

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF CTA EB NO. 3068
INTERNAL REVENUE, (CTA Case No. 10336)
Petitioner,

- versus -

GOLDEN DONUTS, INC.,
Respondent.

x ----- x

GOLDEN DONUTS, INC., CTA EB NO. 3076
Petitioner, (CTA Case No. 10336)

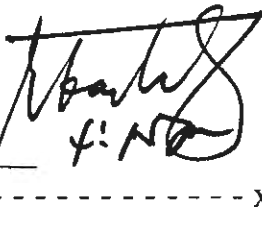
Present:

- versus -

RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID
FERRER-FLORES,
ANGELES,
TESTON, and
CENTENO-DIJAMCO, II.

COMMISSIONER OF
INTERNAL REVENUE, Respondent.

Promulgated:
SEP 17 2026

Handwritten signature and initials in black ink, appearing to be 'T. B. S.' and 'F. N.'.

x ----- x

DECISION

BACORRO-VILLENA, L:

Few powers of the State intrude more directly into the affairs of the citizen than the power to open the latter's books and search the latter's accounts.¹ Conscious of this, the law has long insisted that this power be wielded only by those to *whom* it has been expressly delegated, and only *within* the compass of that delegation.²

The instrument of delegation is the Letter of Authority (LOA) — “the statutorily defined modality”³ through which the Commissioner of Internal Revenue’s (CIR’s) power to examine is transmitted to revenue officers. Absent the same, an examination is no examination at all, and any assessment born out of it is “inescapably void.”⁴ It is upon this settled principle — reiterated by the Supreme Court with a warning against a “disturbing trend”⁵ of disregard for the LOA requirement — that the present case turns.

Before the Court *En Banc* are the consolidated Petitions for Review filed by petitioner CIR on 10 February 2025, docketed as CTA EB No. 3068,⁶ and by petitioner Golden Donuts, Inc. (GDI) on 20 February 2025, docketed as CTA EB No. 3076,⁷ both pursuant to Section 3(b),⁸ Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). Both petitions

¹ Section 6(A), NIRC of 1997, as amended; See *Republic of the Philippines v. Robiegie Corporation*, G.R. No. 260261, 03 October 2022.

² *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

³ *Republic of the Philippines v. Robiegie Corporation*, *supra* at note 1.

⁴ *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, 05 April 2017; *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, 10 May 2021.

⁵ See *Republic v. Robiegie Corporation*, *supra* at note 1.

⁶ *Rollo* (CTA EB No. 3068), pp. 9-22.

⁷ *Rollo* (CTA EB No. 3076), pp. 9-53.

⁸ SEC. 3. *Who may appeal; period to file petition.* —

...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

assail the Decision dated 30 July 2024⁹ (**assailed Decision**) and Resolution dated 03 January 2025¹⁰ (**assailed Resolution**) of the Third Division¹¹ in CTA Case No. 10336, entitled *Golden Donuts, Inc. v. Commissioner of Internal Revenue*, which upheld in part and cancelled in part respondent CIR's deficiency income tax, value-added tax (VAT), final tax (FT), expanded withholding tax (EWT) and documentary stamp tax (DST) assessments against GDI for calendar year (CY) 2010, and ordered GDI to pay respondent CIR the aggregate amount of ₱41,853,020.00, inclusive of surcharge and interest.

PARTIES OF THE CASE

CIR is the duly appointed head of the Bureau of Internal Revenue (BIR), with office address at the BIR National Office Building, Sen. Miriam Defensor-Santiago Avenue (formerly BIR Road), Diliman, Quezon City.¹²

On the other hand, GDI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at the GDI Building, Reliance corner Sheridan Streets, Highway Hills, Mandaluyong City. It is the master franchisor of Dunkin' Donuts in the Philippines. It is registered with the BIR with Tax Identification No. (TIN) 000-122-565-00000 under the BIR Large Taxpayers Service, Revenue District Office (RDO) No. 116 – Regular Large Taxpayers (LT) Division 1.¹³

FACTS OF THE CASE

On 10 October 2011, GDI received Letter of Authority (LOA) No. 116-2011-00000151 (eLA201100003039) dated 06 October 2011,¹⁴ designating Revenue Officers (ROs) Riza Budaño (**Budaño**), Aurora Pelayo (**Pelayo**), Olivia Aviles (**Aviles**), Olivia Sison (**Sison**), and Rogelio Gonzales (**Gonzales**), under Group Supervisor (GS) Marivic 

⁹ Division Docket, Volume V, pp. 3237-3294.

¹⁰ Id., pp. 3364-3375.

¹¹ Penned by Associate Justice Catherine T. Manahan (Ret.), with the concurrence of Associate Justice Henry S. Angeles; Associate Justice Marian Ivy F. Reyes-Fajardo was on leave.

¹² See The Parties, Decision dated 30 July 2024, supra at note 9, p. 3238

¹³ See id., p. 3237.

¹⁴ Exhibit "P-2", Division Docket, Volume I, p. 71.

Bautista (**Bautista**), to examine GDI's books of accounts and accounting records for CY 01 January 2010 to 31 December 2010 (**2010**).¹⁵

On 14 February 2013, GDI executed a Waiver of the Defense of Prescription under the Statute of Limitations¹⁶ (**First Waiver**) under the National Internal Revenue Code (NIRC) of 1997, as amended, valid until 31 December 2014, which OIC-Assistant Commissioner (**OIC-Asst. Comm.**) Alfredo V. Misajon (**Misajon**) accepted on 22 March 2013.¹⁷

On 27 March 2013, GDI received a Letter¹⁸ dated the same date, signed by Cesar D. Escalada (**Escalada**), Chief of the Regular LT Audit Division 1 (**RLTAD-1**), designating ROs Tito R. Monforte (**Monforte**) and Arnaldo T. Ancheta (**Ancheta**) to assist GS Juvy S. dela Peña (**dela Peña**) in examining GDI's books pursuant to the LOA dated 06 October 2011.

On 14 October 2014, a Memorandum¹⁹ addressed to Nestor S. Valeroso (**Valeroso**), OIC-Asst. Comm. of the Large Taxpayers Service (**LTS**), was issued by ROs Budaño, Ma. Gracielle F. San Pedro (**San Pedro**), Monforte and Ancheta, and GS Allan M. Maniego (**Maniego**), recommending the issuance of a Preliminary Assessment Notice (**PAN**). GDI received the PAN²⁰ dated 19 November 2014, on even date, for alleged deficiency income tax, VAT, FT, withholding tax on compensation (**WTC**), EWT and DST, in the aggregate amount of ₱312,088,978.56, inclusive of interest and penalties. GDI filed its protest to the PAN on 02 December 2014.²¹

On 04 December 2014, GDI executed another Waiver of the Defense of Prescription under the Statute of Limitations²² (**Second Waiver**), which OIC-Asst. Comm. Valeroso accepted on 16 December 2014.²³ On 05 January 2015, a Memorandum²⁴ addressed to OIC-Asst. Comm. Valeroso was issued by ROs Budaño, San Pedro, Monforte and 

¹⁵ Summary of Admitted Facts, JSFI, id., Volume II, p. 754.

¹⁶ Exhibit "P-4", id., Volume I, p. 76.

¹⁷ Summary of Admitted Facts, JSFI, id., Volume II, p. 754.

¹⁸ Exhibit "P-5", id., p. 77.

¹⁹ Exhibit "R-7", id., BIR Records, pp. 1498-1507.

²⁰ Exhibit "P-12", Division Docket, Volume I, pp. 87-99.

²¹ Exhibit "P-13", id., pp. 100-119.

²² Exhibit "P-14", id., p. 120.

²³ Summary of Admitted Facts, JSFI, id., Volume II, p. 755.

²⁴ Exhibit "R-10", BIR Records, pp. 1634-1646.

Ancheta, and GS Maniego, recommending the issuance of a Final Assessment Notice (FAN).

GDI received a Formal Letter of Demand²⁵ (FLD) dated 02 February 2015, together with its FAN of even date, assessing deficiency taxes in the aggregate amount of ₱272,615,710.30.²⁶ GDI filed a letter²⁷ dated 03 March 2015 (**Protest**) on 04 March 2015.

On 30 July 2020, GDI received the Final Decision on Disputed Assessment²⁸ (FDDA) and corresponding Assessment Notices, demanding payment of total deficiency taxes of ₱159,296,703.65, broken down as follows:²⁹

Tax Type	Basic Deficiency Tax	Interest	Total Amount
Income Tax	₱25,680,581.02	₱40,644,268.61	₱66,324,849.63
VAT	32,509,243.18	52,876,952.02	85,386,195.20
FT	522,228.26	852,276.52	1,374,504.78
EWT	2,310,597.50	3,770,895.13	6,081,492.63
DST	49,161.11	80,500.30	129,661.41
Total	₱61,071,811.07	₱98,224,892.58	₱159,296,703.65

On 28 August 2020, GDI filed a Petition for Review³⁰ before this Court, praying for the nullification and cancellation of the aforesaid deficiency assessments for CY 2010.

PROCEEDINGS BEFORE THE COURT IN DIVISION

GDI's Petition for Review³¹ was initially raffled to the First Division. In support thereof, GDI asserted the following grounds: (1) the FLD was not accompanied by FANs in violation of Section 228³² of the NIRC of 1997, as amended; (2) the FLD/FAN are void for failure to indicate a definite amount of tax liabilities and due date for payment;

²⁵ Exhibit "P-15", Division Docket, Volume I, pp. 121-136.
²⁶ Summary of Admitted Facts, JSFI, id., Volume II, p. 755.
²⁷ Exhibit "P-16", id., Volume V, pp. 3065-3079.
²⁸ Exhibit "P-17", id., Volume I, pp. 152-153; See Exhibit "R-14", BIR Records, p. 1777.
²⁹ Summary of Admitted Facts, JSFI, Division Docket, Volume II, p. 755.
³⁰ Id., Volume I, pp. 6-43.
³¹ Id.
³² SEC. 228. *Protesting of Assessment.*

(3) the ROs who conducted the audit did not have the requisite authority; and (4) the 2010 deficiency tax assessments issued against GDI are void for having been issued without legal or factual basis.

On 16 November 2020, the CIR filed his or her Answer,³³ averring that: (1) the Court of Tax Appeals's (CTA's) judicial power over the CIR's decisions on disputed assessments is by nature exclusive and strictly appellate and GDI should not be allowed to raise issues for the first time on appeal; (2) the FLD is valid and was received by GDI; (3) there is no requirement in the law that the ROs must be identified in the LOA to have authority; (4) any memorandum (or memorandum of assignment) subsequently issued derived its authority from the original LOA initially issued; and (5) the deficiency assessment issued against GDI is correct.

On 20 May 2021, CIR filed his or her Pre-trial Brief³⁴ while GDI's Pre-Trial Brief³⁵ was filed on 25 June 2021. Following the Pre-Trial Conference held on 01 July 2021³⁶ and the submission of a Joint Stipulation of Facts and Issues³⁷ (JSFI) on 16 July 2021, the First Division issued a Pre-Trial Order³⁸ on 08 April 2022.

During trial, GDI presented Jeffrey G. Manzano (**Manzano**), its Accounting Services Senior Manager, who testified using his Judicial Affidavit dated 27 September 2021.³⁹

On the witness stand, Manzano declared that: (1) he was involved in the preparation of the protest letters and their supporting documents; (2) the ROs authorized to audit GDI's books were: ROs Budaño, Pelayo, Aviles, Sison, Gonzales and GS Bautista; (3) apart from the foregoing names, the following persons *also* examined GDI's books namely ROs Monforte and Ancheta, and GS de la Peña pursuant to Letter dated 17 March 2013 signed by Escalada, Chief RLTAAD-1; (4) GDI received the PAN and FLD/FAN and filed protests against both; (5) the FDDA received on 30 July 2020, bore a due date of 31 December 2019, rendering compliance impossible—the due date having already lapsed when GDI

³³ Division Docket, Volume I, pp. 577-595.

³⁴ Id., pp. 723-727.

³⁵ Id., pp. 731-739.

³⁶ See Minutes of the Hearing dated 01 July 2021, id., Volume II, pp. 745-748.

³⁷ Id., pp. 754-759.

³⁸ Id., Volume V, pp. 3001-3017.

³⁹ See Order dated 05 October 2021, id., Volume II, pp. 897-899.

received the FDDA; (6) on the merits of the assessment, GDI is not liable for deficiency income taxes, as it has available NOLCO credits exceeding the adjusted gross income of ₱85,601,936.73 *per* the FDDA; (7) with regard to VAT, the Local Advertising Fund and Local Promotional Fund do not represent cash collections of GDI, as rooted in Sections 8.02 and 8.03 of the Franchise Agreement; (8) with regard to Final Tax, GDI's stockholders are composed of domestic corporations and individuals—dividends paid to domestic corporations are not subject to final withholding tax, while those paid to individuals are subject to 10% final withholding tax; (9) that the EWT findings were based on assumptions, as the legal and factual basis of each item was not disclosed by the BIR to GDI; and (10) that Revenue Memorandum Circular (RMC) No. 46-2014, issued in 2014, cannot be applied retroactively to 2010.⁴⁰

During his cross-examination, Manzano clarified that he could not specifically recall whether the FANs were attached to the FLD when he received it in February 2015 but maintained that no FANs were found in the company's files at that time. He acknowledged that the FLD itself did not indicate a payment due date and that GDI searched for the allegedly attached FANs but could not locate them in its records. Although CIR asserted that Manzano had signed and received the FANs, Manzano explained that GDI only obtained copies of those documents after the case was elevated to the CTA and the BIR furnished its exhibits. It was only then that they learned that a due date was indicated in the FANs attached to the FLD.⁴¹

No redirect examination was conducted.⁴²

GDI then presented its second witness, Michael L. Aguirre (Aguirre), the Court-commissioned Independent Certified Public Accountant (ICPA), who testified using his Judicial Affidavit dated 13 January 2022 and identified the ICPA Report⁴³ dated 19 November 2021 he submitted to the First Division.⁴⁴ 

⁴⁰ Exhibit "P-40", Judicial Affidavit of Jeffrey G. Manzano dated 27 September 2021, *id.*, pp. 921-940.

⁴¹ TSN dated 05 October 2021, pp. 30-35.

⁴² *Id.*, p. 30-35.

⁴³ Exhibit "P-41", Division Docket, Volume IV, pp. 2139-2182.

⁴⁴ See Order dated 19 April 2022, *id.*, Volume V, pp. 3022-3023.

On the witness stand, ICPA Aguirre testified that: (1) he completed the examination and submitted his written report to the Court; (2) the originals of the documents enumerated in the Report were in petitioner's premises, to which he was given full access during the examination; (3) he was likewise provided with photocopies and print-outs, which he verified to be faithful reproductions of the original documents and/or original computer print-outs; (4) the procedures performed generally involved analysis, vouching, inquiry, verification, and matching with original source documents and other reliable sources; and (5) unless otherwise stated in the ICPA Report, the exhibits identified therein and saved in the Universal Serial Bus (USB) submitted to the Court are faithful copies or reproductions of the originals, consisting of photocopies, certified true copies and original print-outs.⁴⁵

On cross-examination, ICPA Aguirre clarified that GDI's sales to its franchisees and dealers are excluded from the coverage of royalties and management fees, and that it would not be appropriate to treat sales corresponding to such royalties and management fees as GDI's own reportable sales.⁴⁶

No redirect examination was conducted.⁴⁷

GDI's Formal Offer of Evidence⁴⁸ (FOE) was filed on 05 May 2022, and, following the CIR's Comment⁴⁹ thereto, the First Division, in a Resolution dated 18 August 2022,⁵⁰ admitted GDI's Exhibits "P-1" through "P-43", inclusive of their sub-markings and ICPA-series exhibits, as well as Exhibits "A-ICPA" through "O-ICPA." However, certain exhibits were denied: (a) those not found in the records of the case; and (b) Exhibits "P-23-F.18-ICPA" and "P-23-F.74-ICPA," which were totally unreadable, blurred, or almost blank. GDI moved for reconsideration of the denied exhibits on 15 September 2022.⁵¹ Except for Exhibits "P-23-E.103-ICPA" to "P-23-E.119-ICPA", "P-23-E.179-

⁴⁵ Exhibit "P-42", Judicial Affidavit of Michael L. Aguirre dated 13 January 2022, id., Volume IV, pp. 2718-2722.

⁴⁶ TSN dated 19 April 2022, pp. 24-29.

⁴⁷ Id., p. 29.

⁴⁸ Division Docket, Volume V, pp. 3029-3059.

⁴⁹ Id., pp. 3087-3088.

⁵⁰ Id., pp. 3108-3118.

⁵¹ Id., pp. 3124-3127.

ICPA", "P-23-E.228-ICPA" and "P-33-AQ.2-ICPA",⁵² which remained unfound in the records of the case, all other denied exhibits were reconsidered and admitted.⁵³

GDI was then declared to have rested its case.⁵⁴

The CIR, on the other hand, presented RO Budaño as his or her lone witness. Testifying *via* her Judicial Affidavit dated 16 November 2020,⁵⁵ RO Budaño declared that her authority to examine GDI's books was sourced from the LOA dated 06 October 2011, and she confirmed the issuance of the First, Second and Final Notices of Requirements, the two Waivers of the Statute of Limitations, and the PAN, FLD and FDDA.⁵⁶

On cross-examination, RO Budaño confirmed that only one LOA – the LOA dated 06 October 2011 – was ever issued for the audit of GDI's books. She was asked to explain her use of the pronoun “we” in her Judicial Affidavit, in reference to the Memoranda dated 05 January 2015 and 31 October 2019, and clarified that “we” referred to herself together with ROs San Pedro, Monforte and Ancheta – none of whom, save for Budaño, had been named in the LOA dated 06 October 2011. Budaño explained that the ROs originally named in the LOA, other than herself, had since resigned, and that ROs San Pedro, Monforte and Ancheta were brought in to take their place. It was further revealed, in the course of that hearing, that the officer who issued the Memoranda [of Assignment] held a rank lower than Regional Director (RD), and that 

52

Exhibit No.	Description
"P-23-E.103-ICPA" to "P-23-E.119-ICPA", "P-23-E.179-ICPA" and "P-23-E.228-ICPA"	2010 Supporting Documents for EWT Recon Items
"P-33-AQ.2-ICPA"	2010 Supporting Documents for Utilization of National Advertising Fund

53 See Resolution dated 06 January 2023, Division Docket, Volume V, pp. 3141-3144.

54 Id.

55 See Order dated 07 March 2023, id., pp. 3146-3147.

56 Exhibit "R-15", Judicial Affidavit of RO Riza F. Budaño, id., Volume I, pp. 596-602.

“[t]he point is these Revenue Officers were not authorized by any officer of the BIR having a rank of a Regional Director.”⁵⁷

No redirect examination followed.⁵⁸

On 17 March 2023, the CIR filed his or her FOE,⁵⁹ offering Exhibits “R-1” to “R-15”, inclusive of sub-markings. On 30 March 2023, GDI filed a Comment thereto.⁶⁰

Pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023, the case was transferred to this Court’s Third Division on 31 May 2023.⁶¹

In a Resolution dated 01 June 2023,⁶² the Third Division, acting on CIR’s FOE, admitted all the offered exhibits. Accordingly, the parties were granted thirty (30) days from notice to file their respective memoranda, after which the case would be submitted for decision.⁶³

Following the filing of the CIR’s Manifestation on the adoption of the previously filed Answer as his or her Memorandum and GDI’s Memorandum on 14 July 2023⁶⁴ and 21 July 2023,⁶⁵ respectively, the Third Division, through its Resolution dated 27 July 2023,⁶⁶ submitted the present case for decision.

On 30 July 2024, the Third Division promulgated the assailed Decision, the dispositive portion of which reads:⁶⁷ 

⁵⁷ TSN dated 07 March 2023, pp. 7-24.

⁵⁸ Id., p. 24

⁵⁹ Division Docket, Volume V, pp. 3148-3154.

⁶⁰ Id., pp. 3156-3157.

⁶¹ Id., p. 3161.

⁶² Id., pp. 3163-3164.

⁶³ Id.

⁶⁴ Id., pp. 3165-3167.

⁶⁵ Id., pp. 3170-3231.

⁶⁶ Id., p. 3234.

⁶⁷ Supra at note 9; Citation omitted, emphasis and italics in the original text.

DECISION

Page 11 of 35

x -----x

...

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. The assessments issued by [CIR] against [GDI] covering deficiency IT, VAT, FT, and DST for CY 2010 are to be **UPHELD IN PART**, while the assessment on EWT shall be **CANCELLED**. Accordingly, [GDI] is **ORDERED TO PAY [CIR] the aggregate amount of FORTY-ONE MILLION EIGHT HUNDRED THIRTY-FIVE THOUSAND TWO HUNDRED THIRTEEN AND 17/100 (P41,835,213.17)**, inclusive of 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C)(3) of the NIRC of 1997, as amended, computed until December 31, 2017...

...

In addition, [GDI] is **ORDERED TO PAY [CIR] delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes, due as of March 31, 2015, in the amount of P23,024,049.76 or equivalent to P7,569.55 per day, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.**

SO ORDERED.

...

In ruling so, the Third Division found that while portions of the assessments for deficiency income tax, VAT, FT and DST were supported by the evidence on record, several assessment items lacked factual and legal bases or violated petitioner's right to due process. In particular, the Third Division cancelled assessment items that were introduced only at the FDDA stage, those based merely on unverified third-party information without the required confirmation requests and sworn statements from the third-party sources, and those unsupported by sufficient documentation.

The Third Division likewise cancelled the EWT assessment after finding that, upon reconciliation, GDI should not be held liable for withholding tax on the questioned income payments. Accordingly, the Third Division upheld the assessments only in part and reduced GDI's liability to P41,835,213.17, with delinquency interest to accrue until full payment.



Both parties moved for reconsideration. GDI filed its “Motion for Reconsideration (of the [assailed Decision])”⁶⁸ (MR) on 20 August 2024, while the CIR filed his or her “Motion for Partial Reconsideration (Re: [assailed Decision])”⁶⁹ (MPR) on 22 August 2024.

For GDI, the Third Division failed to consider that: (1) the assessments issued against it are null and void for want of authority of the ROs and GS to examine its books since among the ROs who recommended the issuance of PAN and FLD/FAN against GDI, only RO Budaño was named in the LOA; (2) the Letter dated 27 March 2013 signed by Escalada is not the equivalent of an LOA; and (3) the mandatory requirements for a valid assessment (i.e., computation of tax liabilities, demand for payment within the prescribed period and statement of the legal and factual bases used) are not present in this case.

On the other hand, the CIR insisted in his or her MPR that GDI is liable to the full amount of the assessment as indicated in the FDDA.

On 03 January 2025, the Third Division issued the assailed Resolution⁷⁰ denying GDI's MR but partially granting the CIR's MPR insofar as it sought to increase the DST deficiency. The pertinent portion of the said assailed Resolution reads:

...

WHEREFORE, premises considered, [GDI's] *Motion for Reconsideration (of the Decision dated 30 July 2024)* is hereby **DENIED** but the [CIR's] *Motion for Partial Reconsideration (Re: Decision dated 30 July 2024)* is **PARTIALLY GRANTED**:

Accordingly, the [Third Division's] dated July 30, 2024 is hereby amended to read as follows:

“WHEREFORE, in light of the foregoing considerations, the present Petition for Review is **PARTIALLY GRANTED**. The assessments issued by [CIR] against [GDI] covering deficiency IT, VAT, FT, and DST for CY 2010 are to be **UPHELD IN PART**, while the assessment on EWT shall be **CANCELLED**. Accordingly, [GDI] is **ORDERED TO PAY** [CIR] the aggregate amount of **FORTY-**

⁶⁸ Division Docket, Volume V, pp. 3295-3334.

⁶⁹ Id., pp. 3337-3346.

⁷⁰ Supra at note 10; Citation omitted, emphasis and italics in the original text.

ONE MILLION EIGHT HUNDRED FIFTY[-]THREE THOUSAND TWENTY PESOS (₱41,853,020.00), inclusive of 25% surcharge, 20% deficiency interest, and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C)(3) of the NIRC of 1997, as amended, computed until December 31, 2017...

In addition, [GDI] is **ORDERED TO PAY** [CIR] delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes due as of March 31, 2015, in the amount of ₱23,033,861.91 or equivalent to ₱7,572.78 per day, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.”

SO ORDERED.

...

The assailed Resolution amended the dispositive portion of the assailed Decision by increasing the aggregate amount due to ₱41,853,020.00, computed on the same bases.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On 24 January 2025, the CIR filed a “Motion for Extension of Time to File Petition for Review”,⁷¹ following his or her receipt of the assailed Resolution on 09 January 2025. The Court *En Banc* granted the CIR a non-extendible period of fifteen (15) days, or until 08 February 2025, within which to file his or her Petition for Review.⁷² On 10 February 2025, the CIR filed his or her Petition for Review, docketed as CTA EB No. 3068.⁷³

GDI, for its part, received the assailed Resolution on 22 January 2025 and filed a “Motion for Extension of Time (To file Petition for Review)”⁷⁴ on 05 February 2025. The Court *En Banc* granted GDI a non-extendible period of 15 days, or until 21 February 2025, within which to

⁷¹ *Rollo* (CTA EB No. 3068), pp. 1-4.

⁷² Minute Resolution dated 27 January 2025, id., p. 8.

⁷³ *Supra* at note 6.

⁷⁴ *Rollo* (CTA EB No. 3076), pp. 1-3.

file its Petition for Review.⁷⁵ On 20 February 2025, GDI filed its Petition for Review, docketed as CTA EB No. 3076.⁷⁶

In a Minute Resolution dated 21 February 2025,⁷⁷ the Court *En Banc* consolidated CTA EB Nos. 3068 and 3076 pursuant to Section 1, Rule 31 of the Rules of Civil Procedure (RCP), as amended. In a Minute Resolution dated 04 April 2025,⁷⁸ the Court *En Banc* directed GDI to file a comment on the CIR's Petition for Review. GDI filed its "Comment (To [CIR's] Petition for Review dated 10 February 2025)"⁷⁹ on 10 April 2025. However, the CIR, on the other hand, failed to file a corresponding comment on GDI's Petition for Review in CTA EB No. 3076.⁸⁰

Thereafter, the consolidated cases were referred to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA);⁸¹ in a Minute Resolution dated 17 September 2025,⁸² the Court *En Banc* noted that the parties had decided against mediation. The consolidated cases were accordingly deemed submitted for decision.⁸³

ISSUES

The issues for resolution before the Court *En Banc* are as follows —

I.

WHETHER THE THIRD DIVISION ERRED IN UPHOLDING THE VALIDITY OF THE ASSESSMENTS; AND

II.

WHETHER THE THIRD DIVISION GRAVELY ERRED IN HOLDING GOLDEN DONUTS, INC. LIABLE TO PAY DEFICIENCY 2010 INCOME TAX DESPITE THE AVAILABILITY OF UNUTILIZED NET OPERATING LOSS CARRY-OVER (NOLCO) CREDITS.⁸⁴

⁷⁵ Minute Resolution dated 10 February 2025, *id.*, p. 8.

⁷⁶ *Supra* at note 7.

⁷⁷ *Rollo* (CTA EB No. 3068), p. 100.

⁷⁸ *Id.*, p. 101.

⁷⁹ *Id.*, pp. 102-106.

⁸⁰ See Records Verification dated 30 April 2025, *id.*, p. 110.

⁸¹ Minute Resolution dated 28 May 2025, *id.*, p. 111.

⁸² *Id.*, p. 113.

⁸³ *Id.*

⁸⁴ See Assignment of Error, Petition for Review, *supra* at note 6, p. 12; *cf.* see Assignments of Error, Petition for Review, *supra* at note 7, p. 19.

ARGUMENTS

The CIR maintains that the assessment on *undeclared royalty* must be sustained even though the item did not appear until the FDDA, since the finding was based on GDI's own declarations in its protest and GDI never presented documents to refute it. On the *discrepancy in ending inventory*, the CIR argues that GDI had ample opportunity to reconcile its inventory lists against its audited financial statements (AFS) and income tax returns (ITRs), and its failure to do so confirms the assessment. As to *income payments not subjected to EWT*, the CIR relies on GDI's own Trial Balance and Alphalist of Payees, which he or she argues clearly identify the items subject to EWT. On the assessment for *additional undeclared sales*, the CIR points to discrepancies between GDI's sales *per* AFS/ITR and its Summary List of Sales, Summary Alphalist of Withholding Tax, and third-party information obtained through the BIR's Reconciliation of Listing for Enforcement (**RELIEF**) system, all of which, he submits, are sworn and reliable, and were furthermore confirmed through letters sent to GDI's counterparties.

On the *VAT assessment*, the CIR submits that GDI's own Notes to Financial Statements disclose that it collects amounts from its franchisees for a nationwide advertising and promotional fund, which collections constitute gross receipts subject to VAT under Sections 105 and 108 of the NIRC of 1997, as amended; since this finding was drawn from GDI's own submissions, the CIR cannot be faulted for including it in the assessment, and the ICPA's own findings confirm the discrepancy. On FT, EWT and DST, the CIR argues, respectively, that income payments subject to FT were not properly withheld and remitted, that GDI failed to subject all income payments reflected in its Trial Balance and AFS to EWT, and that DST on debt instruments and lease contracts remained unpaid without proof that these had already been collected upon original issuance. Finally, the CIR invokes the lifeblood doctrine and the presumption of correctness attaching to tax assessments and submits that GDI failed to discharge its burden of proving the assessments erroneous.

GDI, for its part, argues that the 2010 deficiency assessments are void because they were results of an invalid audit. According to GDI, the ROs who conducted the audit were bereft of any valid grant of authority. GDI points out that while the LOA dated 06 October 2011 named ROs



Budaño, Pelayo, Aviles, Sison and Gonzales, under GS Bautista, the Memoranda dated 14 October 2014 and 05 January 2015 recommending the issuance of the PAN and the FLD, were instead issued and signed by RO Budaño (together with ROs San Pedro, Monforte and Ancheta, and GS Maniego – who were never named in the LOA). GDI submits that a mere Letter dated 27 March 2013 cannot substitute for the requisite LOA and that, in any event, under Section D(4) of Revenue Memorandum Order (RMO) No. 43-90,⁸⁵ the CIR may only delegate the issuance of an LOA to an RD. Here, the Letter dated 27 March 2013 was not signed by an officer of that rank.

GDI further argues that it cannot be held liable under an FLD, FDDA and Assessment Notices that fail to indicate a definite amount of tax liability and a valid due date for payment, as Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of Revenue Regulations (RR) No. 12-99 require, citing *Commissioner of Internal Revenue v. Fitness by Design, Inc.*⁸⁶ GDI points out that the FLD conditioned the total amount due on the date of actual payment, stating that “the interest and total amount will have to be adjusted if paid beyond March 31, 2015”, and that the Assessment Notices accompanying the FDDA, which GDI received only on 30 July 2020, indicated a payment due date of 31 December 2019 – a date that had already lapsed by the time GDI received the FDDA, rendering compliance impossible and the due date void.

Finally, GDI argues that the Third Division gravely erred in holding it liable for deficiency 2010 income tax despite its unutilized NOLCO of ₱301,187,477.00, carried over from taxable years 2007 to 2009, which the ICPA confirmed was more than sufficient to offset the ₱85,601,936.73 adjustment to GDI's gross income resulting from the audit.

RULING OF THE COURT EN BANC

THE INSTANT PETITIONS FOR
REVIEW WERE TIMELY FILED.



⁸⁵ Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

⁸⁶ G.R. No. 215957, 09 November 2016.

Section 18 of Republic Act (RA) No. 1125,⁸⁷ as amended by RA 9282,⁸⁸ provides that a party adversely affected by a resolution of a Division of the CTA on MR or new trial, may file a Petition for Review with the Court *En Banc*.

Section 3(b),⁸⁹ Rule 8 of the RRCTA provides that a party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a petition for review within 15 days from receipt of a copy of the questioned decision or resolution, without prejudice to the Court *En Banc*'s authority to grant an additional, non-extendible period of 15 days⁹⁰ from the expiration of the original period.

The CIR received the assailed Resolution on 09 January 2025 and, within the reglementary period, filed a Motion for Extension of Time on 24 January 2025, which the Court *En Banc* granted, extending his or her deadline to 08 February 2025.⁹¹ The CIR filed his or her Petition for Review⁹² on 10 February 2025.⁹³ GDI, for its part, received the assailed Resolution on 22 January 2025, and, within the reglementary period, filed its own Motion for Extension of Time on 05 February 2025, which the Court *En Banc* likewise granted, extending its deadline to 21 February 2025.⁹⁴ GDI filed its Petition for Review⁹⁵ on that same date.

Both Petitions for Review having been filed within their respective, timely-extended periods, the Court *En Banc* has acquired jurisdiction over the consolidated cases.

The Court *En Banc* now proceeds to the merits of the cases. 

⁸⁷ AN ACT CREATING THE COURT OF TAX APPEALS.
⁸⁸ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
⁸⁹ Supra at note 8.
⁹⁰ Id.
⁹¹ Supra at note 72.
⁹² Supra at note 6.
⁹³ Since 08 February 2025 fell on a weekend, the CIR had until the next working day, i.e., 10 February 2025 within which to file the petition.
⁹⁴ Supra at note 75.
⁹⁵ Supra at note 7.

THE REVENUE OFFICERS (ROs) WHO
CONDUCTED THE AUDIT WERE
WITHOUT A GRANT OF AUTHORITY

The requirement that an RO bears a grant of authority before examining a taxpayer's books is rooted in Sections 6(A) and 13 of the NIRC of 1997, as amended, which provide:

...
SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –

(A) Examination of Returns and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, **the Commissioner or his [or her] 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. 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.**⁹⁶
...

The Supreme Court has consistently held that “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. In the absence of such an authority, the assessment or examination is a nullity.”⁹⁷ 

⁹⁶ Italics in the original text, emphasis and underscoring supplied.

⁹⁷ *Commissioner of Internal Revenue, v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

As the Supreme Court explained in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*:⁹⁸

...
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 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**.
...

Here, the LOA⁹⁹ dated 06 October 2011 **specifically named** ROs Budaño, Pelayo, Aviles, Sison and Gonzales, under GS Bautista, as authorized to examine GDI's books for CY 2010. The Memoranda dated 14 October 2014¹⁰⁰ and 05 January 2015,¹⁰¹ however, recommending the issuance of the PAN and FLD respectively, were issued by RO Budaño together with ROs San Pedro, Monforte and Ancheta and GS Maniego — *none* of whom, save for RO Budaño, were named in the LOA. RO Budaño herself confirmed, on cross-examination, that the pronoun “we,” as used throughout her Judicial Affidavit in reference to the Memoranda recommending the PAN and FLD, referred to herself together with ROs San Pedro, Monforte and Ancheta — explaining that the ROs originally named in the LOA, other than herself, had since resigned from the BIR, to wit:¹⁰²

...
MS. BUDAÑO:

A: This [LOA dated 06 October 2011] is the first (paused) the only LOA issued for taxable year 2010.

ATTY. FERNANDEZ:

Q: I refer you now to your answer in A.15 on page 3 of your Judicial Affidavit where you stated and I quote, “we didn’t receive any reply from the petitioner nor the documents specified in the

⁹⁸ G.R. No. 222743, 05 April 2017; Citation omitted, emphasis and underscoring supplied.

⁹⁹ Exhibit “P-2”, supra at note 14.

¹⁰⁰ Exhibit “R-7”, supra at note 19.

¹⁰¹ Exhibit “R-10”, supra at note 24.

¹⁰² TSN dated 07 March 2023, pp. 8-13; Emphasis supplied.

letter, so we issued a second notice of requirements dated 16 November 2011 and served to petitioner through registered mail on 17 November 2011." Now, you used the word "we" because apart from yourself there were other Revenue Officers who examined petitioner's 2010 books of account. Am I correct?

MS. BUDAÑO:

A: Yes, Attorney.

ATTY. FERNANDEZ:

Q: And specifically, when you used the word "we" in A.15 of your Judicial Affidavit, you were referring to the team comprised of yourself, Revenue Officers Ma. Gracielle F. San Pedro, Tito R. Monforte and Group Supervisor Allan M. Maniego. Am I correct?

MS. BUDAÑO:

A: Yes, Attorney.

ATTY. FERNANDEZ:

Q: I now refer you to your answer in A. 26 on page 4 of your Judicial Affidavit, were you stated and I quote, "After gathering the documents submitted, we conducted the audit/examination thereof and results of the investigation was arrived at". So, when you used the term "we", were you also referring to yourself, Revenue Officer Revenue Officers Ma. Gracielle F. San Pedro, Tito Monforte, Arnaldo I. Ancheta, and Group Supervisor Allan Maniego?

MS. BUDAÑO:

A: Can I browse first?

ATTY. FERNANDEZ:

Yes.

MS. BUDAÑO:

A: I just have to check po iyong assigned PAN because during the course of the (Is it okay to elaborate?) During the course of the audit, some of the group members were assigned to different Division, but I am the lead examiner on this case, so whether



the other groups were transferred, I am the one responsible preparing for the report.

ATTY. FERNANDEZ:

Q: Yes, but can you please check and answer my question? Who were the people you were referring to when you used the word, we, in A.26 on page 4 of your Judicial Affidavit?

MS. BUDAÑO:

A: Me and my group members if they are still in the Division.

ATTY. FERNANDEZ:

Q: Yes, but specifically who. I asking you who are these individuals.

MS. BUDAÑO:

A: **Riza Budaño, Ma. Gracille Anaban, and Tito Monforte, but I am not sure po if they are still at that Division, Tito Monforte and Ancheta. And our Group Supervisor also resigned in 2016, so the PAN was issued 2019.**

ATTY. FERNANDEZ:

Q: And you mentioned (interrupted)

MS. BUDAÑO:

Others were not already (inaudible)

ATTY. FERNANDEZ:

Q: You mentioned the Group Supervisor. What was his name?

MS. BUDAÑO:

A: **Allan Maniego in the LOA, and since he resigned in 2016, it was replaced by Rosario Arriola.**

ATTY. FERNANDEZ:

Q: Now, I refer you to answer in A.36 on page 5 of your Judicial Affidavit, where you stated and I quote, "GDI protest to the



PAN was reviewed and was taken into consideration. However, we still recommended for the issuance of the Formal Letter of Demand and Assessment Notices through a Memorandum dated January 5, 2015." Now when you used the term "we" here in A.36 on page of your Judicial Affidavit, were you also referring to yourself, Revenue Officers Maria Gracielle San Pedro, Tito Monforte, Arnaldo T. Ancheta and Group Supervisor Allan Maniego?

MS. BUDAÑO:

A: Originally po, in the issued LOA, remaining ROs was me and Ma. Gracielle Anaban. The rest were resigned.

ATTY. FERNANDEZ:

Q: Yes, Ms. Buda[ñ]o, but was question specifically referring to a Memorandum dated January 5, 2015, which was mentioned in A.36 of page 5 of your Judicial Affidavit. I just want to clarify and put on record who the individuals you were referring to when you used the word "we" in this paragraph.

...

MS. BUDAÑO:

A: We refers to Riza Budaño, Gracielle San Pedro- Anaban and Tito Monforte and Mr. Ancheta.

...

ATTY. FERNANDEZ:

Q: Now I refer you again to Exhibit R-1, which you identified on A.12 on page 2 of your Judicial Affidavit as the Letter of Authority dated October 6, 2011 issued to petitioner in this case. I noticed that aside from your name, the names of Revenue Officers Aurora Pelayo, Olivia Aviles, Olivia Sison, Rogelio Gonzales, and Group Supervisor Marivic Bautista are mentioned. Why were they not involved in the preparation of the various memoranda recommending the issuance of assessments against petitioner for taxable year 2010?

MS. BUDAÑO:

A: There was a movement in the group. I was transferred to another Group Supervisor Allan Maniego.



ATTY. FERNANDEZ:

Q: What about the other Revenue Officer?

MS. BUDAÑO:

A. The other Revenue Officers were transferred to different group also, not with Group Supervisor Bautista.

ATTY. FERNANDEZ:

Q: So, are you saying that Revenue Officers Maria Graciella San Pedro, Tito Monforte, and Arnaldo T. Ancheta, were intended to take the place of those Revenue Officers who were reassigned?

MS. BUDAÑO:

A: Yes, Attorney. There was a MOA for that assisting in the audit, but I am the lead examiner.

...

On this record, the books and records of GDI were examined, at least in part, by ROs who were never named in the only LOA ever issued for the audit — that dated 06 October 2011. **Where at least one (1) RO who participated in the audit was without the requisite grant of authority, the resulting assessment is void.**

As the Supreme Court held in the very recent case of *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*,¹⁰³ (**Standard Insurance**) an LOA is the formal instrument by which the Commissioner or his or her delegate empowers named ROs to conduct an audit of a particular taxpayer; “[i]t is the grant of authority to a named officer that defines the legitimacy of the audit, not the abstract existence of an investigation.” **Tax audits are person-specific; the participation of even one unauthorized officer taints the entire proceeding.** 

THE REASSIGNMENT OF REVENUE
OFFICERS (ROs) TO A NEW AUDIT
ENGAGEMENT REQUIRES THE
ISSUANCE OF A NEW LETTER OF
AUTHORITY (LOA)

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,¹⁰⁴ the Supreme Court described the typical, and typically defective, practice of reassigning ROs mid-audit:

...

(i) a valid LOA is issued to an authorized revenue officer; (ii) the revenue officer named in the LOA is reassigned or transferred . . . or is otherwise removed from handling the case covered by the LOA; (iii) the revenue district officer or a subordinate official issues a memorandum of assignment, referral memorandum, or such equivalent document to a new revenue officer for the continuation of the audit or investigation; and (iv) the new revenue officer continues the audit or investigation, supposedly under the authority of the previously issued LOA.

...

Also, in *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,¹⁰⁵ 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 [the] 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.

...

¹⁰⁴ G.R. No. 242670, 10 May 2021; Citation omitted.

