REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* No. 2279** (CTA Case No. 8485)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
AC CORPORATION, *Respondent.*	
	Promulgated: FEB 2 8 2022 2:30 pm

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* posted by the Commissioner of Internal Revenue (CIR) on July 16, 2020 and received by the Court on July 27, 2020,[1] which seeks to reverse and set aside the Decision dated January 6, 2020[2] and the Resolution dated June 10, 2020[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8485 entitled *"AC Corporation vs. Commissioner of Internal Revenue."*

We quote the dispositive portions of the assailed Decision

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[1] EB Docket, pp. 7-22.
[2] EB Docket, pp. 27-54.
[3] EB Docket, pp. 57-62.

and Resolution as follows:

Decision dated January 6, 2020 :

"**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* and *Supplement to the Petition for Review* are **GRANTED.** Accordingly, the FDDA dated March 27, 2012 of respondent, requesting petitioner to pay the assessed deficiency income tax, VAT, and EWT, in the amounts of Php76,137,587.45, Php7,342,384.72 and P2,793,387.86, respectively, covering calendar year ending December 31, 2007, is **WITHDRAWN** and **SET ASIDE.**

SO ORDERED."

Resolution dated June 10, 2020:

"**WHEREFORE,** premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner CIR is the duly appointed head of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. His principal office address is at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes of this Court.

Respondent is a corporation duly organized and existing under Philippine laws with principal office address at the 12th Floor, South Center Tower, 2206 Market St., Madrigal Business Park, Alabang, Muntinlupa City.[4]

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[4] Petition for Review, Court Docket, Volume I, pp. 6-21.

THE FACTS

The facts as found by the Second Division are as follows:

"Respondent issued on July 29, 2008, the Letter of Authority (LOA) No. LOA 2007 000481613, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1. 2007 to December 31, 2007. The said LOA was received by a certain, Alfor Efren on the same date.

Petitioner received on October 29 2010 respondent's Notice of Informal Conference dated October 27, 2010 with Computation of Deficiency Taxes.

On November 12, 2010, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, which respondent accepted through Revenue District Officer Gerry O. Dumayas on November 15, 2010.

On May 11, 2011, petitioner received from respondent the Preliminary Assessment Notice (PAN) dated May 10, 2011 for deficiency income tax, VAT, and EWT allegedly due for taxable year 2007.

Thus, on May 25, 2011, petitioner replied to the PAN, through the letter dated May 24, 2011, disputing the same.

Respondent then issued the Formal *(sic)* Assessment Notice (FAN) dated May 30, 2011, which petitioner received on the same date, assessing the latter for deficiency income tax, VAT, and EWT in the respective amount of P68,954,361.78, P6,666,226.50 and P2,536,902.58, inclusive of interests, for TY 2007.

On June 29 2011, petitioner filed the protest letter dated June 28, 2011 to the FAN. Petitioner submitted additional reconstructed documents to respondent on August 26, 2011.

Respondent issued the FDDA dated March 27, 2012, which was received by petitioner on April 11, 2012, denying the protest on the FAN.

Petitioner filed its Petition for Review on May 8, 2012. This case was initially raffled to this Court's Second Division.

On June 29, 2012, respondent filed his Answer, xxx xxx.

On July 16, 2012, petitioner filed its Reply. For his part, respondent filed his Opposition and Comment (To the Reply Filed on July 20, 2012).

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Petitioner's Pre-Trial Brief was filed on July 30, 2012.

The parties submitted their Joint Stipulation of Facts and Issues on September 28, 2012, which the Court approved in its Resolution dated October 3, 2012, thereby terminating the Pre-Trial.

After the Court ordered respondent to transmit the BIR Records of this case, respondent filed his Ex-Parte Manifestation on January 18, 2013, praying for an extension to transmit the same. The Court granted respondent's motion for extension in the Order dated January 31, 2013. Thereafter, respondent filed his Compliance on February 7, 2013, transmitting the said BIR Records, which the Court noted in the Resolution dated February 13, 2014.

Trial ensued.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following individuals, namely : (1) Ms. Elisa V. Sarmiento, petitioner's Accountant; (2) Mr. Romeo B. Toribio, petitioner's President and COO; (3) Ms. Gloria B. Orciga, Barangay Secretary of Barangay Western Bicutan; (4) Atty. Jhufel M. Baranola, Chief of the Internal Affairs Service, Bureau of Fire Protection, and (5) Mr. Edwardson A. Punzalan, Documentation Head of the Universal LMS Finance and Leasing Corporation.

Pursuant to the Order dated April 2, 2013, the instant case was transferred to this Court's First Division.

On May 27, 2013, petitioner filed a Motion to Resolve First the Invalidity of the Letter of Authority and Waiver of the Statute of Limitations. The Court then received respondent's Opposition and Comment (to the Motion to Resolve First the Invalidity of the Letter of Authority and Waiver of the Statute of Limitations) with Motion to Declare the Petitioner to be Deemed to *(sic)* Waived the Right to Present Additional Evidence on July 8, 2013, and petitioner's reply to Respondent's Opposition and Comment on August 8, 2013.

In the Resolution dated December 17, 2013, the Court denied for lack of merit, petitioner's Motion to Resolve First the Invalidity of the Letter of Authority and Waiver of Statute of Limitations, and respondent's Motion to Declare the Petitioner to be Deemed to *(sic)* Waived the Right to Present Additional Evidence.

On January 28, 2014, petitioner filed a Motion for Partial Reconsideration of the Court Resolution dated 17 December 2013 (To Reconsider only the Denial of the Motion to Resolve First the Invalidity of the Letter of Authority and Waiver of the

Statute of Limitations ["MFR"]). Thereafter, the Court received respondent's Comment/Opposition to the Motion for Partial Reconsideration on February 7, 2014, and petitioner's Reply to Respondent's Comment/Opposition (to the Motion for Partial Reconsideration) on February 26, 2014.

In the Resolution dated April 22, 2014, the Court still denied petitioner's Motion for Partial Reconsideration of the Court Resolution Dated 17 December 2013 for lack of merit.

Thereafter, on July 23, 2014, petitioner filed an Omnibus Motion (1) To Present Evidence Regarding Invalidity of both the Letter of Authority and Waiver of the Statute of Limitations; (2) To File Supplement to Petition for Review; (3) To File Amended Pre-Trial Brief and to file Amended Joint Stipulation of Facts and Issues, to which respondent filed an Opposition and Comment (To the Omnibus Motion) on August 6, 2014. In any event, petitioner filed a Reply (to Respondent's Opposition and Comment) on September 1, 2014, and respondent, a Rejoinder, on September 11, 2014.

In the Resolution dated September 25, 2014, the Court granted petitioner's Omnibus Motion, and directed the parties to do the following:

1. For petitioner, to file a Supplemental Petition for Review and an Amended Pre-Trial Brief;
2. For respondent, to file his Answer and Amended Pre-Trial Brief; and
3. For both parties, to file an Amended JSFI.

As directed by the Court, Petitioner's Amended Pre-Trial Brief, and Supplement to the Petition for Review, were both filed on November 6, 2014; while the Answer to the Supplement to the Petition for Review, and the Manifestation stating that respondent will adopt the Pre-Trial Brief he previously submitted, were both filed on January 22, 2015.

In the Order dated February 4, 2015, the Court noted respondent's Manifestation, however, respondent's Answer to the Supplement to the Petition for Review was considered as a mere scrap of paper for being filed out of time.

After the filing of respondent's Motion for Reconsideration (To the Order Issued on February 4, 2015) on February 6, 2015, and petitioner's Comment to Respondent's Motion for Reconsideration (To the Order Issued on February 4, 2015) on March 27, 2015, the Court directed respondent to submit the original Registry Receipt No. 3267 issued by the Makati City Post Office that pertained to the *Answer to the Supplement to the Petition for Review.* Respondent failed to submit the said original copy of Registry Receipt No. 3267. The

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> Court then denied respondent's Motion for Reconsideration (To the Order issued on February 4, 2015).
>
> The parties submitted their Amended Joint Stipulation of Facts and Issues on March 18, 2015 and the same was approved on April 6, 2015. Thereafter, the Court issued the Pre-Trial Order dated April 21, 2015.
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> xxx xxx xxx
>
> On February 26, 2019, this case was considered submitted for decision."

On January 6, 2020, the Court in Division rendered the assailed Decision granting respondent's Petition for Review in CTA Case No. 8485 and consequently set aside the Final Decision on Disputed Assessment (FDDA) dated March 27, 2012.

On January 21, 2020, petitioner posted his Motion for Reconsideration which was received by the Court on January 24, 2020.

In the assailed Resolution dated June 10, 2020, the Court in Division denied petitioner's Motion for Reconsideration, for lack of merit.

Petitioner received the assailed Resolution on June 16, 2020 denying his Motion for Reconsideration.

On June 26, 2020, petitioner posted a Motion for Extension of Time to File Petition for Review praying for an extension of fifteen (15) days from July 1, 2020 or until July 16, 2020 within which to file his Petition for Review with the Court *En Banc.*[5]

In a Minute Resolution dated July 8, 2020, the Court *En Banc* granted petitioner's Motion for Extension of Time to File Petition for Review and gave petitioner a non-extendible period of fifteen (15) days from July 1, 2020 or until July 16, 2020, within which to file his Petition for Review.

On July 16, 2020, petitioner posted the instant Petition for Review which was received by the Court on July 27, 2020.

In an Order dated September 8, 2020, Presiding Justice Roman G. Del Rosario voluntarily inhibited himself from

[5] EB Docket, pp.1-3.

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participating in the above-captioned case[6] with a subsequent submission of a letter dated September 11, 2020 informing the Supreme Court of said voluntary inhibition This letter was signed by the Court *En Banc's* Clerk of Court, Atty. Danilo B. Fernando.[7]

In a Resolution dated September 17, 2020, the Court *En Banc* directed respondent to file its comment to the Petition for Review within ten (10) days from notice.

On October 26, 2020, respondent posted its *Comment/Opposition (Re: Petition for Review dated 16 July 2020)* and received by the Court on November 17, 2020.

On December 9, 2020 the Court issued a Resolution submitting the case for mediation for the possibility of reaching an amicable settlement and ordered the parties, or their representatives to appear before Ms. Avigail B. Sanchez, the Mediation Staff Assistant at the Philippine Mediation Center Unit- Court of Tax Appeals (PMC-CTA).

On January 18, 2020, the parties executed a *No Agreement to Mediate* which was attested to by Ms. Avigail B. Sanchez.

In a Resolution dated January 26, 2021, the Court *En Banc* submitted the instant case for decision.

THE ISSUE

The grounds raised by the petitioner in his Petition for Review are quoted as follows:

> "AC Corporation is estopped from assailing the authority of the persons who received the LOA as it was never raised in the administrative level;
>
> The principle of estoppel prevents a person from maintaining a position inconsistent with one in which he has acquiesced;
>
> Administrative authorities should be allowed the prior opportunity to decide controversies within its competencies, and in much the same way that, on the judicial level, issues not

[6] EB Docket, pp. 83-84.
[7] EB Docket, page 82.

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> raised in the administrative level cannot be raised for the first time on appeal.
>
> Failure on the part of the Revenue Officer to present the LOA to the respondent within thirty (30) days from its date of issuance does not nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.
>
> Revenue Office *(sic)* Luzviminda G. Sabile, is validly authorized to conduct the investigation/audit of respondent's books of accounts and other accounting records."

Petitioner's arguments:

Petitioner argues, among others, that the Court in Division erred in ruling that the subject assessments are void because the Letter of Authority (LOA) issued by the BIR was received by an unauthorized person on July 29, 2008. He contends that the principle of estoppel should have guided the Court to rule otherwise because respondent never questioned the lack of authority of the recipient of the LOA in the protests filed in the administrative level nor did it file any complaints on the alleged non-receipt of the LOA. Petitioner additionally claims that respondent even participated actively in the administrative investigations, leading his representatives to believe that the propriety of the service of the BIR notices such as the LOA was never an issue.

On the authority of a building's security guard to receive official notices, petitioner cited the case of *Landbank vs. Heirs of Fernando Alsua*[8] where the Supreme Court supposedly ruled that receipt by a security guard is deemed a receipt by a party's counsel as well. Petitioner insists that the security guard identified in the records as Alfor Efren, had the proper authority to receive official notices such as the LOA, hence, his receipt of the LOA on July 29, 2008 (which was the same date of issuance of the LOA) was well within the thirty (30)-day period provided under Revenue Audit Memorandum Order (RAMO) No. 1-00.

Even on the assumption that the LOA was not served upon the taxpayer within the thirty-day period, petitioner maintains that this does not affect the validity thereof because RAMO No. 1-00 has been superseded by Revenue Memorandum Circular (RMC) No. 23-09 which provides that the failure of the Revenue

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[8] G.R. No. 167361 dated April 2, 2007.

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Officer (RO) to request for revalidation of the LOA or the expiration of the revalidation period does not nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be issued.

Lastly, petitioner contends that RO Luzviminda G. Sabile is authorized to conduct the investigation/audit of respondent's books of accounts and other accounting records for taxable year 2007 pursuant to a valid Memorandum of Assignment (MOA) which was allegedly issued in accordance with Revenue Memorandum Order (RMO) No. 69-2010 and pursuant to the procedures outlined in RMO 8-2006.

Respondent's counter-arguments:

In its Comment/Opposition, respondent cited the following grounds for the dismissal of the Petition for Review filed by petitioner, and we quote:

> "(A)
>
> The Petition for Review should be dismissed outright for failure to comply with the Rules on Verification.
>
> (B)
>
> The Petition is a mere rehash of the Motion for Reconsideration filed before the Court in Division and failed to comply with the Contents of a Petition for Review under Rule 43 of the Rules of Court.
>
> (C)
>
> LOA No. 2007-00048613 is void, and the tax assessment issued pursuant thereto is likewise void.
>
> (D)
>
> The active participation by respondent AC Corporation in the administrative investigation does not render it estopped."

Respondent questions the contents of petitioner's Verification and Certification of Non-Forum Shopping attached to his Petition for Review filed with the Court *En Banc* because it was not accompanied by a certified true copy of the Revenue Delegation Authority Order (RDAO) from which the alleged authority of the signatory emanates. Respondent considers the Petition for Review as an unsigned pleading and should be

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dismissed by the Court. Respondent further scrutinizes the contents of the Petition for Review and believes that it fails to specify the supposed erroneous conclusions of facts and/or law committed by the Court in Division, in violation of Section 6 of Rule 43 of the Rules of Court.

As regards the LOA issued by the BIR, respondent agrees with the ruling of the Court in Division that the same is void because it was received by an unauthorized person, i.e., the security guard, thus the same is not legally binding. Respondent maintains that it could not be declared in estoppel to question the lack of authority of the alleged recipient of the LOA (in the administrative level) because at the time, it had no knowledge of the existence of the LOA thus it could not have possibly raised it as an issue in its protest letters.

Additionally, respondent disputes petitioner's application of RMC 23-09 because it was not yet in effect at the time the subject LOA was issued on July 29, 2008. It is also respondent's theory that RMC 23-09 did not supersede RAMO No. 1-00 and that RO Luzviminda G. Sabile was not authorized to continue the audit/investigation of its accounting records by the mere issuance of a MOA which was signed by a revenue district officer.

THE COURT *EN BANC*'S RULING

We shall first rule on the timeliness of the appeal filed by petitioner with the Court *En Banc.*

Records show that petitioner received a copy of the assailed Resolution dated June 10, 2020 (denying its Motion for Reconsideration) on June 16, 2020 giving him until July 1, 2020 to file a Petition for Review with the Court *En Banc.*

On June 26, 2020, petitioner filed a Motion for Extension of Time to File Petition for Review, requesting for an additional period of fifteen (15) days from July 1, 2020 or until July 16, 2020 within which to file an appeal with the Court *En Banc.*

The Court *En Banc* granted the said motion of petitioner and gave the latter until July 16, 2020 within which to file his Petition for Review.

Petitioner subsequently posted his Petition for Review with the Court *En Banc* on July 16, 2020, thus was timely filed.

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We now proceed to rule on the merits of the arguments raised by petitioner.

It is no longer in dispute that the issuance of a valid LOA is an essential part of the due process rights of a taxpayer relative to the conduct of an examination or assessment.[9] We quote the relevant portions of the assailed Decision, thus:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment."[10]

The controversy in the instant case lies in the alleged failure of petitioner's representatives to serve the LOA within the thirty day period rendering the latter to be invalid and without any effect.

After an examination of the records of the case in relation to applicable laws and jurisprudence, the Court finds that the defect in the assessment process lies not in the service of the LOA to an alleged unauthorized person but in the lack of authority of the ROs who continued the audit of respondent's books and accounting records for taxable year (TY) 2007.

We agree with respondent that the LOA should be served within the thirty(30)-day period from the date of issuance in accordance with the provisions of RAMO 1-00[11] issued on March 17, 2000 but we do not agree that the security guard, in all cases, is not considered an authorized person to receive the LOA for purposes of determining valid service.

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[9] *Medicard Philippines, Inc, vs. CIR,* G.R. No. 222743, April 5, 2017.

[10] Quoting *CIR vs. De La Salle University, Inc.*, G.R. Nos. 196596, 198841 and 198941, November 9, 2016.

[11] Updated Handbook on Audit Procedures and Techniques

"VIII. Preliminary Approach to Examination

C. Contact with Taxpayer

2.3 **A Letter of Authority nust be served or presented to the taxpayer within 30 days from its date of issue, otherwise it becomes null and void unless revalidated.** The taxpayer has all the right to refuse its service if presented beyond the thirty day period depending on the policy set by top management. xxx xxx xxx" (emphasis supplied)

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The records show that the LOA 2007-00048613 issued on July 29, 2008 was served upon the security guard assigned presumably at the office premises of respondent because he was clearly identified by respondent's witness, Elisa Sarmiento, in her Judicial Affidavit dated March 5, 2013, in this manner:

> Q3. You earlier mentioned that the name Alfor Efren does not belong to AC Corporation. Do you know this person, Alfor Efren?
>
> A. Yes.
>
> Q4. Who is he? What is his role?
>
> A. Mr. Alfor Efren is a security guard.

Clearly, the security guard, Mr. Alfor Efren, whose signature appears in the photocopy of LOA-00048613 (as having received it on July 29, 2008)[12] is no stranger to respondent. Security guards are not usually hired as employees of the company but are employed by private security agencies who then assign them to various companies under a contractual arrangement. Also, this Court agrees with petitioner that the principle of *estoppel* applies in the instant case, but by way of laches, which was described in one case[13] by the Supreme Court as follows:

> In a general sense, laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. Stated differently, it is negligence or omission to assert a right within a reasonable time, **warranting a presumption that the party entitled to assert it, either has abandoned it or declined to assert it."** (emphasis supplied)

Records show that respondent never questioned the lack of an LOA in its protest letters and as correctly observed by petitioner, even during the audit investigation of its books and accounting records for TY 2007. At the very least, respondent should have requested for an LOA, if it was true that it did not receive any copy thereof from the alleged "unauthorized" security guard before it allowed the ROs to examine any of its accounting records. Respondent should have questioned the alleged lack of an LOA in its protest letters when the PAN and the FAN were subsequently issued. Records show that it did not.

[12] Exhibit "K", Court Docket, page 238.
[13] *Republic of the Philippines vs. Sixto Sundiam, et.al.,* G.R. No. 236381, August 27, 2020.

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This notwithstanding, this Court finds the deficiency tax assessments and the ensuing FDDA void for lack of authority of the ROs who continued the audit examination of respondent's tax records for TY 2007.

Having dismissed the argument of respondent relative to the failure to observe the thirty-day period to serve the LOA, this Court still finds that the assessments issued by petitioner are void and without any effect for the lack of authority of the ROs who continued the audit examination.

We adopt with approval, the ruling of the Court in Division in the assailed Decision, when it disposed of this issue in this manner:

> "Nevertheless, even granting that the subject LOA did not become void because of the lapse of the 30-day period, the revenue officer who conducted the examination of petitioner's books of accounts and other accounting records for taxable year 2007, and who recommended the issuance of the said tax assessments, was not authorized through the said LOA, or any LOA for that matter.
>
> Records show that Ms. Luzviminda G. Sabile, the Revenue Officer (RO) who recommended the issuance of the subject PAN dated May 10, 2011, was directed to continue the audit/investigation of petitioner merely by virtue of Memorandum of Assignment (RR8-044-REA-REF-1010-00012) dated October 21, 2010 signed by Mr. Gerry O. Dumayas, the Revenue District Officer. Specifically, there is no showing that the authority of RO Luzviminda G. Sabile to examine petitioner was derived from an LOA.
>
> Considering that the revenue officer who conducted the examination of petitioner's books of accounts and other accounting records for taxable year 2007 and who recommended the issuance of the said PAN against petitioner for the same taxable year, did not have the authority to do so in the first place, the subject tax assessments issued by the respondent against petitioner are inescapably void."

It bears stressing that RO Luzviminda G. Sabile was not named in the original LOA issued by the BIR but was assigned to continue the audit by way of a MOA signed by a Revenue District Officer who is not one of the officials tasked to issue LOAs pursuant to Section 6 (A) in relation to Section 13 of the 1997 NIRC, as amended, which read as follows:

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> "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." *(Emphasis added)*

> "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)

Based on the foregoing, the Court finds that the MOA assigning the continuation of the audit of respondent's records for TY 2007 to RO Luzviminda G. Sabile does not pass the test of validity, hence, the FANs and the FDDA issued as a result thereof, are void.

In the recently decided case of *CIR vs. McDonald's Philippines Realty Corp.*[14] *(McDonald's* case), the Supreme Court ruled that the use of a Memorandum of Assignment, Referral Memorandum, or such equivalent document directing the continuation of audit or investigation by an unauthorized revenue officer usurps the functions of the LOA, and we quote:

> "It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination is another thing. **The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence**

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

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> **of authority of the substitute or replacement revenue officer."** (emphasis supplied)

The Supreme Court in the *McDonald's* case, even considered the practice of reassigning ROs and substituting them with a new set of ROs (without a separate LOA) as a usurpation of the statutory power of the CIR, and we quote:

> "The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative."

WHEREFORE, premises considered, the Petition for Review filed by the CIR is **DENIED**.

Accordingly, the Decision dated January 6, 2020 and Resolution dated June 10, 2020 of the Second Division of this Court are **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With Separate Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, I join Justice San Pedro in her Concurring and Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AC CORPORATION,
Respondent.

CTA EB NO. 2279
(CTA Case No. 8485)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
FEB 2 8 2022 2:35 PM

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SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, ***J.:***

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

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

In the case at bar however, the Memorandum of Authority (MOA) was issued by Revenue District Officer Gerry O. Dumayas, and not the duly authorized representative of Petitioner, the Revenue Regional Director. Hence, the RO who audited the books of account of Respondent is without any valid authority to do so.

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

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

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

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

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

From all the foregoing, I vote to **AFFIRM** the Decision dated January 06, 2020 and Resolution dated June 10, 2020 of the court *a quo*.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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2 *Emphasis and underscoring supplied.*

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2279** (CTA Case No. 8485)
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
-versus-	
AC CORPORATION, *Respondent.*	Promulgated: FEB 2 8 2022 2:35 pm

x -- x

CONCURRING AND DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the Decision in the above-captioned case insofar as it denies the Petition for Review filed by petitioner Commissioner of Internal Revenue ("CIR").

However, I respectfully interpose my objection on the following findings in the *ponencia*:

1. That respondent's security guard, Mr. Alfor Efren, was authorized to receive the Letter of Authority ("LOA"), on its behalf; and

2. That the principle of *estoppel* applies herein, specifically, for respondent's failure to raise its alleged non-receipt of the LOA during the administrative proceedings.

Likewise, I find it prudent to raise some points on the ruling of the *ponencia*, particularly on the invalidity of the audit and assessment for lack of authority of the revenue officers who conducted the taxpayer's audit.

On the first point, it was advanced that since respondent's witness, Ms. Elisa Sarmiento, was able to identify the security guard, Mr. Efren, it follows that the latter is no stranger and is known to respondent. On this basis, the majority concluded that Mr. Efren had the requisite authority to receive the LOA on behalf of the taxpayer.

I humbly *disagree* with the foregoing findings.

The LOA is an integral part of due process. The said issuance commences the entire audit and assessment process. It is through the LOA that the CIR or his duly authorized representative assigns a revenue officer to perform the audit and assessment of a taxpayer.[1]

As the bedrock of the entire assessment process, the Bureau of Internal Revenue ("BIR") crafted its own rules and procedures on the proper service of the LOA to the taxpayer. Relevant to this case is the pronouncement in ***Revenue Audit Memorandum Order No. 1-00***,[2] to wit:

> "2. *Serving of Letter of Authority*
>
> 2.1 **<u>On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA)</u>** together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else. He should have the proper identification card and should be in proper attire.
>
> xxx xxx xxx
>
> 2.3 **<u>A Letter of Authority must be served or presented to the taxpayer</u>** within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on ________" on the face of the copy of the Letter of Authority issued."
> (Emphasis and underscoring supplied).

Clearly, the above-quoted provision states that the LOA should only be served or presented to the concerned taxpayer or its authorized representative and no other.

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[1] Commissioner of Internal Revenue v. De La Salle University, Inc., G.R. Nos. 196596, 198841 & 198941, 9 November 2016.

[2] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), 17 March 2000.

To my mind, the rationale of the rule is to ensure that the recipient of the LOA has sufficient discretion and understanding of the importance of the document delivered to him/her and has the requisite authority to act on the same.

This is so, considering that the LOA not only acts as a notice to the taxpayer that an audit has commenced against it but also serves as a guide which indicates the scope of the audit and assessment (e.g. name of the taxpayer, taxable year, tax type under audit and name of revenue officers). In most cases, it also includes the checklist of the BIR appraising the taxpayer of the documents it needs to submit to the former.

Given the significant functions of the LOA, the Courts must uphold the strictest scrutiny in ensuring that it is indeed received by the taxpayer concerned.

In this case, despite the direct denial of respondent of having received the LOA[3] and the lack of evidence from petitioner to disprove the same, the majority adopts the view that the LOA was validly served to the taxpayer, relying on the foregoing portions of Ms. Sarmiento's testimony, to wit:

> "Q.3. You earlier mentioned that the name Alfor Efren does not belong to AC Corporation. Do you know this person, Alfor Efren?
>
> A. Yes
>
> Q.4. Who is he? What is his role?
>
> A. Mr. Alfor Efren is a security guard."

Significantly, nowhere in the foregoing did she mention that Mr. Efren, the security guard, had the requisite authority to receive the LOA or any correspondence on respondent's behalf.

In fact, a review of the entire testimony of Ms. Sarmiento would show that she specifically stated that Mr. Efren was **never authorized by AC Corporation**. This establishes that, indeed, the latter had no competence to receive documents for respondent. Likewise, it is worthy to note that this was never disputed by petitioner. The relevant portion of Ms. Sarmiento's testimony is hereby quoted, to wit:

> "Q.1. Ms. Sarmiento, let me just refresh your memory. Last 15 January 2013, you executed a Judicial Affidavit in relation to CTA Case No. 8485 entitled AC Corporation vs. Commissioner of Internal Revenue

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[3] Judicial Affidavit of Ms. Elisa V. Sarmiento dated 05 March 2013, Court in Division Docket, Vol. 1, p. 228.

In relation to CTA Case No. 8485, I am showing you a Letter of Authority ("LA"), copy of which is attached hereto as Annex "A"/Exhibit "K", and which we will also ask the court to confirm the marking as Exhibit "K". This copy is a faithful reproduction of the original duplicate copy of the LA as found in page 3 of the Bureau of Internal Revenue ("BIR") Records filed before the Court of Tax Appeals ("CTA")

I direct your attention to that portion "Received By:_________ Taxpayer/Authorized Representative Signature over Printed Name". On the blank portion, there appears an initial above the name For Alfor Efren.

Please tell us and confirm whether such name and initial belongs to AC Corporation or an authorized representative of AC Corporation.

A. **<u>Such name and initial does not belong to AC Corporation. Mr. Alfor Efren is not an authorized representative of AC Corporation</u>**.

Q2. **Please tell us if, aside from this Letter of Authority, such name and initial ever appeared in the letters given by AC Corporation to the BIR.**

A. **Such name and initial never appeared in the letters given by AC Corporation to the BIR.**

xxx xxx xxx

Q5. Did AC Corporation receive this Letter of Authority from the BIR?

A. No."
(Emphasis and underscoring supplied).

To my mind, the fact that the witness knows and was able to identify the security guard is not proof that the latter had the authority to receive correspondence on behalf of the taxpayer. Knowing is not equivalent to authorizing. One may know but still not authorize a person. This is so since giving a person authority entails trust that the individual has the requisite know-how on what to do upon his/her receipt of the document and sufficient understanding as to its importance and legal repercussions. Evidently so, since the LOA entails an important part of the taxpayer's due process rights.

Furthermore, the Court *En Banc's* rulings on the matter of service and receipt of an assessment has remained consistent that personal service to the security guard is not a valid service. Relevant is the case of ***Commissioner of Internal Revenue v. Ithiel Corp.***,[4] where this Court cited the separate concurring opinion of the *ponente*, my esteemed colleague, Associate Justice Catherine T. Manahan, to wit:

[4] C.T.A. EB Case No. 1551, 12 April 2018.

"The subsequent delivery of the FDDA via registered mail to the respondent a little over a month after the same FDDA was sent by personal delivery to the security guard found within the premises of the respondent's offices, is the dominant mode of service which has the effect of superseding the latter mode for the following reasons:

1. Personal service of the FDDA to a security guard who is not an employee of respondent constitutes an invalid service **as it was not served upon the taxpayer itself or to its authorized representative. The law and relevant regulations impose more stringent requirements when service is done through personal mode. When an official notice is served by** ***personal delivery*****, proof of completeness of service shall consist of a written admission of the party served, or the official return of the server or the party serving. x x x**

2. In Revenue Regulations (RR) 12-99, **service by personal delivery should be made upon the** ***taxpayer himself or his authorized representative who shall acknowledge receipt by signing his name, stating his designation and his authority to receive the same.*** **In Section 3.1.6 of RR 18-2013, which amended certain provisions of RR 12-99, the requirements for personal delivery of the FDDA are stricter — it must be served only to the party (taxpayer) at his registered or known address or wherever he may be found. Hence,** ***personal delivery*** **of the FDDA to a security guard found within the premises of the taxpayer's address is not a valid service.**
(Emphasis and underscoring supplied).

The foregoing decision is consistent with the ruling of the Supreme Court in ***Commissioner of Internal Revenue v. T Shuttle Services, Inc.***,[5] which affirmed the rule that only the taxpayer or its authorized representative may receive the assessment from the BIR, to wit:

"As can be gleaned above, a detailed record of all assessment notices issued by the CIR is required. Notably, among the details to be recorded by the Chief of the Assessment Division or the Head of the Reviewing Office are the "[n]ame of [t]axpayer/[p]erson who received the assessment notice" and, more importantly, the "[p]osition/designation/relationship to the taxpayer, if not served to the taxpayer named in the assessment notice."

While RMO 40-2019 was not yet in force at the time the questioned PAN and FAN in the case were issued, the fact of such subsequent issuance of RMO 40-2019 by the CIR gives the Court all the more reason to affirm, if only for consistency and uniformity, the CTA En Banc's finding that the CIR failed to prove that the PAN and the FAN were properly and duly served upon and received by respondent. Here, the CIR failed to identify and authenticate the signatures appearing on Registry Receipt Nos. 5187 and 2581 **for the purpose of ascertaining whether such signatures were those of respondent's authorized representative/s**. Hence, it is readily apparent that the CIR could not have complied with the requirement of noting the position/designation/relationship of Mr. B. Benitez, the recipient, to respondent, the taxpayer."
(Emphasis and underscoring supplied).

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[5] G.R. No. 240729, 24 August 2020.

I find that the foregoing cases equally apply not just to Preliminary and Final Assessment Notices but also to the LOA since the latter is also part of the audit and assessment process of the BIR. There is no legal basis or any reasonable distinction to treat the LOA differently from the assessment notices.

On the second ground, neither do I find the principle of *estoppel* applies in this case nor agree that the respondent has the corresponding duty to request for an LOA when none was given during the audit investigation.

In ***Javier v. Director of Lands (hereinafter referred to as the "Javier Case")***,[6] the Supreme Court discussed that the principle of *estoppel* sets in when a party fails or neglects "for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."

The operative phrase in the foregoing rule is when the party fails "**for an unreasonable or unexplainable length of time**" to assert a right. In this case, the administrative proceedings only lasted for four (4) years (2008 when the LOA was issued up to the time the original Petition for Review was filed in the CTA in 2012), which according to the ***Javier Case*** is insufficient time for estoppel by laches to set in, to wit:

> In Figueroa, this Court observed the injustice caused to the party pleading laches. Restoration of and reparation towards the party may no longer be accomplished due to the changes in his or her circumstances. Laches, however, was not appreciated as it was a mere four (4) years since trial began that the petitioner in that case raised the issue of jurisdiction on appeal.

It has also already been established in numerous rulings of this Court that the CTA litigates *de novo* and, thus, is not bound by the issues raised during the administrative proceedings. In fact, this Court is mandated to rule on related issues although not raised by the parties in order to ensure the orderly disposition of the case. This is the essence of ***Section 1, Rule 14 of A.M. No. 05-11-07-CTA or the "Revised Rules of Court of Tax Appeals" ("RRCTA"),*** which reads as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> 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."

[6] G.R. No. 233821, 14 June 2021.

In addition, the duty to ensure that an LOA is adequately served to the taxpayer does not lie on the former but on the BIR. It is the BIR and not the taxpayer which is tasked by the Tax Code and jurisprudence to guarantee that the audit and assessment of the taxpayer are conducted in accordance with the law, the BIR rules, and jurisprudence. This is the necessary consequence of the CIR's statutory power to audit and assess a taxpayer.

Given these reasons, it is my humble view that the service of the LOA to the security guard was improper, rendering the assessment void.

As for the invalidity of the assessment on the ground that the audit was performed by revenue officers not duly authorized by a valid LOA, I find it prudent to clarify that the Supreme Court case of ***CIR v. McDonald's Philippines Realty Corp. ("McDonald's Case")***[7] did not prohibit the practice of reassigning revenue officers through a Memorandum of Assignment in totality.

In fact, a close reading of the said case proves that what is considered void by the Supreme Court is a Memorandum of Assignment issued by a person other than the CIR or his authorized representative. This is clear in the quoted portion of the Decision below:

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

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

> **assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is <u>typically signed by the revenue district officer or other subordinate official</u>, and <u>not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC</u>.** Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives."
> (Emphasis and underscoring supplied).

Taking cue from the foregoing, it follows that a Memorandum of Assignment, or any equivalent document, may still confer authority to the new set of revenue officers, provided, that all the elements necessary to establish a Contract of Agency between the CIR or his duly authorized representative and the new revenue officer are satisfied.

I am of the view that if the said requisites are followed, the Memorandum of Assignment should be considered an LOA equivalent sufficient to grant the requisite authority to the new set of examiners.

This is consistent with the ruling of the Court *En Banc* in ***Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.***[8] and ***Commissioner of Internal Revenue v. Trinity Franchising and Management Corporation***,[9] which were both affirmed by the Supreme Court.

In sum, I agree that the assessment of respondent is void, not because no new LOA was issued to the new set of revenue officers, but on the ground that the Memorandum of Assignment was signed by the Revenue District Officer who is not one of the authorized representatives of the CIR. Hence, the Memorandum of Assignment cannot be treated as an equivalent of an LOA.

Considering the foregoing reasons, I concur with the result.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[8] CTA EB Case No. 2047, 17 July 2020 affirmed in G.R. No. 255487, 3 May 2021.
[9] CTA EB Case No. 2010, 14 July 2020 affirmed in G.R. No. 255094, 26 April 2021.