REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2228** (CTA OC No. 021)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
GEORGE A. TALAMAYAN, JR., Respondent.	***Promulgated:*** FEB 24 2022 3:40pm

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DECISION

UY, J.:

In the instant *Petition for Review*[1] filed on February 26, 2020 by petitioner, Commissioner of Internal Revenue against respondent, George A. Talamayan, Jr., petitioner prays that the Decision[2] dated December 3, 2019 and Resolution[3] dated January 23, 2020, rendered by the Second Division of this Court, in CTA OC No. 021, entitled, *"Commissioner of Internal Revenue, Petitioner vs. George A.*

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[1] EB Docket, pp. 6 to 18.

[2] The assailed Decision was penned by Associate Justice Juanito C. Castañeda, Jr, and concurred in by Associate Justice Cielito N. Mindaro-Grulla, with a Dissenting Opinion from Associate Justice Jean Marie A. Bacorro-Villena.

[3] The assailed Resolution was penned by Associate Justice Juanito C. Castañeda, Jr, and concurred in by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Jean Marie A. Bacorro-Villena reiterating her Dissenting Opinion.

Talamayan, Jr., Respondent," be reversed and set aside. The dispositive portions thereof respectively read as follows:

Decision dated December 3, 2019:

> "**WHEREFORE,** premises considered, the subject Complaint, is **DENIED.** Accordingly, the Formal Letter of Demand/Final Assessment Notice, assessing defendant for deficiency Income Tax and Value Added Tax, inclusive of interests, surcharges and penalties in the aggregate amount of ₱2,047,031.98 for calendar year 2008 and Final Notice Before Seizure or Garnishment and Warrant of Distraint and/or Levy No. 2014-007 are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED."**

Resolution dated January 23, 2020:

> "**WHEREFORE,** petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR) who is vested under appropriate laws, the power to make tax assessments, collect taxes, and decide, approve and grant tax protests. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent is a resident of No. 07 Cliff Drive, Purok Ongasan, Loakan Proper, Baguio City and doing business under the name of Rockgates Trading and Construction located at IB-046 Km 6, Betag, La Trinidad, Benguet.

On October 8, 2009, Regional Director (RD) Norberto D. Vitug of Revenue Region No. 2, issued Letter of Authority (LOA) No. LOA 200800047783, authorizing Revenue Officer Christy B. Daytec (RO Daytec) of Revenue District Office (RDO) No. 9, La Trinidad, Benguet, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2008 to December 31, 2008.

On October 13, 2009, RO Daytec issued a *First Request for Presentation of Records*, requesting the submission of documents needed in the conduct of the required examination in order to ascertain the correct internal revenue tax liabilities of respondent.

On November 17, 2009, RO Daytec issued a *Second Request for Presentation of Records*, reiterating the request for the presentation of respondent's records as listed in the *First Request* in order to facilitate the conduct of the required examination.

On December 4, 2009, Revenue District Officer Teogenes T. Abrigo, Jr. (RDO Abrigo, Jr.) of RDO No. 9, La Trinidad, Benguet issued a Final Request for Presentation of Records, reiterating the request for presentation of the books of accounts and other related documents of respondent, with the warning that failure to comply with the above request would result in the issuance of a subpoena *duces tecum*.

On June 15, 2011, respondent received Subpoena *Duces Tecum* (SDT) SDT No. RR2-11-28 dated June 13, 2011 issued by OIC-Regional Director, Eduardo T. Bajador of Revenue Region No. 2, directing respondent to appear and to bring and submit the documents listed therein.

On December 16, 2011, Regional Director (RD) Eduardo T. Bajador referred to and filed with the Provincial Prosecutor of Benguet the Affidavit-Complaint executed by RO Daytec, pursuant to the latter's recommendation for the criminal prosecution of the respondent.

On December 23, 2011, RDO Irene A. Goze (RDO Goze) of RDO No. 9-La Trinidad, Benguet issued a Reference Slip in favor of RO Katrina L. Estacio (RO Estacio) for respondent's assessment based on best evidence obtainable.

