REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

FORT PALM SPRING CONDOMINIUM CORPORATION,
Petitioner,

- versus -

HON. CAESAR R. DULAY, in his capacity as Commissioner of the Bureau of Internal Revenue,
Respondent.

CTA CASE NO. 9999

Members:

RINGPIS-LIBAN, *Chairperson and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 05 2023
8:00 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* prays before this Court that after due hearing, the Court renders judgment declaring that:

1. The right of the BIR to assess and collect the alleged deficiency taxes for 2009 has already prescribed;

2. The *Formal Assessment Notice* ("FAN") dated August 17, 2017 is void for violation of petitioner's right to due process; and

3. The cancellation of the following tax deficiency assessments against petitioner for failure to state and/or lack of legal and factual bases thereof:

Income tax	Php157,069,492.96
Expanded withholding tax ("EWT")	7,312,947.09
TOTAL ASSESSMENT	**Php164,382,440.05**[1]

The Facts

Petitioner Fort Palm Spring Condominium Corporation is a corporation established in accordance with the laws of the Republic of the Philippines, with office address at unit 2C-A, FPS Bldg., 1st Avenue, cor. 30th Street, Global City, Taguig.[2]

Respondent is the duly appointed Commissioner of Internal Revenue who is empowered to perform the duties of his office, including among others, the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law.[3]

The BIR Revenue District Office ("RDO") No. 44 – Taguig-Pateros is located at 3/F, Bonifacio Technology Center, 31st St. cor. 1634, 2nd Ave., Taguig, Metro Manila—around 100 meters away from petitioner's office.[4]

On June 26, 2009, petitioner sent a letter requesting the Bureau of Internal Revenue ("BIR") to issue a ruling to ascertain the taxability of the transfer of condominium and/or parking units from the trustee/petitioner, to the trustor individual investors/unit owners of petitioner.[5] In response to the said letter, the BIR issued Ruling No. DA (128) 374-2009.[6]

Petitioner then filed a *Petition for Declaratory Relief* before the Regional Trial Court ("RTC") Branch 266 of Taguig City, docketed as SCA NO. 4014-TG, entitled *"FORT PALM SPRING CONDOMINIUM CORP. vs. HON KIM HENARES, in her capacity as the COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE"*.[7] In the Order dated July 12, 2016, the said RTC

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1 Docket, Pre-Trial Order dated October 23, 2020, Statement of the Case, pp. 656-657.
2 *Id.*, Petition for Review, Parties, Par. 1, pp. 12-13.
3 *Id.*, Joint Stipulation of Facts and Issues (JSFI), As to Facts, Par. 1, p. 431.
4 *Id.*, JSFI, As to Facts, Par. 13, p. 432.
5 *Id.*, JSFI, As to Facts, Par. 2, p. 431.
6 *Id.*, JSFI, As to Facts, Par. 3, p. 431.
7 *Id.*, JSFI, As to Facts, Par. 4, p. 431.

upheld the validity of BIR Ruling No. DA (128) 374-2009.[8] The same RTC issued a Certificate of Finality relative to the said Order.[9]

In the meantime, the BIR issued the *Letter of Authority* ("LOA") dated September 28, 2010, which authorized Revenue Officers Ramon Rojas and Reynaldo M. Laureta, to examine the books and accounting records of petitioner with respect to all its internal revenue taxes for taxable year 2009.[10]

The BIR issued a *Final Notice* on March 27, 2011;[11] and subsequently, a *Subpoena Duces Tecum* on July 28, 2011, to require petitioner to submit its books of accounts relating to taxable year 2009.[12]

Thereafter, the BIR also issued the *Preliminary Assessment Notice* ("PAN") dated February 23, 2016, and the *Formal Assessment Notice* ("FAN") dated August 17, 2017, for taxable year 2009.[13]

It is noteworthy that the address of petitioner indicated in the above-stated LOA dated September 28, 2010, PAN dated February 23, 2016, and FAN dated August 17, 2017, was 30th Street, Bonifacio Global City, Taguig City,[14] and thus, the said documents were all sent *via* registered mail to the said address.[15]

The *Warrant of Distraint and Levy* ("WDL") dated November 21, 2018 for the taxable year 2009 was issued by the BIR against petitioner likewise indicating the address 30th Street, Bonifacio Global, Taguig City.[16] The WDL was received by the counsel of FPS Condominium Association, Inc. ("FPSCAI").[17] Notably, petitioner and FPSCAI have separate registration with the Securities and Exchange Commission.[18]

On December 06, 2018, petitioner, through counsel, filed a *Letter Request for Reconsideration and/or Re-investigation* to the office of the respondent, with copy furnished to the Department of Finance.[19]

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8 *Id.*, JSFI, As to Facts, Refer to par. 5, p. 432.
9 *Id.*, JSFI, As to Facts, Refer to par. 6, p. 432.
10 *Id.*, JSFI, As to Facts, Refer to pars. 16 and 10, p. 432.
11 *Id.*, JSFI, As to Facts, Par. 14, p. 432.
12 *Id.*, JSFI, As to Facts, Par. 15, p. 432.
13 *Id.*, JSFI, As to Facts, Par. 10, p. 432.
14 *Id.*, JSFI, As to Facts, Refer to par. 11, p. 432.
15 *Id.*, JSFI, As to Facts, Refer to par. 12, p. 432.
16 *Id.*, JSFI, As to Facts, Par. 7, p. 432.
17 *Id.*, JSFI, As to Facts, Par. 8, p. 432.
18 *Id.*, JSFI, As to Facts, Par. 9, p. 432.
19 *Id.*, JSFI, As to Facts, Par. 16, p. 433.

On December 27, 2018, petitioner filed the present *Petition for Review (with Application for Issuance of Temporary Restraining Order and/or Writ of preliminary Injunction).*[20]

In the Resolution dated February 20, 2019,[21] petitioner's *Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction* was set for hearing. Relative thereto, petitioner's tax consultant, Mr. Florencio Y. Rojas, Jr., testified on direct examination.[22]

Thereafter, on March 11, 2019, petitioner filed its *Formal Offer of Exhibits (In support for the Motion to Suspend Collection of Taxes).*[23] In its Resolution dated August 14, 2019,[24] the Court admitted petitioner's offered exhibits, and granted petitioner's *Motion to Suspend Collection of Taxes*, subject to the posting of a cash or surety bond.

Within the extended time granted by the Court,[25] respondent posted his *Answer* on April 04, 2019.[26]

Petitioner filed a *Motion for Waiver or Reduction of Bond* on September 13, 2019.[27] Respondent posted his *Manifestation* on October 24, 2019,[28] manifesting that it has been the policy of the BIR to defer action on any matter (*i.e.*, enforcement of summary remedies) that are already within the ambit of the jurisdiction of this Court, and that with respect to the said *Motion*, it is submitted that respondent will leave the matter to the wisdom of this Court. In its Resolution dated November 26, 2019,[29] this Court denied *Motion for Waiver or Reduction of Bond* for lack of merit.

After petitioner posted Surety Bond No. BD-G16-HO-0005009 on December 16, 2019,[30] the Court enjoined respondent from collecting or attempting to collect the subject Assessment Notice/s in the present case, until further orders.[31]

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[20] *Id.*, pp. 12-27.
[21] *Id.*, pp. 159-160.
[22] *Id.*, Exhibit "P-7", pp. 60-67; Minutes of the hearing held on, and Order dated, March 05, 2019, pp. 162 and 163-a to 163-b, respectively.
[23] *Id.*, pp. 248-252.
[24] *Id.*, pp. 357-362.
[25] *Id.*, Respondent's Motion for Extension of Time to File Answer, pp. 335-337; Resolution dated March 28, 2019, p. 340.
[26] *Id.*, pp. 344-346.
[27] *Id.*, pp. 366-376.
[28] *Id.*, pp. 379- 380.
[29] *Id.*, pp. 385-388.
[30] *Id.*, Petitioner's Manifestation/Compliance dated December 17, 2019, with attachments, pp. 391-405.
[31] *Id.,* Resolution dated January 28, 2020, pp. 407-408.

The Pre-trial Conference was initially set on April 16, 2020,[32] but was reset to, and held on, September 24, 2020.[33] Petitioner's *Pre-Trial Brief* was filed *via* electronic mail on May 20, 2020,[34] while *Pre-Trial Brief (for the Respondent)* was posted on June 24, 2020.[35]

On June 26, 2020, the parties submitted their *Joint Stipulation of Facts and Issues*,[36] which was approved in the Order dated September 24, 2020,[37] thereby terminating the pre-trial. The Pre-Trial Order dated October 23, 2020 was then issued by the Court.[38]

Trial then proceeded; and the parties presented their respective documentary and testimonial evidence.

Petitioner presented the testimonies of the following individuals, namely: (1) Mr. Florencio Y. Rojas, Jr.,[39] petitioner's tax consultant; and (2) Mr. Philip Cea,[40] businessman and petitioner's independent consultant.

On November 26, 2020, petitioner filed its *Formal Offer of Evidence.*[41] However, respondent failed file his comment thereon.[42] In the Resolution dated February 11, 2021,[43] the Court admitted petitioner's offered documentary evidence, *except* for the following:

1. Exhibits "P-8", "P-9", "P-17", and "P-17-1", for failure to present the originals for comparison;

2. Exhibits "P-10", for failure to submit the duly marked exhibits; and

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32 *Id.,* Notice of Pre-Trial Conference dated February 07, 2020, pp. 409-410.
33 *Id.*, Resolution dated June 19, 2020, p. 430; Minutes of the hearing held on, and Order dated, September 24, 2020, pp. 639, and 645-647, respectively.
34 *Id.*, pp. 415-426.
35 *Id.*, pp. 633-635.
36 *Id.*, pp. 431-436.
37 *Id.*, pp. 645-647.
38 *Id.*, pp. 656-663.
39 *Id.*, Exhibit "P-16", pp. 502-521; Minutes of the hearing held on, and Order dated, October 28, 2020, pp. 664-666.
40 *Id.*, Exhibit "P-11", pp. 438-455; Minutes of the hearing held on, and Order dated, November 18, 2020, pp. 667-669.
41 *Id.*, pp. 670-681.
42 *Records Verification Report* dated January 04, 2021 issued by the Judicial Records Division of this Court, p. 1029.
43 *Id.*, pp. 1032-1033.

3. Exhibits "P-12", "P-13", "P-14", and "P-15", for not being found in the records.

On November 26, 2020, respondent, through counsel, transmitted the *BIR Records* for this case, consisting of 897 pages.[44]

For his part, respondent presented the testimony of Revenue Officer ("RO") Talib A. Muti III.[45]

Respondent posted his *Formal Offer of Evidence* on November 09, 2021.[46] Petitioner then filed its *Comment/Opposition (To Respondent's Formal Offer of Evidence)* on November 22, 2021.[47] In the Resolution dated March 17, 2022,[48] the Court admitted respondent's offered exhibits, except for "R-23", "R-24", "R-25", "R-26", "R-27", "R-28", "R-29", "R-30", "R-31", "R-32", and "R-33", for failure to present the originals for comparison.

Petitioner's Memorandum was posted on April 26, 2022.[49] Respondent, however, failed to file his memorandum.[50]

The present case was deemed submitted for decision on September 19, 2022.[51]

The Issues

As stipulated by the parties, the issues for this Court's resolution are the following:

"1. Whether [petitioner] Fort Palm Spring Condominium Corporation is liable for the deficiency Income Tax and Expanded Withholding Tax in the amounts of Php157,069,492.96 and Php7,312,947.09, respectively, including the imposable penalties, surcharges and interest[;]

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[44] *Id.*, Compliance dated November 23, 2020, pp. 1024-1027.
[45] *Id.*, Exhibit "R-34", pp. 1074-H 1074-T; Minutes of the hearing held on, and Order dated, October 19, 2021, pp. 1057-1058.
[46] *Id.*, pp. 1153-1163.
[47] *Id.*, pp. 1136-1152.
[48] *Id.*, pp. 1166-1168.
[49] *Id.*, pp. 1300-1335.
[50] *Id.*, Records Verification Report dated September 13, 2022 issued by the Judicial Records Division of this Court, p. 1339.
[51] *Id.*, Resolution dated September 19, 2022, p. 1341.

2. Whether or not the due process of law was violated when [petitioner] Fort Palm Spring Condominium Corporation was not able to file its protest to the PAN and FAN[; and]

3. Whether or not the Revenue Officers who recommended the issuance of the PAN and FAN were duly authorized under a valid Letter of Authority[.]"[52]

Petitioner's Arguments

Petitioner argues that the delivery of condominium units and parking units in the Fort Palm Spring Condominium is a non-taxable transaction pursuant to BIR Ruling No. DA (C-128) 374-2009; that the revocation of BIR Ruling DA-245-2005 did not abrogate the exemptions under BIR Ruling No. DA (C-128) 374-2009; that assuming *arguendo* that petitioner is liable for the assessed taxes, the right of the BIR to collect the purported taxes has already prescribed; that for the ten (10)-year prescriptive period to apply, allegations of fraud must have legal and factual bases; that the LOA, PAN, and FAN, were not served upon petitioner notwithstanding its proximity to RDO No. 44, in violation of petitioner's constitutional right to due process; and that the officers who conducted the investigation of petitioner for tax liabilities that it allegedly incurred in 2009, and recommended the approval of the PAN were not authorized to do so, in violation of the law.

Respondent's Counter-arguments

Respondent contends that a revenue regulation, the issuance of which is authorized by statute, has the force and effect of law; that assessments are *prima facie* presumed correct and made in good faith; that the taxpayer has the duty of proving otherwise; that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed; that that taxes are important because it is lifeblood of the government and so should be calculated without unnecessary hindrance; and that taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another.

Discussion/Ruling

The present *Petition for Review* has merit. N

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52 *Id.*, JSFI, As to the Issues, p. 433.

The petition was timely filed

Section 7(a)(1) of Republict Act ("RA") No. 1125[53], as amended by RA No. 9282[54] confers upon the Court of Tax Appeals the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the National Internal Revenue Code ("NIRC") of 1997, as amended, to wit:

> "SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue [Code] or other laws administered by the Bureau of Internal Revenue[.]**"[55]

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*[56], the Supreme Court reiterated that the exclusive appellate jurisdiction of the Court of Tax Appeals Division is not limited to cases involving decisions of the Commissioner of Internal Revenue or matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC of 1997, as amended, or related laws administered by the BIR. Simply put, the determination of the validity of a warrant of distraint and levy is under the jurisdiction of the Court of Tax Appeals.

In this regard, Section 11 of RA No. 1125, as amended by RA No. 9282, provides that a taxpayer aggrieved by a decision of the Commissioner of

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53 An Act Creating The Court Of Tax Appeals, June 16, 1954.

54 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Of Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30 2004.

55 *Emphasis supplied.*

56 G.R. No. 255473, February 13, 2023 *citing* Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.

Internal Revenue, has thirty (30) days to file an appeal with the Court of Tax Appeals within from the receipt of the said decision, *viz*:

> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision**, ruling or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **<u>may file an appeal with the CTA within thirty (30) days after the receipt of such decision</u>** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[57]

In the case at bar, Petitioner alleged in the "Petition for Review" that the WDL dated November 21, 2018 was served to the counsel of FPSCAI on November 28, 2018. On November 29, 2018, the next day, Petitioner was given a copy of the said WDL by its counsel.[58] The same was corroborated by Petitioner's witness, Mr. Florencio Y. Rojas, Jr., in his Judicial Affidavit, although in his testimony he stated that the service to FPSCAI was made on the later day November 29, 2018.[59] To emphasize, the date of service of the WDL was not disproved by Respondent during cross-examination or through presentation of contrary evidence. Accordingly, we shall assume that Petitioner was able to receive a copy of the WDL on November 29, 2018. Counting thirty (30) days therefrom, Petitioner had until December 29, 2018 within which to file its petition. Therefore, the "Petition for Review" was timely filed on December 27, 2018.

The subject tax assessments are void, since the RO who conducted the investigation of petitioner was not duly authorized to do so

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose

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57 *Emphasis and underscoring supplied.*
58 Docket, Petition for Review, Statement of Facts, pars. 9-11, p. 15.
59 *Id.*, Judicial Affidavit (Direct Testimony of Mr. Florencio Y. Rojas, Jr. in support of the Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction), Exhibit "P-7", Q8, p. 62.

of collecting the correct amount of tax.[60] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[61]

There must be a grant of authority before any RO can conduct an examination or assessment. Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such authority, the assessment or examination is a nullity.[62]

The importance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the ROs is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.[63]

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[64] the Supreme Court held:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer*' and issue an assessment against him.
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> That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.'
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> **In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided**

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60 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

61 *Commissioner of Internal Revenue v. De La Salle University, Inc., Et. Al.*, G.R. Nos. 196596, 198841, and 198941, November 09, 2016.

62 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

63 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

64 G.R. No. 222133, November 04, 2020.

> **therefor, <u>the resulting assessment shall be void and ineffectual</u>...**"[65]

Moreover, in *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[66] the Supreme Court has made the following ruling relative to the necessity of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation, to wit:

> "The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (*LOA*) and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue (*CIR*) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (*BIR*) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.
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> xxx xxx xxx
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> **<u>The Court hereby puts an end to this practice</u>.**
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> ***The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation***
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> xxx xxx xxx
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> Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in form of a LOA, before any revenue officer can conduct any of these kinds of

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65 *Emphasis and underscoring supplied.*
66 G.R. No. 242670, May 10, 2021.

examination or assessment. The revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.**

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

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To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

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

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> 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. 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 <u>memorandum of assignment</u>, referral memorandum, or any equivalent document is <u>not</u> a proof of the existence of authority of the substitute or replacement revenue officer. The <u>memorandum of assignment</u>, referral memorandum, or any equivalent document is <u>not</u> issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts.** It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.
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> 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 <u>special authority</u> granted to a particular revenue officer.**
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> xxx xxx xxx
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> In summary, **We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer;** and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990."[67]

Lastly, in the recent case of *Republic of the Philippines Vs. Robiegie Corporation*,[68] the Supreme Court reiterated this ruling and stressed that "**<u>the</u>**

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67 *Emphasis and underscoring supplied.*
68 G.R. No. 260261, October 03, 2022.

reassignment of a taxpayer investigation to a different revenue officer must also be made pursuant to a LOA, the one LOA-per-taxpayer rule notwithstanding. When a taxpayer investigation is transferred from one revenue officer to another, the responsible BIR official with authority to issue LOAs shall issue a new LOA to the new revenue officer assigned to the investigation. The old LOA in favor of the reassigned revenue officer shall be deemed cancelled, and the new LOA issued to the subsequently designated revenue officer shall prevail..."[69]

As stipulated by the parties, the LOA dated September 28, 2010 was issued by the BIR to authorize ROs Ramon Rojas and Reynaldo M. Lureta, to examine the books and accounting records of petitioner with respect to its internal revenue taxes for taxable year 2009.[70] However, it appears that it was RO Talib A. Muti III, who conducted the investigation of petitioner.[71]

In his *Memorandum Report* dated May 29, 2015,[72] RO Talib A. Muti III presented his audit findings, and recommended the issuance of the PAN against petitioner for taxable year 2009. In the same *Report*, said RO even stated his supposed authority to investigate petitioner, to wit:

> **"This refers to the continuation of the original investigation of the taxable year 2009 'all internal revenue tax liabilities' all of the above-named taxpayer (hereinafter referred to as the 'Taxpayer'), referred to the undersigned pursuant to Memorandum of Assignment (MOA) No. RR8-044-REA-0714-000597 dated July 22, 2014.**
>
> The original investigation of the instant case was originally conducted by Revenue Officer (RO) Ramon C. Rojas under the Group Supervision (GS) Reynaldo M. Laureta pursuant to Electronic Letter of Authority (eLA) No. 201000035874 dated 28 September 2010, which replaced Letter of Authority (LOA) No. 2009 0004080 dated 24 May 2010. **However, due to the retirement of RO Rojas while the investigation of this Case was still on going, such an unconcluded investigation was referred to the undersigned for continuation thereof.**"[73]

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[69] *Emphasis and underscoring supplied.*
[70] Docket, JSFI, As to Facts, Par. 16, p. 16.
[71] *Id.*, Refer to Exhibit "R-34", pp. 1074-H-1074-T.
[72] BIR Records, Exhibit "R-1", pp. 640 to 649.
[73] *Emphasis and underscoring supplied.*

Moreover, during the hearing held on October 19, 2021, respondent's witness RO Talib A. Muti III testified as follows:

"**Atty. Martinez:**	You, yourself Mr. Witness, would you confirm that you are not a named person in the Letter of Authority?
Witness Muti III:	Yes, Your Honor.
Atty. Martinez:	Was there any Letter of Authority issued under your name?
Witness Muti III:	None, none Your Honor.
Atty. Martinez:	Then what is your authority to make the assessment?
Witness Muti III:	A Memorandum of Assignment signed by the OIC Revenue District Officer."[74]

Despite the conduct of audit and examination of petitioner by RO Muti III for the taxable year 2009, no new LOA was issued in his name. Moreover, there is no indication that the LOA dated September 28, 2010 was ever amended or modified to include the said RO. Hence, the authority under which RO Muti III continued the audit or investigation of petitioner was not made pursuant to the statutory power of respondent or his duly authorized representative to grant the authority to examine the said taxpayer's books of accounts.

To be sure, the result of the absence of an LOA in favor RO Muti III, who continued the audit/investigation of petitioner, is the nullity of respondent's examination and assessment for taxable year 2009, based on the violation of petitioner's right to due process. As already pointed out, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[75]

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[74] Transcript of Stenographic Notes for the hearing held on October 19, 2021, p. 14.
[75] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., Et. Al.,* G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

The authority of RO Muti III is not sufficient to continue the examination of petitioner's books of accounts and other accounting records for taxable year 2009, there being no new nor revised LOA issued in his favor.

Such being the case, the subject tax assessments issued against petitioner, including the assailed WDL dated November 21, 2018, for taxable year 2009, are void, for lack of authority of the concerned RO to examine petitioner's books. Hence, the subject tax assessments cannot be legally enforced against petitioner.

Be that as it may, this Court finds another reason why the subject tax assessments should be considered a nullity.

Respondent's failure to prove that the subject PAN and FAN were received by petitioner renders the subject tax assessments void, for violation of petitioner's right to due process.

Section 228 of the NIRC of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: . . .
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made**; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings."[76]

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[76] *Emphasis supplied.*

The law mandates that as a rule, when respondent or his duly authorized representative finds that proper taxes should be assessed, the concerned taxpayer must first be notified of respondent's findings, through a preassessment notice or a PAN.

Implementing Section 228 of the NIRC of 1997, as amended, is Section 3.1.2 of RR No. 12-99[77], as amended by RR No. 18-2013[78], which provides, in part, as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of Deficiency Tax Assessment.*** —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 *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 (see illustration in ANNEX 'A' hereof).
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — **The Formal Letter of Demand <u>and</u> Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative.** The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX 'B' hereof).

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[77] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the code through payment of a Suggested Compromise Penalty.

[78] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

xxx xxx xxx

3.1.6 ***Modes of Service.*** – **The notice (PAN/FLD/FAN/**FDDA) **to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**

xxx xxx xxx

(iii) **Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered.** A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/ professional courier service company **who received the same and such other relevant information. The registry receipt issued by the post office** or the official receipt issued by the professional courier company **containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**"[79]

On the basis thereof, part of the due process requirement in the issuance of a deficiency tax assessment is the issuance and service of both PAN and FAN to the concerned taxpayer.

In *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.* ("*GJM* case"),[80] the Supreme Court held that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial

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[79] *Emphasis and underscoring supplied.*
[80] G.R. No. 202695, February 29, 2016.

thereof shifts the burden to the sender to prove that the said letter was *actually* received by the addressee.

In this case, petitioner directly denies having received the subject PAN and FAN. Thus, the burden of proving the *actual* receipt of the same lies with respondent.

To prove service of the PAN and FAN by registered mail, respondent offered the following exhibits,[81] to wit:

Exhibit	Description	Purpose
"R-2"[82] "R-3"[83]	PAN with *Details of Discrepancies* dated July 14, 2017 Philpost Proof of Delivery with Tracking No. AC424784428ZZ	1. To prove that the PAN had been served to the petitioner. 2. To prove that the petitioner had been notified of the findings of the investigation against them. 3. To prove that petitioner had been given the opportunity to present their case to the BIR and that due process had been observed. 4. To prove the factual and legal bases of the assessment. 5. For such other purposes as it may serve.
"R-4"[84] "R-5"[85]	FAN with *Details of Discrepancies* dated August 17, 2017 Registry Receipt with No. 054452	1. To prove that the FAN had been served to the petitioner. 2. To prove that the petitioner had been notified of the findings of the investigation against them. 3. To prove that petitioner had been given the opportunity to present their case to the BIR and that due process had been observed.

[81] Docket, Respondent's Formal Offer of Evidence, pp. 1153-1163.
[82] BIR Records, pp. 731-735.
[83] *Id.*, p. 751.
[84] *Id.*, pp. 744-750.
[85] *Id.*, p. 752.

		4. To prove the factual and legal bases of the assessment. 5. For such other purposes as it may serve.

Unfortunately, the foregoing evidence hardly suffice to prove that the said notices were indeed **served and received** by petitioner or by any of its authorized representative/s. The said Registry Receipts merely proved the fact of mailing,[86] and nothing more. The glaring fact remains that nowhere can it be seen from the evidence presented that the said PAN and FAN were actually served and received by petitioner or by any of its authorized representative.

It is noteworthy that above-stated PAN is not of the same date as the one stipulated by the parties herein.[87] However, even granting that the said PAN is the one contemplated by the parties in their stipulation of facts, the corresponding Philpost Proof of Delivery with Tracking No. AC424784428ZZ (Exhibit "R-3") is still of no moment, since it appears therein that there is no one who received the same PAN. Moreover, in the said PAN, the stamped received Form by the BIR was left blank.

Correspondingly, the foregoing evidence cannot be treated as proof of the actual receipt of the subject PAN and FAN by petitioner or its duly authorized representative.

Such being the case, due process was not accorded to petitioner in the issuance of the subject PAN and FAN, pursuant to Section 228 of the NIRC of 1997, and Section 3.1 of RR No. 12-99, as amended by RR No. 18-2013. Such being the case, the said PAN and FAN are void. Thus, petitioner cannot be considered as a delinquent taxpayer to justify respondent's issuance of the WDL dated November 21, 2018.

Finding that the subject tax assessments are void on the above-stated two (2) grounds, *i.e.*, for lack of authority of the RO to examine petitioner and for violation of the latter's right to due process, it is no longer necessary to address or resolve the other issues and arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

86 *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.

87 The parties, in their stipulation of facts, admitted that the date of the PAN, which was issued by the BIR, is "February 23, 2016", not "July 14, 2017". (Docket, JSFI, As to Facts, Refer to par. 10, p. 432).

Accordingly, the subject PAN (whether dated February 23, 2016 or July 14, 2017), the FAN dated August 17, 2017, and the WDL dated November 21, 2018, all issued against petitioner, in the aggregate amount of Php164,382,440.05, for deficiency income tax and EWT, for the taxable year 2009, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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