CTA Form No. 8

22-000259-0070

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10873

PRODUCTIVITY TECHNOLOGIES SERVICES, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI HUSSIN
ATTY. JOEL VINCENT D. SALAZAR
Bureau of Internal Revenue-Revenue Region 8A-Makati City
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Unit 1003, President Tower
No. 81 Timog Avenue, South Triangle
Diliman, Quezon City 1103

GREETINGS:

You are hereby notified by these presents that on **March 7, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 12, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PRODUCTIVITY TECHNOLOGIES SERVICES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10873

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*[1] seeking the cancellation of the assessment against petitioner in the amount of ₱143,339,041.19, representing deficiency income tax (IT) and value-added tax (VAT) for taxable year (TY) 2013.

THE PARTIES

Petitioner Productivity Technologies Services, Inc. is a registered taxpayer of Revenue District Office (RDO) No. 48-West Makati. Its principal place of business is located at Unit 101 OPVI Centre, Building 2, Chino Roces Extension, Magallanes 1232, Makati City.[2]

Respondent Commissioner of Internal Revenue (CIR) is the Chief of the Bureau of Internal Revenue (BIR), who has the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, among others, under Philippine laws.[3]

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1 Docket – Vol. I, pp. 7–30.
2 Docket – Vol. II, p. 605, *Joint Stipulation of Facts and Issues* (JSFI), Stipulated Facts, par. 1.
3 *Id.* at par. 2.

THE FACTS

On April 7, 2015, a Letter of Authority (LOA) with SN: eLA201200005752/LOA-43B-2015-00000173[4] was issued, authorizing Revenue Officer (RO) Etheline Villareal and Group Supervisor (GS) Alejandro San Juan of RDO No. 43B-West Pasig to examine petitioner's books of accounts and other accounting records for internal revenue taxes for TY 2013.[5]

On July 25, 2016, a Memorandum of Assignment (MOA) No. 2016-43B-00000289[6] was issued to RO Gilbert M. Bercasio (Bercasio) and GS Melecio F. Cantara (Cantara).[7]

On December 6, 2016, the Preliminary Assessment Notice (PAN)[8] was issued, assessing petitioner for deficiency IT and VAT in the amounts of ₱57,165,848.73 and ₱45,679,380.63, respectively.[9]

On December 21, 2016, petitioner, through its President Salvador C. de Guzman, filed a reply to the PAN.[10]

On January 10, 2017, the Formal Letter of Demand (FLD) with the Final Assessment Notice (FAN),[11] was issued, assessing petitioner of deficiency IT and VAT in the amounts of ₱50,685,014.54 and ₱40,644,357.04, respectively, for TY 2013.[12]

On February 8, 2017, petitioner filed a protest against the FLD and FAN.[13]

An LOA with SN: eLA201600053498/LOA-043-2019-00000099 dated February 19, 2019[14] was issued authorizing RO Bercasio and GS Cantara of RDO No. 043-Pasig to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2013.[15]

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4 Docket – Vol. I, p. 330, Exhibit "P-5".
5 Docket – Vol. II, p. 605, JSFI, Stipulated Facts, par. 3.
6 Docket – Vol. I, p. 331, Exhibit "P-6"; BIR Records, p. 119, Exhibit "R-6".
7 Docket – Vol. II, p. 606, JSFI, Stipulated Facts, par. 4.
8 Docket – Vol. I, pp. 332–336, Exhibit "P-7".
9 Docket – Vol. II, p. 606, JSFI, Stipulated Facts, par. 5.
10 Docket – Vol. I, pp. 337–339, Exhibit "P-8"; BIR Records, pp. 217–220.
11 *Id.* at 340–346, Exhibit "P-9".
12 Docket – Vol. II, p. 606, JSFI, Stipulated Facts, par. 6.
13 Docket – Vol. I, pp. 347–351, Exhibit "P-10"; BIR Records, pp. 261–265.
14 *Id.* at 364, Exhibit "P-12"; BIR Records, p. 320.
15 Docket – Vol. II., p. 606, JSFI, Stipulated Facts, par. 7.

