REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PRUDENTIALIFE PLANS, INC., herein represented by ATTORNEY DIONNE MARIE SANCHEZ, as Liquidator; and the Insurance Commission, Petitioner,	**CTA CASE NO. 10339**
	Members:
	RINGPIS-LIBAN, *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 22 2024 4:17 p.m.

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DECISION

***FERRER-FLORES, J.*:**

This *Petition for Review* seeks to declare as null and void the assessment issued by the Bureau of Internal Revenue (BIR) to petitioner **Prudentialife Plans Inc.** in the total amount of **₱1,307,337,964.92** and the compromise penalty in the amount of **₱195,000.00** for the period April 1, 2008 to March 31, 2009 (FY 2009); and, to prohibit the enforcement and collection of the same.[1]

THE PARTIES

Petitioner is a corporation declared as insolvent and dissolved by the Regional Trial Court (RTC) – Branch 147, Makati City, pursuant to its Order dated July 17, 2017 in Case No. R-MKT-17-02195-SP.[2]

Respondent is the duly appointed **Commissioner of Internal Revenue** (CIR) empowered to perform the duties of his office, including,

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[1] Statement of the Case, Pre-Trial Order (PTO), April 26, 2022, Docket – Vol. 2, p. 737.

[2] Exhibit "P-7", Docket – Vol. 2, p. 796.

among others, acting on disputed assessments as provided by law. He may be served with summons, notices, resolutions and other processes, as well as final judgment of this Court at the 7th Floor, Room 703, BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

THE ANTECEDENTS (ADMINISTRATIVE LEVEL)

On August 4, 2009, the BIR, through Officer-in-Charge Assistant Commissioner (OIC-ACIR) for Large Taxpayers Service (LTS) Zenaida G. Garcia, issued the *Letter of Authority* (LOA) No. 33828,[4] authorizing Revenue Officers (ROs) Alexander Atienza, Melinda Lim, Nimfa Saga, and Gloria Morales, under Group Supervisor (GS) Theodore L. Maroket, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for FY 2009.

On October 7, 2011, petitioner executed a *Waiver of the Statute of Limitations under the National Internal Revenue Code* (Waiver),[5] extending the audit/investigation of petitioner's deficiency taxes for FY 2009 until December 31, 2013. The waiver was accepted by the respondent on October 10, 2011.

Meanwhile, in the letters, both dated March 7, 2012, issued by the Insurance Commission (IC),[6] the San Diego, Yensiano, Macias, Estoreo, Castañeda, Sanchez (SYMECS) Law Office was appointed as the Co-Conservator of petitioner, along with Atty. Rosario Bernaldo.

On September 19, 2012, the IC issued the *Directive* placing petitioner under Receivership.[7] Thereafter, in the letter dated October 19, 2012,[8] the IC placed petitioner under liquidation and SYMECS Law Office was appointed as the Liquidator.

On April 1, 2013, Mr. Edwin T. Guzman, OIC Chief – Regular Large Taxpayers Audit Division (RLTAD) 2 of the BIR, issued the *Memorandum of Assignment* (MOA) No. LOA-125-2013-162[9] assigning the case to RO Matias D. Fadri III and GS Marilyn P. San Diego for the continuation of the

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3 Paragraph 1, Admitted Facts, PTO, April 26, 2022, Docket – Vol. 2, p. 738.
4 Exhibit "R-3", BIR Records, p. 1.
5 Exhibits "P-18" and "R-4", BIR Records, p. 354; Paragraph 4, Admitted Facts, PTO, April 26, 2022, Docket – Vol. 2, p. 738.
6 Exhibit "P-4", Docket – Vol. 2, pp. 781 to 784.
7 Exhibit "P-2", Docket – Vol. 2, pp. 759 to 777.
8 Exhibit "P-3", Docket – Vol. 2, pp. 778 to 780.
9 Exhibit "R-1", BIR Records, p. 370; Paragraph 2, Admitted Facts, PTO, April 26, 2022, Docket – Vol. 2, p. 738.

audit/investigation to replace the previously assigned ROs who resigned or were transferred to another district office. After the completion of his investigation, RO Fadri submitted the *Memorandum* dated November 14, 2013,[10] which was noted by GS San Diego, recommending the approval of the deficiency tax assessments in the total amount of ₱841,571,221.53 and the issuance of a *Preliminary Assessment Notice* (PAN) against petitioner.

On November 19, 2013, petitioner received, through its Liquidator, the PAN dated November 18, 2024 with the *Details of Discrepancies,*[11] finding petitioner liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefits tax (FBT), documentary stamp tax (DST), with corresponding interests and compromise penalties, in the aggregate amount of ₱841,571,221.53.

On December 16, 2013, petitioner received, through its Liquidator, the *Formal Assessment Notice* (FAN) dated December 12, 2013 together with the *Details of Discrepancies* and *Assessment Notices*,[12] assessing petitioner of alleged deficiency taxes in the gross amount of ₱850,197,620.75, inclusive of interests and compromise penalties, detailed as follows:

Type of tax	Assessment No.	Basic tax	Interest	Compromise penalty	Total
Income tax	IT-125-LA33828-08-13-0154	₱252,391,853.20	₱225,423,783.68	₱50,000.00	₱477,865,636.88
VAT	VT-125-LA33828-08-13-0155	151,924,478.26	142,433,756.11	50,000.00	294,408,234.37
EWT	WE-125-LA33828-08-13-0156	8,303,473.69	7,853,010.24	50,000.00	16,206,483.93
WTC	WC-125-LA33828-08-13-0157	29,419,575.84	27,823,563.85	50,000.00	57,293,139.69
FBT	WR-125-LA33828-08-13-0158	650,450.38	615,163.45	20,000.00	1,285,613.83
DST	DS-125-LA33828-08-13-0159	1,597,910.20	1,515,601.85	25,000.00	3,138,512.05
	Total	**₱444,287,741.57**	**₱405,664,879.18**	**₱245,000.00**	**₱850,197,620.75**

[10] Exhibit "R-9", BIR Records, pp. 464 to 468; Paragraph 9, Admitted Facts, PTO, April 26, 2022, Docket – Vol. 2, p. 739.

[11] Exhibit "R-10", BIR Records, pp. 475 to 485; Paragraph 10, Admitted Facts, PTO, April 26, 2022, Docket – Vol. 2, p. 739.

[12] Exhibits "P-5" and "R-12", BIR Records, pp. 508 to 524. Paragraph 12, PTO, April 26, 2022, Docket – Vol. 2, p. 739.

On January 10, 2014, the Liquidator, on behalf of petitioner, filed a protest to the FAN,[13] arguing that the assessment is without basis in law or in fact and should be cancelled.

Thereafter, the BIR through Mr. Mitchell L. Yu, OIC Chief – RLTAD 2 issued the MOA No. TVN-125-2014-12 dated April 16, 2014[14] referring the protest to RO Fadri and GS San Diego for reinvestigation.

In the interim, the RTC – Branch 147, Makati City, issued the Order dated July 17, 2017[15] in Case No. R-MKT-17-02195-SP entitled *"In the Matter of the Liquidation of Prudentialife Plans Inc. Insurance Commission, Petitioner"* declaring petitioner as insolvent and dissolved. The Order directed all the creditors of petitioner to file their claim with the Liquidator on or before September 28, 2017. The said Order was published in *"Hataw"*, a newspaper of general circulation, on August 16 and 23, 2017.[16]

On May 25, 2018, the Liquidator submitted to the RTC – Branch 147, Makati City, the *Liquidation Plan*.[17] It treated the BIR as one of the preferred creditors of petitioner and made a recommendation on how to address the settlement of the amount of ₱3,835,659,031.09, representing final tax assessments inclusive of interests as of December 31, 2009.

On March 26, 2019, OIC-ACIR-LTS Teresita M. Dizon issued LOA No. eLA201600094192 / LOA-125-2019-00000041,[18] to replace the earlier LOA No. 33828 dated August 4, 2009, authorizing RO Fadri III and GS Ma. Daisy Dajao of the RLTAD 2 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from April 1, 2008 to March 31, 2009.

On July 3, 2020, petitioner, through its Liquidator, received the *Final Decision on Disputed Assessment* (FDDA) dated June 22, 2020 with *Assessment Notices*,[19] denying petitioner's protest, and declaring petitioner liable to pay deficiency income tax, VAT, EWT, WTC, FBT, and DST, in the gross amount of ₱1,307,337,964.92, broken down as follows:

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13 Exhibit "P-6", Docket – Vol. 2, pp. 785 to 795.
14 Exhibit "R-13", BIR Records, p. 581. Paragraph 14, Admitted Facts, PTO, April 26, 2022, Docket – Vol. 2, p. 739.
15 Exhibit "P-7", Docket – Vol. 2, p. 796.
16 *Ibid.*
17 Exhibit "P-11", Docket – Vol. 2, pp. 803 to 846.
18 Exhibit "P-2", BIR Records, p. 630.
19 Exhibits "P-17" and "R-15", BIR Records, pp. 666 to 680; Paragraph 15, Admitted Facts, PTO, April 26, 2022, Docket – Vol. 2, p. 739.

Type of tax	Assessment No.	Basic tax	Interest	Total
Income tax	IT-125-0000041-08-13-087	₱252,391,853.20	₱485,256,148.71	₱737,648,001.91
VAT	VT-125-0000041-08-13-088	151,924,478.26	298,836,967.99	450,761,446.25
EWT	WE-125-0000041-08-13-089	8,303,473.69	16,401,270.33	24,704,744.02
WTC	WC-125-0000041-08-13-090	29,419,575.84	58,110,428.78	87,530,004.62
FBT	WR-125-0000041-08-13-091	650,450.38	1,284,789.10	1,935,239.48
DST	DS-125-LA33828-08-13-0159	1,597,910.20	3,160,618.44	4,758,528.64
	Total	**₱444,287,741.57**	**₱863,050,223.35**	**₱1,307,337,964.92**

THE PROCEEDINGS BEFORE THIS COURT

On August 3, 2020, petitioner filed via electronic mail the present *Petition for Review with Motion to Waive Filing Fees and for Leniency.*[20] The hard copy of the petition was received by the Court on September 3, 2020.[21] The case was initially raffled to the Third Division.

Anent petitioner's *Motion to Waive Filing Fees and for Leniency*, the Executive Clerk of Court III, Atty. Christine C. Maza-Guarin, informed petitioner that it is not one of those exempt from paying legal fees as provided in Sections 18 and 21 of Rule 141 of the Rules of Court, and requested petitioner to pay the required filing fees.[22] In compliance thereof, petitioner paid the said fees on October 21, 2020.[23]

Respondent filed his *Answer* on January 25, 2021.[24]

The Pre-Trial Conference was initially set on June 3, 2021;[25] however, it was reset to September 14, 2021[26] and further reset and held on February 15, 2022.[27] Prior thereto, petitioner's *Pre-Trial Brief* and respondent's *Pre-Trial Brief* were both submitted to the Court on May 28, 2021.[28]

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20 Docket – Vol. I, pp. 15 to 41.
21 Docket – Vol. I, pp. 12 to 14.
22 Docket – Vol. I, pp. 42 to 43.
23 Docket – Vol. I, pp. 45 to 46.
24 Docket – Vol. I, pp. 260 to 282.
25 Notice of Pre-Trial Conference dated January 28, 2021, Docket – Vol. I, pp. 404 to 405.
26 Resolution dated June 16, 2021, Docket – Vol. 2, p. 685.
27 Notice of Resetting dated October 6, 2021, Docket – Vol. 2, p. 686; Minutes of the hearing held on, and Order dated February 15, 2022, Docket – Vol. 2, pp. 689 to 692.
28 Docket – Vol. 2, pp. 468 to 480; and 674 to 679, respectively.

On January 29, 2021, respondent submitted the *BIR Records* consisting of 704 pages in one (1) folder.[29]

Petitioner filed a *Motion to Admit with Reply (Re: Answer dated January 22, 2021)* on February 15, 2021.[30] In the Resolution dated February 24, 2021,[31] the Court granted said *Motion* and admitted petitioner's *Reply.*

On March 16, 2022, petitioner filed a *Manifestation (re: Order dated February 15, 2022)*,[32] stating that, despite discussion with the respondent, the parties were unable to agree upon a joint stipulation of facts for the instant case; and that the parties will simply maintain their respective Pre-Trial Briefs, and proceed to trial without the benefit of a mutual narration of events.

In the Resolution dated March 24, 2022,[33] the Court noted petitioner's *Manifestation* and deemed that the parties waived the filing of the Joint Stipulation of Facts. The Court then ordered the parties to submit their pre-marked documentary exhibits. In compliance therewith, petitioner submitted its *Compliance (Re: Resolution dated March 24, 2024)* on April 11, 2022,[34] while respondent submitted his *Compliance* on April 12, 2022.[35]

Thereafter, the Pre-Trial Order was issued on April 26, 2022,[36] deeming the termination of the Pre-Trial.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimony of its authorized Liquidator, Atty. Dionne Marie M. Sanchez.[37]

The *Formal Offer of Evidence* of petitioner was filed on May 27, 2022.[38] Respondent, however, failed to file his comment thereon.[39] In the

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29 Respondent's *Compliance* dated January 28, 2021, Docket – Vol. I, pp. 406 to 408.
30 Docket – Vol. I, pp. 411 to 429.
31 Docket – Vol. 2, p. 467.
32 Docket – Vol. 2, pp. 715 to 716.
33 Docket – Vol. 2, pp. 713 to 714.
34 Docket – Vol. 2, pp. 730 to 733.
35 Docket – Vol. 2, pp. 726 to 728.
36 Docket – Vol. 2, pp. 737 to 744.
37 Exhibit "P-20", Docket – Vol. 2, pp. 657 to 673; Minutes of the hearing held on, and Order dated, May 17, 2022, Docket – Vol. 2, pp. 745 to 747.
38 Docket – Vol. 2, pp. 748 to 756.
39 Records Verification Report dated August 4, 2022, issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 897.

Resolution dated September 13, 2022,[40] the Court admitted the offered exhibits of petitioner.

For his part, respondent offered the testimony of RO Fadri.[41]

On December 7, 2022, respondent filed his *Formal Offer of Evidence*,[42] to which petitioner filed its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence)* on December 23, 2022.[43] In the Resolution dated February 8, 2023,[44] the Court admitted all of respondent's offered exhibits.

On January 20, 2023, respondent filed a *Manifestation*[45] stating that he will adopt the arguments in his *Answer* as his *Memorandum*, considering that it already contains all the arguments subject of this case.

Petitioner's *Memorandum* was filed on March 17, 2023.[46]

Per this Court's Resolution dated June 13, 2023,[47] the present case was transferred to the Second Division of this Court.

The present case was considered submitted for decision on August 23, 2023.[48]

THE STIPULATED ISSUE

As stipulated by the parties, the issue for resolution of the Court is:

> Whether or not petitioner is liable to pay the amount of ₱1,307,532,964.90 representing petitioner's deficiency income tax, VAT, EWT, WTC, DST, FBT and compromise penalty, inclusive of surcharge and interest, for FY 2009, plus 25% surcharge and 20% deficiency and delinquency interest for late payment, pursuant to Section 249(C) of the National Internal Revenue Code (NIRC) of 1997, as amended; and delinquency

[40] Docket – Vol. 2, pp. 901 to 902.
[41] Exhibit "R-17", Docket – Vol. I, pp. 287 to 294; Minutes of the hearing held on, and Order dated November 23, 2022, Docket – Vol. 2, pp. 903 and 906 to 907, respectively.
[42] Docket – Vol. 2, pp. 908 to 918.
[43] Docket – Vol. 2, pp. 920 to 925.
[44] Docket – Vol. 2, pp. 936 to 937.
[45] Respondent's *Manifestation* dated January 20, 2023, Docket – Vol. 2, pp. 927 to 928.
[46] Docket – Vol. 2, pp. 938 to 968.
[47] Docket – Vol. 2, p. 971.
[48] Docket – Vol. 2, p. 972.

interest rate at 12% per annum from January 1, 2018 until the amount is fully paid pursuant to Section 249(A) of the same Code, as amended by the Tax Reform for Acceleration and Inclusion (TRAIN) Law.[49]

For an orderly disposition of the case, this Court finds it necessary to raise a corollary issue of whether the ROs who conducted the investigation of petitioner's books of accounts and accounting records were duly authorized.

Arguments of petitioner:

Petitioner argues that respondent is estopped from assessing it for failure to file a claim before the Liquidation Court. It likewise asserts that the period of respondent to assess the alleged deficiency taxes had already prescribed. Petitioner also posits that the Waiver was invalid for failure to comply with Revenue Memorandum Order (RMO) No. 20-90. It, finally, avers that respondent is estopped from collecting the alleged deficiency taxes for failure to collect the same within the period allowed by law.

Counter-arguments of respondent:

In his *Answer*, respondent contends that the Court's power of judicial review over decisions of the CIR on disputed assessment is by nature exclusive and appellate. Petitioner should not be allowed to raise issues for the first time on appeal. Respondent believes that he is not estopped from assessing the petitioner and that the period to assess is not yet prescribed. Respondent likewise argues that laches does not apply in this case and that petitioner is liable to pay the deficiency taxes due.

THE RULING OF THE COURT

The present *Petition for Review* is meritorious.

At the outset, the Court observes that the present tax assessments were different from the final assessments which were considered in the *Liquidation Plan* submitted to the RTC – Branch 147, Makati City, as the Liquidation Court, in the gross amount of amount of ₱3,835,659,031.09.[50] This is evident in the testimony of petitioner's witness, Atty. Dionne Marie M. Sanchez, during the May 17, 2022 hearing, when crossed examined by

[49] Stipulated Issues, PTO, April 26, 2022, Docket – Vol. 2, pp. 739 to 740.
[50] Exhibit "P-11", Docket – Vol. 2, pp. 803 to 846.

Atty. Marveen B. Dela Paz and from the clarificatory questions propounded by Associate Justice Ma. Belen M. Ringpis-Liban, as follows:[51]

Cross Examination of Atty. Dionne Marie M. Sanchez conducted by Atty. Marveen B. Dela Paz

ATTY. DELA PAZ

Q Ms. Witness, in your answer to question no. 37, you mentioned of creditors were given until 23 April 2018 to comment on the preliminary registry of claim, correct?

MS. SANCHEZ

A Yes, sir.

xxx xxx xxx

ATTY. DELA PAZ

Q In your answer to question no. 40, you mentioned that no creditors of note opposed the said preliminary registry of claims which includes the BIR, correct?

MS. SANCHEZ

A Yes, that is correct.

xxx xxx xxx

ATTY. DELA PAZ

Q In question no. 45, you mentioned of a claim of the BIR in the amount of 3.8 million, would you agree with me that this is a different claim from the current case before this Honorable Court?

MS. SANCHEZ

A Yes, this is a different claim[.] discovers (sic) [This covers] a different period.

xxx xxx xxx

JUSTICE LIBAN

I have a question. So, there is only one assessment in this case?

MS. SANCHEZ

A Yes, Your Honor, that is subject of this particular case one assessment.

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51 Transcript of Stenographic Notes, Hearing on May 17, 2022, pp. 7-9 and 20-21.

JUSTICE LIBAN

But you mentioned several other assessments, were there other assessments aside from this case?

MS. SANCHEZ

A Your Honor, there was one assessment which covered the period April 2009 until March 2010 and that was with the BIR pursued at the Liquidation court Level.

JUSTICE LIBAN

In other words, with regards to this assessment from April 2009 to 2010, the BIR actually complied with the guidelines?

MS. SANCHEZ

A Yes, Your Honor.

JUSTICE LIBAN

But with regards to this case, which is the assessment for what year?

MS. SANCHEZ

A 2008 to 2009 an earlier fiscal year.

JUSTICE LIBAN

There was no such action from the BIR?

MS. SANCHEZ

A Yes, Your Honor. (Boldfacing supplied)

Moreover, the distinction lies in the amounts involved. The Liquidation Court ordered the settlement of the aggregate amount of ₱3,835,659,031.09 via a compromise settlement,[52] which then resulted in the issuance of the *Certificate of Availment* dated December 18, 2018[53] by the CIR. On the other hand, in the present case, the amount involved was ₱1,307,337,964.92 per the FDDA dated June 22, 2020.[54] Additionally, the difference can be confirmed from the assessment numbers listed in the aforementioned *Liquidation Plan*[55] and the Order dated July 19, 2018[56] of the liquidation court *vis-a-vis* the herein subject *FDDA*, to wit:

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[52] Exhibit "P-13" (Order dated July 19, 2018), Docket – Vol. 2, pp. 848 to 851.
[53] Exhibit "P-15", Docket – Vol. 2, p. 854.
[54] Exhibits "P-17" and "R-15", BIR Records, pp. 666 to 680; Admitted Facts, par. 15, Pre-Trial Order dated April 26, 2022, Docket – Vol. 2, p. 739.
[55] Exhibit "P-11", Docket – Vol. 2, at p. 555.

Liquidation Court			**Subject FDDA**	
Type of tax	**Assessment No.**	**Amount**	**Assessment No.**	**Amount**
Income tax	IT-116-LOA-00000105-09-13-230	₱2,714,049,430.22	IT-125-0000041-08-13-087	₱737,648,001.91
VAT	VT-116-LOA-00000105-09-13-231	1,084,465,121.60	VT-125-0000041-08-13-088	450,761,446.25
EWT	WE-116-LOA-00000105-09-13-232	185,059,433.64	WE-125-0000041-08-13-089	24,704,744.02
WTC	WC-116-LOA-00000105-09-13-233	3,572,999.17	WC-125-0000041-08-13-090	87,530,004.62
FBT		-	WR-125-0000041-08-13-091	1,935,239.48
DST	DS-1116-LOA-00000105-09-13-234	16,434,363.59 1,927,682.87	DS-125-LA33828-08-13-0159	4,758,528.64
MC	MC-1116-LOA-00000105-09-13-235	150,000.00		-
Total		**₱3,835,659,031.09**		**₱1,307,337,964.92**

In view of the foregoing observations, the Court concludes that the present tax assessments are different from those included in the *Liquidation Plan* submitted to the Liquidation Court.

Be that as it may, the tax assessments involved in this case are void and, thus, need *not* be considered by the Liquidation Court. Foremost because the ROs, who conducted the investigation of petitioner's tax liabilities for FY 2009, were not duly authorized; and, as a consequence, the assessments issued were invalid and cannot be the bases in the collection of taxes.

Legal bases to resolve the issue raised by this Court.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) reads as follows:

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

56 Exhibit "P-13", Docket – Vol. 2, at p. 850.

Based on the foregoing provision, the Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.[57] Such authority of the Court is confirmed and recognized by the Supreme Court in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[58] *viz*:

> **On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > **SECTION 1. *Rendition of judgment.* – xxx**
> >
> > **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within authority to consider in its decision <u>the question on the scope of authority of the revenue officers who were named in the LOA</u> even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter. (Boldfacing and underlining supplied)

Moreover, in *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*,[59] the Supreme Court applied the afore-quoted Section 1, Rule 14 of the 2005 RRCTA in the following manner:

> As the CTA *En Banc* held, **the CTA Division was justified in ruling on the issue that respondent was denied due process <u>even though it was not expressly raised by respondent in its petition for review</u>.** xxx. (Boldfacing and underlining supplied)

Furthermore, in *Comilang vs. Burcena, et al.*,[60] the Supreme Court ruled that:

> Once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law. Indeed, the Rules of Court recognize the

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[57] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[58] G.R. No. 183408, July 12, 2017.
[59] G.R. No. 222476, May 5, 2021.
[60] G.R. No. 146853, February 13, 2006.

broad discretionary power of an appellate court to consider errors not assigned.

xxx xxx xxx

Thus, an appellate court is clothed with ample opportunity to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; **(c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice** or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; **(e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.**[61] (Boldfacing supplied)

On the bases of the foregoing jurisprudence, it is clear that the Court has the power to review a related issue even if not raised by the parties. Accordingly, the Court deems it proper to resolve the issue of whether the ROs who conducted the investigation of petitioner's books of accounts for FY 2009 were duly authorized in order to arrive with a just and complete determination of the case.

The ROs, who conducted the investigation of the books of accounts of petitioner, were not duly authorized; thus, the subject tax assessments were void.

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables the said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[62] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[63]

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[61] Cited also in *M/V "Don Martin Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, et al. vs. Hon. Secretary of Finance, et al.* (G.R. No. 160206, July 15, 2015), wherein the Supreme Court recognizes this Court's jurisdiction to determine an issue not raised by the parties.

[62] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

[63] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

The RO, thus, must be granted an authority before the conduct of examination or assessment of taxpayer's account. 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.[64]

The importance of the lack of the ROs' authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the revenue officers is tantamount to the absence of an LOA itself which results in a void assessment. Being a void assessment, the same bears no fruit.[65] Thus, in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[66]

Furthermore, in *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp., (McDonalds case)*[67] the Supreme Court elucidated that a new or amended LOA is necessary for the substitute ROs to continue the audit or investigation, *viz*:

> ***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:
>
>> 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**

64 *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
65 *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, supra.
66 *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020.
67 G.R. No. 242670, May 10, 2021.

