CTA Form No. 8

22-000195-0062

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10852

HELIX AGGREGATES, INC. (formerly LAFARGEHOLCIM AGGREGATES, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENNUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. FELIX PAUL R. VELASCO III
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. LARA NICOLE T. GONZALES
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

BANIQUED AND BELLO
Suite 803, 8th Floor, Jollibee Centre
San Miguel Avenue, Ortigas Center
1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **February 27, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 3, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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HELIX AGGREGATES, INC. (formerly LAFARGEHOLCIM AGGREGATES, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10852

Members:

DEL ROSARIO, *P.J., Chairperson*,
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:

FEB 27 2025; 1:15PM

x - x

DECISION

DEL ROSARIO, P.J.:

At bar is a Petition for Review filed by petitioner Helix Aggregates, Inc. on April 29, 2022 seeking the Court to render judgment:

1. declaring petitioner not liable for deficiency income tax (IT), withholding tax on compensation (WTC), expanded withholding tax (EWT), value-added tax (VAT), excise tax, and documentary stamp tax (DST) for taxable year (TY) 2017; and,

2. ordering the withdrawal and cancellation of the Formal Letter of Demand (FLD) and Final Decision on the Disputed Assessment (FDDA) issued for TY 2017.

THE PARTIES

Petitioner is a corporation organized and existing under the laws of the Philippines with principal office address at Don Mariano Santos

Avenue, Barangay San Isidro, Angono, Rizal.[1] It is primarily engaged in the business of manufacturing and dealing in rock, stone, cement, other minerals and builder's requirements including quarrying, crushing, selling, and dealing of rocks, stone, and limestone.[2] Petitioner is registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 006-974-585 and with BIR Certificate of Registration No. OCN8RC0000263442.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City and may be served with pleadings and other court processes at Litigation Division, Room 703, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

THE FACTS

On October 11, 2018, petitioner received **Letter of Authority (LOA) No. LOA-121-2018-00000035 (eLA201600038735)** dated September 26, 2018 signed by OIC – Assistant Commissioner of the Large Taxpayers Service (LTS) Teresita M. Dizon, authorizing Revenue Officers (ROs) Kathleen Santiago, Fremarie Aquino, Alexander Atienza, Leonila Manuel, Saidamen Marohombsar and Group Supervisor (GS) Ronaldo Camba of Large Taxpayers (LT) Excise Audit Division 1, to examine petitioner's books of accounts and other accounting records for the assessment of all internal revenue taxes for TY 2017.[5]

Subsequently, Ms. Teresita M. Dizon, OIC-Assistant Commissioner, LTS, issued **LOA No. LOA-121-2019-00000109 (SN: eLA201700006130)** dated May 22, 2019, replacing the previous LOA. The amended LOA authorized only RO Kathleen Santiago and GS Constante Jr. Reinante of LT Excise Audit Division 1. Said amended LOA was received by petitioner's authorized representative on June 6, 2019.[6]

Petitioner, through its Chief Finance Officer, Mr. Lambert L. Aguisanda, executed on February 12, 2020 a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal

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[1] Petition for Review, CTA Docket Vol. I, p. 6; Pre-Trial Brief for Petitioner, CTA Docket Vol. III, p. 1135.
[2] Pre-Trial Brief for Petitioner, CTA Docket Vol. III, p. 1135.
[3] Pre-Trial Brief for Petitioner, CTA Docket Vol. III, pp. 1135-1136.
[4] Pre-Trial Order, CTA Docket Vol. III, p. 1476.
[5] Pre-Trial Order, CTA Docket Vol. III, pp. 1476-1477; Exhibits "P-8" and "R-1", BIR Records, p. 1.
[6] BIR Records, p. 317.

Revenue Code extending the period to assess until December 31, 2020.[7] On November 20, 2020, petitioner, through Mr. Aguisanda, executed another Waiver, this time extending the period to assess from December 31, 2020 to June 30, 2021.[8]

Thereafter, on February 26, 2021, petitioner received a Notice of Discrepancy (NoD) dated February 26, 2021 with attached details of discrepancy, inviting petitioner to a discussion of the discrepancies.[9]

On May 11, 2021, petitioner received the Preliminary Assessment Notice (PAN) issued by the LTS for TY 2017 dated April 30, 2021.[10]

On June 8, 2021, petitioner received the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) for TY 2017, assessing petitioner of deficiency IT, WTC, EWT, VAT, excise tax and DST.[11]

On July 8, 2021, petitioner filed its Protest to the FLD/FAN of even date.[12] Subsequently, on October 15, 2021, petitioner filed a submission-letter dated October 13, 2021, submitting all documents relevant to support its Protest to the FLD/FAN.[13]

On April 1, 2022, petitioner received the FDDA Part I and II of even date signed by CIR Caesar R. Dulay, partially denying the Protest and accordingly, finding petitioner liable for deficiency IT, WTC, EWT, VAT, excise tax and DST in the aggregate amount of ₱550,476,896.84,[14] inclusive of surcharge, interest, and compromise penalties for TY 2017.[15]

Aggrieved, petitioner filed the present Petition for Review on April 29, 2022.[16]

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[7] Exhibit "R-3", BIR Records, p. 322.
[8] Exhibit "R-4", BIR Records, pp. 323.e-323.f.
[9] Pre-Trial Order, CTA Docket Vol. III, p. 1477; Exhibit "R-8", BIR Records, pp. 511-525.
[10] Pre-Trial Order, CTA Docket Vol. III, p. 1477; Exhibit "R-10", BIR Records, pp. 579-582.
[11] Pre-Trial Order, CTA Docket Vol. III, p. 1477; Exhibit "R-11", BIR Records, pp. 607-621.
[12] Exhibit "P-8-5", CTA Docket Vol. IV, pp. 1946-1964; BIR Records, pp. 1190-1208.
[13] Exhibit "P-8-6", CTA Docket Vol. IV, pp. 1966-1968.
[14] FDDA Part I (₱550,255,896.84) plus FDDA Part II (₱221,000.00).
[15] Pre-Trial Order, CTA Docket Vol. III, p. 1477; Exhibit "R-14", BIR Records, pp. 1274-1285.
[16] Petition for Review, CTA Docket Vol. I, pp. 6-49.

On July 14, 2022, within the extended period,[17] respondent filed his Answer, raising therein the following special and affirmative defenses:[18]

1. The wordings of the FLD indicate that there is demand for payment and definite amount of tax liability;

2. Respondent's right to assess has not prescribed; and

3. Petitioner is liable for the assessed deficiency taxes, compromise penalties and surcharge.

The Pre-Trial Brief for Petitioner was filed on October 7, 2022[19] while Respondent's Pre-Trial Brief was filed on October 10, 2022.[20] The Pre-Trial Conference was held on February 16, 2023.[21]

During the Pre-Trial Conference, the Court directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on June 26, 2023 pursuant to A.M. No. 11-1-5-SC-PHILJA (Re: Interim Guidelines for Implementing Mediation in the Court of Tax Appeals) and to submit their Joint Stipulation of Facts and Issues (JSFI) not later than March 20, 2023.[22]

On March 20, 2023, the parties filed their JSFI[23] which was approved by the Court in the Resolution dated March 24, 2023 thereby terminating the Pre-Trial.[24]

On April 20, 2023, the Court issued the Pre-Trial Order.[25]

On June 29, 2023, the Court received a "Back to Court" letter dated June 29, 2023 from the PMC-CTA, stating that petitioner had sent a letter thru email manifesting their refusal to enter into mediation.[26]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Mr. Jonah T. Togueño,

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[17] Order dated June 15, 2022, CTA Docket Vol. II, p. 629.
[18] CTA Docket Vol. II, pp. 630-660.
[19] CTA Docket Vol. III, pp. 1134-1145.
[20] CTA Docket Vol. III, pp. 1146-1150.
[21] Order dated February 16, 2023, CTA Docket Vol. III, pp. 1419-1421.
[22] CTA Docket Vol. III, p. 1420.
[23] CTA Docket Vol. III, pp. 1462-1472.
[24] CTA Docket Vol. III, p. 1474.
[25] CTA Docket Vol. III, pp. 1476-1484.
[26] CTA Docket Vol. III, p. 1486.

petitioner's Finance Manager,[27] and Mr. Rean G. Abalos, the Court-commissioned Independent Certified Public Accountant.[28]

On October 9, 2023, petitioner filed its Formal Offer of Evidence.[29] Petitioner's exhibits, except Exhibits "P-2", "P-9", "P-12-2", "P-13", and "P-13-1", were admitted in evidence in the Resolution dated December 19, 2023.[30] With respect to the denied exhibits, petitioner filed a Tender of Excluded Evidence on January 22, 2024.[31]

Thereafter, respondent presented his lone witness, RO Kathleen Santiago.[32] On March 18, 2024, Respondent's Formal Offer of Evidence was filed.[33] In the Resolution dated May 15, 2024, the Court admitted in evidence all of respondent's offered exhibits.[34]

The Memorandum for Petitioner was filed on June 19, 2024[35] while respondent's Memorandum was filed on June 20, 2024.[36] Thereafter, the case was submitted for decision on July 1, 2024.[37]

THE PARTIES' ARGUMENTS

Petitioner argues that:

1. An FLD with no demand or requirement for the taxpayer to pay the tax due is invalid;

2. Assuming the FLD is valid, the government's right to assess petitioner for alleged deficiency taxes for TY 2017 has prescribed;

3. Assuming the FLD is valid, the waiver which respondent required petitioner to execute is not valid since it did not comply with the requisites and formalities of a valid waiver; hence, said waiver

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[27] Exhibits "P-39" and "P-39-1", CTA Docket Vol. I, pp. 55-71; Exhibits "P-40" and "P-40-1", CTA Docket Vol. III, pp. 1512-1521; Order dated September 28, 2023, CTA Docket Vol. III, pp. 1723-1725.
[28] Exhibits "P-38" and "P-38-1", CTA Docket Vol. III, pp. 1713-1718; Order dated September 28, 2023, CTA Docket Vol. III, pp. 1723-1725.
[29] CTA Docket Vol. IV, pp. 1733-1759.
[30] CTA Docket Vol. IV, pp. 2119-2120.
[31] CTA Docket Vol. IV, pp. 2121-2124.
[32] CTA Docket Vol. III, pp. 1155-1176; Order dated March 5, 2024, CTA Docket Vol. IV, pp. 2133-2134.
[33] CTA Docket Vol. IV, pp. 2137-2144.
[34] CTA Docket Vol. IV, pp. 2156-2157.
[35] CTA Docket Vol. IV, pp. 2158-2206.
[36] CTA Docket Vol. IV, pp. 2210-2238.
[37] Minute Resolution dated July 1, 2024, CTA Docket Vol. IV, p. 2241.

did not have the effect of extending the three (3)-year prescriptive period to assess deficiency taxes; and,

4. Assuming the FLD is valid and the government's right to assess is not yet barred by prescription, the assessment for alleged deficiency IT, WTC, EWT, VAT, excise tax and DST has no factual and legal basis.[38]

On the other hand, respondent counter-argues that:

1. The wordings of the FLD indicate that there is demand for payment and definite amount of tax liability;

2. The right to assess has not prescribed; and,

3. Petitioner is liable for the assessed deficiency taxes, surcharges and compromise penalties.[39]

THE ISSUE

The sole issue before this Court is whether or not petitioner is liable to pay the alleged deficiency IT, WTC, EWT, VAT, excise tax, DST and compromise penalties for TY 2017 in the total amount of ₱550,476,896.84, inclusive of interests, surcharges, and compromise penalties.[40]

THE COURT'S RULING

The Petition for Review was timely filed; hence, the Court has jurisdiction over the case

The Court of Tax Appeals (CTA) is a court of limited jurisdiction and can exercise its jurisdiction only to the extent provided by Congress. It is vested with authority to review respondent's FDDA pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as

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[38] Petition for Review, CTA Docket Vol. I, pp. 6-49; Memorandum for Petitioner, CTA Docket Vol. IV, pp. 2164-2205.
[39] Answer, CTA Docket Vol. II, pp. 630-660; Memorandum, Vol. IV, pp. 2212-2236.
[40] Par. 7, Joint Stipulation of Facts and Issues, CTA Docket Vol. III, p. 1463.

amended by RA No. 9282,[41] in relation to Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended.[42]

Under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, a taxpayer adversely affected by a decision of the CIR on the disputed assessment is given a remedy to appeal with the CTA within thirty (30) days from receipt of the assailed decision, *viz.*:

> SEC. 228. *Protesting of Assessment*. – xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

On the other hand, under Section 11 of RA No. 1125,[43] as amended, in relation to Section 3(a), Rule 8 of the RRCTA,[44] a party

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[41] SEC. 7. *Jurisdiction*. – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
   1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue; xxx.

[42] SEC. 3. *Cases within the jurisdiction of the Court in Divisions*. – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:
   (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

[43] Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal*. -Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for actions as referred to in Section 7(a)(2) herein. xxx

[44] Sec. 3. *Who may appeal; period to file petition*. –
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected,

adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA by way of a petition for review within thirty (30) days from receipt of such decision or ruling or from the expiration of the specific period of action.

Prescinding from the foregoing, this Court has exclusive appellate jurisdiction to review on appeal decisions of respondent involving disputed assessments. The taxpayer adversely affected by respondent's decision may file an appeal with this Court within thirty (30) days after receipt of such decision.

Considering that petitioner received respondent's FDDA dated April 1, 2022[45] on even date, petitioner had thirty (30) days therefrom, or until May 1, 2022 within which to file its appeal before the Court. Since May 1, 2022 fell on a Sunday, petitioner had until May 2, 2022 within which to file its appeal.

The present Petition for Review was timely filed on April 29, 2022.[46] Thus, the Court acquired jurisdiction over the present case.

The Court has jurisdiction to determine whether the ROs who conducted the audit of petitioner are authorized

RA No. 1125, as amended, provides that the CTA is a court of record, *viz.*:

> Section 8. *Court of record; seal; proceedings.* - **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence. (*Boldfacing supplied.*)

The CTA, as a court of justice, has jurisdiction to decide the issue on the lack of authority of the RO and GS to conduct the audit and examination of petitioner, albeit the same was not raised by petitioner.

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the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.
[45] BIR Records, p. 1285.
[46] CTA Docket Vol. I, pp. 6-49.

Truth to tell, cases filed before the CTA are litigated *de novo*.[47] The CTA is vested with sufficient authority to consider the issue on the validity of the audit and examination conducted by the RO and GS pursuant to Section 1, Rule 14 of the RRCTA which provides that:

> Rule 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. Rendition of judgment – Xxx xxx xxx.
>
> xxx xxx xxx
>
> In deciding cases, 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 resolution of the issue on the authority of the RO and GS to conduct the audit of petitioner is relevant in determining the validity of the disputed assessments. The necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and necessarily, to the validity of the assessment, that may be issued after said audit.

In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[48] the Supreme Court affirmed the authority of the CTA to resolve the issue involving the authority of the RO to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda, *viz.*:

> 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:
>
> > Section 1. *Rendition of judgment.* – x x x
> >
> > 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**

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[47] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[48] G.R. No. 183408, July 12, 2017.

> **in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda**. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter. (*Boldfacing supplied*)

The Group Supervisor who recommended the issuance of the PAN was not clothed with proper authority

There must be a grant of authority before any RO can conduct an examination or assessment. Section 6 of the NIRC of 1997, as amended, provides:

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

In addition, Section 13 of the NIRC of 1997, as amended, mandates that an RO assigned to perform assessment functions may conduct an audit of a taxpayer's books of accounts and other accounting records pursuant to an LOA issued no less than by the Regional Director, *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. (*Boldfacing supplied*)

Based on the foregoing provisions, it is evident that a taxpayer cannot be examined unless an LOA is issued by the CIR or his/her duly authorized representative. This LOA authorizes the RO to examine the taxpayer in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[49] the Supreme Court was clear in holding that the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any RO is indispensable to the validity of an assessment, to wit:

> Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> xxx xxx xxx
>
> 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>**. *(Boldfacing and underscoring supplied)*

This principle was also reiterated in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[50] to wit:

> Based on the afore-quoted provision, **it is clear that unless authorized by the CIR [himself/herself] or by [his/her] 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/herself] or [his/her] duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. (*Boldfacing supplied*)

Moreover, Revenue Memorandum Order No. 43-90 is explicit in requiring the issuance of a new LOA when an audit is continued by an RO other than the officer named in a previous LOA, *viz.*:

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[49] G.R. No. 178697, November 17, 2010.
[50] G.R. No. 222743, April 5, 2017.

C. Other policies for issuance of L/As.

1. **All audits/investigations, whether field 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.** (*Boldfacing and underscoring supplied*)

More recently, in *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[51] the Supreme Court clarified that the issuance of the LOA, which empowers and enables ROs to examine the books of accounts and other accounting records of the taxpayer, is a statutory power vested in the CIR and his/her duly authorized representatives, *viz.*:

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/herself] or [his/her] duly authorized representatives.

xxx xxx xxx

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

Evidently, all tax agents or ROs must be armed with an LOA issued by the CIR himself/herself or his/her duly authorized representatives to be able to conduct an audit or examination of a

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

taxpayer. Without an LOA, only the CIR himself/herself or his/her duly authorized representatives themselves can conduct the audit or examination.

More importantly, the Supreme Court in *McDonald's* held 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 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 on the requirement of an LOA in the grant of authority by the CIR or his/her duly authorized representative to examine the taxpayer's books of accounts.

As previously mentioned, there are two LOAs in this case.

The first LOA, LOA No. 121-2018-00000035 dated September 26, 2018,[52] reads:

> eLA201600038735
> LOA-121-2018-00000035
>
> **LETTER OF AUTHORITY**
>
> September 26, 2018
>
> LAFARGEHOLCIM AGGREGATES, INC.
> DON MARIANO SANTOS AVENUE, SAN ISIDRO, ANGONO, RIZAL
> TIN : 006-954-585
>
> SIR / MADAM / GENTLEMEN:
>
> The bearer(s) hereof, RO – KATHLEEN SANTIAGO , FREMARIE AQUINO , ALEXANDER ATIENZA , LEONILA MANUEL , SAIDAMEN MAROHOMBSAR / **GS – RONALDO CAMBA** of LT EXCISE AUDIT DIVISION 1 is/are **authorized to examine** your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES INCLUDING DOCUMENTARY STAMP TAX(DS), OTHER TAXES (MISCELLANEOUS TAX)(OTH) for the period from January 1, 2017 to December 31, 2017 pursuant to SEC. 6(A) & SEC. 10(C) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED. **The Revenue Officer(s) identified herein are provided with the necessary identification card(s) which shall be presented to you upon request.**
>
> It is requested that all required documents, books and records be provided to the Revenue Officer(s) in order to expedite the examination.

[52] Exhibits "P-8" and "R-1", BIR Records, p. 1.

You will be duly informed of the results of the examination upon approval of the report submitted by the aforementioned Revenue Officer(s).

Very truly yours,

TERESITA M. DIZON (Sgd)
OIC – Assistant Commissioner
Large Taxpayers Service

On the other hand, LOA No. LOA-121-2019-00000109 dated May 22, 2019[53] reads:

eLA201700006130
LOA-121-2019- 00000109

LETTER OF AUTHORITY

May 22, 2019

LAFARGEHOLCIM AGGREGATES, INC.
DON MARIANO SANTOS AVENUE, SAN ISIDRO, ANGONO, RIZAL
TIN : 006-954-585

SIR / MADAM / GENTLEMEN:

The bearer(s) hereof, RO – KATHLEEN SANTIAGO / **GS – CONSTANTE JR REINANTE** of EXCISE LT AUDIT DIVISION 1 is/are **authorized to examine** your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES INCLUDING DOCUMENTARY STAMP TAX(DS), OTHER TAXES (MISCELLANEOUS TAX)(OTH) for the period from January 1, 2017 to December 31, 2017 pursuant to SEC. 6(A) & SEC. 10(C) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED. **The Revenue Officer(s) identified herein are provided with the necessary identification card(s) which shall be presented to you upon request**.

It is requested that all required documents, books and records be provided to the Revenue Officer(s) in order to expedite the examination.

You will be duly informed of the results of the examination upon approval of the report submitted by the aforementioned Revenue Officer(s).

This is the replacement of Letter of Authority No. 121-2018-00000035 dated September 26, 2018 issued for the continuation of audit of herein tax liabilities covering taxable period from January 01, 2017 to December 31, 2017 **due to reassignment of the case from GS Ronald C. Camba who was transferred to another office**.

Very truly yours,

TERESITA M. DIZON (Sgd)
OIC – Assistant Commissioner
Large Taxpayers Service

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[53] BIR Records, p. 317.

Clearly, these two LOAs indicate the ROs who are authorized to examine petitioner's books of accounts and accounting records and to whom documents, books and records shall be provided in order to expedite such examination.

Notably, after the issuance of the **first LOA**, **GS Ronaldo Camba** issued a Checklist of Requirements[54] dated October 11, 2018 to petitioner's President. By initiating the start of the audit, GS Ronaldo Camba had assumed the responsibility of overseeing and leading the examination.

A reading of the LOAs, coupled with the very act of **GS Ronaldo Camba** in initiating the start of the audit, reveals that a GS is essentially an RO but with added responsibility of leading, directing and overseeing the conduct of the examination of a taxpayer's books of accounts and other accounting records under the special designation of "Group Supervisor".

On this matter, Revenue Administrative Order No. 02-90[55] dated March 28, 1990 provides that "**all group supervisors** and section chiefs **shall be responsible for the work performance of their subordinates and it shall be their responsibility to closely supervise and review their work and audit reports**."

Since a GS is considered an RO not only empowered to conduct an assessment but tasked to lead and direct the same, he/she must, with more reason, be clothed with an LOA. **Any assessment carried out by a GS without the requisite LOA is null and void**.

Revenue Regulations (RR) No. 22-2020[56] dated September 15, 2020 provides the rules on the issuance of an NoD and the procedures to be observed prior to the issuance of the PAN, to wit:

> **SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –**
>
> **3.1** Mode of procedure in the issuance of a deficiency tax assessment:

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[54] BIR Records, p. 2-3.
[55] Subject: Assignment of All Revenue Officers Holding Supervisory Positions to Perform Actual Supervisory Functions.
[56] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-2013 and Revenue Regulations No. 7-2018, Relative to the Due Process Requirement in the issuance of a Deficiency Tax Assessment.

> **<u>3.1.1 Notice of Discrepancy</u>**. – If a taxpayer is found to be liable for deficiency tax or taxes in the course of an investigation conducted by a Revenue Officer, the taxpayer shall be informed through a Notice of Discrepancy (Annex A). The Notice of Discrepancy aims to fully afford the taxpayer with an opportunity to present and explain his side on the discrepancies found.
>
> The Revenue Officer who audited the taxpayer's records shall, among others, state in the initial report of investigation his findings of discrepancies.
>
> Based on the said Officer's submitted initial report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Assessment Division/Regional Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of the "Discussion of Discrepancy".
>
> The Discussion of Discrepancy shall in no case extend beyond thirty (30) days from receipt of the Notice of Discrepancy. It is during the Discussion of Discrepancy that the taxpayer is given the opportunity to present his side of the case and explain the discrepancy found during the investigation of the Revenue Officer assigned and submit documents to support the explanation or arguments.
>
> If the taxpayer disagrees with the discrepancy/discrepancies detected during the audit/investigation, the taxpayer must present an explanation and provide documents to support his explanation. The documents must be submitted during the discussion. Should the taxpayer need more time to present the documents, he may submit such documents after the discussion. The taxpayer must submit all necessary documents that supports his explanation within thirty (30) days after receipt of the Notice of Discrepancy.
>
> If after being afforded the opportunity to present his side through the Discussion of Discrepancy, it is still found that the taxpayer is still liable for deficiency tax or taxes and the taxpayer does not address the discrepancy through payment of the deficiency taxes or the taxpayer does not agree with the findings, **<u>the investigating office, shall endorse the case to the reviewing office and approving official in the National Office or the Revenue Regional Office</u>, for issuance of a deficiency tax assessment in the form of a Preliminary Assessment Notice within ten (10) days from the conclusion of the Discussion**.
>
> Failure on the part of the Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations. *(Boldfacing and underscoring supplied)*

While RR No. 22-2020 provides that the investigating office shall endorse the case to the reviewing office and approving official in the National Office for the issuance of a PAN, **Section 13 of the NIRC of**

1997, as amended, clarifies that it is the RO authorized by an LOA to conduct audit who is responsible for making the recommendation. The head of the investigating office then endorses the case to the reviewing office and approving official for the issuance of the PAN.

Accordingly, only the RO and GS indicated in the second LOA are authorized to (1) continue the audit/examination of petitioner's internal revenue taxes for TY 2017 and (2) subsequently recommend the assessment of deficiency taxes based on their audit findings.

LOA No. LOA-121-2018-00000035 (eLA201000058922) originally authorized **ROs Kathleen Santiago, Fremarie Aquino, Alexander Atienza, Leonila Manuel, Saidamen Marohombsar** and **GS Ronaldo Camba** to conduct the audit of petitioner. Subsequently, a new LOA [LOA No. LOA-121-2019-00000109 (eLA201700006130)] was issued designating **RO Kathleen Santiago** and **GS Constante Jr. Reinante** to continue the audit of petitioner.

In the Memorandum dated February 15, 2021,[57] recommending the issuance of an NoD, and Memorandum dated April 26, 2021,[58] recommending the issuance of the PAN, it was **RO Kathleen Santiago** and **GS Dominic Morales** who were the signatories therein.

Apparently, **GS Dominic Morales** was not granted any authorization under a new and separate, or amended LOA to continue the audit or investigation of petitioner's books of accounts for TY 2017. An exhaustive perusing reveals that the records are bereft of any document whatsoever authorizing him to continue the audit. As such, he had no legitimate role in the assessment process.

The importance of identifying the authorized RO who will conduct the examination and assessment against a taxpayer was explained by the Supreme Court in *McDonald's*, *viz.*:

> To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. **The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment**; and the only way to make that link is by looking at the names of the revenue officers who

[57] BIR Records, pp. 506-510.
[58] BIR Records, pp. 542-546.

> are authorized in the said LOA. **If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment.** Due process requires that **taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that <u>the LOAs must contain the names of the authorized revenue officers</u>.** In other words, identifying the authorized revenue officers in the LOA is a **<u>jurisdictional requirement</u>** of a valid audit or investigation by the BIR, and therefore of a valid assessment. *(Boldfacing and underscoring supplied)*

To comply with due process in a tax audit or investigation, the taxpayer must be able to verify that the ROs who will conduct the examination are authorized. To ensure this, the LOA must explicitly list the names of such authorized ROs. If an RO not named in the LOA proceeds to conduct the audit, the entire assessment process suffers from legal infirmity.

To recall, in *McDonald's*, the RO who conducted the audit was not armed with an LOA, but instead only had a Referral Memorandum. The Supreme Court characterized the issuance of such Referral Memorandum or other equivalent document in reassigning or transferring ROs as a form of usurpation of authority as it seeks to exercise a power that belongs exclusively to the CIR himself/herself or his/her duly authorized representatives. Said the Supreme Court:

> **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/her] 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/her] 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/herself] or [his/her] duly authorized representatives**. *(Boldfacing supplied)*

Similar to *McDonald's*, the authority of the respondent or his duly authorized representative to issue an LOA for reassigning or transferring ROs to continue an audit or examination was usurped in this case. In *McDonald's*, the usurpation was evidenced by a Referral Memorandum. In this case, however, there is even no document whatsoever authorizing **GS Dominic Morales** to continue the audit. Whether the reassignment or transfer of the RO is documented or not is irrelevant – it still constitutes a usurpation of authority.

Interestingly, the act of assuming the continuation of the audit results in two (2) additional forms of usurpation of authority. First, it infringes upon the exclusive power of the CIR or his duly authorized representative to conduct an audit even in the absence of an LOA. Second, it undermines the standing authority of **GS Constante Jr. Reinante** to perform and lead the audit, thereby creating confusion as to whose authority petitioner should submit.

Acts constituting usurpation of authority, regardless of their form, are unequivocally and strongly condemned by law. No less than the NIRC of 1997, as amended, takes a firm stance against such acts, even classifying them as grave misconduct which may warrant dismissal of the erring officer from the revenue service, to wit:

> SEC. 269. *Violations Committed by Government Enforcement Officers*. Every official, agent, or employee of the Bureau of Internal Revenue or any other agency of the Government charged with the enforcement of the provisions of this Code, who is guilty of any of the offenses herein below specified shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than ten (10) years but not more than fifteen (15) years and shall likewise suffer an additional penalty of perpetual disqualification to hold public office, to vote, and to participate in any public election:
>
> xxx xxx xxx
>
> Provided, That the provisions of the foregoing paragraph notwithstanding, **any internal revenue officer for which a prima facie case of grave misconduct has been established shall, after due notice and hearing of the administrative case and subject to Civil Service Laws, be dismissed from the revenue service**: Provided, further, That **the term 'grave misconduct'**, as defined in Civil Service Law, <u>**shall include**</u> the issuance of fake letters of authority and receipts, forgery of signature, <u>**usurpation of authority**</u> and habitual issuance of unreasonable assessments. *(Boldfacing and underscoring supplied)*

By assuming the role of a GS and leading the audit and examination without the requisite LOA, **GS Dominic Morales** –

whether self-designated or otherwise – or any higher-ranking revenue official, effectively usurped the statutory authority vested in the respondent or his duly authorized representative.

Without a new and separate, or amended LOA authorizing **GS Dominic Morales** to perform and lead the examination and assessment of the tax liabilities of petitioner, the conduct of the audit was legally flawed.

Since the conduct of the audit of petitioner was legally flawed, the assessments issued against it are inescapably void. Needless to say, a void assessment bears no fruit[59] and must be slain at sight.

In light of the foregoing, the Court need not belabor the other issues raised by the parties.

WHEREFORE, premises considered, the present Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancies and Assessment Notices covering the deficiency income tax, withholding tax on compensation, expanded withholding tax, value-added tax, excise tax, documentary stamp tax, and the assessed compromise penalties, all dated May 31, 2021, and the Final Decision on Disputed Assessment of respondent Commissioner of Internal Revenue dated April 1, 2022, are **CANCELLED AND SET ASIDE** for being void *ab initio*.

Respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed assessments subject of the Formal Letter of Demand with Details of Discrepancies and Assessment Notices all dated May 31, 2021, and the Final Decision on Disputed Assessment dated April 1, 2022, assessing petitioner of deficiency income tax, withholding tax on compensation, expanded withholding tax, value-added tax, excise tax, documentary stamp tax, in the aggregate amount of ₱550,476,896.84, inclusive of surcharge, interest, and compromise penalties. This injunctive relief is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

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[59] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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