CTA Form No. 8

22-000384-0061

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10951

O-HEALTHCARE SOLUTION PHIL., INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. ALBERT C. ARPON
ATTY. AVELINO G. ALFELOR, JR.
Bureau of Internal Revenue-Revenue Region No. 8A-Makati City
36th Floor, Legal Division, Export Bank Plaza Building
Sen. Gil Puyat Ave., cor. Chino Roces Avenue
Makati City

CASTILLO LAMAN TAN PANTALEON & SAN JOSE
2nd to 5th and 9th Floors, The Valero Tower
122 Valero Street, Salcedo Village, 1227 Makati City

GREETINGS:

You are hereby notified by these presents that on **July 30, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 1, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

O-HEALTHCARE SOLUTION PHIL., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10951

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

JUL 30 2025; 2:30PM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on August 8, 2022 by petitioner O-Healthcare Solution Phil., Inc. ("**Petitioner**"), against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), assailing the Final Decision on Disputed Assessment (**FDDA**) dated June 15, 2022, which assessed petitioner for deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), and withholding tax on compensation (**WTC**) amounting to ₱11,934,892.46 for taxable year (**TY**) 2017.

THE PARTIES

Petitioner is a domestic corporation with its principal office at the 4th Floor, G&A Building, 2303 Chino Roces Avenue Extension, Makati City, Philippines.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (**BIR**), vested by law with the authority to enforce and implement the provisions of the National Internal Revenue Code

[1] Docket – Vol. II, pp. 771–780, *Joint Stipulation of Facts and Issues* (JSFI), Stipulated Facts, par. 3.

(NIRC) of 1997, as amended, as well as related statutes and their implementing rules and regulations. Respondent holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

THE FACTS

On June 25, 2018, petitioner received Letter of Authority **(LOA)** No. eLA201500085154 dated June 11, 2018, issued by Regional Director **(RD)** Glen Geraldino **(Geraldino)** of Revenue Region No. 0008, Makati City. The LOA authorized Revenue Officer **(RO)** Anthony Delos Reyes **(Delos Reyes)**, under Group Supervisor **(GS)** Conchita Ladrera **(Ladrera)**, to examine its books of accounts and other accounting records for TY ending December 31, 2017.[3]

On March 4, 2020, petitioner received a Notice of Informal Conference **(NIC)** issued by respondent.[4]

On December 4, 2020, petitioner received the Preliminary Assessment Notice **(PAN)** with Details of Discrepancies dated November 27, 2020. The PAN assessed petitioner for alleged deficiency IT, VAT, EWT, and WTC for TY 2017, including interest,[5] as follows:

Tax type	**Basic tax**	**Interest**	**Total**
Income tax	₱12,096,627.83	₱3,925,272.88	₱16,021,900.71
VAT	2,063,986.04	724,034.99	2,788,021.03
EWT	791,974.66	280,424.12	1,072,398.78
WTC	1,338,264.10	473,855.49	1,812,119.59
Total	**₱16,290,852.63**	**₱5,403,587.48**	**₱21,694,440.11**

In response to the PAN, petitioner allegedly filed a *Letter for Request for Reconsideration* dated December 12, 2020.[6] However, receipt of this Letter was denied by respondent.[7]

On December 29, 2020, petitioner received the Final Assessment Notice/Formal Letter of Demand with Details of Discrepancies **(FAN/FLD)** dated December 22, 2020, which reiterated the findings in the PAN with re-computed interest:[8]

2 *Id.* at 771–780, JSFI, Stipulated Facts, par. 1.
3 Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 4; Exhibit "P-2", Docket – Vol. I, p. 66.
4 Exhibit "R-5", BIR Records, unpaged.
5 Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 5; Exhibit "P-3", Docket – Vol. I, pp. 79–83.
6 Docket – Vol. I, pp. 6–36, Petition for Review, par. 8; Exhibit "P-4", Docket – Vol. I, pp. 75–78.
7 *Id.* at 343–351, Answer, par. 8.
8 Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 6; Exhibit "P-5", Docket – Vol. I, pp. 84–89.

Tax type	Basic tax	Interest	Total
Income tax	12,096,627.83	4,052,536.03	16,149,163.86
VAT	2,063,986.04	745,749.26	2,809,735.30
EWT	791,974.66	288,756.13	1,080,730.79
WTC	1,338,264.10	487,934.76	1,826,198.86
Total	**16,290,852.63**	**5,574,976.18**	**21,865,828.81**

On January 27, 2021, petitioner filed a *Protest with Request for Reinvestigation* of even date, disputing the deficiency tax and interest assessed in the FAN/FLD.[9]

In a Letter dated February 4, 2021, RD Maridur V. Rosario (**Rosario**) granted petitioner's Request for Reinvestigation.[10]

On March 26, 2021, petitioner timely submitted the documents mentioned in paragraph 12 of its *Petition for Review* dated August 8, 2022, in support of its Protest.[11]

On July 19, 2021, while the reinvestigation was ongoing, petitioner received a *Letter of Continuance of Audit/ Investigation* dated July 15, 2021, signed by Revenue District Officer Bethsheba R. Bautista (**Bautista**) of Revenue District Office (**RDO**) No. 048.[12]

In the July 15, 2021 letter, Revenue District Officer Bautista informed petitioner that (a) RO Delos Reyes had been transferred to another RDO; and (b) RO Joy Mariz Tumaca (**Tumaca**), under GS Gerardo Nuestro (**Nuestro**), was assigned to continue the audit and investigation of petitioner's internal revenue taxes for TY 2017, pursuant to a purported Memorandum of Assignment (**MOA**) No. RR8A-048-REA-0621-00489 dated June 18, 2021.[13]

On November 23, 2021, petitioner received LOA No. LOA-048-00000215 dated November 19, 2021, signed by RD Rosario, authorizing RO Tumaca under GS Nuestro to examine petitioner's books of accounts and other accounting records.[14]

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9 Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 7; Exhibit "P-6", Docket – Vol. I, pp. 91–104.
10 Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 8; Exhibit "P-8", Docket – Vol. I, p. 112.
11 Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 9; Exhibit "P-9", Docket – Vol. I, p. 113.
12 Docket – Vol. II, pp. 771-780, JSFI, Stipulated Facts, par. 10; Exhibit "P-13", Docket – Vol. I, p. 134.
13 Docket – Vol. II, pp. 771-780, JSFI, Stipulated Facts, par. 11; Exhibit "P-13", Docket – Vol. I, p. 134.
14 Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 12; Exhibit "P-15", Docket – Vol. I, p. 140.

On July 7, 2022, petitioner received the FDDA dated June 15, 2022, which imposed various deficiency assessments, with re-computed interest, as follows:[15]

Tax type	Basic tax	Interest	Total
Income tax	₱4,410,983.34	₱2,273,892.12	₱6,684,875.46
VAT	2,063,986.04	1,118,284.60	3,182,270.64
EWT	-	-	-
WTC	1,338,264.10	729,482.26	2,067,746.36
Total	**₱7,813,233.48**	**₱4,121,658.98**	**₱11,934,892.46**

PROCEEDINGS BEFORE THE COURT

On August 8, 2022, petitioner filed its *Petition for Review*.[16]

Summons was issued to respondent on August 31, 2022.[17] On November 2, 2022, respondent filed his *Answer*.[18]

On December 23, 2022, respondent elevated the *BIR Records* of the case to the Court, compiled in one folder consisting of 1,175 pages.[19]

While the case was pending before the Court, petitioner received a Warrant of Distraint and Levy (**WDL**) dated January 25, 2023, signed by RD Florante R. Aninag.[20] This prompted petitioner to file an *Urgent Motion to Suspend the Collection of Tax and or to Enjoin the Enforcement of Warrant of Distraint and/or Levy* (***Urgent Motion***) on February 7, 2023.[21]

During the hearing on February 22, 2023, in relation to *Urgent Motion*,[22] petitioner's counsel presented Mr. Fernando B. Bulante, who testified on direct examination through a Judicial Affidavit. This was followed by petitioner's filing of its *Offer of Documentary Evidence (Re: Urgent Motion to Suspend the Collection of Tax and/or to Enjoin the Enforcement of Warrant of Distraint and/or Levy dated February 6, 2023)* on March 6, 2023,[23] which was resolved by the Court on March 24, 2023.[24]

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15 Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 13; Exhibit "P-1", Docket – Vol. I, pp. 62–65.
16 Docket – Vol. I, pp. 6–36.
17 *Id.* at 330.
18 *Id.* at 343–351.
19 *Id.* at 355–357, Manifestation.
20 Exhibit "P-36", Docket – Vol. I, p. 378.
21 Docket – Vol. I, pp. 359–369.
22 *Id.* at 384.
23 *Id.* at 392–396.
24 Docket – Vol. II, pp. 748–749.

On March 16, 2023, a Pre-Trial Conference was held.[25] On April 17, 2023, both parties jointly filed their *Joint Stipulation of Facts and Issues.*[26] The pre-trial was deemed terminated on April 20, 2023,[27] and the *Pre-Trial Order* was issued on July 14, 2023.[28]

On June 29, 2023, the Court partially granted petitioner's *Urgent Motion.*[29] Petitioner filed its *Compliance* with the Court's order to post a cash bond on August 11, 2023.[30]

During the hearing on August 31, 2023,[31] petitioner presented Mr. Rommel D. Abes (**Abes**), the Court-commissioned Independent Certified Public Accountant (**ICPA**), who testified on direct examination by way of a Judicial Affidavit.

After being referred to mediation, the Philippine Mediation Center submitted its *Mediator's Report*, along with the Agreement to Mediate and Selection of Mediator, on September 5, 2023.[32]

On October 2, 2023, the Court received the *Report* of the ICPA.[33] Thus, during the hearing on October 12, 2023,[34] petitioner presented ICPA Abes, who testified on direct examination by way of a Judicial Affidavit.

Petitioner filed its *Offer of Documentary Evidence* on October 23, 2023,[35] which was resolved by the Court on February 20, 2024.[36]

During the hearing on February 29, 2024,[37] respondent's counsel presented RO Tumaca, who testified by way of a Judicial Affidavit.

Respondent filed his *Formal Offer of Exhibit* on March 11, 2024,[38] which was resolved by the Court on May 6, 2024.[39]

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25 *Id.* at 662–663.
26 *Id.* at 771–780.
27 *Id.* at 783.
28 *Id.* at 801–821.
29 *Id.* at 787–799.
30 *Id.* at 835–838.
31 *Id.* at 852–853.
32 *Id.* at 861.
33 *Id.* at 868–886.
34 *Id.* at 912–913.
35 *Id.* at 915–928.
36 *Id.* at 942–944.
37 *Id.* at 948–949.
38 *Id.* at 954–961.
39 *Id.* at 979–981.

Petitioner filed its *Memorandum* on June 11, 2024,[40] while respondent filed his *Memorandum* on June 13, 2024.[41]

On July 1, 2024, the case was submitted for decision.[42]

THE ISSUE

The parties stipulated the following issue for the Court's resolution, *viz.*:[43]

> Whether or not petitioner is liable to pay the alleged deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Withholding Tax on Compensation (WTC), in the aggregate amount of ₱11,934,892.46, inclusive of interest, for taxable year 2017.

PETITIONER'S ARGUMENTS

In its *Petition for Review* and *Memorandum*, petitioner argues that respondent violated its right to due process.

Petitioner contends that the audit and investigation of its books of accounts and other accounting records were conducted without a valid LOA, and that the belated issuance of a second LOA did not cure this defect.[44] Petitioner also argues that the BIR disregarded its defenses and the additional documents it submitted during the reinvestigation. It notes that the PAN, FAN/FLD, and FDDA were all identical despite its submission of supporting documents.[45]

Petitioner also argues that the issuance of WDL was premature and constituted a gross violation of its right to due process.[46]

Anent substantive issues, petitioner states that (1) the assessment of undeclared income in relation to customer deposits is erroneous, as this is still considered as unearned revenue,[47] (2) the assessment of undeclared sales based on

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[40] *Id.* at 982–1024.
[41] *Id.* at 1027–1036.
[42] *Id.* at 1038.
[43] *Id.* at 771–780, JSFI, Stipulated Issue, par. 15.
[44] *Id.* at 982–1024, Petitioner's *Memorandum*, pars. 37–52.
[45] *Id.* at 982–1024, Petitioner's *Memorandum*, pars. 53–71.
[46] *Id.* at 982–1024, Petitioner's *Memorandum*, pars. 72–77.
[47] *Id.* at 982–1024, Petitioner's *Memorandum*, pars. 78–88.

alleged undeclared purchases is erroneous because respondent did not establish that petitioner derived some profit or gain,[48] (3) respondent erred in disallowing the input tax on the alleged overclaimed purchase of goods,[49] (4) respondent erred in disallowing the salaries and wages due to alleged non-withholding, considering that the discrepancy between the audited financial statements (**AFS**) and the filed returns was accounted for as mandatory government contributions,[50] and (5) respondent erred in assessing deficiency withholding tax on compensation as this has already been paid by petitioner.[51]

RESPONDENT'S ARGUMENTS

In his *Answer* and *Memorandum*, respondent argues that RO Delos Reyes conducted the audit and examination of petitioner, and that he was authorized by a valid LOA.[52] According to respondent, RO Tumaca merely reviewed the already submitted books of accounts and other accounting records of petitioner in support of its request for reinvestigation. RO Tumaca did not conduct an original audit, and the issuance of a LOA was no longer necessary during the review stage of the assessment.[53]

Respondent further argues that petitioner was accorded due process, as the reinvestigation "resulted to dropping in the FDDA of the tax deficiencies."[54]

On the substantive issues, respondent argues that (1) petitioner failed to provide documentation that the portion of the salaries that were not subjected to withholding pertain to mandatory government contributions,[55] and (2) cash deposit or advances shall form part of gross income.[56]

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

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48 *Id.* at 982–1024, Petitioner's *Memorandum*, pars. 89–97.
49 *Id.* at 982–1024, Petitioner's *Memorandum*, pars. 98–103.
50 *Id.* at 982–1024, Petitioner's *Memorandum*, pars. 104–107.
51 *Id.* at 982–1024, Petitioner's *Memorandum*, pars. 108–110.
52 *Id.* at 1027–1036, Respondent's *Memorandum*, pars. 2–4.
53 *Id.* at 1027–1036, Respondent's *Memorandum*, pars. 5–9.
54 *Id.* at 1027–1036, Respondent's *Memorandum*, pars. 10–11.
55 *Id.* at 1027–1036, Respondent's *Memorandum*, pars. 12–13.
56 *Id.* at 1027–1036, Respondent's *Memorandum*, par. 14.

The Court has jurisdiction over the case.

Before delving into the merits, the Court must first resolve whether it has jurisdiction over the present case.

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125,[57] as amended by RA No. 9282,[58] vests the Court of Tax Appeals (CTA) with exclusive appellate jurisdiction to review decisions or inactions of the CIR, to wit:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the [CIR] in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the [CIR] in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; *(Emphasis supplied)*

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, prescribes the period for filing an appeal before the CTA, *viz.*:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any <u>party adversely affected</u> by a decision, ruling, or inaction of the [CIR]...**may file an **appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ...** *(Emphasis supplied)*

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[57] An Act Creating the Court of Tax Appeals, June 16, 1954.

[58] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

The above provisions are likewise provided under Section 3(a)(1) and (2), Rule 4,[59] and Section 3(a), Rule 8[60] of the Revised Rules of the CTA.

Based on the foregoing, the Court has exclusive jurisdiction to review, by appeal, a decision, ruling, or inaction of respondent. The appeal must be filed by the taxpayer affected, or as worded by RA No. 9282, the party adversely affected, within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

In the instant case, petitioner received the FDDA dated June 15, 2022, on July 7, 2022.[61] Thus, it had 30 days from said date, or until **August 6, 2022**, to file a *Petition for Review*. As the said date fell on a Saturday, petitioner timely filed its *Petition for Review* on the next working day, **August 8, 2022**.[62]

The Revenue Officer who supervised the audit was not authorized under a valid LOA.

In its *Petition for Review* and *Memorandum*, petitioner contends that its right to due process was violated, arguing that the audit was conducted without a valid LOA. Specifically, petitioner claims that RO Tumaca conducted the audit without an LOA, and that the belated issuance of a second LOA did not cure this defect.[63]

In his *Answer* and *Memorandum*, respondent counters that RO Delos Reyes conducted the audit and examination

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[59] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

[60] Sec. 3. Who may appeal; period to file petition. — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[61] Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 13.

[62] Docket – Vol. I, pp. 6–36.

[63] Docket – Vol. II, pp. 982–1024, Petitioner's *Memorandum*, pars. 37–52.

pursuant to a valid LOA,[64] and that RO Tumaca merely reviewed the books of accounts and other accounting records previously submitted by petitioner in connection with its request for reinvestigation. Respondent asserts that RO Tumaca did not conduct a new audit, and therefore, the issuance of an LOA was not required during the review stage of the assessment.[65]

The Court rules in favor of petitioner, not on the basis of RO Tumaca's alleged lack of authority, but due to the unauthorized participation of another Revenue Officer in the audit, as further discussed below.

The power to assess necessarily includes the authority to examine any taxpayer to determine the correct amount of tax due.[66] Verily, the law vests the BIR with general powers in relation to the assessment and collection of internal revenue taxes.[67] However, only the CIR or his duly authorized representatives may authorize the examination of any taxpayer and issue an assessment against the latter. This authority is derived from Section 6(A) of the NIRC of 1997, as amended, which provides:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns 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 a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. *(Emphasis supplied)*

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.[68] The issuance of 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

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[64] *Id.* at 1027–1036, Respondent's *Memorandum*, pars. 2–4.
[65] *Id.* at 1027–1036, Respondent's *Memorandum*, pars. 5–9.
[66] *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].
[67] *Id.*
[68] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

belongs *only* to the CIR himself or his *duly authorized* representatives.[69]

Section 13 of the NIRC of 1997, as amended, further emphasizes:

> 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, **<u>pursuant to a Letter of Authority issued by the 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. *(Emphasis and underscoring supplied)*

Section 13 of the NIRC of 1997, as amended, underscores that no examination may be undertaken without an LOA issued by the CIR or a duly authorized representative. The circumstances contemplated under Section 6 of the NIRC of 1997, as amended, where the taxpayer may be assessed through the best evidence obtainable, inventory-taking, or surveillance, among others, do not dispense with the LOA requirement. These are simply methods for examining the taxpayer to determine 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.[70]

The issuance of an LOA prior to any examination or assessment is a requirement of due process. It is not a mere formality or technicality.[71] The Supreme Court, in *Commissioner of Internal Revenue v. McDonalds Philippines Realty Corp.*,[72] emphasized the importance of an LOA, stating:

> **<u>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</u>**

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[69] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

[70] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017, 808 SCRA 528-556 [Per J. Reyes, Third Division].

[71] *Supra* note 69.

[72] *Id.*

> **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. 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**. *(Emphasis and underscoring supplied)*

Accordingly, the issuance of an LOA serves as a critical safeguard to uphold due process, ensuring that the taxpayer is duly informed that the RO knocking at the taxpayer's door and conducting the examination has the proper authority to examine their books of accounts.

In this case, petitioner received LOA No. eLA201500085154 dated June 11, 2018, issued by RD Geraldino of Revenue Region No. 0008, Makati City, authorizing RO Delos Reyes, under GS Ladrera, to examine petitioner's books of accounts and other accounting records for TY 2017.[73] Records reveal that RO Delos Reyes conducted the audit and investigation, which led to the issuance of the PAN on November 27, 2020.

The involvement of RO Tumaca began only after petitioner filed a Protest with Request for Reinvestigation on January 27, 2021. As borne by the records, on July 19, 2021, while the reinvestigation was ongoing, petitioner received a *Letter of Continuance of Audit/ Investigation* dated July 15, 2021, signed by Revenue District Officer Bautista of RDO No. 048. [74] The letter stated that (a) RO Delos Reyes had been transferred to another RDO; and (b) in his stead, RO Tumaca, under GS Nuestro, was assigned to continue the audit and investigation of petitioner's internal revenue taxes for TY 2017, pursuant to a purported MOA No. RR8A-048-REA-0621-00489 dated June 18, 2021.[75]

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[73] Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 4; Exhibit "P-2", Docket – Vol. I, p. 66.
[74] Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 10; Exhibit "P-13", Docket – Vol. I, p. 134.
[75] Docket – Vol. II, pp. 771-780, JSFI, Stipulated Facts, par. 11; Exhibit "P-13", Docket – Vol. I, p. 134.

This Court, sitting *En Banc,* has previously ruled[76] that while the law explicitly requires an LOA to be issued to a Revenue Officer before conducting an audit and recommending an assessment, it does not specifically require an LOA for purposes of recommending a final decision on a disputed assessment.

Needless to say, the requirement for an LOA under Sections 6 and 13 of the NIRC of 1997, as amended, pertains to the stage where the RO and GS conduct an audit and recommend the issuance of a PAN, and FAN/FLD. It does not extend to the **reinvestigation process**, which is undertaken to reach a *decision* on the *Protest* to the FAN/FLD or Assessment Notice by way of an FDDA.

Moreover, **even assuming that an LOA is required to conduct the reinvestigation, its absence would only invalidate the resulting *decision*, such as the FDDA**. The disquisition of the Supreme Court in the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[77] is most enlightening, to wit:

> A void FDDA does not *ipso facto*
> render the assessment void.
>
> . . . .
>
> In resolving the issue on the effects of a void FDDA, it is necessary to **differentiate an 'assessment' from a 'decision**.' In *St. Stephen's Association v. Collector of Internal Revenue,* the Court has long recognized that a 'decision' — differs from an 'assessment,' to wit:
>
>> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section II of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the

[76] See *Commissioner of Internal Revenue v. RCL Feeders Phils., Inc.*, CTA *EB* Case No. 2772 (CTA Case No. 9917), April 29, 2024.
[77] G.R. Nos. 215534 & 215557, April 18, 2016 [Per J. Mendoza, Second Division].

> Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review 'decisions of the Collector of Internal Revenue in cases involving disputed assessment. . .'

The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. **From the foregoing, it is clear that what is appealable to the CTA is the 'decision' of the CIR on disputed assessment and not the assessment itself**.

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. **As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer**. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other — unless the law or regulations otherwise provide.

. . . .

The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment**.

As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the

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> CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.
>
> . . . .
>
> To recapitulate, **a 'decision' differs from an 'assessment' and failure of the FDDA to state the facts and law on which it is based renders the decision void — but not necessarily the assessment**. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided. (*Citations omitted; Emphasis supplied*)

Clearly, a decision on a disputed assessment ***differs*** from the assessment itself. Hence, the invalidity of one does not necessarily result in the invalidity of the other.

Accordingly, the assessment cannot be invalidated on the ground of RO Tumaca's alleged lack of authority.

However, the assessment is still invalid due to the unauthorized participation of another officer in the audit.

Records reveal that the undated *Memorandum* recommending the issuance of the PAN[78] was signed by RO Delos Reyes and **GS Gerardo Nuestro**. GS Nuestro also signed the Revenue Officer's Audit Report dated February 27, 2020,[79] which formed the basis for the issuance of the PAN on **November 27, 2020**.

To recall, LOA No. eLA201500085154 dated June 11, 2018 authorized only RO Delos Reyes and **GS Ladrera** to conduct the audit of petitioner.[80] A separate LOA, No. LOA-048-00000215, authorizing RO Tumaca and GS Nuestro to examine petitioner's books of accounts and other accounting records, was issued only on **November 19, 2021, well after the PAN had been issued.**[81]

This indicates that it was **GS Nuestro**, not GS Ladrera, who actually supervised the audit that led to the issuance of the PAN, despite not being named in the LOA.

[78] BIR Records, p. 994; Exhibit "R-6".
[79] BIR Records, p. 986.
[80] Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 4; Exhibit "P-2", Docket – Vol. I, p. 66.
[81] Docket – Vol. II, pp. 771–780, JSFI, Stipulated Facts, par. 12; Exhibit "P-15", Docket – Vol. I, p. 140.

Under Revenue Administrative Order (RAO) No. 02-90,[82] a GS is a Revenue Officer II, III, or IV tasked with supervising and reviewing the work and audit reports of subordinate Revenue Officers. The RAO provides:

> In the Revenue District Offices, Sector Operations Service and other audit units, all Revenue Officers I who are appointed to positions below the aforementioned supervisory positions shall be regrouped in such a way that they should be assigned under one **Revenue Officer II or Revenue Officer III or Revenue Officer IV who will function as Group Supervisor** or Section Chief.
>
> It does not matter whether a group supervisor or section chief in the audit unit will have only one Revenue Officer I under him. Under this set up, it is expected that the work of Revenue Officers I will be closely supervised and reviewed by their group supervisors or section chiefs.
>
> **All group supervisors and section chiefs shall henceforth be responsible for the work performance of their subordinates and it shall be their responsibility to closely supervise and review their work and audit reports.** (*Emphasis supplied*)

Thus, under RAO No. 02-90, Group Supervisors are Revenue Officers themselves and are not exempt from the requirement of a valid LOA when participating in audit activities. Their designation as supervisors does not alter their classification as ROs; rather, it merely assigns them the additional responsibility of overseeing and reviewing the work and audit reports of their subordinate ROs. Whether their involvement in the audit is direct or supervisory, GS must be expressly named in a valid LOA, just like any other RO. Accordingly, any audit activity or assessment undertaken by a GS without an LOA is void.

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,[83] the Supreme Court underscored this requirement:

> ... Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. It is axiomatic that **only the revenue officers actually named under the LOA are authorized to examine** the

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[82] SUBJECT: Assignment of All Revenue Officers Holding Supervisory Positions to Perform Actual Supervisory Functions, March 28, 1990.

[83] G.R. Nos. 249883-84, January 27, 2020 [Per Resolution, Second Division].

> taxpayer. This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90 ... **In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void**. (*Emphasis supplied*)

Jurisprudence underscores that an LOA is not a general authority to any revenue officer. Rather, it is a special authority granted to a particular revenue officer.[84] Therefore, the participation of unauthorized ROs, even alongside duly authorized ones, constitutes a violation of the petitioner's due process rights. There must be a grant of authority in the form of an LOA before ***any*** **revenue officer** can conduct an examination or assessment.[85] The mere continuation of an audit by authorized ROs cannot cure the participation of unauthorized officers. To emphasize, **all ROs conducting an audit or investigation of a taxpayer must be duly authorized with an LOA.**[86]

Given the lack of authority of GS Nuestro at the time he participated in the conduct of the audit, the resulting assessment is void and without legal effect.

It is axiomatic that 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.[87]

Due process is the very essence of justice itself.[88] While "taxes are the lifeblood of the government," the power to tax has its limits in spite of all its plenitude.[89] 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.[90]

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84 *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

85 *Commissioner of Internal Revenue v. Geniographics, Incorporated*, G.R. No. 264572 (Notice), July 26, 2023 [Per Resolution, Third Division].

86 *Commissioner of Internal Revenue v. ABS-CBN Film Productions, Inc.*, CTA *EB* Case No. 2619 (CTA Case No. 9982), September 28, 2023; *Commissioner of Internal Revenue v. Jopauen Realty Corp.*, CTA *EB* Case No. 2206 (CTA Case No. 8943), February 21, 2022.

87 *Commissioner of Internal Revenue v. BASF Coating + Inks Phils.*, Inc., G.R. No. 198677, November 26, 2014, 748 SCRA 760-773 [Per J. Peralta, Third Division].

88 *Macias v. Macias*, G.R. No. 149617, September 3, 2003, 457 SCRA 463-471 [Per J. Sandoval-Gutierrez, Third Division].

89 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 652 SCRA 172-188 [Per J. Mendoza, Second Division].

90 *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 241 SCRA 829-836 [Per J. Cruz, First Division].

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements is *void and produces no effect.*[91] A void assessment bears no valid fruit.[92]

In light of the invalidity of the assessment, the Court finds it unnecessary to resolve the other issues raised by the parties.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **GRANTED**.

Accordingly, respondent's Final Assessment Notice and Formal Letter of Demand dated December 22, 2020, are hereby **CANCELLED** and **SET ASIDE**. Respondent's Final Decision on Disputed Assessment dated June 15, 2022, finding petitioner liable for deficiency income tax, value-added tax, and withholding tax on compensation amounting to ₱11,934,892.46, inclusive of interest, for TY 2017, is hereby **REVERSED** and **SET ASIDE**.

Further, respondent Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** and **PROHIBITED** from proceeding with the collection of taxes in the above-captioned case.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[91] *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].

[92] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division]; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014 [Per J. Villarama, Jr., Third Division].

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