**REPUBLIC OF THE PHILIPPINES**
***Court of Tax Appeals***
**QUEZON CITY**

***Second Division***

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| **CONCEPCION INDUSTRIES, INC.,** Petitioner, | **CTA CASE NO. 10584** |
| -versus- | Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: APR 26 2024 3:50 pm |

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## RESOLUTION

For the Court's resolution is respondent's "Motion for Reconsideration [of the Resolution dated January 10, 2024]" ("Motion"), filed on February 1, 2024, with petitioner's "Comment/Opposition (To: Respondent's *Motion for Reconsideration* [of the Resolution dated January 10, 2024])" ("Comment"), filed on February 19, 2024.

Respondent seeks the reversal and setting aside of this Court's January 10, 2024 Resolution, where We granted petitioner's Motion for Summary Judgment by (a) cancelling and setting aside the assessment against it; and (b) prohibiting and enjoining respondent from collecting any alleged deficiency taxes based on said assessment. Respondent raises the following arguments:

(a) The grant of the Motion for Summary Judgment was improper as genuine material issues, such as who actually conducted the audit of petitioner's records or the extent of the assistance rendered by the Revenue Officers ("RO") not named in the Letter of Authority ("LOA"), remain;
(b) The Court should not have ruled on issues not substantiated at the administrative level;
(c) The absence of a LOA authorizing the examining ROs does not render an assessment void; and
(d) The Court erred in enjoining and prohibiting respondent from collecting the alleged deficiency taxes.

Meanwhile, petitioner insists that:

(a) The Court was correct in granting the Motion for Summary Judgment;
(b) The Court has the jurisdiction to rule on issues not raised at the administrative level;
(c) The lack of a LOA authorizing some of the ROs who conducted the audit of petitioner's records violated the latter's right to due process, rendering the assessment void; and
(d) The Court properly applied the relevant jurisprudence.

The Motion lacks merit.

Regarding the argument on the existence of genuine material issues, We disagree with the same. As found in the assailed Resolution, the records clearly show that ROs Sison, Gomez, and Manuel signed the Memorandums recommending the issuance of the PAN and FDDA, respectively. They thus participated in the audit of petitioner's records despite lacking the requisite authority to do so.

There is also no need to further determine the extent of their participation. Having signed the relevant memoranda, they effectively recommended the issuance of the PAN and FDDA. As such recommendations require the authority granted by a LOA, under *Section 13 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), said act was enough to violate petitioner's right to due process. We cannot lend credence to respondent's claims that the ROs' participation was merely "clerical and ministerial" or that they signed the memoranda only as "part of the same group as the ROs named in the LOA;" if these were true, then the ROs should not have signed the memoranda in the first place, regardless of which "groups" they were members of.

The argument regarding issues first raised on appeal also lacks merit, as none of the jurisprudence he cites is applicable here. The quoted passage from *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[1] even if taken in isolation and out of context, addresses a failure to submit documents required and requested by the CIR for an administrative claim for refund, *not* a questioning of the validity of the entire assessment itself based on a violation of due process rights. *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[2] involves the alleged non-receipt of an issuance, which is again not a questioning of its validity. Meanwhile, *Commissioner of*

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[1] G.R. No. 207112, December 8, 2015.
[2] G.R. No. 225809, March 17, 2021.

*Internal Revenue v. Hon. Raul M. Gonzales et al.*[3] involves a failure to avail of both administrative and judicial remedies, while *Aguinaldo Industries Corporation v. Commissioner of Internal Revenue et al.*[4] involves a self-contradicting position on the part of therein petitioner. As petitioner in this case committed neither of these mistakes, the pronouncements in these cases do not apply here.

Compare the above with *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*,[5] as cited in petitioner's Comment, where the Supreme Court unequivocally stated that a taxpayer's failure to raise the lack of a ROs authority, such as due to a lack of a LOA, does not bar a Court from considering the same, as the issue involves the "intrinsic validity of the assessment itself." This Court can thus declare an assessment void due to the ROs lack of authority, even if such lack was never mentioned at the administrative level.

Respondent's contention that a lack of a LOA does not render an assessment void, meanwhile, contradicts the *NIRC* and the long-established jurisprudence interpreting it. The assessment declared void in the landmark case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* ("*McDonald's*"),[6] which We cited in the assailed Resolution, was also conducted by the Large Taxpayer Service ("LTS"), refuting respondent's claim that LOAs are issued for "administrative purposes" only in assessments conducted by the LTS. As also discussed in the assailed Resolution, the doctrines laid down in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[7] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[8] and *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[9] show that *all* ROs conducting an audit need to be vested with the requisite authority regardless of if other ROs present already have such authority. Finally, *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*[10] applied *McDonald's* to a LOA issued in 2009, affirming the latter's retroactive applicability, especially as no new doctrine overturned by *McDonald's* was identified[11] aside from a vague notion of "prevailing laws and rules." We thus remain consistent in Our ruling that the conduct of an audit by a RO lacking the authority granted by a LOA is a violation of a taxpayer's right to due process.

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3 G.R. No. 177279, October 13, 2010.
4 G.R. No. L-29790, February 25, 1982.
5 G.R. No. 241848, May 14, 2021.
6 G.R. No. 242670, May 10, 2021.
7 G.R. No. 178697, November 17, 2010.
8 G.R. No. 222743, April 5, 2017.
9 G.R. No. 249883-84, Resolution, January 27, 2020.
10 G.R. No. 255473, February 13, 2023.
11 *See Senarillos v. Hermosisima*, G.R. No. L-10662, December 14, 1956; *see also Columbia Pictures, Inc. v. Court of Appeals*, G.R. No. 110318, August 28, 1996; *see also San Miguel Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 257697 & 259446, April 12, 2023.

Finally, respondent's arguments against Our prohibiting him from collecting the alleged deficiency taxes completely misses the point. Said arguments concern this Court's power to temporarily suspend the collection of taxes. However, Our prohibition is not based on said power. It is based on the fact that the assessment is void. A void assessment bears no fruit,[12] as "the BIR's right to collect deficiency taxes must flow from a valid assessment."[13] In other words, no collection of deficiency taxes can be made without a valid assessment serving as basis. Our prohibition is thus simply a stern reminder that respondent cannot collect the disputed deficiency taxes for taxable year 2014 as no valid assessment for such taxes exists.

In sum, the Motion fails to convince Us to reconsider the findings of our assailed Resolution.

**FOR THESE REASONS**, respondent's Motion for Reconsideration [of the Resolution dated January 10, 2024] is hereby **DENIED** for lack of merit. The Resolution, dated January 10, 2024, is hereby **AFFIRMED**.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice

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[12] *See People v. Italcar Pilipinas, Inc.*, G.R. No. 222280, January 18, 2023; *see also Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023; *see also Commissioner of Internal Revenue v. Azcuna T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.

[13] *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022.