REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA *EB* NO. 2491** (CTA Case No. 9121)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ*.
RED RIBBON BAKESHOP, INC., *Respondent*.	Promulgated: SEP 0 2 2022 11:16 am

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DECISION

***CUI-DAVID, J.*:**

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue on July 9, 2021, assailing the Decision [2] dated January 7, 2021 (assailed Decision), and the Resolution[3] dated June 3, 2021 (assailed Resolution), promulgated by the Court's Third Division (Court in Division) in CTA Case No. 9121 entitled *Red Ribbon Bakeshop, Inc. vs. Commissioner of Internal Revenue*. The dispositive portion of the assailed Decision and Resolution read:

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[1] *En Banc* docket, pp. 6-19.
[2] *Id.*, pp. 26-42.
[3] *Id.*, pp. 43-48.

Assailed Decision dated January 7, 2021:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Revised Final Decision on Disputed Assessment dated 20 July 2015, assessing petitioner for deficiency income tax, and value-added tax in the aggregate amount of P172,233,647.89 for taxable year 2009 is **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.
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> **SO ORDERED**.

Assailed Resolution dated June 3, 2021:

> **WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Re: Decision dated January 07, 2021) is hereby **DENIED** for lack of merit.
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> **SO ORDERED**.

Petitioner prays that the assailed Decision and Resolution be reversed and set aside, and that judgment be rendered ordering respondent to pay the total amount of ₱172,233,647.89, representing deficiency income tax (IT) and value-added tax (VAT) for taxable year (TY) 2009, inclusive of surcharge and interest.

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), who has the power to decide disputed assessments, fees or other charges and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (Tax Code), or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR). The CIR holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Red Ribbon Bakeshop, Inc., on the other hand, is a corporation duly organized and existing under Philippine laws with principal place of business at 84 E. Rodriguez Street, Libis, Quezon City, Philippines. It is primarily engaged in the business of manufacturing, importing, exporting, buying, selling or otherwise, undertaking in, at wholesale and retail, such goods as pastry, bread, cakes, pies, biscuits, crackers, confectionary, and any other food products, among others.

THE FACTS AND THE PROCEEDINGS

The pertinent facts, as found by the Court in Division, are as follows:

> On 24 September 2010, [respondent] received Letter of Authority ("LOA") No. eLA201000015358/LOA-127-2010-00000063, dated 15 September 2010. The LOA authorized Revenue Officers ("RO") Zenaida Paz, Joel Aguila, Ma. Salud Maddela, Allan Maniego, Cletofel Parungao, Myrna Ramirez, and Group Supervisor ("GS") Glorializa Samoy of the LT Regular Audit Division 4 to examine [respondent's] books of accounts and other accounting records for TY 2009.
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> Subsequently, [respondent] executed two (2) Waivers of the Statute of Limitations under the National Internal Revenue Code ("Waiver"). The Waivers were signed by [respondent's] Finance Head, Mary Ellen P. Nuñez, and were accepted by the OIC-Assistant Commissioner of the BIR LT Services, Alfredo V. Misajon. The Waivers allegedly extended the period to assess [respondent], as follows:
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> Meanwhile, the Chief of the Regular LT Audit Division I, Mr. Cesar D. Escalada, issued Memorandum of Assignment ("MOA") No. LOA-116-2013-0453 on 25 February 2013. The MOA designated RO Rosario A. Arriola and GS Rolando M. Balbido to replace the originally assigned ROs and GS, and to continue [respondent's] audit investigation. [Respondent] was informed of the said designation through a letter, dated 4 March 2013, which was received by [respondent] on 7 March 2013.
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> On 21 May 2013, [respondent] received a Preliminary Assessment Notice ("PAN"), dated 20 May 2013, assessing it for alleged deficiency income tax, VAT, withholding tax on compensation ("WTC"), expanded withholding tax ("EWT"), fringe benefits tax ("FBT"), final tax, and documentary stamp tax ("DST") for TY 2009 in the amount of P614,881,526.61, inclusive of interests and penalties.
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> [Respondent] filed its Reply to the PAN on 5 June 2013.
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> On 26 November 2013, [respondent] received the Formal Letter of Demand ("FLD"), of even date, assessing it for alleged deficiency income tax, VAT, WTC, EWT, FBT, final tax, and DST for TY 2009 in the amount of P617,561,519.66, inclusive of interests and penalties.

Thereafter, [respondent] filed its Protest Letter and Request for Reinvestigation, dated 23 December 2013, on 26 December 2013. It also filed a Supplemental Protest Letter, dated 24 February 2014, on even date.

On 2 January 2014, the Chief of the BIR's Regular LT Audit Division 1, Mr. Cesar D. Escalada issued MOA No. 116-2014-0001 assigning GS Rolando M. Balbido and RO Rosario A. Arriola to study the Protest Letters filed by [respondent].

[Respondent] received the FDDA, dated 20 May 2014, on 21 May 2014. In the FDDA, [petitioner], through OIC-Assistant Commissioner of LT Service, Mr. Alfredo V. Misajon, partially granted [respondent's] Protest Letters and assessed it for alleged deficiency taxes for TY 2009 in the aggregate amount of P310,708,028.10 broken down, as follows:

xxx xxx xxx

On 19 June 2014, [respondent] filed its Request for Reconsideration of the FDDA of even date. Likewise, [respondent] partially paid its assessment for deficiency income tax, VAT, WTC, EWT, FBT, and DST in the aggregate amount of P13,482,774.07 broken down, as follows:

xxx xxx xxx

On 1 July 2014, the Chief of the BIR's Regular LT Audit Division 1, Mr. Cesar D. Escalada, issued MOA No. LOA-116-2014-0940 referring [respondent's] Request for Reconsideration to GS Rolando M. Balbido and RO Rosario A. Arriola for their review.

On 20 July 2015, [respondent] received the revised FDDA of even date. In the revised FDDA, [petitioner] assessed [respondent] for alleged deficiency income tax and VAT in the remaining aggregate amount of P172,233,647.89, inclusive of interests and penalties, broken down as follows:

xxx xxx xxx

The assessment arose from [respondent's] alleged undeclared purchases in the amount of P207,564,410.79 which was derived by the BIR from its reconciliation of [respondent's] Summary List of Purchases ("SLP") vis-à-vis the Monthly Alphalist of Payees ("MAP") and the Reconciliation of Listings for Enforcement ("RELIEF"). The comparison allegedly showed that [respondent's] purchases per MAP/RELIEF were higher as compared to its purchases declared in the SLP. Therefore, [petitioner] argues that the difference should be subjected to both income tax and VAT.

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> Aggrieved with the decision of [petitioner], [respondent] filed the instant Petition for Review on 18 August 2015.
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> [Petitioner] filed his/her Answer on 26 October 2015, which was within the extended period granted by the Court.
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> Thereafter, the parties filed their respective Pre-Trial Briefs on 10 March 2016. On 15 March 2016, Pre-Trial Conference for the case ensued. Afterwards, the parties submitted their Joint Stipulation of Facts and Issues on 4 April 2016. On 17 May 2016, the Court issued the Pre-Trial Order, which marked the end of the Pre-Trial Conference.[4] (*Citations/references omitted*)

Trial ensued during which both parties presented evidence in support of their claims.

On January 7, 2021, the Court in Division rendered the assailed Decision granting the Petition for Review and ordering the cancellation and setting aside of the assessment issued against respondent for being void. The Court in Division explained that contrary to petitioner's assertion, a document, such as the Memorandum of Assignment (MOA) may be treated as an equivalent of a new Letter of Authority (LOA), provided that it is compliant with the essential elements of an LOA and that it was issued by the CIR or his/her duly authorized representative who is either the Revenue Regional Director, or in cases of taxpayers falling under the Large Taxpayers Division, the Assistant Commissioner/Head Revenue Executive Assistants, as provided under Revenue Memorandum Order (RMO) No. 29-07. However, in the instant case, all three (3) MOAs were only signed by Mr. Cesar D. Escalada who is the Chief of the BIR's Regular LT Audit Division 1, and is not one of the authorized representatives of petitioner to issue an LOA. Thus, considering that GS Rolando M. Balbido and RO Rosario A. Arriola had no authority to continue the audit/examine respondent's books of account and other accounting records for TY 2009, the resulting assessment is void.

Aggrieved, petitioner sought for reconsideration but the same was denied in the equally assailed Resolution dated June 3, 2021. Hence, petitioner filed this appeal by way of a Petition for Review with the Court *En Banc* on July 9, 2021.

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[4] Assailed Decision dated January 7, 2021, *En Banc* docket, pp. 27-30.

On February 2, 2022, in compliance with the Court's directive per Resolution[5] dated December 14, 2021, respondent filed its Comment (Re: Petitioner's Petition for Review dated July 6, 2021).[6]

On March 2, 2022, the instant case was referred to mediation at the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[7]

On March 24, 2022, the Court *En Banc* received PMC-CTA Form No. 6 (No Agreement to Mediate)[8], stating that the parties decided not to have their case mediated by the PMC-CTA, which the Court *En Banc* noted in the Resolution[9] dated April 6, 2022. In the same Resolution, the Court *En Banc* gave due course to the Petition for Review and submitted the same for decision of the Court.

Hence, this Decision.

ASSIGNMENT OF ERRORS

In the Petition for Review, petitioner assigns the following errors allegedly committed by the Court in Division:

I. THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENTS ARE VOID BECAUSE THE REVENUE OFFICERS WHO CONDUCTED THE AUDIT OF RESPONDENT'S BOOKS OF ACCOUNTS WERE ALLEGEDLY NOT AUTHORIZED THROUGH A LETTER OF AUTHORITY (LOA).

II. THE HONORABLE COURT ERRED IN NOT RULING ON THE VALIDITY OF THE ASSESSMENT AGAINST THE RESPONDENT.

III. THE HONORABLE COURT ERRED IN NOT RULING THAT THE RIGHT TO ASSESS

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[5] *En Banc* docket, pp. 58-59.
[6] *Id.*, pp. 60-72.
[7] Resolution, *En Banc* docket, pp. 75-76.
[8] *En Banc* docket, p.77.
[9] *Id.*, pp. 79-80.

RESPONDENT OF ITS DEFICIENCY INCOME TAX AND VAT HAS NOT PRESCRIBED.

IV. THE HONORABLE COURT ERRED IN NOT RULING THAT TAX ASSESSMENT ARE ENTITLED TO THE PRESUMPTION OF CORRECTNESS AND MADE IN GOOD FAITH.

Petitioner's Arguments:

Petitioner contends that the MOA directing GS Rolando M. Balbido and RO Rosario A. Arriola to continue the audit/examination of respondent's books of accounts and other accounting records for TY 2009 is proper. Citing RMO No. 8-2006, petitioner insists that the standard operating procedures of the ROs have been to issue an MOA to other ROs who will handle the case in instances where the ROs could not continue to conduct the audit examination due to reassignment. For petitioner, the MOA subsequently issued derived its authority from the LOA initially issued, hence, the source of the RO's authority to investigate is not the MOA or any other document, but the LOA itself.

Petitioner further contends that under RMO No. 8-2006, only one LOA per taxable year can be issued to a taxpayer. Thus, the need for petitioner to issue an MOA to another RO to continue the audit under the previously issued LOA.

Petitioner also contends that an LOA is not an "authorization letter" of the ROs. Rather, it is actually issued to taxpayers and not the ROs to inform the taxpayer that audit of his/her person has been authorized by the CIR. Once served, any duly authorized RO may now conduct audit not because of, but rather, "pursuant" to such LOA. Thus, for petitioner, what the LOA authorizes is the conduct of audit of a taxpayer by the BIR's ROs. In the event that the ROs indicated therein can no longer perform the audit due to resignation, transfer, or death, such authority remains, and the conduct of audit must necessarily be reassigned and assumed by another RO.

Petitioner likewise contends that the Court in Division erred in not ruling on the validity of the assessment against respondent and insists that the assessment was made in accordance with law. According to petitioner, respondent was

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given all the opportunity to present its side but failed to present credible evidence to refute the assessment.

Respondent's contention that the waiver was defective as it did not indicate the specific type of tax and the amount due thereon also deserves scant consideration. According to petitioner, waivers of the period to assess are made because the tax audit are still ongoing investigation. Obviously, the type of tax and the amount, at the time of the execution of the waiver, cannot yet be determined.

Finally, petitioner claims that the Court in Division erred in not ruling that tax assessments are entitled to the presumption of correctness and made in good faith. According to petitioner, in the absence of proof of any irregularities in the performance of duties, an assessment duly made by the BIR examiner and approved by his/her superior officers will not be disturbed as all presumptions are in favor of the correctness of tax assessments.

Respondent's Arguments:

In its Comment (Re: Petitioner's Petition for Review dated July 6, 2021)[10], respondent counter-argues that under Section 6(A) of the 1997 Tax Code, as amended, only the CIR or his/her duly authorized representative is empowered to authorize the examination of any taxpayer. Quoting the Court in Division's disquisition in the assailed Resolution, respondent agrees that the LOA is not a mere issuance used in informing the taxpayer that it will be the subject of an audit investigation. Rather, it is the authority given by the CIR or his/her duly authorized representative to the RO designating him/her to perform the audit and assessment of the taxpayer.

Respondent further argues that pursuant to RMO No. 29-07, an MOA may be considered as a valid LOA provided that it was issued by either the CIR or his/her duly authorized representative who is either the Revenue Regional Director, or in cases falling under the Large Taxpayers Division, the Assistant Commissioner/Head Revenue Executive Assistants. Respondent pointed out that all three (3) MOAs were only signed by Mr. Cesar D. Escalada who is the Chief of the BIR's Regular LT Audit Division 1 and not among those who are duly authorized representative of the CIR to issue LOA.

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[10] *En Banc* docket, pp. 60-72.

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Moreover, respondent submits that petitioner cannot take solace from RMO No. 8-2006 to fix the invalid MOA. According to respondent, RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, requires the issuance of a new LOA. For all its intents and purposes, RMO No. 43-90 is the binding revenue issuance relating to the issuance and re-issuance of LOAs for audit purposes. RMO No. 8-2006 was not issued to supplant the provisions of RMO No. 43-90; its main objective is to advice all internal revenue officers of the guidelines and procedures for the implementation of the Letter of Authority Monitoring System (LAMS) with the hope of preventing the issuance of multiple LOAs that probably was an effect of a manual monitoring system.

Contrary to petitioner's argument, RMO No. 8-2006 does not strictly prohibit the issuance of another LOA to replace an old one. What the RMO seeks to prevent is the issuance of multiple LOAs in a single year to avoid harassing the taxpayer. Respondent impresses that the reissuance of an LOA is not tantamount to a duplication of the LOA because when an LOA is reissued, the previous LOA is referenced in the new LOA.

Respondent likewise argues that the Court in Division did not err in not ruling upon the other issues raised. According to respondent, since the Court in Division already found that the assessment issued by petitioner was void due to lack of authority of the ROs, the Court in Division need not belabor on passing upon other matters which are the direct result of an unauthorized assessment.

Respondent also contends that petitioner's right to assess has prescribed in view of the invalid waivers. According to respondent, petitioner failed to address the other bases for the invalidation of the waivers, such as: (1) failure to show that the persons who signed the waivers were validly authorized; (2) the acknowledgment portion of the waivers does not indicate who subscribed and affirmed the veracity of the waiver before the notary public; (3) given that the assessment amounted to more than Php1,000,000.00, RMO No. 20-90 requires that the CIR himself/herself sign for the BIR; and (4) the agreement to waive the defense of prescription was never perfected as it was not proven that respondent validly received a copy of the waiver, as required under the rules.

In closing, respondent submits that the presumption of correctness and validity of an assessment is overturned when there is evidence to the contrary. For respondent, it was able to sufficiently establish the invalidity of the assessment by reason of the lack of authority of the ROs who conducted the audit on its books of accounts and other accounting records.

THE COURT EN BANC'S RULING

The instant Petition for Review was filed on time.

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the Petition was timely filed and whether it has jurisdiction to take cognizance of this case.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> **SEC. 3**. *Who may appeal; period to file petition.* — xxx
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> xxx xxx xxx
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> (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. *(Emphasis supplied)*

Records show that petitioner received the assailed Resolution on June 10, 2021. Thus, petitioner had fifteen (15) days from June 10, 2021, or until June 25, 2021, to file a Petition for Review before the Court *En Banc*.

On June 25, 2021, petitioner filed a Motion for Extension of Time to File Petition for Review,[11] asking for an additional period of fifteen (15) days from June 25, 2021, or until July 10, 2021, to file a Petition for Review. Said motion was granted in the Minute Resolution[12] dated June 28, 2021.

[11] *En Banc* docket, pp. 1-3.
[12] *Id.*, p. 5.

On July 9, 2021, petitioner timely filed the instant Petition for Review.

Considering the timeliness of the Petition, We likewise rule that the Court *En Banc* has jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4[13] of the RRCTA.

The Court shall now proceed to determine the merits of the Petition for Review.

The ROs who continued the audit examination of respondent were not authorized by a valid LOA; hence, the resulting tax assessments are void ab initio.

In the assailed Decision, the Court in Division invalidated the assessments issued against respondent for lack of authority of the ROs who conducted the audit/examination of respondent's books of accounts and other accounting records.

As found by the Court in Division, an LOA was initially issued authorizing ROs Zenaida Paz, Joel Aguila, Ma. Salud Maddela, Allan Maniego, Cletofel Parungao, Myrna Ramirez, and GS Glorializa Samoy to examine respondent's books of accounts and other accounting records for TY 2009. However, the aforementioned ROs and GS were not the examiners who conducted the audit investigation and assessment on the respondent. Instead, it was done by RO Rosario A. Arriola and GS Rolando M. Balbido, as indicated in the petitioner's documentary exhibits, specifically the Memoranda recommending the issuance of PAN, FAN and the revised FDDA.[14]

Petitioner, however, insists that RO Arriola and GS Balbido were duly authorized based on the MOA to continue the audit/examination of respondent for TY 2009. According to petitioner, the practice of conferring authority through MOAs

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[13] RULE 4 - JURISDICTION OF THE COURT ...

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 Divisions 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;

[14] Decision dated January 7, 2021, CTA Case No. 9121, *En Banc* docket, p. 37.

in cases of resignation, retirement, or transfer of office of the original handling RO is allowed under RMO No. 8-2006. Further, the issuance of an LOA every time an audit is reassigned runs counter to the "one LOA per taxable year rule".

Petitioner likewise asserts that an LOA is not an "authorization letter" of the revenue officer. It is issued to inform the taxpayer that an audit investigation of his person has been authorized by the CIR. Petitioner added that once an LOA is served, any duly authorized revenue officer may conduct an audit not because of, but rather, "pursuant" to such letter of authority. She further emphasized that there is no requirement in the law that revenue officers must be identified in the letter of authority to have authority.

In claiming that RO Arriola and GS Balbido are authorized to continue the audit based on the MOA since they are conducting such audit pursuant to a validly issued LOA, petitioner implies that once an LOA is validly issued, **"any" revenue officer** may then act under such LOA.

We disagree.

The arguments of petitioner are not novel and have been the subject of numerous decisions of the Supreme Court, foremost among which is the fairly recent case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp. (McDonald's).*[15] According to the Supreme Court:

> This practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been the subject of several CTA decisions, including *Ithiel Corporation v. CIR, Strawberry Foods Corporation v. CIR, Sugar Crafts, Inc. v. CIR, CIR v. Marketing Convergence, Inc., Fxclusive Networks-PH, Inc. v. CIR,* and the decision in the court *a quo*.
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> The Court hereby puts an end to this practice.
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> **I. The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation**

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

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An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. ... The issuance of 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.

Section 6 of the NIRC provides:

SECTION 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. (*Emphasis supplied*)

Section 10 (c) of the NIRC provides:

SECTION 10. Revenue Regional Director. — ...... 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. (*Emphasis supplied*)

Section 13 of the NIRC provides:

SECTION 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**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, ... (*Emphasis supplied*)

Section D (4) of RMO No. 43-90 provides:

... 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. (*Emphasis supplied*)

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Pursuant to the above provisions, only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. ... **There must be a grant of authority, <u>in the form of a LOA</u>, before any revenue officer can conduct an examination or assessment.** ... In the absence of such an authority, the assessment or examination is a nullity.

A. Due Process Requires <u>Identification of Revenue Officers</u> Authorized to Continue the Tax Audit or Investigation

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In ***<u>Medicard Philippines, Inc. v. Commissioner of Internal Revenue</u>***, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient **if no corresponding LOA was issued**. In that case, We have stated that " [d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case." The result of the absence of a LOA is the **nullity of the examination and assessment** based on the violation of the taxpayer's right to due process.

... 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.

We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, "any" revenue officer may then act under such validly issued LOA.

The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the representatives to the revenue officers, pursuant to Sections 6, 10 (c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, i.e., a revenue officer. Hence, **petitioner is mistaken** to characterize the LOA as a document "issued" to the taxpayer, and that once so issued, **"any" revenue officer** may then act pursuant to such authority.

B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA

... **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, ... 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, ... 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, ... is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.

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C. Revenue Memorandum Order No. 43-90 dated September 20, 1990 Expressly and Specifically Requires the Issuance of a New LOA if Revenue Officers are Reassigned or Transferred

Section D (5) of RMO No. 43-90 dated September 20, 1990 provides:

> Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.

The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases.

...

Section D (5) of RMO No. 43-90 dated September 20, 1990 is not contrary to or inconsistent with the NIRC. In fact, the NIRC codifies the LOA requirement in RMO No. 43-90. While RMO No. 43-90 was issued under the old tax code, nothing in Section D (5) of RMO No. 43-90 is repugnant to Sections 6 (A), 10 and 13 of the NIRC. Hence, pursuant to Section 291 of the NIRC, RMO No. 43-90 remains effective and applicable." (*Emphasis supplied*)

In the afore-quoted *McDonald's case,* the Supreme Court emphasized that the practice of reassigning or transferring ROs originally named in the LOA and substituting or replacing them with new ROs 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/her duly authorized representatives to grant the power to examine the books of accounts of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

Apart from the *McDonald's* case, We also find the more recent case of *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue (Himlayang Pilipino case),*[16] instructive, *viz.*:

[16] G.R. No. 241848, May 14, 2021.

> **Revenue Officer Bagauisan who conducted the audit of petitioner's books of accounts was not authorized pursuant to a valid LOA.**
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> ...
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> However, it appeared that Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Bagauisan who audited petitioner by virtue of a **memorandum of assignment** signed by revenue district officer Nacar, which reads:
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> ...
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> The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 from revenue officer Cacdac to revenue officer Bagauisan necessitates the issuance of a new LOA. **This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit,**" which provides that:
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>> C. Other policies for issuance of L/As.
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>> 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.
>
> Here, there was no new LOA issued naming Bagauisan as the new revenue officer who would conduct the examination of petitioner's books of accounts. The authority of Bagauisan is anchored only upon the memorandum of assignment signed by revenue district officer Nacar.
>
> Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer:
>
> ...
>
> Thus, revenue officer Bagauisan is not authorized by a new LOA to conduct an audit of petitioner's books of accounts for TY 2009.

The lack of a valid LOA authorizing Revenue Officer Bagauisan to conduct an audit on petitioner makes the assessment void.

...

In ***Medicard Philippines, Inc. v. CIR,*** the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. The Letter of Notice earlier sent to Medi card Philippines was not validly converted into a LOA. According to the Court in Medicard Philippines:

> 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.**

... The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. **The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results in a void assessment. Being a void assessment, the same bears no fruit.** (*Emphasis supplied*)

In *Commissioner of Internal Revenue vs. Composite Materials, Inc. (Composite case),*[17] the Supreme Court was likewise categorical in saying that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Revenue Regional Director and emphasized that the *Referral Memorandum* issued by the Revenue District Officer (RDO) directing another RO to continue with the examination is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.*:

> As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that **a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* ruling that in the absence of an LOA, the assessment or examination is a nullity.

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[17] G.R. No. 238352, September 12, 2018.

MV

> Here, the CTA *En Banc* found that **the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void**.
>
> Moreover, the Court agrees with the CTA *En Banc* that the **Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA. (*Emphasis supplied*)

In *Commissioner of Internal Revenue vs. Opulent Landowners, Inc.,* [18] cited in the assailed Resolution, the Supreme Court pointed out that an LOA is **statutorily required** in order to clothe ROs with authority and only the ROs **actually named** under the LOA are authorized to examine taxpayers, to wit:

> ... Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. It is axiomatic that only the revenue officers **actually named** under the LOA are authorized to examine the taxpayer. This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90
>
> ... **In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void**." (*Emphasis supplied*)

In line with the foregoing jurisprudential pronouncements, there must be a grant of authority in the form of an LOA, before any RO can conduct an examination or assessment.[19] Only the ROs actually named under the LOA are authorized to examine the taxpayer.[20] Only the CIR and his/her duly authorized representatives may issue the LOA; the authorized representatives include the Deputy Commissioners, the

[18] G.R. Nos. 249883-84, January 27, 2020.
[19] *CIR vs. McDonalds Phil. Realty Corp.*, G.R. No. 242670, May 10, 2021 *citing CIR vs. Sony Phils, Inc.*, G.R. 178697, November 17, 2010.
[20] *CIR vs. Opulent Landowners, Inc.*, G.R. Nos. 249883-84, January 27, 2020.

Revenue Regional Directors, and such other officials as may be authorized by the CIR.[21]

Moreover, the reassignment or transfer of an RO requires the issuance of a new or amended LOA that will enable the substitute or replacement RO to continue the audit or investigation.[22] An MOA, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer.[23] Neither is a Referral Memorandum issued by the RDO directing another RO to continue with the examination equivalent to an LOA nor does it cure the RO's lack of authority.[24] In the absence of a new LOA issued in favor of the ROs who recommended the issuance of the deficiency tax assessments against the respondent, the resulting assessments are void.[25]

In the instant case, it is undisputed that an LOA was initially issued authorizing RO Zenaida Paz, Joel Aguila, Ma. Salud Maddela, Allan Maniego, Cletofel Parungao, Myrna Ramirez, and GS Glorializa Samoy to audit and assess respondent for taxable year 2009.[26] However, the audit investigation and assessment of respondent's books of accounts and other accounting records were done by RO Arriola and GS Balbido.

While MOA Nos. LOA-116-2013-0453,[27] 116-2014-0001,[28] and LOA-116-2014-0940[29] were issued authorizing RO Arriola and GS Balbido to conduct the said audit investigation, the said MOAs were only signed by Mr. Cesar D. Escalada - the Chief of the BIR's Regular LT Audit Division 1, who is not one of the authorized representatives of petitioner to issue and sign an LOA, i.e., the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR. Simply put, none of the aforesaid MOAs can be regarded as a valid LOA within the context of the law and the prevailing jurisprudence.

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[21] *CIR vs. McDonalds Phil. Realty Corp.*, G.R. No. 242670, May 10, 2021 *citing* Sections 6, 10 and 13 of the NIRC of 1997 and Sec. D (4) of RMO 43-90.
[22] *Id.*
[23] *Id.*
[24] *CIR vs. Composite Materials, Inc.*, G.R. 238352, September 12, 2018.
[25] *CIR vs. Opulent Landowners, Inc.*, G.R. Nos. 249883-84, January 27, 2020.
[26] Exhibit "P-3", Records Vol. 3, p. 1196; Exhibit "R-1", BIR Records, p. 1.
[27] Exhibit "R-3", BIR Records, p. 940.
[28] Exhibit "R-11", BIR Records, p. 1166.
[29] Exhibit "R-13", BIR Records, p. 1552.

Accordingly, the absence of a new or separate LOA specifically identifying RO Arriola and GS Balbido as the new RO and GS who would continue the audit examination of petitioner's books of accounts for TY 2009, rendered them without authority to conduct such audit investigation. Hence, the resulting assessments are null and void.

Void assessments bear no valid fruit.[30]

Having arrived at the foregoing conclusion, We find it unnecessary to discuss and rule upon the other points raised in the instant petition.

WHEREFORE, the *Petition for Review* filed by petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. The assailed Decision dated January 7, 2021, and the assailed Resolution dated June 3, 2021, both rendered by the Court's Third Division in CTA Case No. 9121, are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ON LEAVE

MA. BELEN RINGPIS-LIBAN
Associate Justice

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[30] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 214848, May 14, 2021; *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. Nos.159694 and 163581. January 27, 2006.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice

ON LEAVE

MARIAN IVY F. REYES-FAJARDO
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