On February 5, 2020, a letter signed by the Chief of Collection Division of Revenue Region No. 7B-East NCR,[16] Ceferina S. Ong (Ong), encouraged petitioner to avail itself of the tax amnesty program.[17]

On February 14, 2020, a Warrant of Distraint and/or Levy (WDL)[18] was issued by the Chief of Collection Division.[19]

On April 21, 2021, the Final Decision on Disputed Assessment (FDDA)[20] was issued by Regional Director (RD) Romulo L. Aguila, Jr. (Aguila, Jr.) of Revenue Region No. 7B-East NCR, denying petitioner's request for reconsideration due to its failure to refute the validity of the findings, as shown in the attached Details of Discrepancies. The FDDA was received by petitioner on April 28, 2021.[21]

On May 21, 2021, a request for reconsideration of the FDDA was filed by petitioner, addressed to the CIR, and routed through RD Aguila, Jr.[22]

On May 12, 2022, petitioner received the following:

(1) The CIR's Decision dated January 19, 2022,[23] denying its request for reconsideration of the FDDA; and

(2) The WDL[24] and Warrants of Garnishment (WOG)[25] issued by respondent through RD Maridur V. Rosario of Revenue Region No. 8A-Makati City[26] on the same date.[27]

On June 1, 2022, petitioner filed the present *Petition for Review,*[28] which was raffled to the Second Division.

On June 6, 2022, *Summons* was issued to respondent.[29]

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16 Docket – Vol. I, p. 367, Exhibit "P-14"; BIR Records, p. 343, Exhibit "R-17".
17 Docket – Vol. II, p. 606, JSFI, Stipulated Facts, par. 8.
18 BIR Records, p. 342, Exhibit "R-18".
19 Docket – Vol. II, p. 606, JSFI, Stipulated Facts, par. 9.
20 BIR Records, pp. 399–404, Exhibit "R-20".
21 Docket – Vol. II, JSFI, p. 606, Stipulated Facts, par. 10.
22 Docket – Vol. I, pp. 381–385, Exhibit "P-19"; BIR Records, pp. 449–453.
23 Docket – Vol. II, JSFI, p. 606, Stipulated Facts, par. 12; BIR Records, pp. 498–500.
24 BIR Records, p. 503.
25 BIR Records, pp. 505–529.
26 Docket – Vol. II, JSFI, p. 606, Stipulated Facts, par. 11.
27 Docket – Vol. I, p. 10, *Petition for Review*, par. 10.
28 *Supra* note 1.
29 Docket – Vol. I, p. 166.

On June 16, 2022, respondent was given five days from notice to file his comment on petitioner's *Application for the Issuance of a Suspension Order/Temporary Restraining Order and/or Writ of Preliminary Injunction*, as incorporated in its *Petition for Review*.[30]

On June 30, 2022, respondent filed his *Comment/Opposition (Re: Petitioner's Application for the Issuance of a Suspension Order/ Temporary Restraining Order and/or Writ of Preliminary Injunction)*.[31]

On July 20, 2022, respondent filed his *Answer (On the Petition for Review dated 30 May 2022)*.[32]

On July 28, 2022, the Second Division issued the *Notice of Pre-Trial Conference*,[33] setting the case for pre-trial on October 17, 2022.

Respondent's *Pre-Trial Brief* was filed on October 14, 2022,[34] while the *Pre-Trial Brief of Petitioner Productivity Technologies Services, Inc.* was filed on October 18, 2022.[35]

On October 17, 2022, the Second Division granted petitioner's *Motion for the Suspension of the Collection of Taxes* and ordered the suspension of tax collection by respondent.[36]

On October 20, 2022, the pre-trial conference was held, during which the parties were given thirty (30) days to file a Joint Stipulation of Facts and Issues (JSFI).[37] The parties filed their JSFI on February 21, 2023,[38] which the Second Division admitted and approved in its Resolution dated March 2, 2023.[39] The Court issued the Pre-Trial Order on April 25, 2023, marking the termination of the pre-trial.[40]

On May 29, 2023, the case was transferred to the First Division.[41]

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30 *Id.* at 169, Resolution.
31 *Id.* at 170–178.
32 *Id.* at 216–229.
33 *Id.* at 271–272.
34 Docket – Vol. II, pp. 481–487.
35 *Id.* at 570–584.
36 *Id.* at 541–553, Resolution.
37 *Id.* at 589–591, Minutes of the hearing held on, and Order dated October 20, 2022.
38 *Id.* at 605–608, JSFI.
39 *Id.* at 610.
40 *Id.* at 612–619.
41 *Id.* at 625, Notice of Resolution.

Trial ensued, with both parties presenting and offering their respective testimonial and documentary evidence. Petitioner presented its sole witness, Mr. Salvador C. De Guzman, its President.[42]

On September 21, 2023, petitioner filed its *Formal Offer of Evidence*,[43] to which respondent submitted his *Comment (To Petitioner's Formal Offer of Evidence dated September 21, 2023)* on October 10, 2023.[44] In its Resolution dated January 12, 2024,[45] the Court admitted petitioner's offered exhibits, except for Exhibits "P-4-1" and "P-13-1," for failure to properly offer and identify the exhibits; "P-16" and "P-16-1," for improper marking; and "P-23," for failure to identify.

On April 24, 2024, respondent presented RO Jchellyn H. Salazar as his sole witness.[46] On April 29, 2024, respondent filed his *Formal Offer of Evidence*,[47] to which petitioner did not submit a comment.[48] The Court admitted all respondent's offered evidence in its Resolution dated August 22, 2024.[49]

On November 25, 2024, the case was submitted for decision without both parties submitting their respective memoranda.[50]

THE ISSUE

As agreed by the parties, the sole issue for this Court's resolution is:[51]

> Whether or not petitioner is liable to pay the aggregate amount of ₱143,339,041.19, representing the alleged deficiency Income Tax and Value-Added Tax for taxable year 2013.

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[42] Docket – Vol. I, pp. 141–158, Exhibit "P-22"; Docket – Vol. II, pp. 642–644, and 645–646, Minutes of the hearing held on, and Order dated August 31, 2023, respectively.
[43] Docket – Vol. II, pp. 683–696.
[44] *Id.* at 700–703.
[45] *Id.* at 717–720.
[46] *Id.* at 730–746, Exhibit "R-23"; 789–791, Order dated April 24, 2024.
[47] *Id.* at 793–799.
[48] *Id.* at 801, Records Verification dated May 16, 2024.
[49] *Id.* at 806–807.
[50] *Id.* at 808, Records Verification dated October 29, 2024.
[51] *Id.* at 589 & 590–591, Minutes of the hearing held on, and Order dated October 20, 2022, respectively; 612–619, Pre-Trial Order.

Petitioner's arguments:

Petitioner argues that RO Bercasio and GS Cantera, who conducted the audit investigation, were not authorized by an LOA. Thus, the assessment issued is invalid under Sections 6(A) and 13 of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner further argues that an MOA is insufficient to grant ROs the authority to conduct audit investigations.

Petitioner also claims that the ROs of Revenue Region No. 8A-Makati lacked the authority to conduct enforcement activities due to the transfer of business registration, referencing Revenue Memorandum Order (RMO) No. 11-2005,[52] which states that "collection cases shall be processed by the old RDO."

Lastly, petitioner submits that the BIR's right to assess VAT for the first, second, and third quarters has already prescribed.

Respondent's arguments:

Respondent argues that there is clear evidence that RD Alfredo V. Misajon (Misajon) later authorized RO Bercasio to conduct the tax audit on petitioner. This is supported by the PAN, FAN, and FDDA, all of which were signed by RD Misajon based on the audit conducted by RO Bercasio.

Respondent asserts that even in the absence of an LOA, the audit was properly authorized, and the issued assessment is valid. Further, respondent claims that the issuance of an MOA to RO Bercasio and GS Cantera is not irregular, as it complies with RMO No. 62-2010.[53]

Respondent also submits that Revenue Region No. 8A-Makati is authorized to enforce collection activities against petitioner for its deficiency assessment for TY 2013. This is in accordance with Revenue Regulations No. 11-2008,[54] which provides that when a taxpayer transfers its registration, the old

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52 Amending Pertinent Provisions of RMO 40-2004 (Modified Procedures in Handling Taxpayer's Request for Transfer of Registration) and Inclusion of Additional Policies, May 17, 2005.

53 Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures, June 28, 2010.

54 Consolidated Revenue Regulations on Primary Registration, Its Updates, and Cancellation, August 15, 2008.

RDO is responsible for transferring all accountabilities to the new RDO.

Lastly, respondent asserts that the assessment is presumed correct, and petitioner has the burden to prove otherwise.

THE COURT'S RULING

The *Petition for Review* is meritorious.

Petitioner timely filed the instant Petition for Review.

Section 7(a)(1) of Republic Act (RA) No. 1125,[55] as amended by RA No. 9282,[56] confers jurisdiction on this Court over decisions of respondent and other matters arising under the NIRC of 1997, as amended, to wit:

> SEC. 7. *Jurisdiction*. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the [CIR] in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

Thus, the appellate jurisdiction of the Court is not limited to cases that involve decisions of the CIR on matters relating to assessments or refunds; the second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.[57]

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, as follows:

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[55] An Act Creating the Court of Tax Appeals, June 16, 1954.

[56] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

[57] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010 [Per J. Leonardo-De Castro, First Division].

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling, or inaction of the [CIR] ... may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

These provisions are also provided under Section 3(a)(1)(2), Rule 4,[58] and Section 3(a), Rule 8[59] of the Revised Rules of the Court of Tax Appeals (RRCTA). In sum, this Court has exclusive jurisdiction to review, by appeal, respondent's decision and other matters arising under the NIRC, which must be filed within 30 days from receipt thereof.

In this case, petitioner received the CIR's Decision dated January 19, 2022,[60] along with the WDL and WOGs on May 12, 2022. Petitioner filed the present *Petition for Review* to challenge the WDL, invoking the Court's jurisdiction over "other matters." Thus, petitioner had 30 days from May 12, 2022, or until June 11, 2022, to file an appeal with the CTA. Accordingly, this *Petition for Review* filed on June 1, 2022 is timely filed.

The RO and GS who continued petitioner's audit lacked a valid LOA, rendering the resulting deficiency tax assessment void ab initio.

Petitioner contends that the assessment is void because RO Bercasio conducted the audit without the requisite authorization through an LOA. Petitioner further asserts that an MOA cannot confer the necessary authority upon RO Bercasio.

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[58] SEC. 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action:

[59] SEC. 3. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[60] Docket – Vol. II, JSFI, p. 606, Stipulated Facts, par. 12; BIR Records, pp. 498–500.

The Court concurs.

The power to assess taxes necessarily includes the authority to examine a taxpayer to determine the correct amount of tax due.[61] The law grants the BIR general powers in relation to the assessment and collection of all internal revenue taxes.[62] However, only the CIR or a duly authorized representative may authorize the examination of a taxpayer and issue an assessment. This authority is granted under Section 6(A) of the NIRC of 1997, as amended, which states:

> 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. (*Emphasis supplied*)

An LOA is the authority given to the RO to perform assessment functions. It enables the RO to examine a taxpayer's books of account and other accounting records for the purpose of collecting the correct amount of tax.[63] The issuance of an LOA is based on the fact that the examination of a taxpayer who has already filed a tax return is a power that belongs statutorily to the CIR or his duly authorized representatives.[64]

Section 13 of NIRC of 1997, as amended, further clarifies this requirement:

> 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

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[61] *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].

[62] *Id.*

[63] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

[64] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

> assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (*Emphasis supplied*)

Based on these provisions, a taxpayer's examination cannot be undertaken without an LOA issued by the CIR or a duly authorized representative. Thus, other tax agents may not validly conduct such examinations without prior authorization from the CIR himself or his representatives.[65]

The issuance of an LOA prior to examination and assessment is a requirement of due process and is not a mere formality or technicality.[66] The Supreme Court, in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* (*McDonald's*),[67] emphasized the critical link between a taxpayer's receipt of an LOA and compliance with 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**. (*Emphasis supplied*)

In this case, on April 7, 2015, respondent issued an LOA authorizing RO Villareal and GS San Juan to examine petitioner's books of accounts for TY 2013.[68] However, BIR Records indicate that RO Bercasio, under the supervision of GS

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[65] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017 [Per J. Reyes, Third Division].

[66] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

[67] *Id.*

[68] BIR Records, p. 51, Exhibit "R-1".

Cantara, actually conducted the audit and recommended the issuance of the assessment against petitioner, even though they did not have the necessary LOA at that time.[69]

Instead of a valid LOA, MOA No. 2016-43B-00000289 was issued by Revenue District Officer Honorata S. Aguilar of RDO No. 43B-West Pasig on July 25, 2016, referring RO Bercasio and GS Cantara to the audit/verification of petitioner for TY 2013, particularly for "compliance with the review/reporting requirements of (indicate the reviewing office, e.g., Regional Assessment Division, Office of the Regional Director, Assessment Service, etc.)."[70]

Thereafter, the PAN was issued on December 6, 2016, followed by the issuance of the FLD and FAN on January 10, 2017. It was only on February 19, 2019, more than two years later, that an LOA was belatedly issued authorizing RO Bercasio and GS Cantara to conduct the audit of petitioner for TY 2013.[71] This late issuance confirms that no valid LOA existed when the audit was conducted and the assessments were issued.

In *McDonald's*, the Supreme Court clarified that an MOA cannot substitute for an LOA and does not satisfy the legal requirements for its issuance:

> ***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

[69] *Id.* pp. 150–151.
[70] *Id.* p. 119, Exhibit "R-6".
[71] *Id.* p. 320, Exhibit "R-16".

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> 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 supplied*)

Thus, an MOA merely facilitates the reassignment of cases and does not confer the authority required by law to conduct an examination and assessment. In contrast, an LOA constitutes a specific grant of authority to a designated revenue officer. The practice of reassigning ROs without issuing a separate or amended LOA usurps the authority of the CIR, infringes upon the taxpayer's right to due process, violates BIR regulations, and renders any audit or investigation conducted by unauthorized ROs void. As summarized in *McDonald's*:

> 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**

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> **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. (*Emphasis supplied*)

Guided by the foregoing, the Court finds that the lack of authority of RO Bercasio and GS Cantara to conduct the audit of petitioner renders the assessment void. Being a void assessment, the same bears no fruit[72] and is of no force and effect.

Finally, the belated issuance of an LOA on February 19, 2019, more than two years after the FLD and FAN were issued, does not retroactively validate the unauthorized audit. Instead, it confirms the absence of a valid LOA at the time of the audit and the issuance of the assessment.

Accordingly, the Court deems it unnecessary to address the remaining issues raised in the instant *Petition*.

WHEREFORE, premises considered, the present *Petition for Review* is **GRANTED**.

Accordingly, the Formal Letter of Demand with Assessment Notices dated January 10, 2017, the Warrants of Distraint and/or Levy dated February 14, 2020, and May 12, 2022, and the Warrant of Garnishment dated May 12, 2022, are **CANCELLED** and **SET ASIDE**. Further, the Decision of respondent Commissioner of Internal Revenue dated January 19, 2022, finding petitioner Productivity Technologies Services, Inc. liable for deficiency income tax and value-added tax in the amount of ₱143,339,041.19 for taxable year 2013, is **REVERSED** and **SET ASIDE**.

Consequently, respondent or any person acting on his behalf is **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[72] *People v. E & D Parts Supply, Inc., et al.*, G.R. No. 259284, January 24, 2024 [Per J. Lopez, M. V., Second Division].

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
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