REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

LIBERTY FLOUR MILLS, INC.,
Respondent.

CTA *EB* NO. 2321
(CTA Case No. 9603)

Present:

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

Promulgated:
MAR 02 2022 4:20 pm

x- -x

DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue (CIR) praying for the reversal of the Decision dated March 2, 2020 and Resolution dated July 27, 2020, which cancelled and set aside the assessments against Liberty Flour Mills, Inc. (Liberty Flour) involving deficiency income tax, improperly accumulated earnings tax (IAET), value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST) in the aggregate amount of Php204,013,305.81, inclusive of surcharge, interest and compromise penalties, for taxable year 2009.

FACTS

The CTA 2nd Division narrated the antecedents, as follows:

Petitioner [now, respondent] Liberty Flour Mills, Inc. is a corporation duly organized and existing under Philippine laws with business address at No. 835 Liberty Building, A. Arnaiz Ave., Legaspi Village, Makati City.

On the other hand, respondent [now, petitioner] is the duly appointed Commissioner of Internal Revenue who is tasked to assess and collect all national internal revenue taxes, fees and charges and enforce all forfeitures, penalties, and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On June 4, 2014, [Liberty Flour] received the *Formal Letter of Demand* (FLD) dated May 30, 2014, through OIC-Assistant Commissioner, Large Taxpayers Service (LTS) of the BIR, signed by Mr. Alfredo V. Misajon, OIC-Assistant Commissioner, assessing [Liberty Flour] for alleged deficiency income tax, improperly accumulated earnings tax (IAET), value-added tax (VAT), final withholding tax (FWVAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), capital gains tax (CGT), documentary stamp tax (DST), and final withholding tax (FWT), in the aggregate amount of P774,710,307.07, inclusive of increments, for taxable year 2009.

[Liberty Flour] filed its *protest letter* to the said FLD on July 4, 2014, contesting the said assessments.

On September 5, 2014, [Liberty Flour] filed its *supplemental protest*. Thereafter, on January 27, 2015, [Liberty Flour] filed a *second supplemental protest letter*.

Subsequently, on June 30, 2016, [Liberty Flour] received the *Final Decision on Disputed Assessment* (FDDA) dated June 24, 2016 issued by Mr. Nestor S. Valeroso, Assistant Commissioner, LTS, declaring that [Liberty Flour] is still liable for income tax, VAT, FWT, WTC, FT, and DST, in the total amount of P204,992,889.42, for taxable year 2009, including surcharge, interests and compromise penalties, the details of which are broken down as follows:

xxx xxx xxx

On July 22, 2016, [Liberty Flour] filed a *Motion for Reconsideration* of the said FDDA, contesting the BIR's findings, except those pertaining to deficiency FWVAT and FWT, which [Liberty Flour] settled and paid to the BIR through the Electronic Filing and Payment System (eFPS).

On April 26, 2017, [Liberty Flour] received [the CIR's] *Decision* dated April 24, 2017, denying, in effect, [Liberty Flour's] *Motion for Reconsideration* of the FDDA.[1]

---

[1] EB Docket, Division Decision dated March 2, 2020, pp. 25-26.

Om

On May 26, 2017, Liberty Flour filed its Petition for Review with the Court of Tax Appeals (CTA) Division. After trial, the CTA 2nd Division rendered the assailed Decision, which granted Liberty Flour's Petition for Review, as follows:

> **WHEREFORE**, the *Petition for Review* is **GRANTED**. Accordingly, the FDDA dated June 24, 2016 issued by Assistant Commissioner Nestor S. Valeroso, and respondent's *Decision* dated April 24, 2017, as well as the assessments for deficiency income tax, IAET, VAT, EWT, and DST, in the aggregate amount of P204,013,305.81, inclusive of surcharge, interests and compromise penalties, for taxable year 2009, are **CANCELLED and SET ASIDE**.
>
> **SO ORDERED**.[2]

The CIR's Motion for Reconsideration of the above Decision was denied in the Special 2nd Division's Resolution[3] dated July 27, 2020. The Court in Division found that the revenue officers (ROs) were not properly authorized through a valid Letter of Authority (LOA).

On September 1, 2020, the CIR filed his Petition for Review.[4] Upon notice,[5] Liberty Flour posted its Comment/ Opposition [to Petition for Review dated 24 August 2020][6] on November 9, 2020, which was received by the Court on December 3, 2020.

The case was also referred to mediation, however, the parties decided not to have their case mediated.[7]

Thus, the case was deemed submitted for decision on February 23, 2021.[8]

ISSUES

The CIR makes the following assignment of errors:

---

[2] EB Docket, Division Decision dated March 2, 2020, pp. 52-53.
[3] EB Docket, pp. 55-60.
[4] EB Docket, pp. 1-17.
[5] EB Docket, Resolution dated October 16, 2020, pp. 70-71.
[6] EB Docket, pp. 72-81.
[7] EB Docket, pp. 84-85, in relation to p. 86.
[8] EB Docket, pp. 88-89.

om

I. Whether or not the Honorable Court in Division erred in ruling on an issue never raised by respondent, never joined by the pleadings, never raised during the pre-trial and never defined by the court in the pre-trial order. Thus, petitioner's basic right to fair play and due process was violated when the Court ruled to grant the Petition on the ground of want of authority of revenue officers.

II. Assuming the Court may suddenly decide the case based on an issue that was never raised by respondent, never joined by the pleadings, never raised at the pre-trial order, never defined by the Court in the pre-trial order and never tried by the parties – still the assessment was issued pursuant to a valid Letter of Authority and Memorandum of Assignment.[9]

CIR's arguments

The CIR argues that he was denied procedural and substantive due process since he was neither heard nor given the opportunity to be heard on the issue of authority of the revenue officers.

The CIR also argues that the head of the investigating office, like the Chief of the Regular Large Taxpayers Audit Division I (RLTAD I), may validly reassign the case to another revenue officer through the issuance of a Memorandum of Assignment (MOA). Thus, the revenue officers to whom the case was reassigned was properly clothed with the authority to continue the audit examinations, and accordingly, the assessments made by the revenue officers are valid.

Liberty Flour's arguments

Liberty Flour counter-argues that the CTA has the power to rule upon other issues which are necessary to achieve an

---

[9] EB Docket, Petition for Review, p. 4.

orderly disposition of the case, pursuant to Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA). Liberty Flour also states that the issue on the authority of the revenue officers directly affects the issue on whether the subject tax assessments are valid.

Liberty Flour further argues that the revenue officers who actually conducted the examination of its books of accounts and other accounting records were merely issued a MOA by the Chief of the RLTAD I; that a MOA cannot grant authority to revenue officers to conduct an examination of a taxpayer's records; and, that a MOA does not validly amend or extend the authority given by a previously issued LOA. Thus, the assessments are void for lack of prior authority on the part of the revenue officers who conducted the audit examination of its books of accounts and other accounting records.

RULING OF THE COURT

The Petition for Review lacks merit.

The CTA may not limit itself to the issues explicitly stated by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.

Section 1, Rule 14 of the RRCTA states that "[i]n deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." Based on the foregoing provision, this Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.[10]

Needless to state, the issuance of a valid formal assessment is a substantive prerequisite for collection of

---

[10] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

taxes.[11] Recently, the Supreme Court stated in *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue,*[12] that:

> ... The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.
>
> Lastly, as stated in Presiding Justice Del Rosario's dissenting opinion on the CTA *En Banc* decision, the failure of petitioner to raise at the earliest opportunity, the lack of the revenue officer's authority, does not preclude the Court from considering the same because the said issue goes into the intrinsic validity of the assessment itself.

Clearly, there was no error on the part of the CTA 2nd Division to rule on the issue of authority of the revenue officers, despite not having been raised by the parties.

An LOA is required for the investigation of a taxpayer's books of accounts and accounting records.

We now resolve the issue on the necessity of a validly issued LOA for the investigation and examination of a taxpayer's books and accounting records.

In the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[13] (*McDonald's case*) the Supreme Court reiterated the necessity of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation of a taxpayer's books of accounts, as follows:

> **"The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (*LOA*) and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps**

[11] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.
[12] G.R. No. 241848, May 14, 2021.
[13] G.R. No. 242670, May 10, 2021.

> **the statutory power of the Commissioner of Internal Revenue (*CIR*) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (*BIR*) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.**
>
> xxx xxx xxx

This case is an occasion for the Court to rule on a disturbing trend of tax audits or investigations conducted by revenue officers who are not specifically named or authorized in the LOA, under the pretext that the original revenue officer authorized to conduct the audit or investigation has been reassigned or transferred to another case or place of assignment, or has retired, resigned or otherwise removed from handling the audit or investigation.

This practice typically occurs as follows: (i) a valid LOA is issued to an authorized revenue officer; (ii) the revenue officer named in the LOA is reassigned or transferred to another office, case or place of assignment, or retires, resigns, or is otherwise removed from handling the case covered by the LOA; (iii) the revenue district officer or a subordinate official issues a memorandum of assignment, referral memorandum, or such equivalent document to a new revenue officer for the continuation of the audit or investigation; and (iv) the new revenue officer continues the audit or investigation, supposedly under the authority of the previously issued LOA.

This practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been subject of several CTA decisions, including *Ithiel Corporation v. CIR,*[14] *Strawberry Foods Corporation v. CIR,*[15] *Sugar Crafts Inc. v. CIR,*[16] *CIR v. Marketing Convergence, Inc.,*[17] *Exclusive Networks-PH Inc. v. CIR,*[18] and the decision in the court *a quo.*[19]

<u>The Court hereby puts an end to this practice</u>.

I. The Reassignment or Transfer of a Revenue Officer

[14] CTA Case No. 8689, dated July 4, 2016.
[15] CTA Case No. 8569, dated January 7, 2016.
[16] CTA Case No. 8738, August 16, 2017.
[17] CTA EB Case No. 2109 (CTA Case No. 9301), December 3, 2020.
[18] CTA Case No. 9689, February 23, 2021.
[19] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, CTA EB Case No. 1535 (CTA Case No. 8655), dated January 4, 2018.

Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. 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 belongs only to the CIR himself or his duly authorized representatives.

Section 6 of the NIRC provides:

> SECTION 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –
>
> (A) Examination of Return and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, the **Commissioner** or **his duly authorized representatives** may authorize the examination of any taxpayer and the assessment of the correct amount of tax[.] (Emphasis supplied)

Section 10(c) of the NIRC provides:

> SECTION 10. Revenue Regional Director. – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
>
> x x x
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.] (Emphasis supplied)

Section 13 of the NIRC provides:

> SECTION 13. Authority of a Revenue Officer. – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment

> functions in any district may, pursuant to a **Letter of Authority issued by the Revenue Regional Director**, 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 supplied)

Section D(4) of RMO No. 43-90 dated September 20, 1990 provides:

> For the proper monitoring and coordination of the **issuance of Letter of Authority**, the only BIR officials authorized to **issue and sign Letters of Authority** are the Regional Directors, the **Deputy Commissioners** and the **Commissioner**. For the exigencies of the service, **other officials** may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself. (Emphasis supplied)

Pursuant to the above provisions, only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. 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. There must be a grant of authority, in form of a LOA, before any revenue officer can conduct any of these kinds of examination or assessment. 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.**

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 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. <u>**Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers**</u>**.** In other words, <u>**identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**</u>

We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, 'any' revenue officer may then act under such validly issued LOA.

The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers, pursuant to Sections 6, 10(c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, a revenue officer. Hence, petitioner is mistaken to characterize the LOA as a document 'issued' to the taxpayer, and that once so issued, 'any' revenue officer may then act pursuant to such authority.

B. The Use of <u>Memorandum of Assignment</u>, Referral Memorandum, or Such Equivalent Document,

am

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. 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.**

C. Revenue Memorandum Order No. 43-90 dated September 20, 1990 Expressly and Specifically Requires the Issuance of New LOA if Revenue Officers are Reassigned or Transferred

Section D(5) of RMO No. 43-90 dated September 20, 1990 provides:

> Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.

The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases. The provision involves the following two separate phrases: 're-assignment/transfer of cases to another RO(s)', on the one hand, and 'revalidation of L/As which have already expired', on the one hand, and 'revalidation of L/As which have already expired', on the other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA. The new LOA must then have a corresponding relevant notation, including the previous LOA number and date of issue of the said LOAs.

The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the law it supposedly implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.

The petitioner is mistaken. Section 291 of the NIRC states:

> SECTION 291. In General. – All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.

Section D(5) of RMO No. 43-90 dated September 20, 1990 is not contrary to or inconsistent with the NIRC. In fact, the NIRC codifies the LOA requirement in RMO No. 43-90. While RMO No. 43-90 was issued under the old tax code, nothing in Section D(5) RMO No. 43-90 is repugnant to

> Sections 6(A), 10 and 13 of the NIRC. Hence, pursuant to Section 291 of the NIRC. RMO No. 43-90 remains effective and applicable.
>
> Even the Operations Group of the BIR now recognizes that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate LOA, is no longer tenable. Thus, in Operations Memorandum No. 2018-02-03 dated February 9, 2018, the Operations Group has decided that 'the issuance of a MOA for reassignment of cases in the aforementioned instances [*i.e.*, the original revenue officer's transfer to another office, resignation, retirement, *etc.*] shall be continued.'
>
> xxx xxx xxx
>
> In summary, **We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.**" *(Emphases and underscoring added)*

We now review the authorities of the ROs assigned to examine Liberty Flour's books of accounts and other accounting records.

LOA No. LOA-116-2010-00000125[20] dated September 17, 2010 was issued, authorizing ROs Alpha Betty Tanguilig, Miguel Sulit, William Sundiam and Wilfredo Reyes, under Group Supervisor (GS) Joriz Saldajeno, to conduct the examination of Liberty Flour's books of accounts and other accounting records for taxable year 2009.

MOA dated May 3, 2011[21] assigning RO Olivia F. Aviles and GS Marivic Bautista to conduct the examination of Liberty Flour's books of accounts and other accounting records for taxable year 2009, was issued by Ms. Edralin M. Silario, OIC-

[20] BIR Records, Exhibit "R-3", p. 3.
[21] BIR Records, Exhibit "R-1", p. 1.

Chief of the Large Taxpayers Regular Audit Division 1 (LTRAD 1).

A second MOA dated August 5, 2016 [22] was issued assigning RO Aurora S. Pelayo and GS Olivia F. Aviles to conduct the examination of Liberty Flour's books of accounts and other accounting records for taxable year 2009. This was issued by Mr. Cesar D. Escalada, Chief of the LTRAD 1.

Pursuant to the *McDonald's case*, the foregoing MOAs did not clothe RO Olivia F. Aviles and, later, RO Aurora S. Pelayo, with the requisite authority to continue the examination of Liberty Flour's books of accounts and other accounting records for taxable year 2009. If the RO who conducted the examination of the taxpayer is not duly authorized to do so, the assessment is inescapably void. A void assessment bears no fruit.[23]

Consequently, there is no cogent reason to reverse or modify the assailed Decision and Resolution.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution of the Court's 2nd Division, dated March 2, 2020 and July 27, 2020, respectively, are **AFFIRMED**.

The CIR, his representatives, agents, or any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject deficiency taxes.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

---

[22] BIR Records, p. 1014.
[23] *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

(With Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With Separate Concurring Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
(With Separate Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(I join the Separate Concurring Opinion
Of Justice Ma. Belen M. Ringpis-Liban)
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LIBERTY FLOUR MILLS, INC.,
Respondent.

CTA EB NO. 2321
(CTA Case No. 9603)

PRESENT:

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

PROMULGATED:
MAR 02 2022 4:20 pm

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review ***solely*** on the ground that the Formal Letter of Demand (FLD) and Assessment Notices, all dated May 30, 2014, issued against respondent is void as the examination of respondent's books of accounts was made by Revenue Officer (RO) Olivia F. Aviles and Group Supervisor (GS) Marivic Bautista *sans* a valid Letter of Authority (LOA). Records disclose that their authority emanated from a Memorandum of Asssignment (MOA) dated May 3, 2011 issued by Ms. Edralin M. Silario, OIC-Chief of the Large Taxpayers Regular Audit Division 1 (LTRAD 1).

The National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **Commissioner of Internal Revenue (CIR) or from his duly**

authorized representatives before an examination of a taxpayer may be made.[1] Section 6 thereof 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. xxx" (*Boldfacing and underscoring supplied*)

Relatedly, Section 13 of the NIRC of 1997, as amended, states:

> "Sec. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Boldfacing and underscoring supplied*)

Under Revenue Memorandum Order (RMO) No. 29-07,[2] the equivalent of a Revenue Regional Director in the LTS is the **Assistant Commissioner/HREA** who is also authorized to issue LOAs for audit of large taxpayers, *viz.*:

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

---

[1] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[2] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants.</u>**" (*Boldfacing and underscoring supplied*)

Thus, the *"authorized representative"* contemplated under Section 6 of the NIRC of 1997, as amended, who is vested with the power to issue an LOA is the Revenue Regional Director, pursuant to Section 13 thereof, **or the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service**.

The MOA dated May 3, 2011 issued by the OIC-Chief of LTRAD 1 was not sufficient to clothe RO Aviles and GS Bautista with authority to continue the audit of respondent and recommend the issuance of the FLD and Assessment Notices, assessing respondent for deficiency taxes for taxable year 2009. As a consequence, the FLD and Assessment Notices issued against respondent are null and void.

With regard to the MOA dated August 5, 2016 issued by the Chief of LTRAD 1 which authorizes RO Aurora S. Pelayo and GS Olivia F. Aviles to conduct a **reinvestigation** of respondent's records pursuant to the latter's request for reconsideration of the Final Decision on Disputed Assessment (FDDA) dated June 24, 2016, I submit that it would not invalidate the FLD and Assessment Notices previously issued against respondent.

Needless to say, the requirement for the issuance of an LOA by the CIR or his duly authorized representative, as mandated under Sections 6 and 13 of the NIRC of 1997, as amended, pertains to such stage where the RO and GS would conduct an audit of the books of accounts and other accounting records of the taxpayer after the filing of the latter's tax returns, and recommend the issuance of a Preliminary Assessment Notice, and FLD and Assessment Notices. It does not envision a situation where a reinvestigation will have to be conducted to come up with a final decision as a consequence of the filing of a request for reconsideration of the FDDA, as by then, the financial and other relevant documents of a taxpayer, as examined by RO and GS during the initial stage of the assessment process, already formed part of the BIR Records, with the exception of those that may thereafter be submitted voluntarily by the taxpayer in support of its request for reconsideration of the FDDA.

Moreover, even assuming that an LOA is required for purposes of conducting the reinvestigation, the absence thereof would only invalidate the resulting FDDA or final decision on the request for reconsideration of the FDAA. Notwithstanding the nullity of the FDDA or final decision, the FLD and Assessment Notices are not *ipso facto* rendered void. *Commissioner of Internal Revenue vs. Liquigaz Philippine Corporation / Liquigaz Philippine Corporation vs. Commissioner of Internal Revenue,*[3] declare:

> "**A void FDDA does not *ipso facto* render the assessment void**
>
> xxx xxx xxx
>
> 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.**
>
> xxx xxx xxx
>
> 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 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.**" (Boldfacing supplied)

Considering that RO Aviles and GS Bautista were not imbued with authority to audit respondent, pursuant to the MOA dated May 3, 2011 issued by the OIC-Chief of LTRAD 1, I submit that the FLD and Assessment Notices, all dated May 30, 2014, are void.

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[3] G.R. Nos. 215534 and 215557, April 18, 2016.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LIBERTY FLOUR MILLS INC.,
Respondent.

CTA EB NO. 2321
(CTA Case No. 9603)

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

Promulgated:
MAR 02 2022 4:20pm

x- -x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue ("Petitioner") for lack of authority of the examining Revenue Officers ("ROs"), but for the reasons to be discussed below.

In my humble opinion, a new letter of authority ("LOA") is not needed in case of re-assignment as long as the authority given to the new RO is signed by the Commissioner of Internal Revenue ("CIR") or his duly authorized representative. This is permissible under the laws of agency under the Civil Code.

In the case at bar however, the two (2) Memorandum of Authority (MOA) were issued not by the duly authorized representative of Petitioner, the Assistant Commissioner or Head Revenue Executive Assistant of the Large Taxpayers

Division[1], but by Ms. Edralin M. Silario, OIC-Chief of the Large Taxpayers Regular Audit Division I ("LTRAD 1"), and Mr. Cesar D. Escalada, Chief of the LTRAD 1. Hence, the ROs who audited the books of account of Respondent are without any valid authority to do so.

I am also of the firm belief that the ruling of the Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[2] (*"Mcdonald's"*) should not be haphazardly applied in cases regarding the validity or invalidity of an RO's authority. A perusal of the case discloses that *Mcdonald's* invalidated the practice of reassigning ROs through a Revalidation Notice or Memorandum of Reassignment or any equivalent letter, only because it was presumed that these documents are issued by a subordinate official and not by the CIR or his duly authorized representative, to wit:

> "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 <u>not issued by the CIR or his duly authorized representative</u> for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. <u>It is issued by the revenue district officer or other subordinate official</u> 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

---

1 The position equivalent to a Revenue Regional Director for the Large Taxpayers Division, who is authorized to issue the LOA, is identified in Revenue Memorandum Order No. 29-07 (September 26, 2007) as the Assistant Commissioner or Head Revenue Executive Assistant.

2 G.R. No. 242670, May 10, 2021.

> 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.**[3]

The Supreme Court in the said case did not consider instances where the Revalidation Notice or Memorandum of Reassignment or any equivalent letter is issued by the CIR himself or his duly authorized representative. Thus, it seems that the assumptions from which *Mcdonald's* derived the conclusion that there should be issuance of a new LOA if a RO is reassigned or transferred, is incomplete and as such should not be applied.

From all the foregoing, I vote to **AFFIRM** the Decision dated March 02, 2020 and Resolution dated July 27, 2020 of the court *a quo*.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[3] *Emphasis and underscoring supplied.*

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2321** (CTA Case No. 9603)
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
LIBERTY FLOUR MILLS, INC., *Respondent.*	Promulgated: MAR 02 2022 4:20

x -- x

SEPARATE CONCURRING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the *ponencia*'s finding that the assessment is void for lack of authority of the new revenue officers ("ROs") who continued the audit/examination of respondent's books and records. With utmost respect, however, I elaborate on the following reasons for my concurrence:

First, the *ponencia* relied on ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*** ("***McDonald's Case***")[1] in stating that "the MOAs did not clothe RO Olivia F. Aviles and RO Aurora S. Pelayo with the requisite authority to continue the examination of Liberty Flour's books of accounts and other accounting records for taxable year 2009."

While I agree that the ***McDonald's Case*** admonished the practice of reassigning ROs through a memorandum of assignment, referral memorandum, or any other equivalent documents, it is only because these

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

documents are typically issued by subordinate officials and not by the CIR or his duly authorized representatives.

As quoted in the *ponencia*, the ***McDonald's Case*** pertinently reads:

> "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 <u>not issued by the CIR or his duly authorized representative</u> for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. <u>It is issued by the revenue district officer or other subordinate official</u> 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 <u>typically signed by the revenue district officer or other subordinate official</u>, and <u>not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC</u>.** 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 and underscoring supplied.)

From the foregoing, it is my humble view that a memorandum of assignment, referral memorandum, or any equivalent document **may still be considered as an equivalent of a new LOA** provided it contains all the elements necessary to establish a Contract of Agency between the CIR or his duly authorized representative and the new RO. Included in these elements is the authority of the person issuing the memorandum of assignment, referral memorandum, or any equivalent document who must be the CIR or his duly authorized representative and not a subordinate official.

This is consistent with the ruling of the Court *En Banc* in ***Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.***[2] and ***Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation,***[3] which were affirmed by the Supreme Court in ***Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.,***[4] and ***Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation.***[5]

Second, as found in the *ponencia,* the authority of the ROs who continued the audit originates from a Memorandum of Assignment ("MOA"), dated 3 May 2011, issued by the OIC- Chief of the Large Taxpayers Regular Audi Division 1 and a second MOA dated 5 August 2016 issued by Cesar D. Escalada, Chief of the LTRAD 1.

The Court *En Banc* has ruled in several instances that the LTRAD Chief is not among the duly authorized representatives of the CIR for purposes of granting authority to examine the books of accounts of a taxpayer.[6] The LTRAD Chief is not the CIR, Revenue Regional Director, or an Assistant Commissioner/Head Revenue Executive Assistant.[7]

Following the ***McDonald's Case***, considering that the first MOA in the present case was signed by the OIC Chief of LTRAD 1 and the second MOA signed by Chief of LTRAD 1, a subordinate official who is not the CIR nor his duly authorized representative, the MOAs cannot be treated as a new LOA. Consequently, the assessment is void for lack of authority of the ROs to perform assessment functions.

All told, I concur with the *ponencia*'s denial of the Petition for Review filed by Commissioner of Internal Revenue for lack of merit.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

---

2 CTA EB Case No. 2047 (CTA Case No. 9168), 17 July 2020.
3 CTA EB Case No. 2010 (CTA Case No. 9190), 14 July 2020.
4 G.R. No. 255487, 3 May 2021.
5 G.R. No. 255094, 26 April 2021.
6 Commissioner of Internal Revenue v. PGA Sompo Insurance Corporation, CTA EB Case No. 2203 (CTA Case No. 9394), 15 September 2021; Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc., CTA EB Case No. 2047 (CTA Case No. 9168), 17 July 2020; Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation, CTA EB Case No. 2010 (CTA Case No. 9190), 14 July 2020.
7 Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc., G.R. No. 255487, 3 May 2021; Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation, G.R. No. 255094, 26 April 2021.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 2321 (CTA Case No. 9603) Present:
-versus-	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** *JJ.*
LIBERTY FLOUR MILLS, INC., *Respondent.*	Promulgated: MAR 02 2022 4:20 pm

x- -x

SEPARATE CONCURRING OPINION

REYES-FAJARDO, J.:

I concur with conclusion reached by my esteemed colleague Associate Justice Catherine T. Manahan in holding that the deficiency tax assessments issued by petitioner against respondent for taxable year (TY) 2009 is void for being a product of an invalid examination and audit by petitioner's tax agents.

I further agree with the concurring opinion of my esteemed colleague Associate Justice Ma. Belen M. Ringpis-Liban in stating that a Memorandum of Assignment (MOA) or equivalent document may be treated as sufficient authority to examine and audit the taxpayer if issued by the Commissioner of Internal Revenue (CIR) or his duly authorized representatives.

I however add that on top of the requirement that the MOA or equivalent document must be issued by the CIR or his duly authorized representatives, due process on audit and investigation demands that the taxpayer be duly notified of such MOA or equivalent document issued and signed by the CIR or his duly authorized representatives to be effectively informed of the new revenue officers (ROs) who would continue the examination or audit of the taxpayer. Take for instance:

First, Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,[1] where the Supreme Court ruled that "[t]he LOA **gives notice** to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a *particular period.*"; and

Second, Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.,[2] where the Supreme Court held that due process requires the identification of revenue officers authorized to continue the audit and examination of the taxpayer, explaining in this wise:

> ...
>
> 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 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. ... Due process requires that the 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 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.
>
> ...

1 G.R. No. 183408, July 12, 2017. Boldfacing supplied.
2 G.R. No. 242670, May 10, 2021.

ℋ𝒦

Just as due process on audit or investigation requires that the taxpayer has the right to know the revenue officers authorized by the CIR or his duly representatives to conduct the audit or investigation through the LOA, so too must this standard be equally applied in cases where a MOA or equivalent document was issued by the CIR or his duly authorized representatives. This is to ensure that the taxpayer is duly informed of the new ROs who would continue the audit and examination or audit of the taxpayer under such MOA or equivalent document.

All told, I vote to **AFFIRM** the Decision dated March 2, 2020 and the Resolution dated July 27, 2020 rendered by the Court in Division in CTA Case No. 9603.

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