On January 24, 2012, RDO Goze issued a *Notice of Informal Conference*, informing respondent that an investigation of tax liabilities in the total amount of ₱2,047,031.99 for CY 2008 under LOA No. LOA 200800047783 dated October 8, 2009 was conducted by RO Estacio, initially assigned to RO Daytec and requesting him to submit his objection to the proposed assessment or to appear in an informal conference.

On March 22, 2012, RO Estacio issued a *Memorandum Report* relative to the examination of all internal revenue tax liabilities of respondent for CY 2008 covered by LOA No. LOA 200800047783 dated October 8, 2009, recommending the case be considered for assessment.

On April 24, 2012, RD Eduardo T. Bajador issued a *Preliminary Assessment Notice* (PAN) with Details of Discrepancies, assessing respondent for deficiency income tax and VAT, inclusive of interests, surcharges and penalties in the aggregate amount of ₱2,047,031.98. The PAN with attached Details of Discrepancies was served to respondent via registered mail as evidenced by Registry Return Receipt No. 919.

On May 10, 2012, RD Eduardo T. Bajador issued a *Formal Letter of Demand/Final Assessment Notice* (FLD/FAN), assessing respondent for deficiency income tax and VAT, inclusive of interests, surcharges and penalties in the aggregate amount of ₱2,047,031.98. The FLD/FAN was served via registered mail on May 23, 2012 as evidenced by Registry Return Receipt No. 827.

On August 13, 2012, RDO Goze issued a *First Notice,* demanding payment of the unpaid tax liabilities in the aggregate amount of ₱2,047,031.99. The same was served *via* registered mail on August 24, 2012 as evidenced by a Registry Return Receipt. On September 11, 2012, RDO Goze issued a *Second Notice*, reiterating her demand for the payment of respondent's unpaid tax liabilities in the total amount of ₱2,047,031.99. The same was served *via* registered mail as evidenced by a registry return receipt.

On October 21, 2013, RDO Christine M. Cardona (RDO Cardona) issued a *Final Notice Before Seizure or Garnishment*, giving respondent the last opportunity to make the necessary settlement of the amount of his tax liabilities in the total amount of ₱2,047,031.99, inclusive of interests, surcharges and penalties. The same was served to respondent *via* registered mail on October 29, 2013 and October 30, 2013, as evidenced by a registry return receipt.

On September 16, 2014, RO Michael C. Dacay issued *Warrant of Distraint and/or Levy* No. 2014-007 and was served to respondent on September 19, 2014.

Petitioner filed a *Complaint* on December 19, 2016 before the Court in Division, docketed as CTA OC No. 021. Respondent, however, failed to file his Answer to the *Complaint*.

On May 29, 2018, petitioner filed an *Omnibus Motion 1.) Motion to Declare Defendant in Default; 2.) To Allow Plaintiff to Present his Evidence Ex-Parte*, which was granted by the Court in Division in the Resolution dated July 3, 2018.

During trial, petitioner presented his sole witness, RO Michael C. Dacay. Thereafter, petitioner filed his *Formal Offer of Evidence* on September 7, 2018. In the Resolution dated October 4, 2018, the Court in Division admitted all of petitioner's exhibits.

Petitioner filed his *Memorandum* on December 10, 2018. Thus, CTA OC No. 021 was submitted for decision on December 17, 2018.

In the assailed Decision[4] dated December 3, 2019, the Court in Division denied the *Complaint*. The court *a quo* cancelled and set aside the FLD/FAN, assessing respondent for deficiency income tax and value-added tax (VAT), inclusive of interests, surcharges and penalties in the aggregate amount of ₱2,047,031.98 for calendar year 2008 and the Final Notice Before Seizure or Garnishment and Warrant of Distraint and/or Levy No. 2014-007.

The CIR filed his *Motion for Reconsideration* on December 19, 2019. In the assailed Resolution[5] dated January 23, 2020, the Court in Division denied the *Motion for Reconsideration* for lack of merit.

Undaunted, petitioner filed a *Motion for Extension of Time to File Petition for Review* before the Court *En Banc* on February 11, 2020.[6] In the Resolution[7] dated February 13, 2020, the subject *Motion* was granted and petitioner was given a final and non-

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[4] EB Docket, pp. 23 to 35.
[5] EB Docket, pp. 41 to 43.
[6] EB Docket, pp. 1 to 4.
[7] EB Docket, pp. 5.

extendible period of fifteen (15) days from February 11, 2020, or until February 26, 2020, within which to file his Petition for Review.

Thereafter, the CIR filed the instant *Petition for Review* [8]on February 26, 2020. On June 5, 2020, respondent was directed to file his comment to the *Petition for Review*, within ten (10) days from notice.[9] Respondent, however, failed to file his comment, as per *Records Verification*[10] dated January 28, 2021. Thereafter, the *Petition for Review* was deemed submitted for Decision on March 1, 2021.[11]

ISSUE

The CIR raises the following issue in his *Petition for Review*, to wit:

> "THE HONORABLE COURT IN DIVISION ERRED IN PASSING JUDGMENT UPON THE VALIDITY OF THE ASSESSMENT CONSIDERING THAT THE SAME HAD ALREADY BECOME FINAL AND EXECUTORY."[12]

Petitioner's arguments:

The CIR contends the FLD/FAN was served by registered mail on May 23, 2012. Under Section 228 of the NIRC of 1997, as amended, respondent had thirty (30) days to file his protest, otherwise, the assessment would become final, executory, and demandable. Considering that the respondent failed to file any protest to the subject assessment, the same had already become final and executory.

Considering that the assessment had already reached finality, the collection efforts of the BIR (*i.e.,* Final Notice Before Seizure, Warrant of Garnishment and/or Levy) were proper and valid.

[8] EB Docket, pp. 6 to 18.
[9] EB Docket, pp. 45 to 46.
[10] EB Docket, p. 48.
[11] EB Docket, pp. 50 to 51.
[12] EB Docket, p. 10.

Thus, the action of the Court in Division in disturbing the finality of the assessment by passing judgment upon the validity of the authority of the revenue officer who conducted the examination of the books of accounts of respondent, when respondent did not raise as an issue the authority or validity of the assessment, is a clear violation of Section 228 of the NIRC of 1997, as amended.

THE COURT *EN BANC'S* RULING

The instant *Petition for Review* lacks merit.

The Court in Division is empowered to rule on related issues necessary to achieve an orderly disposition of the case.

In the instant case, petitioner posits that the court *a quo* should no longer pass judgment on whether the revenue officer was validly authorized to perform assessment functions, as respondent did not raise this as an issue in the first place.

We disagree.

Despite not being specifically brought up by the parties, the court *a quo* ruled on the issue of the authority of the revenue officer concerned, since the determination thereof affects the validity of the subject tax assessments.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), reads as follows:

> "RULE 14
>
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1.*Rendition of judgment.* — xxx xxx xxx
>
> **<u>In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case</u>**." *(Emphasis supplied)*

rn

From the foregoing, it is settled that the Court in Division is in no way limited to resolve only the issues specifically raised by the parties. Rather, it may also rule upon related issues necessary to achieve an orderly disposition of the case.

In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[13] it was recognized that the CTA can exercise such power, to wit:

> **"On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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> > 'SECTION 1. *Rendition of judgment.* - xxx xxx xxx
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.'
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA <u>even though the parties had not raised the same in their pleadings or memoranda</u>.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." (*Emphasis and underscoring supplied)*

In the foregoing case, the Supreme Court affirmed the CTA's authority to rule upon related issues necessary to achieve an orderly disposition of the case. Moreover, it categorically stated that the CTA may consider the question on the scope of authority of revenue officers who were named in the LOA, which impliedly covers the

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[13] G.R. No. 183408, July 12, 2017.

issue of whether a revenue officer is authorized through an LOA in the first place.

Accordingly, the Court in Division is justified in resolving the issue on whether or not the revenue officer who conducted the audit and investigation of respondent was validly authorized to do so.

The revenue officer who conducted the audit of respondent's tax records was not validly authorized by an LOA, thus the subject assessments are void for violating respondent's right to due process.

In the instant case, petitioner protests the assailed Decision for passing upon the authority of the revenue officer who conducted the examination of the books of accounts of respondent, on account of the alleged finality of the subject assessments.

We are not convinced.

Section 6 (A) of the NIRC of 1997, as amended, lays down the power of the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, to wit:

> "**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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

Thus, before an examination and an assessment can be made, an authority emanating from the CIR or his duly authorized representative must first be secured.

Relative thereto, Section 13 of the NIRC of 1997, as amended, provides that the authority of a revenue officer to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> "**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, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied.)*

Based on the foregoing provision, a revenue officer is mandated to be first clothed with authority, <u>through a valid LOA</u> issued in his/her favor, before he/she can validly examine taxpayers and perform tax assessment and collection functions.

In other words, 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.[14]

The importance of an LOA and the corresponding authority it confers upon the revenue officer, is further highlighted by RMO No. 43-90, which prescribes the revised policy guidelines for the audit/investigation and issuance of letters of authority to audit. Specifically, it requires that **<u>all</u>** audits/investigations should be

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[14] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

conducted under a Letter of Authority, and requires the issuance of a **new LOA** in case of any reassignment or transfer of cases to another Revenue Officer, to wit:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> xxx xxx xxx
>
> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As."

In the recent case of *Commissioner of Internal Revenue vs, McDonald's Philippines Realty Corp. (McDonald's case),*[15] the Supreme Court stressed that the LOA is the ***concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers***, pursuant to Sections 6, 10(c) and 13 of the NIRC of 1997, as amended.

It was emphasized that the issuance of an LOA prior to examination and assessment is a requirement of due process. It is *not* a mere formality or technicality. The result of the ***absence of an LOA*** is the ***nullity of the examination and assessment*** based on the violation of the taxpayer's right to due process.[16]

In the *McDonald's* case, it was categorically held that the practice of using a memorandum of assignment, referral memorandum, or any equivalent document as proof of authority of the substitute or replacement revenue officer, would no longer be countenanced, to wit:

> "The memorandum of assignment, referral memorandum, or any equivalent document is **not a proof of the existence of authority** of the substitute or replacement officer. The memorandum of assignment, referral memorandum, or any equivalent document is not

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

> 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.
>
> xxx xxx xxx
>
> xxx xxx xxx an LOA is not a general authority to any revenue officer. **It is a <u>special authority</u> granted to a <u>particular revenue officer</u>**.
>
> 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, **<u>is in effect a usurpation of the statutory power of the CIR or his duly authorized representative</u>**." *(Emphasis supplied.)*

In summary, the *McDonald's* case held that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA:

(i) Violates the taxpayer's right to due process in tax audit or investigation;

(ii) Usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and

(iii) Does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

Applying the foregoing principles set forth in the *McDonald's* case, this Court upholds the factual findings of the Court in Division, in that the RO who acted on the respondent's case was not properly clothed with authority, through a valid LOA, to conduct the audit and investigation of respondent.

In this case, Letter of Authority No. 200800047783[17] dated October 8, 2009 was issued authorizing RO Christy B. Daytec of Revenue District Office No. 9, La Trinidad, Benguet, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2008 to December 31, 2008.

A perusal of the record shows that it was RO Katrina L. Estacio who exercised assessment functions and recommended the issuance of the PAN.[18] It appears, however, that RO Estacio was ***not*** validly authorized by a new or amended LOA. Rather, her authority stems from a mere Reference Slip[19] issued by RDO Goze of RDO No. 9-La Trinidad, Benguet, on December 23, 2011.

Considering that the RO who acted on respondent's case was not properly clothed with the requisite LOA, the subject tax assessments, resulting from the investigation, audit, and recommendation of RO Estacio is void for violating the respondent's right to due process. For being void, the same bears no valid fruit.[20]

A void assessment cannot attain finality.

Finally, petitioner argues that the alleged finality of the subject assessment precludes its review by the court *a quo.*

We are not swayed.

Tax assessments issued in violation of the due process rights of a taxpayer are ***null and void***. While the government has an interest in the swift collection of taxes, the BIR and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.[21]

[17] Exhibit "P-4", BIR Records, p. 29.
[18] Exhibit "P-13," BIR Records, pp. 64 to 65.
[19] BIR Records, p. 41.
[20] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.
[21] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,* G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

In this case, the subject tax assessment, which was issued without a valid LOA issued *specifically* in favor of RO Estacio, violates respondent's right to due process. Considering that the subject tax assessment is null and void for violating respondent's right to due process, it necessarily follows that it bears no valid fruit,[22] and thus, cannot attain finality.

In view of the foregoing disquisition, this Court finds no compelling reason to reverse or modify the findings of the court *a quo* in the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated December 3, 2019 and the Resolution dated January 23, 2020 rendered by the Second Division of this Court in CTA OC No. 021 are hereby **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person acting on his behalf is hereby **ENJOINED** from enforcing the collection of deficiency taxes assessed against George A. Talamayan, Jr. for taxable year 2008.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[22] *Commissioner of Internal Revenue vs. Azucena T. Reyes, et seq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

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

CATHERINE T. MANAHAN
Associate Justice

(I maintain my Dissenting Opinion in the Division Level)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(I join the Separate Concurring Opinion of Justice Liban)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(I join the Separate Concurring Opinion of Justice Liban)
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2228** *(CTA OC No. 021)*
	PRESENT:
-versus-	DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, and CUI-DAVID, JJ.
GEORGE TALAMAYAN, JR., *Respondent.*	**PROMULGATED:** FEB 24 2022 3:40 pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* which denied the Petition for Review for lack of merit.

Generally, with respect to assessments which became final for failure to file a timely and valid protest, the rule is that the validity or correctness of assessment may no longer be questioned on appeal. **This means that the Court is precluded from reviewing the legal and factual bases of the assessment, that is - - the manner by which the amount of deficiency taxes was computed.**

An assessment, however, **may neither attain finality nor be the subject of a lawful execution in situations where such assessment was intrinsically void or when an assessment was**

issued without authority, that is, (i) when the petitioner's right to assess has prescribed; (ii) when there is a violation of the taxpayer's right to due process; or (iii) when the assessment is void *ab initio* for lack of authority of the revenue officer to conduct the audit of the taxpayer as in the present case.

In *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*,[1] the Supreme Court emphasized the importance of issuing a valid assessment before proceeding with the collection of deficiency taxes and reiterated that no fruit may arise in situations where the assessment is invalid or when no assessment at all was made, *viz.*:

> "In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. 'An assessment is not an action or proceeding for the collection of taxes. x x x It is **a step preliminary, but essential to warrant distraint**, if still feasible, and, also, to establish a cause for judicial action.' **The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process**, **<u>which vitally includes the issuance of a valid assessment</u>**. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.
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> In *Commissioner of Internal Revenue v. Reyes (Reyes Case),* the petitioner issued an assessment notice and a demand letter for alleged deficiency estate tax against the taxpayer estate. The assessment notice and demand letter simply notified the taxpayer estate of petitioner's findings, without stating the factual and legal bases for said assessment. **The Court, absent a valid assessment, refused to accord validity and effect to petitioner's collection efforts** - which involved, among other things, the successive issuances of a collection letter, a final notice before seizure, and a warrant of distraint and/or levy against the taxpayer estate - and declared that:
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>> 'x x x [P]etitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit.**
>
> x x x x
>
> The Court similarly found that there was no valid assessment in *Commissioner of Internal Revenue v. BASF Coating + Inks Phils.,*

[1] G.R. No. 197945, July 9, 2018.

> *Inc. (BASF Coating Case)* as the assessment notice therein was sent to the taxpayer company's former address. Without a valid assessment, the Court pronounced that petitioner's issuance of a First Notice Before Issuance of Warrant of Distraint and Levy to be in violation of the taxpayer company's right to due process and effectively **blocked any further efforts by petitioner to collect by virtue thereof**. The Court ratiocinated that:
>
> > 'It might not also be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. **An invalid assessment bears no valid fruit.**
> >
> > x x x x
>
> Absent a previously issued assessment supporting the 1998 and 2002 Collection Letters, it is clear that petitioner's attempts to collect through said collection letters as well as the subsequent Warrants of Garnishment and Distraint and/or Levy are void and ineffectual. **If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place.**" *(Additional boldfacing and underscoring supplied)*

Sans a valid assessment, the Court cannot accord validity and effect to petitioner's collection efforts. In the present case, the assessment issued against respondent, being void *ab initio*, cannot be used as a basis for collection of the deficiency taxes against him. **The assessment is fatally infirm since the revenue officer who conducted audit of respondent was not authorized by a valid Letter of Authority (LOA). In essence, this infirmity in the assessment precludes its eventual execution as clearly laid down in the above-cited cases.**

Anent the contention that the collection case filed by petitioner could not be used as an avenue to declare that the assessment issued against respondent is void *ab initio* and could not therefore attain finality, I submit that irrespective of respondent's failure to protest the assessment, its inherent invalidity on the ground that the revenue officer was not authorized by a valid LOA to conduct the audit of respondent's records cannot justly be ignored by the Court.

The Court of Tax Appeals, in the exercise of its exclusive original jurisdiction in tax collection cases, may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[2] It has been

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[2] Sec. 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, as amended.

said that where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them.[3] In fact, an appellate court has an inherent authority to review unassigned errors (i) which are closely related to an error properly raised, or (ii) upon which the determination of the error properly assigned is dependent, or (iii) where the Court finds that consideration of them is necessary in arriving at a just decision of the case.[4]

The ancillary issue anent the authority of the revenue officer to conduct the audit of respondent's records should be resolved by the Court as it would determine the very basis of petitioner's right to enforce collection. **After all, respondent should not be held liable to pay any amount arising from a void *ab initio* assessment.**

Stated differently, since the assessment in this case is void *ab initio*, it is within the power of the Court to slain it at sight and consequently, deny the move of petitioner to collect taxes pursuant to an invalid assessment.

Like a void judgment, a void assessment produces no legal effect; **it never attains finality and - akin to an outlaw - it may be slain whenever or wherever it exhibits its head**.[5]

The disquisition in *Imperial vs. Cruz*[6] anent the effect of a void judgment is enlightening:

> "A void judgment is no judgment at all in legal contemplation. In *Canero v. University of the Philippines,* we held that-
>
>> x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. **It has no legal or binding effect or efficacy <u>for any purpose or at any place</u>.** It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the

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[3] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 106913, May 10, 1994.
[4] Sesbreño v. Central Board of Assessment Appeals, G.R. No. 106588, March 24, 1997.
[5] Imperial vs. Cruz, G.R. No. 178842, January 30, 2017.
[6] *Id.*

> situation is the same as it would be if there was no judgment. x x x
>
> x x x
>
> Xxx, our ruling in *Banco Español-Filipino* v. *Palanca*[1] on the effects of a void judgment has reappeared consistently in jurisprudence touching upon the matter. In this case, we said that a **void judgment is 'a lawless thing, which can be treated as an outlaw and slain at sight, or ignored <u>wherever and whenever it exhibits its head</u>**.' In concrete terms, this means that a void judgment creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect." *(Boldfacing and underscoring supplied)*

In sum, since the assessment that is fraught with fatal infirmity is void and does not become final, its collection may not be made but, instead, can be "slain at sight or ignored wherever and whenever it exhibits its head."

All told, I *CONCUR* in the ponencia.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2228** (CTA OC NO. 021)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
GEORGE A. TALAMAYAN, JR., Respondent.	Promulgated: FEB 24 2022 3:40pm

x- -x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

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

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

In the case at bar however, only a Reference Slip was issued by Revenue District Officer Irene A. Goze of RDO no. 9-La Trinidad, Benguet, and not the duly authorized representative of Petitioner, the Revenue Regional Director. Hence, the RO who audited the books of account of Respondent is without any valid authority to do so.

I am also of the firm belief that the ruling of the Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[1] (*"Mcdonald's"*) should not be haphazardly applied in cases regarding the validity or invalidity of an RO's authority. A perusal of the case discloses that *Mcdonald's* invalidated the practice of reassigning ROs through a Revalidation Notice or Memorandum of Reassignment or any equivalent letter, only because it was presumed that these documents are issued by a subordinate official and not by the CIR or his duly authorized representative, to wit:

> "It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. **The memorandum of assignment, referral memorandum, or any equivalent document is <u>not issued by the CIR or his duly authorized representative</u> for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. <u>It is issued by the revenue district officer or other subordinate official</u> for the purpose of reassignment and transfer of cases of revenue officers.**
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.
>
> The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and 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. **<u>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</u>**

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

> **<u>or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC.</u> Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.**[2]

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

From all the foregoing, I vote to **AFFIRM** the Decision dated December 03, 2019 and Resolution dated January 23, 2020 of the court *a quo*.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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2 *Emphasis and underscoring supplied.*