessments cannot be considered valid just because respondent actively participated in the audit conducted by the ROs who replaced the originally named ROs in the LOA."
> (Emphasis, Ours.)

Simply put, an LOA must identify the specific revenue officers authorized to audit/investigate a particular taxpayer. Otherwise, if the new revenue officer assigned to take over the audit of a taxpayer (due to the resignation, transfer, or death of the previous revenue officer) is not provided an LOA specifically to his or her name, any resulting assessment arising from the audit conducted by such new revenue officer is null and void. Further, a taxpayer's continuous participation in the audit conducted by a revenue officer not armed with an LOA does not preclude the former from assailing the lack of authority of the latter in later proceedings.

A Memorandum or MOA cannot take the place of an LOA.

In the ***McDonald's Case***, the Supreme Court declared that a Memorandum or MOA cannot be used as a substitute for an LOA, which is a special grant of authority to a specific set of revenue officers to examine a taxpayer's books of accounts and other accounting records for purposes of determining the taxes due. A Memorandum or MOA simply notifies a taxpayer of the transfer of an audit/investigation to another set of revenue officers. Unlike an LOA, a Memorandum or MOA does not show that the new set of revenue officers who will pursue the audit are properly authorized to do so. The Supreme Court ruled as follows:

> "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 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.**
>
> 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 a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives."
> (Emphasis, Ours.)

As already discussed in the facts of the case, above, LOA No. 00033788 was initially issued by the OIC – ACIR, LTS, Garcia, in favor of ROs Caymo, Perez, Molinos, Girang and Sta. Maria and GS Castro.[70] OIC-Chief Bautista, LTRAD 2, then transferred the audit of petitioner to RO Santiago and GS Caling through a *Memorandum*, issued on 3 March 2010.[71] Finally, OIC-Chief Guzman, RLTAD 2, reassigned the audit of petitioner to RO Tasarra through a *MOA*, issued on 14 February 2013.[72] Petitioner was informed of the re-assignment of its audit to RO Tasarra through a Letter sent by OIC-Chief, RLTAD 2, Edwin T. Guzman.[73]

ROs Santiago and Tasarra and GS Caling, who were *not* specifically named under LOA No. 00033788, did much of the audit of petitioner's accounting records that resulted in the present percentage tax and DST assessments, as shown by the following acts by said officers:

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[70] Exhibit "P-3", BIR Records, p. 2.
[71] Exhibit "P-9", *id.*, p. 3.
[72] Exhibit "P-10", *id.*, p. 932.
[73] Exhibit "P-33", *id.*, p. 947.

a) RO Santiago and GS Caling prepared a Briefer[74] that resulted in the issuance of an NIC against petitioner;[75]
b) RO Tasarra and GS Caling prepared a Memorandum[76] that resulted in the issuance of a PAN against petitioner;[77]

c) An FLD/FAN[78] was issued through a Memorandum prepared by RO Tasarra and GS Caling;[79] and

d) RO Tasarra and GS Caling submitted a Memorandum[80] which resulted in an FDDA being issued against petitioner.[81]

In totality, ROs Tasarra and Santiago and GS Caling, through a mere Memorandum[82] and MOA,[83] were able to audit, examine, and inspect petitioner's books of accounts and other accounting records which led to the issuance of the present deficiency tax assessments, despite the clear requirement that all revenue officers conducting an audit/investigation of a taxpayer should be properly authorized with an LOA.

As discussed above, assessments issued without the requisite LOA are inescapably void.[84] Consequently, due to the absence of an LOA authorizing ROs Tasarra and Santiago and GS Caling to examine petitioner, the deficiency tax assessments are void. No tax collection can thus be pursued based on these assessments.

The subject Memorandum and Memorandum of Assignment cannot be treated as a valid LOA.

It may be argued that an LOA does not partake a particular form. Following this line of argument, any document may qualify as an LOA provided that the essential requisites of an LOA are present.

To be effective, an LOA must be issued either by respondent himself or by his duly authorized representative. Under ***Section 13 of the NIRC***, the duly authorized representative is the Revenue Regional Director. Under ***Section D (4) of Revenue Memorandum Order No. 43-90***, petitioner expanded the list of duly authorized representatives who may issue Letters of Authority:

74 Exhibit "P-4", *id.*, pp. 894-914.
75 Exhibit "P-31", *id.*, pp. 915-929
76 Exhibit "P-5", *id.*, pp. 1013-1025.
77 Exhibit "P-35", *id.*, pp. 1033-1042.
78 Exhibit "P-37", *id.*, pp. 1076-1090.
79 Exhibit "P-6", *id.*, pp. 1069-1074.
80 Exhibit "P-7", *id.*, pp. 1495-1500.
81 Exhibit "P-40", *id.*, pp. 1502-1511.
82 Exhibit "P-9", *id.*, p. 3.
83 Exhibit "P-10", *id.*, p. 932.
84 Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, 5 April 2017.

"1. Regional Directors;
2. Deputy Commissioners;
3. Commissioner; and
4. Other officials that may be authorized by the Commissioner for the exigencies of service."[85]

Using this line of thought, a Memorandum or a Memorandum of Assignment may be considered a valid and effective LOA, provided that it was issued by any of the persons named above.

In the present case, the subject Memorandum[86] was only issued by the OIC-Chief Bautista, LTRAD 2. This transferred the audit of petitioner to RO Santiago and GS Caling. On the other hand, the MOA was issued by the OIC-Chief Guzman, RLTAD 2. This reassigned the audit of petitioner to RO Tasarra and GS Caling.[87] An OIC-Chief of the LTRAD 2 and an OIC-Chief of the RLTAD 2, which are same positions in the BIR, are not among those listed above. Hence, neither the subject Memorandum nor the MOA can qualify as a valid LOA.

Considering that the ROs who examined and audited petitioner's books of accounts and other accounting records are not armed with a proper LOA, the resulting deficiency tax assessment is null and void.

The LOA clearly states that the audit of petitioner is solely for the purpose of determining any deficiency tax liability except DST.

Granting *arguendo* that the subject ROs were properly authorized to undertake the audit of petitioner, the issuance of a DST assessment was still contrary to the mandate of the LOA.

To reiterate, an LOA defines and limits the authority of revenue officers in auditing a taxpayer's books of accounts and other accounting records for purposes of determining the tax liability.

Under LOA No. 00033788, the ROs are only authorized to audit and examine petitioner for the purpose of determining any deficiency tax liability **except DST** for the period from 1 January 2008 to 31 December 2008.[88] Clearly, the ROs are authorized to determine any deficiency tax except DST. However, their examination delved into an inquiry of petitioner's possible

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[85] Commissioner of Internal Revenue v. Sugar Crafts, Inc., CTA EB No. 1757; CTA Case No. 8738, Resolution, dated 10 September 2019.
[86] Exhibit "P-9", *id.*, p. 3.
[87] Exhibit "P-10", *id.*, p. 932.
[88] Exhibit "P-3", BIR Records, p. 2.

DST liability which was clearly prohibited by LOA No. 00033788. Accordingly, the resulting DST assessment is null and void.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The NIC, PAN, FLD/FAN, FDDA, and Denial Letter issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency percentage tax and DST assessments issued against petitioner for TY 2008, in the aggregate amount of Eleven Million Four Hundred Forty-Seven Thousand One Hundred Forty and 92/100 Pesos (Php11,447,140.92) are hereby **CANCELLED** and **SET ASIDE**. Consequently, unless reversed by higher courts, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

(On leave.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice