REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

SCHEMA KONSULT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10041

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
APR 03 2025

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1:05 p.m.

DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* prays that after due hearing, the Court:

1) issue an Order suspending the collection of the alleged deficiency income tax and value-added tax ("VAT") subject to the conditions as the Court may impose;

2) issue judgment declaring void the assessments upon which the *Warrant of Distraint and/or Levy* ("WDL") dated January 24, 2019 is based, for the alleged deficiency income tax and VAT for the taxable year 2013, in the aggregate amount of Php105,424,185.81, inclusive of surcharge and interest; and

3) issue judgment ordering respondent to withdraw and cancel the WDL dated January 24, 2019 and the subject assessments.[1]

The Facts

Petitioner Schema Konsult, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines with address at 15/F JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City. It is duly registered with the Securities and Exchange Commission with Company Registration No. 145071 issued on October 8, 1987.[2]

Petitioner is also duly registered with the Bureau of Internal Revenue ("BIR") as shown in its BIR Certificate of Registration No. 3RC0000777296 and was assigned with Taxpayer's Identification Number (TIN) 000-862-631-000.[3]

On the other hand, respondent Commissioner of Internal Revenue is the Chief of the BIR, the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith, subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the Tax Code and Section 7 of Republic Act ("RA") No. 1125, as amended by RA No. 9282.[4] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[56]

On January 6, 2015, respondent issued *Letter of Authority* ("LOA") No. LOA-43A-2014-00001158 [(SN: eLA201200005266)] dated January 6, 2015 authorizing Revenue Officer (RO) Dolores Gillego and Group Supervisor (GS) Leyte Portugal to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2013 to December 31, 2013.[7] The said LOA was served to petitioner.[8]

Subsequently, the *Memorandum of Assignment* ("MOA") No. RR7-30136 dated March 30, 2016 was issued by Revenue District Officer Emilia C. Combes

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1 Docket, Pre-Trial Order dated February 8, 2022, Statement of the Case, p. 986.
2 *Id.*, *Joint Stipulation of Facts and Issues* (JSFI), Summary of Admitted Facts, Par. 3, pp. 843-844.
3 *Id.*, JSFI, Summary of Admitted Facts, Par. 4, p. 844.
4 *Id.*, JSFI, Summary of Admitted Facts, Par. 1, p. 843.
5 *Id.*, JSFI, Summary of Admitted Facts, Par. 2, p. 843.
6 *Id.*, JSFI, Summary of Admitted Facts, Par. 1, p. 1937.
7 Docket, *Petition for Review*, Par. 8, vis-à-vis *Answer*, par. 1, pp. 14 and 311, respectively. Refer also to Docket, Exhibit "P-4", p. 722; and Exhibit BIR Records, "R-1", p. 1.
8 Docket, JSFI, Summary of Admitted Facts, p. 863.

of Revenue District Office No. 43A, East Pasig, Pasig City,[9] referring the case of petitioner to RO Jesse Acenas and GS Raymund V. Ranchez for the continuation of the audit/investigation to previously assigned ROs who retired/transferred to another GS.

On October 13, 2017, the BIR issued the *Preliminary Assessment Notice* ("PAN"),[10] finding petitioner liable for deficiency income tax and VAT, for taxable year 2013.

Thereafter, the BIR issued the *Formal Letter of Demand* and *Assessment Notices* ("FLD/FAN") on November 24, 2017,[11] assessing petitioner for deficiency income tax and VAT for taxable year 2013, in the aggregate amount of Php105,424,185.81, inclusive of surcharges and interests.

On June 14, 2018, petitioner was informed that it cannot secure its tax clearance due to alleged tax liabilities for taxable year 2013. Petitioner then requested the BIR to issue a tax clearance in its favor, given that it was taken by surprise by the alleged tax deficiencies.[12]

Subsequently, on June 28, 2018, petitioner received a response from respondent, through Ms. Marivic G. Tulio, Chief of the Collection Division of the BIR. In the said response, petitioner was merely informed that their case is to be transferred to the legal department.[13]

On January 31, 2019, petitioner was served the WDL dated January 24, 2019 for the collection of alleged deficiency income tax and VAT, plus penalties and interest, in the total amount of Php105,424,185.81.[14]

Petitioner filed the present *Petition for Review (With Urgent Motion for Suspension of Collection of Tax and Motion to Dispense with the Payment of Bond)* on March 1, 2019.[15]

In the Resolution dated March 6, 2019,[16] the Court ordered respondent to comment on petitioner's *Urgent Motion*, and likewise set the said *Urgent Motion* for

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9 BIR Records, Exhibit "R-5", p. 18.
10 Docket, Exhibit "P-6" (but marked as Exhibit "P-4" per the Resolution dated March 9, 2022, p. 998), pp. 261-266; BIR Records, Exhibit "R-11", pp. 105-118.
11 BIR Records, Exhibits "R-13" to "R-15", pp. 135-141.
12 Docket, *Petition for Review*, Par. 11, vis-à-vis *Answer*, par. 1, pp. 15 and 311, respectively.
13 *Id.*, *Petition for Review*, Par. 12, vis-à-vis *Answer*, par. 1, pp. 15 and 311, respectively.
14 *Id.*, JSFI, Summary of Admitted Facts, Par. 6, p. 844.
15 *Id.*, pp. 12-49.
16 *Id.*, p. 112.

hearing on March 28, 2019. Respondent, however, failed to file his comment thereon.[17] At the hearing held for the *Urgent Motion,* petitioner presented the testimony of Ms. Charmelle I. Panadero,[18] its Vice President for Financial Affairs.

On April 10, 2019, petitioner filed its *Formal Offer of Evidence (with Manifestation of Petitioner's Willingness To Enter Into Mediation).*[19] However, respondent failed to file comment thereto.[20]

Respondent filed his *Answer* on May 7, 2019,[21] interposing the following defenses, to wit: (1) this Court has no jurisdiction over the present *Petition* since the deficiency income tax and VAT assessments for taxable year 2013 already became final, demandable, and unappealable, on account of petitioner's failure to file a protest to the FLD/FAN as mandated by Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as amended, and Section 3.1.5 of Revenue Regulations ("RR") No. 12-99; (2) well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith; (3) it is the taxpayer and not the BIR who has the duty of proving otherwise; and (4) equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

Petitioner then filed its *Reply (to Respondent's Answer dated 6 May 2019)* on May 20, 2019.[22]

In the Resolution dated May 24, 2019,[23] the Court admitted petitioner's offered exhibits, *except* the following: (1) Exhibits "P-2" and "P-3", for failure to submit the originals for comparison; and (2) Exhibit "P-25-1", for failure to correspond with the document actually marked.

Petitioner then filed a *Motion for Reconsideration (with Motion to set Additional Commissioner's Hearing, Motion to Defer filing of Memorandum, and Manifestation)* on June 11, 2019.[24] In the Resolution dated June 27, 2019,[25] the Court: (1) ordered respondent to file his comment on said petitioner's *Motion*; (2) granted

17 *Id.*, Records Verification Report dated January 14, 2020 issued by the Judicial Records Division of this Court, p. 475.
18 *Id.*, Exhibit "P-25", pp. 122-135; Minutes of the hearing held on, and Order dated, March 28, 2019, pp. 203-205.
19 *Id.*, pp. 210-216.
20 *Id.*, Records Verification Report dated April 30, 2019 issued by the Judicial Records Division of this Court, p. 308.
21 *Id.*, pp. 311-315.
22 *Id.*, pp. 320-334.
23 *Id.*, pp. 348-349.
24 *Id.*, pp. 350-356.
25 *Id.*, pp. 362-365.

petitioner's *Motion to set Additional Commissioner's Hearing*, setting the same on July 9, 2019, and giving petitioner five (5) days therefrom to file its *Formal Offer of Evidence* (in support of the *Motion for Reconsideration*) (3) granted petitioner's *Motion to Defer filing of Memorandum;* (4) noted petitioner's *Manifestation* that it has filed a *Motion to Direct Respondent to Elevate BIR Records* and that respondent has yet to elevate the BIR Records; and (5) ordered respondent to elevate the BIR Records.

Respondent failed to file his comment on petitioner's *Motion for Reconsideration*, while petitioner failed to file its *Formal Offer of Evidence* (in support of the *Motion for Reconsideration*).[26]

Notwithstanding this Court's directive[27] and petitioner's motions for respondent to elevate to this Court the BIR Records of this case,[28] respondent still failed to submit the same.[29]

Although respondent filed his *Manifestation* on July 25, 2019, stating, among others, that the delay was due to the failure by the Collection Division – Arrears Management Team of Revenue Region No. 7 – Quezon City to forward the BIR Records; that it was only on July 23, 2019 that he was informed that the BIR Records were already forwarded to the Task Force ARMD of the BIR National Office; and that he will elevate the BIR Records of this case within seven (7) days from receipt thereof from the Task Force ARMD of the BIR National Office,[30] the Court reminded respondent that he cannot seek refuge in such delay and inefficiency of the Collection Division and that the Revised Rules of the Court of Tax Appeals requires the prompt transmittal of the records to this Court.[31]

In view of petitioner's failure to file its *Formal Offer of Evidence* (in support of the *Motion for Reconsideration*), the Court, in the Resolution dated August 14, 2019,[32] again ordered petitioner to file its *Formal Offer of Evidence* (in support of the *Motion for Reconsideration*).

26 *Id.*, Records Verification Reports dated July 26, 2019 issued by the Judicial Records Division of this Court, p. 380.

27 *Id.*, Resolutions dated March 27, 2019, June 27, 2019, August 14, 2019 and October 15, 2019, pp. 202, 362-365, 388-392 and 398-400, respectively.

28 *Id.*, *Motion to Direct Respondent to Elevate BIR Records* dated May 23, 2019, pp. 338-344; *Second Motion to Direct Respondent to Elevate BIR Records (with Motion to set Additional Commissioner's Hearing and Motion to Defer filing of Memorandum)* dated July 22, 2019, pp. 368-374.

29 *Id.*, Records Verification Reports dated May 21, 2019, June 20, 2019, August 6, 2019, and October 3, 2019 issued by the Judicial Records Division of this Court, pp. 337, 359, 381, and 394, respectively.

30 *Id.*, pp. 377-378.

31 *Id.*, Resolution dated August 14, 2019, pp. 388-392.

32 *Id.*, pp. 388-392.

In compliance, petitioner posted its *Supplemental Formal Offer of Evidence* on September 30, 2019.[33] However, respondent failed to file his comment thereon.[34] In the Resolution dated November 12, 2019,[35] the Court admitted Exhibits "P-2", "P-3", and "P-25-1".

Thereafter, petitioner filed its *Memorandum* on December 9, 2019.[36] Respondent, however, failed to file his memorandum.[37]

In the Resolution dated January 23, 2020,[38] the Court partially granted petitioner's *Urgent Motion for Suspension of Collection of Tax and Motion to Dispense with the Payment of Bond*, thus, suspended the collection of taxes and ordered petitioner to file a cash bond or post a surety bond.

Subsequently, on February 14, 2020, petitioner posted its *Motion for Reconsideration (with Motion to defer posting of bond)*,[39] praying, among others, for this Court to defer the requirement for petitioner to post a bond until its *Motion for Reconsideration* has been resolved. In the Resolution dated March 10, 2020,[40] the Court granted petitioner's *Motion to defer posting of bond;* and ordered respondent to file his comment on petitioner's *Motion for Reconsideration.* However, no comment was filed thereon by respondent.[41]

In the Resolution dated July 23, 2020,[42] the Court denied petitioner's *Motion for Reconsideration,* and ordered petitioner to comply with the Resolution dated January 23, 2020 as the posting of the required cash or surety bond is a condition for the granting of petitioner's *Urgent Motion to Suspend Tax Collection.*

Within the extended period,[43] petitioner then filed its *Compliance* on September 30, 2020, submitting therein the required surety bond.[44]

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[33] *Id.*, pp. 401-405.
[34] *Id.*, Records Verification Report dated October 29, 2019 issued by the Judicial Records Division of this Court, p. 434.
[35] *Id.*, pp. 436-439.
[36] *Id.*, pp. 440-70.
[37] *Id.*, Records Verification Report December 12, 2019 issued by the Judicial Records Division of this Court, p. 474.
[38] *Id.*, pp. 477-486.
[39] *Id.*, p. 487-510.
[40] *Id.*, pp. 514-515.
[41] *Id.*, Records Verification dated July 7, 2020 issued by the Judicial Records Division of this Court, p. 516.
[42] *Id.*, pp. 518-520.
[43] *Id.*, Petitioner's *Motion to Extend Deadline to Post Bond* dated September 18, 2020, pp. 521-525; Resolution dated September 29, 2020, pp. 531-532.
[44] *Id.*, pp. 532-535.

The Pre-Trial Conference was initially set on June 15, 2021,[45] but upon respondent's *Motion to Reset Pre-Trial Conference* filed on June 9, 2021,[46] was reset to, and held on, July 28, 2021.[47] Prior thereto, petitioner's *Pre-Trial Brief* was filed on June 11, 2021,[48] while *Respondent's Pre-Trial Brief* was submitted on July 22, 2021.[49]

In the meantime, on July 22, 2021, respondent transmitted the *BIR Records* of this case, consisting of one (1) folder with 379 pages.[50]

On October 19, 2021, the parties filed *via* e-mail their *Joint Motion to Admit Attached Joint Stipulation of Facts and Issues*,[51] attaching therewith their *Joint Stipulation of Facts and Issues* ("JSFI").[52] In the Resolution dated October 27, 2021,[53] the Court granted the said *Joint Motion*, and admitted and approved the said JSFI, thereby deeming the termination of the Pre-Trial. Subsequently, the parties submitted the hard copy of the said *Joint Motion* with the JSFI on November 16, 2021.[54] The Pre-Trial Order dated February 8, 2022 was then issued.[55]

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner again offered the testimony of Ms. Charmelle I. Panadero.[56]

On November 26, 2021, petitioner posted its *Formal Offer of Evidence*,[57] to which respondent filed his *Comment [Re: Petitioner's Formal Offer of Evidence]* on December 7, 2021.[58] In the Resolution dated March 9, 2022,[59] the Court admitted petitioner's offered exhibits, *except* the following: (1) Exhibits "P-1", "P-2", "P-3", and "P-12", for failure to submit the duly marked exhibits; and (2) Exhibit "P-5", for failure to present the original for comparison.

45 *Id.*, Notice of Pre-Trial Conference dated February 4, 2021, pp. 618-619.
46 *Id.*, pp. 631-632.
47 *Id.*, Resolution dated June 22, 2021p. 749; Minutes of the hearing held on, and Order dated, July 28, 2021, pp. 832-835.
48 *Id.*, pp. 633-643.
49 *Id.*, pp. 750-754.
50 *Id.*, Respondent's Transmittal Letter dated July 21, 2021, p. 826.
51 *Id.*, pp. 839-841.
52 *Id.*, pp. 843-850.
53 *Id.*, p. 852.
54 *Id.*, pp. 859-869.
55 *Id.*, pp. 986-993.
56 *Id.*, Exhibit "P-210", pp. 650-661; Minutes of hearing held on, and Order dated, October 27, 2021, pp. 853-855.
57 *Id.*, pp. 876-880.
58 *Id.*, pp. 979 and 981.
59 *Id.*, pp. 997-999.

Petitioner then filed its *Motion for Reconsideration (With Motion for Additional Commissioner's Hearing)* on March 24, 2022.[60] Respondent failed to file his comment thereon.[61] In the Resolution dated June 10, 2022,[62] the Court partially granted petitioner's *Motion*, thereby setting a Commissioner's Hearing for the comparison of the originals of petitioner's Exhibits "P-1", "P-2", "P-3", "P-5", and "P-12".

Thereafter, petitioner filed its *Supplemental Formal Offer of Evidence* on July 26, 2022.[63] No comment was filed thereon by respondent.[64] In the Resolution dated July 10, 2023,[65] the Court partially granted petitioner's *Motion for Reconsideration*, thereby admitting Exhibits "P-1" and "P-2", but still denying the admission of Exhibits "P-3", "P-5", and "P-12", for failure to submit the duly marked exhibits.

In the meantime, on July 29, 2022, parties filed their *Joint Motion for Mediation*.[66] In the Resolutions dated August 5, 2022[67] and September 15, 2022,[68] the Court suspended the proceedings, and referred the case for mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).

To give the parties additional time within which to reach an amicable settlement, the mediator and the parties submitted a *Request for Extension* filed on November 23, 2022.[69] In the Resolution dated December 15, 2022,[70] the Court granted the said *Request for Extension.* The parties, however, failed to inform the Court whether they have reached an amicable settlement.[71]

On January 20, 2023, the parties filed their *Joint Motion for Extension of Mediation Proceedings*,[72] which was granted by the Court in its Resolution dated February 1, 2023.[73]

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60 *Id.*, pp. 1000-1006.
61 *Id.*, Records Verification Report dated May 26, 2022 issued by the Judicial Records Division of this Court, p. 1053.
62 *Id.*, pp. 1055-1057.
63 *Id.*, pp. 1061-1064.
64 *Id.*, Records Verification Report dated August 16, 2022 issued by the Judicial Records Division of this Court, p. 1136.
65 *Id.*, pp. 1192-1194.
66 *Id.*, pp. 1128-1130.
67 *Id.*, pp. 1134-1135.
68 *Id.*, pp. 1138-1139.
69 *Id.*, p. 1148.
70 *Id.*, pp. 1154-1155.
71 *Id.*, Records Verification Report dated January 4, 2023 issued by the Judicial Records Division of this Court, pp. 1158.
72 *Id.*, pp. 1159-1162.
73 *Id.*, pp. 1169-1171.

Respondent filed, *via* accredited courier, a *Manifestation (Update on Status of Compromise Settlement)* on February 20, 2023,[74] and another *Manifestation (Status of Compromise Settlement)* on April 25, 2023.[75]

Eventually, the mediation was declared unsuccessful per the *Mediator's Report* submitted on October 12, 2023.[76]

For his part, respondent offered the testimony of RO Jesse Ferdinand D. Acenas.[77]

On January 29, 2024, *Respondent's Formal Offer of Evidence* was filed,[78] to which petitioner submitted its *Comment (To Respondent's Formal Offer of Evidence)* on February 14, 2024.[79] In the Resolution dated April 4, 2024,[80] the Court admitted all of respondent's offered exhibits.

On June 5, 2024, petitioner filed its *Memorandum*;[81] while no memorandum was submitted by respondent.[82]

Thereafter, on June 5, 2024, petitioner also filed a *Manifestation (Update on the Status of Compromise)*,[83] informing the Court that it proceeded to pay the full amount of the compromise amount in eight (8) installments, despite respondent's inaction on its Request for Installment Payment. In the Minute Resolution dated June 19, 2024,[84] the Court: (1) noted the said *Manifestation*; and (2) considered the case submitted for decision.

The Issue

As stipulated by the parties, the issue for this Court's resolution is:

74 *Id.*, pp. 1172-1173.
75 *Id.*, pp. 1183-1184.
76 *Id.*, p. 1197.
77 *Id.*, Exhibit "R-37", pp. 757-764; Minutes of hearing held on, and Order dated, January 18, 2024, pp. 1216-1217.
78 *Id.*, pp. 1218-1222.
79 *Id.*, pp. 1223-1226.
80 *Id.*, pp. 1230-1231.
81 *Id.*, pp. 1232-1265.
82 *Id.*, Records Verification dated June 6, 2024 issued by the Judicial Records Division of this Court, p. 1411.
83 *Id.*, pp. 1366-1371.
84 *Id.*, p. 1412.

> "A. Whether or not the [*sic*] Petitioner is liable for the alleged deficiency income tax and value-added tax for the taxable year 2013 in the total amount of One Hundred Five Million Four Hundred Twenty Four Thousand One Hundred Eighty Five and 81/100 Philippine Peso (PHP 105,424,185.81) inclusive of surcharge and interest."[85]

Petitioner's arguments:

Petitioner argues that the assessments are void considering that the ROs, who conducted the audit of petitioner, were not authorized by a LOA to examine the latter's books of accounts and other records; that the assessments are void considering that it never received the FLD/FAN allegedly issued and served by respondent; that the assessments are void considering that the audit continued beyond the 120-day period without submission of a Progress Report and without the surrender of the LOA for revalidation; that the assessments are void considering that the right of respondent to assess petitioner for deficiency income tax and VAT for the taxable year 2013 had already prescribed; that since the assessments are void, the WDL dated January 29, 2019 issued by respondent is likewise void; and that petitioner is not liable for the alleged deficiency income tax and VAT for the taxable year 2013 in the total amount of Php105,424,185.81, inclusive of surcharge and interest.

Respondent's counter-arguments:

Respondent contends that the Court has no jurisdiction over the present *Petition for Review* since the deficiency income tax and VAT assessments for taxable year 2013 already became final, demandable, and unappealable on account of petitioner's failure to file a protest to the FLD/FAN as mandated by Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-99; that tax assessments by tax examiners are presumed correct and made in good faith and it is the taxpayer and not the BIR who has the duty of proving otherwise; and that equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

<u>Discussion/Ruling</u>

The present *Petition for Review* has merit.

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[85] *Id.*, JSFI, Summary Statement of Issues, p. 844.

The Court has jurisdiction over the present petition.

For an orderly disposition of this case, We shall first address the issue of jurisdiction. Respondent contends that the Court has no jurisdiction over the present petition since the deficiency income tax and VAT assessments for taxable year 2013 already became final, demandable, and unappealable on account of petitioner's failure to file a protest to the FLD/FAN.

Petitioner, on the other hand, asserts that it did not receive any FLD/FAN, either personally or by registered mail. By failing to issue and/or serve a FLD/FAN, the assessment did not become final, demandable, and unappealable.

After a thorough analysis, the Court finds that the subject FLD/FAN were not properly served to petitioner by respondent.

Part of the due process requirements in the issuance of tax assessments is that the concerned taxpayer under Section 228[86] of the NIRC of 1997, as amended, be informed in writing of the law and the facts upon which the assessment was made, and that the same taxpayer be given the opportunity to respond and contest the said assessment.

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[86] "SEC. 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: xxx

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

Implementing the said provision is Section 3.1.6 of RR No. 12-99,[87] as amended by RR Nos. 18-2013,[88] which specifies the modes of service by which the BIR informs a taxpayer of an assessment:

"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

3.1.6 *Modes of Service.* — **The notice** (PAN/**FLD/FAN**/FDDA) **to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**

(i) The notice shall be served through **personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found**. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) **Substituted service can be resorted to when the party is not present at the registered or known address** under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

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87 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

88 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'*Disinterested witnesses*' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(ii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to

> administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket."[89]

Based on the foregoing, the service of notices to the taxpayer may be made through: (1) personal service to the concerned party; (2) substituted service, in specific instances; or (3) service by mail.

For personal service, it should be done *"by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found."*

Substituted service on the other hand **can only be resorted: (1) when the party is not present at the registered or known address; (2) when the party is found therein, but refuses to receive the notice; and (3) if no person is found in the party's registered or known address.** If the party is not present, the notice may be left at the party's registered or known address, with his/her/its clerk or with a person having charged thereof. If no person is found in the party's registered or known address, the ROs concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. Should the party be found at the registered or known address but refuses to receive the notice, the concerned revenue officers shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such refusal. In the latter two (2) cases, the notice shall be given to the said barangay official.

As for the service through registered mail, the same must be made by sending the notice *"with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered."* The registry receipt issued by the post office containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

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89 *Emphasis and underscoring supplied.*

To recall, if the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[90]

In the case at bar, petitioner claims that it never received the FLD/FAN allegedly issued and served by respondent.[91] Thus, respondent presented RO Acenas to prove the contrary. Pertinent portions of his testimony are herein quoted for ready reference, *viz.*:[92]

> "(20) Q: What happened next, if any?
>
> A: The Petitioner's tax docket was indorsed to the Assessment Division for review and issuance of the Preliminary Assessment Notice with Details of Discrepancies (PAN). Thereafter, Preliminary Assessment Notice with Details of Discrepancies was issued on October 13, 2017. These documents were served personally at the Petitioner's registered address on October 13, 2017 and these were received by the Petitioner's authorized representative, Ms. Sheryl Gonzaga. An affidavit of service was executed to this effect.
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> x x x x x x x x x
>
> (23) Q: What happened next, if any?
>
> A: The Final Assessment Notice and Formal Letter of Demand with Details of Discrepancies (FAN/FLD) were issued on November 24, 2017. These documents were personally served to Petitioner's registered business address and were received by Petitioner's authorized representative, Ms. Sheryl Gonzaga on November 24, 2017. An affidavit of service was executed to this effect."

The aforementioned *Affidavit of Service of Final Assessment Notice*[93] states that a copy of the FAN dated November 24, 2017 was served to petitioner with business address at "15/F JMT Corporate Condo., ADB Ave., Ortigas Ctr. Brgy. San Antonio, Pasig City" by "leaving a copy of FAN to **Ms. Sheryl V. Gonzaga,**

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90 *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
91 Docket, Exhibit "P-210", Q&A No. 13, pp. 652-653.
92 *Id.*, Exhibit "R-37", Q&A Nos. 20 and 23, pp. 761-762.
93 BIR Records, Exhibit "R-16", p. 144.

receptionist of the said taxpayer for the reason that the subject addressee is not physically present to personally acknowledge receipt of the FAN."

Considering that it was not petitioner, but a certain Ms. Sheryl Gonzaga, the receptionist, who received the subject FLD/FAN, there is no doubt that RO Acenas resorted to substituted service. However, RO Acenas failed to testify on the circumstances that could have demonstrated the impracticability of personal service of FLD/FAN and why he had to resort to substituted service. As such, the Court finds that his immediate resort to substituted service was unwarranted.

Moreover, it should be noted that substituted service may be resorted to when the party is not present at the registered address by leaving the notice at the party's registered address **<u>with the clerk or person having charge thereof</u>**, as stated in the aforecited Section 3.1.6(ii) of RR No. 12-99, as amended by RR No. 18-2013.

But in this case, RO Acenas failed to prove that Ms. Sheryl Gonzaga is an authorized representative or a clerk or person having charge of petitioner. In fact, he even confirmed, upon clarificatory question by the Court, that Ms. Sheryl Gonzaga's authority to receive and act on behalf of petitioner is nowhere to be seen in the list of documents identified by him, to wit:[94]

"JUSTICE MODESTO-SAN PEDRO:
Another question, why do you say that Sheryl Gonzaga was the authorized representative of the petitioner? Was there any proof of such authority?

RO ACENAS:
A. As far as I can recall Your Honor, *hindi ko po*... I cannot remember the authorization.

JUSTICE MODESTO-SAN PEDRO:
That's her designation and authority to act for and on behalf of the taxpayer that appears on the list of documents or only her signature. Preliminary Assessment Notice, just her signature *ano* and indicates that she's a receptionist.

RO ACENAS:
A. Yes, Your Honor.

[94] Transcript of Stenographic Notes (TSN) during the hearing held on January 18, 2024, p. 6.

JUSTICE MODESTO-SAN PEDRO:
So, her authority to act does not appear in the list of documents.

RO ACENAS:
A. Yes, Your Honor."

Thus, it is clear from the afore-quoted testimony that there was improper service of the FLD/FAN as Ms. Sheryl Gonzaga, who received the same, is neither petitioner's "clerk" nor a "person having charge" of petitioner's business, as required under Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013.

Further, based on the testimony of petitioner's witness, Ms. Panadero, she confirmed that Ms. Sheryl Gonzaga is just a receptionist of the entire building, and not an employee of petitioner and, thus, not authorized to receive any documents from the BIR.[95]

In view thereof, there is no doubt that the alleged receipt by Ms. Sheryl Gonzaga of the subject FLD/FAN produces no legal effect and cannot be regarded as valid receipt by petitioner.

An assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the NIRC and RR No. 12-99 is void and produces no effect.[96] Respondent's improper service of the FLD/FAN amounts to the denial of petitioner's right to due process, rendering the entire deficiency tax assessments null and void. Thus, contrary to respondent's argument, the subject tax assessments could not have become final, demandable and unappealable, so as to deprive this Court of jurisdiction to entertain the present appeal.

Considering that the present *Petition for Review* is praying, among others, for the withdrawal and cancellation of the WDL dated January 24, 2019, which was issued on the basis of a void assessment, the Court has jurisdiction to entertain the same.

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95 TSN during the hearing held on October 27, 2021, pp. 23 to 24.

96 *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue,* G.R. No. 244202, July 10, 2023; *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., Et. Al.,* G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Sections 7(a)(1) and 11 of RA No. 1125,[97] as amended by RA No. 9282,[98] confers upon this Court the jurisdiction to decide not only cases on disputed assessments, and refunds of internal revenue taxes, but also "other matters" arising under the NIRC of 1997, to wit:

> "SEC. 7. *Jurisdiction.* — **The CTA shall exercise:**
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided:**
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or <u>other matters</u> arising under the National Internal Revenue Code** or **other laws administered by the Bureau of Internal Revenue**;"
>
> xxx xxx xxx
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue...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."[99]

Based on the foregoing provisions, the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent 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 respondent.[100]

In fact, in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (*Philippine Journalists* case),[101] the Supreme Court held that the issuance of a WDL falls within the phrase *"other matters arising under the National Internal Revenue Code*", and that the CTA has jurisdiction to determine if the WDL issued by the BIR is valid. N

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97 An Act Creating the Court of Tax Appeals.

98 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.

99 *Emphasis and underscoring supplied.*

100 *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

101 G.R. 162852, December 16, 2004.

Note that the issuance of a WDL is directly related to the power and duty of the BIR (which is headed by respondent)[102] to assess and collect all national internal revenue taxes, as stated under Section 2[103] of the NIRC of 1997, as amended, and related provisions of the same Code, such as Sections 205 and 206.

Applying the provisions above, petitioner had thirty (30) days from receipt of the WDL on January 31, 2019,[104] or until March 2, 2019, within which to file its appeal before this Court. Thus, the filing of the present *Petition for Review* on March 1, 2019[105] was timely made, and correspondingly vests jurisdiction to this Court to take cognizance of the same.

There was violation of due process, and thus, the subject tax assessments are void.

As discussed earlier, as part of the due process requirement in the issuance of tax assessments, respondent must give the particular facts upon which his assessment is based, and those facts must appear on record.

By failing to issue and/or serve a FLD/FAN, petitioner was deprived of a fair opportunity to be informed of the legal and factual bases of the assessments against it.

Thus, the inevitable conclusion is that Petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, and Sections 3.1.2 and 3.1.4 of RR No. 12-99, was violated by respondent. As a consequence of such violation, the subject deficiency tax assessments are rendered void and cannot be enforced against Petitioner.

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102 Section 3 of the NIRC of 1997 reads:
"SEC. 3. *Chief Officials of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall have a chief to be known as Commissioner of Internal Revenue, hereinafter referred to as the Commissioner, and four (4) assistant chiefs to be known as Deputy Commissioners."

103 "SEC. 2. *Powers and Duties of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and **its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes**, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred by it by this Code or other laws."

104 Docket, JSFI, Summary of Admitted Facts, Par. 6, p. 863.

105 *Id.*, pp. 12-49.

Moreover, since a void assessment bears no valid fruit[106], the resulting WDL is likewise invalid and without effect.

In any event, this Court sees another reason why the subject tax assessments are void.

The ROs who conducted the investigation of petitioner were not duly authorized to do so, and thus, the subject tax assessments are void.

Petitioner argues that the assessments are void considering that the ROs, who conducted the audit of petitioner, were not authorized by an LOA to examine the latter's books of accounts and other records.[107]

We agree with petitioner.

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.[108] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[109] An LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had.[110]

As a corollary, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[111] The importance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the

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[106] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

[107] Docket, *Memorandum*, Discussion, Par. A, p. 1242.

[108] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

[109] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et. al.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

[110] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

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

ROs is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.[112]

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[113] the Supreme Court held:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer*' and issue an assessment against him.
>
> That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.'
>
> **In cases where the BIR conducts an audit without a valid LOA,** or in excess of the authority duly provided therefor, **<u>the resulting assessment shall be void and ineffectual</u>.** xxx."[114]

Moreover, in the case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[115] the Supreme Court has made the following ruling relative to the necessity of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation, to wit:

> "***B. The Use of <u>Memorandum of Assignment,</u> Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer***

[112] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. 241848, May 14, 2021.
[113] G.R. No. 222133, November 4, 2020.
[114] *Emphasis and underscoring supplied.*
[115] G.R. No. 242670, May 10, 2021.

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. 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 <u>memorandum of assignment</u>, referral memorandum, or any equivalent document is <u>not</u> a proof of the existence of authority of the substitute or replacement revenue officer. The <u>memorandum of assignment</u>, referral memorandum, or any equivalent document is <u>not</u> 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 <u>special authority</u> 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 <u>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 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.**"[116]

Based on the foregoing cases, it is clear that an LOA is not a general authority to any RO, but a <u>special authority</u> granted to a particular RO; that the practice of reassigning or transferring ROs, who are the original authorized officers named in the LOA, and subsequently substituting them with new ROs who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the respondent or his duly authorized representative; and that the issuance of a MOA, 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 respondent or his duly authorized representatives.

In *Republic of the Philippines vs. Robiegie Corporation*,[117] it was clarified that **the LOA is the statutorily designated means by which respondent delegates its investigative powers to the BIR revenue officers**. The pertinent portions of the said case read:

> "xxx. The Republic's construction of Section 13 of the NIRC to mean that an LOA is not an authorization but a mere notice of investigation to the taxpayer is blatantly contrary to the text of the law. First, the concept of *authorization* is inherent in the very language of Sections 6(A) and 13 of the NIRC, which speak of a 'duly authorized representative' and a 'Letter of Authority.' Second, the phrase '*pursuant to*' in Section 13 means 'in the course of carrying out, in conformance to or agreement with, [or] according to.' **Thus, an RO *may* only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a <u>validly issued LOA</u>. Stated differently, under the NIRC, the investigatory powers of the ROs flow from the <u>LOA</u>, which is the <u>statutorily designated means</u> by which the CIR delegates its investigative powers to the BIR revenue officers.**
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> xxx xxx xxx
>
> In conclusion, we reiterate that the power of a BIR revenue officer to conduct taxpayer investigations flows from a validly issued LOA, which is the statutorily defined modality for the delegation of the investigatory powers vested in the CIR by law. **<u>Thus, the reassignment of a taxpayer investigation to a</u>**

[116] *Emphasis and underscoring supplied.*
[117] G.R. No. 260261, October 3, 2022.

<u>different revenue officer must also be made pursuant to a LOA, the one LOA-per-taxpayer rule notwithstanding. When a taxpayer investigation is transferred from one revenue officer to another, the responsible BIR official with authority to issue LOAs shall issue a new LOA to the new revenue officer assigned to the investigation</u>. The old LOA in favor of the reassigned revenue officer shall be deemed cancelled, and the new LOA issued to the subsequently designated revenue officer shall prevail, in accordance with the provisions of RMO No. 8-2006, issued on February 1, 2006."[118]

Clearly, a MOA cannot be given effect to give a new RO the authority to continue the audit and investigation of a taxpayer. Since an LOA is a special authority granted to a particular RO, a new LOA must be subsequently issued, in case the original ROs are being replaced by a new RO to continue the examination and investigation, and even reinvestigation, of a taxpayer.

In this case, the LOA-43A-2014-00001158/SN:eLA201200005266 dated January 6, 2015,[119] which was issued by Regional Director Alfredo V. Misajon, authorized RO Dolores Gillego and GS Leyte Portugal to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including other taxes (miscellaneous tax) and documentary stamp tax, for the period from January 1, 2013 to December 31, 2013.

