20-000161-0073

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10296

ORIENT OVERSEAS CONTAINER LINE LTD., represented by OOCL (PHILIPPINES) INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. FELIX PAUL R. VELASCO III
ATTY. SYLVIA R. ALMA-JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

CASTILLO LAMAN TAN PANTALEON & SAN JOSE
2nd to 5th & 9th Floors, The Valero Tower
122 Valero Street, Salcedo Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **January 9, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 10, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ORIENT OVERSEAS CONTAINER LINE LTD., represented by OOCL (PHILIPPINES) INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10296

Members:

DEL ROSARIO, ***P.J.**, Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, ***JJ.***

Promulgated:
JAN 09 2025; 1:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Orient Overseas Container Line Ltd. (**petitioner/OOCL**), represented in this case by OOCL (Philippines) Inc. (**OPI**), against respondent Commissioner of Internal Revenue (**respondent/CIR**) pursuant to Section 3(a)[2], Rule 8[3]

---

[1] Filed on 01 July 2020, Division Docket, Volume I, pp. 6-41.

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

[3] PROCEDURE IN CIVIL CASES.

in relation to Section 3(a)(1)[4], Rule 4[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It prays that judgment be rendered ordering the cancellation and withdrawal of the Final Decision on Disputed Assessment (**FDDA**), dated 17 February 2020[6], that respondent issued against petitioner. The FDDA was a result of the examination of the latter's books of accounts and other accounting records for the taxable period from 01 July to 2012 to 30 June 2013, or the fiscal year (**FY**) ended 30 June 2013, for brevity.

PARTIES TO THE CASE

Petitioner is a foreign corporation duly organized and existing under the laws of Hong Kong. It operates in the Philippines as an international carrier through OPI, its local shipping agent.[7] OPI, on the other hand, is a domestic corporation located at 11th Floor, Two-Ecom Centre-Tower B, Bayshore Avenue, Mall of Asia Complex, 1300 Pasay City, which represents OOCL in the present case.[8]

Respondent is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof, administered by the Bureau of Internal Revenue (**BIR**). He or she holds office at the BIR National Office Building, Sen. Miriam P. Defensor-Santiago Avenue, Diliman, Quezon City.

---

4 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

5 JURISDICTION OF THE COURT.

6 Exhibit "R-12", BIR Records, Folder 1, pp. 663-679.

7 Apostilled Power of Attorney, Division Docket, Volume I, pp. 251-253.

8 Id.

FACTS OF THE CASE

On 27 March 2015, the BIR's Large Taxpayers Service (**LTS**) Regular LT Audit Division 2 (**RLTAD-2**) issued a Letter of Authority (**LOA**) with Reference No. LOA-125-2015-00000014[9] (SN: eLA201100086758) through then Officer-in-Charge (**OIC**) Assistant Commissioner of the LTS, Nestor S. Valeroso (**Assistant Commissioner Valeroso**). The LOA authorized Revenue Officer (**RO**) Joseph Christian Santos (**Santos**) and Group Supervisor (**GS**) Fe Caling (**Caling**), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the FY ended 30 June 2013. Petitioner received the said LOA on 30 March 2015.

While the audit was ongoing, petitioner executed a "Waiver of the Defense of Prescription Under the Statute of Limitations of the [NIRC]" dated 07 October 2015[10], and another dated 25 May 2016.[11] Respondent continued to carry out the examination of petitioner's books under the assumption that the said waivers were valid, thereby extending the BIR's right to assess.

In the *interim*, on 08 April 2016, Mitchell L. Yu, Division Chief of RLTAD-2, issued a Memorandum of Assignment[12] (**MOA**) designating RO Alvin B. Lasquety (**Lasquety**) as the new handling RO for petitioner's case. RO Santos was promoted to GS and was directed to take over the case as GS in place of GS Caling. On 20 May 2016, petitioner learned of the change through a letter from the BIR dated 04 May 2016[13], informing it that RO Lasquety and GS Santos would be continuing the investigation of petitioner's books for the FY ended 30 June 2013.

As a result of the audit team's investigation, RO Lasquety recommended the issuance of a Preliminary Assessment Notice (**PAN**) through a Memorandum dated 14 November 2016.[14]

---

9 Exhibit "R-1", BIR Records, Folder 1, p. 1.
10 Exhibit "R-5", id., p. 204.
11 Exhibit "R-6", id., p. 206.
12 Id., p. 209.
13 Id., p. 210.
14 Exhibit "R-7", id., p. 428-433.

Pursuant thereto, on 28 November 2016, the BIR issued the Preliminary Assessment Notice (**PAN**).[15] It assessed petitioner with alleged deficiency Income Tax (**IT**), Percentage Tax (**PT**), Value-Added Tax (**VAT**), Expanded Withholding Tax (**EWT**), and Documentary Stamp Tax (**DST**), aggregating ₱83,946,607.04, inclusive of interest and compromise penalties, to wit:

Tax Type	Basic Tax Due	Interest	Compromise	Total Due
IT	₱22,440,333.64	₱14,091,299.92	-	₱36,531,633.56
PT	16,079,849.44	10,863,810.60	-	26,943,660.04
VAT	3,717,716.33	2,501,564.74	-	6,219,281.07
EWT	8,347,659.30	5,662,686.14	-	14,010,345.44
DST	1,180.00	806.93	-	1,986.93
Compromise penalties	-	-	₱239,700.00	239,700.00
Total	**₱50,586,738.71**	**₱33,120,168.33**	**₱239,700.00**	**₱83,946,607.04**

In response thereto, on 13 December 2016, petitioner filed a Reply to the PAN dated 11 December 2016.[16] There, except for DST, petitioner explained the related factual and legal bases for each item of the deficiency assessment as set forth in the PAN. As for the DST, petitioner manifested that it would settle the DST deficiency "solely for practical considerations", but prayed for the cancellation of the remaining items.

Thereafter, in another Memorandum dated 15 December 2016[17], RO Lasquety recommended the issuance of a Formal Letter of Demand with Details of Discrepancies and Assessment Notices (**FLD/FAN**).

Accordingly, on 21 December 2016, the BIR issued the FLD/FAN.[18] It demanded anew the payment of the same basic tax deficiencies as stated in the PAN, this time totaling ₱85,221,670.03 (as adjusted for incremental interest), broken down as follows:

15 Exhibit "R-8", id., pp. 455-465.
16 Exhibit "P-7", Division Docket, Volume I, pp. 554-559.
17 Exhibit "R-9", BIR Records, Folder 1, pp. 504-505.
18 Exhibit "R-10", id., pp. 509-527.

Tax Type	Basic Tax Due	Interest	Compromise	Total Due
IT	₱22,440,333.64	₱14,656,919.29	-	₱37,097,252.93
PT	16,079,849.44	11,269,110.92	-	27,348,960.36
VAT	3,717,716.33	2,595,271.56	-	6,312,987.89
EWT	8,347,659.29	5,873,092.89	-	14,220,752.18
DST	1,180.00	836.67	-	2,016.67
Compromise Penalties	-	-	₱239,700.00	239,700.00
Total	**₱50,586,738.70**	**₱34,395,231.33**	**₱239,700.00**	**₱85,221,670.03**

Petitioner received a copy of the said FLD/FAN on 22 December 2016.[19] Accordingly, on 23 January 2017, petitioner filed with the BIR its Letter-Protest.[20] Once again, it submitted its positions for each item of the deficiency assessment. It also informed the BIR that it had already settled the DST deficiency and part of the EWT deficiency, and requested for the reinvestigation of the remaining deficiency taxes.

On 18 February 2020, petitioner received the FDDA dated 17 February 2020.[21] After considering petitioner's Letter-Protest, it adjusted and recomputed the deficiency IT and EWT, dropped the finding on deficiency DST and cancelled part of the compromise penalties previously imposed, then added incremental interest, as summarized below:

Tax Type	Basic Tax Due	Interest	Compromise	Total Due
IT	₱21,982,744.58	₱23,558,274.99	-	₱45,541,019.57
PT	16,079,849.44	17,998,858.31	-	34,078,707.75
VAT	3,717,716.33	4,151,212.24	-	7,868,928.57
EWT	8,344,335.47	9,363,030.23	-	17,707,365.70
Compromise Penalties			₱175,000.00	175,000.00
Total	**₱50,124,645.82**	**₱55,071,375.77**	**₱175,000.00**	**₱105,371,021.59**

Between 17 March 2020 to 15 May 2020 and 16 May 2020 to 31 May 2020, the National Capital Region (**NCR**) was placed under Enhanced Community Quarantine (**ECQ**) and Modified Enhanced

---

19 Exhibit "P-8", Division Docket, Volume I, p. 560, Exhibit "R-10", BIR Records, Folder 1, pp. 509-527, and par. 12, JSFI, Division Docket, Volume II, p. 717.
20 Exhibit "P-3", id., pp. 578-587.
21 Exhibit "R-12", supra at note 6, and par. 14, JSFI, Division Docket, Volume II, p. 718.

Community Quarantine (**MECQ**), respectively. Addressing the same periods, the Supreme Court issued its own Administrative Circulars[22] (**ACs**) extending the deadline for the filing of appeals and other submissions for 30 calendar days, counted from 01 June 2020.

Thus, on 01 July 2020, pursuant to Section 228[23] of the NIRC of 1997, as amended, petitioner filed the instant Petition for Review.[24] The case was initially raffled to this Court's Second Division.

PROCEEDINGS BEFORE THE SECOND DIVISION

On 22 July 2020, the Second Division served Summons[25] on respondent, requiring the latter to submit an Answer within 30 days from service, or until 21 August 2020.

On 16 September 2020, respondent filed an "Omnibus Motion ([1.] Motion to Admit Attached Answer and [2.] Motion to Defer Submission of Judicial Affidavits of Witnesses)"[26] (**Omnibus Motion**), citing the challenges in accessing the BIR Records because of the COVID-19 pandemic lockdown, and the fact that the handling counsel underwent quarantine after his exposure to a patient who tested positive for COVID-19. The said Omnibus Motion prayed that the belatedly-filed Answer[27] be admitted and respondent be given additional time to file the necessary witnesses' Judicial Affidavits.

---

22 Supreme Court (SC) Administrative Circular (AC) Nos. 31-2020, 34-2020, 35-2020, and 39-2020.

23 SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: ...

...

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations[.] (Emphasis supplied)

24 Supra at note 1.

25 Division Docket, Volume I, p. 247.

26 Id., pp. 257-260.

27 Respondent's Answer dated 16 September 2020, id., pp. 261-275.

In Resolution dated 22 September 2020[28], the Second Division then ordered petitioner to comment on respondent's Omnibus Motion. In compliance, on 05 October 2020, petitioner filed a "Motion with Comment (on [R]espondent's Omnibus Motion dated September 16, 2020)"[29] where it challenged the admission of the Answer stating that the same was baseless, dilatory, belatedly filed, and should not have been admitted.

Over petitioner's objections, in the interest of justice, the Second Division granted the Omnibus Motion in its Resolution dated 16 October 2020[30], and accordingly denied petitioner's reciprocal Motion.

In his or her Answer dated 16 September 2020[31], respondent essentially cited the following special and affirmative defenses: (1) the initial LOA and the letter following the MOA sufficiently clothed RO Lasquety with the necessary authority to investigate petitioner's records; (2) the factual and legal bases of the deficiency taxes assessed were valid; and, (3) the BIR had fully complied with the due process requirements in issuing the present assessment.[32]

With the admission of respondent's Answer, the Second Division set the case's Pre-Trial Conference on 15 February 2021.[33] Accordingly, on 10 February 2021, ahead of the Pre-Trial Conference, both parties filed their respective Pre-Trial Briefs.[34]

Later, on 15 February 2021[35], the Second Division deferred the Pre-Trial Conference and instead directed the parties to appear before the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation proceedings on 08 March 2021, pursuant to Parts I.1.A[36] and

---

28 Id., p. 278.
29 Id., pp. 326-332.
30 Id., p. 335-337.
31 Supra at note 27.
32 Id.
33 See Resolution dated 20 November 2020, Division Docket, Volume I, pp. 346-347.
34 Id., pp. 348-353 and 448-463.
35 See Minutes of the Hearing and Order, both dated 15 February 2021, id., Volume II, pp. 691 and 692, respectively.
36 I. *Coverage*
I.1. The following cases may be referred to mediation:

II[37] of A.M. No. 11-1-5-SC-PHILJA or the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals. In the Resolution issued on even date, the Second Division reiterated its foregoing order and suspended the proceedings for thirty (30) days.[38]

Although the mediation meeting went as scheduled, the parties decided not to pursue the same.[39] On 15 March 2021, the PMC-CTA forwarded a Report dated 08 March 2021 stating that the conciliation proceedings failed.[40] The Second Division noted the same in its Resolution dated 18 March 2021[41] and accordingly set the Pre-Trial Conference anew on 14 April 2021, though the same later had to be rescheduled, considering the Supreme Court's precaution to physically close the courts due to the rising number of COVID-19 cases at the time.[42]

On 20 May 2021, respondent transmitted the BIR Records, consisting of two (2) folders, with the first consisting of the main records in 684 pages and the other of supporting documentation filed by petitioner (during the administrative proceedings) in 878 pages.[43]

A. *Cases within the jurisdiction of the Divisions*
1. Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC), or other laws administered by the Bureau of Internal Revenue (BIR);
2. Inaction by the CIR in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period for action, in which case the inaction shall be deemed a denial upon the lapse of said period[.]

37 II. *Referral to Mediation*
The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.
A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

38 Division Docket, Volume II, p. 693.

39 Id., p. 702.

40 Id.

41 Id., p. 704.

42 Pursuant to SC AC Nos. 21-2021, 22-2021, and 29-2021, the time for filing and service of pleadings and motions from 10 April 2021 to 14 May 2021 in all the courts and judicial offices in the National Capital Judicial Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) was suspended and resumed on 17 May 2021, the first day of the physical reopening of the relevant court.

43 Division Docket, Volume II, p. 705.

In the Order dated 25 May 2021[44], the Second Division reset the Pre-Trial Conference to 19 July 2021. The Pre-Trial Conference proceeded as rescheduled, and the Second Division set schedules for the presentation of the parties' witnesses (the first of which was set on 13 September 2021) and the marking of their documentary exhibits.[45] It likewise ordered the parties to file their Joint Stipulation of Facts and Issues (**JSFI**) within twenty (20) days, or until 08 August 2021. The Second Division also allotted petitioner the same period to possibly file a motion to commission an Independent Certified Public Accountant (**ICPA**).

On 11 October 2021, the Second Division issued a Notice of Resetting[46] in consideration of physical closure of the courts in the NCR pursuant to Supreme Court AC No. 56-2021. It reset the hearing previously scheduled on 13 September 2021 (for petitioner's initial presentation of evidence) to 10 November 2021. Similarly affected by the courts' closure, the parties filed their JSFI on 27 October 2021.[47] The Second Division then approved the parties' JSFI in the Pre-Trial Order it issued on 03 November 2021.[48]

On 10 November 2021[49], trial ensued with petitioner presenting Claire Suvissor Pancho (**Pancho**) as its first witness. On the witness stand, Pancho identified the exhibits she had referred to in her Judicial Affidavit.[50] These exhibits mainly dealt with the BIR documents issued to petitioner over the course of the examination of its books (from the LOA to the FDDA). Relative thereto, she testified that she was OPI's Treasurer and Financial Control Manager, making her privy to the events surrounding the administrative proceedings relative to petitioner's present assessment. She detailed the circumstances of the relationship between OOCL and OPI, and her role in both as Attorney-in-Fact. Pancho likewise testified on the events that transpired prior to the filing of the instant Petition and her part in the proceedings leading to the eventual issuance of the FDDA against petitioner. She attested

---

44 Id., p. 709.
45 See Minutes of the Hearing and Order, both dated 19 July 2021, id., pp. 710 and 711, respectively.
46 Id., pp. 714.
47 Id., pp. 715-727.
48 Id., pp. 730-735.
49 See Order dated 10 November 2021, p. 736.
50 Exhibit "P-19", id., Volume I, pp. 469-483.

that petitioner caused the filing of the present Petition as it viewed the assessment to be void (and the findings therein as erroneous). In particular, she echoed petitioner's defenses and justifications as they were laid out in the Petition for Review.

Respondent's counsel did not cross examine Pancho. Thus, upon the completion and termination of her testimony, the Second Division gave petitioner anew a period of 20 days to file a motion to commission an ICPA. It then set a hearing on 07 February 2022 for the continuation of the presentation of petitioner's evidence, or the possible commissioning of an ICPA (if petitioner opts to file a motion for the purpose).[51]

On 01 December 2021, petitioner filed its Motion to Commission ICPA dated 29 November 2021.[52] However, petitioner's proposed ICPA failed to appear for commissioning in the 07 February 2022 hearing. After issuing a warning, the Second Division reset the hearing for the commissioning to 07 March 2022.[53] However, an official court activity later constrained the Second Division to push the hearing further back to 20 April 2022.[54]

In the 20 April 2022 hearing[55], Romeo A. De Jesus, Jr. (**De Jesus**) was commissioned as ICPA in the absence of any objections thereto. Accordingly, the Second Division ordered him to submit the ICPA Report within forty-five (45) days (or until 04 June 2022) and set a hearing for the presentation of the said report on 06 June 2022.

On 30 May 2022, petitioner filed a "Motion for Extension and Resetting"[56] asking for an additional fifteen (15) days for the ICPA to complete and submit the complete ICPA Report, and the resetting of the corresponding hearing for its presentation to 06 July 2022 or later. Petitioner points out that the voluminous documentation that needed

[51] Supra at note 49.
[52] Division Docket, Volume II, pp. 742-745.
[53] See Order dated 07 February 2022, id., p. 764.
[54] See Notice of Resetting dated 28 February 2022, id., p. 765.
[55] See Minutes of the Hearing and Order, both dated 20 April 2022, id., pp. 767 and 768, respectively.
[56] Id., pp. 769-772.

to be examined and the further substantial effort necessary to pre-mark and scan all of the exhibits necessitate additional time for the ICPA to complete.

In the Resolution dated 08 June 2022[57], the Second Division granted the extension (giving the ICPA until 19 June 2022 to file his report) and reset the hearing to 18 July 2022. On 20 June 2022, ICPA De Jesus filed the ICPA Report, with the accompanying exhibits in a USB Drive.[58] Meanwhile, on 13 July 2022, petitioner submitted ICPA De Jesus' Judicial Affidavit dated 12 July 2022.[59] The 18 July 2022 hearing then proceeded, as scheduled.[60]

When ICPA De Jesus took the witness stand, he declared that he conducted an examination of petitioner's supporting documents in connection with the instant petition. He identified his Report and some of the corresponding exhibits he had referred to in his Judicial Affidavit.[61] ICPA De Jesus also outlined the scope of his examination and the procedures he performed. In verifying each item of the deficiency assessment, he analyzed how respondent recomputed the alleged deficiency taxes by looking into the breakdown and details thereof. He then reviewed petitioner's defenses against each item, as stated in its administrative protest and in the present petition. Apart from petitioner's arguments and supporting documentation, he also proffered discussions citing legal bases for cancelling several of the items in the assessment. The foregoing collectively led him to conclude that petitioner had no deficiency IT, PT, VAT, nor EWT (and thus, there was similarly no basis for compromise penalties).

With ICPA De Jesus being petitioner's last witness, its turn to present evidence had thus ended. The Second Division then gave petitioner 15 days, or until 02 August 2022, to file its Formal Offer of Evidence (**FOE**). Correspondingly, respondent was given 15 days from receiving a copy of the FOE to file a Comment thereon. The Second

---

57 Id., pp. 776-777.
58 Submission dated 17 June 2022, id., pp. 778-780.
59 Submission dated 12 July 2022, id., pp. 868-870.
60 See Minutes of the Hearing and Order, both dated 18 July 2022, id., pp. 905 and 906-907, respectively.
61 See Exhibit "P-25", id., pp. 872-887.

Division also set the hearing for respondent's initial presentation of evidence on 03 October 2022.[62]

On 25 July 2022, through its "Manifestation and Motion to Set Commissioner's Hearing"[63], petitioner informed the Court that a number of the exhibits it intended to offer had not yet been marked as the Commissioner's Hearings set for the marking thereof had previously been cancelled due to multiple instances of physical closures of the courts in the NCR. In consideration thereof, petitioner asked to set additional Commissioner's Hearings and to extend the period for the filing of its FOE until after its exhibits were marked.

The Second Division granted the same in its Resolution dated 02 August 2022[64], setting a Commissioner's Hearing on 22 August 2022 and moving petitioner's deadline to file its FOE to 01 September 2022. However, on the same day, petitioner filed an "[FOE] *Ad Cautelam*"[65] (to meet its previous deadline for filing its FOE), offering its full list of exhibits, but with a reservation that part of its exhibits remained unmarked due to insufficient time in the previous Commissioner's Hearing to complete the marking of its exhibits.

On 25 August 2022, in a further "Manifestation and Motion"[66], petitioner confirmed that both parties were able to attend the 22 August 2022 Commissioner's Hearing, but they were unable to finish the marking of petitioner's documentary evidence due to insufficient time. Thus, petitioner was constrained to ask for another Commissioner's Hearing and further defer the filing of its FOE. In the Resolution dated 05 September 2022[67], the Second Division granted petitioner's request, setting another Commissioner's Hearing on 12 September 2022 and again pushing back petitioner's deadline to file its FOE to 22 September 2022.

---

62 Supra at note 60.
63 Division Docket, Volume II, pp. 908-911.
64 Id., p. 914.
65 Id., pp. 915-923.
66 Id., pp. 930-932.
67 Id., p. 936.

On 21 September 2022, petitioner was able to file its "Supplement to [FOE]".[68] On 03 October 2022, respondent filed his or her Comment thereto.[69] In its Resolution dated 06 October 2022[70], the Second Division submitted petitioner's FOE and Supplement to FOE for resolution (with respondent's Comment). In the same Resolution, in view of the items pending resolution, it also reset respondent's presentation of evidence to 09 February 2023.

In the Resolution dated 19 December 2022[71], the Second Division acted upon petitioner's FOE (and Supplement to FOE), admitting most of its offered exhibits, but also denying a number of exhibits supposedly pre-marked by the ICPA that could not be found in the records of the case. Aggrieved, petitioner filed a "Motion for Partial Reconsideration with Submission"[72] (**MPR**) on 09 January 2023, stating that exhibits in question may had been inadvertently excluded from previous submissions. To remedy the same, petitioner submitted a USB Drive containing the missing ICPA Exhibits.

On 12 January 2023, the Second Division ordered respondent to comment on petitioner's MPR.[73] Considering the pending incidents surrounding petitioner's FOE, it also cancelled the hearing for the initial presentation of respondent's evidence (which was then set for 09 February 2023) until further notice.

On 24 January 2023, respondent filed a Comment/Opposition[74], mainly arguing that the missing exhibits should be authenticated and re-submitted by the ICPA (who originally scanned and pre-marked the said exhibits during his review and examination of petitioner's records). On 01 February 2023, ICPA De Jesus transmitted the missing documentary exhibits.[75] On 23 February 2023, with copies of the missing exhibits from both petitioner and the ICPA on hand, the Second Division granted petitioner's MPR, thereby admitting the

---

68 Id., pp. 942-946.
69 Respondent's "*Comment (On Petitioner's Formal Offer of Evidence)*" dated 03 October 2022, id., pp. 975-977.
70 Id., p. 980.
71 Id., pp. 982-984.
72 Id., pp. 985-989.
73 See Resolution dated 12 January 2023, id., p. 1154.
74 Id., pp. 1155-1157.
75 Id., pp. 1159-1161.

remainder of its previously offered exhibits.[76] Accordingly, the hearing for respondent's initial presentation of evidence was set anew on 22 August 2023.[77]

On 29 May 2023, pursuant to CTA Administrative Circular No. 01-2023 dated 23 May 2023, the present case was transferred to this Court's First Division, which continued to hear the same.[78]

PROCEEDINGS BEFORE THE FIRST DIVISION

During the hearing of 22 August 2023, GS Santos (formerly RO Santos) took the witness stand as respondent's lone witness.[79]

By way of his Judicial Affidavit[80], GS Santos testified that his group conducted the examination of petitioner's books of accounts for the FY ended 30 June 2013. He confirmed that he derives his authority to audit and investigate petitioner's records from LOA No. 125-2015-00000014. He recalled the circumstances surrounding the investigation. In particular, he stated that his group had recommended the issuance of a PAN through a Memorandum dated 14 November 2016, and that a PAN was thereafter issued as a result. He further declared that after the PAN was served, petitioner protested the same. Later, they recommended the issuance of an FLD/FAN, again through a Memorandum dated 15 December 2016. He continued that an FLD/FAN was eventually served on petitioner, which it likewise protested, leading them to recommend (through their Memorandum dated 08 November 2019[81]) the issuance of the FDDA.

Having no witnesses left to present, the First Division directed respondent to file his or her FOE within ten (10) days, or until 01 September 2023. In turn, it gave petitioner ten (10) days from receiving a copy thereof, to file its Comment. Finally, it gave each of the

---

76 See Resolution dated 23 February 2023, id., pp. 1163-1165.
77 Id.
78 Reorganizing the Divisions of the Court.
79 See Order dated 22 August 2023, Division Docket, Volume II, pp. 1168-1169.
80 Exhibit "R-14", id., Volume I, pp. 358-364.
81 Exhibit "R-11", BIR Records, Folder 1, pp. 642-650.

parties 30 days to file their Memoranda from receiving a copy of the Court's later resolution acting on respondent's FOE.[82]

On 04 September 2023, respondent filed his or her FOE.[83] On 15 September 2023, petitioner filed its Comment thereon.[84] In the Resolution dated 25 October 2023[85], the Court admitted all of respondent's offered exhibits.

The same Resolution reiterated its directive of ordering the parties to file their respective memoranda.[86] In compliance, petitioner filed its Memorandum[87] on 30 November 2023. Meanwhile, on 07 December 2023, respondent filed a Manifestation[88] stating that he or she would be adopting the arguments in the previously-filed Answer as his or her Memorandum. Accordingly, in its Resolution dated 09 January 2024[89], the First Division noted petitioner's Memorandum and respondent's Manifestation then submitted the case for decision.

ISSUES

As the parties so stipulated during the Pre-Trial, the following issues were laid out for this Court's determination —

I.

WHETHER THE DEFICIENCY TAX ASSESSMENT ISSUED AGAINST PETITIONER ORIENT OVERSEAS CONTAINER LINE LTD. FOR THE FISCAL YEAR (FY) ENDED 30 JUNE 2013 SHOULD BE CANCELLED ON THE GROUND THAT THE LETTER OF AUTHORITY (LOA) ISSUED TO PETITIONER WAS INVALID; AND,

II.

WHETHER PETITIONER ORIENT OVERSEAS CONTAINER LINE LTD. IS LIABLE FOR DEFICIENCY INCOME TAX (IT), PERCENTAGE

82 See Order dated 22 August 2023, supra at note 79.
83 Division Docket, Volume II, pp. 1171-1177.
84 Petitioner's "Comment (on [R]espondent's Formal Offer of Evidence dated September 4, 2023)", id., pp. 1174-1180.
85 Id., pp. 1187-1188.
86 Id.
87 Id., pp. 1189-1230.
88 Id., pp. 1233-1235.
89 Id., p. 1237.

TAX (PT), VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT), IN THE AGGREGATE AMOUNT OF ₱105,371,021.59, INCLUSIVE OF INTEREST AND COMPROMISE PENALTIES, FOR THE FISCAL YEAR (FY) ENDED 30 JUNE 2013.

ARGUMENTS OF THE PARTIES

In support of its petition, petitioner argues that the LOA in this case was not issued by an authorized officer. Assuming the LOA was valid, the RO that conducted the audit was different from the one named therein. For petitioner, the aforementioned reasons warrant the cancellation and reversal of respondent's assessment.

With respect to each item comprising the deficiency assessment, petitioner interposed its disagreement with each finding of deficiency IT, PT, VAT, and EWT, and similarly questions the imposition of compromise penalties. Petitioner maintains that the alleged deficiencies flagged in the assessment lacked legal and factual basis.

On the other hand, respondent counters that the LOA issued to petitioner (through Assistant Commissioner Valeroso) was valid. Respondent claims that RO Lasquety is duly authorized to continue the audit and examination of petitioner's books through the authority granted by the issued MOA. He or she likewise points out that GS Santos remained part of the audit team, clarifying that a GS's functions include the conduct of an audit and examination of a taxpayer's books.

Moreover, respondent contends that the MOA derives its power from the original LOA previously issued. He or she further argues that no law requires ROs to be identified in the LOA for them to properly acquire the necessary authority.

Finally, respondent maintains that petitioner is liable for the deficiency IT, PT, VAT, and EWT, as well as the compromise penalties, as were set forth in the PAN, FLD/FAN, and FDDA. According to respondent, his or her assessments are presumed to be correct and made in good faith, and the taxpayer bears the burden to prove otherwise.

RULING OF THE COURT

Before delving into the merits of the case, We find it propitious to first determine whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE PRESENT PETITION FOR REVIEW.

The Court of Tax Appeals (**CTA**), being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[90]

Section 11 of the Republic Act (**RA**) No. 1125, as amended by RA 9282, in relation to Section 3(a), Rule 8 of the RRCTA, provides for the proper period during which petitioner may invoke the CTA's jurisdiction in order to question respondent's decision, to wit:

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>
> ...
>
> SEC. 3. *Who may appeal; period to file petition.* —
>
> (a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original

[90] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, 12 March 2014.

> jurisdiction **may appeal to the Court by petition for review filed <u>within thirty days</u> after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[91]
>
> ...

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a Petition for Review with the CTA. Here, petitioner received the FDDA on 18 February 2020.[92] Counting 30 days therefrom, petitioner originally had until <u>19 March 2020</u> to file its judicial appeal.

However, on 17 March 2020, in response to complications brought about by the COVID-19 pandemic, the NCR underwent ECQ, eventually transitioning into MECQ until the same was lifted on 31 May 2020. The Supreme Court issued a series of ACs specifically addressing the periods for filing and submissions falling due within this period, extending the pertinent deadlines as follows:

Issuance	Extension granted[93]
Supreme Court AC No. 31-2020	"The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that <u>fall due during the period from 15 March 2020 until 15 April 2020</u> is **EXTENDED for THIRTY (30) calendar days counted from 16 April 2020.**"
Supreme Court AC No. 34-2020	"The filing of petitions and appeals, complaints, motions, pleadings and other court submissions that <u>fall due up to 30 April 2020</u> is **extended for 30 calendar days, counted from 1 May 2020**[.]"
Supreme Court AC No. 35-2020	"The filing of petitions and appeals, complaints, motions, pleadings and other court submissions that <u>fall due up to 15 May 2020</u> in the ECQ areas is **extended for 30 calendar days, counted from 16 May 2020**[.]"
Supreme Court AC No. 39-2020	"The filing of petitions, appeals, complaints, motions, pleadings and other submissions that <u>fall due up to 31 May</u>

[91] Italics in the original text, emphasis and underscoring supplied.
[92] Supra at note 21.
[93] Emphasis and underscoring supplied.

	2020 before the courts in areas under MECQ areas is **extended for 30 calendar days, counted from 1 June 2020**[.]"

Taking the foregoing into account, the end of petitioner's period to file its Petition for Review would thus fall on 01 July 2020, or 30 days from 01 June 2020 (as provided under Supreme Court AC No. 39-2020). Clearly, petitioner timely filed the instant Petition for Review on 01 July 2020.

We then proceed with a discussion of the merits of the case.

After an assiduous review of the case records and the parties' arguments, this Court has uncovered grounds that warrant the cancellation of respondent's assessment against petitioner.

RESPONDENT'S ASSESSMENT IS VOID FOR HIS OR HER FAILURE TO ISSUE THE NECESSARY LETTER OF AUTHORITY (LOA) IN FAVOR OF REVENUE OFFICER (RO) ALVIN B. LASQUETY.

An assessment "refers to the determination of amounts due from a person obligated to make payments".[94] "In the context of national internal revenue collections, it refers to the determination of the taxes due from a taxpayer under the [NIRC of 1997, as amended]".[95] The assessment process starts with the filing of tax return and payment of tax by the taxpayer.[96] It culminates with the issuance of the FDDA, or in appropriate cases, the CIR's decision on a request for reconsideration filed by the taxpayer.[97]

94 *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, 09 November 2016.
95 Id.
96 Id.
97 See Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-2013.

Under the NIRC of 1997, as amended, it is the CIR who principally exercises the power to make assessments. The same law, however, also delegates this power to the Revenue Regional Directors (**RRDs**). The NIRC of 1997, as amended, provides:

> ...
>
> **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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> ...
>
> **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**:
>
> (a) Implement laws, policies, plans, programs, rules and regulations of the department or agencies in the regional area;
>
> **(b)** Administer and enforce internal revenue laws, and rules and regulations, **including the assessment and collection of all internal revenue taxes, charges and fees;**
>
> (c) **Issue Letters of authority** for the examination of taxpayers within the region[.][98]
>
> ...

While the CIR and the RRDs may perform assessments themselves by the express authority of the NIRC of 1997, as amended, assessments are usually carried out by ROs by way of delegation. This delegation is in the form of an LOA.

---

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

The LOA is the authority given to the appropriate RO assigned to perform assessment functions.[99] It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[100] An RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a validly issued LOA.[101] Stated differently, under the NIRC of 1997, as amended, the investigatory powers of the ROs flow from the LOA, which is the statutorily designated means by which the CIR delegates its investigative powers to the BIR ROs.[102]

Section 13 of the NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 13.** *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[103]
>
> ...

Based on the afore-quoted provision, the authority under an LOA is two-fold: (1) the authority to examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax; and/or, (2) **the authority to examine taxpayers and recommend the assessment of any deficiency tax due.**

---

99 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, 14 May 2021.

100 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

101 *Republic of the Philippines v. Robiegie Corporation*, G.R. No. 260261, 03 October 2022.

102 Id.

103 Emphasis supplied and italics in the original text.

In the present case, the records clearly show that the assessment against petitioner (the progression of the administrative proceedings for which were brought to its knowledge across each of the successive stages through the issuance of the PAN and FLD/FAN) resulted from RO Lasquety's recommendations (as reviewed by GS Santos) in his team's pertinent memoranda for each relevant stage of the proceedings. This fact is corroborated by GS Santos' testimony[104]:

> ...
>
> 23.
>
> Q: After the conduct of the audit procedures, what happened next, if any?
>
> A: We came up with the result of the investigation, hence, we recommended for the issuance of a Preliminary Assessment Notice, through a memorandum.
>
> 24.
>
> Q: I am showing you a Memorandum dated 14 November 2016, found on pages 428-433 of the BIR Records and Marked as Exhibit "R-7" for the respondent. What relation does this document have with the document you mentioned?
>
> A: It is the same memorandum I am referring to.
>
> 25.
>
> Q: After your recommendation for the issuance of PAN, what happened next, if any?
>
> A: A Preliminary Assessment Notice with attachments dated 28 November 2016 was issued and was served to petitioner through its authorized representative Ms. Ragmac.
>
> ...
>
> 27.
>
> Q: What happened after the Preliminary Assessment Notice was issued and served to petitioner?
>
> A: Petitioner filed protest to the PAN hence, we recommended for the issuance of Formal Letter of Demand and Assessment Notices, through a memorandum.

---

104 Exhibit "R-14", supra at note 80.

28.
Q: I am showing you a Memorandum dated 15 December 2016, found on pages 504-505 of the BIR Records and Marked as Exhibit "R-9" for the respondent. What relation does this document have with the document you mentioned?
A: It is the same Memorandum I am referring to.

29.
Q: After recommending for the issuance of FLD and Assessment Notices, what happened next, if any?

A: A Formal Letter of Demand with Assessment Notices and its attachments were issued and were served and received by petitioner through its authorized representative Ms. Ragmac on 22 December 2016.

...

31.
Q: After issuance of the FLD and Assessment Notice with attachments, what happened next, if any?

A: [Petitioner] filed its protest to the FLD, hence, we recommended for the issuance of the Final Decision on Disputed Assessment (FDDA), through a memorandum.

32.
Q: I am showing you a Memorandum dated 8 November 2019, found on pages 642-650 of the BIR Records and marked as Exhibit "R-11" for the respondent. What relation does this document have with the document you mentioned?

A: It is the same Memorandum I am referring to.

33.
Q: After your recommendation for issuance of FDDA, what happened next, if any?

A: A Final Decision on Disputed Assessment and Assessment Notices were issued on 17 February 2020 and was personally served to Glenn B. Aquino, Senior Financial Assistant, authorized representative of [petitioner].

...

Indeed, Exhibits "R-7"[105] and "R-9"[106] pertain to the memoranda (respectively recommending issuance of the PAN and FLD/FAN) prepared by RO Lasquety and reviewed by GS Santos (who previously handled the case as RO). Notably, GS Caling (the GS originally designated in the LOA) had no participation in the recommendations.

To recall, the LOA dated 27 March 2015[107] issued by Valeroso, OIC Assistant Commissioner of the LTS, authorized RO Santos (now GS Santos) and GS Caling as the original audit team.

RO Lasquety and GS Santos took over after the issuance of the MOA dated 08 April 2016.[108] The MOA indicates that the "Lead RO was designated as Group Supervisor". As it appears, no new LOA (nor any document of equivalent validity) had been issued beyond the said MOA.

Generally, only the CIR, Deputy Commissioners, and the RRDs are authorized to issue an LOA. Other officials may be authorized to issue and sign LOAs but *only* upon prior authorization by the CIR himself and *only* in furtherance of the exigencies of the service. Section D(4) of Revenue Memorandum Order (**RMO**) No. 43-90[109] dated 20 September 1990, provides:

> ...
>
> D. Preparation and issuance of L/As.
>
> ...
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the **only 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.**[110]
>
> ...

[105] Supra at note 14.
[106] Supra at note 17.
[107] Exhibit "R-1", supra at note 9.
[108] Supra at note 12.
[109] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.
[110] Emphasis supplied.

Petitioner actually makes a case questioning the validity of the LOA, erroneously arguing that the LOA was not issued by the proper officer. However, as respondent aptly points out, issuing LOAs is well within the power of an Assistant Commissioner. RMO No. 29-07[111] expands on the above issuance and specifies other officials with the authority to sign and issue an LOA:

> ...
> **II. AUDIT POLICIES AND GUIDELINES**
> ...
>
> 2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/ Head Revenue Executive Assistants.
>
> ...

Nevertheless, as can be gleaned from the foregoing disquisitions, RO Lasquety's authority merely sprung from an MOA issued by the Division Chief of RLTAD-2. It is worthy to note that the MOA dated 08 April 2016 and the corresponding change in RO and GS happened prior to the issuance of the PAN[112] and FLD[113] on 28 November 2016 and 21 December 2016, respectively.

In addition to the afore-cited Sections 6(A), 10(c) and 13 of the NIRC of 1997, as amended, which provide that only the CIR and his or her duly authorized representatives (*i.e.*, Deputy Commissioners, the RRDs, and such other officials as may be authorized by the CIR) may issue the LOA, **petitioner's own rules, specifically, RMO No. 43-90[114] mandates the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.** It reads —

> ...
> **Any reassignment/transfer of cases to another RO(s),** and revalidation of [LOAs] which have already expired, **shall require the issuance of a new [LOA]**, with the corresponding notation

111 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.
112 Exhibit "R-8", supra at note 15.
113 Exhibit "R-10", supra at note 18.
114 Supra at note 109.

> thereto, including the previous [LOA] number and date of issue of said [LOAs].[115]
>
> ...

Moreover, in the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[116] (**McDonald's**), the Supreme Court highlighted the difference between an MOA and an LOA in this wise:

> ...
>
> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers.** However, **notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.

---

115 Emphasis and underscoring supplied.
116 G.R. No. 242670, 10 May 2021; Emphasis supplied.

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

Applying the above principles to the case at bar, the MOA signed by the Division Chief of RLTAD-2 does not and cannot confer authority to RO Lasquety to continue the audit or investigation of petitioner's books of accounts for the FY ended 30 June 2013. In the absence of the authority conferred by a valid and duly issued LOA, the investigation and subsequent assessment of petitioner's supposed tax deficiencies could not be sanctioned.

Incidentally, while it may be gainsaid that *McDonald's* does not do away with the reassignment by the CIR himself, such is not the case here.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[117], the Supreme Court underscored the importance of an LOA, *viz:*

> ...
>
> **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 records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is**

[117] G.R. No. 222743, 05 April 2017; Citation omitted and emphasis supplied.

> **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. ...**
>
> ...
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **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.**
>
> ...
>
> ... 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 Supreme Court, citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[118], went on to state:

> ...
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**
>
> ...

Further, the Supreme Court in *McDonald's*[119] concluded that:

> ...
>
> In summary, **We rule that the <u>practice of reassigning or transferring revenue officers originally named in the LOA</u> and**

[118] G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.
[119] Supra at note 116; Emphasis and underscoring supplied.

> **substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA <u>(i) violates the taxpayer's right to due process in tax audit or investigation</u>; <u>(ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer</u>; and <u>(iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990</u>.**
>
> ...

In this case, the records indisputably show that RO Lasquety and GS Santos continued the audit and/or investigation of respondent's books of accounts solely by virtue of an MOA. Furthermore, only the Division Chief of RLTAD-2 (an official who is not among those authorized to issue LOAs pursuant to existing laws and regulations, particularly Section 13[120] in relation Section 10(c)[121] of the NIRC of 1997, as amended, Item D(4) of RMO No. 43-90[122] and Item II(2)[123] of RMO No. 29-07[124]) signed the MOA. It is thus apparent that the lead officer tasked to carry out the investigation had not been validly clothed with the proper authority to continue the audit and recommend the issuance of the assessments against petitioner.

Although We are not unaware that GS Santos was named in the LOA (as then RO Santos) and was also a signatory (as a reviewer) in the memoranda (which recommended the issuance of the PAN, FLD/FAN, and FDDA), the fact remains that RO Lasquety continued and conducted the actual audit *without* the necessary authority from a valid LOA.

---

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

121 Supra at p. 20.

122 Supra at note 109.

123 Supra at p. 25.

124 Supra at note 111.

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[125], the Supreme Court further reiterated that only the ROs actually named in the LOA are authorized to examine the taxpayer, to wit:

> ...
>
> Likewise, the CTA EB correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. 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. . . . 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.**
>
> ...

In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*[126], which also involved a reassignment of a deficiency tax investigation to another RO without the issuance of a new LOA, the Supreme Court nullified the FLD/FAN issued against the taxpayer on the basis of such investigation, thus:

> ...
>
> A perusal of the records of the case discloses that electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 issued against petitioner specifically authorized revenue officer Cacdac and group supervisor Andaya, to examine the books of accounts of petitioner for taxable year 2009[.] ...
>
> ...
>
> 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[.] ...
>
> ...
>
> The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA SN: eLA201000017400 LOA-

---

125 G.R. Nos. 249883-84 (Notice), 27 January 2020; Citations omitted and emphasis supplied.

126 G.R. No. 241848, 14 May 2021.

> 039-2010-00000072 from revenue officer Cacdac to revenue officer Bagauisan necessitates the issuance of a new LOA. This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit"[.] ...
>
> ...
>
> Here, there was no new LOA issued naming Bagauisan as the new revenue officer who would conduct the examination of petitioner's books of accounts. The authority of Bagauisan is anchored only upon the memorandum of assignment signed by revenue district officer Nacar.
>
> Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer[.]
>
> ...

Well-entrenched is the principle that in cases where the BIR conducts an audit without a valid LOA, any resulting assessment shall be void and ineffectual.[127] Without such prerequisite authority, an RO lacks the power to recommend the assessment of any deficiency tax. Considering the absence of a new and valid LOA (or equivalent document) authorizing RO Lasquety to examine petitioner's books of accounts and other accounting records (as a result of the transfer of the case to him subsequent to the issuance of the original LOA), the deficiency tax assessment issued against respondent are *inescapably void*.

In consideration of the foregoing, this Court finds little reason to belabor itself to further discuss at length the items comprising respondent's void assessment.

WHEREFORE, the foregoing premises considered, the instant Petition for Review filed by petitioner Orient Overseas Container Line Ltd. on 01 July 2020 is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice dated 28 November 2016, Formal Letter of Demand with Details of Discrepancies and Assessment Notices dated 21 December 2016, and Final Decision on Disputed Assessment dated

---

[127] See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 117.

17 February 2020 – all issued against petitioner Orient Overseas Container Line Ltd. for assessed deficiency internal revenue taxes in the fiscal year from 01 July to 2012 to 30 June 2013, are declared **VOID**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ENJOINED** from pursuing any actions against petitioner Orient Overseas Container Line Ltd. relative to herein case.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate 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