REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MISAMIS ORIENTAL II RURAL ELECTRIC SERVICE COOPERATIVE, INC. (MORESCO-II), *Petitioner,*	**CTA Case No. 9732**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson, and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 11 2020 2:10 pm

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DECISION

MANAHAN, J.:

This is a Petition for Review filed by Misamis Oriental II Rural Electric Service Cooperative, Inc. (MORESCO II) praying that a judgment be rendered ordering the nullification of the Final Decision on Disputed Assessment (FDDA) dated November 15, 2017 and the cancellation of the deficiency tax assessments for calendar year (CY) 2013 in the aggregate amount of Php24,708,643.11 plus compromise penalty in the amount of Php87,000.00.

THE PARTIES

Petitioner is an electric cooperative existing under the laws of the Republic of the Philippines, with principal office address at Medina, Misamis Oriental.[1]

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[1] Par. 1, Summary of Facts, *Joint Stipulation of Facts and Issue* (JSFI), Docket, p. 121.

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed official to administer all internal revenue laws in the land.[2] He is empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, and other laws administered by the Bureau of Internal Revenue (BIR). His office address is at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS

On March 10, 2015, petitioner received a Letter of Authority (LOA) No. LOA-097-2015-00000007/e(LA) No. 201000059839 dated March 9, 2015, authorizing Revenue Officer (RO) Jesreel King De Torres of Revenue District Office No. 97, to conduct an examination of petitioner's books of accounts and other accounting records for verification of its tax liabilities for CY 2013. An Audit Checklist of Requirements enumerating the documents needed by respondent for its audit and investigation was also sent to the petitioner.[4]

Thereafter, respondent, through Revenue District Officer, Rolando C. Ompoc, of Revenue District Office (RDO) No. 97-Gingoog City, issued a Memorandum of Assignment (MOA) No. MOA0972015LOA7735 dated November 16, 2015,[5] directing RO Dante C. Velayo and Group Supervisor (GS) Camaroding S. Laut to continue the tax audit/investigation of petitioner due to the re-assignment of the originally assigned RO, Mr. De Torres.

After the examination of petitioner's books of accounts and other accounting records, RO Velayo submitted his undated Memorandum Report recommending the issuance of a Preliminary Assessment Notice (PAN) against petitioner.[6]

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[2] Par. 2, Summary of Facts, JSFI, Docket, p. 121.
[3] Par. 2, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket, pp. 11 and 79, respectively.
[4] Par. 3, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket, pp. 11 and 79, respectively; Par. 3(a) and (c), Summary of Facts, JSFI, Docket, p. 121.
[5] Exhibit "R-3", BIR Records, p. 213; Q-15 to Q-17, Exhibit "R-12", Docket, p. 265.
[6] Exhibit "R-4", BIR Records, pp. 243 to 244; Q-19 to Q-22, Exhibit "R-12", Docket, p. 266.

A PAN dated November 28, 2016 was issued and received by petitioner on December 12, 2016, with the following findings of deficiency taxes, to wit:[7]

Income tax	Php 4,115,571.92
Value-added tax (VAT)	Php17,661,745.50
Expanded Withholding Tax (EWT)	Php 232,635.73
Total	Php22,009,953.15

On January 10, 2017, petitioner received a Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) with Assessment No. RR16-097-014-2017dated January 6, 2017, with attached Details of Discrepancies and Assessment Notices, from Revenue Region No. 16, Cagayan De Oro. Petitioner was found to be liable for deficiency taxes amounting to ₱22,907,377.10 for CY 2013, inclusive of interest, surcharges, and compromise penalties, broken down as follows:[8]

Income tax	₱ 4,168,917.81
Value-added tax (VAT)	18,435,715.67
Expanded Withholding Tax (EWT)	240,743.62
Compromise penalty	62,000.00
Total	**₱22,907,377.10**

On February 6, 2017, petitioner filed with the BIR its protest letter dated January 19, 2017.[9]

On March 22, 2017, petitioner received a copy of a Letter dated March 6, 2017 from Regional Director Hermeno A. Palamine of Revenue Region No. 16 - Cagayan de Oro City, instructing petitioner to sign six (6) copies of the Waiver of the Statute of Limitations (Waivers) and to submit notarized copies thereof within ten (10) days from receipt, otherwise, the assessment shall become final and executory.[10]

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[7]Par. 5, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket, pp. 11 and 79, respectively; Par. 3(c), Summary of Facts, JSFI, Docket, p. 121.

[8]Par. 6, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket, pp. 11 to 12, and 79, respectively; Par. 3(d), Summary of Facts, JSFI, Docket, p. 122.

[9] BIR Records (Exhibit "R-11"), pp. 284 to 290; Par. 3(i), Summary of Facts, JSFI, Docket, p. 122.

[10] BIR Records (Exhibit "R-11"), pp. 299 to 303; Exhibit "P-8", Docket, p. 62.

Petitioner signed the Waivers and submitted the same to the BIR. [11]

A letter dated April 3, 2017 was then issued by Regional Director Palamine, informing petitioner that the entire docket of the tax case was remanded to RDO No. 97, Gingoog City.[12]

On May 25, 2017, petitioner received a Final Notice dated May 24, 2017, from Mr. Rolando C. Ompoc, Revenue District Officer of BIR Gingoog City, reiterating his request for petitioner to submit the necessary documents and records to support the latter's position and arguments embodied in its protest letter.[13]

On November 16, 2017, petitioner received an FDDA dated November 15, 2017, [14] stating among others, that petitioner is liable for deficiency Minimum Corporate Income Tax (MCIT), value-added tax (VAT) and expanded withholding tax (EWT) for CY 2013, in the aggregate amount of ₱24,708,643.11, inclusive of increments, and compromise penalty in the amount of ₱87,000.00.

Petitioner filed the instant Petition for Review with the Court on December 13, 2017.[15]

This case was originally raffled to the Court's Second Division.

On February 23, 2018, respondent filed through registered mail his Answer to the Petition for Review.[16]

The pre-trial conference was held on March 15, 2018.[17] Respondent's Pre-trial Brief was filed on March 9,

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[11]Exhibit "P-10", Docket, p. 62; Par. 3(f), Summary of Facts, JSFI, Docket, p. 122.

[12]Exhibit "P-11", Docket, p. 63; Par. 3(g), Summary of Facts, JSFI, Docket, p. 122.

[13]Par. 12, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket, pp. 12 and 79, respectively; Par. 3(i), Summary of Facts, JSFI, Docket, p. 122; and BIR Records (Exhibit "R-11"), p. 304;

[14] BIR Records (Exhibit "R-11"), pp. 324 to 327; Exhibit "P-14", Docket, pp. 66 to 69;Par. 3(j), Summary of Facts, JSFI, Docket, p. 122.

[15] Docket, pp. 10 to 25.

[16] Docket, pp.79 to 95.

2018;[18] while the Pre-Trial Brief for petitioner was submitted on March 15, 2018.[19]

The parties filed their Joint Stipulation of Facts and Issues (JSFI) on April 4, 2018.[20] Consequently, the Court issued the Pre-Trial Order dated April 12, 2018,[21] approving and adopting the parties' JSFI, thus terminating the Pre-trial.

During trial, petitioner presented its testimonial and documentary evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Leila Piastro,[22] Finance Services Department Manager of petitioner; and (2) Mr. Gervacio I. Piator,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

The ICPA Report was submitted on July 20, 2018.[25]

On August 28, 2018, petitioner filed its Formal Offer of Evidence.[26] Respondent filed his Comment/Opposition (on Petitioner's Formal Offer of Evidence dated August 18, 2018) on September 7, 2018.[27]

In an Order dated September 24, 2018,[28] the instant case was transferred to the Court's First Division.

In the Resolution dated January 18, 2019,[29] the Court admitted petitioner's exhibits, *except* for the following:

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[17]*Notice of Pre-Trial Conference* dated March 6, 2018, Docket, pp. 96 to 97; Minutes of the hearing held on, and Order dated, March 15, 2018, Docket, pp. 117 to 118.
[18] Docket, pp. 99 to 101.
[19] Docket, pp. 104 to 108.
[20] Docket, pp. 121 to 125.
[21] Docket, pp. 127 to 131.
[22] Exhibit "P-17", Docket, pp. 156 to 161;Minutes of the hearing held on, and Order dated, May 10, 2018, Docket, pp. 162 to 166.
[23]*Judicial Affidavit* of Gervacio I. Piator, Docket, pp. 169 to 173; Minutes of the hearing held on, and Order dated, July 30, 2018, Docket, pp. 223 to 224.
[24]*Oath of Commission* dated May 10, 2018, Docket, p. 155; Minutes of the hearing held on, and Order dated, May 10, 2018, Docket, pp. 162 to 166.
[25]Exhibit "P-17", Docket, pp. 174 to 175.
[26] Docket, pp. 226 to 231.
[27] Docket, pp. 233 to 235.
[28] Docket, p. 237.
[29] Docket, pp. 255 to 258.

1) Exhibit "P-1", for failure of the exhibit to correspond with the actual document in the records;
2) Exhibits "P-4" and "P-9", for failure to identify these exhibits; and
3) Exhibit "P-17-A", for failure to pre-mark the official receipts/invoices contained in a compact disc.

On March 11, 2019, respondent submitted the BIR Records of the instant case to the Court.[30]

Respondent likewise presented his documentary and testimonial evidence. As for his testimonial evidence, respondent offered the testimonies of the following individuals, namely: (1) Mr. Dante C. Velayo,[31] the group supervisor assigned at RDO No. 98 – Cagayan De Oro; and (2) Mr. Emman Carl P. Rubin,[32] then Revenue Officer II assigned at the Assessment Division of Revenue Region No. 16 – Cagayan De Oro.

On June 10, 2019, respondent filed his Formal Offer of Evidence.[33] However, no comment was filed thereon by petitioner.[34] Thus, in the Resolution dated August 30, 2019,[35] the Court admitted all of respondent's exhibits.

Respondent filed his Memorandum on November 8, 2019,[36] while the Memorandum for the Petitioner was filed on November 18, 2019.[37]

This case was submitted for decision on December 4, 2019.

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[30] *Compliance* dated March 8, 2019, Docket, pp. 276 to 278.
[31] Exhibit "R-12", Docket, pp. 263 to 268; Minutes of the hearing held on, and Order dated, March 14, 2019, Docket, pp. 280 to 283.
[32] Exhibit "R-13", Docket, pp. 291 to 295; Minutes of the hearing held on, and Order dated, May 30, 2019, Docket, pp. 300 to 305.
[33] Docket, pp. 314 to 318.
[34] Records Verification dated July 18, 2019 issued by the Judicial Records Division of this Court, Docket, p. 320.
[35] Docket, pp. 328 to 329.
[36] Docket, pp. 339 to 360.
[37] Docket, pp. 362 to 373.

THE ISSUES

The parties raised the following issues for this Court's resolution, to wit:

1. Whether or not petitioner is liable to pay the assessed deficiency taxes for taxable year 2013 plus surcharge and penalties.

Additional Issues for Petitioner

1. Whether or not the assessment is null and void considering that the examiners who conducted the investigation did not have a Letter of Authority.
2. Whether or not the disallowance of the VAT by respondent is valid. [38]

Petitioner's arguments:

The foremost argument of petitioner centers on the lack of due process in the issuance of the subject tax assessments which springs from its allegation that the audit and investigation of its accounting records was unauthorized due to the lack of an LOA. Petitioner submits that the LOA dated March 9, 2015 authorized RO Jesreel King De Torres to conduct the examination of its books of accounts and other accounting records for CY 2013 but the investigation was transferred to RO Dante Velayo pursuant to a MOA in view of RO De Torres' transfer to another RDO. Petitioner claims that it was RO Velayo who informed them of the results of the audit and investigation which led to the issuance of the PAN and the FAN.

Petitioner asserts that there is a crucial difference between an LOA and a MOA and that the latter does not have the effect of clothing the new set of ROs with the requisite authority to conduct an investigation of its books of accounts and other accounting records.

Petitioner also invokes the issue of prescription on respondent's authority to assess its tax liabilities for CY 2013 stating that the Waiver executed is null and void on the ground that its signatory was not authorized. Petitioner

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[38] Statement of Issues, JSFI, Docket, p. 122.

elaborates by stating that as a juridical entity, it can only act through its Board of Directors. In the instant case, petitioner claims that its General Manager, Engineer Ronel B. Canada, signed the subject Waiver without the requisite authority from its Board of Directors. Petitioner then concluded that the invalidity of the Waiver did not have the effect of extending respondent's right to assess its deficiency taxes for CY 2013, hence prescription had already set in.

As to the substantive merits of the subject assessments, petitioner maintains that as a duly registered electric cooperative, it is permanently exempted from paying income tax for CY 2013 pursuant to Section 39 (a) (1) of Presidential Decree (PD) No. 269. Petitioner also challenges the VAT assessment cited in the FDDA which was not even part of the issues that were delved upon in the FAN/FLD in violation of the Taxpayer's Bill of Rights [39] and relevant provisions of Revenue Regulations (RR) No. 18-2013. Petitioner argues that the findings relayed to him relative to its alleged VAT deficiencies are entirely different from what was noted and raised in the disputed FDDA. In sum, petitioner avers that the factual and legal bases for the VAT assessment cited in the FDDA are not in consonance with Revenue Memorandum Order (RMO) No. 26-2016, which sets the policies and guidelines provided under RR No. 12-99, as amended by RR No. 18-2013, and different from the initial findings of the respondent detailed in said FAN/FLD.

Respondent's counter-arguments:

We provide below a brief and concise summary of respondent's defenses and arguments against the Petition for Review:

A. The FLD and FAN issued against petitioner are valid.

   Respondent asserts that the revenue officers who conducted the audit and investigation were authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2013 under a valid LOA. According to respondent, under Revenue Memorandum Order (RMO) No. 36-2000, only one LOA shall be issued for each taxable year under audit to include all internal revenue

[39] Issued on September 12, 2018, see www.bir.gov.ph.

tax liabilities of the taxpayer which was reiterated in RMO No. 8-2006, to wit:

> D. On Duplication of LA Issued
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> 1. **<u>Only one (1) LA shall be issued to the same taxpayer</u>**, for the same tax type and period, except where an LA was issued for a specific tax type only and subsequently, another LA was issued to the same taxpayer by the same or another office covering the investigation of all internal revenue taxes (AIRT) for the same taxable period. The LA issued for AIRT purposes shall be allowed provided the coverage shall be limited to AIRT except for the specific tax type and said coverage shall be clearly stated on the face of the LA. *(Emphasis supplied)*

Since the aforesaid BIR rules and regulations provide for the issuance of only one (1) LOA, a referral memorandum or memorandum of assignment shall be issued to direct another examiner to continue the audit if the examiner authorized under the issued LOA will not be able to finish his investigation, without need to issue another LOA.

B. Petitioner is estopped from questioning the authority of ROs Velayo and Mulok.

Respondent further asserts that, even assuming for the sake of argument that ROs Velayo and Mulok are not authorized, petitioner is estopped from questioning their authority because during the course of the audit, petitioner was well aware that RO Velayo was not the RO designated in the LOA but did not protest nor ventilated any opposition before the BIR.

C. The right of the BIR to issue an assessment has not prescribed.

Respondent narrates that the assessment covers taxable year 2013, so pursuant to the relevant provisions of the 1997 NIRC, as amended, petitioner had until April 15, 2014 to file its income tax returns. Accordingly, respondent claims that he has until April 15, 2017 to assess petitioner and as judicially admitted by petitioner in paragraph 6 of the petition, it received the FLD on January 10, 2017, which is well within the period prescribed by law.

D. Petitioner is liable for deficiency income and value added tax.

1. On petitioner's deficiency income tax

Respondent challenges the contention of petitioner that it is exempt from the payment of income taxes under Republic Act (RA) No. 10531, otherwise known as the National Electrification Administration Reform Act of 2013 in relation to Presidential Decree (PD) No. 269. Respondent avers that PD No. 1955 withdrew all exemptions (from any preferential treatment) in the payment of duties, taxes, fees and imposts granted to private enterprises. Moreover, Executive Order (EO) No. 93 issued by then President Corazon C. Aquino allegedly withdrew all tax exemptions of electric cooperatives.

2. On petitioner's deficiency VAT

Respondent stands firmly behind the findings of its ROs as regards the petitioner's deficiency VAT. He asserts that records of the petitioner reveal that out of the total sales amounting to Php552,445,624.00 only Php135,409,412 or 24.51% was subjected to VAT. Respondent also claims that the investigation concluded that it cannot be ascertained whether the input tax claimed in the amount of Php15,215,513.85 is attributable to vatable transactions or to VAT-exempt transactions. In this case, respondent asserts that only a ratable portion pertaining to the vatable transaction may be recognized as input tax credit pursuant to Section 4.110-4 of RR 16-2005, thus the allowable input tax would only be P3,729,322.44 or 24.51% of Php15,215,513.85 and the rest will be disallowed as input tax credit.

In his Memorandum, respondent elaborated on the argument that petitioner should not be allowed for the first time on appeal to attack the validity of the assessments on the ground of alleged lack of authority of the ROs who conducted the audit and examination of petitioner's books of accounts and other accounting records. This issue was never raised in the administrative level. To allow this would violate the rules on exhaustion of administrative remedies and defy the doctrine that new issues cannot be raised for the first time on appeal. Under this same principle, respondent asserts that even the validity (or invalidity) of the Waivers could no longer be raised in petitioner's judicial appeal because such issue was never raised in its administrative protest.

RULING OF THE COURT

The Petition for Review has merit.

We first resolve respondent's argument that petitioner can no longer assail the authority of the ROs to conduct the audit and investigation of the books of accounts and other accounting records nor can it question the validity of the Waiver on the ground that these issues were never raised in its protest letters which were filed in response to the PAN and the FAN issued for CY 2013.

We disagree with respondent.

The Court may, for the first time on appeal, allow petitioner to assail the validity of the Waiver and the lack of authority of the ROs to conduct the examination of petitioner's books of accounts and other accounting records.

Cases brought before this Court are litigated *de novo.*

The Supreme Court in the case of *CIR vs. Manila Mining Corporation,*[40] quoted with approval the CTA decision which ruled, thus:

> **"Section 8 of RA 1125 (An Act Creating the Court of Tax Appeals), provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo)** where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration." (emphasis supplied)

The Court of Tax Appeals as a court of record has the authority to determine issues raised by the parties even if these were not raised in the administrative level to achieve a

[40] G.R. No. 153204, August 31, 2005.

judicious administration of justice. To stretch this ruling further, the Court may even resolve issues that were not raised by both parties both in the administrative and judicial levels to achieve an orderly disposition of the case, and we quote the decision of the Supreme Court in the case of *CIR vs. Lancaster*,[41] to wit:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> 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.**" xxx xxx xxx (emphasis supplied)

We now proceed to determine whether the ROs were duly authorized to conduct the audit investigation of petitioner for CY 2013.

Section 6(A) of the 1997 NIRC, as amended, reads:

> "Section 6. *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**, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

Based on the foregoing, an authority emanating from respondent or his duly authorized representative is required before an examination and an assessment may be made against a taxpayer.

Relative thereto, Sections 10 and 13 of the 1997 NIRC, as amended, provides that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

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[41] G.R. No. 183408, July 12, 2017.

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:
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> xxx xxx xxx.
>
> (c) **Issue Letters of Authority for the examination of taxpayer within the region**;
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> xxx xxx xxx."
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> "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 Authorityissued 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)

Thus, a grant of authority, through an LOA issued by the Revenue Regional Director, must be made assigning an RO, to perform tax assessment functions, in order that the latter may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* ("*Medicard* case"),[42] the Supreme Court emphasized the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "An 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**

[42] G.R. No. 222743, April 5, 2017.

records of a taxpayer for the purpose of collecting the correct amount of tax. 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 clearly provides as follows:

> 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.
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> x xxx (Emphasis and underlining Ours)

Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, 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. **Hence, 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**.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[43], the Court said that:

> 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

[43] 649 Phil. 519 (2010).

> authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underlining ours)
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> xxx xxx xxx
>
> Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination**.
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> xxx xxx xxx.
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**." (emphasis supplied)

It is clear from the foregoing jurisprudence, that all audit investigations must be conducted by a duly designated RO, authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA.

In the instant case, the examination of petitioner's books of accounts and other accounting records covering internal revenue taxes for CY 2013 emanated from LOA-097-2015-00000007/eLA201000059839 dated March 9, 2015. This was issued by OIC Regional Director Alberto S. Olasiman of Revenue Region No. 16-Cagayan de Oro City. Under the said LOA, RO Jesreel King De Torres and GS Macadatar Malang of Revenue District No. 97-Gingoog, Misamis Oriental were authorized to conduct the tax investigation pursuant to Section 6 (A) and Section 10 (C) of the 1997 NIRC, as amended.[44]

Thereafter, MOA No. MOA0972015LOA7735 dated November 16, 2015 was issued by Revenue District Officer Rolando C. Ompoc of RDO No. 97-Gingoog City, addressed to RO Dante C. Velayo and GS Camaroding S. Laut, for the continuation of the audit/investigation of petitioner's case to replace the previously assigned RO who transferred to another RDO, pursuant to Revenue Travel Assignment Order No. 43-2015.[45] RO Velayo's proposed assessment was revised by RO Rubin, which, thereafter, became the basis of the subject PAN.[46]

After receiving the PAN dated November 28, 2016 and FLD dated January 6, 2017 on December 12, 2016[47] and January 10, 2017,[48] respectively, petitioner filed a protest letter dated January 19, 2017 on February 6, 2017.[49]

Thereafter, Mr. Rolando C. Ompoc, the Head of the Investigating Office, assigned RO Mojaifa O. Mulok and GS Dioscora A. Ompoc to conduct the reinvestigation relative to petitioner's protest through MOA No. MOA0972015LOA25812 dated April 20, 2017.[50]

It is evident from the aforequoted provisions of law and the ruling in the *Medicard* case, that the subject MOAs cannot clothe RO Velayo and GS Laut with the requisite authority to continue the examination of petitioner's tax liabilities for CY 2013. Similarly, RO Mulok and GS Ompoc cannot conduct the reinvestigation relative to petitioner's protest in the absence of a LOA. Further aggravating such want of authority is the glaring fact that the MOA was merely issued by Mr. Rolando C. Ompoc, the Revenue District Officer and the Head of the Investigating Office who has no power or authority to issue an LOA, much less to effect any

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[44]Exhibit "R-1", BIR Records, p. 212; Exhibit "P-2", Docket, p. 28. Refer also to Par. 3, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket, pp. 11 and 79, respectively; Par. 3(a) and (c), Summary of Facts, JSFI, Docket, p. 121.
[45] Exhibit "R-3", BIR Records, p. 213; Q-7, Exhibit "R-12", Docket, p. 264
[46] Q-19 to Q-22, Exhibit "R-12", Docket, p. 266.
[47]Exhibit "R-6", BIR Records, pp. 257 to 263; Exhibit "P-5", Docket, pp.35 to 40.
[48] Exhibits "R-7", "R-7-A", "R-7-B", "R-7-C", "R-8", "R-8-A", "R-8-B" and "R-8-C", BIR Records, pp. 271 to 282; Exhibit "P-6", Docket, pp. 41 to 52.
[49]Exhibit "P-7", Docket, pp. 53 to 59; BIR Records, pp. 284 to 290.
[50] As mentioned in the FDDA dated November 15, 2017, Exhibit "P-14", Docket, p. 661; BIR Records, p. 327.

modification or amendment to the previously issued LOA No. LOA-097-2015-00000007/eLA201000059839 dated March 9, 2015, issued by OIC Regional Director Alberto S. Olasiman.

It is crystal clear that a Referral Memorandum vests no authority to the new set of revenue examiners to continue the examination of the taxpayer's records. Rather, only an LOA validly issued by the Revenue Regional Director can do so as ruled in the CTA *En Banc* case entitled *Composite Materials, Inc. vs. CIR,*[51] and later affirmed by the Supreme Court in the case of *CIR vs. Composite Materials, Inc.*[52] to wit:

> "In the case at bar, it is undisputed that the person who conducted the examination of petitioner CMI's records Revenue Officer Mary Anne P. Cruz, is not among the revenue officers authorized in LOA No. 0008746 dated September 9, 2008. Evidently, Revenue Officer Mary Anne P. Cruz is not authorized under LOA No. 0008746 to examine petitioner CMI.
>
> xxx xxx xxx
>
> **The Referral Memorandum signed by the Revenue District Officer does not give authority to Revenue Officer Mary Anne P. Cruz to conduct examination of petitioner CMI's records. On the contrary, pursuant to Sections 10 and 13 of the NIRC of 1997, as amended, it is the Revenue Regional Director who may issue an LOA."** (emphasis supplied)

Simply put, the said MOAs cannot be equated with the LOA, as required by the same provisions of law and the *Medicard* case. Correspondingly, not having a valid authority to examine or reinvestigate petitioner, the subject tax assessments issued against the latter are inescapably void. Such being the case, the said tax assessments must perforce be cancelled and set aside following the principle that void assessments bear no valid fruit.[53] In the case of *CIR vs. Opulent Landowners Inc.,*[54] the Supreme Court reiterated the ruling that if the Revenue Officers are not authorized, in the

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[51] CTA *EB* No. 1314, August 15, 2017.
[52] G.R. No. 238352, September 12, 2018.
[53] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006; *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corp.*, G.R. No. 197945, July 9, 2018.
[54] G.R. Nos. 249883-84, January 27, 2020.

absence of a new LOA in their favor, their resulting assessments are void.

As such, it becomes unnecessary to address the validity or invalidity of the subject deficiency tax assessments.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FDDA dated November 15, 2017 is **WITHDRAWN** and **SET ASIDE**. Moreover, the FLD and FAN dated January 6, 2017 issued against petitioner for CY 2013 in the aggregate amount of Php22,907,377.10 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice