REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

BIOENERGY 8 CORPORATION, Petitioner,	**CTA CASE NO. 10260**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 05 2024 4:30 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Bioenergy 8 Corporation's (**petitioner**'s) "Motion for Reconsideration (Re: Decision [d]ated 16 January 2024)"[1] (**MR**), filed *via* LBC on 13 February 2024, without respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) comment despite due notice.[2]

Petitioner seeks the reversal and setting aside of this Court's Decision[3] promulgated on 16 January 2024 (**assailed Decision**) in the above-captioned case, which dismissed the instant Petition for Review[4] for lack of jurisdiction.

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1 Division Docket, Volume II, pp. 901-918.
2 *Per* Records Verification dated 17 April 2024, id., p. 924.
3 Id., pp. 862-900.
4 Id., Volume I, pp. 7-82, with annexes.

In the assailed Decision[5], this Court held that it has no jurisdiction over the present petition, deeming it premature. Petitioner filed a judicial appeal following its receipt of Regional Director Esmeralda M. Tabule's (**RD Tabule**'s) Letter dated 27 December 2019[6] (**Denial Letter**), which denied petitioner's Request for Reconsideration[7] filed before the Office of the Commissioner (**OCIR**). Such denial was made without approval or proof of delegated authority from respondent. Consequently, there is still no "final decision" reviewable by this Court.

This Court noted that petitioner's only recourse is to await respondent's final decision on its administrative appeal, as it clearly opted for the *second remedy*, *i.e.*, to await respondent's final decision and appeal the said decision before the Court of Tax Appeals (**CTA**) within thirty (30) days from receipt thereof (instead of the first remedy, *i.e.*, to appeal to the CTA within 30 days from the date of receipt of RD Tabule's Denial Letter).

In the instant MR[8], petitioner insists that this Court has jurisdiction over the present petition as RD Tabule's Denial Letter constitutes a clear and explicit denial of petitioner's administrative appeal, and as such, should be treated as respondent's final decision, making it appealable to this Court. Additionally, petitioner points out that respondent admitted that RD Tabule's Denial Letter pertains to the pending Request for Reconsideration filed before the OCIR. This admission, according to petitioner, qualifies as an exercise of respondent's delegated authority.

Petitioner also argues that the case records clearly show that the relaxation of the rule on exhaustion of administrative remedies is warranted. In support of this argument, petitioner asserts that the exhaustion of administrative remedies may be dispensed with because its right to due process was violated.

Specifically, petitioner claims that the Bureau of Internal Revenue (**BIR**) failed to issue a new Letter of Authority (**LOA**), authorizing Revenue Officer Cynthia O. Nedamo (**RO Nedamo**), under the supervision of Group Supervisor Ma. Afrecy L. Barbiran (**GS Barbiran**),

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5 Supra at note 3.
6 Exhibit "P-35", Division Docket, Volume I, p. 358; Exhibit "R-7", BIR Records, p. 802.
7 Exhibit "P-32", id., pp. 350-355.
8 Supra at note 1.

to conduct the reinvestigation of petitioner's books of account and accounting records. As such, petitioner maintains that the Assessment Notices (**ANs**) and the Final Decision on Disputed Assessment (**FDDA**) should be struck down for being invalid and for being issued in violation of its constitutional right to due process.

Petitioner further contends that respondent is estopped from disputing RD Tabule's Denial Letter.[9] This is because respondent acknowledged the existence and due execution of RD Tabule's Denial Letter in the Joint Stipulation of Facts and Issues[10] (**JSFI**). Furthermore, respondent included such Denial Letter as part of his or her exhibits in this case, specifically as Exhibit "R-7".

Assuming that RD Tabule's issuance of the Denial Letter is *ultra vires,* petitioner argues that such an administrative action constitutes grave abuse of discretion, amounting to a lack or excess of jurisdiction. As a result, this situation presents a clear exception to the rule on exhaustion of administrative remedies.

Lastly, petitioner asserts that this Court should take cognizance of this case to ensure its orderly disposition and in the interest of substantial justice. Petitioner emphasizes that the tax assessment at issue began in 2013 and has been pending for over ten (10) years.

We rule below.

After due consideration of petitioner's arguments, this Court finds the instant MR[11] bereft of merit.

At the outset, the Court finds no new matters or arguments that were not considered in the assailed Decision.[12] Petitioner essentially reiterated and built upon the arguments earlier passed upon and rejected by this Court. Nonetheless, if only to put petitioner's mind to rest, this Court will clarify the basis for the assailed Decision.

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9 Exhibit "P-35"/Exhibit "R-7", supra at note 6.
10 Division Docket, Volume I, pp. 381-389.
11 Supra at note **Error! Bookmark not defined.**.
12 Supra at note 3.

THE COURT OF TAX APPEALS (CTA) HAS NO JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

Contrary to petitioner's contention and as explained in the assailed Decision[13], RD Tabule's Denial Letter[14] cannot be treated as respondent's final decision appealable to this Court as there is no evidence on record to show that respondent delegated his or her authority to resolve petitioner's Request for Reconsideration (of the FDDA) to RD Tabule.

The case records confirm that petitioner filed a Protest[15] against the Formal Letter of Demand with Details of Discrepancies and Assessment Notices[16] (**FLD/FAN**) with then Regional Director Romulo L. Aguila, Jr. (**RD Aguila**) of Revenue Region (**RR**) No. 19-Davao City and, after the Protest was denied by then OIC-RD Nuzar N. Balatero (**OIC-RD Balatero**) through the FDDA dated 20 April 2017[17], pursued an administrative appeal with the OCIR.

It is evident that petitioner chose to await respondent's final decision, which is the decision that can be appealed to this Court within 30 days of receipt. As explained in the assailed Decision, the only way for an assessment (subject of an administrative appeal before the OCIR) to be reviewable and appealable to this Court is when the CIR, himself or herself, renders a decision. Unfortunately for petitioner, the instant appeal was filed based merely on the receipt of RD Tabule's Denial Letter, which is premature as it is not sanctioned under the prevailing rules and lacks proof that respondent delegated authority to RD Tabule to act on his or her behalf.

To reiterate, petitioner has in fact recognized in its Letter dated 14 February 2020[18] addressed to then Regional Director Joseph M. Catapia (**RD Catapia**) of the same RR No. 19-Davao City, asking a clarification on RD Tabule's Denial Letter, that a mere RD has no authority to approve or deny a request for reconsideration filed before

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13 Supra at note 3.
14 Exhibit "P-35"/Exhibit "R-7", supra at note 6.
15 Exhibit "P-29", id., pp. 342-345.
16 Exhibit "P-28", Division Docket, Volume I, pp. 337-341; Exhibits "R-4" and "R-4-a" to "R-4-d", BIR Records, pp. 127-132.
17 Exhibit "P-31"/Exhibit "R-6", id., pp. 347-349.
18 Exhibit "R-8", BIR Records, p. 81 (Note: The letter consists of three [3] pages, all marked p.81).

the OCIR pursuant to Revenue Administrative Order (**RAO**) No. 03-14[19], as amended by RAO No. 04-17.[20] The BIR Records also bear out a Letter-Reply dated 09 June 2020[21] issued by RD Catapia, informing petitioner that "[the 2012 tax docket with eLA No. 201000076259 dated 05 September 2013] will be forwarded to the Tax Appellate Division to properly facilitate [petitioner's] request for reconsideration...".

Considering that petitioner's administrative appeal is still pending before the OCIR, and consistent with Section 3 of Revenue Regulations (**RR**) No. 12-99[22], as amended by RR No. 18-2013[23], which clearly provides that the CIR decides the administrative appeal from the decision of the duly authorized representative, RD Tabule's decision cannot be deemed as respondent's decision without evidence that she was duly authorized to issue it on respondent's behalf. In fact, it is void for being *ultra vires*. Therefore, petitioner's management erroneously regarded RD Tabule's Decision as equivalent to a denial from respondent.

Notably, even though respondent acknowledged the existence and due execution of RD Tabule's Decision in the JSFI[24], this does not imply that respondent ratified or delegated authority to RD Tabule to act on his or her behalf. In fact, in respondent's Answer, they categorically disputed petitioner's claim that RD Tabule's decision constitutes a final decision appealable before this Court.

It is worth mentioning that respondent cannot be estopped from denying RD Tabule's authority to issue the Denial Letter on his or her behalf. In matters of taxation, the government cannot be estopped by the mistakes, errors or omissions of its agents, for upon it depends the ability of the government to serve the people for whose benefit taxes are collected.[25]

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19 *Organization and Functions of the Regional Offices, Its Divisions & Sections and Revenue District Offices.*

20 *Amendment of Revenue Administrative Order (RAO) No. 3-2014 dated November 5, 2014 Defining the Functions of the Offices of the Regional Director and Assistant Regional Director.*

21 BIR Records.

22 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

23 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

24 Supra at note 10.

25 *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corporation*, G.R. No. 212920, 16 September 2015.

Regarding petitioner's allegation that the rule on exhaustion of administrative remedies may be dispensed with due to an alleged violation of its right to due process, a review of the case records confirms that no such violation occurred in this case.

A NEW LETTER OF AUTHORITY (LOA) IS NOT NECESSARY TO AUTHORIZE REVENUE OFFICER (RO) NEDAMO AND GROUP SUPERVISOR (GS) BARBIRAN TO REINVESTIGATE PETITIONER'S DEFICIENCY TAX ASSESSMENTS.

Petitioner contends that its constitutional rights to due process (in the conduct of its audit leading to the issuance of the assessment) were violated as the RO who conducted the **reinvestigation** was not authorized by a new LOA.

We disagree.

The National Internal Revenue Code (**NIRC**) of 1997, as amended, does require that an investigating officer be duly clothed with authority from the CIR (or from his duly authorized representatives) before an audit examination takes place. Section 6 thereof thus provides:

> ...
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> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however*; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[26]
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> ...

[26] Emphasis supplied and italics in the original text.

Relatedly, Section 13 of the NIRC of 1997, as amended, states:

> ...
> SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[27]
> ...

However, while the law explicitly requires a valid LOA to be addressed to an RO before an examination of a taxpayer's books (and subsequently recommend the issuance of an assessment), the law does not specifically require the same for purposes of issuing a recommendation towards the FDDA.

Evidently, the above-discussed LOA requirement pertains to the stage of the administrative proceedings where the RO and GS would conduct an audit of the books of accounts and other accounting records of the taxpayer after the filing of the latter's tax returns, and ultimately recommend the issuance of a Preliminary Assessment Notice (**PAN**) and an FLD/FAN.

Alternatively stated, a valid LOA is necessary for all the stages of the administrative proceedings until the issuance of the FAN. It does not envision a situation where a **reinvestigation** will have to be conducted to arrive at a final decision upon an administrative protest to the FAN (to be set forth in an FDDA).

Moreover, even assuming that an LOA is required to conduct the reinvestigation, its absence would only invalidate the resulting *decision*, such as the FDDA. The Supreme Court elucidated the relevant distinctions in the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[28] (**Liquigaz**) where it held:

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27 Emphasis supplied and italics in the original text.
28 G.R. Nos. 215534 and 215557, 18 April 2016; Citations omitted, emphasis supplied and italics in the original text.

...

A void FDDA does not ipso facto render the assessment void.

...

In resolving the issue on the effects of a void FDDA, it is necessary to **differentiate an 'assessment' from a "decision."** In *St. Stephen's Association v. Collector of Internal Revenue,* the Court has long recognized that a "decision" — differs from an "assessment," to wit:

> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by Section II of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of Section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review "*decisions* of the Collector of Internal Revenue in cases involving *disputed assessment...*"

The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. **From the foregoing, it is clear that what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.**

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. **As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer**. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other— unless the law or regulations otherwise provide.**
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> ...
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> The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment**.
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> As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.
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> ...
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> To recapitulate, **a "decision" differs from an "assessment" and failure of the FDDA to state the facts and law on which it is based renders the decision void—but not necessarily the assessment**. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.
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> ...

Clearly, a decision on a disputed assessment is distinct from the assessment that preceded it. Hence, in consideration of the foregoing, the invalidity of one would not necessarily result in the invalidity of the other.

In the instant case, it is undisputed that Revenue Officer Abolhasan Balindong (**RO Balindong**) and Group Supervisor Saripoden Bantog (**GS Bantog**) examined petitioner's books of accounts and other accounting records and recommended the issuance of the PAN[29] and the FLD/FAN[30] (**FLD/FAN**) under the validly issued LOA dated

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[29] Exhibit "P-25", Division Docket, Volume I, pp. 333-334; Exhibit "R-3", BIR Records, pp. 124-125.
[30] Exhibit "P-28"/Exhibits "R-4" and "R-4-a" to "R-4-d", supra at note 16.

05 September 2013[31] with Reference No. LOA-132-2013-00000378 (SN: eLA201000076259). Nonetheless, at the onset, petitioner had only questioned the authority of the team assigned to evaluate its Protest[32] against the FLD/FAN, requesting for a reinvestigation and the submission of supporting documents.

As the records bear, petitioner protested the FLD/FAN on 15 December 2015, by filing a Request for Reinvestigation.[33] **Pursuant to Revenue Memorandum Order (RMO) No. 69-2010 dated 11 August 2010[34], a Memorandum of Assignment (MOA) shall be issued for protested cases or cases for reinvestigation.** Furthermore, RMO No. 08-06 dated 01 February 2006[35] provides that protested cases under reinvestigation shall not be assigned to the same RO who handled the original investigation. Accordingly, the reinvestigation of petitioner's alleged deficiency tax liabilities was properly referred to a different RO, specifically RO Nedamo, under the team of GS Barbiran.

Indeed, then Revenue District Officer Rodrigo L. Rivamonte (**RDO Rivamonte**), who issued the letter[36] authorizing RO Nedamo to conduct the reinvestigation, is not among the authorized representatives (as contemplated under Section 6[37] of the NIRC of 1997, as amended, and supplemented[38] by RMO No. 43-90[39] and RMO No. 29-2007[40]) who may authorize the examination of any taxpayer and the assessment of the correct amount of tax. The said letter, thus, does not carry the same power as a duly-issued LOA.

31 Exhibit "P-40", Division Docket, Volume I, p. 329; Exhibit "R-1", BIR Records, p. 8.

32 Exhibit "P-29", supra at note 155.

33 Id.

34 Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.

35 Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

36 BIR Records, p. 689.

37 SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*
(A) *Examination of Returns and Determination of Tax Due.* After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax[.]

38 Section D(4) of RMO No. 43-90 provides that deputy commissioners (DCIRs), and other BIR officials authorized by the CIR himself are permitted to issue an LOA. Among the BIR officials expressly authorized by the CIR (under RMO No. 29-2007) to issue an LOA are the Assistant Commissioners (ACIRs) and Head Revenue Executive Assistants (HREAs).

39 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

40 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

However, the same should not invalidate the FLD/FAN **previously issued** against petitioner. To be clear, the FDDA dated 20 April 2017[41], signed by then OIC-RD Balatero, which was issued upon the recommendation of RO Nedamo, is **not** for an assessment but for a decision on a disputed assessment. In any case, applying the precepts in the *Liquigaz* case, a void FDDA would not *ipso facto* render the assessment void.

Petitioner anchors its position on the Supreme Court's pronouncements in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[42], which explored the purpose of the LOA:

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> **To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts.** The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. **If any revenue officer other than those named in the LOA conducted the <u>examination and assessment</u>, 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 <u>examination and assessment</u>**, 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.
>
> ...

Petitioner's reliance on the above ruling is misplaced.

As previously established, **the reinvestigation is conducted in connection with a taxpayer's protest against the FLD/FAN**. As exemplified by the very fact that there is already an FLD/FAN, the said reinvestigation procedures occur subsequent to the issuance of the assessment.

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[41] Exhibit "P-31"/Exhibit "R-6", supra at note 17.
[42] G.R. No. 242670, 10 May 2021; Emphasis and underscoring supplied.

As a point of further contrast, in a reinvestigation, no ROs will be "knocking at a taxpayer's door". Inversely, it is the taxpayer (aggrieved from the results of the examination of its records, as laid out in the issued assessment) who proceeds to the pertinent offices of the BIR to dispute (or protest) the assessment.

Moreover, in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[43] (**Sony Philippines**), it is emphasized that ROs duly authorized *via* LOA must not go beyond the authority given to them. As an incident of the taxpayer's remedy of seeking reinvestigation, it is the taxpayer that determines the extent of the evidence that the BIR will be able to review or peruse. This is in accordance with the latter's responsibility to submit all relevant supporting documents (in connection with the request for reinvestigation) within sixty (60) days from the filing of the protest.[44]

The Court *En Banc* had likewise aired this view in its recent case of *Commissioner of Internal Revenue v. RCL Feeders Phils., Inc.*[45], where it proclaimed that after the issuance of the FAN, an LOA is not necessary to authorize the new RO to reinvestigate the CIR's deficiency tax assessments.

It echoed the same ruling in *Commissioner of Internal Revenue v. Titanium Corporation*[46], where the Court *En Banc* took effort to clarify that the subject FDDA therein was void not because the RO who conducted the reinvestigation of therein respondent's tax liabilities was not duly authorized through a validly issued LOA, but as a consequence of a void assessment. It thus enunciated that "while the law requires explicitly an LOA to be given to the appropriate [RO] before an examination of a taxpayer and the assessment of the correct amount of tax may be had, the law does not explicitly require the same before reinvestigation and for the purpose of recommending the issuance of [an] FDDA".[47]

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43 G.R. No. 178697, 17 November 2010.
44 See Par. 4, Section 228(e), NIRC of 1997, as amended.
45 CTA EB Case No. 2772, 29 April 2024.
46 CTA EB Case No. 2502, 13 February 2023.
47 Id.

Accordingly, the absence of a valid LOA for the team assigned to evaluate petitioner's Protest[48] is not fatal to the FDDA[49], much less to the FLD/FAN.[50]

All told, this Court sees no cogent reason to warrant a reconsideration or modification of the assailed Decision.[51]

WHEREFORE, in view of the foregoing, petitioner's "Motion for Reconsideration (Re: Decision [d]ated 16 January 2024)", filed on 13 February 2024, is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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48 Exhibit "P-29", supra at note 15.
49 Exhibit "P-31"/Exhibit "R-6", supra at note 17.
50 Exhibit "P-28"/Exhibits "R-4" and "R-4-a" to "R-4-d", supra at note 16.
51 Supra at note 3.