However, in the MOA No. RR7-30136 dated March 30, 2016,[120] issued by Revenue District Officer Emilia C. Combes, of Revenue District Office No. 43A, East Pasig, Pasig City, the case of petitioner for taxable year 2013 was referred to RO Jesse Acenas and GS Raymund V. Ranchez for the *"[c]ontinuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who retired/transferred to another Group Supervisor this district office."*

Armed with the MOA, RO Acenas has prepared a *Memorandum*[121] addressed to the Regional Director and *Revenue Officer's Audit Report on Income Tax and Value Added Tax*,[122] which, in turn, resulted to the issuance of the subject *Preliminary Assessment Notice* and *Final Assessment Notice and Formal Letter of Demand*

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[118] *Emphasis and underscoring supplied.*
[119] Docket, Exhibit "P-4", p. 722; BIR Records, Exhibit "R-1", p. 1.
[120] BIR Records, Exhibit "R-5", p. 18.
[121] *Id.*, Exhibit "R-8", pp. 81-82.
[122] *Id.*, Exhibits "R-9" and "R-10", pp. 75 and 78, respectively.

(FAN/FLD).[123] Pertinent portions of his Judicial Affidavit are herein quoted for ready reference, to wit:[124]

"(2) Q: Can you please tell this Honorable Court what is your relation to the case of Schema Konsult Inc. vs. Commissioner of Internal Revenue under CTA Case No. 10041?

A: **I am the Revenue Officer of the Bureau of Internal Revenue tasked to continue the conduct of audit and investigation of all internal revenue taxes, including documentary stamp tax and other taxes for taxable year 2013 of Petitioner pursuant to the Memorandum of Assignment dated March 30, 2016 with MOA No. RR7-30136.**

xxx xxx xxx

(5) Q: Upon receipt of the Memorandum of Assignment what did you do, if any?

A: I examined the records of the case and based thereon, I found that a Letter of Authority has been issued to the Petitioner dated January 6, 2015 with LA No. LOA-43A-2014-00001158 / SN: eLA201200005266 authorizing the conduct of audit against Petitioner's internal revenue taxes, including documentary stamp tax and other taxes for taxable year 2013. A Checklist of Requirements for Presentation of Records for Audit dated January 8, 2015 was also given to Petitioner which required the latter to submit the documents enumerated therein for the conduct of audit assessment for Petitioner's 2013 taxable year. These were personally served to Petitioner and received by Petitioner's authorized representative Ms. Charmelle I. Panadero on January 8, 2015.

xxx xxx xxx

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[123] Docket, Exhibit "R-37", Q&A Nos. 17 to 25, pp. 761-762. Refer also to Exhibit "P-6" (but marked as Exhibit "P-4", Refer to Resolution dated March 9, 2022, p. 998), pp. 261-266; BIR Records, Exhibit "R-11", BIR Records, pp. 114-118; Exhibits "R-13" to "R-15", pp. 135-139, 141, and 140, respectively.

[124] Docket, Exhibit "R-37", Q&A Nos. 2, 5, and 17, pp. 758 and 761, respectively.

(17) Q: What happened next, if any?

A: I continued the conduct of audit investigation of Petitioner's 201[3] taxable year based on the audit procedures specified in Revenue Audit Memorandum Order No. 1-2000 and based on best evidence obtainable for failure of Petitioner to present the required documents. Thereafter, **I prepared the Revenue Officer's Audit Report on Income Tax and Value Added Tax showing the audit findings for the Petitioner's taxable liabilities for taxable year 2013 and the Memorandum Report recommending for the issuance of Preliminary Assessment Notice**."[125]

RO Acenas again admitted upon clarificatory questioning from the Court, during the hearing for the main case, that he was not authorized by an LOA to continue the audit, and his authority was only by virtue of a MOA.[126]

It is noteworthy, however, that no new LOA was issued in the name of RO Acenas. Hence, his authority to continue the audit or investigation of petitioner was not made pursuant to the statutory power of respondent or his duly authorized representative to grant the authority to examine the said taxpayer's books of accounts. The authority of RO Jesse Acenas and that of GS Raymund V. Ranchez is not legally sufficient to continue the examination of petitioner's books of accounts and other accounting records, there being no new nor revised LOA issued in their favor.

In the same vein, when Revenue District Officer Combes issued the said MOA, she, in effect, usurped the statutory power of respondent and his duly authorized representative. In issuing the same MOA, Revenue District Officer Combes, in effect, exercised a power which was not vested in her, specifically, the power to amend or modify the LOA earlier issued by a BIR official who is higher in rank than her.

Such being the case, the subject tax assessments issued against petitioner for taxable year 2013 are void, for lack of authority of RO Jesse Acenas and GS Raymund V. Ranchez to examine petitioner's books. Being a void assessment, the same bears no fruit.[127] Hence, the subject tax assessments cannot be legally

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[125] *Emphasis supplied.*
[126] TSN during the hearing held on January 18, 2024, pp. 5-6.
[127] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. 241848, May 14, 2021.

enforced against petitioner. As such, it becomes already unnecessary to address the remaining issues and arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

For being void, the *Formal Letter of Demand* and *Assessment Notices* dated November 24, 2017, assessing petitioner for deficiency income tax and VAT for taxable year 2013, in the aggregate amount of Php105,424,185.81, inclusive of surcharges and interests, are **CANCELLED** and **SET ASIDE**.

Moreover, the *Warrant of Distraint and/or Levy* dated January 24, 2019 issued against petitioner for the subject tax assessments is **WITHDRAWN** and **CANCELLED**. Accordingly, respondent is **PROHIBITED** and **ENJOINED** from collecting the said amount against petitioner.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice