REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILPLANS FIRST, INC.,
Respondent.

CTA EB No. 2351
(CTA Case No. 9404)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, and
REYES-FAJARDO, *JJ.*

Promulgated:
NOV 09 2021 2:50 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Commissioner of Internal Revenue on October 23, 2020 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), praying for the reversal and setting aside of the Decision dated June 17, 2020[1] and the Resolution dated September 15, 2020[2] promulgated by the Court in Division in CTA Case No. 9404, entitled *Philplans First, Inc., vs. Commissioner of Internal Revenue,* which granted Philplans First, Inc.'s Petition for Review and cancelled the Final Decision on Disputed Assessment dated June 29, 2016 .

[1] Penned by Associate Justice Juanito C. Castaneda, Jr., with Associate Justice Jean Marie A. Bacorro-Villena, concurring; CTA *En Banc* Docket, pp. 25-62.
[2] Penned by Associate Justice Juanito C. Castaneda, Jr., with Associate Justice Jean Marie A. Bacorro-Villena, concurring; CTA *En Banc* Docket, pp. 63-65.

The dispositive portions of the assailed Decision and assailed Resolution state:

Decision dated June 17, 2020

"**WHEREFORE**, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated June 29, 2016, assessing petitioner in the total amount of ₱416,578,539.35 allegedly representing its Income Tax, Value Added Tax and Documentary Stamp Tax for calendar year (CY) 2009, is **CANCELLED**.

SO ORDERED."

Resolution dated September 15, 2020

"**WHEREFORE**, respondent's *Motion for Reconsideration (Re: Decision dated 17 June 2020)* is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has 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 (NIRC) of 1997, as amended, or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

Respondent Philplans First, Inc. (PFI) is a corporation duly organized and existing under Philippine laws, with principal office located at the 12th Floor, iAcademy Building, 6764 Ayala Avenue, Makati City.[3]

THE FACTS

On June 9, 2010, PFI received a Letter of Authority (LOA) No. 124-2010-00000102 dated May 28, 2010 signed by then CIR, Joel L. Tan-Torres, authorizing Revenue Officers (ROs) Denver Gomez, Lizette Mallari, Evangeline Casipe, Roque Doloiras and Group Supervisor (GS) Lanie Luna of the Large Taxpayers Excise Audit

[3] Exhibit "P-1-1", CTA Division Docket, Volume III, p. 1221.

Division 2, to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.[4]

On January 25, 2013, PFI through its President and CEO, Mr. Monico V. Jacob, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code extending the period to assess until December 31, 2013.[5] This was accepted by the CIR through Assistant Commissioner Alfredo V. Misajon on January 25, 2013.[6]

On June 13, 2013, Ms. Lindagrace B. Sagun, the OIC-Chief, Excise Large Taxpayers Audit Division (ELTAD) II, issued a Memorandum of Assignment (MOA) No. ELTAD II 2013-MOA-0159 referring the continuation of the audit/investigation of PFI's internal revenue tax liabilities for Calendar Year (CY) 2009, pursuant to LOA No. 124-2010-00000102 dated May 28, 2010, to ROs Reynoso C. Jovero Jr., Meliza C. Wepee, Catherine Ann J. Senador, Ma. Nimfa P. Saga under GS Jesus F. Cabasal.[7]

On September 6, 2013, PFI received a Letter dated September 4, 2013 signed by OIC-Chief, ELTAD II, Lindagrace B. Sagun, informing it that the audit of its internal revenue taxes for CY 2009, pursuant to LOA No. 124-2010-00000102 dated May 28, 2010 was reassigned to ROs Reynoso C. Jovero Jr., Meliza C. Wepee, Catherine Ann J. Senador, Ma. Nimfa P. Saga and GS Jesus F. Cabasal.[8]

On December 6, 2013,[9] PFI received a Preliminary Assessment Notice (PAN) dated November 29, 2013 with Details of Discrepancies.[10]

On December 20, 2013, PFI filed a Reply to the PAN dated December 19, 2013.[11]

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[4] Exhibit "P-29", CTA Division Docket, Vol. II, p. 676; Exhibit "R-2", BIR Records Folder 1, p. 6.
[5] Exhibit "P-24", CTA Division Docket, Vol. II, p. 645; Exhibit "R-3", BIR Records Folder 1, p. 9.
[6] Exhibit "P-24-3", CTA Division Docket, Vol. II, p. 645.
[7] Exhibit "R-1", BIR Records Folder 1, p. 623.
[8] Exhibit "P-33", CTA Division Docket, Vol. II. p. 688; Exhibit "R-1-A", BIR Records Folder 1, p. 654.
[9] Par. 1.4, Stipulation of Facts, Joint Stipulation of Facts and Issue (JSFI), CTA Division Docket, Vol. II, p. 789.
[10] Exhibit "P-36", CTA Division Docket, Vol. II, pp. 694-701; Exhibit "R-6", BIR Records Folder 3, pp. 276-283.
[11] Exhibit "P-37", CTA Division Docket, Vol. II, pp. 708-711.

On December 26, 2013, PFI received a Formal Letter of Demand (FLD) of even date with Details of Discrepancies and Assessment Notices, assessing it of deficiency Income Tax, Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), Value-Added Tax (VAT) and Documentary Stamp Tax (DST) for CY 2009.[12]

On January 24, 2014, PFI filed its Protest to the FLD-FAN of even date.[13]

On June 30, 2016,[14] PFI received the Final Decision on Disputed Assessment (FDDA) dated June 29, 2016 issued by petitioner CIR, assessing it for income tax, VAT and DST in the total amount of ₱416,578,539.35 for CY 2009.[15]

Aggrieved, PFI filed the present Petition for Review on July 29, 2016.[16] The case was raffled to the CTA First Division. Subsequently, the case was transferred to the CTA Second Division pursuant to the Order dated October 1, 2018.[17]

After trial, the Court in Division granted the Petition for Review in in its Decision dated June 17, 2020.[18] A Motion for Reconsideration (Re: Decision dated 17 June 2020)[19] was filed by the CIR, but the same was denied in the Court in Division's Resolution dated September 15, 2020.[20]

Dissatisfied, petitioner CIR filed the present Petition for Review before the Court *En Banc* on October 23, 2020, docketed as CTA EB No. 2351.[21]

PFI filed its Comment (on the Petition for Review dated 21 October 2020) on December 14, 2020.[22]

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[12] Exhibits "P-6" to "P-6-7", CTA Division Docket, Vol. II, pp. 568-586; Exhibits "R-8" to "R-9", BIR Records Folder 4, pp. 56-63 and 32-36.
[13] Exhibits "P-5" and "P-5-1", CTA Division Docket, Vol. II, pp. 544-567.
[14] Par. 1.5, Stipulation of Facts, JSFI, CTA Division Docket, Vol. II, p. 789.
[15] Exhibit "P-4", CTA Division Docket, Vol. I, pp. 47-60; Exhibit "R-11", BIR Records Folder 4, pp. 240-253.
[16] CTA Division Docket, Vol. I, p. 10.
[17] CTA Division Docket, Vol. III, p. 1383.
[18] CTA Division Docket, Vol. IV, pp. 1514-1551.
[19] CTA Division Docket, Vol. IV, pp. 1552-1561.
[20] CTA Division Docket, Vol. IV, pp. 1568-1570.
[21] CTA *En Banc* Docket, pp. 7-17.
[22] CTA *En Banc* Docket, pp. 70-82.

In the Resolution dated January 7, 2021, the Court *En Banc* noted PFI's comment and referred the case for mediation to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) pursuant to Section II of A.M. No. 11-1-5-SC-PHILJA or the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[23]

On February 23, 2021, the Court received the PMC-CTA Form 6-No Agreement to Mediate dated February 22, 2021 stating that the parties decided not to have their case mediated.[24]

In the Resolution dated March 16, 2021, the Court submitted the present Petition for Review for decision.[25]

THE ISSUE

The sole issue for the Court *En Banc*'s resolution is whether or not the Court in Division erred when it granted a relief that was not prayed for by respondent.

PARTIES' ARGUMENTS

Petitioner's Arguments

CIR argues that: (i) the Court in Division erred in granting a relief that was not prayed for by PFI; (ii) his basic right to fair play and due process was violated; and, (iii) the Court in Division erred when it held that the Referral Memorandum is not sufficient to grant the new ROs the authority to continue the conduct of the audit investigation of PFI.

Respondent's Arguments

In its Comment, PFI counter-argues that: (i) the Petition should be dismissed outright pursuant to Section 7, Rule 43 of the Rules of Court since it is not accompanied by certified copies of the assailed Decision and Resolution; (ii) the Petition is a mere rehash of the arguments raised by the CIR in its Motion for Reconsideration in CTA Case No. 9404 which have already been extensively passed upon by the Court in Division; (iii) the Petition lacks factual and legal basis; (iv) the Court in Division has authority to rule upon the validity of an

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[23] CTA *En Banc* Docket, pp. 85-86.
[24] CTA *En Banc* Docket, p. 87.
[25] CTA *En Banc* Docket, pp. 89-90.

assessment even if not raised by PFI in its pleadings; and, (v) the assessment is void, as the assessment was issued without a proper LOA.

THE COURT *EN BANC'S* RULING

The Petition for Review is bereft of merit.

Petition for Review with the Court En Banc was timely filed

Section 3, Rule 8 of the RRCTA provides:

> "Rule 8
> Procedure in Civil Cases
>
> xxx xxx xxx
>
> SEC. 3. Who may appeal; period to file petition. –
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** xxx" (*Boldfacing supplied*)

CIR received the assailed Resolution of the Court in Division on September 23, 2020.[26] Counting fifteen (15) days therefrom, CIR originally had until October 8, 2020 within which to file his Petition for Review before the Court *En Banc*.

On October 8, 2020, CIR filed a Motion for Extension of Time to File Petition for Review, which was granted in a Minute Resolution dated October 19, 2020. The Court granted CIR an additional period of fifteen (15) days from October 8, 2020 or until October 23, 2020 within which to file his Petition for Review before the Court *En Banc*.

Considering that the present petition was timely filed on October 23, 2020,[27] the Court *En Banc* is vested with jurisdiction to take cognizance of the same.

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[26] Notice of Resolution dated September 15, 2020, CTA Division Docket, Vol. IV, p. 1567.
[27] CTA *En Banc* Docket, p. 7.

No compelling ground to reverse or modify the assailed Decision and Resolution

The Court agrees with PFI that the present Petition for Review is a mere rehash of the arguments raised by the CIR in his Motion for Reconsideration in CTA Case No. 9404 which have already been extensively passed upon by the Court in Division in the assailed Resolution dated September 15, 2020.

It is worth mentioning that CIR's discussion in the Petition for Review is almost a word for word replication of his discussion in his Motion for Reconsideration as he merely replaced the word "respondent" with "petitioner".

There being no new matters or issues raised in the present Petition for Review and there being no reversible error committed by the Court in Division, the Court *En Banc* finds no cogent reason to deviate from the assailed Decision and Resolution. Nevertheless, for emphasis, the Court *En Banc* shall pass upon CIR's arguments.

The Court in Division did not err in ruling on the issue of the authority of the ROs, albeit said issue was not raised by the parties

CIR argues that his basic right to fair play and due process was violated when the Court in Division ruled on the issue of the authority of the ROs which was not raised in PFI's Petition for Review.

While the issue on the lack of authority of the ROs to conduct audit of PFI was not raised, the Court is nonetheless vested with sufficient authority to consider the same, pursuant to Section 1, Rule 14 of the RRCTA, which provides:

> "SECTION. I. Rendition of judgment. – xxx
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."** *(Boldfacing supplied)*

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This Court, in deciding a case, is not limited to the issues raised or agreed upon by the parties in their respective pleadings. It may also consider other related matters necessary to dispose of a case on the merits. As such, the Supreme Court, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[28] ruled that this Court has the power to take into consideration matters of record having some bearing to the ultimate disposition of the case which the parties have failed to raise in their pleadings or the lower courts unfortunately ignored, to wit:

> "The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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>> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."** *(Boldfacing supplied)*

Undeniably, the authority of the ROs who audited PFI is relevant in determining the validity of the disputed assessments.

In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[29] the Supreme Court clarified that the CTA can indeed resolve the issue involving the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda, to wit:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may**

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[28] G.R. No. 163835, July 7, 2010.
[29] G.R. No. 183408, July 12, 2017.

> **also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment*. - x xx
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the **CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda**. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Boldfacing supplied)*

Indeed, pursuant to the foregoing pronouncements, it is within the authority of this Court to first resolve the issue on the scope of the authority of the ROs who conducted the audit investigation to achieve an orderly disposition of this case. Thus, the Court in Division did not err in ruling on the issue of the authority of the revenue officer even if the issue was not raised by the parties.

Revenue Officers were not duly authorized to conduct the audit of PFI, hence the assessment is void

As held in the assailed Decision, the Memorandum of Assignment No. ELTAD II-2013-MOA-0159 dated June 13, 2013 issued by OIC-Chief, ELTAD II, Lindagrace B. Sagun could not validly grant ROs Reynoso C. Jovero Jr., Meliza C. Wepee, Catherine Ann J. Senador, Ma. Nimfa P. Saga and GS Jesus F. Cabasal the authority to conduct the examination pursuant to LOA No. 124-2010-00000102 dated May 28, 2010.

Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring a specific authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be made, to wit:

> "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

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> 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 a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." (*Boldfacing supplied*)

A revenue officer cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose. Section 13 of the NIRC of 1997, as amended, states:

> "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 <u>Letter of Authority</u> issued by the <u>Revenue Regional Director</u>**, 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." (*Boldfacing and underscoring supplied*)

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[30] the Supreme Court was clear in holding that the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment, to wit:

> "Based on Section 13 of the Tax Code, **a Letter of Authority or 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. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> xxx xxx xxx
>
> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**." (*Boldfacing and underscoring supplied*)

This was also reiterated in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[31] to wit:

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[30] G.R. No. 178697, November 17, 2010.
[31] G.R. No. 222743, April 5, 2017.

ρη

> "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." (*Boldfacing supplied*)

Based on the aforementioned cases, the audit examination and assessment against a taxpayer should be pursuant to an LOA. Absent a valid LOA, any assessment is void.

Moreover, Revenue Memorandum Order (RMO) No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, requires the issuance of a new LOA:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of UAs which have already expired, **shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." (*Boldfacing supplied and underlining supplied*)

Therefore, guided by the foregoing, it is erroneous for the CIR to insist that the MOA is a valid source of authority for the ROs named therein to audit PFI. To reiterate, the issuance of an LOA is indispensable in the audit of a taxpayer.

Considering that no new LOA was issued authorizing ROs Reynoso C. Jovero Jr., Meliza C. Wepee, Catherine Ann J. Senador, Ma. Nimfa P. Saga under GS Jesus F. Cabasal to audit PFI for CY 2009, the aforementioned ROs and GS had no authority to conduct the audit/investigation. As a consequence, the assessments resulting from their audit are inescapably void and must be slain at sight.

Even if the Court *En Banc* subscribes to CIR's argument that a MOA maybe a valid source of authority for the ROs to audit PFI, the same will not suffice since the MOA in this case was not signed by the CIR or his duly authorized representative.

CIR's contention that the OIC-Chief of the ELTAD II can sign the MOA, as head of the investigating office, pursuant to RMO No. 8-2006,[32] is devoid of merit.

As previously mentioned, an LOA can only be issued either by the CIR or his duly authorized representative, as identified by Section 10 (C) of the NIRC of 1997, as amended, to be the Revenue Regional Director, to wit:

> "SEC. 10. Revenue Regional Director. - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
>
> xxx xxx xxx
>
> (c) Issue Letters of authority for the examination of taxpayers within the region;"

The position equivalent to a Revenue Regional Director for the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants. RMO No. 29-07[33] provides:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants.**"

In the present case, the MOA was signed by Ms. Lindagrace B. Sagun, the OIC-Chief of ELTAD II. She is neither the CIR, Revenue

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[32] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), February 1, 2006.
[33] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Services, September 26, 2007.

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Regional Director, nor an Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service. She had no authority to issue the MOA, thus, the assessments resulting therefrom is a nullity.

Failure to demand payment of the tax due within a specific period

Even assuming that the ROs had the authority to conduct the audit of PFI, the assessments issued against it are still void.

Perusal of the FLD and Assessment Notices show that they failed to demand payment of the tax due within a specific period.

Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, pertinently states:

> "*3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* - The Formal Letter of Demand **and** Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN **calling for payment of the taxpayer's deficiency tax** or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX "B" hereof)." (Boldfacing and underscoring supplied)

Clearly, a formal letter of demand AND an assessment notice are indispensable in the assessment of a taxpayer. The use of the word "shall" in Section 3.1.3 of RR No. 12-99, as amended by RR No.18-2013, indicates the mandatory nature of the requirement.[34]

The last paragraph of the FLD specifically states that PFI is requested to pay its aforesaid deficiency tax liabilities through the authorized agent bank in which it is enrolled within the time shown in the enclosed assessment notice, to wit:

> "In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice."

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[34] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.

The spaces for the due date in the attached Assessment Notices were, however, conspicuously left blank:

Notice of Assessment for Income Tax

Exhibit "P-6-3"
APR 0 6 2017

BIR FORM NO. **0401**
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT / ASSESSMENT NOTICE

RETURN PERIOD: Taxable year 2009

ASSESSMENT NUMBER: LTAD II-IT-09-0009
DATE ISSUED: 12-26-2015

TIN: 000-488-404-000
NAME: PHILPLANS FIRST, INC.
ADDRESS: 12th Floor [Academy Building 6764 Ayala Avenue, Makati City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE / BASED ON/REASON	PARTICULARS	AMOUNT	
TAX TYPE: Income tax			
BASED ON/REASON: Section 32, 34, 58 of the NIRC and RR 2-98	Discrepancy on revenue,expenses not subjected to Expanded Withhoding tax and unsupported creditable tax withheld at source (Form 2307)	Basic	70,007,854.17
		Surcharge	-
		Interest	52,016,794.67
		Compromise	-
DUE DATE		Total	122,024,648.84

IMPORTANT
PLEASE REFER AT THE BACK
OF THIS NOTICE
FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT / ASSESSMENT NOTICE

RETURN PERIOD: Taxable year 2009

BCS NUMBER (TO BE FILLED UP BY BIR)

TIN: 000-488-404-000
NAME: PHILPLANS FIRST, INC.
TAX TYPE: Income tax
AMOUNT PAYABLE: 122,024,648.84
DUE DATE:

FOR FILING OF PROTEST

☐ I/WE DISAGREE TO THE ABOVE FINDINGS.
(SUBMIT LETTER OF PROTEST)

TAXPAYER'S SIGNATURE OVER PRINTED NAME

POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT
CASH				
CHECK				
TAX DEBIT MEMO				
OTHERS				

TO BE FILLED UP BY BIR
AUDITED BY:
DATE:

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

Notice of Assessment for WTC

Exhibit "P-6-4"
APR 0 6 2017

BIR FORM NO. **0401**
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD Taxable year 2009	AUDIT RESULT / ASSESSMENT NOTICE	ASSESSMENT NUMBER ELTAD-II-WC-09-0003 DATE ISSUED 12-26-2013

TIN 000-488-404-000
NAME PHILPLANS FIRST, INC.
ADDRESS 12th Floor IAcademy Building 6764 Ayala Avenue, Makati City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE	PARTICULARS	AMOUNT	
Withholding tax on Compensation BASED ON/REASON: Section 34 K the and RR 2-98	Salaries and wages not subjected to Withholding tax	Basic	3,013,856.29
		Surcharge	-
		Interest	2,379,707.90
		Compromise	-
DUE DATE		Total	5,393,564.19

IMPORTANT
PLEASE REFER AT THE BACK
OF THIS NOTICE
FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD Taxable year 2009	AUDIT RESULT / ASSESSMENT NOTICE	BCS NUMBER (TO BE FILLED UP BY BIR)

TIN:	000-488-404-000	FOR FILING OF PROTEST
NAME:	PHILPLANS FIRST, INC.	☐ I/WE DISAGREE TO THE ABOVE FINDINGS (SUBMIT LETTER OF PROTEST)
TAX TYPE:	Withholding tax on Compensation	
AMOUNT PAYABLE:	5,393,564.19	TAXPAYER'S SIGNATURE OVER PRINTED NAME
DUE DATE:		POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	TO BE FILLED UP BY BIR
CASH					AUDITED BY:
CHECK					
TAX DEBIT MEMO					DATE:
OTHERS					

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

Notice of Assessment for EWT

Exhibit "P-6-5"
APR 0 6 2017

BIR FORM NO. **0401**
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD	AUDIT RESULT / ASSESSMENT NOTICE	ASSESSMENT NUMBER
Taxable year 2009		ELPAD-II-WE-09-0003
		DATE ISSUED 12-26-2013

TIN.	000-488-404-000
NAME.	PHILPLANS FIRST, INC.
ADDRESS	12th Floor IAcademy Building 6764 Ayala Avenue, Makati City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE	PARTICULARS	AMOUNT	
Expanded Withholding tax			
BASED ON/REASON:			
Section 78,79,80 of the NIRC and RR 2-98	Expenses/payments not subjected to Expanded Withhoding tax	Basic	1,710,093.65
		Surcharge	-
		Interest	1,350,271.21
		Compromise	-
DUE DATE:		Total	3,060,364.86

IMPORTANT
PLEASE REFER AT THE BACK
OF THIS NOTICE
FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD	AUDIT RESULT / ASSESSMENT NOTICE	BCS NUMBER (TO BE FILLED UP BY BIR)
Taxable year 2009		

		FOR FILING OF PROTEST
TIN:	000-488-404-000	
NAME:	PHILPLANS FIRST, INC.	☐ I/WE DISAGREE TO THE ABOVE FINDINGS. (SUBMIT LETTER OF PROTEST)
TAX TYPE:	Expanded Withholding tax	
AMOUNT PAYABLE:	3,060,364.86	TAXPAYER'S SIGNATURE OVER PRINTED NAME
DUE DATE:		POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	TO BE FILLED UP BY BIR
CASH					AUDITED BY:
CHECK					
TAX DEBIT MEMO					DATE:
OTHERS					

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

Notice of Assessment for VAT

Exhibit "P-6-6"
APR 0 6 2017

BIR FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT / ASSESSMENT NOTICE

RETURN PERIOD Taxable year 2009		ASSESSMENT NUMBER ELTAD-II-VB-09-0003 DATE ISSUED 12-26-2013

TIN	000-488-404-000
NAME	PHILPLANS FIRST, INC.
ADDRESS	12th Floor IAcademy Building 6764 Ayala Avenue, Makati City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE	PARTICULARS	AMOUNT
Value Added tax BASED ON/REASON: Section 108 of the NIRC and RR 16-2005	Unreported receipts/revenue	Basic 128,693,503.31 Surcharge 64,346,761.65 Interest 101,262,384.93 Compromise Total 294,302,649.89
DUE DATE:		

IMPORTANT
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KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT / ASSESSMENT NOTICE

RETURN PERIOD Taxable year 2009		BCS NUMBER (TO BE FILLED UP BY BIR)

TIN:	000-488-404-000	FOR FILING OF PROTEST
NAME:	PHILPLANS FIRST, INC.	☐ I/WE DISAGREE TO THE ABOVE FINDINGS. (SUBMIT LETTER OF PROTEST)
TAX TYPE:	Value Added tax	
AMOUNT PAYABLE:	294,302,649.89	TAXPAYER'S SIGNATURE OVER PRINTED NAME
DUE DATE:		POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT
CASH				
CHECK				
TAX DEBIT MEMO				
OTHERS				

TO BE FILLED UP BY BIR
AUDITED BY:
DATE:

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

Notice of Assessment for DST

Exhibit "P-6-7"
APR 0 6 2017

BIR FORM NO. 0401
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT / ASSESSMENT NOTICE

RETURN PERIOD		ASSESSMENT NUMBER
Taxable year 2009		ELATD-II-DS-09-0005
		DATE ISSUED 12-26-2013

TIN	000-488-404-000
NAME	PHILPLANS FIRST, INC.
ADDRESS	12th Floor Academy Building 6764 Ayala Avenue, Makati City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE	PARTICULARS	AMOUNT	
Documentary Stampe Tax			
BASED ON/REASON			
Section 194 and 186 of the NIRC	DST on lease of real property and direct premium	Basic	114,874.34
		Surcharge	28,718.59
		Interest	91,647.69
		Compromise	16,000.00
DUE DATE:		Total	251,240.62

IMPORTANT
PLEASE REFER AT THE BACK
OF THIS NOTICE
FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. 0401
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT / ASSESSMENT NOTICE

RETURN PERIOD		BCS NUMBER (TO BE FILLED UP BY BIR)
Taxable year 2009		

		FOR FILING OF PROTEST
TIN:	000-488-404-000	☐ I/WE DISAGREE TO THE ABOVE FINDINGS. (SUBMIT LETTER OF PROTEST)
NAME:	PHILPLANS FIRST, INC.	
TAX TYPE:	Documentary Stamps Tax	TAXPAYER'S SIGNATURE OVER PRINTED NAME
AMOUNT PAYABLE:	251,240.62	
DUE DATE:		POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	TO BE FILLED UP BY BIR
CASH					AUDITED BY:
CHECK					
TAX DEBIT MEMO					DATE:
OTHERS					

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,[35] the Supreme Court **invalidated** an assessment after noting its failure to state the due date for the payment of the tax liabilities:

> "**The disputed Final Assessment Notice is not a valid assessment**.
>
> xxx xxx xxx
>
> Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**
>
>> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice*. (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.
>
> Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (*Boldfacing and underscoring supplied*)

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment *sans* a categorical demand for payment within a specific date or period is, in legal contemplation, void.

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

To reiterate, a final assessment notice must not only indicate the legal and factual bases of the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period.[36] It bears to stress that the CIR must indicate with absolute clarity the categorical demand for payment within a specific date in the Assessment Notices, lest it be declared fatally infirm.

Absent a valid demand, as in this case, the FLD and Assessment Notices are void. Being void assessments, they bear no fruit[37] and must be slain at sight.

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit. Accordingly, the Court in Division's Decision dated June 17, 2020 and Resolution dated September 15, 2020 in CTA Case No. 9404 are **AFFIRMED**.

Petitioner Commissioner of Internal Revenue, his duly authorized representatives or any other person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency Income Tax, Value-Added Tax and Documentary Stamp Tax for calendar year 2009 assessed against respondent Philplans First, Inc. in the Final Decision on Disputed Assessment dated June 29, 2016. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[36] *Id.*

[37] *Commissioner of internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010·

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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