

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2674
(CTA Case No. 9625)

Present:

- versus -

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, II.

FORMULA SPORTS, INC.,
Respondent.

Promulgated:
MAR 06 2024

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DECISION

BACORRO-VILLENA, J.:

Assailing the Decision dated 02 March 2022¹ (**assailed Decision**) and Resolution dated 28 July 2022² (**assailed Resolution**) of the Third Division³ in CTA Case No. 9625, entitled *Formula Sports, Inc. v. Commissioner of Internal Revenue*, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the instant Petition for Review⁴ on 

¹ Rollo, pp. 30-44.

² Id., pp. 46-50.

³ Penned by Associate Justice Maria Rowena Modesto-San Pedro, with Associate Justice Erlinda P. Uy (Ret.) and Associate Justice Ma. Belen M. Ringpis-Liban, concurring.

⁴ Rollo, pp. 7-23.

15 September 2022⁵, pursuant to Section 3(b)⁶, Rule 8, in relation to Section 2(a)(1)⁷, Rule 4 of the Revised Rules of the Court of Tax Appeals⁸ (RRCTA). Herein, petitioner seeks the reversal of the assailed Decision and assailed Resolution, and prays instead for a judgment ordering respondent Formula Sports, Inc. (**respondent**) to pay ₱141,144,586.10 representing deficiency excise tax and value-added tax (VAT) for taxable years (TYs) 2010, 2011, and 2012 including the corresponding accrued surcharges, interest, and compromise penalties, plus further interest until full payment.

PARTIES OF THE CASE

Petitioner CIR is the duly appointed head of the Bureau of Internal Revenue (BIR) responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. He or she holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.⁹

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.¹⁰ Its principal office is located at 32nd Street corner 4th Avenue, Crescent Park West, Bonifacio Global City, Taguig City. It is registered with the 

⁵ The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a “Motion for Extension to File Petition for Review” *per En Banc* Minute Resolution dated 01 September 2022, *id.*, p. 6.

⁶ SEC. 3. *Who may appeal; period to file petition.*

...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

⁷ SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

...
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

⁸ A.M. No. 05-11-07-CTA.

⁹ Parties, Petition for Review, *rollo*, pp. 8-9.

¹⁰ *Id.*

Securities and Exchange Commission (SEC) under SEC Reg. No. A1997-18420. Its primary purpose is to sell (on wholesale or retail basis), distribute, export, exchange, pledge, dispose, trade, and to deal or engage in any business relating to automobiles, utility vehicles, trucks, any and all kinds of motor vehicles, automobile products, motor vehicles parts, accessories, materials, instrument tools, supplies, machinery, equipment and product related to automobiles. It also assembles, manufactures, fabricates, installs, repairs, purchase imports any and all kinds of motor vehicles, and constructs, installs, buys, leases or holds or owns factories, buildings, plants shops, and other facilities of whatever kind and character, necessary, convenient or suitable thereto. Lastly, it performs any and all acts of work which may be necessary or advisable for, or related incidentally or directly with above-mentioned businesses. In line with its primary or general business purposes, it is the exclusive importer and distributor of Maserati cars in the Philippines.¹¹

FACTS OF THE CASE

On 22 October 2014, the Officer-in-Charge (OIC) Assistant Commissioner (ACIR) of the Large Taxpayers Service (LTS), Nestor S. Valeroso (**Valeroso**), issued Mission Order No. 00110055¹² (**Mission Order**) addressed to Revenue Officers (ROs) Marianne P. Pascual (**Pascual**) and Emmanuel G. Viardo (**Viardo**), through Group Supervisor (GS) Emilie C. Peig (**Peig**). The Mission Order directed the ROs to validate or verify respondent's Importer's Sworn Statement (ISS) and to inspect its books of accounts pertaining to its importations and sales of automobiles from 2010 to 2012, pursuant to Section 13 of Revenue Regulations (RR) No. 25-2003.¹³

Under the aforesaid RR, depending upon the nature of the findings that would arise from verification procedures, the CIR or his or her duly authorized representative may eventually assess deficiency excise tax, interest, and surcharges.¹⁴ 

¹¹ Supra at note 1, pp. 30-31.

¹² Exhibits "R-1"/"P-4", BIR Records, p. 568.

¹³ Amended Revenue Regulations Governing the Imposition of Excise Tax on Automobiles pursuant to the Provisions of Republic Act No. 9224, An Act Rationalizing the Excise Tax on Automobiles, Amending for the Purpose the National Internal Revenue Code of 1997, and For Other Purposes.

¹⁴ SECTION 13. *Manufacturer's/Assembler's or Importer's Sworn Statement.* — Every manufacturer/ assembler or importer of automobiles shall file with the Commissioner of Internal Revenue or his

In connection with the Mission Order, on 27 October 2014, the BIR issued a Request for Presentation of Records requiring respondent to produce its accounting records and supporting documentation on its importations and sales of automobiles for the years 2010 to 2012.¹⁵ On 27 October 2014, respondent received both the Mission Order and the Request for Presentation of Records.¹⁶

On 17 November 2014, the BIR reiterated its request for documentation in a Second and Final Notice for Presentation of Records/Documents. Respondent received this notice on 24 November 2014.¹⁷

Following the LTS's validation and verification procedures, the BIR issued the Preliminary Assessment Notice¹⁸ (PAN) on 26 January 2015. Respondent received the same on 09 March 2015. The PAN stated that respondent was liable for deficiency excise tax and VAT totaling ₱122,275,296.90, inclusive of surcharges, interest, and compromise penalties.

Later, on 23 March 2015, respondent filed its reply to the PAN.¹⁹ It highlighted therein that it would be unable to refute the findings in the PAN as it lacked the supporting details and information used to arrive at the amounts of the said findings.

Thereafter, on 10 October 2016, OIC-ACIR Teresita M. Angeles (Angeles) issued the Formal Letter of Demand²⁰ (FLD) which , respondent received on 24 November 2016. The FLD reiterated its

authorized representative on or before the end of months of June and December of every calendar year, or for every proposed registration of a new brand of automobiles, including its variants, a sworn statement showing, among others, the following information:

...
The sworn statement shall be subject to verification by the Commissioner of Internal Revenue or his duly authorized representative to determine its correctness and/or accuracy. For this purpose, the Commissioner of Internal Revenue or his duly authorized representative may examine and/or require the production of the manufacturer's/assembler's or importer's books of accounts or such other documents from which the accuracy and correctness of the sworn statement may be determined. In case it is determined that the sworn statement does not accurately and correctly reflect the prices of automobiles, the taxpayer shall be assessed of the deficiency excise tax, inclusive of surcharges and interests.

¹⁵ Exhibits "R-2"/"P-5", BIR Records, p. 569.

¹⁶ Supra at notes 12 and 15.

¹⁷ Exhibits "R-3"/"P-6", BIR Records, pp. 570-571.

¹⁸ Exhibits "R-5"/"P-7", id., pp. 578-581.

¹⁹ Exhibit "P-8", id., pp. 595-597.

²⁰ Exhibits "R-7"/"P-9"; id., pp. 603-606.

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findings in the PAN (albeit with updated values for interest) for deficiency excise tax and VAT in the total amount of ₱141,144,586.10, broken down as follows:

I. Excise Tax

	2010	2011	2012	Total
Basic Deficiency Excise Tax	₱15,152,749.25	₱14,590,595.97	₱10,253,247.18	₱39,996,592.40
Add: 20% Interest p.a. (from 19 Apr 2010 to 31 Oct 2016)	19,393,113.42	15,757,438.36	11,642,898.93	46,793,450.71
Add: 50% Surcharge	7,576,374.62	7,295,297.98	5,126,623.59	19,998,296.19
Add: Compromise Penalty	50,000.00	50,000.00	50,000.00	150,000.00
TOTAL EXCISE TAX PAYABLE	₱42,172,237.29	₱37,693,332.31	₱27,072,769.70	₱106,938,339.30

II. Value-Added Tax

	2010	2011	2012	Total
Basic Deficiency VAT	₱4,998,479.76	₱4,818,590.73	₱3,281,039.09	₱13,098,109.58
Add: 20% Interest p.a. (from 19 Apr 2010 to 31 Oct 2016)	6,404,006.05	5,212,555.42	2,822,520.95	14,439,082.42
Add: 50% Surcharge	2,499,239.88	2,409,295.37	1,640,519.55	6,549,054.80
Add: Compromise Penalty	40,000.00	40,000.00	40,000.00	120,000.00
TOTAL VAT PAYABLE	₱13,941,725.69	₱12,480,441.52	₱7,784,079.59	₱34,206,246.80

TOTAL EXCISE TAX PAYABLE	₱42,172,237.29	₱37,693,332.31	₱27,072,769.70	₱106,938,339.30
TOTAL VAT PAYABLE	13,941,725.69	12,480,441.52	7,784,079.59	34,206,246.80

TOTAL DEFICIENCY TAX PAYABLE	₱56,113,962.98	₱50,173,773.83	₱34,856,849.29	₱141,144,586.10
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As explained in the FLD, the deficiency excise tax and VAT arose from the differences observed in the reconciliation of respondent's Authority to Release Imported Goods (ATRIG) with invoices gathered from its suppliers (as furnished by the BIR's International Tax Affairs Division [ITAD]), alongside the purchase price of the imported vehicles respondent had declared in its ISS. According to the BIR, the purchase price of the imported vehicles declared in the ISS (which respondent used to determine how much excise tax and VAT it paid) was lower than the purchase price *per* the corresponding invoices and ATRIGs. The FLD also mentioned that the BIR had since furnished respondent's authorized representative a copy of the worksheet for the latter to validate the assessment's computation.²¹

Still later, respondent filed its Protest²² to the FLD on 22 December 2016. Therein, respondent contested the validity of the assessment by asserting that: (1) there was no valid Letter of Authority (LOA) issued for the conduct of the investigation; (2) the BIR's right to assess for TYs 2010 to 2012 had already prescribed; and, (3) respondent's right to due process was violated with the BIR's failure to set forth the factual and legal bases of the assessment.

In response, on 20 February 2017, OIC-ACIR Angeles issued the Final Decision on Disputed Assessment²³ (FDDA) controverting all of the abovementioned grounds and denying respondent's Protest to the FLD. Respondent received a copy thereof on 14 March 2017.²⁴

Undeterred, on 11 April 2017, respondent filed with petitioner a Request for Reconsideration of the FDDA.²⁵ Petitioner denied the same in a letter dated 11 May 2017 which served as his or her Final Decision.²⁶ Respondent received a copy thereof on 29 May 2017.²⁷ 

²¹ Details of Discrepancies, id., pp. 603-604.
²² Exhibit "P-10", Division Docket, Volume II, pp. 737-752.
²³ Exhibit "R-9", BIR Records, pp. 644-645.
²⁴ Exhibit "P-11", Division Docket, Volume I, pp. 77-78.
²⁵ Exhibit "P-12", id., Volume II, pp. 753-779.
²⁶ Exhibit "R-11", BIR Records, p. 677.
²⁷ Exhibit "P-13", Division Docket, Volume I, p. 106.

In the Final Decision, petitioner clarified that the FDDA had already considered all arguments in respondent's Request for Reconsideration and found them all to be without merit. Alternatively stated, it was a mere rehash of respondent's protest to the FLD. The Final Decision also contained a demand for respondent to settle the deficiency assessment or appeal with the Court of Tax Appeals (CTA) within thirty (30) days from receipt thereof.²⁸ Following the demand, respondent filed its Petition for Review²⁹ before this Court on 28 June 2017, or within thirty (30) days from its receipt of petitioner's Final Decision. The case was raffled to the Third Division.

On 12 October 2017, petitioner was able to file his or her Answer.³⁰ In the Answer, petitioner insisted that: (1) respondent's deficiency taxes may still be assessed pursuant to Section 13³¹ of RR No. 25-2003³² even in the absence of a valid LOA or Mission Order; (2) the BIR's right to assess respondent has not yet prescribed since the latter committed fraud in the filing of its tax returns and payment of taxes, hence the extraordinary prescriptive period of ten (10) years should apply; (3) respondent's right to due process was not violated considering that it was given all the opportunity to intelligently file its protest against the assessment; and, (4) in the absence of proof of any irregularities, the assessment is considered valid, correct, and made in good faith which the Court is bound to uphold.

On 04 December 2017, petitioner forwarded the BIR Records of the present case to this Court.³³

Thereafter, petitioner (then respondent) filed his or her Pre-Trial Brief³⁴ on 12 February 2018. Meanwhile, respondent (then petitioner) filed its Pre-Trial Brief³⁵ on 15 February 2018. The Pre-Trial Conference took place on 20 February 2018.³⁶ As ordered therein, the parties filed

²⁸ Id.

²⁹ Id., pp. 10-195, with annexes.

³⁰ After three (3) motions for extensions of time. See Resolutions dated 08 August 2017, 15 September 2017, and 12 October 2017, id., pp. 202, 212-214 and 220-221, respectively; id., pp. 222-227.

³¹ Supra at note 14.

³² Supra at note 13.

³³ See Compliance dated 01 December 2017, Division Docket, Volume I, pp. 235-236.

³⁴ Id., pp. 239-241.

³⁵ Id., Volume II, pp. 552-561.

³⁶ See Minutes of the Hearing and Order, both dated 20 February 2018, id., pp. 562 and 564-565, respectively.

their Joint Stipulation of Facts & Issues³⁷ (**JSFI**) on 08 March 2018. The Third Division later issued the Pre-Trial Order³⁸ on 10 April 2018.

When trial ensued, respondent presented its first witness, Severino E. Santillan (**Santillan**), its Finance Director.³⁹ He testified *via* his Judicial Affidavit⁴⁰ as to the events that had transpired, from its receipt of the Mission Order up until petitioner's Final Decision. He also identified the documents in connection therewith. He echoed respondent's insistence that the assessment is void based on the following grounds, namely: (1) the FLD was issued beyond the three (3)-year prescriptive period; (2) the audit and assessment was conducted without a valid LOA; and, (3) the assessment had no factual and legal bases.

Severino Esplana (**Esplana**), a consultant of Jestine Customs Brokerage, Inc. (respondent's brokerage firm) and former Chief of the Valuation and Classification Division and Concurrent Chief of the Payment Certification Unit of the Bureau of Customs (**BOC**), also testified by way of Judicial Affidavit.⁴¹ There, he declared that he assisted respondent in the preparation and filing of its customs tariff documentation and in the release of its imported vehicles from the BOC. As such, to prepare for the filing of its court case, respondent requested him to secure certified copies of its Single Administrative Documents (**SADs**) and Import Entry and Internal Revenue Declarations (**IERDs**). However, he explained that the BOC only provided him with printouts of the SADs and photocopies of the IERDs. He explained further that only photocopies are obtainable as the originals remained in the BOC's custody.

Esplana also pointed out that the SAD and IERD contain the same information; specifically, the amount of duties and taxes assessed on each of respondent's imported vehicles. He discussed further that the ATRIG serves as the importer's proof that all the duties assessed had already been paid and that the imported goods had already been allowed release from the BOC's custody. In addition to the foregoing documents, he testified that he was able to belatedly secure a Certification from the

³⁷ Id., pp. 566-574.
³⁸ Id., pp. 576-581.
³⁹ See Minutes of the Hearing and Order, both dated 21 May 2018, id., pp. 596 and 597, respectively.
⁴⁰ Exhibit "P-22", id., Volume I, pp. 247-415.
⁴¹ See Minutes of the Hearing and Order, both dated 17 September 2018, id., pp. 625-626; Exhibits "P-23" and "P-24", id., Volume I, pp. 416-427, and Volume II, pp. 613-618, respectively.

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BOC listing down respondent's payments of duties in relation to its imported vehicles and certifying that these have all been collected and remitted to the Bureau of Treasury (BTr).

As then petitioner, respondent filed its Formal Offer of Evidence⁴² (FOE) on 04 October 2018. Petitioner did not file a Comment/Opposition thereto.⁴³

Acting on respondent's FOE, in its Resolution dated 21 February 2019⁴⁴, the Third Division admitted all of respondent's pieces of evidence except for Exhibits "P-3" to "P-3-X", "P-14" to "P-14-W", and "P-15" to "P-15-X" which correspond to respondent's IERDs, SADs, and ATRIGs, respectively. It denied admission of the said exhibits for respondent's failure to comply with the requisites for their admissibility as secondary evidence.

Aggrieved, on 12 March 2019, respondent filed its Motion for Reconsideration⁴⁵ (MR) of the 21 February 2019 Resolution, asking the Court to reconsider the admission of the denied exhibits. Petitioner filed his or her Comment/Opposition⁴⁶ thereto on 18 March 2019. Then, respondent filed its Motion for Leave to File the Attached Reply to Comment/Opposition⁴⁷ on 02 April 2019 to address petitioner's Comment/Opposition. The Court admitted the same (as part of the records of the case) on 08 April 2019.⁴⁸

On 13 June 2019, the Court partially granted respondent's MR, admitting the SADs marked as Exhibits "P-14" to "P-14-W" composed of respondent's SADs.⁴⁹

In consideration of the remaining exhibits, respondent filed its Tender of Excluded Evidence⁵⁰ on 11 July 2019. It asked for the denied

⁴² Id., Volume II, pp. 632-805.

⁴³ See Records Verification dated 14 November 2018, id., p. 806.

⁴⁴ Id., pp. 810-811.

⁴⁵ See Motion for Reconsideration (RE: Resolution dated February 21, 2019), id., pp. 826-836.

⁴⁶ See Comment/Opposition (on [Respondent's] Motion for Reconsideration dated March 12, 2019), id., pp. 839-842.

⁴⁷ See Motion for Leave to File the Attached Reply to Comment/Opposition (to the Motion for Reconsideration Re: Resolution dated February 21, 2019), id., pp. 846-852.

⁴⁸ See Resolution dated 08 April 2019; id., p. 854.

⁴⁹ See Resolution dated 13 June 2019; id., pp. 856-862.

⁵⁰ Id., pp. 863-868.

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exhibits to be considered part of the case records, pursuant to Section 40⁵¹, Rule 132⁵² of the Rules of Court, specifically: (1) Exhibits "P-3" to "P-3-X", or respondent's IERDs; and, (2) Exhibits "P-15" to "P-15-X" or respondent's ATRIGs.⁵³ Over petitioner's Comment/Opposition⁵⁴ thereto on 26 July 2019, the Court granted respondent's Tender of Excluded Evidence in a Resolution dated 05 September 2019.⁵⁵

Subsequently, RO Viardo took the stand as petitioner's lone witness.⁵⁶ He testified, by way of Judicial Affidavit⁵⁷, on what transpired during the audit and assessment of respondent and identified the relevant documents the BIR issued during the conduct thereof.

On 27 February 2020, petitioner filed his or her FOE.⁵⁸ Respondent filed its Comment and/or Opposition⁵⁹ thereto on 12 March 2020.

On 08 July 2020, acting upon petitioner's FOE, the Court admitted all offered pieces of evidence, except for Exhibit "R-12" representing the entire BIR Records, which was denied for petitioner's failure to have the same marked.⁶⁰ To address this, petitioner filed an Omnibus Motion⁶¹ on 20 August 2020, asking the Third Division to set a Commissioner's Hearing to have the denied exhibit marked and to be allowed to thereafter re-file his or her FOE.⁶² Respondent filed its Comment/Opposition thereto on 15 September 2020.⁶³ The Court

⁵¹ SEC. 40. *Tender of Excluded Evidence*. — If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

⁵² Presentation of Evidence.

⁵³ Supra at note 50.

⁵⁴ See Comment/Opposition (Re: Petitioner's Tender of Excluded Evidence), Division Docket, Volume II, pp. 870-873.

⁵⁵ Id., p. 877.

⁵⁶ See Minutes of the Hearing and Order, both dated 12 February 2020, id., p. 913 and pp. 914-915, respectively.

⁵⁷ Exhibit "R-13", id., pp. 816-824.

⁵⁸ Id., pp. 916-922.

⁵⁹ Id., pp. 925-929.

⁶⁰ See Resolution dated 08 July 2020, id., pp. 934-935.

⁶¹ See Omnibus Motion (a) Motion for Partial Reconsideration [Re: Resolution dated July 08, 2020]; and (b) Motion to Set Commissioner's Hearing, id., pp. 980-983.

⁶² Id.

⁶³ See Comment/Opposition (to [Petitioner] Omnibus Motion dated August 14, 2020), id., pp. 986-990.

granted the Omnibus Motion through its Resolution dated 04 November 2020.⁶⁴

Subsequently, on 15 December 2020, petitioner filed his or her Supplemental FOE.⁶⁵ Respondent filed its Comment/Opposition thereto on 21 December 2020.⁶⁶ On 24 January 2021, the Court granted the Supplemental FOE, admitting petitioner's Exhibit "R-12".⁶⁷

Respondent and petitioner thereafter filed their Memoranda on 20 August 2020⁶⁸ and 01 March 2021⁶⁹, respectively. With the filing of both Memoranda, the case was submitted for decision on 03 March 2021.⁷⁰

On 02 March 2022, the Third Division promulgated the assailed Decision⁷¹ that granted herein respondent's Petition for Review. The dispositive portion thereof reads:

...

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment, dated 20 February 2017, assessing [respondent] for deficiency excise tax and VAT in the aggregate amount of ₱141,144,586.10, inclusive of interests and penalties, for taxable years 2010, 2011, and 2012 is hereby **CANCELLED** and **SET ASIDE**.

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

SO ORDERED.

...

In the assailed Decision, the Third Division held that the absence of a valid LOA voids the assessment issued against respondent. As such, the ROs that carried out the investigation of respondent's books lacked

⁶⁴ Id., pp. 997-1000.
⁶⁵ Id., pp. 1003-1009.
⁶⁶ See Comment/Opposition (to [Petitioner's] Supplemental Formal Offer of Evidence), id., pp. 1012-1017.
⁶⁷ See Resolution dated 25 January 2021, id., pp. 1021-1022.
⁶⁸ Id., pp. 936-978.
⁶⁹ Id., pp. 1026-1040.
⁷⁰ See Resolution dated 03 March 2021, id., p. 1043.
⁷¹ Supra at note 1; Emphasis in the original text.

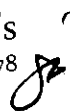
the requisite authority, resulting in a null and void assessment. The Court emphasized that the Mission Order does not replace, supplant, nor can it be converted into a valid LOA.⁷²

Unsatisfied, on 24 March 2022, petitioner filed an MR⁷³ questioning the Third Division’s action and findings. Petitioner recycled its arguments prior to the assailed Decision, stating that a valid LOA is not necessary and that the assessment should be considered valid even with no LOA or Mission Order attending it, as the investigation was carried out under the office of petitioner (particularly, the LTS).

On 12 April 2022, respondent commented on petitioner’s MR, aligning with the views of the Third Division in the assailed Decision and pointing out that respondent failed to raise any new arguments in support of his or her position.⁷⁴

The Third Division then proceeded to promulgate its now assailed Resolution⁷⁵ of 28 July 2022, denying petitioner’s MR for lack of merit. In denying the MR, the Court underscored that the said MR merely rehashed petitioner’s arguments that were already considered in the assailed Decision. Nevertheless, it discussed the importance of a valid LOA *vis-à-vis* the due process requirements.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following petitioner’s receipt of a copy of the assailed Resolution on 16 August 2022⁷⁶, a “Motion for Extension to File Petition for Review”⁷⁷ (**Motion for Extension**) was filed with the Court *En Banc* on 30 August 2022. This Court granted the same, extending petitioner’s period to file a petition by fifteen (15) days or until 15 September 2022.⁷⁸ 

⁷² Id.
⁷³ See Motion for Reconsideration (Re: Decision promulgated 2 March 2023), Division Docket, Volume II, pp. 1061-1067.
⁷⁴ See Comment/Opposition (to the Motion for Reconsideration dated March 22, 2022), id., pp. 1073-1092.
⁷⁵ Supra at note 2.
⁷⁶ See Notice of Resolution dated 02 August 2022, Division Docket, Volume II, p. 1095.
⁷⁷ *Rollo*, pp. 1-4.
⁷⁸ Supra at note 5.

On 15 September 2022 or within the 15-day extended period granted, petitioner filed the instant Petition for Review⁷⁹ seeking the reversal of the Third Division’s assailed Decision and Resolution. On 03 November 2022, respondent filed its Comment/Opposition thereto.⁸⁰

On 23 December 2022⁸¹, the Court *En Banc* noted respondent’s Comment/Opposition⁸² and, pursuant to Parts I.1.B⁸³ and II⁸⁴ of A.M. No. 11-1-5-SC-PHILJA or the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*, referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation. However, the parties decided not to have their case mediated by the PMC-CTA.⁸⁵

On 08 March 2023, in consideration of the above, the Court *En Banc* submitted the case for decision.⁸⁶

ISSUE

The instant Petition for Review submits the following issue for the Court *En Banc*’s resolution —

WHETHER THE THIRD DIVISION ERRED IN RULING THAT THE ASSESSMENT IS VOID FOR THE REVENUE OFFICERS’ LACK OF AUTHORITY TO CONDUCT THE AUDIT INVESTIGATION,

⁷⁹ Supra at note 4.
⁸⁰ See Comment/Opposition (to the Petition for Review dated September 15, 2022), *rollo.*, pp. 55-89.
⁸¹ See Resolution dated 23 December 2022, *id.*, pp. 92-93.
⁸² Supra at note 80.
⁸³ I.1. The following cases may be referred to mediation:
...
B. *Cases within the jurisdiction of the Court En Banc*:
Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies — BIR, BOC, Department of Finance, Department of Trade and Industry, Department of Agriculture.
⁸⁴ II. *Referral to Mediation*
The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.
A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center — Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.
⁸⁵ See No Agreement to Mediate dated 06 February 2023, *rollo*, p. 94.
⁸⁶ See Resolution dated 08 March 2023, *id.*, pp. 96-97.

LEADING TO THE CANCELLATION AND SETTING ASIDE OF THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) DATED 20 FEBRUARY 2017, THAT DEMANDED RESPONDENT FORMULA SPORTS, INC. TO PAY DEFICIENCY EXCISE TAX AND VALUE-ADDED TAX (VAT) FOR TAXABLE YEARS (TYs) 2010, 2011, AND 2012 IN THE TOTAL AMOUNT OF ₱141,144,586.10, INCLUSIVE OF INTEREST AND PENALTIES, PLUS FURTHER INTEREST UNTIL FULL PAYMENT.

ARGUMENTS

In its bid for reversal of the Third Division's actions, petitioner asserts that a valid LOA is not a requirement when an audit investigation is conducted under the office of the CIR as the power to assess is organic to his office. Under this premise, petitioner further contends that the LOA is not among the statutory requirements when the audit investigation is conducted by the LTS, but is merely issued for administrative purposes to keep track of ongoing assessments.

Petitioner contends further that LOAs are only required for ROs in Revenue District Offices (RDO), based on Section 13⁸⁷ of the National Internal Revenue Code (NIRC) of 1997, as amended.

Additionally, petitioner posits that the law does not specifically state that LOAs could be the only source of authority (for an RO) to conduct audits, as such authority may be granted in another form (like a Mission Order).

Relying on Section 13⁸⁸ of RR No. 25-2003⁸⁹ as sufficient basis of authority for petitioner or his or her duly authorized representatives, petitioner insists that the assessment issued against respondent is thus valid notwithstanding the absence of a valid LOA or even a Mission Order.

In maintaining his or her position favoring the validity of the present assessment, petitioner also argues that the BIR's right to assess

⁸⁷ SEC. 13. *Authority of a Revenue Officer.* –
...[A] Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director[.] ...

⁸⁸ Supra at note 14.

⁸⁹ Supra at note 13.

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respondent for TYs 2010 to 2012 had not prescribed. According to petitioner, the 10-year prescriptive period applies as respondent committed fraud in the filing of its tax returns and payment of taxes.

Petitioner proceeds to argue that respondent's right to due process was not breached after being given all the opportunity to intelligently file its protest against the assessment. Petitioner points out that respondent was able to utilize such opportunities when the latter was able to respond to the PAN, FAN, and FDDA.

Lastly, petitioner asserts that an assessment shall not be disturbed in the absence of proof of any irregularities in the performance of official duties.

On the other hand, respondent calls the Court *En Banc*'s attention to petitioner's failure to raise any new matters nor any errors in interpretation of the law or the facts, either of which would merit a reversal of the pronouncements of the Third Division.

In response to petitioner's arguments, respondent counters that the requirement under the law to issue a valid LOA must be met, considering that petitioner had not been able to provide a basis for an exemption therefrom. It likewise opposes petitioner's view that a Mission Order may take the place of the LOA.

Similarly, respondent highlights the LOA's relevance in relation to due process requirements. According to it, a taxpayer must be given proof that the persons attempting to conduct an investigation of its books are clothed with the proper authority. To further bolster its position, respondent contends that the right to issue an assessment against it for TYs 2010 to 2012 have indeed prescribed. Respondent finds as baseless petitioner's position that the 10-year prescription period applies.

Respondent also points out that the BIR failed to inform it of the factual and legal bases of the assessment, violating thus its right to due process.



Finally, against petitioner’s contention, respondent firmly declares that it had sufficiently overcome the presumption of regularity that petitioner has invoked.

RULING OF THE COURT *EN BANC*

After a thorough examination of the records of the case and the parties’ arguments, We conclude that the present Petition for Review is bereft of merit. The Court *En Banc* fully agrees with the Third Division’s declarations and actions in this case.

Before proceeding further, We find it propitious to confirm the Court’s acquisition of jurisdiction over the present petition.

Section 18 of Republic Act (RA) No. 1125⁹⁰, as amended by RA 9282⁹¹, provides that a party adversely affected by a resolution of a Division of the CTA on MR or new trial, may file a Petition for Review with the CTA *En Banc*. Relatedly, the RRCTA⁹², under Section 3(b)⁹³, Rule 8, states that the party affected should file the Petition for Review within 15 days from receipt of a copy of the questioned decision or resolution. This is without prejudice to the authority of the Court to grant an additional 15-day period⁹⁴ from the expiration of the original period, within which to file the Petition for Review.

Applying the foregoing, petitioner received the assailed Resolution on 16 August 2022.⁹⁵ Counting 15 days therefrom, petitioner had until 31 August 2022 to file the present Petition for Review before the Court *En Banc*. On 30 August 2022, petitioner filed a Motion for Extension⁹⁶ which the Court eventually granted.⁹⁷ As a result, the deadline to file the petition was pushed to 15 September 2022. 8

90 AN ACT CREATING THE COURT OF TAX APPEALS.
91 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
92 Supra at note 8.
93 Supra at note 6.
94 Id.
95 Supra at note 76.
96 Supra at note 77.
97 Supra at note 5.

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The instant petition filed on 15 September 2022⁹⁸ has, therefore, been timely filed and the Court *En Banc* successfully acquired jurisdiction over it.

Our ruling on the issue follows.

Upon a careful study of the arguments and scrutiny of the evidence and testimony submitted by both parties, the Court *En Banc* finds that petitioner's assessment of respondent bears an incurable defect that necessarily voids the whole assessment.

As the Third Division aptly ruled, petitioner's assessment against respondent, pursuant to an investigation conducted by ROs without the authority granted by a valid LOA, is null and void.

It is settled that the audit process normally commences with the CIR's issuance of the required LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment. At the same time, the LOA 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.⁹⁹ This function of an LOA is emphasized in the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*¹⁰⁰ (**Medicard**), where the Supreme Court explained, thus:

...

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. ...

...

In the case at bar, the LOA's absence is undisputed. Nowhere in the records of this case could a valid LOA nor any functional equivalent 

⁹⁸ Supra at note 4.

⁹⁹ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017.

¹⁰⁰ G.R. No. 222743, 05 April 2017; Citation omitted.

thereof be found. In its place, petitioner states that it issued a Mission Order.¹⁰¹

Revisiting the proceedings before the Third Division, RO Viardo, one of the officers directed to verify respondent's ISS (and petitioner's lone witness), corroborated as much¹⁰²:

...

Justice San Pedro: Okay. You admit that there is no LOA?

RO Viardo: Yes, your Honors.

Justice San Pedro: It's just a mission order?

RO Viardo: Yes, your Honors.

...

In fact, petitioner's position is grounded upon its claim that a prior LOA is not necessary in the instant case. Petitioner dismisses the LOA's necessity in this wise¹⁰³:

1. Based on Section 13 of the NIRC of 1997, as amended, the LOA only applies to ROs in RDOs;
2. The LOA is irrelevant and unnecessary when an audit investigation is conducted under the office of the CIR, as it is the latter's organic function to assess (as provided under Section 6 of the NIRC of 1997, as amended);
3. When an audit investigation is conducted under the office of the CIR, the LOA's issuance is not a statutory requirement, but is merely issued for administrative purposes to allow keeping track of ongoing assessments; and,
4. Section 6 of the NIRC of 1997, as amended, does not specifically state that only LOAs may be the source of authority for ROs to conduct audits, and thus may be in other forms such as Mission Orders. 

¹⁰¹ Supra at note 12.

¹⁰² TSN dated 12 February 2020, p. 9.

¹⁰³ Supra at note 4.

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We do not share any of petitioner's views.

The pertinent sections of the 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.

...

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[.]¹⁰⁴

...

The RO tasked to examine the books of accounts of taxpayers must be authorized via LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. 

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*¹⁰⁵, the Supreme Court sees similarly:

...

Based on Section 13 of the Tax Code, a Letter of Authority or 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 very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.

...

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. ...

...

Thus, for the examination of a taxpayer to be lawful, a valid LOA must be issued either by the CIR or his or her duly authorized representative.

Pursuant to the abovementioned Section 13, in relation to Section 10(c)¹⁰⁶ of the NIRC of 1997, as amended, as well as Revenue Memorandum Order (RMO) No. 43-90¹⁰⁷ and RMO No. 29-2007¹⁰⁸, the CIR's duly authorized representatives are as follows: (1) Regional Directors; (2) Deputy Commissioners; (3) Assistant Commissioner/ Head Revenue Executive Assistants (for Large Taxpayers); and, (4) other officials but only upon the CIR's prior authorization.

The above-cited *Medicard*¹⁰⁹ case enlightens further: 

¹⁰⁵ G.R. No. 178697, 17 November 2010; Citation omitted.

¹⁰⁶ 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[.]

¹⁰⁷ ...
Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

¹⁰⁸ Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

¹⁰⁹ Supra at note 100; Citation omitted and emphasis supplied.

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...

... An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. ...

...

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

...

... To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. ...

...

In the same fashion, the Supreme Court had already passed upon and rejected arguments congruent with petitioner's in the more recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*¹¹⁰:

...

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. The revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.

...

¹¹⁰

G.R. No. 242670, 10 May 2021; Citations omitted.

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

...

As elucidated in the foregoing discussions, the LOA is a crucial prerequisite to the observance of the taxpayer's due process rights. The authority of the RO assigned to audit a taxpayer stems from the LOA. Contrary to petitioner's contentions, it is not simply an administrative document issued for monitoring purposes.

It is further worth noting that, by way of exception, the grant of authority by a valid LOA may be dispensed with when the CIR personally undertakes the investigation.¹¹¹ However, that is not the case here. It is also equally recognized that any other person who intends so must be duly clothed with authority. As likewise correctly pointed out by respondent, in line with the conclusions of the Third Division, petitioner in this case had not exhibited any basis for exempting the handling ROs from needing to derive authority from a valid LOA.

Having established the significance of the absence of the LOA, We proceed to weigh the other side of petitioner's declarations. 

¹¹¹ Supra at notes 100 and 109.

According to petitioner, the requisite authority may be granted in another form, such as through a Mission Order. Petitioner advances further and insists that Section 13¹¹² of RR No. 25-2003¹¹³, by itself, sufficiently empowers his or her representatives to conduct investigations leading to the issuance of an assessment. For petitioner, resultant assessments would thus be valid notwithstanding the absence of a grant of authority by a valid LOA or even a Mission Order.

Once again, neither of petitioner's rationalizations could cure the defective assessment for the want of authority to do so.

Petitioner relies on RR No. 25-2003 as the source of the authority of the ROs designated to carry out verification procedures¹¹⁴:

...

SECTION 13. *Manufacturer's/Assembler's or Importer's Sworn Statement.* — Every manufacturer/assembler or importer of automobiles shall file with the Commissioner of Internal Revenue or his authorized representative on or before the end of months of June and December of every calendar year, or for every proposed registration of a new brand of automobiles, including its variants, **a sworn statement** showing, among others, the following information:

- a. Name, address, TIN, and Assessment Number of the manufacturer/assembler or importer;
- b. The names and variants of the different models manufactured/assembled or imported;
- c. Wholesale price of each model and variants to dealers;
- d. Suggested retail price of each model and variants;
- e. Production/assembly/importation costs and all other expenses incurred or to be incurred until the automobile is finally sold (e.g., materials, labor, overhead, selling and administrative expenses, etc.) per brand or model; and
- f. Value of car airconditioners, radio and mag wheels including the cost of their installation.

¹¹² Supra at note 14.

¹¹³ Supra at note 13.

¹¹⁴ Id; Emphasis supplied.

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The sworn statement shall be subject to verification by the Commissioner of Internal Revenue or his duly authorized representative to determine its correctness and/or accuracy. For this purpose, the Commissioner of Internal Revenue or his duly authorized representative may examine and/or require the production of the manufacturer's/assembler's or importer's books of accounts or such other documents from which the accuracy and correctness of the sworn statement may be determined. In case it is determined that the sworn statement does not accurately and correctly reflect the prices of automobiles, the taxpayer shall be assessed of the deficiency excise tax, inclusive of surcharges and interests.

In the above issuance, the CIR or his or her duly authorized representatives may verify the correctness and accuracy of the sworn statement submitted by a manufacturer, assembler, or importer of automobiles.

In the instant case, the BIR mobilized its ROs to conduct such verification procedures upon respondent's ISS through the issuance of Mission Order No. 00110055 that instructed thusly¹¹⁵:

...

Pursuant to the provisions of Section 6 (c) of the National Internal Revenue Code, you are hereby directed to conduct the following activities marked X below:

...

[X] 5. Others

To validate/verify Importer's Sworn Statement and inspect books of accounts pertaining to importation/sales of automobiles pursuant to Sec. 13 of RR 25-2003.

...

Readily, We observe that the Mission Order lacked any express authorization to conduct an audit and issue an assessment. Nevertheless, We delve into the implications of the Mission Order. Notably, the Mission Order draws power from paragraph (c)¹¹⁶ of 

¹¹⁵ Supra at note 12.

¹¹⁶ (C) Authority to Conduct Inventory-taking, Surveillance and to Prescribe Presumptive Gross Sales and Receipts. - The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal

Section 6¹¹⁷ of the NIRC of 1997, as amended, which sets forth the CIR's authority in relation to inventory or stock-taking, as opposed to paragraph (a)¹¹⁸, which governs his or her power to authorize examinations and assessments.

The form utilized by the BIR for the Mission Order, BIR Form No. 0422, similarly originates from RMO No. 03-2003¹¹⁹ (as Annex "A" thereto), which recognizes the CIR's power under Section 6(c):

...

I. BACKGROUND

Under Section 6 (C) of the National Internal Revenue Code, as amended, the Bureau is empowered to conduct inventory-taking of goods of any taxpayer for purposes of determining his correct internal revenue tax liabilities, or it may place the business operations of any person under observation or surveillance, if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes. While this power is inherently provided in the Tax Code, it has been observed that this tool has not been fully utilized by the Bureau to enhance taxpayer's compliance.

...

An identical form is bundled with the later issued RMO No. 03-2009¹²⁰ as Annex "A".¹²¹ Therein, surveillance activities are likewise 

revenue tax purposes. The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed *prima facie* correct.

When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Sections 113 and 237 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base, and such amount so prescribed shall be *prima facie* correct for purposes of determining the internal revenue tax liabilities of such person.
¹¹⁷ SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*

¹¹⁸ Supra at page 19.

¹¹⁹ Prescribing Guidelines and Procedures in the Conduct of Inventory Taking/Stocktaking and Verification of Inventories Covering Taxable Year 2002 by the Large Taxpayers Audit and Investigation Division I, Large Taxpayers Audit and Investigation Division II, Large Taxpayers District Office – Makati, Large Taxpayers District Office - Cebu and Revenue District Offices; Emphasis in the original text.

¹²⁰ Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business.

¹²¹ Mission Orders.

initiated by Mission Orders. The guidelines and procedures set forth in the RMO more vividly outlined the road to an assessment stemming from a Mission Order, viz:

...
IV. POLICIES
...

2. All surveillance activities shall be covered by Mission Orders (MOs) [Annex "A"]. ...
...

V. GUIDELINES AND PROCEDURES

A. Surveillance Activities

1. Prelude to Surveillance
...

1.2. Prepare the necessary MO for approval and signature of the concerned Regional Director/ACIR, as the case may be.
...

2. Conduct of Surveillance
...

4. Action on Surveillance Results

If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided for under Section 115 of the NIRC, as amended, a recommendation shall be made to effect such closure.

If the result of the surveillance made likewise indicates that the taxpayer had not been, in fact, correctly reporting income for tax purposes, and that the veracity of his accounting records is not reliable, the Commissioner or Regional Director concerned shall issue a Letter of Authority (LA) for the investigation of the taxpayer. The Revenue Officer named in the LA shall proceed with the audit and cause the assessment of the taxpayer's internal revenue tax liabilities, based either on: (1) surveillance, pursuant to Section 6 [C]; (2) best evidence rule, as provided under Section 6 [B], NIRC as amended; and/or (3) the result of the tax audit.¹²²

...

¹²² Supra at note 120; Emphasis and underscoring supplied.

As it is, the procedure laid out in the issuance still calls for the grant of authority through a valid LOA if the assigned RO intends to pursue an investigation of a taxpayer leading to the eventual issuance of a deficiency assessment. Nonetheless, the preceding RMO No. 03-2003 did not brush off the significance of the LOA in listing its policies¹²³:

...

IV. POLICIES

6. In case the taxpayer subjected to inventory verification agrees to the findings resulting to corresponding adjustments to sales or cost of sales, the following courses of action shall be undertaken by the Revenue Officer:

6.1 Require the taxpayer to pay resulting deficiency taxes upon conclusion of the inventory-taking activity, **without prejudice to the issuance of a Letter of Authority upon recommendation of the ACIR, LTS/Regional Director and approval of the Commissioner.**

6.2 Record the findings discovered in the course of verification for reference in any subsequent audit of the concerned taxpayers subjected to stocktaking.

...

Applying the foregoing principles to the present case, the proper course of action for the ROs involved (assuming the circumstances hint towards the necessity to conduct an audit) would have been to first secure authorization *via* LOA, rendering any applicable measures precursor to advance a recommendation towards petitioner to issue the same.

Succinctly, the Mission Order does not encompass the same kind of authority as the LOA, nor may the former take the place or be converted into the latter simply by virtue of the flow of the proceedings — be it verification procedures, or if the RO oversteps into the conduct of a full-blown tax audit. Conversely, the above-discussed RMOs mandate that a valid LOA be issued before an audit can commence, notwithstanding whether the BIR's observations hinting towards perceived deficiency taxes arises from the surveillance activities¹²³ authorized by the Mission Order.

¹²³

Supra at note 119; Emphasis supplied.

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As petitioner's own allegation in the Petition for Review highlights, LOAs are issued to authorize the conduct of audits of taxpayers' internal revenue taxes, while Mission Orders are issued for specific purposes.¹²⁴ Evidently, any such purpose falls short of authorizing an audit investigation.

Interestingly, the BIR itself had previously endeavored to observe the distinction strictly, inviting its officers to act accordingly. RMO No. 11-2006¹²⁵ and RMO No. 12-2007¹²⁶, for instance, mutually provided:

...

The practice of issuing mission orders, correspondence letters, referral memoranda or any other similar orders for the purpose of audit examination and assessment of internal revenue taxes is hereby strictly prohibited.¹²⁷ ...

...

We echo the Third Division's position when it deemed the *Medicard* case particularly instructive herein. There, the Supreme Court rejected the recognition of an alternative document, a Letter Notice (LN), as a substitute for a validly-issued LOA¹²⁸:

...

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. ... Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

... Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and

¹²⁴ *Rollo*, p. 14.

¹²⁵ Par. 14, RMO No. 11-2006 dated 20 April 2006 entitled 2006 Audit Program for Revenue District Offices.

¹²⁶ Par. 17, RMO No. 12-2007 dated 03 July 2007 entitled 2007 Audit Program for Revenue District Offices.

¹²⁷ Emphasis supplied.

¹²⁸ Supra at note 100; Emphasis supplied.

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assessment of the petitioner. Unfortunately, this was not done in this case.

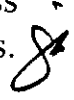
...

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

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.

...

In consideration of all the foregoing, We find no cogent reason to side with petitioner. All told, the present assessment could have been upheld if a valid LOA was issued therefor. Well-entrenched are the doctrines that in the absence of the requisite authority, the assessment or examination is a nullity¹²⁹; and, a void assessment bears no fruit.¹³⁰

As the Court *En Banc* similarly finds the assessment against respondent inescapably void, further discussions of the remaining grounds in support of petitioner's position (involving the other aspects of the investigation carried out by the BIR) can no longer alter the outcome of this instant case. Accordingly, in the absence of any reversible error, the Court *En Banc* has no other recourse but to dismiss this case and to leave undisturbed the Third Division's assailed actions. 

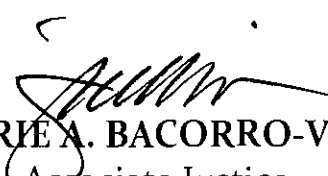
¹²⁹ *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, supra at note 105.

¹³⁰ *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 02 March 2022 and 28 July 2022, respectively, of the Third Division in CTA Case No. 9625, entitled *Formula Sports, Inc. v. Commissioner of Internal Revenue* are hereby **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from collecting or taking further action on the subject deficiency taxes assessed against respondent Formula Sports, Inc. as provided in the Final Decision on Disputed Assessment dated 20 February 2017 representing deficiency excise tax and value-added tax in the aggregate amount of ₱141,144,586.10, inclusive of interest, surcharges, and compromise penalties, for the taxable years 2010, 2011, and 2012.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

ON OFFICIAL BUSINESS
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
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