REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

INTEGRATED SOLUTIONS TECHNOLOGY LIMITED,
Respondent.

CTA EB NO. 2401
(CTA Case No. 9608)

Present:

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

Promulgated:
SEP 13 2022 10:27am

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**CIR/petitioner**) pursuant to Section 11[2] of

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[1] Filed on 28 December 2020, *Rollo*, pp. 3-15.

[2] **Sec. 11.** Section 18 of the same Act is hereby amended as follows:

> **"SEC. 18**. Appeal to the Court of Tax Appeals *En Banc*. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*."

Republic Act (**RA**) No. 9282.[3] It seeks to reverse and set aside the Decision dated 26 August 2020[4] (**assailed Decision**) and the Resolution dated 20 November 2020[5] (**assailed Resolution**) of this Court's First Division[6] in CTA Case No. 9608, entitled *"Integrated Solutions Technology Limited v. Commissioner of Internal Revenue"*. Both assailed Decision and Resolution granted respondent Integrated Solutions Technology Limited's (**ISTL**'s/**respondent**'s) prior Petition for Review which sought the cancellation of the Final Decision on Disputed Assessment (**FDDA**)[7] and the Final Assessment Notice (**FAN**)[8] that the Bureau of Internal Revenue (**BIR**) issued against it.

Petitioner is the CIR, charged with the duty of assessing and collecting internal revenue taxes. He holds office at the BIR, National Office Building, BIR Road, Diliman, Quezon City and may be served with summons and other legal processes through the undersigned counsels, with office address at Legal Division, BIR Region No. 8A – Makati City, Export Bank Plaza Building, Sen. Gil Puyat Avenue corner Chino Roces Avenue, Makati City.

Respondent is a regional operating headquarters (ROHQ) and existing under the laws of the Philippines, with principal place of business at the 5th Floor Sterling Centre, Ormaza corner Dela Rosa Streets, Legazpi Village, Makati City.

The antecedent facts follow.

On 18 September 2014, respondent received Letter of Authority (**LOA**) No. LOA-047-2014-00000513 dated 17 September 2014, authorizing Revenue Officer (**RO**) Gerardo Nuestro (**Nuestro**) and Group Supervisor (**GS**) Medina Lopez (**Lopez**), to examine

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3 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

4 *Rollo*, pp. 20-43.

5 Id., pp. 45-49.

6 Penned by Associate Justice Catherine T. Manahan and concurred by Presiding Justice Roman G. Del Rosario.

7 Dated 25 April 2017, Exhibit "P-1", Division Docket, Volume I, p. 27.

8 Dated 13 January 2017, Exhibit "P-15", id., Volume II, pp. 690-694.

respondent's books of accounts for all internal revenue taxes for the period 01 January 2013 to 31 December 2013.[9]

Later, respondent also received a Preliminary Assessment Notice (**PAN**) dated 28 December 2016.[10] Still later, the FAN was also issued and respondent received the same on 18 January 2017.[11]

Unable to agree with the BIR's issuances, respondent filed its protest against the FAN on 17 February 2017. However, the BIR denied the same and issued the FDDA on 25 April 2017. Respondent received the FDDA on 08 May 2017.

On 05 June 2017, respondent filed its Petition for Review docketed as CTA Case No. 9608. Initially, it was raffled to the Second Division of this Court.

After petitioner (**then respondent**) filed his Answer[12] on 11 August 2017, the pre-trial proceeded. The parties submitted their Joint Stipulation of Facts and Issues[13] (**JSFI**) on 26 October 2017, which the Second Division approved in its Pre-Trial Order dated 10 November 2017.[14]

When trial ensued thereafter, respondent presented its witnesses, namely: (1) Maricar Y. Santiago (**Santiago**), its Finance Manager; (2) Mark S. Romanillos (**Romanillos**), its Administrative Staff; and, (3) Dulce P. Young (**Young**), its General Manager and Resident Agent.

Young assumed the witness stand where she identified her Judicial Affidavit[15] that constituted her direct testimony. She testified that: (1) she has started working with and for respondent since 03 June 2002; (2) she is concurrently respondent's General Manager and Resident Agent, and she manages its administrative, finance and

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9 Joint Stipulation of Facts and Issues (JSFI), id., p. 601.
10 Id.
11 Id.
12 Id., Volume I, pp. 75-83.
13 Id., pp. 600-608.
14 Id., pp. 612-626.
15 Exhibit "P-71", id., Volume I, pp. 505-519.

development matters; (3) she oversees and ensures its compliance with government-mandated tax and reportorial requirements; (4) respondent received the LOA on 18 September 2014; (5) it complied and submitted all requirements to the BIR; (6) they received a final notice on 05 November 2015 stating that they failed to present records or documents; (7) they later also received a notice for the continuation of the audit/investigation; (8) they have again transmitted documents to the BIR; (9) several months passed and they were served with the PAN for taxable year (TY) 2013[16], with Details of Discrepancies on 09 January 2017; (10) the PAN was served on the building guard, Nory Nices, and forwarded to them on 11 January 2017; (11) before they could respond to the PAN, they were sent with the FAN with Assessment Notices[17] on 18 January 2017; (12) another set of FAN[18] with Details of Discrepancies were also received on 18 January 2017; (13) when they received the FANs, they have yet to reply to the PAN and were still preparing it so they sought advice as to the overlap of the periods to respond to the BIR's issuances; (14) as *per* their lawyer's advice, they filed their protest[19] on 17 February 2017; (15) in a letter received from the BIR on 08 May 2017, their protest was denied; and, (16) later, on 05 June 2017, they filed their Petition for Review with this Court in Division.

As for Romanillos, he testified that: (1) he is an administrative staff and he received the FAN and Assessment Notice for TY 2013; and, (2) the FAN was shown to Young and Santiago being respondent's General Manager and Finance Manager, respectively.

Santiago was the last to take the witness stand.[20] In her Judicial Affidavit[21], she declared that: (1) she is respondent's Finance Manager and was employed by respondent since 2006; (2) as a Finance Manager, she handles all BIR-related matters like audits and assessments; (3) petitioner's assessment of respondent for deficiency taxes in TY 2013 was based on incorrect facts and figures; (4) the assessment was barred by prescription; and, (5) when the LOA was received, Young instructed her to handle the same.

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16 Exhibit "P-11", id., Volume II, pp. 681-685.
17 Exhibits "P-24" to "P-31", id., pp. 705-718.
18 Exhibits "P-15" to "P-22", id., pp. 690-703.
19 Exhibit "P-32", id., pp. 719-726.
20 Order dated 24 January 2018, id., p. 687.
21 Exhibit "P-73", Division Docket, Volume I, pp. 133-144.

After respondent rested its case[22], petitioner presented his lone witness, Sharon S. Zafe (**Zafe**).[23]

On the witness stand and through her Judicial Affidavit[24], Zafe stated that: (1) she has been employed with the BIR since 10 July 2007; (2) she holds the position of RO1 and assigned at the Revenue District Office No. 47, East-Makati; (3) her responsibilities include, among others, the verification and audit examination of a taxpayer's books of accounts and other accounting records; (4) as for respondent's case, she was issued a Memorandum of Assignment (**MOA**) dated 19 May 2016, referring its case for investigation and examination, pursuant to LOA No. SN:eLA201100080829 dated 17 September 2014; (5) the latter LOA authorized her and GS Arthur Benjamin T. Padilla (**GS Padilla**) to continue the audit investigation of RO Nuestro; (6) the MOA was issued by Revenue District Officer (**RDO**), Atty. Shirley A. Calapatia (**Calapatia**) of Revenue District Office No. 47, East-Makati[25]; (7) pursuant thereto, she sent respondent notices of continuance of audit/investigation; (8) after the investigation report was made, the PAN dated 28 December 2016, with Details of Discrepancies, was served on respondent; (9) *per* Philpost's Certification dated 15 August 2017[26], respondent received the same; (10) a FAN dated 13 January 2017 was also issued after respondent failed to respond to the PAN; and, (11) respondent filed its protest to the PAN with the RDO on 14 March 2017.

After petitioner offered its exhibits and the Court admitted them[27], the parties were required to submit their respective memoranda. On 13 August 2019, petitioner submitted his memorandum[28] while respondent filed its memorandum[29] on 15 August 2019. On 29 August 2019, the First Division submitted the case for decision.[30]

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22 Order dated 24 September 2018, id., Volume III, p. 1120; The case was also transferred to the First Division pursuant to Court of Tax Appeals Administrative Circular No. 02-2018, dated 18 September 2018, "Reorganizing the Three (3) Divisions of the Court".
23 Order dated 12 March 2019, Division Docket, Volume III, pp. 1137-1138.
24 Exhibit "R-4", id., Volume I, pp. 107-112.
25 Exhibit "R-1-c", BIR Records, p. 430.
26 Exhibit "R-3", id., p. 715.
27 Order dated 10 July 2019, Division Docket, Volume II, pp. 1162-1169.
28 Id., pp. 1170-1179.
29 Id., pp. 1181-1200.
30 See Resolution dated 29 August 2019, id., p. 1203.

Later, or on 26 August 2020, the First Division issued its assailed Decision[31] cancelling and setting aside petitioner's assessment against respondent. The dispositive portion reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**.
>
> Accordingly, the FDDA dated April 25, 2017, denying [respondent's] protest, is **REVERSED** and **SET ASIDE**. Furthermore, the FAN dated January 13, 2017, assessing [respondent's] of deficiency income tax, EWT, WTC, FWT, VAT, DST, and compromise penalty for the year 2013, in the total amount of ₱29,299,632.51, is **CANCELLED** and **SET ASIDE**.
>
> ...

In resolving respondent's Petition for Review, the First Division found that RO Zafe and GS Padilla, who continued the examination of respondent's books of accounts and other accounting records for the TY 2013, were not named in LOA No. 047-2014-00000513 (but RO Nuestro and GS Lopez). Moreover, it found that respondent's right to due process was violated when the BIR issued the FAN before the lapse of the fifteen (15)-day period for it to reply to the PAN.

Expectedly, petitioner filed his Motion for Reconsideration[32] (**MR**) on 18 September 2020, but the First Division denied the same.[33]

Aggrieved by the First Division's actions, petitioner filed his Petition for Review before the Court *En Banc* on 28 December 2020. Before Us, petitioner raises the following issues for resolution, to wit:

> I.
>
> WHETHER THE REVENUE OFFICER (RO) WHO CONTINUED THE AUDIT AND EXAMINATION OF THE BOOKS OF ACCOUNTS OF RESPONDENT INTEGRATED SOLUTIONS TECHNOLOGY LIMITED'S INTERNAL REVENUE TAX LIABILTY FOR TAXABLE YEAR 2013, HAS THE PROPER AUTHORITY TO CONDUCT ASSESSMENT OF TAX DEFICIENCY.

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31 Supra at note 4.
32 Division Docket, Volume III, pp. 1230-1249.
33 See Resolution dated 20 November 2020; *Rollo*, pp. 45-49.

II.
WHETHER THE FINAL ASSESSMENT NOTICE (FAN) ISSUED AGAINST RESPONDENT INTEGRATED SOLUTIONS TECHNOLOGY LIMITED IS INVALID HAVING BEEN ISSUED PREMATURELY, THEREBY DEPRIVING THE LATTER THE OPPORTUNITY TO BE HEARD.

In support of the above issues, petitioner contends that the National Internal Revenue Code (**NIRC**) of 1997, as amended, does not specifically provide that a new LOA must be issued to grant an RO who replaced a previous RO named in the LOA who was transferred, reassigned or retired. Further, under Revenue Memorandum Order (**RMO**) No. 69-2010, a manually and serially-numbered MOA shall be issued for "reassignment for continuance of the audit/investigation of a case to another RO due to resignation/retirement/transfer of the original RO". According to petitioner, the First Division also erred in relying on the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[34] (**Medicard**), since the case involves the absence of an LOA thus, the same is not in all fours with respondent's case.

Respondent, on the other hand, agrees with the First Division in its holding that a reassignment or transfer of an audit to another RO requires the issuance of a new LOA. Moreover, the issuance of a FAN against it was clearly premature and violated its right to due process.

The Court *En Banc*'s ruling follows.

After a careful review of the records of the case and the parties' contrasting arguments, the Court *En Banc* is constrained to deny the present petition.

Before the Court *En Banc* proceeds to discuss the issues raised, it deems propitious to state at the outset that the instant petition was filed on time. As the records show, petitioner received a duplicate original copy of the assailed 26 August 2020 Decision of this Court's First Division in CTA Case No. 9608 on 03 September 2020. On 18 September 2020, the petitioner filed an MR of the said Decision. On 09 December 2020, petitioner, through the BIR Legal Division, Revenue Region No. 8, Makati City received a duplicate original copy of the

[34] G.R. No. 222743, 05 April 2017.

assailed Resolution dated 20 November 2020, denying herein petitioner's MR.

Initially petitioner had 15 days from 09 December 2020 or until 24 December 2020 to file the instant petition. However, since 24 December 2020 was declared as special non-working holiday while 25 December 2020 was a regular holiday, 26 and 27 December 2020 fell on Saturday and Sunday, respectively, the petitioner had until the next business day or 28 December 2020 within which to file the instant Petition for Review. Petitioner filed the instant case on the said date, and thus within the prescribed period.

REVENUE OFFICER SHARON S. ZAFE AND GROUP SUPERVISOR ARTHUR BENJAMIN T. PADILLA WERE NOT DULY AUTHORIZED TO CONTINUE WITH THE EXAMINATION AND INVESTIGATION OF RESPONDENT.

Contrary to petitioner's claim that a MOA sufficiently clothes an RO with authority to examine and investigate a taxpayer's tax liability, or that it has the same force and effect as that of an LOA, the Court *En Banc* finds otherwise.

The Court *En Banc* has been consistent in ruling that the RO tasked to examine the books of accounts of taxpayers must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

> ...
>
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> > (A) *Examination of Return and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized 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.[35]
>
> ...

Section 10(c) of the NIRC of 1997, as amended, provides:

> ...
>
> **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[.][36]
>
> ...

In relation to the above, Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books of accounts must be armed with an LOA, *viz*:

> ...
>
> **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.[37]
>
> ...

Under the said provision, an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other

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35 Emphasis supplied.
36 Emphasis supplied.
37 Emphasis supplied.

accounting records because such right is statutorily conferred only upon petitioner.

Section D(4) of Revenue Memorandum Order (**RMO**) No. 43-90[38] dated 20 September 1990, provides:

> ...
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the **Regional Directors**, the **Deputy Commissioners** and the **Commissioner**. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.[39]
>
> ...

As can be gleaned from the foregoing, RO Zafe's authority merely sprung from an MOA issued by RDO Calapatia. It is worthy to note that the MOA dated 19 May 2016 and the corresponding change in RO and GS happened prior to the issuance of the PAN and FAN on 28 November 2016 and 13 January 2017, respectively.

In addition to the aforequoted Sections 6(A), 10(c) and 13 of the NIRC of 1997, as amended, which provide that only the CIR and his duly authorized representatives (*i.e.*, Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR) may issue the LOA, **petitioner's own rules, specifically, RMO No. 43-90[40] mandates the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.** It reads —

> ...
>
> **<u>Any reassignment/transfer of cases to another RO(s),</u>** and revalidation of [LOAs] which have already expired, **<u>shall require the issuance of a new [LOA]</u>**, with the corresponding notation thereto, including the previous [LOA] number and date of issue of said [LOAs].[41]
>
> ...

[38] *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated 20 September 1990.*

[39] Emphasis supplied.

[40] Supra at note 38.

[41] Emphasis and underscoring supplied.

Moreover, in the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[42] (**McDonald's**), the Supreme Court highlighted the difference between an MOA and an LOA in this wise:

> ...
>
> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers.** However, **notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.
>
> **The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative**. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC. **Hence,**

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

> **the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.**
>
> ...

Applying the above principles to the case at bar, the MOA signed by RDO Calapatia, does not and cannot confer authority to RO Zafe and GS Padilla to continue the audit or investigation of respondent's books of accounts for TY 2013. As both are not authorized through an LOA, their investigation and subsequent assessment of respondent's tax deficiency could not be sanctioned.

Incidentally, while it may be gainsaid that *Mcdonald* does not do away with the reassignment by the CIR himself, such is not the case here.

In *Medicard*[43], the Supreme Court underscored the importance of an LOA, *viz*:

> ...
>
> **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. 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**

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[43] Supra at note 34; Citation omitted and emphasis supplied.

> **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. ...
>
> ...

The Supreme Court, citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[44], went on to state:

> ...
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**
>
> ...

Further, the Supreme Court in *McDonald's*[45] concluded that:

> ...
>
> In summary, **We rule that the <u>practice of reassigning or transferring revenue officers originally named in the LOA</u> and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA <u>(i) violates the taxpayer's right to due process in tax audit or investigation</u>; <u>(ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer</u>; and <u>(iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990</u>**.
>
> ...

Considering the absence of a new and valid LOA authorizing RO Zafe to examine respondent's books of accounts and other accounting records as a result of the reassignment/transfer of the case to her, the deficiency tax assessments issued against it are inescapably void.

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[44] G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

[45] Supra at note 42; Emphasis and underscoring supplied.

Incidentally, while RO Zafe mentioned a prior issuance of LOA No. SN:eLA201100080829, the same was not presented and offered as evidence. As it is, the only LOA in the records is LOA No. LOA-047-2014-00000513 dated 17 September 2014 which, unfortunately, does not contain her name or GS Padilla's.

FINAL ASSESSMENT NOTICE (FAN) WAS PREMATURELY ISSUED.

In herein case, it is likewise undisputed that respondent received the PAN on 09 January 2017. It then had until 24 January 2017 to respond thereto. Unfortunately, the FAN was also issued and respondent received it on 18 January 2017.

In not awaiting for the 15-day period (to reply to the PAN) to fully expire, petitioner did not accord respondent due process. The reply is an ordained procedure, a part of due process, to give chance to respondent to explain or rebut the findings in the PAN. This opportunity was, however, rendered useless with petitioner's immediate issuance of the FAN, as stated.

In *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[46], the Supreme Court, resolved to deny the Petition for Review on *Certiorari* subject thereof for failure to show that this Court, sitting *En Banc,* committed a reversible error in cancelling and withdrawing the assessments issued against respondent therein. The Supreme Court went on to rule that:

> ...
>
> In this case, the records show that respondent received the PAN on February 5, 2009. **However, without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**

46 G.R. No. 227616, see Resolution dated 19 June 2019; Citation omitted, emphasis supplied and underscoring in the original text.

> In *CIR v. Metro Star Superama, Inc.*, **the Court emphasized that the PAN is part of due process. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules, as in this case, is a denial of the taxpayer's right to due process.**
>
> ...

Furthermore, in a plethora of cases[47] decided by this Court *En Banc*, it was ruled consistently that the taxpayer's right to due process was violated when the FAN or Final Letter of Demand (**FLD**) was issued prior to the lapse of the 15-day period given to it to respond to the PAN.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[48](**Avon**), the Supreme Court, citing *Ang Tibay, et al. v. The Court of Industrial Relations, et al.*[49], also ruled that "[n]**ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.**" The Supreme Court further explained in *Avon* that:

> ...
>
> **However, within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices, reiterating the findings stated in the Preliminary Assessment Notice. The Bureau of Internal Revenue chose to ignore Avon's explanations** and refused to cancel the assessments unless Avon would agree to pay the other deficiency assessments.
>
> ...
>
> **It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must**

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47 *Commissioner of Internal Revenue v. Merial Philippines, Inc.*, CTA EB No. 1398 (CTA Case No. 8370), 09 May 2017; *Commissioner of Internal Revenue v. Apex Chemical Corporation*, CTA EB Nos. 1382 and 1387 (CTA Case No. 8698), 14 October 2016; *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, CTA EB No. 1139 (CTA Case No. 8331), 11 August 2015; *Commissioner of Internal Revenue v. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Science Institute), Inc.*, CTA EB No. 1151 (CTA Case No. 8095), 17 February 2015.

48 G.R. Nos. 201398-99, 03 October 2018; Citations omitted, emphasis supplied and italics in the original text.

49 G.R. No. L-46496, 27 February 1940.

> **give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**
>
> *In Edwards v. McCoy*:
>
>> The object of a hearing is as much to have evidence considered as it is to present it. **The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.**
>
> In *Ang Tibay*, **this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts *but the tribunal must consider the evidence presented*."**
>
> ...
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.**
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.**
>
> ...

With the above, the Court *En Banc* finds no reason to reverse the First Division's assailed Decision and Resolution.

WHEREFORE, with the foregoing, the Petition for Review filed by petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. Accordingly, the Assailed Decision dated 26 August 2020 and Resolution dated 20 November 2020, respectively, of the First Division in CTA Case No. 9608, entitled *Integrated Solutions Technology Limited v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**

Accordingly, petitioner Commissioner of Internal Revenue is **ENJOINED** from pursuing any actions against respondent Integrated Solutions Technology Limited, relative to herein case.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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