REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2046** (CTA Case No. 9258)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO, *JJ.***
PENTA TECHNOLOGY, INC., Respondent.	Promulgated: FEB 09 2021 4:08 p.m.

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DECISION

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

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) on 11 April 2019. It seeks the reversal of the Decision dated 14 November 2018[2] and the Resolution dated 08 March 2019[3], respectively, rendered by the Court's Special First Division in CTA Case No. 9258 entitled *Penta Technology, Inc. v. Commissioner of Internal Revenue.*

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[1] *Rollo*, pp. 1-10.

[2] Division Docket, pp. 336-351; Penned by Associate Justice Cielito N. Mindaro-Grulla (retired), with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy, concurring.

[3] Id., pp. 369-373.

FACTS OF THE CASE

On 17 July 2008, Bureau of Internal Revenue (**BIR**), Regional Director (**RD**), Manuel V. Mapoy, issued Tax Verification Number (**TVN**) 00088511[4] authorizing Revenue Officer (**RO**) Wilhelfortes Asprer (**Asprer**) of Revenue District Office (**RDO**) No. 49 to examine and audit respondent Penta Technology, Inc. (**PTI/respondent**). The TVN covered respondent's internal revenue taxes for taxable year (**TY**) 2007.[5] A certain Mel Cordero (**Cordero**) received the TVN.

On 05 August 2008, respondent questioned the selection criteria for the TVN.[6]

Later, respondent received a Re-assignment Notice (**RN**) from the BIR informing it that RO Asprer was being replaced by RO Elma Delluta (**Delluta**) and Group Supervisor (**GS**) Rodel Buenaobra (**Buenaobra**).[7] Still later, respondent also received a letter informing it that RO May F. Quiambao (**Quiambao**) and GS Arnel B. Magbag (**Magbag**) will continue respondent's audit investigation.[8]

On 17 March 2010, respondent received another letter notifying respondent of RO Quiambao's transfer and its case's re-assignment to RO Janet Q. Soretta (**Soretta**), under the supervision of GS Adolf M. Viacrusis (**Viacrusis**).[9]

On 07 October 2010, RO Soretta served on respondent a Notice of Informal Conference[10] (**NIC**). On 03 December 2010, respondent received a Preliminary Assessment Notice (**PAN**) dated 25 November 2010.[11] On 11 January 2011, respondent likewise received a Final Assessment Notice (**FAN**) dated 07 January 2011[12], through Marissa Marquez (**Marquez**).[13]

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4 Exhibit "P-3", id., p. 115.
5 Paragraph 3, Joint Stipulation of Facts and Issues (JSFI), id., p. 256.
6 Paragraph 4, JSFI, id.
7 Paragraph 5, JSFI, id.
8 Paragraph 7, JSFI, id., p. 257.
9 Paragraph 8, JSFI, id.
10 Exhibit "R-1", id., pp. 180-182.
11 Exhibit "R-3", id., pp. 187-188.
12 Exhibit "R-4", id., p. 193.
13 Exhibit "R-4-a", id.

On 11 February 2011, respondent filed a protest[14] against the FAN and on 29 August 2012, respondent received a Final Decision on Disputed Assessment (**FDDA**) dated 17 August 2012[15], denying its protest.

On 04 October 2012, respondent elevated its protest against the FDDA to petitioner.[16]

On 23 April 2013, the BIR served a Preliminary Collection Letter[17] (**PCL**) on respondent and a Final Notice Before Seizure (**FNBS**) on 26 June 2013.[18]

Later, in his Decision dated 07 January 2016, petitioner denied respondent's protest.[19]

Thereafter, respondent appealed petitioner's Decision *via* a Petition for Review (CTA Case No. 9258) to this Court on 15 February 2016.[20]

During the trial, respondent offered the testimony of its lone witness, Cordero[21], who testified to her receipt of the TVN. She further stated that she is not respondent's authorized representative as regards the receipt of documents and notices issued to respondent by the BIR.

After respondent rested its case, petitioner likewise presented his sole witness, RO Soretta[22], who testified to her audit of respondent.

On 14 November 2018, the Special First Division promulgated the assailed Decision[23], the dispositive portion of which reads:

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14 Paragraph 13, Petition for Review (CTA Case No. 9258), id., p. 12.
15 Exhibit "R-5", id., pp. 205-206.
16 Exhibit "R-6", id., pp. 211-220.
17 Exhibit "R-7", id., p. 221.
18 Paragraph 22, Petition for Review (CTA Case No. 9258), id., p. 14.
19 Exhibit "R-8", id., pp. 222-228.
20 Id., pp. 10-30.
21 Exhibit "P-4", Judicial Affidavit dated 07 November 2016, id., pp. 240-242.
22 Exhibit "R-9", Judicial Affidavit dated 19 October 2016, id., pp. 172-179.
23 Supra at note 2.

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> **WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. The Decision dated January 7, 2016 of respondent Commissioner of Internal Revenue (CIR) and Final Decision on Disputed Assessment issued on August 17, 2012, are hereby **REVERSED** and **SET ASIDE.**
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> Accordingly, the assessments for deficiency income tax in the amount of Php5,919,565.74, for value added tax in the amount of Php812,766.59, for expanded withholding tax in the amount of Php76,056.49, for withholding tax on compensation in the amount of Php88,199.36, for fringe benefit tax in the amount of Php956,599.49, and for compromise penalty in the amount of Php32,000.00 for taxable year 2007 plus the increment that may have accrued thereon are **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**
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> ...

Affirming the foregoing Decision, the Special First Division also rendered the assailed Resolution[24], the dispositive portion of which reads:

> ...
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> **WHEREFORE**, premises considered, respondent's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
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> ...

Hence, the present Petition.

ISSUE

A perusal of the petition reveals that petitioner raises a single issue -

WHETHER THE SPECIAL FIRST DIVISION ERRED WHEN IT ASSUMED JURISDICTION OVER RESPONDENT PENTA TECHNOLOGY, INC.'S PETITION FOR REVIEW WHEN ITS PROTEST TO THE FINAL ASSESSMENT NOTICE (FAN) WAS

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24 Supra at note 3.

FILED BEYOND THE 30-DAY PERIOD ALLOWED FOR THE FILING THEREOF.

ARGUMENTS

In support of the above issue, petitioner argues that the FAN had already become final and executory given that respondent received the FAN on 11 January 2011 but only filed its protest on 11 February 2011. He explains that respondent had thirty (30) days under Section 228[25] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, from receipt of the FAN or from 11 January 2011 within which to file its protest to the FAN; the last day falling on 10 February 2011.

Citing the case of *Commissioner of Internal Revenue v. Bank of the Philippine Islands*[26] (**BPI**), petitioner insists that an assessment becomes final and unappealable: (1) when it is not protested within 30 days from receipt; and, (2) when the adverse decision on the protest is not appealed to the CTA within 30 days from receipt of the final decision.

Respondent, on the other hand, contends that, although it received the FAN on 11 January 2011 through Marquez, the same was only received by its authorized representative, Ria A. Sablon (**Sablon**), on 13 January 2011. Respondent thus maintains that the 30-day period to file the protest should not be counted from 11 January 2011 but from 13 January 2011 when Sablon actually received the FAN. Consequently, when respondent filed its protest on 11 February 2011, the same was filed within the prescribed period.

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25 **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: provided, however, That a preassessment notice shall not be required in the following cases:

...

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.

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.

...

26 G.R. No. 134062, 17 April 2007.

RULING OF THE COURT *EN BANC*

After a careful review of the records of the case and the parties' contrasting arguments, the Court *En Banc* finds no cogent reason to deviate from the Special First Division's assailed Decision and Resolution.

Admittedly, respondent's argument that the 30-day period under Section 228 of the NIRC of 1997, as amended, should not be counted from 11 January 2011 appears as a mere afterthought after it had realized the belated filing of its protest to the FAN. A similar sentiment may be had regarding its argument that Cordero was not authorized to receive the TVN. It appears that that respondent never disputed Cordero's authority in its letter questioning the TVN's issuance. Neither was Sablon's appointment as respondent's authorized representative raised in its protest to the FAN. The facts also disclose that Marquez not only received the FAN but also previously received the NIC and PAN without contest from respondent.

However, even considering the belated filing of respondent's protest to the FAN, it is an undisputed fact in the case at bar that petitioner did not issue a Letter of Authority (**LOA**) prior to pursuing an audit investigation of respondent.

It is well-settled that the absence of an LOA is tantamount to a denial of a taxpayer's right to due process. Such absence is an incurable defect that renders a tax assessment void *ab initio*.

The importance of the issuance of an LOA as an element of due process cannot be overemphasized. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[27] (**Medicard**), the Supreme Court underscored the indispensability of the LOA in an audit investigation, to wit:

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> 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

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[27] G.R. No. 222743, 05 April 2017; Citation omitted, emphasis and underscoring in the original text.

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. Section 6 of the NIRC clearly provides as follows:

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

(A) **Examination of Return and Determination of Tax Due.-** After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

...

Moreover, considering the circumstances of the case at bar, respondent's failure to timely file the protest to the FAN did not make valid the otherwise void assessment, especially since respondent's original Petition for Review before the Court in Division was timely filed. Respondent's arguments, though deserving scant consideration, cannot overshadow the nullity of petitioner's action of pursuing an assessment of respondent through a mere TVN.

As ratiocinated by the Supreme Court in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[28] (**Metro Star Superama**):

...

The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. <u>In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law</u>

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[28] G.R. No. 185371, 08 December 2010; Citations omitted, emphasis in the original text, underscoring and emphasis supplied.

on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Hence in *Commissioner of Internal Revenue v. Algue, Inc.*, it was said –

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> xxx xxx xxx
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> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed.

...

Furthermore, petitioner's reliance on the case of *BPI* is grossly misplaced. First, the LOA's validity was not put in issue in *BPI*. Rather, the point of contention there was the failure of an assessment notice to specify the legal and factual basis of the BIR's findings. Second, the Supreme Court in *BPI* (prior to discussing the taxpayer's failure to timely file its administrative protest) first established the validity of the assessment. In agreement with this Court's findings, the Supreme Court found that the taxpayer was duly informed of the assessment against it. Lastly, the taxpayer in *BPI* was found to have engaged in dilatory tactics which proved fatal to its cause. The same, however, cannot be said of respondent.

From the *BPI* decision, it is readily apparent that considerations regarding the assessment's validity are not immediately disregarded in the face of allegations of a taxpayer's lapses. The same principle is evident in the rulings of *Medicard* and *Metro Star Superama*.

WHEREFORE, the foregoing premises considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on 03 April 2019 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 14 November 2018 and 08 March 2019, respectively, of the Special First Division in CTA Case No. 9258, entitled *Penta Technology, Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

x - x

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see Separate Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I join the SCO of Justice Manahan)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* No. 2046** (CTA Case No. 9258)
	Members :
-versus-	**DEL ROSARIO,** *P.J.* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *JJ.*
PENTA TECHNOLOGY, INC. *Respondent.*	Promulgated: FEB 09 2021 4:08 p.m.

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SEPARATE CONCURRING OPINION

MANAHAN, J.:

The *ponencia* affirmed the assailed Decision and Resolution promulgated on November 14, 2018 and March 8, 2019, respectively, of the Special First Division and consequently denied the Petition for Review filed by the Commissioner of Internal Revenue (CIR) with the Court *En Banc.*

I concur with the conclusion clearly enunciated by my esteemed colleague, Justice Jean Marie A. Bacorro-Villena, that the issuance of a Letter of Authority (LOA) is indispensable in an audit investigation and the absence thereof constitutes a violation of a taxpayer's right to due process. It is well-settled in jurisprudence that the absence of an LOA renders the resultant tax assessment void and that a void assessment bears no fruit.[1]

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[1] *Medicard Philippines, Inc. vs. CIR,* G.R. No. 222743, April 5, 2017; *CIR vs. Metro Star Superama,* G.R. No. 185371, December 8, 2010.

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The instant petition, however, raises the single but primordial issue of jurisdiction of the Court, and I quote:

> "Whether the Court erred when it assumed jurisdiction over respondent's Petition for Review when its protest to the Final Assessment Notice was filed beyond the 30-day period allowed for the filing thereof."

It is my humble opinion that jurisdictional issues take precedence over any other issues presented to the Court. The CIR raises the allegation that the respondent did not timely file a protest to the Final Assessment Notice (FAN) and consequently rendered the assessment final, executory and unappealable.

Without going into the details of whether or not the allegations of petitioner CIR are in accord with the records of the case, I maintain that we cannot dismiss ruling on such an issue on the ground that the assessment was null and void in the first place. Ruling on the validity of the assessments must take a backseat to the question of jurisdiction. A court should first determine whether or not it has jurisdiction over the subject matter considering that any act that it performs without jurisdiction is null and void."[2] In order for the court or adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter.[3]

The possibility that the assessment is final and executory deprives us of the authority to take cognizance of the appeal filed by the taxpayer questioning the validity of the subject assessments.

WHEREFORE, in view of the foregoing, I vote to resolve the issue of jurisdiction before the Court delves into the merits of the subject assessments.

CATHERINE T. MANAHAN
Associate Justice

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[2] *Bernadette S. Bilag,et.al., vs. Estela Ay-ay, et.al.*, G.R. No. 189950, April 24, 2017.
[3] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.