REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2206** *(CTA Case No. 8943)*
-*versus*-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
JOPAUEN REALTY CORPORATION, *Respondent.*	Promulgated: FEB 2 1 2022 3:30 pm

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed on 5 January 2020,[1] with respondents' **COMMENT/OPPOSITION (to the PETITION FOR REVIEW) ("Comment")**, filed on 2 March 2020.[2]

---

[1] Records, pp. 6-91.
[2] *Id.*, pp. 97-112.

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** ("CIR") is the head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of said office, including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the ***National Internal Revenue Code, as amended, ("NIRC")*** or other laws or portions thereof administered by the BIR. He may be served summons, pleadings, and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent **JOPAUEN REALTY CORPORATION** is a duly registered domestic corporation with principal address at Burol Main, Dasmarinas, 4114 Cavite.

The Facts

The following are the undisputed facts:[3]

"On January 22, 2010, petitioner received Letter of Authority (LOA) No. LOA 2008-0002369268, dated December 29, 2009, together with the First Request for Presentation of Records.

Subsequently, respondent issued a Second Request for Presentation of Records, which petitioner received on February 2, 2010.

Thereafter, respondent issued a Final Request for Presentation of Records, which petitioner received on May 12, 2010.

Respondent then issued a Notice of Informal Conference (NIC), which was received by the petitioner on April 14, 2011, scheduling the informal conference within fifteen (15) days from receipt of the notice.

On May 24, 2011, an informal conference was set with the Revenue District Officer, Atty. Honorata S. Aguilar, together with the Revenue Examiners.

Pursuant to the informal conference, and as instructed by Revenue Officer Norma Siscar, petitioner alleges that it paid the following taxes:

Tax Type	Amount	Proof of Payment
Expanded Withholding Tax	P10,669.12	Official Receipt (OR) No. 04261851
Withholding Tax on Compensation	P12,689.26	OR No. 04261852

[3] *Id.*, pp. 8-9.

Miscellaneous Tax	P10,000.00	OR No. 04261853
Income Tax	P91,760.69	OR No. 04261854

On December 22, 2011, respondent alleges that it issued and sent a Preliminary Assessment Notice (PAN) to petitioner via registered mail.

Subsequently, as there was no reply to the PAN, respondent issued a Formal Letter of Demand (FLD) dated January 12, 2012, demanding payment of alleged deficiency taxes for the taxable year 2008. Respondent alleges that the Final Assessment Notices were attached to the FLD. Petitioner filed a protest on February 28, 2012.

Respondent issued Letter dated December 12, 2012 informing petitioner that Revenue Officer Teresita Tibayan and Group Supervisor Alexander O. Ricaforte, were assigned for examination of the case.

Petitioner received an Amended Preliminary Assessment Notice (the Amended PAN), demanding payment for alleged deficiency taxes for the taxable year 2008. Petitioner claims that the Amended PAN was received on February 10, 2014.

Ruby D. Lordan then consulted with the BIR Regional Director of San Pablo, Laguna. The Regional Director immediately ordered a reinvestigation and assigned the case to another examiner.

Subsequently, Shirley Enobal, the Administrator of the Petitioner, submitted supporting documents for various expenses that were required by the second examiner. The examination of these documents was not continued because the examiner was reshuffled to another assignment.

Petitioner then received on November 5, 2015 [sic], the Final Decision on Disputed Assessment (FDDA) dated September 25, 2014, holding the Petitioner liable for alleged deficiency tax assessments in the amounts of P769,673.05, P2,533,203.14, P12,494.63, and P42,500.00, representing alleged deficiency Income Tax, Value-added tax (VAT), Expanded Withholding Tax (EWT), and compromise penalties, respectively."

On 4 December 2014, respondent filed a Petition for Review before the Court in Division to question the validity of the deficiency tax assessments.[4]

On 13 September 2019, the Court in Division rendered the Assailed Decision, the dispositive portion of which provides:[5]

> "**WHEREFORE,** premises considered, the Petition for Review filed by petitioner Jopauen Realty Corporation is hereby **GRANTED.** Accordingly, the assessment notices issued by respondent Commissioner of Internal Revenue against the petitioner for the taxable year 2008, particularly, the Preliminary Assessment Notice dated December 22, 2011, Formal Letter of Demand dated January 12, 2012, Amended Preliminary

[4] *Id.*, p. 9.
[5] *Id.*, p. 14; Annex "A", Petition, *id.*, p. 90.