¹⁰⁵ G.R. Nos. 249883-84, 27 January 2020 (Resolution); Citations omitted, emphasis and underscoring supplied.

The Court *En Banc* is not unmindful that reassignment and reorganization of audit teams is a normal administrative practice within any organization, including the BIR. That internal practice, however, cannot come at the expense of the taxpayer's right to due process in the conduct of a BIR audit, which requires that the taxpayer be notified of any change in the set of officers examining its books.

Section C(5) of RMO No. 43-90¹⁰⁶ accordingly requires the issuance of a new LOA whenever revenue officers are reassigned or transferred to continue an audit:

- ...
- C. Other policies for issuance of [LOAs].
- ...
5. Any re-assignment/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 thereto, including the previous [LOA] number and date of issue of said [LOAs].
- ...

The Supreme Court's ruling in *Standard Insurance* is squarely on point. There, as here, the BIR reassigned the audit of a taxpayer's books to ROs not named in the original LOA, without issuing a new LOA. The Supreme Court declared the resulting deficiency assessment "null and void for want of a valid LOA authorizing the examiners who made the assessment," holding that "[t]he **absence of a new LOA upon the re-assignment of the DST audit to the new revenue officers is a clear violation of Section 13 of the NIRC and of RMO 43-90.**"¹⁰⁷ The Supreme Court rejected the CIR's argument that the absence of a new LOA did not invalidate the assessment, emphasizing that a memorandum or letter of assignment cannot substitute for the LOA that the law requires.

In the case at bar, it is undisputed that only one (1) LOA¹⁰⁸ – that dated 06 October 2011 – was ever issued for the audit of GDI's books, a fact RO Budaño herself confirmed. No new LOA was issued to authorize 

¹⁰⁶ Supra at note 85.

¹⁰⁷ *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*, supra at note 103.

¹⁰⁸ Exhibit "P-2", supra at note 14.

ROs San Pedro, Monforte and Ancheta, and GS Maniego, to continue the audit in place of the ROs originally named.

The Third Division ruled that, because RO Budaño — the sole remaining officer from among those originally named in the LOA — was among those who conducted the audit examination and signed the report of findings, the assessment was valid, reasoning that as long as any one of the original ROs named in the LOA participated in the audit, the requisite authority was satisfied.

The Court *En Banc* does not agree.

To rule that an audit remains valid so long as any one originally-named officer continues to participate, notwithstanding the presence of other, unauthorized officers, would render the LOA requirement pointless, since the very purpose of naming specific officers in the LOA is to cabin the authority to examine a taxpayer's books to those officers alone, for that taxpayer, for that taxable period.

To reiterate, “[t]hat the original audit was covered by an LOA does not save the subsequent one; each audit assignment must stand on its own authority. . . [i]t is the grant of authority to a named officer that defines the legitimacy of the audit, not the abstract existence of an investigation.”¹⁰⁹ The Third Division's approach reduces the LOA to a mere formality — satisfied, apparently, by the lingering presence of a single authorized officer, even as the bulk of the audit work falls to officers who never received the CIR's or his or her authorized representative's *imprimatur*. Unfortunately, that is not the law. The LOA names specific officers for a reason: the taxpayer is entitled to know, with certainty, who examines its books and by what authority.¹¹⁰ An audit team composed substantially of unauthorized officers, propped up by the sole remaining authorized officer, is precisely the kind of circumvention the LOA requirement was designed to prevent. 

¹⁰⁹ *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*, supra at note 103.

¹¹⁰ *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, supra at note 104.

The case of *Standard Insurance* is categorical in saying that the absence of a new LOA upon reassignment is a clear violation of the law, and the resulting assessment is a nullity. Nothing in that ruling conditions nullity on the complete absence of an originally-named officer; the violation lies in subjecting the taxpayer to examination by officers who bear no authority and that violation is no less real when the unauthorized officers are three (3) or four (4) rather than all.

THE LETTER OR MEMORANDUM ON
RECORD CANNOT SUBSTITUTE FOR A
LETTER OF AUTHORITY (LOA) IN
GRANTING AUTHORITY TO THE
ADDITIONAL REVENUE OFFICERS
(ROs)

The Court *En Banc* adheres to the principle of substance over form in weighing whether a document may substitute for a defective or absent LOA. A memorandum or letter may, in appropriate cases, stand in the place of an LOA, provided it is issued by an officer authorized to issue one.

The governing rule on who may issue an LOA is stated with precision in Section D(4) of RMO No. 43-90:¹¹¹

...
D. Preparation and issuance of [LOAs].
...

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.

...

¹¹¹ Supra at note 85.

In relation thereto, RMO No. 29-2007¹¹² also authorizes Assistant Commissioner/Head Revenue Executive Assistants to issue LOAs relative to Large Taxpayers.

Summing up the foregoing rules, only the following officials are properly conferred with authority to permit the examination of taxpayers for deficiency taxes:

1. CIR;
2. Regional Directors;
3. Deputy Commissioners;
4. Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and
5. Other officials but only upon prior authorization by the CIR himself or herself.

In the instant case, the Letter dated 27 March 2013,¹¹³ authorizing ROs Monforte and Ancheta to assist GS dela Peña, was signed by Escalada, Chief of the RLTA-1 – a position *not* among the aforementioned officials. The Memoranda dated 14 October 2014¹¹⁴ and 05 January 2015,¹¹⁵ while signed and approved by Valeroso, OIC-Assistant Commissioner of the LTS, were addressed to Valeroso himself, not to GDI, and merely recommended the issuance of the PAN and FLD; the BIR Records contain no proof that GDI was ever furnished a copy of either Memorandum, nor any separate Memorandum of Assignment formally designating ROs San Pedro, Monforte, Ancheta and Maniego to the audit of GDI's books.

In the course of that hearing with RO Budaño as witness, it was further revealed that the officer who issued the Letter dated 27 March 2013 (designating ROs San Pedro, Monforte, Ancheta and Maniego to the audit of GDI's books) held a rank lower than Regional Director, and that the point is these ROs were not authorized by any officer of the BIR having a rank of a Regional Director, viz:¹¹⁶ 

¹¹² Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

¹¹³ Exhibit "P-5", supra at note 18.

¹¹⁴ Exhibit "R-7", supra at note 19.

¹¹⁵ Exhibit "R-10", supra at note 24.

¹¹⁶ TSN dated 07 March 2023, pp. 19-21; Emphasis supplied.

...

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

You mentioned of a Memorandum of Assignment. Who actually issued the Memorandum of Assignment, if you can remember?

MS. BUDAÑO:

Usually, po it's the Chief of the Office, Division Chief.

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

It is the Division Chief?

MS. BUDAÑO:

Yes po.

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

Can you give us an idea what is the rank of a Division Chief? Does it have the rank of a Regional Director or a Revenue District Officer?

MS. BUDAÑO:

Level to Revenue District Officer po.

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

I see. So, a Revenue District Officer is definitely lower than a Regional Director?

MS. BUDAÑO:

Yes, your Honors.

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

And based on your experience, is a Revenue District Officer authorized to issue a Letter of Authority?

MS. BUDAÑO:

No, your Honors.



[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

I see. So, if a Memorandum of Assignment is equivalent to a Letter of Authority, it would seem that the Memorandum of Assignment was not actually issued by someone who has authority to issue a Letter of Authority.

MS. BUDAÑO:

Yes, your Honors.

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

Kindly verbalize your answer please.

MS. BUDAÑO:

Your Honors, I don't know if it's a MOA or just an existing notice po for the other members po.

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

Yes. It's only the authority of the issuing officer that the court is inquiring from you because you said that only a Regional Director can issue a Letter of Authority.

MS. BUDAÑO:

Yes, your Honors.

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

If a Memorandum of Assignment would be considered by the Court as a Letter of Authority, but the Memorandum of Assignment was issued by someone lower than the Regional Director, it would mean that the Memorandum of Authority or rather the Memorandum of Assignment was not issued by an officer duly authorized to do so. What do you mean by nodding your head? Please say it clearly.

MS. BUDAÑO:

Your Honors, the original LOA was retained.

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

It's not the LOA I am asking you. It's the MOA. Because the MOA actually named two Revenue Officers you mentioned



earlier, Revenue Officers Tito Monforte and Revenue Officer Arnaldo T. Ancheta.

MS. BUDAÑO:

Yes po.

[PRESIDING] JUSTICE DEL ROSARIO [RET.]:

And these Revenue Officers actually conducted an examination of the documents. Is it not that only duly authorized Revenue Officers can conduct examination of documents, and the Court is trying to elicit from you what their authority is in making that examination. Anyway, it seems (paused) Are you confused? The point is these Revenue Officers were not authorized by any officer of the BIR having a rank of a Regional Director.

MS. BUDAÑO:

Yes, your Honors.

...

This infirmity is fatal. An LOA — or any document purporting to stand in its place — must issue from an officer competent to grant it. Where the officer who assigned the additional ROs lacked the rank required by the CIR's own regulations, the assignment conferred no authority at all.

On this record, neither the Letter dated 27 March 2013¹¹⁷ nor the Memoranda dated 14 October 2014¹¹⁸ and 05 January 2015¹¹⁹ can validly substitute for an LOA conferring authority upon the additional ROs who participated in the audit. The assessments issued as a result of that audit were, accordingly, issued in violation of GDI's right to due process, and are inescapably void.

THE ASSESSMENTS BEING
INESCAPABLY VOID, THE COURT
EN BANC NEED NOT RESOLVE THE
REMAINING ISSUES

¹¹⁷ Exhibit "P-5", supra at note 18.

¹¹⁸ Exhibit "R-7", supra at note 19.

¹¹⁹ Exhibit "R-10", supra at note 24.

Having found that the 2010 deficiency assessments against GDI are void for want of a valid grant of authority to all the ROs who conducted the audit, the Court *En Banc* finds it unnecessary to further resolve GDI's remaining contentions – that the FLD, FDDA and Assessment Notices failed to indicate a definite amount of tax liability and a valid due date under Section 228 of the NIRC of 1997, as amended, and that GDI's unutilized NOLCO was sufficient to offset the deficiency IT assessment. A void assessment is no assessment at all, and confers no liability, whatever its arithmetic or the taxpayer's available offsets might otherwise show. For the same reason, the CIR's own Petition in CTA EB No. 3068 – which asks that GDI be held liable for the full, undiminished amount of the deficiency assessments as reflected in the FDDA – cannot prosper: there is no valid assessment to which such a liability, full or partial, may attach. After all, settled is the rule that a void assessment bears no fruit.¹²⁰

As a final note, the power to tax is an attribute of sovereignty — inherent, plenary, and indispensable to the existence of government.¹²¹ But precisely because the taxing power is so formidable, the law has surrounded its exercise with procedural safeguards designed to temper its intrusion into the affairs of the taxpayer.¹²² Among these, the LOA requirement stands as the principal check against arbitrariness in the conduct of a BIR audit. It cabins the examination to officers specifically named by a competent authority, for a particular taxpayer, for a particular taxable period — no more, no less.

The Supreme Court's consistent insistence on strict compliance with the LOA requirement, reaffirmed most recently in *Standard Insurance*, reflects the principle that the State, in the exercise of its vast power to examine and assess, bears the correlative responsibility to be the less — not the more — intrusive presence in the taxpayer's affairs. The LOA is not a mere administrative formality; it is the taxpayer's assurance that the revenue officers at its door are there by authority of law,¹²³ and not by administrative convenience alone. Where that assurance is

¹²⁰ *Commissioner of Internal Revenue v. Liquigaz Phils. Corporation*, G.R. Nos. 215534 & 215557, 18 April 2016, citing *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, 27 January 2006.

¹²¹ See *Romeo P. Gerochi, et al. v. Department of Energy (DOE), et al.*, G.R. No. 159796, 17 July 2007.

¹²² See *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010.

¹²³ See *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, *supra* at note 104.

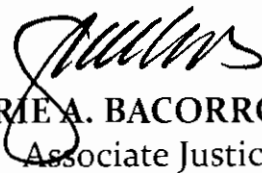
absent — where the BIR has substituted officers without the issuance of a new LOA, as it did here — the resulting assessment cannot stand, not because the State is denied its right to collect, but because it has failed to collect in the manner the law prescribes. A government that insists on strict compliance by its taxpayers must itself comply strictly with the safeguards it has imposed upon its own power.

ACCORDINGLY, in view of the foregoing, the Petition for Review filed by petitioner Golden Donuts, Inc. in CTA EB No. 3076 is **GRANTED**. The Decision dated 30 July 2024 and the Resolution dated 03 January 2025 of the Third Division of this Court in CTA Case No. 10336 are **REVERSED** and **SET ASIDE**. The Formal Letter of Demand and Final Assessment Notices dated 02 February 2015 and the Final Decision on Disputed Assessment issued by respondent Commissioner of Internal Revenue against petitioner Golden Donuts, Inc. for calendar year 2010 are **CANCELLED** and **SET ASIDE**.

Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from pursuing any action against Golden Donuts, Inc. relative to the above-mentioned void assessments.

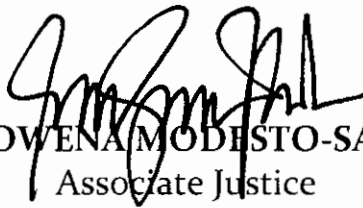
The Petition for Review filed by petitioner Commissioner of Internal Revenue in CTA EB No. 3068 is **DENIED** for lack of merit.

SO ORDERED.

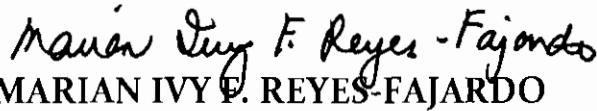

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Presiding Justice



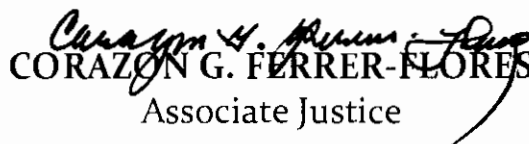
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY P. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice



HENRY S. ANGELES
Associate Justice



PAOLO S. TESTON
Associate Justice



DEBBIE JEAN I. CENTENO-DIJAMCO
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.


JEAN MARIE A. BACORRO-VILLENA
Acting Presiding Justice