REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

SHANG PROPERTY DEVELOPERS, INC., *Petitioner,*	**CTA CASE NO. 9745**
	Members: **UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 12 2022 8:14 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition") filed by petitioner, **SHANG PROPERTY DEVELOPERS, INC.**, against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), pursuant to ***Section 7 (1) of Republic Act No. 1125, as amended by Section (7) (a) (1) of Republic Act No. 9282 ("RA 1125")***, seeks to declare the assessments issued by respondent against petitioner for deficiency Income Tax ("IT"), Value Added Tax ("VAT"), Final Withholding VAT ("FWVAT"), and Documentary Stamp Tax ("DST") for the taxable year ("TY") 2013, in the aggregate amount of Two Hundred Twenty Three Million Three Hundred Nineteen Thousand Eight Hundred Forty Seven Pesos and 44/100 (Php223,319,847.44), and as referred and/or mentioned in the Warrant of Distraint and/or Levy ("WDL"), dated 7 December 2017, as null and void.[1]

The Parties

Petitioner is a corporation duly organized and existing under Philippine laws.[2]

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1 *See* Statement of the Case and Facts in the Pre-Trial Order, Records, Vol. 2, p. 701.
2 *See* The Parties in the Petition, *id.*, Vol. 1, p. 3.

Respondent is the head of the Bureau of Internal Revenue ("BIR"), the government agency tasked to, among others, collect all national internal revenue taxes. As CIR, respondent 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 of 1997, as amended ("NIRC"),*** other tax laws, and rules and regulations.[3]

The Facts

On 15 July 2014, a Letter of Authority ("LOA") was issued by the Regional Director of Revenue Region 8 ("RR 8"), Jonas D.P. Amora, in favor of Revenue Officer ("RO") Kristine Ami and Group Supervisor ("GS") Reynaldo Causapin of Revenue District Office No. ("RDO") 47, authorizing them to audit and examine petitioner's books of accounts and other accounting records for the purpose of determining any deficiency tax liability for the period from 1 January 2013 to 31 December 2013.[4]

On 18 February 2016, petitioner executed a Waiver to extend the prescriptive period to assess in light of its request for more time to submit documents necessary for the audit.[5]

Thereafter, RO Ami requested that the audit of petitioner be transferred to another RO as she had been reassigned to RDO 49.[6] On 15 April 2016, a Letter was issued by the Revenue District Officer of RDO 47, Atty. Shirley A. Calapatia, informing petitioner that the audit of its books of accounts and other accounting records would be assigned to RO Gigette T. Ventura, to be supervised by GS Marivel G. Bello.[7] A Memorandum of Assignment, dated 13 April 2016, ("MOA") was attached to this Letter, indicating that the transfer of the audit to RO Ventura and GS Bello was due to the previous RO's transfer to another district office.[8]

Thereafter, RO Ventura and GS Bello issued a Memorandum recommending the issuance of a Preliminary Assessment Notice ("PAN").[9] On 18 November 2016, respondent issued a PAN.[10]

Petitioner filed a Protest to the PAN on 9 December 2016.[11]

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[3] *See* Facts in the Pre-Trial Order, *id.*, Vol. 2, p. 702.
[4] *Ibid;* Exhibit "R-11", BIR Records, p. 3.
[5] Exhibit "R-13", *id.*, p. 641.
[6] *Id.*, p. 643.
[7] Exhibit "R-14", *id.*, p. 646.
[8] *Id.*, p. 645.
[9] Exhibit "R-6", *id.*, pp. 676-678.
[10] Exhibits "R-7" and "P-9", *id.*, pp. 722-727.
[11] *See* Facts in the Pre-Trial Order, Records, Vol. 2, p. 702; Exhibit "R-8", BIR Records, pp. 698-721.

On 13 December 2016, respondent issued the Formal Assessment Notices ("FAN").[12] The FAN sought to collect the following deficiency taxes from petitioner:

Tax Type	Amount Due (inclusive of surcharge and interest, exclusive of compromise penalty)
IT	Php214,400,223.45
VAT	8,417,159.78
FWVAT	429,348.48
DST	43,115.73

Respondent then issued a Preliminary Collection Letter, dated 14 June 2017, ("PCL") demanding the above stated amounts.[13] Thereafter, respondent issued a Final Notice Before Seizure, dated 5 July 2017, ("FNBS") seeking the collection of the aforementioned deficiency taxes.[14]

On 7 December 2017, petitioner received the subject WDL seeking the collection of the amount provided in the FAN.[15]

On 5 January 2018, petitioner filed the instant Petition with a Motion to Suspend Collection of Taxes. The case was initially raffled to this Court's First Division.

On 11 January 2018, this Court issued Summons to respondent to file an Answer to the Petition.[16]

30 January 2018, a hearing was conducted in relation to petitioner's Motion to Suspend Collection of Taxes. In support of its Motion, petitioner presented various documentary evidence which were identified by its witness, Ms. Mabel Tacorda.[17]

On 1 March 2018, respondent filed his Answer with Motion to Dismiss,[18] before elevating all of the BIR Records appurtenant to the case on 16 April 2018.[19]

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[12] Exhibit "R-9" and "P-8", BIR Records, pp. 728-737.
[13] *Id.*, p. 752.
[14] *Id.*, p. 754.
[15] See Facts in the Pre-Trial Order, Records, Vol. 2, p. 701; Exhibit "R-10", BIR Records, pp. 764-766.
[16] Records, Vol. 1, pp. 132-133.
[17] *Id.*, pp. 300-302; Exhibit "P-6", *id.*, pp. 142-296; See Formal Offer of Evidence (Re: Motion for Suspension of Collection of Tax), *id.*, pp. 305-346.
[18] *Id.*, pp. 348-358.
[19] *Id.*, p. 370.

On 21 May 2018, petitioner filed a Reply with Comment/Opposition (To Respondent's Answer with Motion to Dismiss dated February 28, 2018).[20] This Court issued a Resolution on 4 July 2018, granting petitioner's Motion to Suspend Collection of Taxes and denying respondent's Motion to Dismiss.[21]

On 17 August 2018, petitioner filed its Pre-Trial Brief.[22] On the same date, petitioner submitted the Judicial Affidavits of its witnesses, Ms. Katherine M. Silva[23] and Ms. Tacorda.[24]

In an Order, dated 9 October 2018, the case was transferred to this Court's Third Division.[25]

On 16 October 2018, respondent filed his Pre-Trial Brief,[26] followed by his Supplemental Pre-Trial Brief on 18 October 2018.[27] On the same date, respondent also submitted the Judicial Affidavit of his witness, RO Ventura.[28]

Pre-Trial ensued on 11 December 2018.[29]

On 10 January 2019, the parties submitted their Joint Stipulation of Facts and Issue,[30] which then terminated the Pre-Trial.[31] A Pre-Trial Order was issued by the Court on 21 February 2019.[32]

On 3 April 2019, petitioner filed a Supplemental Judicial Affidavit of its witness, Ms. Silva.[33]

During the hearing held on 4 April 2019, the parties expressed their willingness to enter mediation for possible settlement.[34] On 30 May 2019, the Philippine Mediation Center Unit of the Court issued a No Agreement to Mediate as the parties decided not to pursue mediation.[35]

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20 *Id.*, pp. 380-415.
21 *Id.*, pp. 422-432.
22 *Id.*, Vol. 1, pp. 468-476.
23 Exhibit "P-18", *id.*, Vols. 1-2, pp. 477-526.
24 Exhibit "P-17, *id.*, Vol. 2, pp. 527-622.
25 *Id.*, p. 627.
26 *Id.*, pp. 632-635.
27 *Id.*, pp. 636-637.
28 Exhibit "R-16", *id.*, pp. 638-664.
29 *Id.*, pp. 667-670.
30 *Id.*, pp. 672-679.
31 *See* Resolution, dated 16 January 2019, *id.*, pp. 684-687.
32 *Id.*, pp. 699-707.
33 Exhibit "P-19", *id.*, pp. 708-713.
34 *Id.*, pp. 718-720.
35 *Id.*, pp. 728-731.

On 20 November 2019, petitioner presented its witnesses, Ms. Silva and Ms. Tacorda, but respondent moved to defer the cross-examination of said witnesses, which was allowed by this Court.[36] The cross-examination was instead performed on 6 February 2020.[37]

On 21 February 2020, petitioner filed its Formal Offer of Evidence,[38] while respondent filed, through registered mail, a Comment (to Petitioner's Formal Offer of Evidence) on 19 August 2020.[39] The Court admitted all of petitioner's offered Exhibits in a Resolution, dated 28 October 2020.[40]

On 1 October 2020, respondent filed a Motion to Admit (The attached Judicial Affidavit of Revenue Officer Kristine Ami),[41] seeking the admission of the Judicial Affidavit of his witness, RO Ami.[42] This Motion was granted by the Court, and the Judicial Affidavit of RO Ami was made part of the records.[43]

On 19 January 2021, respondent presented his witnesses, RO Ventura and RO Ami, who underwent cross-examination.[44]

On 3 February 2021, respondent filed his Formal Offer of Evidence,[45] to which petitioner filed a Comment.[46] This Court then admitted all of respondent's Exhibits.[47]

Petitioner filed its Memorandum on 28 June 2021.[48] Meanwhile, respondent filed his Memorandum on 16 July 2021 through registered mail.[49]

Thus, on 28 October 2021, this Court issued a Resolution submitting the instant case for Decision.[50]

Hence, this Decision.

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[36] *Id.*, pp. 735-737.
[37] *Id.*, pp. 742-744.
[38] *Id.*, pp. 745-838.
[39] *Id.*, pp. 843-851.
[40] *Id.*, pp. 883-885.
[41] *Id.*, pp. 858-862.
[42] *Id.*, pp. 863-880.
[43] *See* Resolution, dated 13 October 2020, *id.*, pp. 881-882.
[44] *Id.*, pp. 901-903.
[45] *Id.*, pp. 904-916.
[46] *Id.*, pp. 918-929.
[47] See Resolution, dated 17 March 2021, *id.*, pp. 932-934.
[48] *Id.*, pp. 935-992.
[49] *Id.*, pp. 994-1014.
[50] *Id.*, pp. 1015-1016.

<u>The Issues</u>[51]

"WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE ASSESSED TOTAL AGGREGATE AMOUNT OF PHP308,835,204.52 (INCLUSIVE OF SURCHARGES AND INTERESTS), AS DEFICIENCY INCOME TAX, VALUE-ADDED TAX, FINAL WITHHOLDING ON VAT, DOCUMENTARY STAMP TAX AND COMPROMISE PENALTY, IN THE TOTAL AGGREGATE AMOUNT OF PHP223,319,847.44 (INCLUSIVE OF SURCHARGES AND INTERESTS), FOR TAXABLE YEAR 2013."

"WHETHER OR NOT PETITIONER WAS SERVED AND HAS RECEIVED THE BIR FAN DATED DECEMBER 13, 2016, BEARING THE ASSESSED DEFICIENCY INCOME TAX, VALUE-ADDED TAX, FINAL WITHHOLDING ON VAT, DOCUMENTARY STAMP TAX AND COMPROMISE PENALTY OF PETITIONER FOR TAXABLE YEAR 2013, ON DECEMBER 21, 2016."

"WHETHER OR NOT THE SUBJECT BIR FAN DATED DECEMBER 13, 2016 HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE FOR FAILURE OF PETITIONER TO TIMELY FILE A PROTEST, WITHIN THIRTY (30) DAYS FROM RECEIPT THEREOF, PURSUANT TO ***SECTION 228 OF THE [NIRC],*** AND IMPLEMENTED UNDER ***SECTION 3.1.5 OF REVENUE REGULATIONS NO. 12-99, AS AMENDED ('RR 12-99')."***

"WHETHER OR NOT THE COURT HAS JURISDICTION TO ACT ON THE INSTANT PETITION FOR REVIEW."

<u>Arguments of the Parties</u>

<u>Petitioner's Arguments</u>[52]

Petitioner avers the following in its Memorandum:

a) Due to the fatal lapses committed by respondent's examiners, the FAN did not become final, executory, and demandable;

   i. The ROs who conducted the tax audit of petitioner were not named in the LOA nor had any LOA in their names; ꝶ

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[51] *See* Issues in the Pre-Trial Order, *id.*, pp. 559-560.
[52] *Id.*, pp. 940-990.

ii. The Letter of Reassignment cannot be treated as an equivalent of a LOA because it failed to comply with the essential requirements of a LOA;

iii. The assessment against petitioner has not yet become final, executory, unappealable, or uncontestable. Petitioner never received a copy of the FAN. As such, there was no opportunity for petitioner to file a Reply to the PAN or a Protest to the FLD/FAN. Accordingly, there is no merit in respondent's argument that the subject assessments have already become final and executory due to petitioner's failure to respond thereto because it had no opportunity to do so since it never received any assessment notice;

iv. Petitioner filed its judicial protest within the prescriptive period fixed by law. Since petitioner never received a copy of the PAN and FLD/FAN, it was constrained to consider the WOGs received by its affiliate companies as respondent's decision on other matters arising under the ***NIRC***. As petitioner's affiliate companies initially received the WOGs on 31 August 2018, it had until 30 September 2018 within which to file a judicial protest. Thus, petitioner timely filed the instant Petition on 28 September 2019;

b) Petitioner did not receive the FAN;

i. As testified by Ms. Silva, petitioner received the PAN through registered mail and not through personal service. On the other hand, Ms. Silva never authorized anyone to receive the FAN;

ii. This matter is confirmed by respondent's very own Accounts Receivable/Delinquent Accounts History Sheet which cannot provide the mode of service of the PAN but provides "mailed" as the mode of service of the FAN;

iii. The BIR did not overcome the burden of proving receipt of the assessments by petitioner;

iv. The BIR did not comply with the rules of service required under ***RR 12-99 and Revenue Regulations No. 18-2013;***

v. Even assuming without admitting that there is valid ground for the use of substituted service, the BIR failed to prove the circumstances necessitating such mode of service;

vi. Thus, it can only be concluded that the PAN and the alleged FAN were sent by the BIR through registered mail;

c) The BIR's actions in relation to the assessments and the WDL violated petitioner's right to due process;

i. A taxpayer must be informed of the assessments made against it;

ii. A taxpayer must be given the opportunity to present its case and adduce evidence;

iii. Respondent's right to assess petitioner for TY 2013 had already prescribed because the subject Waiver is invalid, and thus, could not have extended the period to assess petitioner; and

d) The Court has jurisdiction to act on the instant Petition.

Respondent's Counter-Arguments[53]

Respondent counter argues as follows in his Memorandum:

a) No administrative protest against the FAN was filed by the petitioner. Hence, the assessment has become final and executory and can no longer be judicially disputed;

b) The Court has no jurisdiction over the present case;

c) The assessment notices were duly served to the petitioner. Since petitioner responded to the previous BIR notices and letters that were received by the person who signed for Ms. Silva, respondent and his authorized representative were led to believe that such person was authorized to receive notices and letters from the BIR. Otherwise, if the said person was not actually authorized to receive any notices or letters from the BIR, petitioner should have raised such matter and informed the BIR as to who are authorized to communicate with the BIR. Petitioner's letters to the BIR are bereft of any indication that the person who received and signed the BIR notices and letters was not authorized. By petitioner's act of responding to the BIR notices and letters and its silence on the absence of authority to receive of its personnel, respondent, therefore, had the right to rely on its belief that the person who received the BIR notices and letters including the PAN and FAN was an authorized representative of the petitioner. Under the principle of estoppel, petitioner can no longer be allowed to deny or to falsify the authority of the person who received the BIR notices and letters, specifically the PAN and FAN;

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[53] *Id.*, pp. 997-1010.

d) The LOA issued by the Regional Director creates a principal-agent relationship between the Regional Director and the ROs named therein. The authority of RO Ventura and GS Bello to examine petitioner's books of accounts and accounting records for TY 2013 was pursuant to a LOA and their findings were ratified by the Regional Director who issued the same LOA; and

e) Petitioner is liable to pay the assessed total aggregate amount of Php223,319,847.44 (inclusive of surcharges and interests), representing deficiency IT, VAT, FWVAT, DST and compromise penalty for TY 2013.

The Ruling of the Court

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

The Court has jurisdiction over the present Petition.

Respondent claims that the Court has no jurisdiction to entertain the present Petition as the subject assessments have already become final and executory. This is terribly misplaced.

Jurisdiction by this Court over the instant case is conferred by ***Section 7 (1) of RA 1125***, to wit:

> ***"SEC. 7. Jurisdiction. -*** The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** 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 or other laws or part of law administered by the Bureau of Internal Revenue;"**
> (Emphasis and underscoring, Ours.)

Jurisdiction by the Court is not solely limited to matters directly related to assessments or refunds of internal revenue taxes. The Court is also empowered to take cognizance of other matters which arise from the implementation of the ***NIRC***. This was categorically declared by the High Court in ***Philippine Journalist, Inc. v. Commissioner of Internal Revenue***, to wit:

> **"The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue.** The wording of the

provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected."
(Emphasis and underscoring, Ours.)

In the instant case, petitioner is appealing the issuance of the WDLs, which is a manifestation of respondent's effort to collect the subject deficiency tax assessments. The issuance of the WDLs are not decisions of respondent directly related to assessments, considering that these are usually issued post-assessment. Although not directly related to assessments, the Court still has jurisdiction to determine the propriety of the issuance of such WDLs. This is because the issuance of such qualifies as a decision by respondent relating to other matters arising from the implementation of the ***NIRC*** (*i.e.*, collection of taxes) that may be appealed before this Court as provided under ***Section 7 (1) of RA 1125.***

Furthermore, while petitioner is mainly appealing respondent's efforts to collect the subject deficiency taxes, this does not mean that this Court is limited in determining whether the collection procedure employed after assessment is proper. The Court may also rule upon the validity of the assessment.[54] After all, a void assessment bears no fruit.[55] As such, no tax collection can be pursued from such a void assessment.

After determining that the instant case falls under the Court's "other matter" jurisdiction, it should now be determined whether petitioner timely filed its judicial appeal.

In the case at bar, petitioner received the WDLs on 7 December 2017.[56] As provided, the WDLs are deemed decisions by respondent relating to other matters arising from the implementation of the ***NIRC*** (*i.e.*, collection of taxes). Hence, the period to file an appeal from such decision must be tacked from the date when such WDLs were received by petitioner.

Under ***Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***, "[a] party adversely affected by a decision... of the Commissioner of Internal Revenue... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision."

Following this, petitioner had thirty (30) days from receipt of the WDLs (*i.e.*, 7 December 2017), or until 6 January 2018, within which to file a judicial appeal before this Court. As petitioner filed the instant Petition on 5 January 2018, this Court properly assumed jurisdiction over the present case.

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[54] Commissioner of Internal Revenue v. MIFFI Logistics Co., Inc., CTA *EB* No. 1979, CTA Case No. 9122, 26 November 2019.

[55] Commissioner of Internal Revenue v. Azucena T. Reyes and Azucena T. Reyes v. Commissioner of Internal Revenue, G.R. Nos. 159694 & 163581, 27 January 2006.

[56] *See* Facts in the Pre-Trial Order, Records, Vol. 2, p. 701; Exhibit "R-10", BIR Records, pp. 764-766.

<u>A LOA as an instrument of due process should particularly name the revenue officers who are authorized to conduct an audit.</u>

Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with a LOA. This is a principle undeterred under our tax laws. A 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 a 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***,[57] 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:
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>> **SEC. 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*
>>
>> (A) **Examination of Return and Determination of Tax Due**.- After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x
>
> **<u>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.</u>** 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.**

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[57] G.R. No. 222743, 5 April 2017, citing Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010.

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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.

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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 a Letter of Authority as an instrument of due process when it recently ruled in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp. ("McDonald's Case")***[58] that a Letter of Authority should specifically name the revenue officers who will pursue the tax audit, to wit:

"A. **Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation**

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.

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

> 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. **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.**
>
> 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.)

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, a 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 a MOA cannot substitute for an LOA. A MOA simply notifies a taxpayer of the transfer of an audit/investigation to another set of revenue officers. Unlike a LOA, a MOA does not show that the new set of revenue officers who will pursue the audit are properly authorized to do so. A 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, LOA No. 047-2014-00000363, dated 15 July 2014,[59] was initially issued authorizing RO Ami and GS Causapin of RDO 47 to audit/examine petitioner for possible deficiency tax liabilities for TY 2013. Subsequently, a Letter, dated 15 April 2016,[60] and a MOA, dated 13 April 2016,[61] were issued by the Revenue District Officer of RDO 47, Atty. Calapatia, transferring the audit to RO Ventura, to be supervised by GS Bello. Through the MOA issued in favor of RO Ventura and GS Bello, they were able to come up with audit findings that then resulted in the issuance of assessment notices against petitioner.[62]

In addition, RO Ventura admitted in her testimony that she audited petitioner despite not having a LOA specifically named in her favor, to wit:[63]

> "8. Q: What is your participation in the said tax examination of petitioner?
>
> A: **<u>I am the one who conducted an examination of the books of accounts and other accounting records of petitioner, to determine all its internal revenue taxes for taxable year 2013, which led to the issuance of the subject BIR PAN dated November 18, 2016 and Formal Assessment Notice (FAN) dated December 13, 2016, bearing the assessed deficiency income tax, value-added tax, final withholding on VAT, documentary stamp tax and compromise penalty of petitioner for taxable year 2013."</u>**
> (Emphasis and underscoring, Ours.)

In totality, RO Ventura and GS Bello were able to audit, examine, and inspect petitioner'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.[64]

Consequently, due to the absence of a LOA authorizing RO Ventura and GS Bello to examine petitioner, the deficiency tax assessments issued against respondent are void. Accordingly, no tax collection can be pursued based on these assessments.

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59 Exhibit "R-11", BIR Records, p. 3.
60 Exhibit "R-14", *id.*, p. 646.
61 *Id.*, p. 645.
62 Exhibit "R-6", *id.*, pp. 676-678.
63 Exhibit "R-16", Records, Vol. 2, p. 641.
64 Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, 5 April 2017.

<u>The Letter, dated 15 April 2016, and the MOA, dated 13 April 2016, cannot be treated as a valid LOA.</u>

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

To be effective, a 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."[65]

Using this line of thought, a MOA or a mere Letter 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 Letter, dated 15 April 2016, and the MOA, dated 13 April 2016 were issued by a mere Revenue District Officer, Atty. Calapatia.[66] This signatory is not among those listed above. Hence, the subject MOA cannot qualify as a valid LOA.

Considering that the revenue officers who examined and audited petitioner's books of accounts and other accounting records is not armed with a proper LOA, the resulting deficiency tax assessment is undoubtedly null and void. As the instant assessment is void, no tax collection can be pursued in relation thereto. Consequently, respondents improperly issued the subject WDLs as the same were not founded upon a valid assessment.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The PAN, FAN, PCL, FNBS and WDLs issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency IT, VAT, FWVAT and DST assessments issued against petitioner for TY 2013, in the aggregate amount of Two Hundred Twenty Three Million

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[65] Commissioner of Internal Revenue v. Sugar Crafts, Inc., CTA EB No. 1757; CTA Case No. 8738, Resolution, dated 10 September 2019.
[66] Exhibit "R-14", *Id.*, p. 646; *Id.*, p. 645.

Three Hundred Nineteen Thousand Eight Hundred Forty Seven Pesos and 44/100 (Php223,319,847.44), are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice