REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BASIC HOUSING SOLUTIONS, INC.,
Petitioner,

- versus -

COMMISSIONER, BUREAU OF INTERNAL REVENUE, represented by OIC-Regional Director, MARIDUR V. ROSARIO, Revenue Region No. 9A – CaBaMiRo, Sto. Tomas, Batangas,
Respondent.

CTA Case No. 9905

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *JJ.*

Promulgated:
JUN 28 2022
9:10 a.m.

x--x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Basic Housing Solutions, Inc. (**petitioner/BHSI**) pursuant to Rule 8, Section 3(a)[2], in relation to

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[1] Filed on 10 August 2018, Division Docket, Volume I, pp. 12-51.

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

Rule 4, Section 3(a)(1)[3] of the Revised Rules of the Court of Tax Appeals[4] **(RRCTA)**.

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Block 31, Lot 3, Hillsview Royale, Brgy. Timalan, Bacoor, Cavite.[5] It is also registered with the Bureau of Internal Revenue **(BIR)** with Taxpayer Identification Number **(TIN)** 001-668-599, particularly with Revenue District Office **(RDO)** No. 054B – Bacoor, Cavite.[6]

Respondent Commissioner of Internal Revenue **(respondent/CIR)** heads the BIR, with office address at BIR Building, Diliman, Quezon City, represented by Maridur V. Rosario, the Officer-in-Charge - Revenue Regional Director **(OIC-RD Rosario)** of Revenue Region **(RR)** No. 9A – CaBaMiRo[7], located in Sto. Tomas, Batangas.[8]

FACTS OF THE CASE

The primary purpose of petitioner's business is to acquire by purchase, lease, donation or otherwise, and to own, hold, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise dispose of buildings, houses, apartments and other structures of whatever kind, together with their appurtenances.[9]

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3 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

...

4 A.M. No. 05-11-07- CTA dated 22 November 2005.

5 Exhibit "P-1", Division Docket, Volume II, pp. 495-501.

6 Petition for Review, id., Volume I, pp. 12-13.

7 Referring to Cavite-Batangas-Mindoro-Romblon.

8 Petition for Review, Division Docket, Volume I, p. 13.

9 Exhibit "P-1-a-1", id., Volume II, p. 496.

For the taxable year (**TY**) 2014, petitioner sold units (that were reported as exempt sales) prior to the approval of its application for Income Tax Holiday (**ITH**) incentive with the Board of Investments (**BOI**).[10]

On 31 March 2015, the BOI issued in petitioner's favor a Certificate of ITH Entitlement as New Developer of Low-Cost Mass Housing Project for each of its projects, Tierra Vista Pampanga Phase 1[11] (**Tierra Vista**) and The Veraneo (**The Veraneo**).[12]

Sometime in March 2016, petitioner received copies of letters[13] issued by then BOI Executive Director Efren V. Leaño (**Director Leaño**) dated 03 March 2016, addressed to Erlinda A. Simple, Assistant Commissioner, Assessment Service of the BIR (**ACIR Simple**), informing the latter that its following sales are not eligible for ITH:

Tierra Vista Pampanga Phase 1	₱	11,910,700.00
The Veraneo		21,398,900.00
Total	**₱**	**33,309,600.00**

In the meantime, Memorandum of Assignment No. 16-094 dated 22 September 2016[14] (**first MOA**) was issued by Revenue District Officer Benjamin B. Virtucio Jr. (**RDO Virtucio**), authorizing Revenue Officer Layna A. Magpantay (**RO Magpantay**) and Group Supervisor Romanito P. Guiuan (**GS Guiuan**) to evaluate petitioner's ITH incentive availment.

By reason of said disallowance, petitioner filed a Motion for Reconsideration (**MR**) and a Supplemental MR[15] with the BOI's Incentives Services Department.

Sometime in October 2017 and pending the resolution of petitioner's MR and Supplemental MR with the BOI, petitioner received a Preliminary Assessment Notice (**PAN**) dated 06 October

10 Joint Stipulation of Facts & Issues, id., Volume I, p. 403.
11 Exhibit "P-3", id., Volume II, p. 504.
12 Exhibit "P-4", id., p. 505.
13 Exhibits "P-7" and "P-8", id., pp. 568-569.
14 Exhibit "R-1", BIR Records, p. 238.
15 Exhibits "P-12" to "P-12-s", Division Docket, Volume II, pp. 583-602.

2017[16] finding it liable for deficiency income tax (**IT**) and compromise penalty in the sum of ₱21,061,617.36, composed of the following:

Basic IT deficiency	₱	13,848,393.53
Interest (until 15 November 2017)		7,163,223.83
Compromise Penalty		50,000.00
Total	**₱**	**21,061,617.36**

On 20 December 2017, petitioner also received a Formal Letter of Demand[17] (**FLD**) with Details of Discrepancies[18] and Assessment Notices (**ANs**) for IT[19] and compromise penalty[20] in the total amount of ₱21,410,672.76, computed as follows:

Basic IT deficiency	₱	13,848,393.53
Interest (until 15 November 2017)		7,512,279.23
Compromise Penalty		50,000.00
Total	**₱**	**21,410,672.76**

Consequently, on 16 January 2018, petitioner responded to the FLD by way of protest[21], asserting that the assessment is void for lack of legal and factual bases. Later, the BOI issued Resolution No. 07-10, Series of 2018 dated 21 February 2018[22], granting petitioner's MR and giving it full entitlement of ITH incentives on its sales of low-cost mass housing units at Tierra Vista and The Veraneo.

Thereafter, petitioner received copies of two (2) separate letters, both dated 06 March 2018[23], issued by the BOI's Atty. Marjorie O. Ramos-Samaniego (**Atty. Samaniego**) addressed to ACIR Simple, informing the latter of petitioner's full entitlement to ITH for the aforementioned sales.

16 Exhibits "P-9", "P-9-a" and "P-9-b", id., pp. 570-572.
17 Exhibits "P-10" and "P-10-a", id., pp. 573-574.
18 Exhibit "P-10-b", id., p. 575.
19 Exhibit "P-10-c", id., p. 576.
20 Exhibit "P-10-d", id., p. 577.
21 Exhibits "P-11" to "P-11-d", id., pp. 578-582.
22 Exhibits "P-13-a" to "P-13-d", id., pp. 604-607.
23 Exhibits "P-14" and "P-15", id., pp. 608-609.

On 26 March 2018, RDO Virtucio issued another MOA with No. MOA 54B-18-030[24] (**second MOA**) to RO Magpantay and GS Guiuan for reinvestigation of petitioner's all internal revenue tax liabilities pursuant to the protest letter/request for reinvestigation it filed.

On 11 July 2018, petitioner received the Final Decision on Disputed Assessment (**FDDA**) dated 19 June 2018, finding it liable for deficiency IT in the same amounts stated in the FLD.

<u>PROCEEDINGS BEFORE THIS COURT</u>

Within thirty (30) days therefrom or on 10 August 2018, petitioner filed the instant Petition for Review[25] praying that the deficiency tax assessment against it be cancelled and set aside.

On 21 November 2018, respondent filed an Answer[26] to the aforesaid petition, raising the following affirmative defenses, to wit: (1) petitioner is liable for deficiency IT and compromise penalty, as petitioner sold units prior to the approval of its application for ITH incentive and further verification also revealed that there are unallowable deductions amounting to ₱18,819,610.00; and, (2) the validity and lawfulness of the assessment are presumed and made in good faith, and the burden to prove otherwise is on the taxpayer.

After filing their respective Pre-Trial Briefs[27] (**PTBs**), the parties were ordered to appear before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[28] However, the parties manifested before the latter that they have decided not to have their case mediated.[29] Thus, pre-trial proceedings continued and the Court directed the parties to submit their Joint Stipulation of Facts and Issues (**JSFI**).[30]

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24 Exhibit "R-6", BIR Records, p. 312.
25 Supra at note 1.
26 Division Docket, Volume I, pp. 190-196.
27 Respondent's Pre-Trial Brief filed on 21 February 2019, id., pp. 211-215; Pre-Trial Brief (For: Petitioner) filed on 22 February 2019, id., pp. 220-236.
28 Resolution dated 28 March 2019, id., p. 394.
29 PMC-CTA Form 6 – No Agreement to Mediate dated 29 April 2019, id., p. 395.
30 See Order dated 06 June 2019, id., p. 402.

On 21 June 2019, the parties submitted their JSFI[31] and accordingly, Pre-Trial Order[32] was issued on 15 July 2019. Trial thereafter ensued.

On 24 July 2019, petitioner presented its lone witness, Armiza Enoc (**Enoc**) who, through her Amended Judicial Affidavit[33], testified by way of direct examination that: (1) she is petitioner's Chief Accountant and the custodian of all financial documents; (2) petitioner declared in its Annual Income Tax Return[34] (**ITR**) exempt sales in the amount of ₱347,800,420.00, which represents sales of low cost mass housing units, including sales in Tierra Vista and The Veraneo projects; (3) while the IT due for TY 2014 is ₱3,496,694.00, petitioner did not pay anything at the time when it filed its Annual ITR because it has a creditable IT of ₱7,507,795.00; (4) sometime in March 2016, petitioner, through her office, was furnished with a copy of the letters[35] sent by BOI's Director Leaño to ACIR Simple, in connection with the sales report submitted by petitioner to BOI; (5) in the said letters, BOI disallowed its sales totaling to ₱33,309,600.00 (and which petitioner claimed as part of the exempt transaction) as the same are ineligible for the 100% ITH incentive; (6) as a result, petitioner filed an MR and a Supplemental MR[36]; (7) petitioner received the PAN[37] sometime in October 2017 and thereafter opted to wait for the FAN; (8) on 20 December 2017, petitioner received the FLD[38]; (9) petitioner's counsel then prepared a reply to the said FLD by way of protest[39], which was inadvertently dated 16 January 2017 when the year thereof should have been 2018; (10) the said protest, containing an allegation that the assessment lacks legal and factual bases and is contrary to law, was personally served on the BIR on 17 January 2018; (11) sometime in March 2018, petitioner received the BOI's Notice of Resolution dated 28 February 2018[40] with the attached Resolution No. 07-10, Series of 2018 dated 21 February 2018[41], reversing its original decision (disallowing a portion of petitioner's sales from the 100% ITH incentive); (12) about the same time, petitioner also received two (2)

31 Id., pp. 403-410.
32 Id., pp. 425-431.
33 Exhibits "P-17" and "P-17-A", id., pp. 435-468.
34 Exhibits "P-6" to "P-6-I", id., Volume II, pp. 556-565.
35 Supra at note 13.
36 Supra at note 15.
37 Supra at note 16.
38 Supra at note 17.
39 Supra at note 21.
40 Exhibit "P-13", Division Docket, Volume II, p. 603.
41 Supra at note 22.

separate letters dated 06 March 2018[42] sent by BOI's OIC-Director, Atty. Samaniego, to ACIR Simple; (13) the said letters state that petitioner's eligible revenues entitled to the ITH incentive now amounting to ₱48,955,040.00 and ₱172,497,980.00, for its registered activities in Tierra Vista and The Veraneo projects, respectively, and that the rate of exemption should be 100% of IT due for TY 2014; (14) on 11 July 2019, petitioner received the FDDA, which denied its protest and containing the same amount as demanded in the FLD; and, (15) petitioner's disallowed sales should be entitled to 100% ITH by reason of the Certificates of ITH Entitlement[43] issued by BOI and as stated in the BOI Resolution No. 07-10, Series of 2018.

Respondent did not conduct any cross examination.[44]

On 29 July 2019, petitioner filed its Formal Offer of Exhibits[45] (**FOE**). Respondent failed to file his comment thereto despite directive to do so.[46] Thus, on 10 September 2019, the Court resolved to admit all of petitioner's documentary evidence, except Exhibits "P-2" and "P-2-a"[47], "P-11" to "P-11-d"[48], "P-11-e"[49] and "P-11-f"[50], for failure to present the originals for comparison.[51] Later on, however, the parties agreed to stipulate on the original of Exhibit "P-11" as being attached to the BIR Records.[52]

On 29 January 2020, respondent presented GS Guiuan, who testified through his Judicial Affidavit[53], that: (1) he is currently an RO III and was tasked to conduct the reinvestigation of petitioner's deficiency tax liabilities for TY 2014 *per* second MOA[54]; (2) through a

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42 Supra at note 23.
43 Supra at notes 11 and 12.
44 TSN dated 24 July 2019, p. 6.
45 Division Docket, Volume II, pp. 483-494.
46 *Per* Records Verification dated 22 August 2019, id., p. 646.
47 Final Decision on Disputed Assessment dated June 19, 2018 issued by the Bureau of Internal Revenue, Office of the Regional Director, Revenue Region No. 9A – CaBaMiRo, Sto. Tomas, Batangas.
48 Letter for Mr. Romulo L. Aguila Jr., Regional Director, BIR Revenue Region No. 9A dated January 17, 2017 [2018].
49 Signature of Atty. Teresita L. Caalim.
50 Stamped Received dated 17 January 2018 by Assessment Division, Revenue Region 9A received by Ian Kevin F. Reyes, Revenue Officer.
51 See Resolution dated 10 September 2019, Division Docket, Volume II, pp. 648-649.
52 TSN dated 11 March 2020, pp. 3-4.
53 Exhibits "R-10" and "R-10-1", Division Docket, Volume II, pp. 716-720.
54 Supra at note 24.

letter dated 04 April 2018[55], petitioner was informed that he was authorized to further conduct an evaluation of deficiency IT assessment in relation to the protest/reconsideration it filed; (3) petitioner did not submit any of the documents mentioned in the Memorandum Report dated 22 May 2018[56] to support its request for reconsideration; (4) after petitioner did not submit any further documents, they forwarded the tax docket to the Assessment Division for final execution of the assessment notice through Indorsement Letter dated 22 May 2018[57]; and, (5) he recommended the reiteration of the deficiency IT assessment since petitioner failed to substantiate its allegations.

On cross examination, RO Guiuan further testified that: (1) he first learned of the case when he was issued a first MOA[58]; (2) the recommendation for issuance of the PAN was based on the disallowance by BOI[59]; (3) the BIR notified petitioner of the said disallowance[60]; and, (4) at that time, he was not aware that the BOI reconsidered its earlier decision and now allowed petitioner 100% ITH entitlement as there was no such document then.[61]

On re-direct examination, RO Guiuan declared that petitioner was not able to substantiate its claim despite notice.[62]

On re-cross examination, RO Guiuan further testified that he can no longer recall who received the first MOA, 2nd Indorsement and Memorandum, both dated 22 May 2018, on behalf of petitioner.[63]

During the hearing on 11 March 2020, respondent dispensed with the presentation of the second and last witness, RO Magpantay, after petitioner agreed to stipulate on the [existence and due execution of the] documents[64] mentioned in the said witness' Judicial Affidavit.[65]

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55 Exhibit "R-7", BIR Records, p. 313.
56 Exhibit "R-9", id. p. 315.
57 Exhibit "R-8", id., p. 316.
58 TSN dated 29 January 2020, p. 9.
59 Id., p. 10.
60 Id., p. 12.
61 Id., p. 13.
62 Id., p. 14.
63 Id., p. 15.
64

Exhibit	Document	Reference
"R-1"	Memorandum of Assignment dated 22 September 2016	BIR Records, p. 238

On 24 September 2020, respondent filed his or her FOE[66], without petitioner's comment.[67] Thus, on 10 November 2020, the Court admitted all of respondent's documentary evidence, except the Judicial Affidavit of RO Guiuan.[68] However, in its Resolution dated 17 March 2021[69], the Court reconsidered such denial and duly admitted the said Judicial Affidavit.

On 01 September 2020 and 17 December 2020, the parties[70] filed their respective memoranda. Thus, the case was submitted for decision on 28 June 2021.[71]

ISSUES

In the JSFI, which the Court approved, the parties submitted the following issues for the Court's resolution:

> I.
> WHETHER PETITIONER BASIC HOUSING SOLUTIONS, INC. IS LIABLE FOR THE ASSESSED INCOME TAX DEFICIENCY AND COMPROMISE PENALTY IN THE AGGREGATE AMOUNT OF ₱21,410,672.76, PLUS SURCHARGE AND INTEREST; AND,
>
> II.
> WHETHER PETITIONER BASIC HOUSING SOLUTIONS, INC. CAN CLAIM EXEMPTION PRIOR TO THE APPROVAL OF PETITIONER'S APPLICATION FOR INCOME TAX HOLIDAY (ITH) INCENTIVE.[72]

"R-2"	Letter dated 27 September 2016	Id., p. 239
"R-3"	Memorandum dated 26 October 2016	Id., p. 242
"R-4"	Preliminary Assessment Notice dated 6 October 2017	Id., pp. 256-258
"R-4-a"	Registry Return Receipt	Id., p. 259
"R-5"	Formal Letter of Demand	Id., pp. 260-261
"R-5-a"	Details of Discrepancy	Id., p. 262
"R-5-b"	Assessment Notice	Id., p. 265
"R-5-c"	Assessment Notice	Id., p. 264
"R-5-d"	Registry Return Receipt	Id., p. 263

65 Order dated 11 March 2020, Division Docket, Volume II, p. 735.
66 Id., pp. 766-772.
67 *Per* Records Verification dated 14 October 2020, id., p. 773.
68 See Resolution dated 10 November 2020, id., pp. 784-785.
69 Id., pp. 795-798.
70 Petitioner's Memorandum, id., pp. 746-762 and Respondent's Memorandum, pp. 774-782.
71 See Resolution dated 28 June 2021, id., p. 810.
72 Id., Volume I, p. 404.

Petitioner argues that Resolution No. 07-10, Series of 2018, dated 21 February 2018 had already reversed the BOI's initial disallowance of the ITH entitlement; hence, the letters sent to ACIR Simple indicating petitioner's full entitlement to the ITH incentive.

In addition, petitioner insists that the facts on which the assessment was based were couched in general terms; thus, it was prevented from forwarding a proper refutation or objection. In particular, the Details of Discrepancies did not state the reasons why petitioner was not entitled to the ITH incentive in the amount of ₱15,412,060.00.

Furthermore, petitioner contends that respondent's findings were anchored solely on the BOI's determination without any independent examination from the BIR. Since such findings of the BOI were subsequently reversed, the BIR's assessment (which was based solely on the BOI's findings that was subsequently reversed) has no more leg to stand on.

On the other hand, respondent maintains that petitioner is liable for deficiency IT and compromise penalty because it cannot claim exemption prior to the approval of its application for ITH incentive.

Respondent also claims that petitioner was duly informed of the factual and legal bases of the assessment. He also observed both procedural and substantive due process in issuing the subject assessment.

Lastly, respondent avers that assessments are presumed correct and made in good faith, and the taxpayer has the duty to prove otherwise.

RULING OF THE COURT

After a judicious review of the records of the case, the Court finds merit in the instant petition.

At the onset, it is settled that this Court may not limit itself to the stipulated issues as it may also rule upon related issues necessary to achieve an orderly disposition of the case. Such related issues include the determination of whether the ROs who conducted the examination were duly authorized pursuant to existing laws, rules and regulations. As held in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[73]:

> ...
> Is the question on the authority of revenue officers to examine the books and records of any person cognizable by the CTA?
>
> It must be stressed that the assessment of internal revenue taxes is one of the duties of the BIR. ...
> ...
>
> It is pursuant to such pertinent provisions of the NIRC conferring the powers to the CIR that the petitioner (CIR) had, in this case, authorized its revenue officers to conduct an examination of the books of account and accounting records of Lancaster, and eventually issue a deficiency assessment against it.
>
> From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms "other matters" under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.
>
> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
>> SECTION 1. *Rendition of judgment.* - x x x
>>
>> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule

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[73] G.R. No. 183408, 12 July 2017; Citation omitted and italics in the original text.

> upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda, The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter.
>
> ...

Thus, notwithstanding petitioner's failure to raise such issue, the Court finds it necessary to first determine whether the ROs who conducted the examination of petitioner were duly authorized to do so.

As it is, the audit process normally commences with the issuance by the CIR of a Letter of Authority (**LOA**). The 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 RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[74]

In this case, no LOA was issued for the examination of petitioner's books of accounts and other accounting records. Instead, the first MOA[75] was issued by RDO Virtucio, assigning RO Magpantay and GS Guiuan to evaluate petitioner's ITH incentive availment.

During GS Guiuan's cross-examination[76], he also testified that he first learned about the case by virtue of the said first MOA, to wit:

> ...
> JUSTICE CASTAÑEDA:
> When did you first learn about this case?
>
> WITNESS:
> When we received the Memorandum of Assignment.

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74 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, supra.
75 Exhibit "R-1", supra at note 14.
76 TSN dated 29 January 2020, pp. 8-9.

JUSTICE CASTAÑEDA:
When did you receive the memorandum of assignment?

WITNESS:
This was referred to us, issued memorandum of assignment dated September 22, 2016.

...

As can be gleaned from the foregoing, RO Magpantay and GS Guiuan's supposed authority merely sprung from the first MOA issued by RDO Virtucio. By virtue of such MOA, the said ROs conducted the examination of petitioner's ITH availment and recommended the issuance of the PAN, as evidenced by their Memorandum to the RD dated 26 October 2016.[77] However, Sections 6, 13 and 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provide clearly:

...

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.

...

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.

...

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77 Exhibit "R-3", BIR Records, p. 242.

> **SEC. 228.** *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed**, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:[78]
>
> ...

Thus, for the examination to be valid, an LOA must be issued either by the CIR himself or herself or by his or her duly authorized representative. Pursuant to the aforementioned Section 13, in relation to Section 10(c)[79] of the NIRC of 1997, as amended, as well as Revenue Memorandum Order (**RMO**) Nos. 43-90[80] and 29-2007[81], the CIR's duly authorized representatives are: (1) Regional Directors; (2) Deputy Commissioners; (3) Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and, (4) other officials but only upon prior authorization by the CIR himself or herself.

In this case, aside from the fact that no LOA was issued, the MOAs relied upon by respondent were executed by a mere RDO, a subordinate official who is not authorized to issue LOAs.

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[82], the Supreme Court highlighted the difference between an MOA and an LOA in this wise:

> ...
>
> 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

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[78] Emphasis supplied.

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

[80] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

[81] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

[82] G.R. No. 242670, 10 May 2021; Emphasis supplied.

> 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 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.**
>
> ...

Applying the above principles to the case at bar, a mere MOA signed by an RDO, a subordinate official, does not and cannot confer authority upon RO Magpantay and GS Guiuan to conduct the audit or investigation of petitioner's ITH incentive availment. As both RO Magpantay and GS Guiuan are not authorized to conduct such investigation, the resulting assessment against petitioner is inescapably void.

Well-entrenched are the principles that in the absence of such an authority, the assessment or examination is a nullity[83] and a void assessment bears no fruit.[84]

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[83] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

[84] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010.

With the foregoing disquisition, due to the invalidity of the assessment against petitioner, the Court finds it unnecessary to tackle the other issues raised as their resolution could no longer change the outcome of the case.

WHEREFORE, in view of the foregoing, the Petition for Review filed on 10 August 2018 by petitioner Basic Housing Solutions, Inc. is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancies and Assessment Notice Nos. RR9A-54B-eLA-14-IT-051 and RR9A-54B-eLA-14-MC-051, all dated 07 December 2017, issued against petitioner for the taxable year 2014, are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes arising therefrom.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice