REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- **versus** -

MARKET STRATEGIC FIRM, INC.,
Respondent.

CTA EB No. 2281
(CTA Case No. 9280)

Present:

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

Promulgated:

FEB 09 2022 2:33 p.m.

x - x

DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* posted by the Commissioner of Internal Revenue (CIR) on July 23, 2020 and received by the Court on July 29, 2021,[1] which seeks to reverse and set aside the Decision dated February 10, 2020 and Resolution dated June 16, 2020[2], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9530, entitled *"Market Strategic Firm, Inc. vs. Commissioner of Internal Revenue.*

We quote the dispositive portions of the assailed Decision and Resolution as follows:

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[1] EB Docket, pp. 6 to 16.
[2] EB Docket, pp. 26 to 58; and pp. 66 to 69, respectively.

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Decision dated February 10, 2020:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the Formal Letter of Demand/Assessment Notice against Market Strategic Firm, Inc for alleged deficiency taxes, penalties and interests in relation to taxable year 2010 issued on September 15, 2014 and the Final Decision on Disputed Assessment issued on September 14, 2015 are hereby **CANCELLED** and **WITHDRAWN.**
>
> **SO ORDERED."**

Resolution dated June 16, 2020:

> "**WHEREFORE**, the Commissioner of Internal Revenue's Motion for Reconsideration (Re:Decision dated February 10, 2020) is hereby **DENIED** for lack of merit."
>
> **SO ORDERED."**

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. He may be served with summons, pleadings and other processes at his office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

Respondent is a domestic corporation primarily engaged in the business of trading such as, but not limited to garments, accessories, shoes and toys on wholesale or retail.[3]

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[3] Paragraph 6, Petition for Review, Court Docket, Vol. I, pp.10-158.

On September 20, 2011, a Letter of Authority No.116-2011-00000050 was issued by then Officer-in-Charge-Assistant Commisioner, Alfredo V. Misajon, to authorize the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year (TY) 2010. Subsequent to the examination/audit conducted on petitioner's book of accounts and other accounting records, a Formal Letter of Demand (FLD) with Details of Discrepancies and Final Assessment Notices (FANs) were issued against petitioner for alleged deficiency taxes, penalties and interest for TY 2010 detailed as follows:

1. Income Tax (IT) in the amount of Php3,303,769,658.39;
2. Value-Added Tax (VAT) in the amount of Php1,457,842,274.38;
3. Expanded Withholding Tax (EWT) in the amount of Php3,764,838.00;
4. Unremitted Withholding Tax on Compensation in the amount of Php113,983.52; and
5. Improperly Accumulated Earnings Tax in the amount of Php4,707,219.63.

On October 13, 2014 petitioner filed its protest to the FLD/FAN.

On September 14, 2015, petitioner received a Final Decision on Disputed Assessment (FDDA) dated September 10, 2015, partially granting petitioner's protest but found petitioner still liable for deficiency taxes, penalties and interests for TY 2010, detailed as follows:

	Income Tax	**VAT**	**EWT**	**WTC**	**Total**
Basic Tax	611,584,501.21	315,655,720.92	4,697,746.00	58,436.52	**931,996,404.65**
Surcharge		157,827,860.46			**157,827,860.46**
Interest and penalties	536,183,672.00	290,647,641.00	4,347,667.00	54,081.00	**831,233,061.00**
Total	1,147,768,173.21	764,131,222.38	9,045,413.00	112,517.52	**1,921,057,326.11**

On October 14, 2015, petitioner filed a Motion for Reconsideration with the Office of the Commissioner of Internal Revenue.

In a letter dated February 2, 2016, then CIR, Kim Jacinto S. Henares, denied the Motion for Reconsideration filed by petitioner and reiterated the findings embodied in the FDDA

dated September 10, 2015.

This letter-denial was received by respondent on February 2, 2016.

On March 3, 2016, petitioner filed its Petition for Review with the Court.

The case was raffled to the Second Division and docketed as CTA Case No. 9280 entitled "Market Strategic Firm Inc. vs. Commissioner of Internal Revenue."

On May 24, 2016, the CIR filed his Answer to the Petition for Review, reiterating the grounds for the denial embodied in the FDDA and stating that the deficiency assessments rest on solid legal and factual grounds.

On July 14, 2016, petitioner CIR filed his pre-trial brief while respondent MSFI filed its pre-trial brief on July 18, 2016.

The pre-trial conference was held on July 21, 2016.

After the pre-trial conference, the parties then filed their Joint Stipulation of Facts and Issues (JSFI) on August 5, 2016. Thereafter, the Court in Division issued a Pre-Trial Order on August 24, 2016.

During trial, respondent presented the following witnesses:

1. Consuelo Cadelina;
2. Mary Rose V. Nunez;
3. Russel M. Elemia;
4. Kathleen Cheng;
5. Annalyn Cayetano;
6. Prudencio Tatunay; and
7. Hazel Ann Hapin.

Thereafter, respondent filed its Formal Offer of Evidence on March 6, 2017.

On October 13, 2017, the Court in Division admitted respondent's Formal Offer of Evidence but denied some exhibits for failure (1) to submit the duly marked exhibits; failure (2) to identify some of the exhibits, and (3) to have some exhibits form

part of the records of the case.

On November 6, 2017, respondent filed a Motion for Partial Reconsideration (of the Resolution promulgated on 13 October 2017).

In a Resolution dated June 7, 2018, the Court held in abeyance the resolution on respondent's Motion for Partial Reconsideration and granted the respondent another opportunity to present some of the documents which were denied.

On October 3, 2018, the Court issued a Resolution granting respondent's Motion for Partial Reconsideration and admitted the exhibits which were initially denied by the Court in its Resolution dated October 13, 2017.

On February 11, 2019, petitioner CIR filed his Formal Offer of Evidence.

On March 8, 2019, the Court issued a Resolution admitting all of petitioner CIR's exhibits, except for "R-15-d" for not being found in the records. In that same resolution, the Court ordered the parties to submit their respective Memoranda within thirty (30) days from notice.

On April 2, 2019, petitioner CIR filed a Manifestation with a Motion to Admit attached Memorandum which was admitted by the Court in a Resolution dated April 11. 2019.

On April 22, 2019, respondent filed a Motion to Admit (the Attached Memorandum for the Petitioner) which was admitted by the Court on May 10, 2019.

The case was then submitted for decision on May 10, 2019.

On February 10, 2020, the Court in Division rendered the assailed Decision granting respondent's Petition for Review in CTA Case No. 9280 and consequently, cancelled the FLD/FANs and FDDA issued for TY 2010.

On February 24, 2020, the CIR filed a Motion for Reconsideration (Re: Decision dated February 10, 2020).

In the assailed Resolution dated June 16, 2020, the Court in Division denied petitioner CIR's Motion for Reconsideration for lack of merit.

Petitioner received the said assailed Resolution on June 23, 2020.

On July 7, 2020, petitioner filed a Motion for Extension of Time to File Petition for Review with the Court *En Banc,* requesting for an additional period of fifteen (15) days from July 8, 2020 or until July 23, 2020 within which to file his Petition for Review. This was granted by the Court in a Minute Resolution dated July 9, 2020.

On June 23, 2020, petitioner posted his Petition for Review docketed as CTA *EB* No. 2281 and which was received by the Court on July 29, 2020.

In a Resolution dated September 8, 2020, the Court *En Banc* directed respondent to file its comment to the Petition for Review within ten (10) days from notice.

On October 1, 2020, respondent filed its Comment (on the Petition for Review).

On October 9, 2020, the Court issued a Resolution submitting the case for mediation for the possibility of reaching an amicable settlement.

On November 24, 2020, the parties executed a *No Agreement to Mediate* which was attested to by the Philippine Mediation Center Unit- Court of Tax Appeals (PMC-CTA).

Thereafter, the Court *En Banc* submitted the instant case for decision on December 11, 2020.

THE ISSUE

The grounds raised by the petitioner CIR in his Petition for Review are quoted as follows:

> "With all due respect, the Second Division erred when it ruled on the issue of lack of authority, which was not raised by respondent.

> With all due respect, the Second Division erred when it held that the referral memorandum is not sufficient to grant the revenue officer the authority to continue the conduct of the audit investigation."

Petitioner's arguments:

Petitioner opposes the action of the Court in Division in granting a relief that was not prayed for by the respondent in its Petition for Review as it goes against his right to fair play and due process. Petitioner avers that respondent never questioned the authority of the revenue officer (RO) who conducted the audit of its books and accounting records for taxable year 2010 in the administrative as well as in its Petition for Review filed with the Court in Division. Petitioner contends that it was erroneous on the part of the Court to rule upon the same without giving him the opportunity to be heard on the matter. This to the mind of petitioner, is a clear violation of his right to due process. Even on the assumption that the Court can indeed rule on the authority of the RO despite not having been raised by respondent in its Petition for Review filed with the Court in Division, petitioner maintains that the Court erred in ruling that the referral memorandum is not sufficient to clothe the new set of revenue officers with the authority to continue the conduct of the audit investigation of respondent's books and other accounting records for TY 2010.

Petitioner takes issue with the conclusion of the Court in Division that the Memorandum of Assignment (MOA) or Referral Memorandum is void as it was only signed by the Chief of RLTAD I and cites Revenue Memorandum Order (RMO) No. 8-2006, which supposedly states that in case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office for the continuation of the audit by a RO other than the officer named in the original LOA. According to petitioner, a MOA duly signed by the Chief of RLTAD I was issued for the continuation of the investigation of respondent's books of accounts and other accounting records and this serves as sufficient authority for the ROs named therein to continue the audit investigation. Petitioner concludes that the Court erred in ruling otherwise.

Respondent's counter-arguments:

Respondent begins its counter-argument by citing the Supreme Court decision in the case of *Commissioner of Internal Revenue vs. Composite Materials, Inc.*[4] *(Composite* case*)* where it was supposedly ruled that an RO may examine the taxpayer's books pursuant to an LOA issued by the Regional Director and that a Referral Memorandum issued by a Revenue District Officer (RDO) directing another RO to continue the audit investigation, is not equivalent to an LOA nor does it cure the RO's lack of authority. Respondent applies this ruling to the circumstances of the case and proffers the assertion that a MOA cannot be treated as an LOA, because a reassignment necessitates the issuance of a new LOA, which is lacking in the instant case.

Respondent further echoes the ruling in the case of *Medicard Philippines Inc. vs. Commissioner of Internal Revenue,*[5] *(Medicard* case*)* where the Supreme Court emphasized the importance of an LOA and the authority of ROs who conducted the audit. Respondent avers that the *Medicard* case highlighted the firm position of the Supreme Court that the lack of authority of the investigating team of the BIR results to the invalidity of the ensuing tax deficiency assessments.

THE COURT *EN BANC*'S RULING

The timeliness of the appeal made by the petitioner is shown by the dates on record. As mentioned earlier, petitioner CIR received the assailed Resolution dated June 16, 2020 (denying its Motion for Reconsideration) on June 23, 2020 and consequently filed a Motion for Extension of Time to File Petition for Review requesting for an additional fifteen (15) days from July 8, 2020 or until July 23, 2020 within which to file an appeal with the Court *En Banc.*

The Court *En Banc* granted the said motion of petitioner and gave the latter until July 23, 2020 within which to file his Petition for Review.

The Petition for Review was posted by petitioner on July 23, 2020 which was the last day of the extended period granted by the Court, hence said Petition was timely filed in accordance with the Minute Resolution of the Court dated July 9, 2020.

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[4] G.R. No 238352, September 12, 2018 .
[5] G.R. No. 222743, April 5, 2017.

The Court shall now proceed to determine the merits of the arguments of the CIR in his Petition for Review.

Petitioner submits that the failure of respondent to raise the issue of lack of authority of the ROs to conduct the audit/investigation of its books of accounts and other accounting records in the administrative level and in the Petition for Review prohibits the Court to rule on the same.

We do not agree with the petitioner.

We quote Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals, thus:

> **"Rule 14**
> **Judgement, its Entry and Execution**
>
> Section 1. – *Rendition of Judgment.-*
>
> **In 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**." (Emphasis supplied)

The aforequoted section is clear that this Court is not bound by the issues raised by the parties, but may also rule on related issues necessary to achieve an orderly disposition of the case. This has been recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[6] and we quote:

> "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."** (emphasis supplied)

Further, in the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[7] the Supreme Court ruled in this manner, thus:

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[6] G.R. No. 183408, July 12, 2017.
[7] G.R. No. 163835, July 7, 2010.

> "The general rule is that the appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
>
> xxx xxx xxx
>
> **"The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.** Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time: The appellate court, may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. xxx xxx xxx
>
> xxx xxx xxx
>
> Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance." (emphasis supplied)

As a general rule, appeals may only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, but the same admits of certain exceptions, i.e., in the interest of justice; matters of record having some bearing on the issues submitted by the parties, and questions involving matters of public importance.

In the instant case, the validity of the subject deficiency assessments for TY 2010 is directly in issue and such is a matter of record having been submitted as evidence during trial, and thus, could be resolved by referring to said evidence. The validity of such deficiency assessments for TY 2010 is also a matter of public importance because, taxpayers cannot be held

liable under invalid or void tax assessments following the doctrine that a void assessment bears no valid fruit.[8]

In sum, the Court is not prohibited from resolving the issue of lack of authority of the ROs to conduct an audit of respondent's books of accounts and other accounting records prior to the determination of the merits of the deficiency assessments.

In his Petition for Review, petitioner insists that the MOA issued and signed by the Chief of RLTAD I, Mr. Cesar D. Escalada, granted the ROs the authority to continue the audit/investigation of the taxpayer's records for TY 2010.

We analyze.

The records show that the then Officer-in-Charge-Assistant Commissioner for Large Taxpayer's Service, Mr. Alfredo V. Misajon, issued LOA No. 116-2011-00000050 on September 20, 2011 to authorize the examination of respondent's books of accounts and other accounting records for all internal revenue taxes for TY 2010. The ROs named in said LOA were Ma. Salud Madela, Myrna Ramirez, Zenaida Paz, Cletofel Parungao, Allan Maniego and Joel Aguila under Group Supervisor (GS) Glorializa Samoy. Records also show that a MOA was subsequently issued referring the continuation of the audit/investigation (of the same TY 2010) to RO Allan Maniego under GS Wilfredo S. Reyes. The said MOA was signed by the Chief of the RLTAD I, Mr. Cesar D. Escalada.

It is imperative to define what an LOA is and its implications on the right of a taxpayer to due process in order for the Court to come up with a legally sound conclusion.

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[9] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[10]

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[8] *Samar-I Electric Cooperative vs. CIR*, G.R. No. 193100, December 10, 2014.
[9] *CIR vs. Sony Phils., Inc.*, G.R. No.. 178697, November 17, 2010; *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[10] *Commissioner of Internal Revenue vs. De La Salle University, Inc., etseq.*, G.R. Nos.

Therefore, there must be a grant of authority before any RO can conduct an examination or assessment. 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 respondent himself or his duly authorized representatives.[11] This is explicitly provided under Sections 6 (A) and 13 of the 1997 National Internal Revenue Code (NIRC), as amended, which provide as follows:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis added)*
>
> "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." (Emphasis supplied)

Based on the afore-quoted provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[12] Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.[13] In the absence of such an authority, the assessment or examination is a nullity.[14]

196596, 198841, and 198941, November 9, 2016.
[11] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[12] *Ibid.*
[13] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178797, supra.
[14] *Ibid.*

Noteworthy is the fact that RO Allan Maniego who was authorized under the original LOA No. 116-2011-00000050 has again been named in the MOA as the one authorized to continue the audit/investigation. We quote the findings of fact of the Court in Division, thus:

> "The BIR Records show that LOA No. 116-2011-00000050 was issued authorizing ROs Ma. Salud Madela, Myrna Ramirez, Zenaida Paz, Cletofel Parungao, **Allan Maniego** and Joel Aguila under Group Supervisor (GS) Glorializa Samoy to examine MSFI's books of accounts and other accounting records for the period from January 1 to December 31, 2010. However, records show that Mr. Cesar D. Escalada, Chief of RLTAD I issued Memorandum of Assignment (MOA) No. LOA-116-2013-0306 referring the continuation of the audit/investigation to **RO Allan Maniego** under GS Wilfredo S. Reyes. xxx xxx"

This Court believes that in this particular circumstance, the authority of RO Allan Maniego emanates from the original LOA dated September 20, 2011, hence amply clothes him with the requisite authority to *continue* the audit/investigation of respondent's books for TY 2010 without the other original ROs who presumably have been transferred/reassigned, resigned or retired. Regardless of the reason for discontinuing the audit/investigation of respondent's tax records, the fact remains that RO Allan Maniego was tasked to continue the audit/investigation. Respondent's argument that a Referral Memorandum is not equivalent to an LOA citing the Supreme Court decision in the *Composite* case, finds no application in the instant case because there was no substitution of ROs but a mere reduction of ROs to only one (1), i.e., RO Allan Maniego.

We quote portions of the *Composite* case, to wit:

> "Moreover, the Court agrees with the CTA en banc that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any **reassignment or transfer of cases to another RO** or revalidation of an expired LOA shall require the issuance of a new LOA." (emphasis supplied)

It is clear that a Referral Memorandum is not equivalent to an LOA when such will refer the continuance of the

The law grants the CIR the power to authorize the examination of any taxpayer and such power may be delegated to his or her authorized representatives. Section 7 of the 1997 NIRC, as amended, provides as follows:

> Section 7. *Authority of the Commissioner to Delegate Power.*- The Commissioner **may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with rank equivalent to a division chief or higher,** subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner:" xxx xxx xxx (emphasis supplied)

This Court finds that Assistant Commissioner, Mr. Alfredo V. Misajon is duly authorized to issue and sign LOA No. 116-2011-00000050 by virtue of RMO 29-07, which provides that the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants. We quote below portions of RMO 29-07, thus:

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

Subsequent to the issuance of LOA No. 116-2011-00000050, a MOA was issued and signed by the Chief of the RLTAD I, Mr. Cesar D. Escalada. Included in the MOA is a statement that this (MOA) serves as a "continuation of the audit/investigation to replace the previously assigned ROs who resigned/retired/transferred to another district office."

audit/investigation to a new set of ROs. It does not refer to a situation where the RO named in the original LOA will just continue the audit/investigation without the other ROs named in the original LOA. The words "transfer of cases to another RO" suggests quite plainly that a *new* set of ROs will continue the audit/investigation of the taxpayer's records, hence necessitating the issuance of a new LOA. This situation is not the same in the instant case where RO Allan Maniego is tasked to merely continue his assignment of conducting an audit/investigation of respondent's tax records. Transfers or reassignments of ROs to other revenue district offices ordinarily take place within the BIR, and thus, may leave their assigned tasks unfinished so that a MOA or Referral Memorandum becomes necessary not only to formalize the assignment of these new set of ROs but also to inform the taxpayer that a new set of ROs will continue the audit/investigation.

Even the recently decided case of *CIR vs McDonald's Philippines Realty Corp.*[15] (*McDonald's* case) which adopted the rulings of the Supreme Court in the *Medicard and Composite* cases states that a Referral Memorandum or a MOA or any equivalent document is not sufficient to authorize a *new* set of revenue officers to continue with the audit/investigation, and we quote:

> "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." (emphasis supplied)

While ruling that the issuance of a new LOA is essential in the continuance of an audit/investigation of a taxpayer's records, the wordings of the *McDonald's* decision suggests that this is necessary only when the same will be transferred to a new set of revenue officers.

The primary rationale for the requirement of an LOA prior to a tax audit/investigation was enunciated in the *Medicard* case, and we quote:

> "In fact, apart from the statutory requirement, an LOA is equally needed under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR

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

> conducts a physical examination of the taxpayer's records; **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute."** (emphasis supplied)

Indeed, the government's vast power and resources for tax assessment and collection should be tempered with statutory safeguards to ensure that this power is not abused and to minimize the possibility that the power of tax examination is not used as a tool to harass taxpayers. The existence of implementing procedural requisites is meant not only to provide a systematic approach in conducting a tax audit/investigation but also to provide guidelines in ensuring that the rationale or purpose of the law (in issuing an LOA) is achieved. Certainly, a scrutiny of the requisites both in law and its implementing regulations such as the proper signatories to the LOA; the limitation on the taxable period covered by the LOA and the validity period of the LOA, etc., is in order, to determine whether or not the ultimate objective of said issuance has been achieved.

Using the standards set by law, implementing regulations and jurisprudence, the Court finds that the authority of RO Allan Maniego under the subject LOA prevails under the subsequent MOA, hence, did not affect the validity of the deficiency tax assessments issued against respondent for TY 2010.

WHEREFORE, premises considered, the Petition for Review filed by the CIR is **GRANTED**. The Decision dated February 10, 2020 and Resolution dated June 16, 2020 of the Second Division of this Court are **REVERSED** and **SET ASIDE.**

Let this case be **REMANDED** to the Court in Division for the determination of respondent's deficiency tax liabilities for TY 2010.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(with due respect, please see Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(with due respect, I join the Dissenting Opinion
of Justice Castañeda)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(with due respect, I join the Dissenting Opinion
of Justice Castañeda)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(with due respect, I join the Dissenting Opinion
of Justice Castañeda)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With Concurring Opinion)
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,*	**CTA EB NO. 2281** (CTA Case No. 9280)
	Present:
- versus –	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, and Cui-David, *JJ.*
	Promulgated:
MARKET STRATEGIC FIRM, INC., *Respondent.*	FEB 09 2022 2:33 p.m.

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DISSENTING OPINION

CASTAÑEDA, JR., *J.:*

With all due respect, I dissent from the *ponencia* of my esteemed colleague, the Honorable Associate Justice Catherine T. Manahan.

In granting the present Petition for Review and ordering the remand of the case to the Court in Division for the determination of respondent's tax liabilities for taxable year 2010, the *ponencia* held that LOA No. 116-2011-00000050 and the subsequent Memorandum of Assignment passed the test of validity. The *ponencia* arrived at such conclusion based on its view that the authority of Revenue Officer Allan Maniego (RO Maniego) to *continue* the audit investigation of respondent's books of account for taxable year 2010 emanates, not from the Memorandum of Assignment, but from LOA No. 116-2011-00000050 where his name was actually included, among other

revenue officers who presumably have been transferred/reassigned, resigned or retired. The *ponencia* also maintained that the rule that a Referral Memorandum is not equivalent to an LOA finds no application to the present case because what is involved here is a mere reduction of authorized revenue officers and not one of substitution.

I beg to differ.

While it may be true that RO Maniego was specifically authorized under LOA No. 116-2011-00000050 together with other revenue officers to *originally* conduct the audit examination of respondent's books of accounts for taxable year 2010, I do not agree that he had the requisite authority to *continue* the audit investigation of respondent's books of account for taxable year 2010 as he cannot derive the said authority either from the original LOA or under the subsequent Memorandum of Assignment issued to him.

In the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[1] the Supreme Court categorically held that Revenue Memorandum Order (RMO) No. 43-90 remains effective and applicable. Notably, it also found that under Section D(5) thereof, issuance of a new LOA is expressly required in two (2) instances, namely: (1) any reassignment or transfer of cases to another revenue officer; or (2) revalidation of expired LOA. The Supreme Court explained as follows:

> 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. <u>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 other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA.</u> 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

[1] G.R. No. 242670, May 10, 2021 ("*McDonald's*").

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 discontinued." *(Emphasis and underscoring supplied; Citations omitted)*

Meanwhile, in *AFP General Insurance Corporation v. Commissioner of Internal Revenue*,[2] the Supreme Court made the following disquisition as regards the need for revalidating a duly served LOA for purposes of continuing the audit beyond the 120-day period from date of its issuance. It also tackled the resulting consequence in the event of failure to procure such revalidation, to wit:

> The issuance[3] confirms that a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance. The 120-day period for rendering an investigation report was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.

[2] G.R. No. 222133, November 4, 2020 ("*AFP General Insurance*").
[3] Revenue Memorandum Order No. 43-64 (Period of Limitation for Action on Cases Received [July 3, 1964]).

Nonetheless, the revenue officer may validly request for LOA revalidation, which shall be supported by a progress report and an enumeration of reasons to justify his request.

The superior officer or the Division Chief/Revenue District Officer (RDO) shall review the request. If justified, he/she shall recommend the LOA's revalidation and endorse the request to the CIR/his duly authorized representative for the latter's approval.

Without revalidation, the LOA shall be considered void and the assigned revenue officer is "prohibited from *further* investigation and contact with the taxpayer." The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of audit.* It contemplates a *served LOA* and *an on-going audit investigation.* Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.

Given this context, it is clear that failure to comply with the 120-day rule does not void LOA *ab initio.* **The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his expired authority to audit to be able to validly continue investigation beyond the first 120 days.**

That the revenue officer is unable to conduct *further* investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.

In any case, AGIC does not even allege facts showing that the assigned revenue officers continued with their audit investigation beyond the first 120 days after issuance/service of the LOA. **Failure to revalidate the LOA in accordance with the 120-day rule shall only be an issue in cases where tax authorities proceeded with an extended audit without first seeking the requisite revalidation.** *(Emphasis supplied and citations omitted)*

In the present case, it is readily apparent on record that more than 120 days had elapsed from the time LOA No. 116-2011-00000050 was issued on September 20, 2011 up until Memorandum of Assignment No. LOA-116-2013-0306 was issued to RO Maniego in 2013. The case records do not bear any indication whatsoever that a revalidation of LOA No. 116-2011-00000050 was ever sought or made within or even after such period. On the other hand, it is clear that RO Maniego continued the audit of respondent's books after the issuance of the Memorandum of Assignment in his favor.

Guided by the Supreme Court's pronouncements in the above cases of *McDonald's* and *AFP General Insurance*, I submit that, *sans* a revalidation,

LOA 116-2011-00000050 became unenforceable and that RO Maniego was prohibited from conducting further investigation by virtue of such LOA. In other words, LOA No. 116-2011-00000050 cannot validly clothe RO Maniego with the requisite authority to *continue* the audit examination of respondent's books of accounts for taxable year 2010, contrary to the view maintained by the *ponencia*. Moreover, pursuant to Section 5(D) of RMO No. 43-90 as expounded by the Supreme Court in *McDonald's,* there is a need to secure a new LOA in the present case because it squarely falls under one of the 2 instances mentioned therein, *i.e.*, revalidation of LOA which have already expired.

Neither can it be claimed that RO Maniego had the authority to continue the audit investigation by virtue of the Memorandum of Assignment. As I had pointed out in my Separate Concurring Opinion in the Court in Division's Decision in CTA Case No. 9280, the Memorandum of Assignment issued by Mr. Cesar D. Escalada cannot validly grant RO Maniego the authority to continue the audit examination of respondent's books. Section 4(D) of RMO No. 43-90 identifies those officials who are authorized to issue and sign LOA. The Chief of the Regular Large Taxpayers Audit Division I (RLTAD I) is not included therein. As a mere OIC-Chief of RLTAD I, Mr. Escalada does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA. Accordingly, absent any prior authority on the part of the revenue officer who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

In view of the foregoing, I vote to **DENY** the present Petition for Review for lack of merit.

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2281** (CTA Case No. 9280)
- versus -	Present: Del Rosario, P.J., Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, and Cui-David, JJ.
MARKET STRATEGIC FIRM, INC. *Respondent.*	Promulgated: FEB 09 2022 2:33 p.m.

x----------x

CONCURRING OPINION

CUI-DAVID, *J.:*

I write to elucidate my concurrence with the *ponencia* and to highlight some points that I deem significant.

As determined by the *ponencia,* the grounds raised by the petitioner Commissioner of Internal Revenue (CIR) in his Petition for Review are:

x----------x

> "With all due respect, the Second Division erred when it ruled on the issue of lack of authority, which was not raised by respondent.
>
> With all due respect, the Second Division erred when it held that the referral memorandum is not sufficient to grant the revenue officer the authority to continue the conduct of the audit investigation."

Anent the first ground, I concur with the *ponencia* that the Court of Tax Appeals (CTA) is not prohibited from ruling on the authority of the concerned Revenue Officer (RO) to conduct the audit investigation of respondent Market Strategic Firm, Inc.'s (MSFI's) books of accounts and other accounting records for the taxable year (TY) 2010, notwithstanding the latter's failure to raise it as an issue. Section 1, Rule 14 of the 2005 Revised Rules of the CTA, as amended,[1] is clear that the CTA may not limit itself to issues stipulated by parties.

In *Commissioner of Internal Revenue vs. Opulent Landowners, Inc. (Opulent),*[2] the Supreme Court held that:

> "As correctly ruled by the CTA EB, the CTA was authorized to rule on the authority of the revenue officers to conduct the audit and recommend the issuance of the deficiency tax assessments against respondent, notwithstanding the fact that this was not raised at any point in the proceedings. The court has already upheld the CTA's authority to do so, pursuant to Sec. 1, Rule 14 of the Revised Rules of the court of tax Appeals and Section 7 of Republic Act. No. 1125, as amended, given that such issue falls under the jurisdiction of the CTA."

Similarly, in the recent case of *Himlayang Pilipino Plans, Inc. vs. CIR,*[3] the Supreme Court, quoting the dissenting opinion of Presiding Justice Roman Del Rosario, held that:

> "Lastly, as stated in Presiding Justice Del Rosario's dissenting opinion on the CTA En Banc's 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."

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[1] A.M. No. 05-11-07 CTA
[2] G.R. No. 249883-84, January 27, 2020
[3] G.R. No. 241848, May 14, 2021

Therefore, it is evident that the CTA is not bound by the issues specifically raised by the parties, but may also rule upon related issues that are essential to achieving an orderly disposition of the case.[4]

As to the second ground, the *ponencia* ratiocinated that:

> "The records show that the then Officer-in-Charge Assistant Commissioner for Large Taxpayer's Service, Mr. Alfredo V. Misajon, issued LOA No. 116-2011-00000050 on September 20, 2011 to authorize the examination of respondent's books of accounts and other accounting records for all internal revenue taxes for TY 2010. The ROs named in said LOA were Ma. Salud Madela, Myrna Ramirez, Zenaida Paz, Cletofel Parungao, **Allan Maniego** and Joel Aguila under Group Supervisor (GS) Glorializa Samoy. Records also show that a MOA was subsequently issued referring the continuation of the audit /investigation (of the same TY 2010) to RO **Allan Maniego** under GS Wilfredo S. Reyes. ...
>
> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.
>
> Therefore, there must be a grant of authority before any revenue officer can conduct an examination or assessment. ... This is explicitly provided under Section 6 (A) and 13 of the 1997 NIRC, as amended, which provide as follows:
>
> ...
>
> Based on the afore-quoted provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.
>
> ...

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[4] Commissioner of Internal Revenue vs. Lancaster Philippines, Inc., G.R. No. 183408, July 12, 2017

x----------x

> Noteworthy is the fact that RO Allan Maniego who was authorized under the original LOA No. 116-2011-00000050 has again been named in the MOA as the one authorized to continue the audit/investigation.
>
> ...
>
> This Court believes that in this particular circumstance, the authority of RO Allan Maniego emanates from the original LOA dated September 20, 2011, hence, amply clothes him with the requisite authority to continue the audit/investigation of respondent's books for TY 2010 without the other original ROs who presumably have been transferred/reassigned, resigned or retired. Regardless of the reason for discontinuing the audit/investigation of the respondent's tax records, the fact remains that RO Allan Maniego was tasked to continue the audit/investigation. Respondent's argument that a Referral Memorandum is not equivalent to an LOA citing the Supreme Court decision in the Composite case, finds no application in the instant case because there was no substitution of ROs but a mere reduction of ROs to only one (1), i.e., RO Allan Maniego.
>
> ..."

I concur with the *ponencia.*

RO Allan Maniego is one of the original revenue officers duly authorized to examine respondent records for TY 2010, under LOA No. 116-2011-00000050. His authority to ***continue*** the audit investigation of the respondent's books for the same taxable year **originates from the said LOA, not from the MOA**. Thus, the respondent's audit may be continued by RO Allan Maniego **without the need for a new LOA, as he was already given the authority to do so under the original LOA.**

The subject MOA is a mere superfluity at this point, since with or without it, RO Maniego could continue with the investigation, as the source of his authority to investigate emanates from the original LOA and not from the MOA.

In the *Opulent case*, the Supreme Court emphasized that only revenue officers **actually named** under the LOA are authorized to examine the taxpayer. Thus, RO Allan Maniego is duly authorized to continue the audit, considering he was

named one of the revenue officers under LOA No. 116-2011-00000050.

It bears noting that the recently decided case of *CIR vs. McDonald's Philippine Realty Corp.*[5] *(McDonald)* was quoted by two of my learned colleagues: Justice Catherine T. Manahan, in her *ponencia;* and Justice Juanito C. Castaneda, Jr., Chairman of the Court's Second Division, in his Dissenting Opinion.

The *ponencia* pointed out that "While ruling that the issuance of a new LOA is essential in the continuance of an audit/investigation of a taxpayer's records, the wordings of the McDonald's decision suggests that this is necessary only when the same will be transferred to a **new set of revenue officers**." Whereas the Dissenting Opinion essentially discussed "the need for revalidating a duly served LOA for purposes of continuing the audit beyond the 120-day period from the date of its issuance" and the "resulting consequences in the event of failure to procure such revalidation," thus:

> "In the recent case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*, the Supreme Court categorically held that Revenue Memorandum Order (RMO) No. 43-90 remains effective and applicable. Notably, it also found that under Section D(5) thereof, issuance of a new LOA is expressly required in two (2) instances, namely: (1) any reassignment or transfer of cases to another revenue officer; or (2) revalidation of expired LOA. ...
>
> > **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: "reassignment/transfer of cases to another RO(s)", 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.** ...
>
> Meanwhile, in *AFP General Insurance Corporation v. Commissioner of Internal Revenue,* the Supreme Court made the following disquisition as regards the need for revalidating

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

a duly served LOA for purposes of continuing the audit beyond the 120-day period from date of its issuance. It also tackled the resulting consequence in the event of failure to procure such revalidation, to wit:

> The issuance confirms that a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance. The *120-day period for rendering an investigation report* was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.
>
> Nonetheless, the revenue officer may validly request for LOA revalidation, which shall be supported by a progress report and an enumeration of reasons to justify his request.
>
> ...
>
> **Without revalidation, the LOA shall be considered void and the assigned revenue officer is "prohibited from *further* investigation and contact with the taxpayer." The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of audit*. It contemplates a *served LOA* and *an on-going audit investigation.*** Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.
>
> Given this context, it is clear that failure to comply with the 120-day rule does not void LOA *ab initio*. **The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his *expired authority to audit* to be able to validly continue investigation beyond the first 120 days.**
>
> ...

In the present case, it is readily apparent on record that more than 120 days had elapsed from the time LOA No. 116-2011-00000050 was issued on September 20, 2011 up until Memorandum of Assignment NO. LOA -116-2013-0306 was issued to RO Maniego in 2013. The case records do not

bear any indication whatsoever that a revalidation of LOA No. 116-2011-00000050... was ever sought or made within or even after such period.

...

Guided by the Supreme Court's pronouncement in the above cases of *McDonald's* and *AFP General Insurance*, I submit that, *sans* a revalidation, LOA No. 116-2011-00000050 became unenforceable and that RO Maniego was prohibited from conducting further investigation by virtue of such LOA. In other words, LOA No. 116-2011-00000050 cannot validly clothe RO Maniego with the requisite authority to *continue* the audit examination ..., contrary to the view maintained by the *ponencia*. Moreover, pursuant to Sec. 5 (D) of RMO No. 43-90 ..., there is a need to secure a new LOA in the present case because it squarely falls under one of the 2 instances mentioned herein, *i.e.*, revalidation of LOA which have already expired.

...." Emphasis supplied

I respectfully disagree with the above opinion of my esteemed colleague and Chairman, Justice Castaneda, that there is a need to secure a new LOA, holding that the present case squarely falls under one of the two instances mentioned in RMO No. 43-90 that requires a new LOA, i.e. **revalidation of an expired LOA**.

I wish to highlight that in the aforesaid case of *AFP General Insurance Corp. (AGIC)*[6] **the CTA En Banc ruled in favor of the validity of the subject LOA,** to wit:

"*Ruling of the CTA En Banc*

...

The court a quo ruled as follows: *first,* when the concerned revenue officers failed to submit their report within 120 days after service of the LOA, they likewise failed to submit the subject LOA for revalidation. However, their failure to do so **did not affect the LOA's validity**. RMO 38-88 and RMC 40-06 do not treat an LOA as void once it is not revalidated within the said period. ...

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[6] G.R. No. 222133, November 4, 2020

Hence, AGIC filed the present petition." (Emphasis supplied)

AGIC insists that the CTA *En Banc* erred in upholding the assessments for the following reasons: *first*, the *subject LOA was invalid* because it remained "un-revalidated" despite (a) belated service thereof, and (b) the non-submission of a report within the reglementary 120-day period.[7] The Supreme Court **denied** AGIC's petition, and upheld the subject LOA's validity, viz.:

"The Court's Ruling

The petition has no merit.

...

Third, even if the Court brushes aside these recognized principles and follows AGIC's reasoning, it is clear that they would have had the legal right to refuse service of an LOA it believed was defective due to lack of revalidation. However, it is undisputed that AGIC did not contest the LOA upon receipt and allowed the tax authorities to proceed with and complete the audit.

Moreover, AGIC did not question the timeliness of the LOA's service in any of the following reply to the PAN, two-page formal administrative protest to the FID, Petition for Review, and Motion for Reconsideration before the CTA Division. AGIC raised this argument only on appeal (to the CTA En Banc).

To the Court's mind, AGIC's failure to exercise its right to refuse the service of an allegedly defective LOA shows that they had acquiesced to the tax authorities' investigation. That it waited until after the issuance of the PAN, FLD, as well as the CTA Division's adverse decision before objecting to this irregularity, could only be interpreted as a mere afterthought to resist possible tax liability.

Revalidating a served LOA in connection with the "120-day rule."

...

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[7] *Id.*

x----------x

Alternatively, AGIC argues that the subject LOA also became null and void when it was not submitted for revalidation after the lapse of a supposed "120-day period."

AGIC relies on RMC 40-06, which imposes a "120-day rule" in connection with LOA re-validation. The circular refers to RMO 38-88, which provides as follows:

...

The foregoing issuance refers to the "120-day period" as the time within which an investigation report shall be rendered.

AGIC claims that LOA No. 00021964 was nullified due to the assigned revenue officers' failure to: (1) render the investigation report within this period, and (2) submit the LOA for revalidation. Thus, the resulting tax assessments are also void.

...

RMO 43-64, read together with RMO 38-88, **discredits AGIC's claim**.

The issuance confirms that a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance. **The *120-day period for rendering an investigation report* was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.**

...

Given this context, it is clear that failure to comply with the 120-day rule does not void LOA ab initio. The expiration of the 120-day period merely renders an LOA unenforceable, inasmuch as the revenue officer must first seek ratification of his expired authority to audit to be able to validly continue investigation beyond the first 120 days.

That the revenue officer is unable to conduct further investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.

...

> Based on the foregoing, ... **the Court upholds the subject LOA's validity.**" (Emphasis supplied)

Clearly, failure to comply with the 120-day rule **does not void an LOA *ab initio* but merely renders it unenforceable.** The 120-day period was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.

However, under Revenue Memorandum Circular (RMC) No. 23-09 dated April 16, 2009,[8] the **failure to revalidate an LOA does not nullify the same**, but shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO.

Additionally, RMO No. 44-2010 dated May 12, 2010 was issued by the Bureau of Internal Revenue barely sixteen months before the service of the subject LOA to respondent MSFI on September 20, 2011, providing that beginning June 1, 2010, **there is no need for the revalidation of LOAs**, to wit:

> "...
>
> 8. **Beginning June 1, 2010**, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, **there is no need for revalidation of the LA even if the prescribed audit period has been exceeded**. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.

---

[8]Revenue Memorandum Circular No. 23-09

I. Revalidation of LAs

The revalidation of LA shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. Failure on the part of the RO to request for the revalidation of LA or the expiration of the "revalidation period" does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO if the Regional Director, upon the recommendation of the Revenue District Officer, deems it necessary.

x----------x

...

V. REPEALING CLAUSE

The provisions of existing issuance that are inconsistent herewith are hereby **repealed, amended, or modified**." (Emphasis supplied)

RMO No. 43-90 is undoubtedly not an irrepealable order. It is thus reasonable to conclude that the pertinent provision of RMO No. 43-90 requiring the revalidation of an expired LOA has already been repealed by RMO No. 44-2010.

Accordingly, I submit my concurrence with the *ponencia.*

LANEE CUI-DAVID
Associate Justice