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:

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)

xxx xxx xxx

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. **In the absence of such an authority, the assessment or examination is a nullity.** (Boldfacing supplied)

It is clear in the *McDonald's case* that the identification of ROs authorized to conduct the tax audit or investigation is part of due process.

Taxpayers need to be informed that the RO knocking at their door has the proper authority to examine their books of accounts; and, the authority is the LOA wherein the name of the RO is identified and all other details of the audit are stated. If any RO other than those named in the LOA conducts the examination and assessment, taxpayers would be unable to verify the existence of the authority of the RO; and, it is their right to know that the ROs actually conducting the examination and assessment are duly authorized to do so.

It was also in the *McDonald's case* that the Supreme Court categorically held that the LOA is the concrete manifestation of the grant of authority by the CIR or his duly authorized representatives to the ROs pursuant to Sections 6, 10(c) and 13 of the NIRC of 1997, as amended. It is a mistake to characterize the LOA as a document "issued" to the taxpayer, and that, once so issued, "any RO may then act pursuant to such authority."

Further, the *McDonald's case* firmly ruled that the use of MOA, Referral Memorandum or any other equivalent document directing the continuation of audit or investigation by an unauthorized RO is a usurpation of the functions of the LOA under the NIRC of 1997, as amended; and that issuances referring to reassignment of the audit or investigation from one RO to another and the actual authority of the RO who will conduct the actual audit or investigation are different. Thus, it is specifically required to issue a new LOA if ROs are reassigned or transferred, to wit:

> ***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 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.

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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 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 a 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), 64(64) and revalidation of L/As 65(65) 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.**

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 LIAs 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.

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> 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) of 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 discontinued. (Boldfacing and underlining supplied)

In *Republic of the Philippines vs. Robiegie Corporation*,[68] the Supreme Court held that the **LOA is the statutorily designated means by which respondent delegates his investigative powers to the BIR revenue officers**, to quote:

> xxx. The Republic's construction of Section 13 of the NIRC to mean that an LOA is not an authorization but a mere notice of investigation to the taxpayer is blatantly contrary to the text of the law. First, the concept of authorization is inherent in the very language of Sections 6(A) and 13 of the NIRC, which speak of a 'duly authorized representative' and a 'Letter of Authority.' Second, the phrase 'pursuant to' in Section 13 means 'in the course of carrying out, in conformance to or agreement with, [or] according to.' **Thus, an RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a <u>validly issued LOA</u>. Stated differently, under the NIRC, the investigatory powers of the ROs flow from the <u>LOA</u>, which is the <u>statutorily designated means</u> by which the CIR delegates its investigative powers to the BIR revenue officers.** (Boldfacing and underlining supplied)

[68] G.R. No. 260261, October 3, 2022.

Records show that the original LOA No. 33828 dated August 4, 2009,[69] was issued by OIC-ACIR –LTS Garcia. It authorized ROs Atienza, Lim, Saga, and Morales, under GS Maroket, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for FY 2009. However, OIC Chief – RLTAD 2 Guzman, assigned the case to RO Fadri and GS San Diego for the *"[c]ontinuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office"* through the issuance of MOA No. LOA-125-2013-162 dated April 1, 2013.[70]

Subsequently, RO Fadri submitted the *Memorandum* dated November 14, 2013,[71] which was noted by GS San Diego, recommending the issuance of a PAN. As a matter of course, the PAN dated November 18, 2013 with *Details of Discrepancies*[72] were issued to petitioner. Thereafter, another *Memorandum* dated December 9, 2013[73] was submitted by RO Fadri and noted by GS San Diego recommending the issuance of a FAN. Hence, the FAN together with the *Details of Discrepancies* and *Assessment Notices*,[74] were issued on December 12, 2013 assessing petitioner of alleged deficiency taxes in the gross amount of ₱850,197,620.75, inclusive of interests and compromise penalties.

At this juncture, the Court notes that neither RO Fadri nor GS San Diego was given the proper authority to continue the audit/investigation of petitioner's books of accounts for FY 2009. There was no new LOA issued under their names. Nonetheless, RO Fadri and GS San Diego continued the investigation which resulted in the issuance of the PAN and FAN to petitioner.

Such act of RO Fadri and GS San Diego is not sanctioned by law. The absence of an LOA in their favor will not make their examination of petitioner's books of accounts and accounting records for FY 2009 valid. Paradoxically, the examination violates petitioner's right to due process. *Apropos*, the tax assessments issued in violation of the due process rights are null and void.[75]

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69 Exhibit "R-3", BIR Records, p. 1; Admitted Facts, par. 2, Pre-Trial Order dated April 26, 2022, Docket – Vol. 2, p. 738.
70 Exhibit "R-1", BIR Records, p. 370; Admitted Facts, par. 2, Pre-Trial Order dated April 26, 2022, Docket – Vol. 2, p. 738.
71 Exhibit "R-9", BIR Records, pp. 464 to 468.
72 Exhibit "R-10", BIR Records, pp. 475 to 485.
73 Exhibit "R-11", BIR Records, pp. 496 to 500.
74 Exhibits "P-5" and "R-12", BIR Records, pp. 508 to 524. Admitted Facts, par. 12, Pre-Trial Order dated April 26, 2022, Docket – Vol. 2, p. 739
75 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

It is true that MOA No. LOA-125-2013-162 dated April 1, 2013 was issued to RO Fadri and GS San Diego for the continuance of the audit to replace previously assigned ROs. However, the said MOA is not an LOA contemplated by the rules and jurisprudence. It was not issued by the CIR or his duly authorized representative for the purpose of vesting upon RO Fadri and GS San Diego the authority to examine petitioner's books of accounts. In fact, the said MOA usurps the statutory power of the respondent or his duly authorized representative. This is because the MOA was issued by a BIR Official (Mr. Guzman, OIC Chief – RLTAD 2), who is not among the authorized BIR officials empowered[76] to issue an LOA.

Likewise, the subsequent issuance of LOA No. eLA201600094192 / LOA-125-2019-00000041 dated March 26, 2019[77] by OIC-ACIR-LTS Dizon did not cure the lack of authority of RO Fadri. This is because the same was only issued on <u>March 26, 2019</u> while the investigation was conducted sometime on <u>April 1, 2013</u>, upon issuance of the MOA, until its conclusion on <u>December 9, 2013</u>, upon the submission of the *Memorandum* report recommending the issuance of the FAN.

The Court holds that the subject tax assessments issued against petitioner for FY 2009 are void for lack of authority of RO Fadri and GS San Diego to examine petitioner's books of accounts and accounting records for the said period. Being void assessments, the same bear no fruit.[78]

It is a hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act.[79] The subject tax assessments, therefore, cannot be legally enforced against petitioner. With that said, it becomes unnecessary to address the stipulated issue and other arguments raised by the parties.

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

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[76] Among the BIR officials, authorized by law and BIR issuance, to issue Letter of Authority are the <u>Commissioner of Internal Revenue</u> [Section 6(A) of the NIRC of 1997, as amended], the <u>Revenue Regional Directors</u> [Sections 10(c) and 13 of the NIRC of 1997, as amended], the <u>Deputy Commissioners</u> [Section D(4) of Revenue Memorandum Order No. 43-90], and <u>other BIR officials authorized by the CIR such as the Assistant Commissioners</u> and <u>Head Revenue Executive Assistants</u> [No.2, Roman Number II, Revenue Memorandum Order No. 29-2007].

[77] Exhibit "P-2", BIR Records, p. 630.

[78] Refer to *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, supra.

[79] *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201225-26, 201132 and 201133, April 18, 2018.

Accordingly, the Formal Assessment Notice dated December 12, 2013 and the Final Decision on Disputed Assessment dated June 22, 2020, issued against petitioner, for the deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, fringe benefit tax, and documentary stamp tax, inclusive of interests in the amount of ₱1,307,337,964.92, and compromise penalties in the sum of ₱195,000.00, or in the aggregate amount of ₱1,307,532,964.92, for the period April 1, 2008 to March 31, 2009, are **CANCELLED** and **SET ASIDE**.

Respondent and/or the concerned officers of the Bureau of Internal Revenue are hereby **ENJOINED** to **REFRAIN** from collecting the said amount from petitioner.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

On judicial leave
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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's Division.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Acting 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