> Assessment Notice received by petitioner on February 10, 2014 and Final Decision on Disputed Assessment dated September 25, 2014 are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED."**

On 1 October 2019, petitioner filed his Motion for Reconsideration on the Assailed Decision, which was denied for lack of merit by the Court in Division in a Resolution, dated 2 December 2019.[6]

On 20 December 2019, petitioner filed a Motion for Extension of Time to File Petition for Review,[7] which this Court *En Banc* granted through a Resolution, dated 2 January 2020.[8]

On 6 July 2020, petitioner filed the instant **Petition.**

Afterwards, this Court *En Banc* issued a Resolution, dated 4 February 2020, requiring respondent to file a Comment on the Petition,[9] which was complied with by respondent when it filed the **Comment** on 2 March 2020.

On 16 July 2020, this Court *En Banc* issued a Resolution noting respondent's Comment and referring the case to mediation.[10]

On 10 September 2020, the Philippine Mediation Center Unit ("PMCU") issued a 2nd Notice to Appear to the parties.[11] On 19 November 2020, the PMCU along with the parties filed a Request for Extension of the mediation in order to reach an amicable settlement,[12] which was granted by this Court *En Banc* through a Resolution, dated 27 November 2020.[13]

On 4 February 2021, the Court *En Banc* received a Mediator's Report from the PMCU indicating that there was an unsuccessful mediation between the parties.[14]

On 23 February 2021, the Court *En Banc* issued a Resolution submitting the instant case for Decision.[15]

Hence, this Decision.

---

6 *Id.*, p. 14; Annex "B", Petition, *id.*, pp. 45-52.
7 *Id.*, pp. 1-4.
8 *Id.*, p. 5.
9 *Id.*, p. 92-94.
10 *Id.*, pp. 113-115.
11 *Id.*, p. 116.
12 *Id.*, p. 117.
13 *Id.*, pp. 118-120.
14 *Id.*, p. 121-127.
15 *Id.*, p. 128-131.

The Assigned Errors

In summary, the Petition provides for the following assigned errors to be resolved by the Court *En Banc*:

> **THE COURT IN DIVISION ERRED IN RULING THAT PETITIONER FAILED TO PROVE THAT RESPONDENT INDEED RECEIVED THE SUBJECT ASSESSMENT NOTICES; and**
>
> **THE COURT IN DIVISION ERRED WHEN IT RULED THE PRESENT ASSESSMENT VOID FOR LACK OF A VALID LETTER OF AUTHORITY ("LOA").**

Arguments of the Parties

Petitioner argues as follows:[16]

1. Respondent failed to refute the presumption that the assessment notices were received in the regular course of the mail and that official duty has been regularly performed. Under ***Section 3, Rule 131 of the Rules of Court***, disputable presumptions are satisfactory if uncontradicted but may be contradicted and overcome by other evidence. Other than its bare-faced denial, respondent did not present any evidence that the assessment notices were not received in the regular course of the mail and that the official duty has been regularly performed. Hence, the said presumptions stand.

2. The case of ***Republic v. Court of Appeals***[17] was improperly applied in ***Barcelon Roxas Securities, Inc. v. Commissioner of Internal Revenue.***[18]

3. The Court in Division erred in ruling that the assessments are void because the revenue officers who audited respondent were not authorized through an LOA.

[16] *Id.*, pp. 16-36.
[17] 149 SCRA 351.
[18] G.R. No. 157064, 7 August 2006.

4. The case of ***Commissioner of Internal Revenue v. Sony Philippines, Inc.***[19] is inapplicable to the case at bar. The facts involved in the aforementioned case are not on all fours with the present case.

5. What the LOA authorizes is the conduct of audit of a taxpayer by the CIR's revenue officers. Hence, in the event that the revenue officers indicated in the LOA can no longer perform the audit due to resignation, transfer or death, such authority remains and the conduct of audit must necessarily be reassigned and assumed by another revenue officer. This is only a logical consequence of the vast powers given to the CIR by the ***NIRC*** to make assessments and collect the right amount of taxes.

6. The Court in Division erred when it ruled the assessments void for lack of authority noting that the Memorandum of Assignment ("MOA") was issued by Revenue District Officer Honorata S. Aguilar ("RDO Aguilar").

7. The subject MOA merely flowed from the instant LOA. In ***Revenue Memorandum Order No. ("RMO") 62-2010***, the CIR expressly delegates to the Head of Investigating Office the authority to sign the MOA in case of changes in the composition of the revenue officers due to resignation, retirement or reassignment, pursuant to an existing LOA.

8. An MOA subsequently issued derived its authority from the original LOA initially issued. Thus, an MOA need not be signed by the CIR or a Regional Director. An MOA is just a mere reassignment of the case from a previous examiner to another revenue officer, which a head of office can lawfully do.

9. Hence, the subject MOA properly transferred the audit to Revenue Officer Teresita Tibayan ("RO Tibayan").

In its **Comment,** respondent counter-alleges as follows:[20]

1. The Petition is pro forma and raises issues which were already exhaustively passed upon by the Court in Division. Petitioner has not raised any new argument.

2. Respondent sufficiently refuted the presumption that the assessment notices were received in the regular course of mail. Respondent presented two (2) witnesses who clearly testified that respondent did not receive the Preliminary Assessment Notice ("PAN").

---

[19] G.R. No. 178697, 17 November 2010.
[20] *Id.*, pp. 94-102.

3. The Court in Division correctly found that the assessment is void for lack of authority of the revenue officer who audited respondent.

The Ruling of the Court En Banc

This Court resolves to **DENY** the **Petition** for lack of merit.

Once receipt is denied, the CIR must prove through a preponderance of evidence that the assessment notices were indeed received by the taxpayer.

Petitioner posits that respondent must first adduce evidence proving that it did not receive the subject assessment notices through the regular course of mail before the disputable presumption under ***Section 3 (v), Rule 131 of the Rules of Court***[21] can be overcome. This is incorrect.

Once receipt of the assessment notices is denied and controverted by the taxpayer, the burden of proof is shifted to the CIR to prove through a preponderance of evidence that the taxpayer, or his or her authorized representative, indeed received the subject assessment notices. This was categorically declared by the Supreme Court in ***Commissioner of Internal Revenue v. T Shuttle Services, Inc.***,[22] to wit:

> "Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires the assessment to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Section 228 pertinently provides:
>
>> 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 pre-assessment notice shall not be required in the following cases:
>>
>> x x x x
>>
>> 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.

[21] **Section 3.** *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
xxx xxx xxx
(v) That a letter duly directed and mailed was received in the regular course of the mail;

[22] Resolution, G.R. No. 240729, 24 August 2020.

> 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.
>
> x x x x
>
> (Emphasis supplied)

To highlight the due process requirement in Section 228 of the NIRC, Section 3 of Revenue Regulations (RR) 12-99 dated September 6, 1999 provides:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the tax payer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
>
> 3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based x x x. If the taxpayer fails to

> respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> x x x x
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void x x x. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
>
> x x x x
>
> As can be gleaned from the above provisions, **service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that 'a letter duly directed and mailed was received in the regular course of the mail.' However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.**
>
> **In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.**"
> (Emphasis and underscoring, Ours.)

In the present case, respondent has unequivocally denied receipt of the PAN. Accordingly, the burden to prove that the PAN was received by respondent is shifted to petitioner.

As examined by the Court in Division and as verified by the Court *En Banc*, petitioner failed to provide convincing proof that the PAN was received by the respondent. The receiving signature of the registry return receipt card for the PAN[23] is blank. Consequently, there is no evidence that the PAN was actually received by respondent or its authorized representative.

Failure to prove that the PAN was indeed received by the respondent renders the instant assessment null and void. Without proof of receipt, the PAN is deemed not received by respondent. Hence, respondent's right to be informed of the assessments issued against it has been violated. On this score alone, the instant Petition must fail.

An LOA as an instrument of due process should particularly name the revenue officers who are authorized to conduct an audit.

Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with an LOA. This is a principle undeterred under our tax laws. An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in auditing a taxpayer.

The importance of an LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court in the ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[24] to wit:

> **"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.** 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, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file

[23] Exhibit "R-3", BIR Records, p. 184.
[24] G.R. No. 222743, 5 April 2017, citing Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010.

> a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x

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 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.**

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

xxx xxx xxx

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."**
(Emphasis and underscoring, Ours.)

In fact, the Supreme Court even went further in highlighting the importance of an LOA as an instrument of due process when it recently ruled in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty***

Corp.[25] that an LOA should specifically name the revenue officers who will pursue the tax audit, to wit:

> "A. **<u>Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation</u>**
>
> The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In Medicard Philippines, Inc. v. Commissioner of Internal Revenue, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that '[d]ue process demands xx x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.' The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.
>
> To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **<u>Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.</u>**
>
> We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, 'any' revenue officer may then act under such validly issued LOA.
>
> The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers, pursuant to Sections 6, 10(c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, i.e., a revenue officer. Hence, petitioner is mistaken to characterize the LOA as a document 'issued' to the taxpayer, and that once so issued, 'any' revenue officer may then act pursuant to such authority."
> (Emphasis and underscoring, Ours.)

---

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

Thus, petitioner's contention (that an LOA simply authorizes the conduct of audit of a taxpayer by the CIR's revenue officers, and in the event that the revenue officers indicated in the LOA can no longer perform the audit due to resignation, transfer, or death, such authority remains and the conduct of audit must necessarily be reassigned and assumed by another revenue officer without the need for a new LOA under the name of such new revenue officer) is mistaken. A taxpayer has the right to know the specific revenue officers who are authorized to examine his or her books of accounts and other accounting records. Consequently, an LOA must particularly state the revenue officers authorized to audit/investigate a particular taxpayer. Otherwise, if the new revenue officer assigned to take over the audit of a taxpayer (due to the resignation, transfer, or death of the previous revenue officer) is not provided an LOA specifically to his or her name, any resulting assessment arising from the audit conducted by the new revenue officer is null and void.

An MOA cannot take the place of an LOA.

In the ***McDonald's Case***, the Supreme Court declared that an MOA cannot substitute for an LOA. An MOA simply notifies a taxpayer of the transfer of an audit/investigation to another set of revenue officers. Unlike an LOA, an MOA does not show that the new set of revenue officers who will pursue the audit are properly authorized to do so. An LOA is a special grant of authority to a specific set of revenue officers to examine a taxpayer's books of accounts and other accounting records for purposes of determining the taxes due. The Supreme Court ruled, as follows:

> "B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA
>
> **It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**

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

In the present case, the Court in Division found that LOA No. 2008-000236926, dated 29 December 2009, was initially issued authorizing Revenue Officer Norma Siscar and Group Supervisor Elizabeth Abello to audit/examine respondent for possible deficiency tax liabilities for taxable year 2008. Subsequently, an MOA was issued, transferring the audit to RO Tibayan. Through the MOA issued in favor of RO Tibayan, she was able to come up with audit findings that then resulted in the issuance of assessment notices against respondent.[26]

In totality, RO Tibayan was able to audit, examine, and inspect respondent's books of accounts and other accounting records (which then lead to deficiency tax assessments against respondent) through a mere MOA, despite the clear requirement that all revenue officers conducting an audit/investigation of a taxpayer should be properly authorized with an LOA.

It is noteworthy that assessments issued without the requisite LOA are inescapably void.[27]

Consequently, due to the absence of an LOA authorizing RO Tibayan to examine respondent, the deficiency tax assessments issued against respondent are void. Accordingly, no tax collection can be pursued based on these assessments.

---

[26] Annex "A", Petition, Records, pp. 87-90.
[27] Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, 5 April 2017.

<u>The subject MOA cannot be treated as a valid LOA.</u>

It may be argued that an LOA does not partake a particular form. Following this line of argument, any document may qualify as an LOA provided that the essential requisites of an LOA are present.

To be effective, an LOA must be issued either by respondent himself or by his duly authorized representative. Under ***Section 13 of the NIRC***, the duly authorized representative is the Revenue Regional Director. Under ***Section D (4) of RMO No. 43-90***, petitioner expanded the list of duly authorized representatives who may issue Letters of Authority:

> "1. Regional Directors;
> 2. Deputy Commissioners;
> 3. Commissioner; and
> 4. Other officials that may be authorized by the Commissioner for the exigencies of service."[28]

Using this line of thought, an MOA may be considered a valid and effective LOA, provided that it was issued by any of the persons named above.

In the present case, the subject MOA was issued by RDO Aguilar.[29] This signatory is not among those listed above. Hence, the subject MOA cannot qualify as a valid LOA.

Considering that the revenue officer who examined and audited respondent's books of accounts and other accounting records ais not armed with a proper Letter of Authority, the resulting deficiency tax assessment is undoubtedly null and void.

Following the above discussions, this Court deems it unnecessary to resolve the remaining issues.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 13 September 2019, and Resolution, dated 2 December 2019, promulgated by the Court in Division are hereby **AFFIRMED.**

---

[28] Commissioner of Internal Revenue v. Sugar Crafts, Inc., CTA EB No. 1757; CTA Case No. 8738, Resolution, dated 10 September 2019.
[29] Annex "A", Petition, Records, p. 90.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

Lanee Cui-David
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice