CTA Form No. 8 (For DCC)

22-000095-0049

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10795

FABTECH KITCHENS UNLIMITED, INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

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GREETINGS:

You are hereby notified by these presents that on **October 15, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **October 16, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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FIRST DIVISION

FABTECH KITCHENS UNLIMITED, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10795**

Members:

BACORRO-VILLENA, *Acting Chairperson,* *and*
CUI-DAVID, *JJ.*

Promulgated:
OCT 15 2025; 10:30 AM

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is the "Motion for Reconsideration (To the Decision dated 12 February 2025)"[1] (**MR**), filed *via* registered mail on 05 March 2025[2] by respondent Commissioner of Internal Revenue (**respondent/CIR**), with "Comment/Opposition (Re: Motion for Reconsideration dated 5 March 2025)"[3] (**Comment/Opposition**), filed by petitioner Fabtech Kitchens Unlimited Inc. (**petitioner**) on 30 April 2025.

The MR assails this Court's Decision dated 12 February 2025[4] (**assailed Decision**). The dispositive portion of which reads as follows:

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1 Division Docket, Volume II, pp. 730-736.
2 Received by the Court on 10 March 2025.
3 Division Docket, Volume II, pp. 743-766.
4 Id., pp. 706-729.

> ...
>
> **WHEREFORE**, with the foregoing premises, the Petition for Review filed by petitioner Fabtech Kitchens Unlimited, Inc. on 02 March 2022 is hereby **GRANTED**. Accordingly, the deficiency Value-Added Tax, Fringe Benefit Tax, Improperly Accumulated Earnings Tax and Compromise Penalty for the fiscal year 2017, in the aggregate amount of ₱53,771,480.83, as found in the Final Decision on Disputed Assessment, are hereby **CANCELLED** and **SET ASIDE.**
>
> Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.
>
> **SO ORDERED**.
>
> ...

In the MR, respondent argues that when a Regional Director (**RD**) issues the Letter of Authority (**LOA**), it creates a principal-agent relationship between the RD and the Revenue Officers (**ROs**) named therein. He or she then adds that since there is an existing relationship of principal and agency among the RO, RD and CIR in the issuance of LOA, a seeming defect in an RO's authority can tacitly be cured by an RD. Respondent adds that RD Maridur V. Rosario's approval of the undated Memorandum[5] subsequently ratified the authority of Group Supervisor Cadidia Carim (**GS Carim**) or any other revenue officer who participated in the audit.

Petitioner, on the other hand, counters that an LOA serves as the source of an RO's investigatory powers. According to petitioner, respondent's arguments disregard both the law and established jurisprudence on the indispensable nature of an LOA as the lawful source of an RO's investigatory authority. It insists that the issuance of a new LOA is also indispensable in case of reassignment in a deficiency tax investigation to another RO. In its absence, the assessment becomes void.

Lastly, petitioner maintains that while the general rule is that agency may be constituted in any form under Article 1869 of the Civil Code[6], this does not apply to the CIR's delegation of his or her

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5 Undated Memorandum recommending the issuance of the Preliminary Assessment Notice (PAN) which was prepared and submitted by RO Jemaruh Cajuday and concurred in by GS Cadidia Carim.

6 **Art. 1869.** Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

investigatory powers. The CIR's authority to examine is not inherent in individual ROs but must be expressly and specifically delegated through the issuance of an LOA.

We resolve.

At the outset, the Court notes that the instant MR was filed out of time. Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**)[7], as amended, provides:

> ...
> SEC. 1. *Who may and when to file motion.* — Any aggrieved party may seek a reconsideration or new trial of any decision, resolution, or order of the Court **by filing a motion for reconsideration** or new trial **<u>within fifteen days from the date of receipt of notice of the decision</u>**, resolution or order of the Court in question.
> ...

It is well-established that the period for filing a Motion for Reconsideration is strictly non-extendible.[8] Failure to file the motion within the prescribed period renders the Court's judgment or final order final and executory.[9]

A perusal of the records reveals receipt of the assailed Decision on following dates:[10]

Recipient	Receiving Date
Bureau of Internal Revenue (**BIR**)	18 February 2025
Office of the Solicitor General (**OSG**)	14 February 2025

Agency may be oral, unless the law requires a specific form.

7 Italics in the original text, emphasis and underscoring supplied.

8 See *Habaluyas Enterprises, Inc. and Pedro Habaluyas vs. Judge Maximo M. Japson, Manila Regional Trial Court, Branch 36, et al.*, G.R. No. 70895, 30 May 1986 (Resolution); *Solomon Rolloque, et al. vs. The Honorable Court of Appeals and Apolinario Hidalgo*, G.R. No. 78109, 18 January 1991; *Gregorio De Leon, doing business as G.D.L. Marketing vs. Hercules Agro Industrial Corporation and/or Jesus Chua and Rumi Rungis Milk*, G.R. No. 183239, 02 June 2014.

9 See *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589, 15 September 2006.

10 Please refer to the receiving stamp on the Notice of Decision dated 13 February 2025.

As held in the case of *Claudine Monette Baldovino-Torres vs. Jasper A. Torres*,[11] the Supreme Court reaffirmed its rulings in *National Power Corporation vs. National Labor Relations Commission, et al.*[12] and *Commissioner of Customs vs. Court of Appeals and Philippine Casino Operators Corporation*,[13] clarifying that the fifteen (15)-day reglementary period for filing an MR or a new trial begins from the OSG's date of receipt, as the authorized representative of the Government of the Philippines, including its agencies and instrumentalities, to wit.:

> ...
>
> In the case of *National Power Corporation v. National Labor Relations Commission* (NAPOCOR), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG. In holding so, the Court emphasized that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.**
>
> The NAPOCOR case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals,* where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**
>
> In the same vein, **the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision** on April 4, 2017.
>
> ...

Meanwhile, *En Banc* Resolution No. 8-2024[14] provides that the filing of an MR of a decision before the CTA *En Banc* shall be by: (1) personal filing; (2) registered mail, or (3) accredited courier.

Thus, counting fifteen (15) days from 14 February 2025, the OSG's date of receipt of the assailed Decision, respondent had until 01 March 2025 to file an MR. Considering that 01 March 2025 fell on a Saturday,

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[11] G.R. No. 248675, 20 July 2022; Citations omitted, emphasis supplied and italics in the original text.
[12] G.R. Nos. 90933-61, 29 May 1997.
[13] G.R. No. 132929, 27 March 2000.
[14] Guidelines on Submission of Electronic Copies of Pleadings and Other Court Submissions Before the Court of Tax Appeals Pursuant to A.M. No. 10-3-7-SC and A.M. No. 11-9-4-SC.

respondent thus had <u>until 03 March 2025</u> to file the same. However, the instant MR was filed **<u>only on 05 March 2025</u>** *via* registered mail.[15] Clearly, the instant MR was filed out of time.

To be sure, judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the *lapse* of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The Court need not even pronounce the finality of judgments or orders as the same become final by operation of law.[16]

Incidentally, even if the Court were to deem that the MR was filed on time, it remains dismissible for lack of merit. Respondent's arguments, though couched in different terms, are a mere rehash of those already raised and considered by this Court.

In *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[17], the Supreme Court explained, to wit:

> ...
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
>
> ...

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[15] The MR was filed *via* electronic mail on 06 March 2025.

[16] See *Barrio Fiesta Restaurant, et al. vs. Helen C. Beronia*, G.R. No. 206690, 11 July 2016.

[17] G.R. No. 109645 (Resolution), 04 March 1996.

Furthermore, the Supreme Court in *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[18] ruled:

> ...
>
> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. **As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.**
>
> ...

Nevertheless, for emphasis, this Court reiterates that respondent utterly failed to observe the requirements of due process.

In the MR, respondent argues that there is a principal-agent relationship between the RD and the ROs named in the LOA. Due to the said relationship, the RD's approval of the undated Memorandum[19] subsequently ratified the authority of GS Carim or any other revenue officer who participated in the audit.

We do not agree.

Assuming that there is a principal-agent relationship between the RD and ROs named in the LOA, this agency relationship still requires that it must be constituted in accordance with the specific form required by Section 13 of the National Internal Revenue Code (**NIRC**), as amended, which expressly provides that an RO must be duly authorized before conducting an audit of the taxpayer to wit:

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18 G.R. No. 159938, 22 January 2007 (Resolution); Citation omitted and emphasis supplied.
19 Supra at note 5.

> ...
>
> **SEC. 13.** *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a **Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[20]
>
> ...

Further, the **CIR's own rules, specifically Section C(5) of Revenue Memorandum Order (RMO) No. 43-90[21], mandate the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.**

Also, in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[22], the Supreme Court has already highlighted the importance of the issuance a new LOA in case of transfer or re-assignment in this wise:

> ...
>
> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers**. However, **notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing**. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of

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20 Emphasis supplied and italics in the original text.

21 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

22 G.R. No. 242670, 10 May 2021; Emphasis supplied.

> assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. **But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**
>
> **The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative.** The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.
>
> ...

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[23], the Supreme Court underscored the importance of an LOA, *viz*:

> ...
>
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. ...**
>
> ...
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of

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23 G.R. No. 222743, 05 April 2017; Citation omitted and emphasis supplied.

> taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**
>
> ...
>
> ...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.
>
> ...

Contrary to respondent's claim that the undated Memorandum[24] ratified GS Carim's authority, the said Memorandum serves as evidence that GS Carim continued the audit and recommended the issuance of assessments against petitioner, despite the absence of a new and valid LOA authorizing her to continue petitioner's audit or examination.

In the case at bar, the records indisputably show that the LOA[25] only named RO Jemaruh Cajuday and GS Fatima Pre as the duly authorized BIR examiners that could conduct an examination of petitioner's books. Without issuing a new LOA, RO Theodoro Mandigma and GS Carim continued the examination of petitioner's books. Thus, considering the absence of a new and valid LOA authorizing them to examine petitioner's books of accounts and other accounting records the deficiency tax assessment issued against petitioner is inescapably void.

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[26], the Supreme Court further reiterated that only the ROs actually named in the LOA are authorized to examine the taxpayer, to wit:

> ...
>
> Likewise, the CTA EB correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. **It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer. ... In the absence of a new LOA issued in favor of the revenue officers who recommended**

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24 Supra at note 5.

25 BIR Records, p. 2.

26 G.R. Nos. 249883-84 (Resolution), 27 January 2020; Citations omitted and emphasis supplied.

> **the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.**
>
> ...

WHEREFORE, in view of the foregoing, respondent's "Motion for Reconsideration (To the Decision dated 12 February 2025)", filed on 05 March 2025 is **DENIED** for being filed out of time and for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice