REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2356** (CTA Case No. 9698)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
RAMON Y. MENDOZA, Respondent.	***Promulgated:*** FEB 02 2023 10:46 am

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DECISION

UY, *J*.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on November 4, 2020 by petitioner, Commissioner of Internal Revenue (CIR), against respondent, Ramon Y. Mendoza, praying that the Court *En Banc* give due course to the instant *Petition*, reverse and set aside the *Decision*[2] dated March 2, 2020 and the *Resolution*[3] dated September 29, 2020 both rendered by the First Division of this Court in CTA Case No. 9698, entitled *"Ramon Y. Mendoza, Petitioner, v. Commissioner of Internal Revenue, Respondent"*, and a new one be rendered dismissing the original *Petition for Review* filed by respondent and ordering respondent to pay the amount of ₱8,257,363.07,

[1] EB Docket, pp. 6 to 17.
[2] EB Docket, pp. 58 to 79.
[3] EB Docket, pp. 80 to 81.

representing deficiency income tax and value-added tax (VAT), inclusive of interest, surcharge and penalties. The dispositive portions of the assailed *Decision* and *Resolution* respectively read as follows:

***Decision* dated March 2, 2020:**

"**WHEREFORE**, premises considered, the Petition for Review filed on October 13, 2017 by petitioner Ramon Y. Mendoza is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated September 12, 2017 is hereby **SET ASIDE**. The Formal Letter of Demand, with the following Assessment Notices, all dated August 16, 2016, covering taxable year 2012, assessing petitioner for deficiency Income Tax and Value Added Tax, in the aggregate amount of **EIGHT MILLION TWO HUNDRED FIFTY SEVEN THOUSAND THREE HUNDRED SIXTY THREE PESOS and SEVEN CENTAVOS (₱8,257,363.07)**, *viz.*:

Tax	Assessment Notice Nos.	Amount
Income Tax	040-B058-12-50%SC	₱5,941,850.20
Value-Added Tax	040-B058-12-50%SC	₱2,315,512.87
	Total:	**₱8,257,363.07**

are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED."

***Resolution* dated September 29, 2020:**

"**WHEREFORE**, premises considered, respondent's "**Motion for Reconsideration**" filed on June 30, 2020 is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed CIR, vested by law with the power to implement and enforce the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws. She may be served with summons and other court processes at the 5th

Floor (Roof Deck) Fisher Mall, Quezon Avenue cor. Roosevelt Junction, Quezon City.

On the other hand, respondent is of legal age, married, Filipino, with residence at No. 31 Nova Scotia Street, Loyola Grand Villas, Marikina City.

On June 9, 2014, petitioner issued Letter Notice (LN) No. 040-RLFTRS-12-00-00671 signed by then CIR Kim S. Jacinto-Henares, inviting respondent to present documentary evidence in order to reconcile the discrepancies found by the Bureau of Internal Revenue (BIR) after a computerized matching was conducted on information/data provided by third party sources as opposed to his declarations per VAT returns for taxable year (TY) 2012.

In October 2014, respondent received Letter of Authority (LOA) No. 040-2014-00001022/SN:eLA201100092734 dated October 2, 2014 authorizing Revenue Officer (RO) Arlene Manangan, under the supervision of Group Supervisor (GS) Judith Arcinue, of Revenue District No. 040 to examine/audit respondent's internal revenue taxes including documentary stamp tax, other taxes (Miscellaneous Tax)(OTH) for the period January 1, 2012 to December 31, 2012.

An undated Memorandum was submitted by RO Manangan and GS Nenita L. Crespo, with the recommending approval of Revenue District Officer (RDO) Rosemarie V. Ramos-Ragasa, to the Regional Director of Revenue Region No. 7, recommending the issuance of a Preliminary Assessment Notice (PAN) against respondent for deficiency income tax and VAT for TY 2012.

On June 20, 2016, a Memorandum was issued by Analyn S. Chu, the OIC-Chief of the Assessment Division of Revenue Region No. 7, to RO Manangan and GS Crespo returning the entire tax docket of respondent in order for them to send a confirmation request to obtain third party information to attest to the veracity of the data provided in the LN.

On June 22, 2016, RO Belen S. Occeña and GS Corazon C. San Pedro received a Memorandum of Assignment (MOA) dated June 21, 2016 signed by RDO Lorna H. Sun-Tobias, referring the audit/verification of respondent's (Harmonics Electrical Service/Nobu Trading) case to them for review/reporting requirements of the Assessment Division, replacing the previously assigned revenue officer who was transferred to another district office.

On June 23, 2016, RDO Sun-Tobias issued Letters to Electromark Multisales, Inc. and Georos Construction Development & Trading Inc. notifying said companies of the conduct of an LN investigation of respondent's income tax and VAT liabilities for TY 2012, requesting for advice whether the figures contained therein are correct, and to send their reply to Revenue District Office No. 40 BIR Cubao, Quezon City, with the corresponding notification to RO Occeña.

On June 28, 2016, RO Occeña submitted a Memorandum dated June 24, 2016 to the RDO of Revenue District Office No. 40 attaching thereto the confirmation requests mailed to various customers (as evidenced by Registry Receipt No. 637605752 and 636605746 ZZ), and recommending that the case docket be returned to the Assessment Division for the preparation of the PAN.

On July 19, 2016, respondent received from the BIR the PAN dated July 12, 2016, assessing him for deficiency income tax and VAT in the total amount of ₱8,195,796.32, inclusive of surcharge and interest for TY 2012, broken down as follows:

Tax Type	Basic Tax	50% Surcharge	Interest	Total
Income Tax	₱2,709,952.92	₱1,354,976.46	₱1,832,373.64	**₱5,897,303.02**
VAT	₱1,035,357.34	₱ 517,678.67	₱ 745,457.29	**₱2,298,493.30**
Total	**₱3,745,310.26**	**₱1,872,655.13**	**₱2,577,830.93**	**₱8,195,796.32**

In his reply to the PAN, respondent sent his Letter dated August 1, 2016 addressed to Alfredo V. Misajon, the Regional Director of Revenue Region No. 7 – Quezon City. Said Letter was received by the BIR, Director's Office, Revenue Region No. 7, Quezon City on August 3, 2016.

On August 25, 2016, respondent received from the BIR a Formal Letter of Demand (FLD) dated August 16, 2016, with accompanying Assessment Notices and Details of Discrepancies assessing respondent for deficiency income tax in the amount of ₱5,941,850.20 and for VAT in the amount of ₱2,315,512.87, inclusive of surcharge and interest for TY 2012, viz.:

Tax	Assessment Notice Nos.	Amount
Income Tax	040-B058-12-50%SC	₱5,941,850.20
Value-Added Tax	040-B058-12-50%SC	₱2,315,512.87
	Total:	**₱8,257,363.07**

MK

On September 21, 2016, respondent filed with the BIR his "Protest to Formal Letter of Demand dated August 16, 2016" dated September 20, 2016.

On November 8, 2016, RO Occeña and GS San Pedro received from RDO Albino M. Galanza an MOA dated November 7, 2016, assigning them to reinvestigate the Protest filed by respondent.

On September 13, 2017, respondent received from the BIR the Final Decision on Disputed Assessment (FDDA) dated September 12, 2017 signed by Marina C. De Guzman, OIC-Regional Director of Revenue Region No. 7 (Quezon City), denying respondent's Protest dated September 20, 2016.

Aggrieved, respondent filed a *Petition for Review* before the Court in Division of this Court, docketed as CTA Case No. 9698, entitled *"Ramon Y. Mendoza v. Commissioner of Internal Revenue"*, on October 13, 2017. The case was initially assigned to the Second Division of this Court but was subsequently transferred to the First Division of this Court.

On December 12, 2017, petitioner filed her *Answer* with the following special and affirmative defenses:

(a) The deficiency assessments for income tax in the amount of ₱5,941,850.20 and VAT in the amount of ₱2,315,512.87 for TY 2012 were issued in accordance with applicable laws and regulations;

(b) Respondent's Protest failed to state the facts, the applicable laws, rules and regulations or jurisprudence on which his Protest was based; and

(c) The Court of Tax Appeals has no jurisdiction over the *Petition for Review* since it has been filed without a cause of action; thus, warranting a dismissal thereof.

After the Pre-Trial Conference held on February 1, 2018, the parties filed their *Joint Stipulation of Facts and Issues* on February 21, 2018. Thereafter, the Court in Division issued the *Pre-Trial Order* on February 27, 2018 and terminated the Pre-Trial.

During trial, respondent presented two (2) witnesses, namely: (1) respondent himself; and (2) his wife, Evelyn C. Mendoza.

On the other hand, petitioner presented three (3) witnesses, namely: (1) GS Crespo; (2) RO Occeña; and (3) RO Kenneth Marie P. Belen.

Considering the filing of respondent's *Memorandum* on August 27, 2019, and petitioner's failure to submit her Memorandum, CTA Case No. 9698 was submitted for decision on September 16, 2019.

On March 2, 2020, the Court in Division rendered the assailed *Decision*[4] which granted respondent's *Petition for Review*, set aside the FDDA dated September 12, 2017, and cancelled and withdrew the FLD with Assessment Notices all dated August 16, 2016 covering TY 2012.

Dissatisfied with the Court in Division's *Decision*, petitioner filed a *Motion for Reconsideration*[5] on June 30, 2020, praying that the *Decision* dated March 2, 2020 be reconsidered and set aside, and a ruling in favor of petitioner be rendered.

On July 14, 2020, respondent filed his *Comment*[6] on petitioner's *Motion for Reconsideration*, pursuant to the Court in Division's *Resolution*[7] dated July 10, 2020.

In the assailed *Resolution*[8] dated September 29, 2020, the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

Thus, on November 4, 2020, petitioner filed the instant *Petition for Review*[9] docketed as CTA EB No. 2356, after being granted a final and non-extendible period of fifteen (15) days from October 20, 2020, or until November 4, 2020, within which to file her *Petition for Review*.[10]

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[4] EB Docket, pp. 58 to 79; Division Docket – Vol. II (CTA Case No. 9698), pp. 726 to 747.
[5] Division Docket – Vol. II (CTA Case No. 9698), pp. 748 to 757.
[6] Division Docket – Vol. II (CTA Case No. 9698), pp. 761 to 775.
[7] Division Docket – Vol. II (CTA Case No. 9698), p. 760.
[8] EB Docket, pp. 80 to 81; Division Docket – Vol. 2 (CTA Case No. 9698), pp. 782 to 783.
[9] EB Docket, pp. 6 to 17.
[10] *Minute Resolution* dated October 23, 2020, EB Docket, p. 5.

On November 26, 2020, the Court *En Banc* issued the *Resolution*[11] ordering petitioner to submit duplicate originals or certified true copies of the *Decision* and *Resolution* appealed from, and the Affidavit of Service as proof that respondent was served with a copy of the instant *Petition for Review*.

Petitioner filed her *Compliance*[12] on January 11, 2021, which was noted in the *Resolution*[13] dated January 27, 2021. In the same *Resolution*, the Court *En Banc* ordered respondent to file his Comment on the instant *Petition for Review* within ten (10) days from notice.

On February 26, 2021, respondent filed his *Comment/Opposition (To Petitioner's Petition for Review dated November 4, 2020)*.[14] Thereafter, the instant case was referred to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) in the *Resolution*[15] dated March 15, 2021. On April 27, 2022, the PMC-CTA issued a No Agreement to Mediate.[16]

In the *Resolution*[17] dated May 18, 2022, the instant *Petition for Review* was submitted for decision.

Hence, this *Decision*.

ISSUES

Petitioner raises the following issues[18] for the Court *En Banc's resolution*, to wit:

a) The Court in Division erred in ruling that the revenue officer and group supervisor who continued the audit of respondent were not authorized by a valid LOA.

b) The Court in Division erred in ruling that the FLD and Assessment Notices are void.

[11] EB Docket, pp. 50 to 53.
[12] EB Docket, pp. 54 to 57.
[13] EB Docket, pp. 84 to 85.
[14] EB Docket, pp. 86 to 115.
[15] EB Docket, pp. 475 to 476.
[16] EB Docket, p. 478.
[17] EB Docket, pp. 480 to 481.
[18] EB Docket, p. 10.

Petitioner's arguments:

Petitioner argues that once the LOA is served, any duly authorized revenue officer may conduct the audit not because of, but pursuant to, such LOA. The authority to conduct the audit may be included in the letter or in any other document issued by the CIR or her duly authorized representative.

According to petitioner, an MOA subsequently issued derives its authority from the original LOA. An MOA is issued for the continuation of the audit investigation which was already authorized under the LOA. In fact, petitioner states that under Revenue Memorandum Order (RMO) No. 62-2010, an MOA shall be issued when, among other instances, there is "reassignment for the continuation of the audit/investigation to another revenue officer due to resignation/ retirement/transfer of the original revenue officer".

Petitioner also insists that the due process requirements under the law and Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, have been strictly observed. Petitioner avers that respondent was able to file his protest, which resulted to the issuance of the FDDA; thus, it cannot be said that respondent was denied due process.

Allegedly, the Final Assessment Notice (FAN)/FLD and the FDDA clearly stated the facts and the law upon which the assessments were based. Moreover, there is nothing in the law which provides that the due date for payment is a substantive requirement for the validity of a FAN.

Finally, petitioner claims that there is a presumption in favor of the propriety and correctness of the assessment against respondent. Petitioner contends that it is upon respondent to present evidence and establish the inaccuracy of the assessment made against him.

Respondent's counter-arguments:

Respondent counter-argues that the instant *Petition* should have been dismissed outright because petitioner failed to comply with the requirements of a valid appeal. Respondent avers, that as observed by the Court *En Banc*, petitioner failed to attach certified true copies of the assailed *Decision* and *Resolution*, and the proof of service, to the instant *Petition for Review*. While it is true that petitioner filed her

Compliance dated January 11, 2021, the submissions of the certified true copies of the assailed *Decision* and *Resolution*, and the Affidavit of Service, were made after the extended period for petitioner to file her appeal; hence, the appeal should be considered filed out of time.

Moreover, respondent emphasizes that the right to appeal is neither a natural right nor a component of due process. It is a mere statutory privilege and may be exercised only in the manner and accordance with the provisions of law. Likewise, petitioner should not be accorded any liberality in the application of the rules on a valid appeal because liberality in the application of the rules must be predicated on a justifiable reason for non-compliance. In this case, respondent points out that petitioner did not offer any explanation for her failure to attach the certified true copies of the assailed *Decision* and *Resolution*, and the proof of service.

Respondent also maintains that the FAN and FDDA are void for having been issued pursuant to an audit conducted by unauthorized officers. While RMO No. 62-2010 provides that an MOA shall be issued for the assignment of another revenue officer for the continuance of the audit, the same RMO does not provide that the LOA requirement may be dispensed with. The law, regulations, and jurisprudence are clear that before a revenue officer can conduct an audit and issue an assessment against a taxpayer, said revenue officer must be specifically authorized by a duly-issued LOA. Absent said authority, any assessment issued in the course of the unauthorized examination is void.

In addition, respondent counter-argues that the subject FLD and FDDA are void for having been issued beyond the three (3)-year prescriptive period. Further, an examination of the PAN, FLD and FDDA shows that aside from a general allegation that respondent had undeclared purchases, the PAN, FLD and FDDA failed to provide details on the subject transactions. Petitioner's failure to state the facts on which the assessment was based violated respondent's right to due process.

Likewise, the BIR's disregard of respondent's submissions in its reply to the PAN and Protest is a grave violation of the respondent's right to due process because it means that the BIR failed to conduct a good faith consideration of the arguments and evidence presented by respondent.

Lastly, considering that the Assessment Notices attached to the FLD do not contain any due dates, respondent claims that the same can neither be considered as a categorical demand to pay nor a final notice.

THE COURT *EN BANC*'S RULING

At the outset, respondent asserts that the instant *Petition* should have been dismissed outright due to petitioner's failure to comply with the requirements of a valid appeal.

In this case, petitioner failed to attach to the instant *Petition for Review* filed on November 4, 2020, certified true copies of the assailed *Decision* and *Resolution*, and the proof of service to the adverse party.

According to respondent, considering that the certified true copies of the assailed *Decision* and *Resolution*, and the proof of service, were only submitted by petitioner on January 11, 2021, in compliance with the Court *En Banc*'s *Resolution* dated November 26, 2020, which was well after the extended period for petitioner to file her appeal, the appeal should be considered filed out of time.

We are not convinced.

While it is true that the right to appeal is neither a natural right nor a component of due process, and is a mere statutory privilege and may be exercised only in the manner and in accordance with the provisions of law, it is also worth noting that the Court *En Banc* is empowered to relax the strict application of the rules of procedure. Section 2, Rule 1 of the Revised Rules of the Court of Tax Appeals, as amended, provides:

> "SEC. 2. *Liberal construction.* — The Rules shall be **liberally construed** in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court." *(Emphasis supplied)*

In the case of *La Sallian Educational Innovators Foundation (De La Salle University-College of St. Benilde), Inc. v. Commissioner of*

Internal Revenue (*La Salle* case),[19] the Supreme Court held that a liberal interpretation of the rules of procedure may be allowed if a rigid application will defeat substantial justice, to wit:

> "This Court has ruled in the past that if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice and depending on the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.
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> Otherwise stated, procedural rules are important tools designed to facilitate the dispensation of justice, but legal technicalities may be excused when strict adherence thereto will impede the achievement of justice it seeks to serve."

In this case, petitioner filed the instant *Petition for Review* on November 4, 2020. Said filing was within the extended period of fifteen (15) days from October 20, 2020, or until November 4, 2020.[20] However, petitioner only attached photocopies of the assailed *Decision* and *Resolution*, and failed to attach the proof of service, to the *Petition for Review*.

Nonetheless, petitioner filed a *Compliance*,[21] submitting the duplicate originals of the *Decision* dated March 2, 2020 and the *Resolution* dated September 29, 2020, and the Affidavit of Service, within the period given by the Court *En Banc*.

Similar to the *La Salle* case, petitioner was able to file the *Petition for Review* on the last day of filing. While it is true that petitioner initially failed to comply with all of the requirements of a valid appeal under Sections 6 and 7, Rule 43 of the 1997 Rules of Civil Procedure, petitioner subsequently filed a *Compliance* submitting the required documents within the period given by the Court *En Banc*. Said filing showed petitioner's good faith and willingness to abide by the rules.

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[19] G.R. No. 202792, February 27, 2019.
[20] *Minute Resolution* dated October 23, 2020, EB Docket, p. 5.
[21] EB Docket, pp. 54 to 57.

Moreover, considering that the case involves collection of taxes which are the lifeblood of the government, judicial leniency is warranted, notwithstanding petitioner's failure to offer any explanation for her failure to attach the certified true copies of the assailed *Decision* and *Resolution*, and the proof of service, to the *Petition for Review*. Thus, the Court *En Banc* is inclined to relax the strict application of the rules of procedure and resolve the instant *Petition* on the merits.

The revenue officers who continued the audit of respondent's books of accounts and other accounting records were not authorized by a valid LOA.

Section 6 (A) of the NIRC of 1997, as amended, lays down the power of the CIR or her duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, to wit:

> "SECTION. 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**, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis supplied)*

Relative thereto is Section 13 of the NIRC of 1997, as amended, which provides that the authority of a revenue officer to examine taxpayers or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> "SECTION. 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, <u>pursuant to a Letter of Authority</u> issued by the Revenue Regional Director, examine taxpayers** within the jurisdiction of the district in order to collect the correct amount of tax, or to **recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied)*

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[22] (*Medicard* case) the Supreme Court emphasized the importance of an LOA, which grants authority to BIR officials to examine taxpayers, or to recommend the assessment of any deficiency tax due, to wit:

> "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 supplied)*

[22] G.R. No. 222743, April 5, 2017.

Furthermore, petitioner, through the issuance of Revenue Memorandum Circular No. 75-2018,[23] recognized the ruling in the *Medicard* case, in this wise:

> "The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, <u>through an LOA</u>. The concept of an LOA is therefore clear and unequivocal. <u>Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore "inescapably void</u>."**
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> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." *(Emphasis and underscoring supplied)*

Clearly, there must be a grant of authority, through an LOA, before any revenue officer can conduct an examination or assessment. In the absence of such an authority, the assessment or examination is a nullity.[24]

In the instant case, records reveal that pursuant to LOA No. 040-2014-00001022/SN:eLA201100092734 dated October 2, 2014,[25] only RO Manangan and GS Arcinue were authorized to examine respondent's books of accounts and other accounting records for TY 2012.

Subsequently, an MOA dated June 21, 2016[26] was issued by RDO Sun-Tobias referring the audit of respondent to RO Occeña and GS San Pedro for *"compliance with the review/reporting requirements*

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[23] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.
[24] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[25] Exhibit "P-5", Division Docket – Vol. II (CTA Case No. 9698), p. 461.
[26] Exhibit "P-16", Division Docket – Vol. II (CTA Case No. 9698), p. 485.

of the Assessment Division, this Region, to replace the previously assigned Revenue Officer who resigned/retired/transferred to another district office."

Evidently, the supposed authority of RO Occeña and GS San Pedro to continue the audit/investigation of respondent was merely based on the MOA dated June 21, 2016. As a corollary, it bears noting that there is no showing that a new LOA was issued specifically authorizing RO Occeña and GS San Pedro to continue the audit/ investigation of respondent.

The failure of petitioner to issue a new LOA runs counter to RMO No. 43-90 which lays down the guidelines for the audit/investigation and issuance of LOAs, the pertinent portions of which state:

> "C. Other policies for issuance of L/As.
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> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
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> 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." *(Emphasis and underscoring supplied)*

It is clear from the foregoing that all audits/investigations must be conducted by a duly designated revenue officer authorized to perform the audit and examination of the taxpayer's books and accounting records, pursuant to an LOA. In case of reassignment or transfer of cases to another revenue officer, it is mandatory that a new LOA be issued with the corresponding notation thereto. In the absence of such an authority, the assessment or examination is a nullity.[27]

In the present case, it is undisputed that no new LOA was issued. The only basis for RO Occeña and GS San Pedro's authority was the MOA dated June 21, 2016. Thus, the reassignment of the examination of respondent's books of accounts and other accounting records to RO

[27] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

Occeña and GS San Pedro violated RMO No. 43-90 cited above, which states that **any reassignment/transfer of cases shall require the issuance of a new LOA**.

Moreover, in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[28] the Supreme Court clarified that a Memorandum of Assignment is not proof of the existence of authority of the substitute or replacement revenue officer. We quote:

> "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.
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> 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**

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

> **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 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.**
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> 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." *(Emphasis and underscoring supplied)*

Applying the foregoing, it is evident that RO Occeña and GS San Pedro were not duly authorized to continue the examination of respondent. The MOA dated June 21, 2016 is insufficient to clothe them with authority to continue the audit and examination of respondent.

Moreover, even assuming that a new LOA is no longer necessary in case of reassignment of the audit/investigation to a new revenue officer, and that an MOA is sufficient to authorize the new revenue officer to continue the audit/investigation of a taxpayer as long as the MOA is signed by the CIR or her duly authorized representative, the MOA issued in the instant case is still insufficient to clothe RO Occeña and GS San Pedro with authority to continue the audit/investigation of respondent. The MOA dated June 21, 2016 was signed by RDO Sun-Tobias and not by petitioner or the Revenue Regional Director.

Accordingly, the subject tax assessments are inescapably void, and thus, bear no valid fruit.[29]

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[29] *Commissioner of Internal Revenue v. Azucena T. Reyes,* G.R. No. 159694, January 27,

The FLD and Assessment Notices are void.

Section 228 of the NIRC of 1997, as amended, provides for the procedure in the issuance of tax deficiency assessments, to wit:

> "SECTION. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following case:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx xxx xxx"

Relative thereto is Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, which provides for the due process requirement in the issuance of a deficiency tax assessment, which states:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The **FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes** shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX "B" hereof)." *(Emphasis supplied)*

2006.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*,[30] the Supreme Court explained that the issuance of a valid formal assessment — which includes a demand for payment within a specific period — is a substantive prerequisite for collection of taxes, to wit:

> "The **issuance of a valid formal assessment is a substantive prerequisite for collection of taxes**. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects." An assessment does not only include a computation of tax liabilities; it also includes a **demand for payment <u>within a period prescribed</u>**. Its main purpose is to determine the amount that a taxpayer is liable to pay.
>
> xxx xxx xxx
>
> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and **must demand payment of the taxes described therein <u>within a specific period</u>**."
>
> **The disputed Final Assessment Notice is not a valid assessment.**
>
> xxx xxx xxx
>
> Second, **there are <u>no due dates</u> in the Final Assessment Notice**. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
>> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent

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[30] G.R. No. 215957, November 9, 2016.

> bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's assertion, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." *(Emphasis and underscoring supplied)*

Further, in *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*,[31] the Supreme Court reiterated the importance of a demand for payment within a specific period, to wit:

> "Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executor [sic], and demandable should be **premised on the validity of the assessments themselves**. As it was established that **the deficiency IT and VAT assessments for CY 2007 are void for failure to accord respondent due process in their issuance**, the CIR's argument necessarily fails.
>
> Besides, even granting that the PAN and the FAN were properly and duly served upon and received by respondent the Court affirms the CTA *En Banc*'s ruling that the **FAN and the assessment notices attached to it are still void for failure to demand payment of the taxes due <u>within a specific period</u>**." *(Emphasis and underscoring supplied)*

[31] G.R. No. 240729, August 24, 2020.

In the instant case, no due dates were indicated in the Assessment Notices[32] issued by petitioner. We quote with approval the ruling of the Court in Division in the assailed *Decision* dated March 2, 2020, to wit:

> "**The enclosed Assessment Notices, however, conspicuously left blank the space provided for that would have indicated the due date within which the tax deficiency should be paid**, *viz.*:
>
> xxx xxx xxx
>
> In ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.***, the Supreme Court **invalidated** an assessment after noting its failure to state the due date for the payment of the tax liabilities:
>
> xxx xxx xxx
>
> **The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment.** Otherwise stated, an assessment *sans* a categorical demand for payment within a specific date or period is, in legal contemplation, void.
>
> Incidentally, while the following entry appears on the upper right hand corner of the FLD – "Due Date: September 15, 2016", said information appears too equivocal *sans* any statement that it is the due date for payment. Truth to tell, such entry may even refer to the due date when the FLD and Assessment Notice should be released to the taxpayer. Besides, a close scrutiny of the FLD reveals that the interest was computed until September 30, 2016. It is certainly incongruous for the BIR to compute the interest until September 30, 2016 if September 15, 2016 refers to the due date for payment.
>
> In fine, the FLD and Assessment Notices in this case, being void, bear no fruit and may be slain at sight."[33]

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[32] Exhibit "P-9", Division Docket – Vol. II (CTA Case No. 9698), p. 470 to 475.
[33] Emphasis and underscoring by the Court in Division.

In sum, the Court *En Banc* finds no cogent reason to vacate the assailed *Decision* and *Resolution*.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The *Decision* dated March 2, 2020 and the *Resolution* dated September 29, 2020 rendered by the First Division of this Court in CTA Case No. 9698 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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