REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA *EB* CRIM NO. 082** *(CTA Crim. Case Nos. O-666 & O-667)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.*
VIVETECH CORPORATION/ EDWIN B. LUMAGUE (President) and ROEDEL R. LUMAGUE (Treasurer), *Respondents.*	Promulgated: NOV 0 5 2021 1:45

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by petitioner People of the Philippines, assailing the Decision, dated 1 December 2019,[2] and Resolution, dated 3 June 2020,[3] both rendered by the Court in Division,[4] insofar as it did not impose civil liability against respondents, and praying that judgment be rendered ordering respondent corporate officers to pay in full the civil liability of ₱7,990,532.90 and ₱12,512,109.26 representing deficiency income tax and VAT assessments for taxable year 2009.

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1 *EB* Records, pp. 7- 50, with annexes.
2 Division Records Vol. 2, CTA Crim. Case Nos. O-666 & O-667, pp. 995-1012.
3 *Id.*, pp. 1033-1036.
4 Court of Tax Appeals- First Division.

The Parties

Petitioner People of the Philippines is represented by complainant Bureau of Internal Revenue ("BIR"), the government agency primarily charged with the duty of assessing and collecting internal revenue taxes who holds office at the BIR, National Office Building, BIR Road, Diliman, Quezon City. It may be served with summons and other legal processes through its counsel at the Legal Division, Revenue Region 8B- South NCR, 2/F BIR Building, 313 Sen. Gil Puyat Avenue, Makati City.

Respondents Edwin B. Lumague and Roedel R. Lumague are the President and Treasurer, respectively, of respondent Vivetech Corporation, a domestic corporation duly registered with the Securities and Exchange Commission engaged in the business of trading metal products, jigs, filters, and peripherals used in semi-conductor and electronics industries with registered business address at Building 2A Sunyu Compound, Veterans Center, Sta. Cruz, Taguig City. They may be served with summons and other legal processes through their counsel at Suite 1102, 11/F 139 Corporate Center, 139 Valero St., Salcedo Village, 1227 Makati City.

The Facts

On 5 March 2018, two separate Informations were filed in the Court of Tax Appeals charging respondents for violation of ***Section 255*** in relation to ***Sections 253(d) and 256*** of the ***National Internal Revenue Code, as amended*** ("***Tax Code***"). The Informations pertinently read:

CTA Crim. Case No. O-666

> "The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **VIVETECH CORPORATION,** a domestic corporation, and **EDWIN B. LUMAGUE,** being the President and **ROEDEL R. LUMAGUE,** being the Treasurer thereof, for wilful failure to pay national internal revenue taxes for taxable year 2007 *(sic)*, in violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:
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>> 'That on or about January 2013, in Quezon City, and within the jurisdiction of this Honorable Court, accused **VIVITECH CORPORATION,** a domestic corporation and **EDWIN B. LUMAGUE,** being the President and **ROEDEL R. LUMAGUE,** being the Treasurer thereof, required by law to file income tax return and to pay the corresponding tax, did then and there wilfully, unlawfully and feloniously fail to pay the aggregate deficiency **Value – Added Tax (VAT)** for taxable year 2009 in the amount of

> Seven Million Nine Hundred Ninety Thousand Five Hundred Thirty Two Pesos and Ninety Centavos (P7,990,532.90), exclusive of surcharges and interests, corresponding to the four (4) quarters of taxable year 2009, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of final notice before seizure issued on January 16, 2013, to the damage and prejudice of the government.'
>
> **CONTRARY TO LAW."**[5]

CTA Crim. Case No. O-667

"The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **VIVETECH CORPORATION,** a domestic corporation, and **EDWIN B. LUMAGUE,** being the President and **ROEDEL R. LUMAGUE,** being the Treasurer thereof, for wilful failure to pay national internal revenue taxes for taxable year 2007 *(sic)*, in violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about January 2013, in Quezon City, and within the jurisdiction of this Honorable Court, accused **VIVITECH CORPORATION,** a domestic corporation and **EDWIN B. LUMAGUE,** being the President and **ROEDEL R. LUMAGUE,** being the Treasurer thereof, required by law to file income tax return and to pay the corresponding tax, did then and there wilfully, unlawfully and feloniously fail to pay the aggregate deficiency **income tax** for taxable year 2009 in the amount of Twelve Million Five Hundred Twelve Thousand One Hundred Nine Pesos and Twenty Six Centavos (P12,512,109.26), exclusive of surcharges and interests, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of final notice before seizure issued on January 16, 2013, to the damage and prejudice of the government.'
>
> **CONTRARY TO LAW."**[6]

CTA Crim. Case No. O-666 was raffled to the Second Division while CTA Crim Case No. O-667 was raffled to the First Division.

On 19 March 2018, the Second Division found probable cause for the issuance of warrants of arrest against Edwin B. Lumague and Roedel R. Lumague in CTA Crim. Case No. O-666.[7] On 23 March, 2018, the First

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[5] Division Records Vol. 1, CTA Crim. Case No. O-666 & O-667, pp. 6-7.
[6] *Id.*, pp. 6-7.
[7] *Id.*, pp. 205-207.

Division also found probable cause for the issuance of warrants of arrest against Edwin B. Lumague and Roedel R. Lumague in CTA Crim. Case No. O-667.[8]

On 19 April 2018, both Edwin B. Lumague and Roedel R. Lumague voluntarily appeared and submitted themselves to the jurisdiction of the respective Courts. Upon posting of the required bail bond for their provisional liberty for each of the cases and upon approval thereof by the respective Courts, the warrants of arrest were lifted and set aside.[9]

On 7 May 2018, Edwin B. Lumague and Roedel R. Lumague were arraigned in CTA Crim. Case No. O-666, both pleading not guilty.[10] Similarly, 20 June 2018 both respondents were arraigned in CTA Crim. Case No. O-667, with both pleading not guilty.[11]

In the meantime, on 6 June 2018, CTA Crim. Case No. O-667 was consolidated with CTA Crim. Case No. O-666, the latter case bearing the lower docket number.[12]

Pre-trial proceeded, and the Second Division issued a Pre-Trial Order on 13 July 2018.[13]

Trial ensued. Petitioner presented as its witnesses Revenue Officers Rhodora C. Balazo,[14] Marcelo A. Blancaflor,[15] and Mohaimin M. Abedin ("RO Abedin").[16] Petitioner's witnesses testified on the factual and legal bases of the deficiency assessments, respondents willful and deliberate failure to pay the said deficiency taxes, and the BIR's collection efforts against respondents.

Petitioner formally offered its documentary evidence on 3 September 2018.[17] Respondents filed their Comment thereto on 12 September 2018.[18]

In the interim, the original case was transferred from the Second Division to the First Division pursuant to CTA Administrative Circular No.

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8 Division Records Vol. 1, CTA Crim. Case No. O-667, pp. 105-106.
9 Division Records Vol. 1, CTA Crim. Case No. O-666 & O-667, pp. 210-211; Division Records Vol. 1, CTA Crim. Case No. O-667, pp. 129-132.
10 Division Records Vol. 1, CTA Crim. Case No. O-666 & O-667, pp. 238-242.
11 *Id.*, pp. 294-296.
12 *Id.*, pp. 251-256.
13 *Id.*, pp. 297-307.
14 Exhibits "P-22" and "P-22-a", *id.*, pp. 310-319; *id.*, pp. 390-391.
15 Exhibits "P-21" and "P-21-a", *id.*, pp. 352-359; *id.*, pp. 390-391.
16 Exhibits "P-25" and "P-25-a", *id.*, pp. 397-409; *id.*, pp. 460-460-B.
17 *Id.*, pp. 464-477.
18 *Id.*, pp. 492-506.

02-2018 dated 18 September 2018, "Reorganizing the Three (3) Divisions of the Court".[19]

In a Resolution dated 23 October 2018,[20] the Court in Division admitted all of petitioner's formally offered evidence. However, the Court noted certain discrepancies in Exhibits "P-1", "P-1-a", "P-1-b", "P-1-c", "P-2", "P-2-a", "P-12", "P-12-a", "P-12-b", "P-23", and "P-23-a".

After petitioner rested its case, respondents presented their witnesses: accused Roedel R. Lumague,[21] accused Edwin B. Lumague,[22] and respondent corporation's accountant Antonio T. Iloseo.[23] The witnesses testified on the lack of due process in the issuance of the assessment, lack of authority of the Revenue Officer conducting audit, and defects in the service of notices rendering the assessment void, as well as the lack of willful intent on the part of the accused.

Respondents formally offered their documentary evidence on 12 April 2019.[24] Petitioner filed its Comment/ Opposition thereto through registered mail on 24 April 2019.[25]

In a Resolution dated 10 July 2019,[26] the Court in Division admitted all of respondents' formally offered evidence, noting certain discrepancies in Exhibits "A-55", "A-58", "A-42-A", "A-43-A", "A-73", and "A-74".

As directed by the Court in Division, respondents filed their Memorandum on 15 August 2019.[27] Petitioner failed to file its Memorandum per Records Verification Report dated 24 September 2019.[28]

Thereafter, CTA Crim. Case Nos. O-666 & O-667 were submitted for Decision.[29]

On 11 December 2019, the Court in Division rendered the assailed Decision[30] finding the assessment void for lack of authority of the investigating revenue officer. Due to the invalidity of the assessment, no civil

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19 *Id.*, pp. 507-507.
20 *Id.*, pp. 511-514.
21 Exhibits "P-53" and "P-53-a", *id.*, pp. 518-534; Division Records Vol. 2, CTA Crim. Case Nos. O-666 & O-667, pp. 677-679.
22 Exhibits "P-51" and "P-51-a", *id.*, pp. 660-672; *id.*, pp. 677-679.
23 Exhibits "P-52" and "P-52-a", *id.*, pp. 707-725; *id.*, pp. 702- 706.
24 *Id.*, pp. 924-941.
25 *Id.*, pp. 942-944.
26 *Id.*, pp. 950-953.
27 *Id.*, pp. 954-977.
28 *Id.*, p. 978
29 *Id.*, pp. 979-A-980.
30 *Id.*, pp. 994-1012.

liability was imposed and respondents were acquitted for failure of petitioner to establish guilt beyond reasonable doubt. The dispositive portion of the assailed Decision is quoted as follows:

> "**WHEREFORE**, the accused Vivetech Corporation, Edwin B. Lumague, and Roedel R. Lumague are **ACQUITTED** in CTA Case Nos. O-666 and O-667 for failure of the prosecution to establish accused's guilt beyond reasonable doubt.
>
> The cash bail bonds posted by the accused are hereby **CANCELLED** and **ORDERED RELEASED** to the accused upon presentation of the proper documents, in accordance with usual accounting rules and regulations.
>
> **SO ORDERED**."

Petitioner filed its Motion for Partial Reconsideration[31] of the assailed Decision with respondents' Comment on 31 January 2020.[32]

In the assailed Resolution, dated 3 June 2020,[33] the Court in Division denied petitioner's Motion for Partial Reconsideration.

Petitioner and respondents received the assailed Resolution on 9 July 2020 and 29 June 2020, respectively.[34]

On 23 July 2020, petitioner filed through registered mail a Motion for Extension of Time to File Petition for Review,[35] praying for an additional fifteen (15) days from 24 July 2020 or until 8 August 2020 to file its Petition for Review.

On 24 August 2020, petitioner filed through registered mail the present Petition for Review, which was received by this Court on 4 September 2020.[36]

In a Minute Resolution, dated 3 September 2020, petitioner's Motion for Extension of Time to File Petition for Review was granted, subject to the condition that said motion for extension was filed on time.[37]

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[31] *Id.*, pp. 1013-1321.
[32] *Id.*, pp. 1025-1028
[33] *Id.*, pp. 1033-1036.
[34] *Id.*, p. 1033.
[35] *EB* Records., pp. 1-5.
[36] *EB* Records, pp. 7-50, with annexes.
[37] *Id.*, p. 6.

In a Resolution, dated 25 September 2020,[38] without necessarily giving due course to the Petition for Review, respondents were ordered to file their Comment, not a Motion to Dismiss, to the Petition for Review. On 9 October 2020, respondents filed their Comment on the Petition for Review.[39]

Thereafter, the present case was submitted for decision on 6 November 2020.[40]

Hence, this Decision.

The Issue[41]

The sole issue submitted for the Court's resolution is:

> Whether or not the Court in Division erred in not imposing the civil liability of the accused, due to alleged void tax assessments for taxable year 2009 opining that there was no letter of authority ("LOA") issued by the BIR Regional Director to "RO Abedin" authorizing the latter to conduct an examination of the books and other accounting records of petitioner for taxable year 2009.

Arguments of the Parties

Petitioner's Arguments[42]

Petitioner argues that the authority of RO Abedin to continue the tax audit/investigation of petitioner's internal revenue taxes for taxable year 2009 is warranted under ***RMO 69-2010***, which provides the guidelines for issuance of a Memorandum of Assignment. As such, according to petitioner, there is no need for the issuance of a new Letter of Authority in favor of RO Abedin considering that LOA No. eLA201000004689, dated 15 September 2010, is still valid and existing, as the BIR Regional Director of RR8-Makati had not yet expressly revoked the same.

Petitioner also insists that respondents are estopped from questioning the authority of RO Abedin, as they actively participated in the said BIR investigation and allowed RO Abedin to continue the said tax audit without

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[38] *Id.*, pp. 51-53.
[39] *Id.*, pp. 54-62.
[40] *Id.*, pp. 63-65.
[41] Issue for Resolution, Petition for Review, *id.*, p. 11.
[42] *See* Petition for Review, *id.*, pp. 11-20.

raising any protest on the alleged lack of authority of the latter until the BIR issued the assessed deficiency taxes and penalties for taxable year 2009.

Lastly, petitioner contends that accused can no longer invoke the validity of the tax assessment issued by the BIR to petitioner corporation by indirectly questioning the authority of RO Abedin who examined its books of accounts for taxable year 2009 since the subject tax assessments had already become final, executory, and enforceable for its failure to file a timely protest pursuant to ***Section 228 of the Tax Code.***

Respondents' Arguments[43]

Meanwhile, respondents maintain that the Court in Division did not err in finding that the assessment is void for lack of authority of RO Abedin. Respondents assert that the validity of the LOA only covers the authorized officers named therein and is not intended to extend to a person not mentioned in the LOA. In contradicting petitioner's contention that the MOA is sufficient to authorize RO Abedin, respondents cite ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[44] which held that the tax agent may not validly conduct examination without being authorized by the Commissioner of Internal Revenue himself or by his duly authorized representative through a LOA. Respondents also point out that the supposed Memorandum of Assignment, which allegedly clothed RO Abedin with sufficient authority, was not mentioned, identified, or testified upon, much less offered in evidence.

Respondents stress that the civil aspect of the case flows from a supposed tax assessment which should be determined valid before civil liability can be imposed upon the accused in the criminal case. They then reiterate that an invalid assessment bears no fruit and that no right by the BIR to collect flows therefrom. According to respondents, it is thus immaterial that they allowed RO Abedin to continue the tax audit, and estoppel cannot lie with the uneven keel by which the powers of the government are arrayed against the taxpayer.

Finally, respondents insist that the FAN with Details of Discrepancies and Assessment Notices was not properly served. Since petitioner failed to present proof that the FAN was properly and duly served upon respondents, it cannot be said that the assessment became final, executory, and demandable without violating the due process requirements.

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[43] *See* Comment [On the Petition for Review], *id.*, pp. 54-62.
[44] G.R. No. 222743, 5 April 2017.

The Ruling of the Court *En Banc*

After a careful and thorough evaluation and consideration of the records and arguments of both parties, the Court *En Banc* finds the Petition unmeritorious.

The Petition for Review was timely filed.

Records show that petitioner received the assailed Resolution on 9 July 2020.[45] Counting fifteen (15) days[46] from this date, petitioner only had until 24 July 2020 within which to file its Petition for Review with the Court *En Banc* or a motion for extension of time.

Petitioner filed its Motion for Extension of Time through registered mail on 23 July 2020,[47] praying for an additional period of fifteen (15) days from 24 July 2020 or until 8 August 2020 to file its Petition for Review, which the Court granted in a Minute Resolution dated 3 September 2020.[48] Petitioner was thus given until 8 August 2020 to file its Petition for Review.

However, on 3 August 2020, the Supreme Court issued ***Administrative Circular No. 43A-2020 ("Admin. Circular No. 43A-2020")***, in view of the Modified Enhanced Community Quarantine in the National Capital Region, which suspended the reglementary period for filing of petitions, appeals, complaints, motions, pleadings, and other submissions from 4 to 18 August 2020.

On 24 August 2020, petitioner filed its Petition for Review by registered mail citing ***Admin. Circular No. 43A-2020***.

Considering that the fifteen-day reglementary period from the lifting of the suspension falls on a Sunday, petitioner had until the next working day, or 24 August 2020, to file its Petition for Review. Hence, the Petition for Review was timely filed on 24 August 2020, and the Court *En Banc* acquired jurisdiction over the present case.

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[45] *See* Notice of Resolution, CTA Crim. Case Nos. O-666 & O-667 Vol. 2, p. 1033.
[46] Section 1, Rule 15 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals, as amended.
[47] *EB* Records., pp. 1-5.
[48] *Id.*, p. 6

<u>Petitioner failed to prove that the Revenue Officer was authorized to conduct audit.</u>

Petitioner insists that the LOA issued for the examination of respondent corporation's books of accounts and accounting records remains valid and that the authority of RO Abedin to continue the audit of respondent corporation through a Memorandum of Assignment is warranted under ***Revenue Memorandum Order ("RMO") No. 69-2010***. As such, there is no need for the issuance of a new LOA in favor of RO Abedin.

In refutation, respondents assert that the validity of the LOA is only insofar as the officers specifically named therein, which does not include RO Abedin. They further point out petitioner's failure to mention, identify, testify upon, or offer in evidence the said documentary evidence purportedly proving the authority of RO Abedin, notwithstanding the latter's extensive testimony through his Judicial Affidavit on his supposed authority to conduct audit.

The Court *En Banc* rules in favor of respondents.

As found by the Court in Division, petitioner did not present any evidence to show RO Abedin's authority to continue the audit of the officers originally named in the LOA. Relevant portions of the assailed Decision are quoted below:

> "Accused questions the validity of the assessment on the following grounds: (1) the assessment is void because Revenue Officer (RO) Mohaimin M. Abedin is not named in the Letter of Authority; and (2) there was improper service of notices.
>
> As to his authority, RO Abedin testified as follows:
>
> Q8: What is your participation in this case?
> A8: I am the Revenue Officer who was authorized to investigate the books of accounts and other accounting records of VIVETECH CORPORATION, to determine all its internal revenue tax liability for taxable year ending December 31, 2009, pursuant to BIR Letter of Authority No. 00003959 dated May 20, 2010, which led to the issuance of the subject BIR Preliminary Assessment Notice (PAN) dated September 7, 2012 and BIR Formal Letter of Demand and Assessment Notices (FLD/AN) dated October 11, 2012, bearing the assessed deficiency income tax, income tax (MCIT), value-added tax, expanded withholding tax, documentary stamp tax, improperly accumulated earnings tax and compromise penalty of VIVETECH CORPORATION for taxable year 2009.

Q9: Prior to the issuance of the subject PAN and FLD/AN, can you briefly explain the procedures made by the BIR to investigate the internal revenue tax case of VIVETECH CORPORATION for taxable year 2009, if any?

A9: At first, the BIR issued a Letter of Authority No. 00003959 dated May 20, 2010 to VIVETECH CORPORATION which authorized the investigation of its books of accounts and other accounting records, to determine all its internal revenue taxes for taxable year 2009. After issuance of the said LOA, the BIR subsequently served to the subject taxpayer a BIR First Notice for Presentation of Records dated 20 April 2010, and then, a BIR Final Notice for Presentation of Records dated February 7, 2011, both requiring VIVETECH CORPORATION to produce and submit to the BIR its books of accounts and other accounting records for tax audit/examination of its internal revenue tax liability for taxable year 2009.

Q10: Would you know when did VIVETECH CORPORATION receive the said Letter of Authority No. 00003959 dated May 20, 2010, BIR First Notice for Presentation of Records dated 20 April 2010, and BIR Final Notice for Presentation of Records dated February 7, 2011? SDHTEC

A10: Yes, Atty. Based on BIR records, VIVETECH CORPORATION through its representative duly received these Letter of Authority No. 00003959 dated May 20, 2010, on <u>May 24, 2010</u>; BIR First Notice for Presentation of Records dated 20 May 2010, on <u>May 24, 2010</u>; and BIR Final Notice for Presentation of Records dated February 7, 2011, on <u>February 14, 2011</u>.

Accused states that RO Abedin is not named in any of the LOAs issued in the instant case. Accused offered in evidence Exhibit "A-54" which is LOA No. eLA201000004689 dated September 15, 2010 and Exhibit "A-56" which is LOA No. 00003959 dated May 20, 2010.

LOA No. 00003959 is a manual LOA, while LOA No. eLA201000004689 is an electronic LOA (eLOA), both covering taxable year 2009. Both LOAs authorize only Revenue Officer Joseph Tejada and Group Supervisor Melba Gador to examine accused's books of accounts and other accounting records.

Clearly, RO Abedin is not one of those named in the LOAs. The prosecution also failed to present evidence to show RO Abedin's authority to continue the audit in place of RO Joseph Tejada."[49]

In ***Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.***,[50] the Supreme Court emphasized the importance of a LOA to authorize specific revenue officers to perform assessment functions as a due process requirement and admonished the practice of reassigning revenue officers through equivalent documents issued by subordinate officials:

[49] Division Records Vol. 2, CTA Crim. Case Nos. O-666 & O-667, pp. 1008-1010.
[50] G.R. No. 242670, 10 May 2021.

"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 x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case." **The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.**

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **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.

...

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.**
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> 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, petitioner did not offer any specific documentary evidence that would prove its authority to examine respondent corporation's books of accounts and other accounting records. The Court *En Banc* refers to the documentary evidence offered by respondents, particularly LOA No. 00003959, dated 20 May 2010,[51] and LOA No. eLA201000004689, dated 15 September 2010,[52] which were offered for the purpose of proving that the BIR RO Abedin is not among those authorized to examine respondent corporation's books and other relevant documents.

A perusal of the said LOAs shows that both authorize Group Supervisor Melba Gador and Revenue Officer Joseph Tejada to examine respondent corporation's books of accounts and other accounting records for the period 1 January 2009 to 31 December 2009. However, the undated Memorandum Report,[53] which discussed the results of the investigation/verification and recommended the issuance of a Preliminary Assessment Notice ("PAN") was prepared by Group Supervisor Ma. Teresa S. Reyes and Revenue Officer Mohaimin. M. Abedin. Clearly, none of these officers were authorized to conduct the audit which led to the issuance of the PAN.

Hence, the Court in Division did not err in finding that the assessment is void for lack of authority of the revenue officer who conducted the audit.

In its effort to legitimize the assessment, petitioner argues that RO Abedin was authorized to continue the tax audit through a Memorandum of Assignment issued pursuant to ***RMO No. 69-2010.***

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[51] Exhibit "A-56", BIR Records, p.1.
[52] Exhibit "A-54", *id.*, p. 3.
[53] Exhibit "P-19" and "P-19-a", *id.*, pp. 215-219.

Respondents belie petitioner's belated assertion that RO Abedin is duly authorized and points out that the subject document was not mentioned, identified, testified upon, nor offered in evidence in the course of the proceedings.

Evidence not formally offered cannot be admitted and considered by this Court. ***Section 34, Rule 132*** of the ***Revised Rules on Evidence*** provides that the court cannot consider evidence which has not been formally offered:

> "Section 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

In formally offering evidence, the specific purpose by which the document is being offered must be stated. The Supreme Court explains this in ***Katigbak v. Sandiganbayan***:[54]

> "The prosecution relies heavily on NHA Board Resolution No. 2453 dated March 12, 1992 to establish the alleged conspiracy between the petitioners and their co-accused. This resolution purportedly approved the cancellation of the NHA contract for land development with the private complainant on the ground of "mutual termination" and the award of the contract for the unfinished portion of the project to the private respondent Jose Cruz/Triad Construction. **However, the Court is bothered by the unexplained failure of the prosecution to include in its formal offer of exhibits such a very vital piece of evidence in proving the existence of the alleged conspiracy among the petitioners**.
>
> We emphasize that **any evidence a party desires to submit for the consideration of the court must formally be offered by him. Such a formal offer is necessary because it is the duty of the judge to rest his findings of fact and his judgment strictly on the evidence offered by the parties at the trial;** and no finding of fact can be sustained if not supported by such evidence. Documents not regularly received in evidence during the trial will not be considered in disposing of the issues in an action. Hence, we have held that:
>
>> When a **party offers a particular documentary instrument as evidence during trial, he must specify the purpose for which the document or instrument is offered**. He **must also describe and identify the document**, and offer the same as an exhibit **so that the other party may have an opportunity of objecting to it**. The offer of evidence is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial. Such offer may be made orally or in writing sufficient to show that

[54] G.R. No. 140183, 10 July 2003.

> the party is ready and willing to submit the evidence to the court.
>
> . . ."

(Emphasis, Ours.)

Here, as pointed out by respondents, the said Memorandum of Assignment was not formally offered in evidence and, as such, cannot be considered by the Court.

The rule admits of an exception such that evidence not formally offered may be admitted and considered when the following requisites are present: (1) the documentary evidence must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case.[55] Case law illustrates that the first requisite is deemed satisfied when a party explains the contents of the exhibits, while the second requisite is satisfied when the evidence is marked and presented during pre-trial.[56]

These requirements were, however, not met by petitioner. The records would bear that there is no evidence of positive identification of the purported Memorandum of Assignment by any of petitioner's witnesses. While RO Abedin testified in great length on his performance of assessment functions, there is no testimony establishing his supposed authority emanating from the Memorandum of Assignment. Neither was the particular document marked and presented during the course of the proceedings.

Given the foregoing, the Court *En Banc* cannot subscribe to petitioner's bare allegation that RO Abedin was authorized to conduct audit. Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[57] Furthermore, petitioner's failure to offer a vital piece of documentary evidence denied respondents' right to examine its contents and object, if necessary. The Court is likewise denied of an opportunity to make a proper determination of the veracity of its contents and ascertain if it proves the purpose for which it was offered.

It bears emphasizing that cases filed before the Court of Tax Appeals are litigated *de novo*.[58] It is thus incumbent upon party-litigants to prove every minute aspect of their case.[59] *h*

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[55] Tan v. United Coconut Planters Bank, G.R. No. 213156, 29 July 2019 *citing* Mato v. Court of Appeals G.R. No. 116149, 23 November 1995; Commissioner of Internal Revenue v. Jerry Ocier, G.R. No. 192023, 21 November 2018 *citing* Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc. G.R. No. 197515, 2 July 2014.

[56] People v. Villanueva, G.R. No. 181829, 1 September 2010 *citing* Ramos v. Dizon, G.R. No. 137247, 7 August 2006.

[57] Loadstar International Shipping, Inc. v. Erispe, Jr., G.R. No. 221227, 19 February 2020.

[58] Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, 2 July 2014.

[59] *Ibid.*

All told, in view of the fatal infirmity of the lack of authority of the revenue officer conducting audit which equates to a denial of respondents' right to due process, the Court *En Banc* affirms the finding of the Court in Division that the deficiency assessment against them are void.

Respondents are not estopped from questioning the authority of Revenue Officer Abedin.

Petitioner's argument that respondents are estopped from questioning the authority of RO Abedin is untenable.

The principle of estoppel is provided in ***Section 2(a), Rule 131 of the Revised Rules on Evidence*** as follows:

> "Section 2. Conclusive presumptions. – The following are instances of conclusive presumptions:
> (a) Whenever a party has, by his or her own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he or she cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it; ..."

Estoppel is applied when the following elements concur: *(1)* the actor, who usually must have knowledge, notice, or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct, or silence; *(2)* the other in fact relies, and relies reasonably or justifiably, upon that communication; *(3)* the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *(4)* the actor knows, expects, or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[60]

The Court finds that petitioner failed to establish the elements of estoppel. No sufficient evidence was presented to prove that respondent corporation had knowledge, notice or suspicion that RO Abedin had no authority to conduct audit. There is also no indication that respondents communicated such fact to petitioner in a misleading way, either by words, conduct, or silence.

Moreover, the doctrine of estoppel is predicated on equity, which cannot be applied in contravention of statutory law.[61] ***Section 6(A)*** in relation

[60] Rural Bank of Malasiqui, Inc. v. Ceralde, G.R. No. 162032, 25 November 2015, *citing* Philippine Bank of Communications v. Court of Appeals, G.R. No. 109803, 20 April 1998.
[61] Agra, et al. v. Philippine National Bank, G.R. No. 133317, 29 June 1999.

to ***Section 10(c) of the Tax Code*** clearly provides that the power to make assessments and to issue Letters of Authority to conduct examination is lodged with the Commissioner of Internal Revenue or his duly authorized representatives. The foregoing provisions were interpreted in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***[62]and ***Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.***,[63] both of which emphasize that the authority of the revenue officers to conduct audit is a due process requirement.

Finding that the assessment is void for having been conducted without authority, the Court finds it no longer necessary to discuss in length the issue on the alleged finality of the assessment due to failure of respondents to file a timely protest. It is well-settled that a void assessment bears no fruit.[64] Correspondingly, a void assessment cannot attain finality.

Petitioner cannot enforce the civil liability arising from the deficiency assessment in the present case.

Even assuming that the assessments are valid, the Court *En Banc* cannot grant petitioner's prayer for respondents to pay in full the amount of civil liability in the amounts of ₱7,990,532.90 and ₱12,512,109.26 representing deficiency income tax and VAT assessments.

In the case of ***Gaw, Jr. v. Commissioner of Internal Revenue***,[65] the Supreme Court explained that the civil liability deemed instituted with the criminal action is only the civil liability *ex delicto*. It does not include civil liability arising from a different source of obligation such as those arising from law. It held:

> "*The civil action filed by the petitioner to question the FDDA is not deemed instituted with the criminal case for tax evasion*
>
> Rule 9, Section 11 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:
>
> > **SEC.11.** *Inclusion of civil action in criminal action.* — In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be

[62] G.R. No. 222743, 5 April 2017.
[63] G.R. No. 242670, 10 May 2021.
[64] Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. Nos. 197945, 204119-20, 9 July 2018; Commissioner of Internal Revenue v. Metro Star Superama, Inc. G.R. No. 183571, 8 December 2010.
[65] G.R. No. 222837, 23 July 2018.

> deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.

Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam*, is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case.

We do not agree.

Rule 111, Section 1 (a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.

It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.

In the case of *Republic of the Philippines v. Patanao*, We held that:

> **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes. It is error to hold, as the lower court has held that the judgment in the criminal case nos. 2089 and 2090 bars the action in the present case. **The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of**

> **the criminal acts charged.**x x x. (Citations omitted and emphasis ours)

Further, in a more recent case of *Proton Pilipinas Corp. v. Republic of the Phils.*, We ruled that:

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it**. It should be borne in mind that **the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute**. The **payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him**. (Citations omitted and emphasis ours)"

With the clear pronouncement in ***Gaw, above***, the petitioner cannot continue to insist that respondents should be here held liable for their alleged deficiency income tax and VAT assessments, the same having arisen from a different source of obligation and not from the crimes as charged. The present criminal proceeding may not be converted into a deficiency assessment proceeding in the guise of elevating the civil aspect of the criminal action.

With respect to the civil liability *ex delicto,* the acquittal of the accused does not always lead its extinguishment. The civil liability *ex delicto* is only deemed extinguished when there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. If the acquittal is only based on reasonable doubt of the accused, it may still be held liable to pay the civil liability ex delicto. ***Dy v. People***[66] is instructive on this point:

> "The Civil Code states that when an accused in a criminal prosecution is acquitted on the ground that his guilt has not been proven beyond reasonable doubt, a civil action for damages for the same act or

[66] G.R. No. 189081, 10 August 2016.

omission may be filed. In the latter case, only preponderance of evidence is required. This is supported by the Rules of Court which provides that the extinction of the criminal action does not result in the extinction of the corresponding civil action. **The latter may only be extinguished when there is a "finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist."** Consistent with this, the Rules of Court requires that in judgments of acquittal the court must state whether "the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist."

Thus, whether an exoneration from the criminal action should affect the corresponding civil action depends on the varying kinds of acquittal. In *Manantan v. Court of Appeals*, we explained —

> Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. **First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability**, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. **There being no delict civil liability ex delicto is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the delict complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only**. This is the situation contemplated in Article 29 of the Civil Code, where the civil action for damages is "for the same act or omission." Although the two actions have different purposes, the matters discussed in the civil case are similar to those discussed in the criminal case. However, the judgment in the criminal proceeding cannot be read in evidence in the civil action to establish any fact there determined, even though both actions involve the same act or omission. The reason for this rule is that the parties are not the same and secondarily, different rules of evidence are applicable. Hence, notwithstanding herein petitioner's acquittal, the Court of Appeals in determining whether Article 29 applied, was not precluded from looking into the question of petitioner's negligence or reckless imprudence.

In *Dayap v. Sendiong*, we further said —

> **The acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability**

> **where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.**
>
> Hence, a civil action filed for the purpose of enforcing civil liability *ex delicto*, even if mandatorily instituted with the corresponding criminal action, survives an acquittal when it is based on the presence of reasonable doubt. In these instances, while the evidence presented does not establish the fact of the crime with moral certainty, the civil action still prevails for as long as the greater weight of evidence tilts in favor of a finding of liability. This means that while the mind of the court cannot rest easy in penalizing the accused for the commission of a crime, it nevertheless finds that he or she committed or omitted to perform acts which serve as a separate source of obligation. There is no sufficient proof that the act or omission is criminal beyond reasonable doubt, but there is a preponderance of evidence to show that the act or omission caused injury which demands compensation."
> (Emphasis, Ours.)

In the present case, respondents were charged for violation of ***Section 255 in relation to Sections 253(d) and 256 of the Tax Code***, which has the following elements: (1) accused are required under the Tax Code or its rules and regulations to pay any tax; (2) accused failed to pay the required tax at the time required by law or rules and regulations; and (3) accused's failure to pay the required tax at the time required by law or rules and regulations is willful.

In acquitting the respondents, the Court in Division found that prosecution failed to establish the existence of the second and third elements of the crime charged on the ground that the assessments issued are void for lack of authority of the revenue officer conducting the audit and, thus, that the obligation to pay did not arise.

Clearly, the acquittal was based on the finding that respondents did not commit the crime charged. Thus, the civil liability based on delict is deemed extinguished. Accordingly, respondents cannot be made liable and therefore, are also absolved from paying the civil liability ex delicto.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by People of the Philippines is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated 1 December 2019 and Resolution dated 3 June 2020, both rendered by the Court in Division, are hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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