REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EXECUTIVE INTERNATIONAL MOVERS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9953

Present:
CASTAÑEDA, JR.,
BACORRO-VILLENA,
and
CUI-DAVID, *JJ.*

Promulgated:
MAR 14 2022
2:00 p.m.

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DECISION

CUI-DAVID, J.:

This is a Petition for Review filed on October 18, 2018, by petitioner Executive International Movers, Inc., praying that the Decision of the Commissioner of Internal Revenue dated July 16, 2018[1], and its assessment for the taxable year (TY) 2009 be reversed and set aside and a new judgment be rendered exonerating petitioner from the subject tax liability due to the assessment notices being contrary to law and hence, void ab initio.

THE PARTIES

Petitioner Executive International Movers, Inc. (Executive), now AGS Four Winds International Movers, Incorporated, is a corporation duly organized and existing under Philippine laws with Tax Identification No. 02-648-185-000 and principal place of business at No. 8 Mercury Avenue, Barangay Bagumbayan, Quezon City (formerly No. 10 P.

[1] Docket, pp. 738 to 748.

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Antonio St., Barrio Ugong, Pasig City). It is represented in this case by Atty. Roger Terence P. Camua and may be served with a summons and other court processes through the said counsel at Unit 2501, 139 Corporate Center, Valero St., Salcedo Village, Makati City.

Respondent is the Commissioner of Internal Revenue (CIR) who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on disputed assessments, refunds of internal revenue taxes, fees, or other charges as provided by law. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman Quezon City.[2]

THE FACTS

On May 24, 2010, the Regional Director (RD) of BIR Revenue Region No. 7, Quezon City, issued Letter of Authority (LOA) No. 2009-00014560 authorizing Revenue Officer Ryan C. Loon (RO Loon)/Group Supervisor Danilo B. Abat (GS Abat) to examine the books of accounts and other accounting records for all internal revenue taxes of the petitioner for TY 2009, or from January 1, 2009, to December 31, 2009. The LOA was received by Elizabeth L. Cordero, petitioner's employee.[3]

On July 7, 2010, a Second Request for Presentation of Records dated July 1, 2010[4] was received by the petitioner.

On April 23, 2012, RO Loon submitted a Memorandum[5], returning the entire tax docket of the petitioner for re-assignment to another RO given his transfer to the Large Taxpayers Regular Audit Division III (LTRAD3), Large Taxpayer Service.

On April 27, 2012, a Waiver of the Defense of Prescription (Waiver) was executed by the petitioner's Managing Director, Christopher Ward, extending the period of the assessment until December 31, 2013.[6]

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[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 224.
[3] Par. 2, JSFI, Docket, p. 224; Exhibit "P-2"; Exhibit "R-8"
[4] Par. 3, JSFI, *Id.*, p. 224; Exh. "R-11", p. 389.
[5] Exhibit "R-14", *Id.*, p. 393.
[6] Par. 5, JSFI, *Id.*, p. 225.

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On April 30, 2012, a Memorandum of Assignment (MOA)[7] was issued by Revenue District Officer (RDO) Luis A. Alberto, Jr., referring the subject tax docket to Revenue Officer Mia Portia R. Mempin (RO Mempin) and Group Supervisor Maria Cecilia M. Masangya (GS Masangya) for the *continuation* of the audit/investigation.

On July 27, 2012, Ms. Gina Robles, an accountant of the petitioner, received an undated Notice of Informal Conference (NIC) together with electronic Letter of Authority (eLOA) No. eLA-2010-00025089 dated October 21, 2010, issued by RD Jonas DP. Amora, pursuant to Revenue Memorandum Order (RMO) No. 69-2010 converting the manual LOA to electronic LOA.[8] The said eLOA, issued still under the name of RO Loon and GS Abat, covers the same taxable period and taxes.

On June 3, 2013, petitioner also received an undated Amended Notice of Informal Conference informing it about the investigation report of RO Mempin under GS Masangya.

On September 30, 2013, a Preliminary Assessment Notice (PAN) was issued by RD Jonas DP. Amora. The PAN was sent by the BIR through registered mail and received by the petitioner on October 28, 2013.[9]

On November 5, 2013, petitioner filed its protest/reply to the PAN, requesting for cancellation/termination of the 2009 audit investigation including the PAN.[10]

On the same day, November 5, 2013, petitioner received Final Assessment Notices (FAN) and Formal Letter of Demand (FLD) with Demand No. 43B-B057-09 all dated October 30, 2013, assessing it for deficiency Income Tax, Value Added Tax (VAT), and Expanded Withholding Tax (EWT) in the respective amount of ₱12,785,689.97, ₱533,176.13, and ₱452,074.19 for TY 2009.[11]

On November 8, 2013, petitioner, through its representative, filed a petition/motion reiterating its request for the termination of the audit investigation for TY 2009

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[7] Exhibit "R-15",*Id.*, p. 394.
[8] Par. 4, JSFI, *Id.*, p. 224.
[9] Par. 6, JSFI, *Id.*, p. 225.
[10] Par. 7, JSFI, *Id.*, p. 225.
[11] Par. 8, *Id.*, p. 225 and Exhibits "R-23", "R-23-A", "R-23-B" and "R-24", pp. 414-417.

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including all notices such as the PAN dated September 30, 2013 and the FAN dated October 30, 2013.[12]

On June 11, 2014, petitioner received a Final Notice Before Seizure (FNBS) dated May 26, 2014 sent by the BIR via registered mail on June 6, 2014.[13]

On February 5, 2015, a Warrant of Distraint and/or Levy (WDL) was issued and constructively received by the petitioner on June 11, 2015.[14]

On September 19, 2018, petitioner's authorized representative, Ria A. Sablon, received a copy of the *Decision* of the respondent CIR on its Request for the Lifting of the WDL.[15]

On October 18, 2018, petitioner filed the instant Petition for Review. The case was then raffled to this Court's Second Division.

On December 10, 2018, respondent filed his Answer within the extended period, interposing the following special and affirmative defenses, to wit: (1) the Court has no jurisdiction over the case; (2) the period of the Government to assess has not yet prescribed; (3) the assessment made by the Revenue Officers assigned to conduct the audit assessment against the petitioner is valid; and (4) a Temporary Restraining Order (TRO) to suspend the collection of taxes is unwarranted.[16]

On January 25, 2019, respondent filed his Pre-Trial Brief, while petitioner filed its Pre-Trial Brief on January 28, 2019.[17]

On January 31, 2019, when this case was called for a Pre-Trial Conference, petitioner's prayer for the issuance of a TRO was treated as a Motion for Suspension of Collection of Tax. The Pre-Trial Conference proceeded and the parties were

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[12] Par. 9, JSFI, *Id.*, p. 225
[13] Par. 10, JSFI, *Id.*, p. 225
[14] Par. 11, *Id.*, p. 225; Exh. "P-14", p. 123; "R-5", p. 321
[15] *Id.*, pp. 766 to 768
[16] Answer, *Id.*, p. 172
[17] Respondent's and Petitioner's Pre-trial Brief, *Id.*, pp. 194 and 212

directed to file their Joint Stipulation of Facts and Issues (JSFI).[18]

On February 11, 2019, the parties submitted their JSFI, which the Court approved and adopted in the Pre-Trial Order dated February 18, 2019, thereby terminating the Pre-Trial Conference.[19]

On February 14, 2019, respondent, after he was granted two extensions by the Court,[20] filed his Compliance submitting in their entirety the BIR records required by the Court.[21]

The trial of the case then ensued.[22]

On February 20, 2019, at the initial hearing, petitioner's counsel manifested that the petitioner will no longer pursue its Motion to Suspend Collection of Tax and instead, will proceed with the trial on the merits of the case.[23]

During the trial, petitioner presented documentary and testimonial evidence. In the matter of testimonial evidence, petitioner presented and offered the testimony of its lone witness, Ms. Ria A. Sablon, a tax consultant.[24]

On April 1, 2019, petitioner filed its Formal Offer of Documentary Evidence, while respondent filed his Comment/Opposition on April 8, 2019.[25]

On May 22, 2019, respondent filed a Motion for Resetting of Hearing and Motion for Leave of Court to File Demurrer to Evidence.[26]

On May 28, 2019, the Court issued a Resolution admitting the petitioner's exhibits except for: (1) Exhibit "P-1-A", for not being found in the records of the case and for

[18] Order, *Id.*, p. 223
[19] JSFI, *Id.*, p. 224
[20] Orders dated January 7, 2019 and January 23, 2019, respectively
[21] Compliance, *Id.*, p. 229
[22] Pre-Trial Order, *Id.*, p. 232
[23] Order, *Id.*, pp. 236 to 237
[24] Judicial Affidavit of Ria A. Sablon, *Id.*, p. 243
[25] Formal Offer of Documentary Evidence and Comment, *Id.*, pp. 253 and 257
[26] Motion for Resetting of Hearing and Motion for Leave of Court, *Id.*, p. 262

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failure to identify; and (2) Exhibit "P-16", for failure to identify.[27]

On May 29, 2019, the Court granted respondent's Motion for Resetting of Hearing but denied the Motion for Leave of Court to File Demurrer to Evidence, due to his failure to attach a copy of the Demurrer to Evidence.[28]

On June 11, 2019, respondent moved for the reconsideration of the denial of his Motion for Leave of Court to File Demurrer to Evidence. On July 8, 2019, petitioner filed its Comment/Opposition thereto, with Notice of Change of Mailing Address.[29]

On October 24, 2019, the Court granted respondent's Motion for Reconsideration and directed the petitioner to file a comment on the Demurrer to Evidence.

On November 15, 2019, petitioner filed its Comment with 2nd Notice of Change of Address.[30]

On February 14, 2020, the Court denied the respondent's Demurrer to Evidence and took note of the petitioner's 2nd Notice of Change of Address.[31]

On June 24, 2020, respondent filed a Motion to Admit Exhibits as part of the Judicial Affidavits of the respondent's witnesses, which the Court granted on November 20, 2020.

On June 29, 2020, the Court denied the petitioner's Urgent Motion for Trial Via Video Conferencing filed on June 22, 2020 and took note of its 3rd Notice of Change of Address. Petitioner was also ordered to comment on the respondent's Motion to Admit Exhibits for the Judicial Affidavits of the respondent's witnesses.

On July 1, 2020, respondent presented and offered the testimonies of ROs Solita C. Mauricio and Remedios May A. Roque.[32]

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[27] *Id.*, p. 266
[28] Order, *Id.*, p. 269
[29] Motion for Reconsideration, *Id.*, p. 270 and Comment, p. 284.
[30] *Id.*, pp. 289-291.
[31] *Id.*, p. 296.
[32] Order, *Id.*, p. 325.

On November 20, 2020, the Court granted respondent's Motion to Admit Exhibits and considered the subject exhibits as part of the Judicial Affidavits of the respondent's witnesses, ROs Solita Mauricio and Remedios May A. Roque.

On February 1, 2021, respondent presented and offered the testimony of his last witness, Revenue Officer Mia Portia R. Mempin-Bien.[33]

On February 24, 2021, respondent filed his Formal Offer of Evidence, while petitioner filed its Comment via electronic mail on March 1, 2021.[34]

On May 20, 2021, the Court issued a Resolution admitting the respondent's exhibits but took note of the following: (1) that Exhibits "R-16" and "R-22" were offered as "Notice of Informal Conference" and "Preliminary Assessment Notice", respectively, while the documents marked and identified include attachments of details of discrepancies; (2) that Exhibit "R-21" was offered as "Amended Notice of Informal Conference", while the document marked and identified also includes attachment of details of discrepancies and the word "amended" was merely handwritten; and, (3) that Exhibits "R-20", "R-20-A", "R-20-B", and "R-20-C" were offered and identified as "Amended Revenue Officer's Audit Report on Income Tax, Value Added Tax, Compensation Withholding Taxes, and Expanded Withholding Taxes", respectively, while the documents marked do not contain the word "amended".[35]

On October 25, 2021, petitioner filed its Memorandum.[36]

On November 29, 2021, this case was considered submitted for decision without the Memorandum of the respondent.[37]

THE ISSUES [38]

The parties submitted the following issues for the Court's determination:

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[33] Compliance, *Id.*, p. 371.
[34] Vol II, Respondent's Formal Offer of Evidence *Id.*, p. 425 and Comment, p. 435.
[35] *Id.*, p. 438.
[36] Memorandum, *Id.*, p. 446.
[37] *Id.*, p. 456.
[38] Statement of Issues, JSFI, *Id.*, p. 225.

1. Whether or not the assessment against the petitioner is valid.

2. Whether or not the Honorable Court has jurisdiction to take cognizance of petitioner's Petition for Review.

3. Whether or not the prayer for the suspension of the collection of taxes is warranted.

The Court finds it unnecessary to rule on the third issue in view of the petitioner's counsel manifestation that the petitioner would no longer pursue its motion to suspend the collection of taxes.[39]

THE COURT'S RULING

The Petition is meritorious.

At the outset, it bears emphasis that the Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. Thus, this Court shall first determine the issue of jurisdiction raised by the respondent.

The instant Petition for Review was timely filed; hence, the Court has jurisdiction to take cognizance of the case.

A review of the records reveals that the issue on the jurisdiction of the Court has already been addressed and resolved in this Court's Resolution dated February 14, 2020[40] whereby respondent's Demurrer to Evidence was denied, to wit:

> "In this case, the arguments raised by respondent mainly delve on the jurisdiction of the Court. On this basis alone, the Court cannot grant respondent's Demurrer to Evidence on the ground of lack of jurisdiction.
>
> Nevertheless, even if the Court should consider the allegations of petitioner regarding jurisdiction, as the said issue can be raised any time, it must be noted that what

[39] Order, pp. 236 to 237; TSN dated February 20, 2019, *Id.*, p. 2
[40] *Id.*, pp. 298 to 301

determines the jurisdiction of the court is the nature of the action pleaded **as appearing from the allegations in the complaint**. The averments and the character of the relief sought are the ones to be consulted.

Pursuant to Section 3(a) (1) and (2) of Rule 4 of the Revised Rules of the Court of Tax Appeals, as amended, the Court of Tax Appeals (CTA) has jurisdiction over the following:

> "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, ... 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, ... or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, ...

Based on the foregoing, petitioner has two options: (1) appeal to the CTA within thirty (30) days from the lapse of the one hundred eighty 180)-day period, or (2) wait until the Commissioner decides on his protest before he elevates the case. It must be emphasized, however, that these options are mutually exclusive and resort to one bars the application of the other.

Although the FNBS may be considered as the final decision of respondent, it is apt to restate that the option to wait for the final decision remains with the taxpayer.

Furthermore, in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, the Supreme Court held that the jurisdiction of the CTA is not only "limited to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR." ...

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> In the Petition for Review, petitioner raised issues regarding the validity of the assessment on the ground of prescription, invalidity of waivers, and authority of the Revenue Officers to conduct or continue the audit investigation of petitioner's Books of Accounts and other accounting records, as well as the validity of the warrant of distraint or levy, which may be considered as "other matters arising from the NIRC." Thus, petitioner may appeal the Final Decision on these matters to this Court. ...
>
> Based on the allegation in the Petition for Review, petitioner received on September 18, 2018 a Final Decision from respondent, stating that the request for the lifting of WDL, by virtue of the collection proceedings initiated by the Bureau of Internal Revenue (BIR) based on the FLD, is denied and the assessment is affirmed.
>
> Counting from September 18, 2018, petitioner had until October 18, 2018 within which to file an appeal on the said Final Decision. **Thus, based on the allegations in the complaint, and regardless of the denial of Exhibits "P-1-A" and "P-16", the instant Petition for Review filed on October 18, 2018, was timely filed**." (Emphasis supplied)

Clearly, the filing of this Petition for Review on October 18, 2018 was on time, thereby giving this Court jurisdiction over the instant case.

We shall now address the validity of the assessment.

The revenue officers who continued the audit investigation of petitioner were not authorized by a valid LOA; hence, the resulting tax assessments are void *ab initio*.

As borne out by the records, a manual LOA[41] and an electronic LOA[42] were issued by the RD of BIR Revenue Region No. 7, Quezon City, authorizing **RO Loon/GS Abat** to examine the petitioner's books of accounts and other accounting records for TY 2009.[43]

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[41] with No. LOA 2009-00014560 dated May 24, 2010, *Id.*, pp. 43 and 385.
[42] with No. SN: eLA2010-00025089/LOA-043B-2010-00000090 dated October 21, 2010.
[43] Par 2 and Par 4 of the JSFI, *Id.*, p. 224.

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Subsequently, a Memorandum of Assignment **(MOA)**[44] was issued by the RDO referring the entire tax docket of petitioner to **RO Mempin** and **GS Masangya** for the *continuation* of the audit/investigation in view of the transfer of RO Loon to LTRAD3. The subject MOA serves as the only basis of their authority to conduct the audit since no new or separate LOA was issued in their name:

> "ATTY. BOHOL:
> Q. Ms. Witness, what was issued to you as your authority to conduct the audit?
>
> RO MEMPIN-BIEN:
> A. I was issued with a Memorandum of Assignment authorizing me to continue the audit investigation.
>
> JUSTICE CASTAÑEDA:
> Who issued the Memorandum of Assignment?
>
> RO MEMPIN-BIEN:
> A. It was issued by Revenue District Officer Luis A. Algupay, Jr.
>
> JUSTICE CASTAÑEDA:
> All right, proceed.
>
> ATTY. BOHOL:
> Thank you, Your Honors.
>
> xxx
>
> RE-CROSS EXAMINATION BY ATTY. JOSE RAPHAEL B. AGAAB
>
> ATTY. AGAAB:
> Q. Attached to the exhibit you just mentioned is RR 15 which refers to the Memorandum of Assignment. Still, the question remains, aside from this, was there any notification to the petitioner was normally was done through a Letter of Authority or ELOA, is there any ELOA or manual Letter of Authority issued in your name granting you the authority to continue the re-assignment to conduct the audit investigation?

[44] Exhibit "R-15", *Id.*, p. 394.

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> RO MEMPIN-BIEN:
> A. Aside from this Memorandum of Assignment, there is none Attorney.
>
> ATTY. AGAAB:
> That's all, Your Honors." [45]

Petitioner, citing the cases of *Medicard Philippines, Inc. vs. CIR*,[46] *CIR vs. Sony Philippines, Inc.*,[47] *Int'l. Pharmaceuticals, Inc. vs. CIR*,[48] *Cebu Mitsumi, Inc. vs. CIR*,[49] and *Royal Class Trading and Transport Corp. vs. CIR*,[50] contends that:

> "38. ... a MOA alone is not sufficient in itself in granting authority to a revenue officer to conduct an audit investigation of a taxpayer. A MOA merely communicates that a revenue officer has been transferred to another assignment. To be able to conduct an audit investigation or tax assessment, the concerned revenue officer and group supervisor must also possess a valid LOA/eLA along with the MOA. Therefore, although there was a MOA re-assigning RO Mempin and GS Masangya to continue the audit/investigation of petitioner's accounting records, they, however, were still not authorized to do so because they were not armed with any LOA which specifically names and authorizes them as required by law." [51]

Respondent, quoting Sections 6 (A), 7, 10 (c)(h), and 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, counters that:

> "22. Thus, based on the foregoing provisions of the NIRC, a duly authorized revenue officer may conduct the audit assessment **<u>not because of but pursuant to the Letter of Authority</u>**. (Emphasis supplied)
>
> ...

[45] TSN dated February 8, 2021, pp. 11-12.
[46] G.R. No. 222743, April 5, 2017.
[47] G.R. No. 178697, November 17, 2010.
[48] CTA Case No. 7752, December 21, 2010.
[49] CTA Case No. 8531, May 21, 2015.
[50] CTA Case No. 8844, November 16, 2017.
[51] Par. 38 of the Petition for Review, *Id.*, p. 10.

24. In carrying out the plain-meaning rule, the word "pursuant to", as defined by Merriam-Webster Dictionary, is ***"in carrying out"*** or ***"in conformity with"***. Thus, Revenue Officer Mia Portia Mempin and Group Supervisor Maria Cecilia Masangya, to whom the audit investigation were reassigned through the Memorandum of Assignment dated April 30, 2012, are authorized to continue the audit assessment of the Petitioner on its 2009 TY since they are conducting such audit pursuant to a validly issued Letter of Authority.

25. Petitioner's reliance to the Medicard Case' is untenable.

...

26. Petitioner's reliance on Revenue Memorandum No. 43-90 on the issuance of a new Letter of Authority in cases of reassignment or transfer of cases to another Revenue Officer is also untenable." [52]

In claiming that RO Mempin and GS Masangya are authorized to continue the audit based on the MOA since they are conducting such audit pursuant to a validly issued LOA, respondent implies that once an LOA is validly issued, **"any" revenue officer** may then act under such LOA.

We disagree.

The above arguments of the respondent relative to the authority of the RO and GS, the sufficiency of the MOA, and the applicability of the Medicard case and RMO No. 43-90, were squarely addressed in the recent case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp. (McDonald's).*[53] According to the Supreme Court:

> "This practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been the subject of several CTA decisions, including Ithiel Corporation v. CIR,

[52] Par. 22, 24 to 26 of the Answer, *Id.*, p. 172.
[53] G.R. No. 242670, May 10, 2021.

Strawberry Foods Corporation v. CIR, Sugar Crafts, Inc. v. CIR, CIR v. Marketing Convergence, Inc., Exclusive Networks-PH, Inc. v. CIR, and the decision in the court a quo.

The Court hereby puts an end to this practice.

I. The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation

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

Section 6 of the NIRC provides:

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

Section 10 (c) of the NIRC provides:

> SECTION 10. Revenue Regional Director. — ...... the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others: ......
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region. (Emphasis supplied)

Section 13 of the NIRC provides:

> SECTION 13. Authority of a Revenue Officer. — ... 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, ... (Emphasis supplied)

Section D (4) of RMO No. 43-90 provides:

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

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

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. ... **There must be a grant of authority, <u>in the form of a LOA</u>, before any revenue officer can conduct an examination or assessment.** ... In the absence of such an authority, the assessment or examination is a nullity."

"A. Due Process Requires <u>Identification of Revenue Officers</u> Authorized to Continue the Tax Audit or Investigation

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

... Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

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

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

B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA

... **The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer**. The memorandum of assignment, ... is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, ... rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, ... is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use <u>as a proof of authority to continue the audit or investigation</u>, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.

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

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

> Any re-assignment/transfer of cases to another RO(s), 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.

The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases.

x--x

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

Apart from the *McDonald's* case, we also find the recent case of *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue (Himlayang Pilipino)* [54] applicable, viz.:

> "**Revenue Officer Bagauisan who conducted the audit of petitioner's books of accounts was not authorized pursuant to a valid LOA.**
>
> ...
>
> However, it appeared that Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Bagauisan who audited petitioner by virtue of a **memorandum of assignment** signed by revenue district officer Nacar, which reads: ...
>
> Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer: ...
>
> Thus, revenue officer Bagauisan is not authorized by a new LOA to conduct an audit of petitioner's books of accounts for TY 2009.
>
> **The lack of a valid LOA authorizing Revenue Officer Bagauisan to conduct an audit on petitioner makes the assessment void.**
>
> ...
>
> In ***Medicard Philippines, Inc. v. CIR,*** the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. The Letter of Notice

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[54] G.R. No. 241848, May 14, 2021.

x---x

earlier sent to Medi card Philippines was not validly converted into a LOA. According to the Court in Medicard Philippines:

> 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**.
>
> ... The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. **The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results in a void assessment. <u>Being a void assessment, the same bears no fruit</u>.**" (Emphasis supplied)

In *Commissioner of Internal Revenue vs. Composite Materials, Inc. (Composite)*,[55] the Supreme Court emphasized that an RO may only examine the taxpayer's books of accounts pursuant to a LOA; and that a Referral Memorandum issued by the RDO is not equivalent to a LOA and, therefore, does not cure the RO's lack of authority, viz.:

> "... **a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA)** issued by the Regional Director. This was reiterated by the court in ***<u>Medicard Philippines, Inc. v. Commissioner of Internal Revenue</u>*,** ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA *en banc* found that **the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.**
>
> Moreover, the Court agrees with the CTA *en banc* that the **<u>Referral Memorandum</u>** issued by a Revenue District Officer **directing RO Cruz to continue with the**

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[55] G.R. No. 238352, September 12, 2018

> **examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority. ...**" (Emphasis supplied)

In *Commissioner of Internal Revenue vs. Opulent Landowners, Inc.,*[56] the Supreme Court pointed out that a LOA is statutorily required in order to clothe ROs with authority and only the ROs **actually named** under the LOA are authorized to examine taxpayers, to wit:

> "... 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)

In line with the foregoing jurisprudential pronouncements, there must be a grant of authority in the form of a LOA, before any revenue officer can conduct an examination or assessment.[57] Only the revenue officers actually named under the LOA are authorized to examine the taxpayer.[58] 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.[59]

Moreover, the reassignment or transfer of a revenue officer requires the issuance of a new or amended LOA that will enable the substitute or replacement RO to continue the audit or investigation.[60] A memorandum of assignment,

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[56] G.R. Nos. 249883-84, January 27, 2020
[57] CIR vs. McDonalds Phil. Realty Corp., G.R. No. 242670, May 10, 2021 *citing* CIR vs. Sony Phils, Inc., G.R. 178697, November 17, 2010.
[58] CIR vs. Opulent Landowners, Inc., G.R. Nos. 249883-84, January 27, 2020.
[59] CIR vs. McDonalds Phil. Realty Corp., G.R. No. 242670, May 10, 2021 *citing* Sections 6, 10 and 13 of the NIRC of 1997 and Sec. D (4) of RMO 43-90.
[60] *Id.*

referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer.[61] Neither is a Referral Memorandum issued by the RDO directing another RO to continue with the examination equivalent to a LOA nor does it cure the RO's lack of authority.[62] In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against the respondent, the resulting assessments are void.[63]

In the present case, it is undisputed that RO Mempin and GS Masangya continued the audit investigation of the petitioner on the basis of a MOA, which is not sufficient to grant them the authority to conduct an audit if there is no corresponding LOA.

Accordingly, the absence of a new or separate LOA specifically identifying RO Mempin as the new RO who would continue the audit examination of petitioner's books of accounts for TY 2009, rendered her without authority to conduct such audit investigation. Hence, the resulting assessments from the audit she conducted are null and void.

Another important issue raised by the petitioner is the validity of the Waiver executed by its Managing Director, Mr. Christopher Ward (Mr. Ward).

Petitioner claims that:

> "20. Contrary to the respondent's misplaced position that a Waiver of the Defense of Prescription executed by petitioner, through its Managing Director, Mr. Christopher Ward, extended the period of the assessment until December 31, 2013, the BIR failed to comply with the legal requirements for a Waiver to be valid and binding upon the taxpayer and the BIR.
>
> 21. In the case of *CIR vs. Philippine Daily Inquirer* (G.R. No. 213943, March 22, 2017), the Supreme Court exhaustively discussed the legal requirements for a Waiver to be valid and binding upon the taxpayer and

[61] *Id.*
[62] CIR vs. Composite Materials, Inc., G.R. 238352, September 12, 2018.
[63] CIR vs. Opulent Landowners, Inc., G.R. Nos. 249883-84, January 27, 2020.

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the BIR, the undersigned shall hereby quote in full below:

Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after __ 19_", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to

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show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

...

24. In the instant case, the following defects were identified:

a) Respondent CIR stated in his Decision that a Waiver was accepted by the BIR through RDO Luis A. Alberto, Jr. on April 27, 2012, the same day it was executed. However, the records show that it was accepted by unidentified person on May 14, 2012.

b) RMO 20-90 provides that for tax cases involving more that P1 Million, the revenue officer authorized to sign the waiver is only the Commissioner. According to Section 207 of NIRC, the RDO may only sign the waiver for cases involving P1 million and below. ...

c) Petitioner was furnished a copy of the Waiver only on June 04, 2013, a date beyond the three-year prescriptive period to assess and which was not even accepted by its authorized representative.

d) The 6th requirement quoted in the case of *CIR v. Philippine Daily Inquirer* above was likewise not satisfactorily complied with.

25. Hence, as held by the Supreme Court in the case cited above, which is similar to this herein case, the period to assess by the BIR has already been barred by prescription. Waiver was INVALID." [64]

Petitioner further claims that the person who signed the Waiver had no authority from the Board of Directors; that the <u>period to assess</u> by the BIR for TY 2009 ended on April 15, 2013, while the PAN and FAN were issued only on September 30, 2013 and October 30, 2013, respectively;[65] that due to the defects in the Waiver, the period to assess or collect taxes was not extended; that consequently, the PAN and the FAN issued by the BIR beyond the three-year period were void and could

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[64] Par. 20, 21, 24 and 25, Petition for Review, *Id.*, p. 10.
[65] Par. 40, Petition for Review, *Id.*, p. 10.

never attain finality; and therefore, the collection proceedings could not have been legally initiated.[66]

On the other hand, respondent counters that:

"The period of the government to assess has not yet prescribed

14. Section 222 of the NIRC provides for the exceptions as to period of limitation of assessment and collection of taxes, to wit:

    "(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.

    The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

15. Petitioner alleged that the waiver extending the period until December 31, 2013 to assess its 2009 TY executed on April 27, 2012 by its Managing Director, Christopher Ward is void since the latter has no written notarized authority from its board of directors.

16. Perusal of the records show that said Christopher Ward has represented the petitioner on different correspondence with the BIR particularly on its letters regarding the submission of its documents dated July 23, 2010, September 22, 2010, November 15, 2010. Furthermore, he even signed the Statement of Management Responsibility as an attachment to its 2009 Audited Financial Statements as "President/Chairman of the Board". Hence, these correspondence and documents show that said Christopher Ward is indeed a responsible official of the corporation.

17. Petitioner cannot now come to court and deny the authority of said Christopher Ward in signing the said waiver as a defense against the assessment of its 2009 TY made within the extended period of assessment pursuant to the said waiver. It should be noted that it

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[66] Par. 44, Petition for Review, *Id.*, p. 10.

is the petitioner which caused the discrepancy in the waiver in not providing the notarized written authority. The Supreme Court held in the case of *Department of Public Highways vs. Quiwa*, to wit:

> "Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter. ... One who seeks equity must do equity, and one who comes into equity must come with clean hands."[67]

The Court is now confronted with the issue on the validity of the Waiver executed by the petitioner and whether it validly extended the original three-year prescriptive period until December 31, 2013.

The waiver, being defective and invalid, did not extend the period to assess petitioner until December 31, 2013; hence, the right of the Government to assess the alleged deficiency taxes is already barred by prescription, and the resulting assessments rendered null and void.

Section 203 of the NIRC of 1997, as amended, provides for a period of three (3) years for the BIR to assess internal revenue taxes, counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later. Consequently, any assessment issued after the expiration of such period is no longer valid and effective.

Moreover, Section 222 (b) of the 1997 NIRC, as amended, provides for the **exceptions as to the period of limitation of assessment** and collection of taxes, to wit:

[67] Par. 14 to 17 of the Answer, *Id.*, p. 172.

x--x

> "(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, **both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** " (Emphasis supplied)[68]

In *SMI-Ed Philippines Technology, Inc. v. Commissioner of Internal Revenue,* the Court explained the primary reason behind the prescriptive period on the CIR's right to assess or collect internal revenue taxes, that is, to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the Government must assess internal revenue taxes on time, so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.[69]

To implement the foregoing provisions, the BIR issued RMO No. 20-90 on April 4, 1990, which provides the guidelines for the proper execution of the Waiver of Statute of Limitations under the NIRC. It holds that a valid waiver of statute of limitations must be: (a) in writing; (b) agreed to by both the Commissioner and the taxpayer; (c) issued before the expiration of the ordinary prescriptive periods for assessment and collection; and (d) for a definite period beyond the ordinary prescriptive period for assessment and collection.[70]

Parenthetically, Revenue Delegation Authority Order (RDAO) No. 05-01 dated August 2, 2001 authorized subordinate Bureau officials to sign the waivers and introduced a new waiver form. It also provides the following procedures for the proper execution of a valid waiver, to wit:

> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ____ 19 _____," which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

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[68] Par. 14, Answer, *Id.,* p. 172.
[69] CIR vs Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017 *citing* the case of SMI-Ed Philippines Technology, Inc. v. CIR, 746 Phil. 607 (2014).
[70] La Flor Dela Isabela, Inc. vs. CIR, G.R. 202105, April 28, 2021, citing BPI vs. CIR, G.R. No. 139736, October 17, 2005

x---x

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR, or the revenue official authorized by him, must sign the waiver, thereby indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, has been duly notarized, and was executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and the date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy, to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[71]

These requirements are **mandatory** and must be strictly followed.[72] The Supreme Court did not hesitate to strike down and invalidate waivers which failed to strictly comply with the provisions of RMO No. 20-90 and RDAO No. 05-01.

In *Commissioner of Internal Revenue vs. Kudos Metal Corporation,*[73] the period to assess or collect taxes was not extended, and the assessments were rendered void, due to the following defects in the waivers: (1) the waivers were executed without the notarized written authority of the taxpayer's

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[71] La Flor Dela Isabela, Inc. vs. CIR, G.R. No. 202105, April 28, 2021 *citing* CIR vs. Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017.

[72] La Flor Dela Isabela, Inc. citing CIR vs. Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017.

[73] G.R. No. 178087, May 5, 2010.

representative to sign the waiver on its behalf; (2) the waivers failed to indicate the date of acceptance; and (3) the fact of receipt by the taxpayer of its file copy was not indicated in the original copies of the waivers.

In *Commissioner of Internal Revenue v. Standard Chartered Bank,*[74] the Court also invalidated the waivers executed by the taxpayer because: (1) the waivers were signed by the Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not indicated; (3) the waivers did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.

In *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc.,*[75] the periods for the CIR to assess or collect the alleged deficiency taxes were not extended, because it was found that the three (3) waivers that were the subject of the case suffered from the following defects: (1) At the time when the first waiver took effect on June 2, 2006, the period for the CIR to assess STI for deficiency EWT and deficiency VAT for fiscal year ending March 31, 2003 had already prescribed; (2) STI's signatory to the three (3) waivers had no notarized written authority from the corporation's Board of Directors; and (3) Similar to *Standard Chartered Bank,* the waivers did not specify the kind of tax and the amount of tax due.

In the recent case of *La Flor Dela Isabela, Inc. vs. Commissioner of Internal Revenue,*[76] the periods for the CIR to assess or collect the alleged deficiency taxes were not extended and the assessments issued were considered void and of no legal effect because of defects in the waiver. Thus:

> "Applying Section 222 (b) in relation with Section 203 of the NIRC, as well as the applicable BIR issuances, namely, RMO 20-90 and RDAO 05-01, and the relevant jurisprudence, We find that the waivers subject of this case failed to strictly comply with the requirements under the law.

MAW

[74] G.R. No. 192173, July 29, 2015.
[75] G.R. No. 220835, July 26, 2017.
[76] G.R. No. 202105, April 28, 2021.

x--x

> First, the first and fourth waivers ... failed to specify the date of acceptance by the CIR or his duly authorized representative for the purpose of determining whether the said waivers were validly accepted before the expiration of the original threeyear period and the period agreed upon in case of subsequent agreement.
>
> Second, all five waivers were signed by Cesar C. Maranan (Maranan), the Accounting Manager of petitioner La Flor. ... No notarized written authority was attached to the waivers authorizing Maranan to sign the waivers for and on behalf of La Flor. Neither was there any evidence showing that Maranan was among the responsible officials of petitioner La Flor authorized by its by-laws to execute a waiver.
>
> Third, even assuming that the first three waivers were validly executed and that Maranan had authority to sign the waivers on behalf of petitioner, the fourth Waiver was executed and notarized only on January 6, 2004, clearly beyond the expiry of the third waiver on December 31, 2003. The fourth waiver did not also indicate the date of acceptance by the CIR or his duly authorized representative. It bears noting that both the execution and the acceptance of the subsequent waiver should be made before the expiration of the period of prescription or before the lapse of the period agreed upon in the prior or preceding waiver. Patently, the fourth Waiver was executed and accepted on January 6, 2004, or beyond the period agreed upon by La Flor and the CIR in the third Waiver, i.e. until December 31, 2003.
>
> Consequently, with the nullity of the fourth waiver, the execution and acceptance of the fifth waiver on November 4, 2004 were not valid since there was no more period to extend for which the CIR could assess La Flor's internal revenue taxes for taxable year 1999. Section 222(b) of the NIRC is explicit that the period agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

Applying Section 222 (b) in relation to Section 203 of the NIRC, as well as RMO No. 20-90 and RDAO No. 05-01, and the relevant jurisprudence, we find the Waiver executed by Mr. Ward suffers from the following defects, similar to the case of *Kudos Metal Corporation*, *viz.*:

1. Mr. Ward signed the Waiver without the notarized written authority from the corporation's Board of Directors. It bears emphasizing that RDAO No. 05-01 directs the authorized revenue official to ensure that the waiver is duly

accomplished and signed by the taxpayer or his authorized representative, before affixing his signature to signify his acceptance of the same; and in case the authority is delegated by the taxpayer to a representative, as in this case, the concerned revenue official shall see to it that such delegation is in writing and duly notarized.[77]

2. The Waiver failed to indicate the date of acceptance by the CIR or his duly authorized representative for the purpose of determining whether the acceptance was made before the expiration of the original three-year period. While there appears to be a date appearing on the space for the date of acceptance of the waiver, *i.e.*, April 27, 2012, respondent's witness[78] testified that the date of acceptance by the BIR is not indicated in the document. It was also one of the review findings of BIR Reviewer, Mathew Michael V. Torio:[79]

> "ATTY. AGAAB:
> Q: I am looking at the copy of the Waiver... it is mentioned in the Affidavit that there two (2) copies retained by the BIR and one retained by the petitioner. Would you know when such Waiver was accepted, the date of acceptance by the BIR?
>
> RO MEMPIN-BIEN:
> A. It does not indicate in the document.
>
> ATTY. AGAAB:
> Your Honors, I would like to manifest that about the document, Exhibit R-13 and R-13-A concerning Exhibit R-24 and R-25-A, we would like to note that in R-25-A, there is a handwritten note thereby <u>BIR Reviewer Matthew Michael B. Torio, there is a handwritten note there that says "Please also indicate the date of acceptance in the attached Waiver"</u>. I would like to manifest that, Your Honors.
>
> JUSTICE CASTAÑEDA:
> Noted."[80] (Emphasis Supplied)

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[77] Exhibit "P-7", *Id.*, p. 55; Exhibit "R-13", p. 391.
[78] TSN dated February 8, 2021, p. 10.
[79] Exhibits "R-25" and "R-25-A", *Id.*, pp. 419 and 420.
[80] TSN dated February 8, 2021, p. 10.

Thus, it would seem that the date April 27, 2012 indicated on the face of the waiver is not the date of respondent's or his authorized representative's acceptance.

3. The fact of receipt by the petitioner of its file copy was not indicated in the original copy of the Waiver. The two copies of the Waiver retained by the respondent do not indicate that the petitioner was furnished a copy of the BIR-accepted Waiver.[81]

Considering the foregoing defects in the Waiver executed by the parties, the periods for the respondent CIR to assess or collect the alleged deficiency Income Tax, VAT, and EWT were not extended until December 31, 2013. The period within which respondent could assess the internal revenue taxes of petitioner had already prescribed. *In fine,* the PAN and the corresponding FANs issued on September 30, 2013 and October 30, 2013, respectively, or beyond the three-year prescriptive period, are therefore considered void and of no legal effect. Without a valid waiver, the statute of limitations on assessment, and consequently on collection of the deficiency taxes, could not have been suspended.

In turn, the Preliminary Collection Letter, the FNBS and the Warrant of Distraint and Levy issued pursuant to void assessments, are also void.

Accordingly, even if a LOA was validly issued in the name of RO Mempin, the assessments and the resulting notices are nonetheless null and void because the subject Waiver was defective and did not extend the original prescriptive period.

Void assessments bear no valid fruit.[82]

WHEREFORE, in light of the foregoing, the instant Petition for Review is **GRANTED**. Accordingly, the following Assessment Notices under Formal Letter of Demand No. 43B-B057-09 all dated October 30, 2013, covering TY 2009, assessing petitioner Executive for deficiency taxes, viz:

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[81] Exhibits "R-13" and "R-13-A"; RMC No. 6-2005 dated February 2, 2005, *Id.*, pp. 391 and 392.
[82] Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue, G.R. No. 214848, May 14, 2021; Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010; Commissioner of Internal Revenue vs. Azucena T. Reyes, G.R. Nos.159694 and 163581, January 27, 2006.

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Kind of Tax		**Amount**
Income Tax	₱	12,785,689.97
Value Added Tax		533,176.13
Expanded Withholding Tax		452,074.19

are **CANCELLED** and **SET ASIDE** for being null and void.

Consequently, respondent Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from proceeding with the collection of the said deficiency taxes against petitioner during the pendency of the instant case.

SO ORDERED.

LANEE CUI-DAVID
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, Jr.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, Jr.
Associate Justice
2nd Division Chairperson

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CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice