REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 2271
(CTA Case No. 9462)

Present:

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

-*versus*-

UPS SCS (PHILIPPINES), INC.,
Respondent.

Promulgated:
FEB 24 2022 3:37pm

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue (CIR) praying for the reversal of the Decision dated September 24, 2019 and Resolution dated June 8, 2020, which cancelled and set aside the assessments for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefit tax (FBT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET), including compromise penalties, in the aggregate amount of P130,451,420.43, for the calendar year 2010, against respondent UPS SCS (Philippines), Inc. (UPS SCS).

FACTS

The CTA 3rd Division narrated the antecedents, as follows:

Petitioner [now, respondent] UPS SCS (Philippines), Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Solar Land Compound, NAIA Avenue, Sto. Niño, Parañaque City. It may be served orders, notices, resolutions, and other processes of this Court through its counsel.

Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office No. 52, as shown by its Certificate of Registration dated July 15, 1992 with Taxpayer's Identification No. 001-776-941-000.

On the other hand, Respondent [now, petitioner] is the duly appointed Commissioner of Internal Revenue (CIR) 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 on disputed assessments, pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.

On November 23, 2011, Respondent issued Letter of Authority (LOA) No. 052-2011-00000461 authorizing Revenue Officer Arnold M. Maggay and Group Supervisor Lina I. Inductivo to examine Petitioner's books of accounts and other accounting records for calendar year (CY) 2010.

On December 4, 2014, Petitioner received a copy of the Preliminary Assessment Notice (PAN) with attached Details of Discrepancies dated December 1, 2014, in which Respondent informed Petitioner of the proposed assessment for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefits tax (FBT), documentary stamp tax (DST), and improperly accumulated earning tax (IAET) and imposition of compromise penalties for CY 2010 in the aggregate amount of P110,039,235.37.

On December 19, 2014, Petitioner filed its Reply to the PAN contesting the preliminary finding that it was liable for deficiency IT, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalty in the aggregate amount of P110,039,235.37.

On December 23, 2014, Petitioner received a copy of the Formal Assessment Notice (FAN) dated December 22, 2014 with attached Details of Discrepancies. In the FAN, Respondent ordered Petitioner to pay its alleged deficiency income tax, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalty for CY 2010 in [the] aggregate amount of P111,076,161.03.

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> On January 22, 2015, Petitioner filed a Protest Letter against the FAN requesting the cancellation and withdrawal of the deficiency assessments for IT, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalties for CY 2010. Petitioner attached supporting documents to its protest letter.
>
> On August 4, 2016, Petitioner received a copy of the Final Decision on Disputed Assessment (FDDA) dated July 25, 2016 with attached Details of Discrepancies. In the FDDA, Respondent ordered Petitioner to pay alleged deficiency IT, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalties for CY 2010 in the total amount of P130,451,420.42.[1]

On September 2, 2016, UPS SCS filed its Petition for Review with the Court of Tax Appeals (CTA) Division. After trial, the CTA 3rd Division rendered the assailed Decision, which granted UPS SCS' Petition for Review, as follows:

> **WHEREFORE,** premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated July 25, 2016 demanding payment for petitioner's deficiency IT, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalties for calendar year 2010 in the total amount of P130,451,420.43 is hereby **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**[2]

The CIR's Motion for Reconsideration of the above Decision was denied in the Resolution[3] dated June 8, 2020. The Court in Division found that the revenue officers (ROs) were not properly authorized through a valid Letter of Authority (LOA).

On July 20, 2020, the Court received the CIR's Petition for Review,[4] posted on July 13, 2020. Upon notice,[5] UPS SCS filed its Comment (Re: CIR's Petition for Review dated July 13, 2020) on September 28, 2020.[6]

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[1] *Rollo*, Decision dated September 24, 2019, pp. 15-17.
[2] *Rollo*, Decision dated September 24, 2019, p. 32.
[3] *Rollo*, pp. 35-38.
[4] *Rollo*, pp. 5-13.
[5] *Rollo*, Resolution dated September 11, 2020, pp. 52-53.
[6] *Rollo*, pp. 54-66.

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The case was also referred to mediation,[7] however, on December 3, 2020, the parties decided not to have their case mediated.[8]

Thus, the case was deemed submitted for decision on February 8, 2021.[9]

ISSUES

The CIR has not made an assignment of errors nor statement of issues in his Petition for Review.

CIR's arguments

The CIR argues that Revenue Officer (RO) Arnold M. Maggay was duly authorized to conduct the audit of UPS-SCS' books and accounting records for calendar year 2010, through LOA No. 052-2011-00000461. The CIR further states that it was RO Maggay who conducted the audit of UPS-SCS' books of accounts and accounting records and subsequently recommended the issuance of the Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN).

The CIR also argues that a new LOA is not necessary for a new RO assigned to conduct the reinvestigation of the taxpayer's books of accounts and accounting records, after the taxpayer's protest and for the purpose of recommending a final decision on disputed assessment (FDDA). Thus, RO Mariano M. Flores and Group Supervisor (GS) Bernard U. Urbano, who conducted the reinvestigation were properly authorized through Memorandum of Assignment (MOA) No. 052-1464-2015-MOA-ASS issued by OIC-Revenue District Officer Rosita Meniano.

UPS SCS' arguments

UPS SCS counter-argues that GS Urbano, who continued the audit with RO Maggay, was not properly authorized through an LOA, but only through a MOA. GS Urbano also supervised the conduct of the reinvestigation, armed only with a MOA.

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[7] *Rollo*, Resolution dated October 22, 2020, pp. 69-71.
[8] *Rollo*, No Agreement to Mediate, p. 72.
[9] *Rollo*, pp. 74-75.

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UPS SCS also states that ROs who conduct the reinvestigation should also be authorized through an LOA not a mere MOA. The LOA is needed in all stages of the assessment process. The reinvestigation of a disputed assessment forms part of the assessment process. Consequently, all revenue officers that form part of the assessment process must be duly authorized under an LOA.

Assuming that a MOA may validly authorize the reinvestigation of a disputed assessment, UPS SCS argues that the in such case, the MOA may only be issued by the Regional Director and not a Revenue District Officer, consistent with Sections 10 and 13 of the NIRC of 1997, as amended.

Thus, UPS SCS prays that the instant Petition for Review be dismissed.

RULING OF THE COURT

The instant Petition for Review was timely filed.

The CIR received the 3rd Division's Resolution on June 16, 2020.

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),[10] petitioner had fifteen (15) days from June 16, 2020, or until July 1, 2020, within which to file the petition for review before the Court *En Banc*.

On June 30, 2020, petitioner filed his Motion for Extension of Time to File Petition for Review,[11] praying for an additional period of 15 days from July 1, 2020, or until July

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[10] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*
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(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[11] *Rollo*, pp. 1-3.

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16, 2020, within which to file his Petition for Review. The same was granted in the Minute Resolution dated July 3, 2020.[12]

On July 20, 2020, the Court received the subject Petition for Review which was timely posted on July 13, 2020.

An LOA is required for the investigation and reinvestigation of a taxpayer's books of accounts and accounting records.

The main issue involved is the necessity of a validly issued LOA for the investigation and examination of a taxpayer's books and accounting records.

In the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[13] (*McDonald's case*) the Supreme Court reiterated the necessity of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation of a taxpayer's books of accounts, as follows:

> **"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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> This case is an occasion for the Court to rule on a disturbing trend of tax audits or investigations conducted by revenue officers who are not specifically named or authorized in the LOA, under the pretext that the original revenue officer authorized to conduct the audit or investigation has been reassigned or transferred to another case or place of

[12] *Rollo*, p. 4.
[13] G.R. No. 242670, May 10, 2021.

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assignment, or has retired, resigned or otherwise removed from handling the audit or investigation.

This practice typically occurs as follows: (i) a valid LOA is issued to an authorized revenue officer; (ii) the revenue officer named in the LOA is reassigned or transferred to another office, case or place of assignment, or retires, resigns, or is otherwise removed from handling the case covered by the LOA; (iii) the revenue district officer or a subordinate official issues a memorandum of assignment, referral memorandum, or such equivalent document to a new revenue officer for the continuation of the audit or investigation; and (iv) the new revenue officer continues the audit or investigation, supposedly under the authority of the previously issued LOA.

This practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been subject of several CTA decisions, including *Ithiel Corporation v. CIR,*[14] *Strawberry Foods Corporation v. CIR,*[15] *Sugar Crafts Inc. v. CIR,*[16] *CIR v. Marketing Convergence, Inc.,*[17] *Exclusive Networks-PH Inc. v. CIR,*[18] and the decision in the court *a quo.*[19]

The Court hereby puts an end to this practice.

I. 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

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.

Section 6 of the NIRC provides:

[14] CTA Case No. 8689, dated July 4, 2016.
[15] CTA Case No. 8569, dated January 7, 2016.
[16] CTA Case No. 8738, August 16, 2017.
[17] CTA EB Case No. 2109 (CTA Case No. 9301), December 3, 2020.
[18] CTA Case No. 9689, February 23, 2021.
[19] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, CTA EB Case No. 1535 (CTA Case No. 8655), dated January 4, 2018.

> SECTION 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –
>
> (A) Examination of Return 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 representatives** may authorize the examination of any taxpayer and the assessment of the correct amount of tax[.] (Emphasis supplied)

Section 10(c) of the NIRC provides:

> SECTION 10. Revenue Regional Director. – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
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> x x x
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.] (Emphasis supplied)

Section 13 of the NIRC provides:

> SECTION 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)

Section D(4) of RMO No. 43-90 dated September 20, 1990 provides:

> For the proper monitoring and coordination of the **issuance of Letter of Authority**, the only BIR officials authorized to **issue and sign Letters of Authority** are the

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> Regional Directors, the **Deputy Commissioners** and the **Commissioner**. For the exigencies of the service, **other officials** may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself. (Emphasis supplied)

Pursuant to the above provisions, only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.

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

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

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that '[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.' **The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.**

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.**

We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, 'any' revenue officer may then act under such validly issued LOA.

The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers, pursuant to Sections 6, 10(c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, a revenue officer. Hence, petitioner is mistaken to characterize the LOA as a document 'issued' to the taxpayer, and that once so issued, 'any' revenue officer may then act pursuant to such authority.

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

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 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**

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memorandum, or any equivalent document is not 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.

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

C. Revenue Memorandum Order No. 43-90 dated September 20, 1990 Expressly and Specifically Requires the Issuance of New LOA if Revenue Officers are Reassigned or Transferred

Section D(5) of RMO No. 43-90 dated September 20, 1990 provides:

> Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.

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The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases. The provision involves the following two separate phrases: 're-assignment/transfer of cases to another RO(s)', on the one hand, and 'revalidation of L/As which have already expired', on the one hand, and 'revalidation of L/As which have already expired', on the other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA. The new LOA must then have a corresponding relevant notation, including the previous LOA number and date of issue of the said LOAs.

The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the law it supposedly implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.

The petitioner is mistaken. Section 291 of the NIRC states:

> SECTION 291. In General. – All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.

Section D(5) of RMO No. 43-90 dated September 20, 1990 is not contrary to or inconsistent with the NIRC. In fact, the NIRC codifies the LOA requirement in RMO No. 43-90. While RMO No. 43-90 was issued under the old tax code, nothing in Section D(5) RMO No. 43-90 is repugnant to Sections 6(A), 10 and 13 of the NIRC. Hence, pursuant to Section 291 of the NIRC. RMO No. 43-90 remains effective and applicable.

Even the Operations Group of the BIR now recognizes 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 LOA, is no longer tenable. Thus, in Operations Memorandum No. 2018-02-03 dated February 9, 2018, the Operations Group has decided that 'the issuance of a MOA for reassignment of cases in the aforementioned instances [*i.e.*, the original revenue officer's transfer to another office, resignation, retirement, *etc.*] shall be continued.'

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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.**" *(Emphases and underscoring added)*

We now review the authorities of the ROs assigned to examine UPS SCS' books of accounts for calendar year 2010.

In LOA No. 052-2011-00000461 dated November 23, 2011,[20] RO Arnold M. Maggay and GS Lina I. Inductivo were authorized to examine UPS SCS's books of accounts and other accounting records for calendar year 2010.

In MOA No. 052-1405-2014-MOA-ASS dated September 23, 2014,[21] RO Maggay was instructed to evaluate and recommend the necessary appropriate action regarding UPS SCS' tax liabilities. The said MOA named Bernard U. Urbano as the group supervisor.

Arising from the investigation pursuant to the foregoing LOA and MOA, the PAN[22] with Details of Discrepancies dated December 1, 2014 was received by UPS SCS on December 4, 2014. The FAN[23] with Details of Discrepancies dated December 22, 2014 was received by UPS SCS on December 23, 2014.

Thus, RO Maggay was properly authorized through LOA No. 052-2011-00000461 dated November 23, 2011 to audit and examine UPS SCS' books of accounts and other accounting records. Thus, the PAN and FAN were issued based on this investigation under a valid LOA.

Subsequently, in response to UPS SCS' request for reinvestigation, MOA No. 052-1464-2015-MOA-ASS[24] dated

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[20] Division Docket, Vol. 4, Exhibit "P-3", p. 1525.
[21] BIR Records, p. 533.
[22] Division Docket, Vol. 4, Exhibit "P-3", pp. 1528-1533.
[23] Division Docket, Vol. 4, Exhibit "P-6", pp. 1541-1555.
[24] BIR Records, p. 733.

February 26, 2015, was issued. Under this MOA, UPS SCS' audit/verification for taxable year 2010 was referred to RO Mariano M. Flores and GS Bernand U. Urbano for "reinvestigation per protest letter/request for reinvestigation filed by the subject taxpayer."

The question now arises whether an LOA is required for a reinvestigation as requested by a taxpayer. We rule in the affirmative. This is in consonance with Section 13 of the NIRC of 1997, as amended, which provides:

> SECTION 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, <u>a Revenue Officer</u> assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayer within the jurisdiction of the district in order to collect the correct amount of tax, or</u> **<u>to recommend the assessment of any deficiency tax due</u>** in the same manner that the same acts could have been performed by the Revenue Regional Director himself. (*Emphasis and underscoring supplied*)

The reinvestigation is but another investigation of the taxpayer's books of accounts in light of the newly submitted supporting documents submitted by the taxpayer with its request for reconsideration, for the purpose of recommending the assessments of deficiency taxes which must be upheld or modified in the FDDA, or to recommend collection of the tax, as when a Preliminary Collection Letter is issued instead of an FDDA. Thus, whether at the start of the audit, continuation of the audit, or reinvestigation after protest, the RO assigned must be authorized through a valid LOA.

Further, while the *McDonald's case* merely discussed the continuation of an audit, a valid LOA should still be required for reinvestigation considering that the same due process considerations apply to a reinvestigation. The taxpayer has the same right to due process in a reinvestigation, which includes knowing that the RO conducting the reinvestigation is properly authorized. That the reinvestigation was at the instance of the taxpayer, or requested by the taxpayer, does not do away with the requirement that the RO be properly armed with an LOA. Thus, we reiterate:

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> ...the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his [or her] 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.**[25] (*emphasis supplied*)

Considering that RO Flores was only authorized through MOA No. 052-1464-2015-MOA-ASS[26] dated February 26, 2015 to conduct the reinvestigation of UPS SCS' tax liabilities for calendar year 2010, the subsequent FDDA[27] dated July 25, 2016 with Details of Discrepancies is rendered void.

Based on the foregoing discussion, the PAN and FAN were issued upon the recommendation of an RO authorized through a valid LOA, while the FDDA is rendered void for having been issued under a mere MOA.

The subject FAN is void, for failure of the CIR to consider the explanations submitted by UPS SCS in its reply to the PAN which is violative of petitioner's right to due process.

Notwithstanding that the FAN was issued under a valid LOA, said FAN is nevertheless void for having been issued without consideration and evaluation of the defenses

[25] *McDonald's case*, see Note 13.
[26] BIR Records, p. 733.
[27] Division Docket, Vol. 4, Exhibit "P-9", pp. 1561-1567.

contained in UPS SCS letter-explanation[28] dated December 19, 2014.

In *Fluor Daniel, Inc. v. Commissioner of Internal Revenue,*[29] the CTA 3rd Division had occasion to address similar circumstances, as they discussed to wit:

> Section 3 of Revenue Regulation ("RR") No. 12-99, as amended by RR No. 18, 2013 expressly provides that "[i]f the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response.
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> Based on the foregoing provision, part of the due process requirement in the issuance of a deficiency tax assessment is the issuance and service of a PAN. Moreover, Petitioner is given fifteen (15) days from receipt of the PAN within which to respond thereto, before the issuance of the FAN by the BIR.
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> Relative thereto, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. Et. Al.* (*"Avon* case"), the Supreme Court pronounced:
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>> **"<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void.</u> While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>>
>> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. <u>Failure to adhere to these</u>**

[28] Division Docket, Vol. 4, Exhibit "P-5", pp. 1535-1540.
[29] CTA Case No. 9267, May 28, 2021.

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<u>requirements constitutes a denial of due process and taints the administrative proceedings with invalidity</u>.

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Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, <u>this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.</u>

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It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. **<u>The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason</u>**.

Xxx xxx xxx

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> Xxx xxx xxx
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)

xxx. ***[The Commissioner of Internal Revenue's]* disregard of the standards and rules renders the deficiency tax assessments null and void.** xxx

The foregoing doctrinal pronouncements affirms that the issuance of a PAN is a part of due process; that the issuance thereof gives both the taxpayer and Respondent opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN or to reduce the assessment at the earliest opportunity; that this purpose is

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> not served in case Respondent or the BIR fails to consider the taxpayer's explanations or arguments before the FAN is issued; that the failure by Respondent or the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process; and that the disregard by respondent or the BIR of the standards and rules renders the deficiency tax assessments null and void.
>
> In this respect, the Court finds that in issuing the FLD/FAN, the BIR never addressed or delved into the arguments raised by Petitioner in its *request for reconsideration* of the PAN. This is clear when Respondent issued a FAN which is a complete replica of the PAN, without even stating and explaining the demerits of Petitioner's contentions.
>
> The right of the taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto; and that the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process. Right to due process is the opportunity to be heard. However, such opportunity would be wasted if the reply or protest to assessments submitted to the BIR is not taken into consideration. It is an empty and meaningless exercise if the same is not even considered by the BIR.
>
> As part of the due process requirement in the issuance of tax assessments, Respondent must give the reason/s for rejecting Petitioner's explanations, and must give the particular facts upon which his conclusions are based, and those facts must appear on record. Respondent has obviously not observed such requirement in the issuance of the subject FLD/FAN. Thus, the inevitable conclusion is that Petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, and Sections 3.1.2 and 3.1.4 of RR No. 12-99, was violated by Respondent. As a consequence of such violation, the said deficiency ax assessment is rendered void and cannot be enforced against Petitioner. (*Emphasis in the original*)

In the instant case, the FAN contained the very same assessment items and deficiency taxes stated in the PAN. The FAN never addressed or even cited the arguments raised by UPS SCS in its letter explanation to the PAN. In fact, the haste with which the FAN was issued shows even further that no consideration was given to the arguments raised in the letter-explanation to the PAN. To recall, UPS SCS filed its letter-explanation on December 19, 2014, a Friday. The FAN, was

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dated December 22, 2014 (Monday) and received by UPS SCS on December 23, 2014.

Thus, UPS SCS' right to due process was violated rendering the subject FAN void and unenforceable against UPS SCS.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution of the Court's 3rd Division, dated September 24, 2019 and June 8, 2020, respectively, are **AFFIRMED**.

The CIR, his representatives, agents, or any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject deficiency taxes.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I join Justice Liban's Separate Concurring Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
(I join Justice Liban's Separate Concurring 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

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2271** *(CTA Case No. 9462)*
	PRESENT:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, *and* **CUI-DAVID**, *JJ.*
UPS SCS (PHILIPPINES), INC., *Respondent.*	**PROMULGATED:** FEB 24 2022 3:33 pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review ***solely*** on the ground that the Formal Assessment Notice (FAN)[1] dated December 22, 2014 issued against respondent is void for having been issued in violation of respondent's right to due process of law.

A careful perusal of the FAN [including its Details of Discrepancies] and the Preliminary Assessment Notice (PAN)[2] dated December 1, 2014 [including its Details of Discrepancies] reveals that the FAN and its Details of Discrepancies are verbatim reproductions of the wordings of the PAN and its Details of Discrepancies, differing only

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[1] Exhibit "P-6".
[2] Exhibit "P-4".

in the computation of interests. The FAN and its Details of Discrepancies neither referred to respondent's Reply to the PAN[3] nor addressed its arguments therein.

Indeed, consistent with the pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. and Avon Products Manufacturing Inc. vs. The Commissioner of Internal Revenue,*[4] issuing the FAN which is an exact replica of the PAN, *sans* any indication in the FAN that due consideration was accorded on respondent's explanations or arguments as stated in its Reply to the PAN, is fatal to petitioner's cause.

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] Exhibit 'P-5".
[4] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2271** (CTA Case No. 9462)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
UPS SCS (PHILIPPINES), INC., Respondent.	Promulgated: FEB 24 2022 3:33 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.

I reiterate my stand in the Division Decision in CTA Case No. 9462 that 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, the duly authorized representative refers to the Revenue Regional Director.

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*")

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

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 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. Hence, it is my opinion 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 September 24, 2019 and Resolution dated June 08, 2020 of the Third Division in CTA Case No. 9462.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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2 *Emphasis and underscoring supplied.*