REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2235 (CTA CASE NO. 8980)**
	Present:
-versus-	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, *and* REYES-FAJARDO, *JJ.*
FPIP PROPERTY DEVELOPERS AND MANAGEMENT CORPORATION, Respondent.	**Promulgated:** NOV 17 2021 4:12 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is the Petition for Review filed by the Commissioner of Internal Revenue (CIR), under Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court, which seeks to reverse the following:

1. August 28, 2019 Decision[1] of the CTA Special Third Division[2] the dispositive portion of the decision reads:

"**WHEREFORE**, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment for income tax, VAT, WTC, EWT, FWT, VAT withholding, DST, and their corresponding penalties, surcharges and interest, in the total amount of Five Hundred Sixty Eight Million

[1] Annex A, Petition for Review, *Rollo*, pp. 37-59.
[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, with a Separate Concurring Opinion by Associate Justice Ma. Belen M. Ringpis-Liban.

Three Thousand Three Hundred Twenty and Ninety Four Centavos (₱568,003,320.94) are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED."

2. January 31, 2020 Resolution[3] denying the CIR's Motion for Reconsideration and affirming the August 28, 2019 Decision.

THE FACTS

The taxpayer FPIP Property Developers and Management Corporation (FPIP) is a domestic corporation primarily engaged in the business of building and managing ready-built factories and other facilities registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Facilities Enterprises at the First Philippine Industrial Park Economic Zone with Registration Certificate No. 00-04-F dated June 2, 2000.[4]

The respondent in the case below is the Commissioner of the Bureau of Internal Revenue (BIR) with authority to collect all national internal revenue taxes and decide disputed assessments and refunds of internal revenue taxes, fees or other charges in relation thereto, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

Pursuant to the Letter of Authority (LOA) No. LOA-116-2010-00000057 dated May 14, 2010, which FPIP received on May 27, 2010, the Large Taxpayers Service Regular Audit Division 1 of the BIR conducted a tax examination of petitioner for taxable year (TY) 2009.[6]

On June 6, 2014, FPIP received a copy of the Formal Letter of Demand with Final Assessment Notice (FAN) of even date, finding it liable for deficiency Income Tax (IT), Value-Added Tax (VAT), Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), Final Withholding Tax (FWT), VAT Withholding, Documentary Stamp Tax (DST), and corresponding penalties in the sum of Five Hundred Fifty Two Million Five Hundred Forty Five Thousand One Hundred Sixty Four Pesos and Sixty Centavos (₱552,545,164.60) for TY 2009.[7]

Proceedings Before the Court A Quo

On July 4, 2014, FPIP filed a protest against the said FAN. The CIR, however, failed to act on the said protest within one hundred eighty (180) days

[3] Annex B, Petition for Review, *Rollo*, pp. 66-68.
[4] December 28, 2019 Decision, *Rollo*, p. 37.
[5] *Id.*
[6] *Id.*, at p. 38.
[7] *Id.*

from its filing. Hence, the taxpayer FPIP lodged the instant Petition for Review on January 30, 2015.[8]

On March 4, 2015, FPIP received the Final Decision on Disputed Assessment (FDDA) of even date finding it liable for IT, VAT, WTC, EWT, FWT, VAT Withholding, DST, and their corresponding penalties, surcharges and interest, in the total amount of Five Hundred Sixty Eight Million Three Thousand Three Hundred Twenty and Ninety Four Centavos (₱568,003,320.94).

On June 15, 2015, the court *a quo* granted FPIP's Motion for Leave to File and Admit Attached Supplemental Petition for Review filed on March 31, 2015, and accordingly admitted the attached Supplemental Petition for Review.[9]

In his Answer to the Petition for Review, the CIR pointed out the following:

- Taxpayer FPIP's prayer for a cease and desist order is untenable for collection of tax cannot be enjoined. Even an appeal to this Court cannot suspend the process of collection through the administrative remedies available under the law. The only exception is when such collection will jeopardize the taxpayer's interest, otherwise, the relief prayed for must be denied.[10]

- Contrary to FPIP's averment, his right to issue the subject assessments has not prescribed as the three (3)-year period to assess under Section 203 of the National Internal Revenue Code (NIRC), as amended, was extended by virtue of the five (5) Waivers of the defense of prescription executed by it allowed under Section 222(b) of the same Code.[11]

- A Board Resolution authorizing FPIP's Treasurer, Emelita Sabella, to sign the Waivers was also not warranted since she was one of its responsible officers when the tax investigation was in progress. Under Revenue Memorandum Order (RMO) No. 20-1990, an authority to sign the waiver is not necessary when the waiver is signed by the taxpayer itself through its responsible official. In addition, Emelita Sabella attested before the Notary Public that the five (5) Waivers were the voluntary acts and deeds of FPIP and that she was duly authorized to sign them.[12]

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[8] *Id.*
[9] August 28, 2019 Decision, *Rollo*, pp. 38-39.
[10] *Id.*, p. 39.
[11] *Id.*; Answer, Division Docket, Vol. 1, pp. 383-384.
[12] *Id.*; Answer, Division Docket, Vol. 1, pp. 384-385.

- Also contrary to FPIP's stance, the Waivers were validly signed and accepted by then OIC Alfredo V. Misajon, who had the authority to do so for tax cases pending investigation. Under Paragraph B, No. 15 of Revenue Delegated Authority (RDAO) No. 04-07 dated August 31, 2007, the CIR may delegate to the Assistant Commissioner (ACIR), LTS or in his/her absence, the concerned Head Revenue Executive Assistant (HREA) the authority to approve and sign a Waiver of the Statute of Limitations duly signed by the taxpayer or his/her authorized representative. Since the period to issue the subject assessments was extended by virtue of the execution of the five (5) Waivers, the FAN was issued against the taxpayer within the extended period as indicated in the Waiver dated January 23, 2014.[13]

- The taxpayer was, likewise, accorded due process since it was able to explain its position even if the FAN was issued within nine (9) days from its filing of reply to the Preliminary Assessment Notice (PAN). Moreover, Revenue Regulations (RR) No. 18-2013 mandates the CIR to release the FAN within fifteen (15) days from petitioner's reply to the PAN.[14]

- The taxpayer was also not denied of its Constitutional right to a speedy disposition of cases. The three-year prescriptive period to assess was extended at its instance who requested for time to submit documents to dispute the assessments issued against it paving the way for the execution of the five (5) Waivers of the Defense of Prescription.[15]

- Per its PEZA Certificate of Registration, FPIP's registered activity is "to engage in the construction and management of seven (7) factory buildings for lease to PEZA-registered Ecozone Export Enterprise at the First Philippine Industrial Park-Special Zone (FPIP-SEZ). In other words, buying and selling of real properties are not among its registered activity. Thus, its sale of property to HOGP Land Holdings, Inc. (HOGP) and Hoya Glass Disk Philippines, Inc. (HDGP) cannot be deemed necessarily included in its registered activity," thus not entitled to a preferential tax rate of five per cent (5%).[16]

- FPIP was also unable to show that the Park Charges, Insurance, Taxes and Licenses and other disallowed costs were directly related to its registered activity, hence, deemed as direct costs. No evidence, such as vouchers and official receipts, were submitted to support

[13] *Id.*, pp. 39-40; Answer, Division Docket, Vol. 1, pp. 387-388.
[14] *Id.*, p. 40; Answer, Division Docket, Vol. 1, pp. 388-390.
[15] *Id.*; Answer, Division Docket, Vol. 1, p. 390.
[16] *Id.*; Answer, Division Docket, Vol. 1, pp. 390-393.

such claim. Thus, the IT assessment issued against petitioner must stand.[17]

- The same is true with regard to FPIP's deficiency VAT as the transactions where VAT was imposed, were outside its PEZA-registered activity. Also, exemption to all national internal revenue taxes only pertains to the operation of PEZA-registered entity.[18]

- The assessment for deficiency WTC must also be sustained as FPIP was not able to substantiate its claim that the remuneration paid to its employees were not subject to WTC.[19]

- The same is true with the assessed EWT which FPIP must pay in the absence of any proof that the professional fees and purchase of service were exempted from EWT. The taxpayer cannot also take refuge under the mantle of BIR Ruling No. DA (C-279) 678-2009 and BIR Ruling No. 115-2013 to contest the deficiency Withholding Tax Assessment relative to its acquisition of a building given that the transaction was also beyond its registered activity, not to mention the disparity in the factual milieu of the incidents covered. Further, the alleged exemption was premised on FPIP's representation that the sale of real property was among its registered activity.[20]

- With regard the assessment for deficiency FWT and VAT WT, FPIP argues that the fees it paid for services rendered "outside the Philippines" are not subject to Philippine Income Tax. The record, however, reveals that these "fees" pertained to sales commissions to a corporation for the sale of real properties located inside the First Philippine Industrial Park in Batangas. The contract to sell also indicates that the buyers were domestic corporations justifying the assessments for deficiency FWT and VAT Withholding Tax.[21]

- Finally, FPIP is also liable for DST in the absence of any convincing evidence to prove payment thereof. In this regard, the tenet that tax exemption is construed against the claimant and its failure to adduce evidence to support its claim is fatal is invoked.[22]

After the filing of the parties' Joint Stipulation of Facts and Issues on July 10, 2015, a Pre-Trial Order was issued on August 18, 2015, terminating the pre-trial proceeding.[23]

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[17] *Id.*; Answer, Division Docket, Vol. 1, pp. 390-393.
[18] *Id.*; Answer, Division Docket, Vol. 1, pp. 393-394.
[19] *Id.*, p. 41; Answer, Division Docket, Vol. 1, pp. 394-395.
[20] *Id.*; Answer, Division Docket, Vol. 1, pp. 395-396.
[21] *Id.*; Answer, Division Docket, Vol. 1, pp. 396-397.
[22] *Id.*; Answer, Division Docket, Vol. 1, pp. 397-398.
[23] *Id.*

During the trial, FPIP presented as witnesses, Attorney Esmeraldo C. Amistad, Emelita D. Sabella, Victor Z. Montinola, and the Independent Certified Public Accountant (ICPA) Ma. Fedna B. Parallag.[24]

Attorney Esmeraldo C. Amistad, testified that he is the Corporate Secretary of FPIP and, as such, he is in custody of its corporate records. Upon verification of records, he was able to ascertain that no Board Resolution authorizing its Treasurer, Emelita D. Sabella, or anyone to sign for and in behalf of petitioner the five (5) waivers of the defense of prescription executed in this case. There is also nothing in its Amended By-Laws authorizing its Treasurer, Emelita D. Sabella, to sign waivers of the defense of prescription for the corporation. For this reason, he issued a Negative Certification stating that no board resolution was issued authorizing FPIP's Treasurer, or ratifying her act of signing the waivers in behalf of the corporation. The witness admitted that witness Emelita C. Sabella was not sanctioned nor penalized for her act of signing for petitioner in the five (5) Waivers. Further, he knows that a corporation can impliedly authorize or ratify an act of its officers.[25]

Witness Emelita D. Sabella, testified that she is FPIP's Treasurer since the year 2005. Her duties include overseeing the financial aspects and cash flow of the corporation, filing of tax returns and payment of correspondent taxes. She also has the custody of FPIP's financial records.[26] Furthermore, she testified that:

- LOA No. 116-2010-00000057 was issued on May 14, 2010, or barely thirty-one (31) days after FPIP filed its Annual Income Tax Return (ITR) on April 13, 2010. For her, during that short span of time, it was incredible for the BIR to have finished the examination of the numerous returns that FPIP filed showing the need for an order for a tax audit.[27]

- Further, the LOA was manually issued in violation of RMO No. 69-2010 which requires that LOA should be electronically issued through the BIR computer system. She however admitted that this policy was suspended shortly.[28]

- In any event, FPIP complied with the directive in the LOA and submitted the requested documents. Two years thereafter, or on May 10, 2012, FPIP received from the BIR a request for additional documents which it considered to have been issued beyond the 120-day validity of the LOA, thereby depriving the assigned ROs of the

[24] *Id.*, pp. 41-42.
[25] *Id.*, p. 42.
[26] *Id.*
[27] *Id.*
[28] *Id.*, p. 43.

authority to continue the audit. Nevertheless, FPIP complied if only to avoid the issuance of a formal assessment.[29]

- On or around September 5, 2012, FPIP was asked to execute a Waiver of the defense of prescription, lest a formal assessment would be issued against it. The warning prompted her to sign the Waiver. She signed the second Waiver on December 19, 2012.[30]

- On January 10, 2013, FPIP received a Notice for Informal Conference (NIC) finding it liable for deficiency taxes. On January 15, 2013, September 19, 2013, and January 23, 2014, the third, fourth, and fifth Waivers were respectively executed by her.[31]

- The PAN issued on May 12, 2014 was received by FPIP the following day, May 13, 2014. It filed a protest on the PAN on May 28, 2014. On June 6, 2014 or nine (9) days later, FPIP received the FAN, which was substantially a replica of the PAN indicating that the BIR did not consider its protest against the PAN. Be that as it may, FPIP filed its protest against the FAN on July 4, 2014. Counting from the dates of the filing of its IT, VAT, WTC, EWT, and FWT Returns for TY 2009, the FAN was issued beyond the 3-year prescriptive period, rendering the assessments against it void.[32]

- While she admitted having executed the five (5) Waivers in behalf of FPIP without any authority from its Board of Directors, she also admitted that not all her actions as Treasurer needed a Board resolution to be valid. Furthermore, she was unaware that such authority to execute the Waivers was necessary since the BIR never required its submission. She also confessed that she was not sanctioned to execute the Waivers nor was there any revocation thereof made by the Board of Directors which learned about it only upon the filing of the instant case before the Court.[33]

- She did not deal directly with the BIR during the assessment process as only her staff interacted with the BIR. She executed the Waivers upon the advice of her staff and at the behest of the BIR.[34]

- Moreover, the OIC-ACIR who accepted the Waivers had no authority to do so, for under RDAO 5-01, it should be the ACIR of the BIR Large Taxpayer Service who must accept the Waiver in behalf of respondent. The witness also emphasized that the first Waiver was accepted by the BIR beyond the 3-year prescriptive

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[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*, pp. 43-44.
[34] *Id.*, p. 44.

period contrary to the provision that the waiver should be executed and accepted within such 3-year period, rendering the same void.[35]

- In conclusion, since the five (5) waivers were invalidly executed, hence, void, the period to assess petitioner was not extended rendering the assessment in the FAN void as well.[36]

Witness Victor Z. Motinola testified that he is currently the Vice President for Land Acquisition of First Philippine Industrial Park, Inc. During the pertinent period, he was FPIP's Finance Officer, specifically from October 2008 to March 2015. He further testified that:

- The taxpayer's principal place of business is at the First Philippine Industrial Park — Special Economic Zone. It is engaged in building and managing ready-built factories and other facilities. It is registered with PEZA as an Ecozone Facilities Enterprise.[37]

- He was consulted when FPIP received the FDDA on March 4, 2015. He believed that the bulk of the deficiency IT assessment was on the sale of a parcel of land to HOGP and on the sale of a building to (HGDP) wherein respondent in the case below imposed the regular tax rate of 30% instead of preferential rate of 5% since FPIP is a PEZA-registered entity, thus, entitled to a preferential tax rate of 5% on its gross income in lieu of all taxes. Besides, both sales were activities within the ecozone and were necessary to its registered activity. The witness, however, admitted that his opinion was based on a communication from PEZA stating that it was without objection thereto and that it acknowledged the sale.[38]

- Respondent CIR also erroneously deemed the items "Staff Activities," "Other Benefits," and "Retirement" as falling under the category of "Salaries & Wages" subject to WTC. However, "Staff Activities" did not benefit any particular employee and were expenses for a company-wide improvement program, hence, should not be categorized as "Salaries & Wages" for which withholding was necessary.[39]

- The item "Other Benefits" refers to accumulated sick and vacation leave benefit plans of FPIP's employees, which was included in the financial statements for presentation purposes. The same has not been utilized or availed by any of its employees.[40]

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[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*, pp. 44-45.
[39] *Id.*, p. 45.
[40] *Id.*

- The item "Retirement" was also included in the financial statements for presentation purposes only. It refers to an unfunded and non-contributory retirement plan. No payout has been made to any employee, neither was any amount used as deductible expense as no one has retired from the ranks of FPIP since 2000.[41]

- On EWT, the bulk of the assessment was on real properties acquired by FPIP located in the special economic zone in Tanauan City, Batangas. FPIP acquired the real properties from another PEZA-registered entity within an ecozone. Per BIR Ruling No. DA(C-270) 678-2009, the seller was entitled to the 5% preferential rate and it need not withhold EWT.[42]

- On the other hand, the assessments for FWT and VAT withholding pertain to the sales commission and marketing fees that FPIP paid to a non-resident foreign corporation for its successful marketing of FPIP to Japanese corporations. Since these services were wholly performed outside the country by a non-resident entity, there was no legal basis for the imposition and FPIP was of no obligation to withhold.[43]

The Court-commissioned ICPA, Ma. Fedna B. Parallag testified that per her audit and as reflected in the ICPA Report dated February 17, 2016, FPIP is a Securities and Exchange Commission (SEC) registered corporation, and also registered with PEZA, with primary purpose of purchasing, acquiring, building, constructing, developing, leasing, selling, conveying, mortgaging, operating and maintaining real properties.[44] The ICPA:

- Confirmed that witness Emelita Sabella executed five (5) Waivers of the defense of prescription without any notarized written authority to do so.[45]

- Declared that only the preferential rate of 5% and not the regular 30% IT should be imposed on FPIP's sale of real property as it is a PEZA-registered entity and that it was part of its PEZA-registered activity. She however admitted that FPIP failed to secure the required written consent of PEZA fifteen (15) days prior to the sale as required in its Supplemental Agreement with the latter.[46]

- Further declared that not all the items under various costs and deductions under the 5% preferential rate should be disallowed since FPIP was able to substantiate certain items. Likewise, the imposition

[41] *Id.*
[42] *Id.*
[43] *Id.*, pp. 45-46.
[44] *Id.*, p. 46.
[45] *Id.*
[46] *Id.*

of VAT should be reduced since FPIP was also able to substantiate certain items under this category.[47]

- Recommended the cancellation of WTC assessment since these were imposed on employee benefits which were treated as non-deductible expenses.[48]

- Recommended that the EWT assessment on Professional fees, Rentals, Purchase of services and goods, and building acquisition should also be reduced per the evidence presented. The purchase of buildings from another PEZA-registered entity within another ecozone means that the seller is exempt from EWT being subject to the 5% rate, hence, there was no need for FPIP to withhold.[49]

- Recommended that the FWT assessment, imposed on the payment for services performed out of the country by a non-resident company to a resident company, should be cancelled.[50]

- Stated that FPIP is not liable to pay DST on its rentals as it is a PEZA-registered entity renting to another PEZA-registered entity located within the ecozone.[51]

- Lastly, stated that the imposition of compromise penalty was justified since FPIP failed to report its monthly zero-rated sales in its VAT returns for TY 2009. It also failed to submit the alpha list of income payments in its 2009 e-submission of files and to file a Summary of Regular Suppliers and Real Estate Inventory for 2009.[52]

After its formal offer of evidence, petitioner FPIP rested.[53]

In support of his defense, respondent CIR presented Revenue Officers (RO) Reynoso C. Bravo and Josa C. Gomez as his witnesses.[54]

RO Reynoso C. Bravo testified that pursuant to the LOA issued in this case, he conducted an audit of all internal revenue taxes for TY 2009 of petitioner.[55] He further testified that:

- The Letter of Authority, Letter Request for production of documents, and Checklist of Requirements for the submission of the books of accounts and related records were served to petitioner on

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[47] *Id.*
[48] *Id.*
[49] *Id.*, p. 47.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*

May 27, 2010. FPIP was, however, not able to submit the required documents and since the period to assess was about to expire, thus, through its Treasurer, it executed a Waiver of the Defense of Prescription dated September 5, 2012, which the BIR accepted on September 25, 2012. This was followed by a Notice of Informal Conference served upon FPIP through registered mail on December 10, 2012.[56]

- FPIP, again through its Treasurer, executed the second Waiver of the Defense of Prescription dated December 19, 2012 which was accepted by the BIR on December 21, 2012.[57]

- On January 10, 2013, the Informal Conference was held, and thereupon the third Waiver of the Defense of Prescription dated January 15, 2013 was executed and accepted by the BIR on January 28, 2013.[58]

- Since he was assigned to another BIR office, he had no further participation in the audit.[59]

Witness RO Josa C. Gomez, testified that by virtue of a Memorandum of Assignment, he continued the audit of the taxpayer. Because the taxpayer requested for time to submit additional documents to refute the finding of deficiency taxes as contained in the NIC, it was asked to execute the fourth and fifth Waivers of the Defense of Prescription dated September 19, 2013 and January 23, 2014, which were accepted by the BIR on October 2, 2013 and January 28, 2014, respectively.[60]

Upon the recommendation of the audit group contained in the Memorandum dated April 21, 2014, the PAN dated May 12, 2014 was issued and served on FPIP on May 13, 2014, to which the latter filed protest on May 28, 2014. Also at their instance, the FAN was issued and served on June 6, 2014. FPIP likewise protested the FAN. Thereafter, the audit group recommended in the Memorandum dated October 27, 2014 the issuance of the FDDA which was served to the taxpayer on March 4, 2015.[61]

Per Resolution of June 22, 2018, the CIR rested his case.[62]

On December 28, 2019 the CTA Special Third Division promulgated a decision which granted FPIP's petition and cancelled the assessment against it.[63]

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[56] *Id.*, pp. 47-48.
[57] *Id.*, p. 48.
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*, pp. 58-59.

On January 31, 2020, the court *a quo* denied the CIR's motion for reconsideration and affirmed its decision.[64]

CTA En Banc Proceedings

Aggrieved by the decision and resolution of the court *a quo*, the CIR elevated the case to the CTA *En Banc* by filing a Petition for Review on March 9, 2020.[65]

On July 27, 2020, respondent FPIP filed its Comment (To Petitioner's Petition for Review dated March 4, 2020).

In an August 26, 2020 Resolution,[66] the Court referred the case for mediation but the parties decided not to have the case mediated and, thus, submitted their No Agreement to Mediate to the Court.[67]

Finally, the case was submitted for decision in a Resolution dated October 20, 2020.[68]

THE ISSUES

In assailing the December 28, 2019 Decision, petitioner CIR states that the court *a quo* erred:[69]

- In ruling that the assessments are void because the Revenue Officers (RO) who conducted the audit of the taxpayer's books of accounts were allegedly not authorized through a Letter of Authority (LOA); and,

- In applying the Supreme Court's ruling in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[70] which is not applicable to the case.

THIS COURT'S RULING

We resolve to *deny* the petition.

[64] Rollo, pp. 66-68.
[65] *Rollo*, pp. 7-30.
[66] *Rollo*, pp. 96-97.
[67] *Rollo*, p. 98.
[68] *Rollo*, pp. 53-54.
[69] Petition for Review, *Rollo*, pp. 8-9.
[70] G.R. No. 222743, April 5, 2017.

First, the issue at the core of the case is *not* novel as it has been extensively discussed and squarely resolved in the assailed decision.

> "In the instant case, Letter of Authority (LOA) No. LOA-116-2010-00000063, dated May 14, 2010, was issued by Commissioner, Joel L. Tan-Torres authorizing Revenue Officers (ROs) Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Walter Batoon, Aileen Grace Parra, Laurel Eleda and Group Supervisor (GS) Erlinda Ulgado and Ana Marie Perez to examine the petitioner's books of accounts and other accounting records for internal revenue taxes for TY 2009.
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> RO Reynoso Bravo testified that while he was authorized to conduct the audit, he was not able to finish the same due to his re-assignment to the Large Taxpayer Division-Makati after petitioner's execution of the third Waiver. RO Josa Gomez, by virtue of the Memorandum of Assignment (MOA) No. LOA-116-2013-0426 issued by Mr. Cesar Escalada, Chief, Regular LT Audit Division 1 on February 25, 2013, continued the audit under the supervision of Group Supervisor Olivia Aviles. Such examination ended with the issuance of the FLD/FAN and the FDDA.
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> Note that RO Josa Gomez and RO Felina Guimbao who recommended the issuance of PAN, FLD with FAN and FDDA against petitioner through memorandum report, were not among those named as examiners in the LOA issued for TY 2009.
>
> Section C (1) and (5) of RMO No. 43-90, specifically requires the issuance of a new LOA in cases of reassignment or transfer of the investigating RO to another revenue office, to wit:
>
>> C. Other policies for issuance of L/As.
>>
>> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>>
>> xxx xxx xxx
>>
>> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.
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> On this regard, the Court has already ruled that the issuance of a new LOA in cases of reassignment or transfer of the investigator is mandatory, thus:
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>> Therefore, the use of the word 'shall' in RMO No. 43-90 can only mean that the issuance of a new LOA in cases of reassignment or transfer of investigation is mandatory. Hence, before an assessment can be made, the RO conducting the audit must first be authorized to do so. Absent such new LOA, any assessment issued resulting from such audit is void. ✓

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. x x x **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** [citing *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017].

It has also been ruled that a RO may only examine the taxpayer's books pursuant to a LOA issued by the Regional Director and that the Referral Memorandum issued by the Revenue District Officer ("RDO") directing another RO to continue with the examination of the taxpayer's records is not equivalent to a LOA nor does it cure the RO's lack of authority, *viz.*:

> As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA *en banc* found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> Moreover, the Court agrees with the CTA *en banc* that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA. [citing *Commissioner of Internal Revenue v. Composite Materials, Inc.*, G.R. No. 238352, September 12, 2018]

Considering that the LOA issued for TY 2009 against petitioner did not include the names of RO Gomez or RO Guimbao, hence, the named ROs did not have the required authority to conduct the audit or examination of petitioner for the subject TY.

Established is the rule that a revenue officer must be clothed with authority before proceeding with an examination or assessment. That authority must be in a form of a LOA, and not a mere Memorandum Referral, as obtaining in the present case.

There is no denying that the authority of RO Gomez to examine petitioner for possible deficiency taxes pertaining to TY 2009 originated from MOA No. LOA-116-2013-0426 issued on February 25, 2013. This is not true with regard RO Felina Guimbao, who co-signed the memorandum recommending the issuance of the assessment against petitioner. No similar MOA was issued in her favor authorizing her to conduct an audit/investigation of all internal revenue taxes of petitioner for TY 2009.

Accordingly, the absence of a new LOA naming RO Gomez and RO Guimbao as the new ROs rendered them without authority to continue the examination/audit of petitioner's internal revenue tax liability for TY 2009. In other words, RO Gomez and RO Guimbao acted without authority when they continued the audit of petitioner and thereafter recommended issuance of the assailed assessment. Consequently, the investigation and corresponding assessments issued against petitioner are void.

Let it be stressed that a LOA is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit, it is an express grant of authority. Thus, absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation per RMO No. 43-90, there is no authority to conduct the investigation/audit. Consequently, the assessment is null and void. And a void assessment bears no valid fruit.

The rationale for requiring a valid LOA as a prerequisite to a valid assessment is not that difficult to perceive — it is to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

Since the subject deficiency tax assessments are clearly void for lack of authority of the examining ROs, discussion on the other issues raised by the parties becomes unwarranted." (*Underscoring supplied; citations omitted*)

Secondly, Section 6 of the 1997 NIRC, as amended, provides as follows:

"**SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, 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.
>
> xxx xxx xxx"

Pursuant to this provision, an authorization from the CIR or from his duly authorized representative is needed in order to examine any taxpayer. In relation to Sections 10 and 13 of the 1997 NIRC, as amended, the authorization needed to examine any taxpayer is the Letter of Authority (LOA) and the CIR's duly authorized representative referred to is the Revenue Regional Director:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
>
> xxx xxx xxx.
>
> (c) Issue Letters of Authority for the examination of taxpayer within the region;
>
> xxx xxx xxx."
>
> "SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."

From a reading of the foregoing provisions, it is evident that an LOA from the Revenue Regional Director is necessary before a Revenue Officer (RO) can audit the taxpayer's records, 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. Otherwise stated, an RO cannot examine a taxpayer or recommend the assessment of any deficiency tax due in the absence of an LOA. The absence of authorization or an LOA of an RO to examine taxpayers in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due cannot be overly emphasized. An RO authorized by an LOA in any district may examine taxpayers within the jurisdiction of the district in order to assess and collect the correct amount of tax in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

Third, in the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[71] the Supreme Court held that the practice of reassigning or transferring ROs originally named in the LOA and substituting or replacing them with new ROs *to 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 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 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. The Supreme Court, therefore, affirmed the CTA's decision which invalidated the assessment against the taxpayer, thus:

> "***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

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

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.

xxx xxx xxx

D. Revenue Officer Marcellano Was Not Authorized to Continue the Audit of the Respondent's Books of Accounts for C. Y. 2006, Rendering the Assessment Void

Applying the above principles to the case at bar, it is clear that Marcellano was not authorized under a new and separate, or amended, LOA to continue the audit or investigation of the respondent's books of accounts for C.Y. 2006. The August 31, 2007 LOA was originally issued to revenue officers Eulema Demadura, Lover Loveres, Josa Gomez, and Emalyn dela Cruz. The original revenue officer, Demadura, was transferred to another assignment. Pursuant to a mere referral memorandum, revenue officer Marcellano continued the audit of the respondent's books of accounts. No new LOA was issued in the name of Marcellano to conduct the audit of the respondent's books of accounts. Moreover, the August 31, 2007 LOA was not amended or modified to include the name of Marcellano. Hence, the authority under which Marcellano continued the audit or investigation was not pursuant to the statutory power of the CIR or his duly authorized representative to grant the authority to examine the taxpayer's books of accounts.

In summary, We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to 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 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 BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

WHEREFORE, the Petition for Review on *Certiorari* is DENIED for lack of merit. The Decision dated January 4, 2018 and the Resolution dated September 21, 2018 of the Court of Tax Appeals *En Banc* in CTA EB No. 1535, which affirmed the CTA Division's Decision dated June 1, 2016 and the Resolution dated October 3, 2016 in CTA Case No. 8655, invalidating the ₱16,229,506.83 assessment of deficiency value-added tax for calendar year 2006 against the respondent, are AFFIRMED." (*Underscoring supplied*)

Finally, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[72] the Supreme Court, citing Section 1, Rule 14 of A.M. No. 05-11-07-

[72] G.R. No. 183408, July 12, 2017.

CTA, or the RRCTA, declared that the CTA can resolve the issue on the authority of the RO to conduct the audit, although the same was not raised by the parties in their pleadings or memoranda. For want of valid LOA, the Supreme Court in said case ultimately declared the assessment *void.*

Clearly, the assessment issued by the petitioner is void in the absence of an LOA authorizing the new ROs who substituted the old ROs originally assigned to examine the taxpayer. Accordingly, the Court finds nothing in the instant case that merits a reversal of the ruling of the court *a quo*.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the August 28, 2019 Decision and the January 31, 2020 Resolution of the court *a quo* are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(*With Separate Concurring Opinion*)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(*With Concurring Opinion*)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

FPIP PROPERTY DEVELOPERS AND MANAGEMENT CORPORATION,
Respondent.

CTA EB NO. 2235
(CTA Case No. 8980)

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

Promulgated:
NOV 17 2021 4:12 p.m.

x- -x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue ("Petitioner") for lack of authority of the examining Revenue Officer ("RO"), but for the reasons to be discussed below.

I reiterate my stand in the Separate Concurring Opinion I penned in the Assailed Decision that a new letter of authority ("LOA") is not needed in case of re-assignment as long as the authority given to the new RO is signed by the Commissioner of Internal Revenue ("CIR") or his duly authorized representative. This is permissible under the laws of agency under the Civil Code. In the case at bar, the duly authorized representative refers to the Assistant Commissioner or Head Revenue Executive Assistant of the Large Taxpayers Division.[1]

[1] The position equivalent to a Revenue Regional Director for the Large Taxpayers Division, who is authorized to issue the LOA, is identified in Revenue Memorandum Order No. 29-07 (September 26, 2007) as the Assistant Commissioner or Head Revenue Executive Assistant.

I am also of the firm belief that the ruling of the Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[2] ("*Mcdonald's*") should not be haphazardly applied in cases regarding the validity or invalidity of an RO's authority. A perusal of the case discloses that *Mcdonald's* invalidated the practice of reassigning ROs through a Revalidation Notice or Memorandum of Reassignment or any equivalent letter, only because it was presumed that these documents are issued by a subordinate official and not by the CIR or his duly authorized representative, to wit:

> "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 <u>not issued by the CIR or his duly authorized representative</u> for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. <u>It is issued by the revenue district officer or other subordinate official</u> 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. **<u>The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue</u>**

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

> **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.**[3]

The Supreme Court in the said case did not consider instances where the Revalidation Notice or Memorandum of Reassignment or any equivalent letter is issued by the CIR himself or his duly authorized representative. Hence, it is my opinion that the assumptions from which *Mcdonald's* derived the conclusion that there should be issuance of a new LOA if a RO is reassigned or transferred, is incomplete and as such should not be applied.

From all the foregoing, I vote to **AFFIRM** the Decision dated August 28, 2019 and Resolution dated January 31, 2020 of the Special Third Division in CTA Case No. 8980.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[3] *Emphasis and underscoring supplied.*

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2235** (CTA Case No. 8980)
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.*
FPIP PROPERTY DEVELOPERS AND MANAGEMENT CORPORATION, *Respondent.*	Promulgated: NOV 17 2021 4:12 p.m.

x --- x

CONCURRING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the *ponencia*'s finding that the assessment is void for lack of authority of the new revenue officers ("ROs") who continued the audit/examination of respondent's books and records who, thereafter, recommended the issuance of the assailed deficiency assessment. With utmost respect, however, I elaborate on the following reasons for my concurrence:

First, the *ponencia* relied on the ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*** (*"McDonald's Case"*)[1] in stating that the practice of reassigning or transferring ROs originally named in the Letter of Authority ("LOA") and substituting or replacing them with new ROs to continue the audit/investigation without a separate or amended LOA violates the taxpayer's right to due process, usurps the statutory power of the Commissioner of Internal Revenue ("CIR") or his duly authorized representatives, and does not comply with the existing rules and regulations of the Bureau of Internal Revenue ("BIR").

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

While I agree that the ***McDonald's Case*** admonished the practice of reassigning ROs through a memorandum of assignment, referral memorandum, or any other equivalent documents, it is only because these documents are typically issued by subordinate officials and not by the CIR or his duly authorized representatives.

As quoted in the *ponencia,* the ***McDonald's Case*** pertinently reads:

> "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 <u>not issued by the CIR or his duly authorized representative</u> for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. <u>It is issued by the revenue district officer or other subordinate official</u> 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 <u>typically signed by the revenue district officer or other subordinate official</u>, and <u>not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC</u>.** 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 and underscoring, Ours.)

From the foregoing, it is my humble view that a memorandum of assignment, referral memorandum, or any equivalent document may still be considered as an equivalent of a new LOA provided it contains all the elements necessary to establish a Contract of Agency between the CIR or his duly authorized representative and the new RO. Included in these elements is the authority of the person issuing the memorandum of assignment, referral memorandum, or any equivalent document who must be the CIR or his duly authorized representative and not a subordinate official.

This is consistent with the ruling of the Court *En Banc* in ***Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.***[2] and ***Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation,***[3] which were affirmed by the Supreme Court in ***Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.***[4] and ***Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation.***[5]

Second, as found by the Court in Division and affirmed in the *ponencia*, the authority of one of the ROs who continued the audit originates from a Memorandum of Assignment issued by the Chief of the Regular LT Audit Division ("RLTAD") 1.

The Court *En Banc* has ruled on several instances that the RLTAD Chief is not among the duly authorized representatives of the CIR for purposes of granting authority to examine the books of accounts of a taxpayer.[6] The RLTAD Chief is not the CIR, Revenue Regional Director, or an Assistant Commissioner/Head Revenue Executive Assistant.[7]

Following the ***McDonald's Case***, considering that the Memorandum of Assignment in the present case was signed by the Chief of RLTAD 1, a subordinate official who is neither the CIR nor his duly authorized representative, the Memorandum of Assignment cannot be treated as a new LOA. Consequently, the assessment is void for lack of authority of the RO to perform assessment functions.

All told, I concur with the *ponencia*'s denial of the Petition for Review filed by Commissioner of Internal Revenue for lack of merit.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[2] CTA EB Case No. 2047 (CTA Case No. 9168), 17 July 2020.
[3] CTA EB Case No. 2010 (CTA Case No. 9190), 14 July 2020.
[4] G.R. No. 255487, 3 May 2021.
[5] G.R. No. 255094, 26 April 2021.
[6] Commissioner of Internal Revenue v. PGA Sompo Insurance Corporation, CTA EB Case No. 2203 (CTA Case No. 9394), 15 September 2021; Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc., CTA EB Case No. 2047 (CTA Case No. 9168), 17 July 2020; Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation, CTA EB Case No. 2010 (CTA Case No. 9190), 14 July 2020.
[7] Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc., G.R. No. 255487, 3 May 2021; Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation, G.R. No. 255094, 26 April 2021.