22-000645-0068

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11043

BRILLIANT CREATIONS PUBLISHING, INC., Duly Represented herein by its Authorized Representative, Ms. Ria A. Sablon,

Petitioner,

- versus -

NOTICE OF DECISION

THE COMMISSIONER OF INTERNAL REVENUE (CIR), BUREAU OF INTERNAL REVENUE (BIR),

Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. DAYNE B. MEDINA
ATTY. SHEEHERAZADEE A. LABOR-MORAN
ATTY. JUFFERSON D. VIERNES
Bureau of Internal Revenue, Revenue Region No. 7A
Legal Division, Room 516, Roof Deck, Fisher Mall
Quezon Avenue corner Fernando Poe Jr., Avenue
Quezon City

ATTY. ERIC R. CORTES
Unit 103, AIC Burgundy Empire Tower
Sapphire Road, Ortigas Center, Brgy. San
Antonio, Pasig City 1605

GREETINGS:

You are hereby notified by these presents that on **June 20, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 24, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BRILLIANT CREATIONS PUBLISHING, INC., Duly Represented herein by its Authorized Representative, Ms. Ria A. Sablon, *Petitioner,*	**CTA CASE NO. 11043**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE (CIR), BUREAU OF INTERNAL REVENUE (BIR), *Respondent.*	Promulgated: JUN 20 2025, 8:40AM

x- -x

DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*[1] seeking the reversal of respondent Commissioner of Internal Revenue (CIR)'s Decision dated September 2, 2022[2] (assailed *Decision*), which affirmed the assessment against petitioner in the aggregate amount of ₱9,833,631.48, representing deficiency income tax (IT) and expanded withholding tax (EWT) for the taxable year (TY) 2014.

THE PARTIES

Petitioner Brilliant Creations Publishing, Inc. is a corporate taxpayer duly organized and existing under Philippine laws with business address at 3/F Bonanza Plaza 2 Building,

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[1] Docket – Vol. I, pp. 7–30.
[2] Docket – Vol. I, pp. 464–475, Exhibit "P-1"; BIR Records, pp. 669–680, Exhibit "R-11".

Block 1 Lot 6, Hilltop Subdivision, Barangay Greater Lagro, 1147 Novaliches, Quezon City.[3]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), vested by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, as well as related statutes and their implementing rules and regulations. Respondent holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

THE FACTS

On August 20, 2015,[5] petitioner received a Letter of Authority (LOA) with SN: eLA201200022496/LOA-028-2015-00000514 dated August 10, 2015,[6] authorizing Revenue Officer (RO) Dante Tan and Group Supervisor (GS) Jocelyn Hernandez of Revenue District Office (RDO) No. 28-Novaliches to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2014 to December 31, 2014.

On May 17, 2017, respondent issued a Preliminary Assessment Notice (PAN),[7] which petitioner received on the same date.

On June 13, 2017, petitioner received the Formal Letter of Demand (FLD) with Final Assessment Notice (FAN),[8] to which it filed a protest[9] on July 13, 2017, requesting reconsideration.

On October 5, 2018, the Regional Director of Revenue Region No. 7-Quezon City, Marina C. De Guzman, issued a Final Decision on Disputed Assessment[10] (FDDA), which petitioner received on October 16, 2018.

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[3] Docket – Vol. I, p. 389, *Joint Stipulation of Facts and Issues* (JSFI), Admitted Facts, par. 1; 416, Pre-Trial Order, III. Admitted Facts and Stipulation of Facts, par. 1.
[4] Docket – Vol. I, p. 389, JSFI, Admitted Facts, par. 2; 416–417, Pre-Trial Order, III. Admitted Facts and Stipulation of Facts, par. 2.
[5] BIR Records, p. 2, Exhibit "P-2-a".
[6] BIR Records, p. 2, Exhibits "P-2" and "R-1".
[7] Docket – Vol. I, pp. 482–492, Exhibit "P-9"; BIR Records, pp. 190–200, Exhibit "R-7".
[8] BIR Records, pp. 219–232, Exhibits "P-10", "P-10-a", "P-10-b" & "P-10-c" and "R-8", "R-8-A" & "R-8-B".
[9] Docket – Vol. I, pp. 494–502, Exhibit "P-11".
[10] Docket – Vol. I, pp. 503–513, Exhibit "P-12"; BIR Records, pp. 326–336, Exhibit "R-10".

On November 15, 2018, petitioner appealed the FDDA to respondent by filing a protest.[11]

In the assailed *Decision* dated September 2, 2022,[12] respondent denied petitioner's request for reconsideration of the FDDA, the dispositive portion of which is quoted below:

> **WHEREFORE**, predicated on the foregoing, the Final Decision on the Disputed Assessment, dated October 5, 2018, demanding the payment of the aggregate amount of **₱9,833,631.48,** representing deficiency IT and EWT for the taxable year 2014 is hereby **AFFIRMED**.
>
> Consequently, this Office hereby orders **Brilliant Creations Publishing, Inc.** to pay ₱9,833,631.48, including interests that may have accrued thereon until actual payment thereof, to the Collection Service, BIR National Office Building, Diliman, Quezon City; otherwise, the collection thereof shall be effected through summary remedies provided by law.
>
> This constitutes the **Final Decision** of this Office on the matter.

On November 7, 2022, petitioner received the assailed *Decision*.[13]

Subsequently, a Warrant of Distraint and/or Levy[14] (WDL) dated November 10, 2022 was issued and received by petitioner on the same date.[15]

On December 7, 2022, petitioner filed the present *Petition for Review*.[16]

On January 9, 2023, the Court directed petitioner to submit the names of its intended witnesses, summaries of their testimonies, their Judicial Affidavits, and a list of documentary exhibits to be presented, within ten (10) days from notice.[17]

Meanwhile, on January 18, 2023, respondent issued a Warrant of Garnishment to BDO Unibank, Inc.,[18] to which the

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11 Docket – Vol. I, pp. 514–522, Exhibit "P-13"; BIR Records, pp. 566–574.
12 Docket – Vol. I, pp. 464–475, Exhibit "P-1"; BIR Records, pp. 669–680, Exhibit "R-11".
13 BIR Records, p. 680, Exhibit "R-11".
14 Docket – Vol. I, p. 523, Exhibit "P-14"; BIR Records, p. 682, Exhibit "R-12".
15 *Id.*
16 *Supra* note 1.
17 Docket – Vol. I, p. 223, Minute Resolution.
18 BIR Records, p. 707, Exhibit "R-25".

latter garnished the amount of ₱1,102,494.22 as relayed in its letter dated February 10, 2023.[19]

On January 26, 2023, petitioner filed its *Compliance Re Order dated 09 January 2023 With Prayer for Additional Time to Submit Judicial Affidavit of Additional Witnesses*,[20] which the Court granted on February 9, 2023.[21]

On February 13, 2023, the Court issued *Summons*,[22] directing respondent to file an answer within thirty (30) days from notice.

On April 14, 2024, respondent filed a *Motion to Admit (Attached Answer to the Petition for Review dated December 7, 2022)*,[23] along with the attached *Answer*.[24] The Court granted the motion and admitted the Answer on April 26, 2023.[25]

The case was referred to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on June 8, 2013.[26] However, on June 13, 2023, the PMC-CTA issued Form No. 6 - No Agreement to Mediate, indicating that the parties had decided not to have their case mediated.[27]

On June 20, 2023, petitioner filed an *Urgent Motion for Issuance of TRO and/or Injunction to Suspend Tax Collection*,[28] to which respondent failed to file a comment.[29]

On June 30, 2023, the Court issued a *Notice of Pre-Trial Conference*,[30] setting the case for pre-trial on August 31, 2023.

On August 29, 2023, petitioner's *Pre-Trial Brief*[31] and *Respondent's Pre-Trial Brief*[32] were filed.

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[19] BIR Records, p. 708.
[20] Docket – Vol. I, pp. 225–228.
[21] *Id.* at 239–240.
[22] *Id.* at 259.
[23] *Id.* at 264–266.
[24] *Id.* at 267–272.
[25] *Id.* at 277, Resolution.
[26] *Id.* at 280–281, Resolution dated May 23, 2023.
[27] *Id.* at 282.
[28] *Id.* at 283–285.
[29] *Id.* at 313, Records Verification dated August 24, 2023.
[30] *Id.* at 290–292.
[31] *Id.* at 314–318.
[32] *Id.* at 319–327.

During the pre-trial conference, the parties were given 15 days to file a Joint Stipulation of Facts and Issues (JSFI).[33]

On October 5, 2023, respondent filed a *Manifestation*[34] stating that the amount of ₱1,102,494.22 had been garnished from petitioner's bank account and credited to the BIR.

The parties filed their JSFI on October 6, 2023,[35] which the Court approved in a Resolution dated October 16, 2023.[36] The Court issued the Pre-Trial Order[37] on November 10, 2023, marking the termination of the pre-trial.

On November 15, 2023, petitioner presented the testimonies of its three witnesses:[38] (1) Ms. Ria A. Sablon, Tax Consultant,[39] (2) Ms. Regina Niña Cruz, then Disbursing Staff[40] and (3) Ms. Maria Angela C. Parma, member of the Board of Directors.[41]

On December 11, 2023, petitioner filed its *Formal Offer of Evidence*,[42] to which respondent did not file a comment.[43] The Court admitted all of petitioner's offered evidence in a Resolution dated February 6, 2024.[44]

On December 1, 2023, the Court granted petitioner's *Urgent Motion for Issuance of TRO and/or Injunction to Suspend Tax Collection* and ordered the suspension of tax collection, subject to the posting of a cash or surety bond equivalent to the total amount of the basic deficiency tax claimed.[45]

During the presentation of respondent's sole witness, RO Mary Grace J. Soriano (Soriano),[46] only respondent's counsels appeared. As prayed for, the Court allowed the presentation of the witness *ex-parte*, and petitioner's right to cross-examine the witness was deemed waived.[47]

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[33] *Id.* at 341–346, Minutes of the hearing held on, and Order dated August 31, 2023.
[34] *Id.* at 381–386.
[35] *Id.* at 389–395.
[36] *Id.* at 403–404.
[37] *Id.* at 411–424.
[38] *Id.* at 426–427, Order dated November 15, 2023.
[39] *Id.* at 229–236, Judicial Affidavit of Ria A. Sablon, Exhibit "P-17".
[40] *Id.* at 241–246, Judicial Affidavit of Regina Niña Cruz, Exhibit "P-18".
[41] *Id.* at 247–258, Judicial Affidavit of Maria Angela C. Parma, Exhibit "P-19".
[42] *Id.* at 456–463.
[43] Docket – Vol. II, p. 581, Records Verification dated January 15, 2024.
[44] *Id.* at 598–599.
[45] *Id.* at 449–455, Resolution.
[46] Docket – Vol. I, pp. 330–337, Sworn Statement of Mary Grace J. Soriano to Questions Propounded by Atty. Jufferson D. Viernes, Exhibit "R-28".
[47] Docket – Vol. II, pp. 611–615, Minutes of the hearing held on, and Order dated April 2, 2024.

On May 3, 2024, respondent filed a *Motion to Admit (Attached Formal Offer of Evidence)*,[48] to which petitioner filed a *Comment To Respondent's 'Motion to Admit'*[49] on June 3, 2024.

On May 27, 2024, a *Memorandum for Petitioner*[50] was filed.

In a Resolution dated August 22, 2024,[51] the Court granted respondent's *Motion to Admit (Attached Formal Offer of Evidence)* with attached *Formal Offer of Evidence* (FOE), with a warning to respondent's counsel that similar future negligence or omission would be dealt with severely. With the admission into the records of respondent's FOE, petitioner was directed to file a comment but failed to do so.[52] Thereafter, the Court admitted all of respondent's exhibits in a Resolution dated August 14, 2024.[53]

On November 5, 2024, the case was submitted for decision without respondent's memorandum.[54]

THE ISSUES

As agreed upon by the parties, the issues for the Court's resolution are:[55]

1. Whether or not the Honorable Court of Tax Appeals has jurisdiction over petitioner's appeal; and

2. Whether or not petitioner is liable to pay the disputed assessment of deficiency taxes in the total amount of Nine Million Eight Hundred Thirty-Three Thousand Six Hundred Thirty-One Pesos and 48/100 (₱9,833,631.48) for taxable year 2014.

Petitioner's arguments:

Petitioner contends that the LOA was served by an individual, Reg Pasquite, who is not a BIR employee, in violation

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48 *Id.* at 620–628.
49 *Id.* at 685–687.
50 *Id.* at 676–684.
51 *Id.* at 696–698.
52 *Id.* at 700, Records Verification dated July 15, 2024.
53 *Id.* at 706–707.
54 *Id.* at 716, Notice of Resolution.
55 Docket – Vol. I, pp. 390 & 417, JSFI & Pre-Trial Order, respectively.

of Revenue Memorandum Circular (RMC) No. 110-2020.[56] Additionally, petitioner claims that under Revenue Memorandum Order (RMO) No. 44-2010,[57] the LOA must state the criteria used in selecting the audit candidate or indicate the basis for the audit (*i.e.*, regular audit program, special audit, etc.), which was not done in this case. Petitioner further asserts that the authority of the RO to conduct a tax audit had already lapsed. The PAN was issued to petitioner only on May 17, 2017, or about 21 months after the LOA was released, exceeding the 120-day period within which the audit should have been completed.

Moreover, petitioner argues that respondent's right to collect the deficiency taxes had already prescribed because the FLD/FAN were issued on June 13, 2017, but respondent issued the assailed *Decision* only on September 2, 2022, beyond the three-year prescriptive period for tax collection.

Lastly, petitioner contends that respondent failed to present any documentary evidence because its witness, RO Soriano, had no personal knowledge of most of the matters covered in her testimony, except with regard to the part on unwarranted and premature tax collection done against petitioner.

Respondent's arguments:

Respondent counters that there is nothing that would support petitioner's claims that the LOA had no selection criteria and was improperly served. Respondent cites Part II of RMO No. 04-2013, which prescribes the uniform criteria for the audit of tax returns by RDOs. Respondent further claims that the LOA clearly indicated the basis for the audit, *i.e.*, Sections 6(A) and 10(C) of the NIRC of 1997, as amended.

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[56] Clarifications on the Proper Modes of Service of an Electronic Letter of Authority, issued on September 24, 2020 states:
1. The eLA shall be served to the taxpayer through personal service by delivering personally a copy of the eLA at his registered or known address or wherever he may he found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

Personal or substituted service of the eLA shall be effected by the RO assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose.

[57] Electronic Issuance of Letters of Authority, issued on May 12, 2010 states:
III. Features of the Electronic LA
. . . .
5. The basis for the audit (i.e., regular audit program, special audit, etc.) shall be indicated in the LA.

Anent petitioner's allegation of improper service of the LOA, respondent points out that there is no evidence to support it other than petitioner's self-serving allegation. Respondent refutes petitioner's claim that the ROs conducted the audit beyond the period to conduct an audit, citing RMC No. 23-2009[58] which provides that "[f]ailure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued."

Finally, respondent emphasizes that examiners' tax assessments are presumed correct and made in good faith, and it is the taxpayer's duty to prove otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed, as presumptions favor tax assessments.

THE COURT'S RULING

The *Petition for Review* is meritorious.

The Petition for Review was timely filed.

Section 7(a)(1) of Republic Act (RA) No. 1125,[59] as amended by RA No. 9282,[60] confers jurisdiction on the Court of Tax Appeals (CTA) over decisions of the CIR and other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the [CIR] in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising

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[58] Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division, April 16, 2009.

[59] An Act Creating the Court of Tax Appeals, June 16, 1954.

[60] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

Thus, the appellate jurisdiction of the CTA is not limited to cases that involve decisions of the CIR on matters relating to assessments or refunds; the second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.[61]

Moreover, Section 11 of RA No. 1125, as amended, prescribes the period for filing an appeal before the CTA, as follows:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling, or inaction of the [CIR] ... may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

These provisions are likewise reflected in Section 3(a)(1)(2), Rule 4,[62] and Section 3(a), Rule 8[63] of the Revised Rules of the Court of Tax Appeals (RRCTA). They affirm that the CTA has exclusive appellate jurisdiction to review the CIR's decision and other matters arising under the NIRC, which must be filed within 30 days from receipt thereof.

In this case, petitioner received the CIR's assailed *Decision* on November 7, 2022.[64] Counting 30 days from that date, petitioner had until December 7, 2022 to file an appeal. The *Petition for Review* was filed on that same date, well within the

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[61] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010 [Per J. Leonardo-De Castro, First Division].

[62] SEC. 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action:

[63] SEC. 3. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[64] BIR Records, pp. 669–680, Exhibit "R-11".

prescribed period. Accordingly, the appeal was timely, and the Court properly assumed jurisdiction over the case.

The Court may rule on related issues not specifically raised by the parties but necessary to achieve an orderly disposition of the case.

Under Section 1, Rule 14[65] of the RRCTA, the CTA is not strictly bound by the issues raised by the parties and may consider other related matters necessary for the just and orderly disposition of the case.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[66] the Supreme Court affirmed the authority of this Court to address such issues not raised by the parties in this wise:

> 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.* — x x x In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. *(Emphasis supplied)*

In this case, although the authority of the RO under a valid LOA was not raised as issue in the pleadings, it falls within the CTA's authority to rule on the matter. The validity of the assessment hinges on this issue, and its resolution is indispensable to the fair and proper disposition of this case.

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65 SEC. 1. *Rendition of judgment.* – ....
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.

66 G.R. No. 183408, July 12, 2017 [Per J. Martires, Second Division]; See also *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].

The RO who continued the audit of petitioner lacked a valid LOA, rendering the resulting deficiency tax assessment void ab initio.

Under Section 6(A) of the NIRC of 1997, as amended, only the CIR or his duly authorized representative may authorize the examination of a taxpayer and issue an assessment:

> SEC. 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 representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. (*Emphasis supplied*)

An LOA is the authority given to the RO to perform assessment functions. It enables the RO to examine a taxpayer's books of account and other accounting records for the purpose of collecting the correct amount of tax.[67] The issuance of an LOA is based on the fact that the examination of a taxpayer who has already filed a tax return is a power that belongs statutorily to the CIR or his duly authorized representatives.[68]

Section 13 of NIRC of 1997, as amended, further clarifies this requirement:

> 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 <u>Letter of Authority</u> 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*)

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67 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

68 *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[69] the Supreme Court underscored that an LOA is indispensable for the validity of an assessment:

> Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> ....
>
> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that 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>**. (*Emphasis supplied*)

Likewise, in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[70] the Supreme Court reiterated that:

> Based on the afore-quoted provision, **it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. (*Emphasis supplied*)

RMO No. 43-90[71] also requires the issuance of a new LOA when an RO originally named in the LOA is replaced or reassigned:

> C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.

[69] G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].
[70] G.R. No. 222743, April 5, 2017 [Per J. Reyes, Third Division].
[71] SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.

....

5. **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**. (*Emphasis supplied*)

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*,[72] (*McDonald's*) the Supreme Court affirmed the necessity of issuing a new or amended LOA when reassigning ROs:

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 a 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.

....

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.... **There must be a grant of authority, in the form of a LOA, before *<u>any</u>* revenue officer can conduct an examination or assessment**.... **In the absence of such an authority, the assessment or**

[72] G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

> **examination is a nullity**. (*Emphasis supplied; citations omitted*)

Clearly, *all* ROs must be armed with an LOA issued by the CIR or an authorized representative to conduct an audit or examination of a taxpayer.

Moreover, the Supreme Court emphasized in *McDonald's* that the practice of reassigning or transferring ROs originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA: (1) violates the taxpayer's right to due process in tax audit or investigation; (2) usurps the statutory power of the CIR or his duly authorized representatives to grant the power to examine the books of accounts of a taxpayer; and (3) fails to comply with existing BIR rules and regulations, particularly RMO No. 43-90.

In this case, the LOA issued on August 10, 2015,[73] authorized **RO Tan** and **GS Hernandez** to audit petitioner's records for TY 2014. However, the documents issued after the LOA, *i.e.*, the Recommendation for Issuance of Subpoena Duces Tecum,[74] the Revenue Officer's Audit Reports,[75] and a Memorandum[76] dated February 10, 2017, which recommended the issuance of a PAN, were prepared and signed by **RO Tan** and **GS Alberto S. Enriquez, Jr. (Enriquez)**. A certification from petitioner's representative likewise confirms that it was **RO Tan** and **GS Enriquez** who conducted the audit at petitioner's office on November 21, 2016.[77]

This indicates that **GS Enriquez**, not **GS Hernandez**, conducted the audit alongside **RO Tan**, despite not being named in the LOA. The records contain no document authorizing **GS Enriquez** to conduct the audit.

Under Revenue Administrative Order (RAO) No. 02-90,[78] a GS is a Revenue Officer II, III, or IV who is tasked with supervising and reviewing the work and audit reports of subordinate Revenue Officers. It provides:

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[73] BIR Records, p. 2, Exhibits "P-2" and "R-1".
[74] BIR Records, pp. 20-22.
[75] BIR Records, unpaged, Exhibits "R-2" to "R-6".
[76] BIR Records, unpaged.
[77] BIR Records, p. 23.
[78] SUBJECT: Assignment of All Revenue Officers Holding Supervisory Positions to Perform Actual Supervisory Functions, March 28, 1990.

> In the Revenue District Offices, Sector Operations Service and other audit units, all Revenue Officers I who are appointed to positions below the aforementioned supervisory positions shall be regrouped in such a way that they should be assigned under one **Revenue Officer II or Revenue Officer III or Revenue Officer IV who will function as Group Supervisor** or Section Chief.
>
> It does not matter whether a group supervisor or section chief in the audit unit will have only one Revenue Officer I under him. Under this set up, it is expected that the work of Revenue Officers I will be closely supervised and reviewed by their group supervisors or section chiefs.
>
> **All group supervisors and section chiefs shall henceforth be responsible for the work performance of their subordinates and it shall be their responsibility to closely supervise and review their work and audit reports.** (*Emphasis supplied*)

Thus, Group Supervisors, being ROs themselves under RAO No. 02-90, are not exempt from the requirement of a valid LOA when they participate in audit activities. Their designation as supervisors does not negate their classification as ROs; it merely defines their added responsibility to oversee and review the work and audit reports of their subordinate ROs. Whether their involvement in the audit is direct or supervisory, Group Supervisors must be expressly named in a valid LOA, just like any other RO. Accordingly, any audit activity or assessment undertaken by a GS without an LOA is void.

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,[79] the Supreme Court affirmed that only ROs named in an LOA are authorized to examine taxpayers:

> ... Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. It is axiomatic that **only the revenue officers actually named under the LOA are authorized to examine** the taxpayer. This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90 ... **In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.** (*Emphasis supplied*)

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[79] G.R. Nos. 249883-84, January 27, 2020 [Per Resolution, Second Division].

Indeed, jurisprudence dictates that the absence of a new LOA for the substitute RO renders the assessment void.

Here, it is undisputed that GS Enriquez was not granted an LOA to audit petitioner for TY 2014. Without an LOA specifically naming him, his participation in the audit was unauthorized, rendering the deficiency tax assessment null and void. Consequently, the garnished amount of ₱1,102,494.22 is unwarranted, as a void assessment bears no valid fruit[79] and does not create any lawful tax liability.

In view of the nullity of the assessment, the Court finds it unnecessary to pass upon the other issues raised by the parties.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **GRANTED**. The Formal Letter of Demand with Final Assessment Notices dated June 13, 2017, the Warrant of Distraint and/or Levy No. RR7A-10-27-2022-2420 dated November 10, 2022, and the Warrant of Garnishment dated January 18, 2023, are **CANCELLED** and **SET ASIDE**.

Accordingly, respondent is **ORDERED to REFUND** in favor of petitioner the amount of ₱1,102,494.22, representing the garnished amount based on a void assessment.

Furthermore, respondent Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** and **PROHIBITED** from collecting the amount of ₱9,833,631.48 from petitioner.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[79] *Commissioner of Internal Revenue v. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per CJ. Panganiban, First Division].

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice