REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA EB No. 2825** (CTA Case No. 9941)
	Present:
-*versus*-	**RINGPIS-LIBAN**, *Acting P.J.* **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, and **ANGELES**, *JJ.*
MISNET EDUCATION, INC. *Respondent.*	Promulgated: NOV 18 2025

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DECISION

ANGELES, *J.*:

THE CASE

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner assailing the Decision dated July 3, 2023 (assailed Decision),[2] which ordered the cancellation of the *Final Decision on Disputed Assessment* (FDDA) dated September 4, 2018 and the *Final Assessment Notice* (FAN) dated January 14, 2011, issued by the petitioner against the respondent. Also assailed is the Resolution dated October 3, 2023 (assailed Resolution),[3] denying the petitioner's *Motion for Reconsideration*, promulgated by this Court's Special Third Division (Court in Division) in CTA Case No. 9941.

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[1] EB Docket, pp. 1 to 17.
[2] Decision dated July 3, 2023, EB Docket, pp. 18 to 40.
[3] Resolution dated October 3, 2023, EB Docket, pp. 41 to 49.

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue vested with authority and power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR) and may be served with summons and other legal processes of the Court at the Legal Division, Revenue Region No. 8A – Makati City, 36th Floor, Exportbank Plaza Building, Sen. Gil Puyat corner Chino Roces Avenue, Makati City.[4]

Respondent Misnet Education, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 2402 Antel 2000 Corporate Center, 121 Valero Street, Salcedo Village, Makati City, Philippines.[5]

ANTECEDENT FACTS

The facts as found by the Court in Division are as follows:[6]

> On August 15, 2008, petitioner [herein respondent] received respondent's [herein petitioner] *Letter of Authority* ("*LOA*") No. 2007-00047942 dated August 11, 2008, with *First Notice for Presentation of Documents* (*First Notice*), and a letter informing petitioner [herein respondent] that Revenue Officer ("RO") Ma. Amable B. Tan to assist in the investigation.
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> Thereafter, on August 29, 2008, respondent [herein petitioner] issued a *Second Notice of Presentation of Records* (*Second Notice*), which was received by petitioner [herein respondent] on September 04, 2008.
>
> Petitioner [herein respondent] transmitted the documents requested in the BIR *First Notice* and *Second Notice* in the letter dated September 12, 2008, which was received by the BIR Revenue District Office No. 50 on September 15, 2008.
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> On October 24, 2008, petitioner [herein respondent] received the BIR *Final Request for Presentation of Books of Accounts and Other Accounting Records* (BIR *Final Notice*) dated October 22, 2008.

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[4] Petition for Review, EB Docket, p.2.
[5] *Id.*
[6] EB Docket, pp. 19 to 28; Docket (CTA Case No. 9941), pp. 649 to 658.

Petitioner [herein respondent] then sent the letter-reply dated October 24, 2008 and received by the BIR on October 27, 2008, stating that documents had already been submitted to the BIR.

On June 02, 2009, petitioner [herein respondent] received the letter dated May 25, 2009 from respondent [herein petitioner], informing petitioner [herein respondent] that RO Divina Santos, under the supervision of Ms. Almira Navarro, was authorized to continue the BIR Audit under the BIR LOA.

On June 29, 2009, petitioner [herein respondent] received the *Last Appeal* letter dated June 23, 2009 from the BIR on the submission of additional documents.

Petitioner [herein respondent] replied to said BIR's *Last Appeal* in the letter dated June 30, 2009 and received by the BIR on July 02, 2009, informing the latter that it has submitted all required documents, and requested clarification on the list of additional documents which purportedly was not provided.

Subsequently, on February 23, 2010, the BIR wrote another letter informing petitioner [herein respondent] of another change in the authorized revenue examiner by the name of Mr. Wilfredo A. Pongase under the supervision of Ms. Ma. Cristina Carsolin.

On February 25, 2010, the BIR sent the petitioner [herein respondent] a letter entitled *Addendum to Final Notice*.

On April 13, 2010, the BIR sent a *Post Reporting Notice* which was received by petitioner [herein respondent] on April 19, 2010, detailing the initial findings of the BIR.

An *Amended Post Reporting Notice* was issued by the BIR through Revenue District Officer Ricardo B. Espiritu on April 29, 2010, inviting the latter to an informal conference scheduled on May 17, 2010.

On December 29, 2010, a *Preliminary Assessment Notice* ("PAN") together with Annex "A" thereof, i.e., the *Details of Discrepancies*, was sent by the BIR to the petitioner [herein respondent].

Then, on January 14, 2011, respondent [herein petitioner] issued a *Formal Assessment Notice* ("FAN"), together with the Annex "A" thereof, i.e., *Details of Discrepancies*, which was received by petitioner [herein respondent] on January 19, 2011.

Petitioner [herein respondent] filed the letter-protest dated January 14, 2011 against the FAN which was received by the BIR on February 17, 2011.

On March 24, 2011, the BIR sent a letter to petitioner [herein respondent] it received on April 01, 2011, stating its comments on petitioner's [herein respondent] protest and requested additional document necessary to resolve the issues raised in the assessment.

Thereafter, on September 12, 2012, the BIR sent another letter, replying in part to the positions espoused by petitioner [herein respondent], which was received by petitioner [herein respondent] on September 17, 2012.

On September 04, 2018, the assailed FDDA was issued by the BIR. It provided for assessment for alleged deficiency income tax, value-added tax ("VAT"), and withholding tax on compensation ("WTC"), as follows:

Tax Type	**Basic**	**Surcharge**	**Interest**	**Total**
Income tax	Php1,170,733.03		Php2,448,596.15	Php3,619,329.18
VAT	792,974.24		1,694,140.57	2,883,601.93
WTC	256,946.03	Php396,487.12	550,357.28	807,303.31
			TOTAL	**Php7,310,234.42**

On October 05, 2018, petitioner [herein respondent] filed its *Petition for Review.*

On December 04, 2018, respondent [herein petitioner] filed a *Motion for Extension of Time,* which was granted by the Court in its Resolution dated December 10, 2018.

Thereafter, on January 09, 2019, respondent [herein petitioner] transmitted the BIR *Records* for this case. In the Resolution dated January 16, 2019, the Court ordered respondent [herein petitioner] to certify and elevate pages 920 to 928 of the BIR *Records* of this case, since the said pages are missing. Thereafter, respondent [herein petitioner] submitted the said missing pages to the Court."

On January 14, 2019, petitioner posted his *Answer.*[7] Respondent posted its *Reply (to the Respondent's [Petitioner's] Answer)* on January 31, 2019.[8]

On July 15, 2020, petitioner posted a *Motion for Leave to File Demurrer to Evidence,*[9] attaching therewith a *Demurrer of Evidence.*[10]

Thereafter, on July 22, 2020, respondent filed a *Motion for Leave to File Formal Offer Evidence,*[11] with an attached *Formal Offer of Evidence* dated March 16, 2020.[12]

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[7] Docket (CTA Case No. 9941), pp. 171 to 179.
[8] *Id.*, pp. 187 to 192.
[9] *Id.*, pp. 496 to 499.
[10] *Id.*, pp. 500 to 505.
[11] *Id.*, pp. 479 to 482.
[12] *Id.*, pp. 483 to 489.

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Respondent also posted its *Opposition to Motion for Leave to File Demurrer* on July 23, 2020.[13]

The Court granted the *Motion for Leave to File Formal Offer Evidence* and admitted the *Formal Offer of Evidence* posted by respondent in the Resolution dated July 30, 2020.[14]

In a Resolution dated September 30, 2020, the Court denied petitioner's *Motion for Leave to File Demurrer to Evidence* and *Demurrer to Evidence* for being moot and academic.[15]

On October 21, 2020, petitioner posted a *Comment Ad Cautelam (To Petitioner's [Respondent's] Formal Offer of Evidence).*[16] The Court admitted all of respondent's offered exhibits in the Resolution dated January 4, 2021.[17]

Petitioner then filed his *Formal Offer of Evidence* on April 20, 2021.[18] The Court issued a Resolution dated October 18, 2021 which admitted petitioner's offered exhibits except for Exhibit "R-9-A" for not being found in the records.[19]

Trial ensued and the case was submitted for decision on August 4, 2022.[20]

On July 3, 2023, the Court in Division promulgated the assailed Decision,[21] the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
>
> Accordingly, the FDDA dated September 04, 2018, requesting petitioner to pay deficiency income tax, VAT, and WTC, in the aggregate amount of Php7,310,234.42 for taxable year 2007, and the FAN dated January 14, 2011 issued against petitioner, are **CANCELLED and SET ASIDE**.

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[13] *Supra* note 7, pp. 512 to 518.
[14] *Id.*, p. 509.
[15] *Id.*, pp. 539 to 543.
[16] *Id.*, pp. 552 to 556.
[17] *Id.*, pp. 564 to 565.
[18] *Id.*, pp. 574 to 580.
[19] *Id.*, pp. 588 to 590.
[20] *Id.*, p. 644.
[21] EB Docket pp. 18 to 40; Docket (CTA Case No. 9941), pp. 648 to 670.

The Court in Division ruled in favor of respondent since it found that the revenue officer (RO) who continued the audit and examination of respondent's books, which resulted to the issuance of the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN), was not authorized by a Letter of Authority (LOA). In so ruling, the Court in Division relied on the Supreme Court's pronouncement in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[22] which categorically held that a new LOA must be issued when the ROs originally named therein are completely replaced by different ROs who thereafter conducted the audit. The Court in Division further held that petitioner violated respondent's right to due process when the FAN was prematurely issued, thereby depriving respondent the opportunity to respond to the PAN.

Aggrieved, petitioner posted a *Motion for Reconsideration*[23] on August 1, 2023, praying for a reversal of the assailed Decision. Respondent, in turn, filed an *Opposition to the Motion for Reconsideration* on August 16, 2023.[24]

On October 3, 2023, the Court in Division rendered the assailed Resolution,[25] which denied petitioner's *Motion for Reconsideration*.[26]

Hence, this Petition.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Petitioner posted his *Petition for Review* on November 9, 2023.[27]

In the Notice of Resolution dated January 11, 2024,[28] the Court *En Banc* directed the respondent to file its comment. On January 23, 2024, respondent filed its *Comment*.[29]

The present case was submitted for decision on May 23, 2024.[30]

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[22] G.R. No. 242670, May 10, 2021.
[23] Docket (CTA Case No. 9941), pp. 671 to 689.
[24] *Id.*, pp. 691 to 696.
[25] EB Docket, pp. 41 to 49; Docket (CTA Case No. 9941), pp. 699 to 707.
[26] Docket (CTA Case No. 9941), pp. 671 to 689.
[27] EB Docket, pp. 1 to 17.
[28] *Id.*, p. 54.
[29] *Id.*, pp. 55 to 63.
[30] Notice of Resolution dated May 23, 2024, *Id.*, p. 66.

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ASSIGNMENT OF ERRORS

Petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

> "THE SPECIAL THIRD DIVISION OF THE COURT OF TAX APPEALS:
>
> I. ERRED IN HOLDING THAT PETITIONER VIOLATED RESPONDENT'S RIGHT TO DUE PROCESS
>
> II. ERRED IN DECIDING THE ISSUE OF AUTHORITY OF THE RO ASSIGNED TO THE CASE DESPITE HAVING NOT BEEN RAISED BY THE RESPONDENT NOR PART OF THE ISSUES IN THE PRE-TRIAL ORDER
>
> III. ERRED IN NOT GIVING DUE COURSE TO PETITIONER'S MOTION FOR LEAVE TO ADMIT ATTACHED DEMURRER TO EVIDENCE
>
> IV. ERRED IN DENYING HEREIN PETITIONER'S MOTION FOR RECONSIDERATION FOR LACK OF MERIT"[31]

ARGUMENTS OF THE PARTIES

Petitioners' arguments

Petitioner maintains that he did not violate respondent's right to due process, contending that a Letter of Authority (LOA) is issued to the taxpayer and not the Revenue Officer (RO). Thus, it is petitioner's stance that once an LOA has been issued, any RO assigned to perform assessment functions within the district may validly examine respondent's books pursuant to the LOA.[32] Petitioner further posits that an LOA partakes of the nature of a contract of agency between the Revenue Regional Director (RRD) and the ROs named therein. Hence, when the RRD issued the PAN, FAN, and FDDA, such acts were deemed a ratification of the actions taken by his agents.[33]

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[31] Assignment of Errors, *Petition for Review*, EB Docket, p. 5.
[32] EB Docket, pp. 5 to 6.
[33] *Id.*, pp. 8 to 10.

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Petitioner likewise argues that the Court in Division erred in ruling on the supposed lack of authority of the ROs, as this issue was never raised by respondent in the course of the administrative proceedings nor on appeal. Petitioner stresses that respondent actively participated in the proceedings without questioning the authority of the ROs, and therefore is estopped from belatedly raising such issue.[34]

Finally, petitioner contends that the Court in Division erred in declaring his *Motion for Leave to File Demurrer to Evidence*, together with the attached *Demurrer to Evidence*, as moot and academic. Petitioner asserts that since his motion was filed ahead of respondent's *Motion for Leave to File Formal Offer of Evidence*, the Court in Division should not have declared petitioner's motion moot and academic.[35]

Respondent's counter-arguments

Respondent counters that petitioner's arguments are a mere rehash those already raised in his *Motion for Reconsideration*.[36] Respondent insists that its right to due process was violated when no new LOA was issued for the ROs who actually conducted the audit.[37] It further contends that its right to due process was likewise violated when the FAN was issued prior to the expiration of the fifteen (15)-day period within which respondent was entitled to respond to the PAN.[38]

Respondent also maintains that the Court in Division did not err in passing upon the authority the ROs assigned to the case even if the issue was not raised by respondent. It points out that, as alleged in its Petition for Review, the mere issuance of letters and MOAs informing respondent of the change in the ROs who will conduct the audit is sufficient to establish the violation of its right to due process.[39]

Finally, respondent explains that it was unable to submit its *Formal Offer of Evidence* on time due to the lockdowns implemented brought about by the Enhanced Community Quarantine (ECQ) and the Modified ECQ.[40] Respondent stresses that since both petitioner and respondent jointly stipulated and admitted facts, such admission dispenses respondent's need to present evidence to prove the same.[41]

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[34] *Supra* note 31, pp. 10 to 12.
[35] *Id.*, pp. 12 to 13.
[36] *Id.*, p. 56.
[37] *Id.*
[38] *Id.*, p. 57.
[39] *Id.*, p. 59.
[40] *Id.*
[41] *Id.*, pp. 60 to 61.

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RULING OF THE COURT

The Court denies the Petition for Review.

Petitioner does not have the legal authority to file the Petition for Review

At the outset, the Court emphasizes that the Office of the Solicitor General (OSG) is the proper party to file the Petition for Review. Under the Administrative Code of 1987, among the duties of the OSG is to:

> (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; **represent the Government and its officers in** the Supreme Court, the Court of Appeals, and **all other courts or tribunals in all civil actions** and special proceedings **in which the Government or any officer thereof in his official capacity is a party.**[42] (Emphasis supplied)

In *Gonzales v. Chavez*,[43] the Supreme Court explained that from the historical and statutory perspectives, the Solicitor General is the principal law officer and legal defender of the government.

Similarly, in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*,[44] the Supreme Court reiterated that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.

The only exceptions are: (1) when the government is adversely affected by the contrary position taken by the OSG; (2) when there is an express authorization by the OSG deputizing legal officers to assist the Solicitor General and appear or represent the government in cases involving their respective offices; and (3) when the dismissal of the petition could have lasting effect on government tax revenues.[45]

In *Republic of the Philippines v. G Holdings, Inc.*,[46] the Supreme Court held that:

> The general rule is that **only the Solicitor General can bring or defend actions on behalf of the Republic of the**

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[42] Section 35, Chapter 12, Title III, Book IV.
[43] G.R. No. 97351, February 4, 1992.
[44] G.R. No. 144942, July 4, 2002.
[45] *People v. Tuyay*, G.R. No. 206579, December 1, 2021.
[46] G.R. No. 141241, November 22, 2005.

> **Philippines** and that actions filed in the name of the Republic, or its agencies and instrumentalities for that matter, **if not initiated by the Solicitor General, should be summarily dismissed.**
>
> As an exception to the general rule, the Solicitor General is empowered to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." [*Emphasis supplied*]

Accordingly, if the OSG does not initiate the action on behalf of the Republic of the Philippines, the petition should be summarily dismissed unless it can be proved that the OSG deputized the government office which filed the petition. In this case, petitioner failed to prove that his legal officers were deputized by the OSG to file the instant Petition. Hence, the Petition is dismissed.

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

> **RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> xxx xxx xxx
>
> SEC. 3. Who may appeal; period to file petition. –
>
> xxx xxx xxx
>
> (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*]

In *National Power Corporation v. National Labor Relations Commission*,[47] the Supreme Court elucidated that:

> Although jurisprudence regarding mandatory service of orders and decision on the OSG and not merely to its deputized

[47] G.R. No. 90933-61, May 29, 1997.

> special attorneys, pertain to court cases involving land registration and naturalization, the same rule should be observed in cases before the Labor Arbiter and the NLRC. **The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same.** As the lawyer for the government or the government corporation involved, the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.
>
> From the foregoing, we conclude that service of the Labor Arbiter's decision on the deputized special attorney is insufficient and not valid and binding on the Solicitor General, who was himself entitled to such service. **The period to appeal an adverse decision should be reckoned from the date the OSG, and not the deputized lawyer, received a copy of the decision.** Since service was not made on the OSG, the period to file an appeal was suspended and did not commence to run. The appeal memorandum, having been filed on July 17, 1989, it was filed on time and should have been entertained by the NLRC. Consequently, respondent Commission committed grave abuse of discretion when it promulgated its decision on October 6, 1989 dismissing petitioner's appeal for having been filed late. [*Emphasis supplied*]

Here, records show that, petitioner, through the OSG, received the assailed Resolution dated October 3, 2023, only on December 4, 2023. Thus, petitioner had fifteen (15) days from such receipt or until December 19, 2023, within which to file a Petition for Review with the Court *En Banc*, pursuant to Section 3(b), Rule 8 of the RRCTA.

While petitioner posted his *Petition for Review*[48] on November 9, 2023, he failed to attach any proof that he was authorized by the OSG to file the instant Petition. It bears emphasis that when petitioner posted his *Petition for Review*, he did not have the legal authority to do so. Thus, the Petition should be denied for lack of legal authority of petitioner to file said petition.

Even if we were to consider the merits of the case, the Petition would still be denied. As correctly ruled by the Court in Division, respondent's right to due process was violated when no new LOA was issued to the ROs who actually conducted the audit and when the FAN was issued prior to the expiration of the period for respondent to reply to the PAN.

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[48] EB Docket, pp. 1 to 17.

The CTA Division did not err in ruling that petitioner violated respondent's right to due process by not issuing a new LOA

Petitioner argues that the Court in Division erred in ruling that **ROs Wilfredo Pongase** and **Gloria C. Beltran** were not authorized to conduct the audit and examination of respondent's books of accounts. Petitioner insists that an LOA dated February 11, 2008 had been issued, and pursuant thereto, any RO of the BIR, even if not expressly named in the LOA, may conduct the investigation of respondent's books.

This argument is untenable. While it is undisputed that an LOA dated February 11, 2008 was issued to authorize the audit of respondent's books of accounts, the RO authorized in the LOA to conduct the audit was not the person who actually conducted the audit. Simply put, the RO who conducted the audit was not named nor authorized in the LOA.

Section 13 of the Tax Code is explicit:

> 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. [*Emphasis supplied*]

An LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[49] An LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had.[50]

Jurisprudence has consistently held that when the ROs actually conduct the audit are entirely different from those originally named in the LOA, a new LOA must be issued to validly authorize them. Absent

[49] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[50] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, supra* note 65.

such authority, the audit is void, and any resulting assessment is likewise void.[51]

Petitioner's witness, **RO Gloria C. Beltran,** claimed during clarificatory questioning from the Court, that an LOA was issued in the name of RO Wilfredo Pongase:

> Justice San Pedro: Ms. Witness, you mentioned that you were not the original examiner, who was the original examiner in this case?
>
> Witness: Wilfredo Pongase, I think.
>
> Justice San Pedro: Did he have an LOA in his name?
>
> Witness: **Yes, Your Honor, I think there is an LOA in his name.** [*Emphasis supplied*]
>
> Justice San Pedro: Is there documentary proof of this?
>
> Witness: Attorney, can you have that in our file? The LOA of Mr. Pongase, I do not have the file but it is in the docket.
>
> Justice San Pedro: Did you have an LOA in your name?
>
> Witness: There is none, only the Memorandum of Assignment.[52]

Contrary to the testimony of **RO Beltran**, LOA No. 200700047942 dated August 11, 2008[53] authorized Group Supervisor **(GS) Teodore Maroket** and **RO Melinda Lim** to examine respondent's book of accounts and other accounting records for all internal revenue taxes for the taxable year 2007.

Thereafter, on February 16, 2010, the Memorandum with Reference No. 050-0216-TO—208 was issued and the case was reassigned to **RO Wilfredo Pongase** and **GS Ma. Cristina S. Carsolin.**[54] Pursuant to the said Memorandum, they examined the books of accounts and prepared an undated Memorandum Report[55] which subsequently resulted in the issuance of a PAN and FAN.

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[51] *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.* G.R. No. 242670, May 10, 2021; *Republic of the Philippines v. Robiegie Corporation*, G.R. No. 260261, October 3, 2022; *Commissioner of Internal Revenue v. Manila Medical Services Inc.*, G.R. No. 255473, February 13, 2023.
[52] TSN, April 29, 2021, pp. 10 to 11.
[53] BIR Records, Exhibit "R-3," p. 1092.
[54] *Id.*, Exhibit "R-1," p. 1122.
[55] *Id.*, Exhibit "R-6," pp. 1133 to 1136.

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Subsequently, respondent's case was again referred to **RO Gloria C. Beltran** and **GS Ma. Cristina S. Carsolin**, by virtue of MOA No. RR8-050-0311-000043 dated March 7, 2011,[56] for purposes of reinvestigating respondent's protest to the FAN. Pursuant thereto, **RO Beltran** accomplished an undated Memorandum which recomputed of respondent's VAT liability while maintaining the other assessed tax liabilities of respondent.[57]

Clearly, the RO and GS who were originally named in the LOA were completely different from those who actually conducted the audit. A new LOA was thus required to be issued to authorize **RO Pongase** and **GS Carsolin**. In the absence of such, the audit and the resulting assessment are void.

Even assuming that **RO Pongase** and **GS Carsolin** were authorized to examine respondent's books, petitioner still violated respondent's right to due process when he prematurely issued the FAN.

As correctly ruled by the Court in Division, petitioner failed to comply with Section 3.1.2 of Revenue Regulations (RR) No. 12-99. Said provision explicitly provides:

> 3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based.
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN**, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, **within fifteen (15) days from date of receipt of the PAN**, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. [*Emphasis supplied*]

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[56] *Supra note 53*, Exhibit "R-14," p. 1220.
[57] *Id.*, Exhibit "R-15," pp. 1231 to 1232.

It is clear from the foregoing that the taxpayer is given fifteen (15) days from the receipt of the PAN within which to file a reply to the PAN. Only upon the lapse of such period, may the BIR validly proceed with the issuance of a FAN/FLD.

In *Prime Steel Mill v. Commissioner of Internal Revenue*,[58] where the BIR issued a FAN prior to the expiration of the fifteen (15)-day period granted to the taxpayer to submit its reply to the PAN, the Supreme Court ruled that:

> In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that "[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN."
>
> While Yumex rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. **There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.**
>
> As the Court also held in Yumex, "[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment." "Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response."
>
> In the same vein, it is beside the point that petitioner was able to submit a "well-prepared protest letter." **The fact remains that respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.**
>
> Well-settled is the rule that **an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect.** (Emphasis supplied)

Similarly, in this case, respondent received the PAN on January 3, 2011.[59] Therefore, it had fifteen (15) days or until January 18, 2011, within which to file a reply to PAN. However, petitioner issued the FAN on January 14, 2011, four (4) days before the expiration of respondent's period to reply. By prematurely issuing the FAN, petitioner not only violated his own rules and regulations but also violated respondent's right to due process. Consequently, the resulting assessment is void.

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[58] G.R. No. 249153, September 12, 2022.
[59] BIR Records, Exhibit "R-7-A", p. 1219.

The Court in Division did not err in ruling on the authority of the ROs assigned

Petitioner argues that since respondent did not raise the lack of authority of the ROs who conducted the examination of its books and accounting records at the administrative level, it cannot belatedly do so for the first time on appeal. Petitioner further contends that the Court in Division erred in ruling on the issue, as respondent did not raise the same in its Pre-Trial Order.

Petitioner's contention is untenable.

The Court may rule upon related issues necessary to achieve an orderly disposition of the case pursuant to Section 1, Rule 14 of the RRCTA. The rule provides:

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

In *Republic of the Philippines v. First Gas Power Corporation,*[60] where the taxpayer did not raise the issue of prescription at the administrative level, the Supreme Court explained that:

> In the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, this Court categorically ruled that the Revised Rules of the CTA clearly allowed it to rule on issues not stipulated by the parties to achieve an orderly disposition of the case, thus:
>
> > On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
> >
> > 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. –
> >
> > xxx

[60] G.R. No. 214933, February 15, 2022.

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> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA 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. (Citations omitted)
>
> In view of the foregoing, the CTA correctly ruled on the issue of prescription even if it was only raised for the first time on appeal.

In this case, it is true that respondent did not raise the lack of authority of the RO and the GS who conducted the audit in the administrative level. The Pre-Trial Order also limited the issues to whether petitioner's right to collect the deficiency taxes had prescribed and whether respondent was liable for deficiency income tax, value-added tax, and withholding tax on compensation.[61]

Nevertheless, before the liability for deficiency taxes may be determined, the Court must first determine whether the assessment is valid in the first place. The validity of the assessment necessarily depends on whether the ROs who conducted the audit were duly authorized in the first place. Moreover, in its Memorandum, respondent raised the issue of the lack of authority of **RO Pongase** and **RO Beltran.**[62]

Accordingly, the Court in Division did not err in ruling on the authority of the ROs assigned, even if the issue was not raised in the administrative level nor expressly included in the Pre-Trial Order.

The Court in Division did not err in denying Petitioner's Demurrer to Evidence

Petitioner contends that since he posted the *Motion for Leave to File Demurrer to Evidence with attached Demurrer to Evidence* on

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[61] Docket (CTA Case No. 9941), p. 466.
[62] Memorandum (For Petitioner Misnet Education Inc.) dated April 26, 2022, Docket (CTA Case No. 9941), p. 597.

July 15, 2020, ahead of respondent's *Motion for Leave to File Formal Offer of Evidence* filed on July 22, 2020, his *Demurrer to Evidence* should not have been deemed moot and academic.

Petitioner's argument is unavailing.

While it is true that petitioner posted his *Motion with Attached Demurrer to Evidence* on July 15, 2020, records show that the Court actually received the same only on July 28, 2020.[63] Consequently, the Court could not have acted on petitioner's Motion or required respondent to comment thereon prior to its actual receipt.

On the other hand, respondent's *Motion* was received by the Court on July 22, 2020[64] and was granted on July 30, 2020.[65]

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use.[66]

In this case, petitioner's *Demurrer to Evidence* was anchored solely on respondent's failure to file its *Formal Offer of Evidence*.[67] However, given that respondent filed its *Formal Offer of Evidence* on July 22, 2020, prior to the Court's receipt of petitioner's *Demurrer to Evidence*, and the same was duly admitted by the Court on July 30, 2020. Consequently, petitioner's *Demurrer to Evidence* had been rendered moot.

As aptly held by the Court in Division:

> Considering, however, that as mentioned earlier, petitioner [herein respondent] has already filed its *Formal Offer of Evidence* on July 22, 2020 and that the same was admitted by the Court in the Resolution dated July 30, 2020, the Court finds that the issue raised in the instant *Motion* has now become moot and academic.
>
> Further, the extraordinary and exceptional circumstances brought about by the current pandemic warrant the relaxation of procedural rules in the instant case. Accordingly, while petitioner [herein respondent] belatedly filed its formal offer of evidence, the

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[63] *Supra* note 59, p. 496.
[64] *Supra* note 59, p. 479.
[65] *Id.*, p. 509.
[66] Express Telecommunications Co, Inc. v. AZ Communications, Inc. citing *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, G.R. No. 196902, July 13, 2020.
[67] *Supra* note 59, p. 501.

same is not tantamount to a waiver of tis right to formally offer its evidence.

All told, the Court in Division did not err in denying petitioner's *Demurrer to Evidence* for being moot.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision and Resolution, dated July 3, 2023 and October 3, 2023, respectively, in CTA Case No. 9941 are **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(ON OFFICIAL BUSINESS)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice