

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB NO. 2826
(CTA Case No. 10080)

Present:

- versus -

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

**SUN LIFE GREPA FINANCIAL,
INC.,**

Respondent.

Promulgated:

DEC 12 2024

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*¹ filed by petitioner Commissioner of Internal Revenue (CIR) on December 4, 2023, seeking the reversal of the Decision² dated May 9, 2023 (*assailed Decision*) and the Resolution³ (*assailed Resolution*) dated October 6, 2023, both rendered by this Court's Special Third Division (Court in Division) in CTA Case No. 10080 entitled "*Sun Life Grepa Financial, Inc. v. Commissioner of Internal Revenue*." The dispositive portions of the assailed Decision and Resolution read:



¹ *En Banc (EB)* Docket, pp. 7–20.

² *Id.* at 29–46.

³ *Id.* at 48–59.

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Assailed Decision dated May 9, 2023:

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The NIC, PAN, FLD/FAN, FDDA, and Denial Letter issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency percentage tax and DST assessments issued against petitioner for TY 2008, in the aggregate amount of Eleven Million Four Hundred Forty-Seven Thousand One Hundred Forty and 92/100 Pesos (Php11,447,140.92) are hereby **CANCELLED** and **SET ASIDE**. Consequently, unless reversed by higher courts, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

Assailed Resolution dated October 6, 2023:

WHEREFORE, respondent's Motion for Reconsideration is hereby **DENIED**. The Decision, dated 9 May 2023, is hereby **AFFIRMED**.

SO ORDERED.

THE PARTIES⁴

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code.

Respondent Sun Life Grepa Financial, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at Grepalife Building, 221 Sen. Gil Puyat Avenue, Makati City.

THE FACTS AND THE PROCEEDINGS

The material facts, as found by the Court in Division, remain undisputed, to wit:

On 29 June 2009, a Letter of Authority ("LOA") No. 00033788 was issued by the Officer in Charge ("OIC") — Assistant Commissioner of Internal Revenue ("ACIR"), Large

⁴ *Id.* at 8–9, Petition for Review, Parties.



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Taxpayers ("LT") Service ("LTS"), Zenaida G. Garcia, in favor of Revenue Officers ("RO") Michael Anthony Caymo, Lilybeth Perez, Amelia Molinos, Mariesol Girang, and Pearl Marie Sta. Maria, and Group Supervisor ("GS") Roberto P. Castro, authorizing them to audit and examine [respondent's] books of accounts and other accounting records to determine any deficiency tax liability except DST for the period from 1 January 2008 to 31 December 2008. A copy of the LOA was received by [respondent] on 15 July 2009.

On 2 July 2009, the OIC-Chief, LT Assessment Division ("LTAD") 1, Conrado C. Lee, requested [respondent] to submit its books of accounts and other accounting records to aid in the examination of [respondent] for possible deficiency taxes for TY 2008. This request letter was received by [respondent] on 15 July 2009.

On 3 March 2010, a Memorandum was issued by the OIC-Chief, LT Regular Audit Division ("LTRAD") 2, Angeles C. Bautista, transferring the audit of [respondent] to RO Merly D. Santiago and GS Fe F. Caling. The transfer was due to the previous ROs' assignment to other offices. [Respondent] was notified of this transfer through a Letter by OIC-Chief, LTRAD 2, Angeles C. Bautista, which was received by [respondent] on 15 March 2010.

On 15 March 2010, OIC-Chief, LTRAD 2, Angeles C. Bautista, issued a Second Notice for Presentation of Books of Accounts and Other Accounting Records, reiterating [petitioner's] request to [respondent] to submit its books of accounts and other accounting records to determine any possible deficiency taxes for TY 2008. This notice was received by [respondent] on the same date it was issued.

Thereafter, [respondent] submitted its accounting records.

On 26 July 2011, [respondent], through its Senior Vice President — Controllers Group, Ramon G. Vizmonte, entered into a Waiver of the Statute of Limitation ("Waiver") with [petitioner], who was represented by ACIR, LTS, Zenaida G. Garcia, which extended the prescription to issue a deficiency tax assessment against [respondent] until 30 June 2012. Subsequently, on 26 March 2012, [respondent] and [petitioner] executed another Waiver further extending the prescription until 31 December 2012. On 22 October 2012, the parties further extended the prescription to issue a deficiency tax assessment against [respondent] through a Waiver until 30 June 2013.



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A Briefer was then submitted by RO Santiago and GS Caling to their superiors recommending that an informal conference be held to discuss possible deficiency tax assessments against [respondent]. On 5 February 2013, a Notice of Informal Conference ("NIC") was issued by OIC-ACIR, LTS, Alfredo V. Misajon, highlighting certain discrepancies found by RO Santiago and GS Caling in relation to their audit of [respondent's] books of accounts and other accounting records that may result in possible deficiency tax assessments. [Respondent] was also requested to clarify such discrepancies. The NIC was received by [respondent] on 7 February 2013.

In a Memorandum, dated 6 February 2013, RO Santiago and GS Caling requested that the audit of [respondent] be re-assigned to a new set of ROs. On 14 February 2013, a Memorandum of Assignment ("MOA") was issued by OIC-Chief, Regular LTAD ("RLTAD") 2, Edwin T. Guzman, reassigning the audit of [respondent] to RO Manuel T. Tasarra, with the same GS, in light of RO Santiago's transfer to RLTAD 3. [Respondent] was informed of the reassignment of its audit to RO Tasarra through a Letter sent by OIC-Chief, RLTAD 2, Edwin T. Guzman.

On 20 February 2013, [respondent] sent a Letter to OIC-ACIR, LTS, Misajon, requesting the re-scheduling of the informal conference to 13 March 2013.

On 18 March 2013, another Waiver was executed between [respondent], as represented by its Treasurer, Ma. Josefina A. Castillo, and [petitioner], as represented by the OIC-ACIR, LTS, Misajon, extending the prescription to issue an assessment against [respondent] until 31 December 2013.

On 24 May 2013, [respondent] sent its reconciliation schedules of the discrepancies found in the NIC.

On 30 September 2013, another Waiver was executed further extending the prescription until 31 March 2014. The prescription was further extended until 30 September 2014 through a Waiver, dated 20 February 2014.

Afterwards, RO Tasarra and GS Caling submitted a Memorandum recommending the issuance of a Preliminary Assessment Notice ("PAN") against [respondent]. On 2 May 2014, [respondent] received the PAN and filed its Reply to the same on 16 May 2014.

Subsequently, RO Tasarra and GS Caling submitted a Memorandum recommending the issuance of a Formal Letter of Demand ("FLD") and Final Assessment Notices ("FAN"). [Petitioner] issued the FLD/FAN on 11 June 2014, a copy of which was received by [respondent] on 16 June 2014, assessing petitioner with the following deficiency taxes:



Tax Type	Amount Due (inclusive of surcharge, interest, and compromise penalty)
Income Tax ("IT")	Php80,931,900.68
Percentage Tax	2,828,160.17
Value Added Tax ("VAT")	3,202,643.85
Expanded Withholding Tax ("EWT")	23,004,861.38
Withholding Tax on Compensation ("WTC")	9,707,993.71
Fringe Benefits Tax ("FBT")	557,207.23
DST	7,821,681.04

On 17 July 2014, [respondent] filed its Protest to the FLD/FAN requesting for a reinvestigation of the assessment. It then submitted its supporting documents to the Protest on 12 September 2014.

Then, RO Tasarra and GS Caling submitted a Memorandum recommending the issuance of a Final Decision on Disputed Assessment ("FDDA"). On 10 May 2016, [petitioner] issued the FDDA, a copy of which was received by [respondent] on 11 May 2016, assessing [respondent] with reduced deficiency taxes, to wit:

Tax Type	Amount Due (inclusive of surcharge, interest, and compromise penalty)
IT	Php23,945,366.65
Percentage Tax	3,332,537.55
EWT	864,180.71
DST	6,344,235.24

Still aggrieved, [respondent] filed a Request for Reconsideration of the FDDA before the CIR on 10 June 2016. Likewise, on 12 May 2016, [respondent] paid the EWT assessment amounting to Php864,180.71.

On 29 January 2019, a Memorandum was prepared for [petitioner] CIR recommending the removal of the IT assessment in light of [respondent's] payment of the EWT assessment but the retention of the percentage tax assessment, which sums up to Php3,927,222.24, inclusive of surcharge and interest and exclusive of compromise penalty in the amount of Php25,000.00, and the DST assessment, which totaled Php7,469,918.68, inclusive of surcharge and interest and exclusive of compromise penalty in the amount of Php25,000.00, or, all in all, Eleven Million Four Hundred Forty-Seven Thousand One Hundred Forty and 92/100 Pesos (Php11,447,140.92). On 15 April 2019, [petitioner] issued the Denial Letter assessing [respondent] with deficiency percentage tax and DST in the aforementioned amount. A copy of said Denial Letter was received by [respondent] on 16 April 2019.

On 16 May 2019, [respondent] filed the instant Petition assailing the assessment contained in the Denial Letter. This Court then issued Summons to [petitioner], requiring him to

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file an Answer to the Petition on 23 May 2019. [Petitioner] complied and filed such Answer via registered mail on 14 June 2019.

In a Resolution, dated 1 July 2019, this Court referred the instant case to the Philippine Mediation Center - Court of Tax Appeals ("PMC-CTA"). However, a No Agreement to Mediate was submitted by the PMC-CTA on 8 August 2019.

In a Resolution, dated 15 August 2019, this Court set the Pre-Trial Conference to be held on 12 November 2019, at 9:00 a.m. [Petitioner] then elevated the BIR Records relevant to this case on 24 October 2019, before filing his Pre-Trial Brief on 4 November 2019. Meanwhile, on 8 November 2019, [respondent] filed both its Pre-Trial Brief and the Judicial Affidavit of its witness, Atty. Reeno E. Febrero.

Pre-Trial ensued on 12 November 2019.

The parties then submitted their Joint Stipulation of Facts and Issues on 2 December 2019. Afterwards, on 9 December 2019, [respondent] submitted the Judicial Affidavit of its witness, Ronaldo H. Diloy, in light of its manifestation during the Pre-Trial Conference that it would present another witness. On the other hand, on 20 December 2019, [petitioner] filed a Manifestation that he would no longer present a witness as the RO selected to testify on the matter had resigned from the BIR and could not be located.

This Court then issued a Pre-Trial Order on 16 January 2020.

On 13 March 2020, [respondent] submitted the Amended Judicial Affidavit of Mr. Diloy. [Respondent] presented its witnesses, Atty. Febrero and Mr. Diloy, on 14 July 2020.

On 19 August 2020, [respondent] filed its Formal Offer of Evidence by registered mail. In a Resolution, dated 24 November 2020, this Court admitted all of [respondent's] Exhibits, except Exhibit "P-38", for failure of the Exhibit formally offered and identified to correspond with the document actually marked.

On 22 December 2020, [petitioner] filed his Memorandum on 22 December 2020.

However, [respondent] filed a Motion for Reconsideration with Motion to Recall Witness on 3 February 2021, to which [petitioner] later filed a Comment. The Court then granted the Motion to Recall Witness on 3 June 2021. [Respondent] filed the Supplemental Judicial Affidavit of Mr. Diloy on 1 July 2021 and once again presented him as witness



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on 2 July 2021. Following this, [respondent] filed its Supplemental Formal Offer of Evidence on 29 July 2021, to which [petitioner] interposed no objection. The Supplemental Offer of Evidence, and the previously filed Motion for Reconsideration, were then granted by the Court on 17 December 2021, and the offered Exhibits were admitted.

The issue with its initially denied evidence resolved, [respondent] filed its Memorandum on 11 April 2022. Thus, on 11 May 2022, this Court issued a Resolution submitting the instant case for Decision.⁵

On May 9, 2023, the Court in Division rendered the assailed Decision granting respondent's *Petition for Review*. In favoring respondent, the Court in Division ruled that a Letter of Authority (LOA) is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given to them in auditing a taxpayer.

The Court in Division cited the Supreme Court's ruling in *Medicard Philippines, Inc., v. Commissioner of Internal Revenue*,⁶ which held that tax assessments issued without the required LOA are inescapably void. Hence, since no LOA was issued authorizing Revenue Officers (ROs) Tasarra and Santiago and Group Supervisor (GS) Caling to examine respondent's tax liabilities, the deficiency tax assessments issued against respondent are void, according to the Court in Division.

Not satisfied, petitioner filed a *Motion for Reconsideration*,⁷ which was denied in the assailed Resolution dated October 6, 2023.

Undeterred, petitioner filed a *Motion for Extension to File Petition for Review*⁸ on November 16, 2023, seeking an extension period of fifteen (15) days from November 18, 2023, or until December 3, 2023, to file his *Petition for Review*, which the Court granted in a *Minute Resolution*⁹ dated November 17, 2023.

On December 4, 2023,¹⁰ petitioner filed the instant *Petition for Review*, to which respondent was directed to file its *Comment* within ten (10) days from receipt of the notice.

⁵ See Note 2, pp. 2–7.

⁶ G.R. No. 222743, April 5, 2017 [Per J. Reyes, Third Division].

⁷ Division Docket – Vol. II, pp. 976–996.

⁸ *En Banc* Docket, pp. 1–4.

⁹ *Id.* at 6.

¹⁰ December 3, 2023 falls on a Sunday.

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On January 12, 2024, respondent filed its *Comment/Opposition (to Petitioner's Petition for Review dated 1 December 2023)*. However, the Court noted an error in the caption of the *Comment/Opposition*. Thus, on January 29, 2024, the Court issued a Resolution¹¹ directing respondent to submit its *Comment/Opposition* with the corrected caption and designation of the parties within five (5) days from notice. In the same Resolution, the Court referred the case to mediation before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.

In its *Compliance (Re: Notice dated 29 January 2024)*¹² filed on February 5, 2024, respondent filed its corrected *Comment/Opposition (to Petitioner's Petition for Review dated 1 December 2023)*.

On February 8, 2024, respondent filed a *Manifestation*,¹³ stating that there were inadvertent typographical errors in its *Compliance*, particularly in Paragraph 4 and the Prayer, and requested that the corrections be considered.

Respondent's *Compliance (Re: Notice dated 29 January 2024)* and *Manifestation* were noted in the Resolution¹⁴ dated February 15, 2024.

On March 11, 2024, the PMC-CTA reported that the parties decided not to have their case mediated.¹⁵ Accordingly, on March 27, 2024, the instant case was submitted for decision.¹⁶

Hence, this Decision.

ASSIGNMENT OF ERROR

In his *Petition for Review*, petitioner assigns the following errors allegedly committed by the Court in Division, to wit:



¹¹ *EB* Docket, p. 71.

¹² *Id.* at 72-74.

¹³ *Id.* at 85-88.

¹⁴ *Id.* at 102.

¹⁵ *Id.* at 103.

¹⁶ *Id.* at 104.

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- I. WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ASSESSMENT ISSUED AGAINST PETITIONER (*sic*) IS INVALID.
- II. WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN ENJOINING RESPONDENT (*sic*) FROM COLLECTING THE ASSESSED DEFICIENCY TAXES ABSENT A FINAL AND EXECUTORY RESOLUTION DECLARING THE ASSESSMENT INVALID.

Petitioner's Arguments:

Petitioner avers that in the assailed Decision, the Court in Division ruled that the assessment issued against respondent is invalid because the ROs who conducted the audit were allegedly not authorized to do so.

However, petitioner disagrees.

Firstly, petitioner argues that the instant case involves an audit conducted by the Large Taxpayer Services (LTS) of the Office of the Commissioner of Internal Revenue. According to petitioner, the law does not require the CIR or his authorized representatives to issue LOAs, as the law merely requires that the CIR and his duly authorized representatives serve notice to the taxpayer for audit and investigation. The requirement to issue an LOA, petitioner claims, applies only to BIR Regional Offices, given that these offices operate outside the CIR's immediate supervision.

Secondly, citing the case of *Commissioner of Internal Revenue v. Oriental Assurance Corporation*,¹⁷ petitioner submits that the assessment remains valid despite the reassignment of the case to another RO through a Memorandum of Assignment (MOA). Petitioner submits that an LOA was validly issued to petitioner. Thus, even without issuing a subsequent LOA for the re-assignment, the investigation conducted by the investigating ROs was done pursuant to a valid LOA.

Thirdly, petitioner contends that respondent was afforded due process, considering that respondent was able to present evidence before the BIR, file an intelligent appeal, and attend meetings with the ROs involved.



¹⁷ CTA EB Nos. 1482 & 1487, June 21, 2018 [Per J. Castañeda, Jr., *En Banc*].

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Finally, petitioner asserts that respondent was informed that the investigation would continue under different ROs due to the transfer of the originally assigned officer. Petitioner emphasizes that respondent did not raise any question regarding the authority of the ROs during the administrative appeal. On the contrary, respondent actively participated in the audit process until the issuance of the Final Assessment Notice without questioning the authority of the ROs involved.

Respondent's Arguments:

Respondent submits that the instant *Petition for Review* should be denied as petitioner failed to raise any new arguments that the Court in Division has not fully threshed out in the assailed Decision and Resolution. Respondent claims that petitioner simply reiterated the arguments presented in his *Motion for Reconsideration* filed before the Court in Division.

Nevertheless, respondent maintains that the Court in Division correctly ruled that the assessment is null and void due to petitioner's failure to observe due process. Echoing the ruling of the Court in Division, respondent emphasizes that a *Memorandum* or *Memorandum of Assignment* cannot serve as a substitute for an LOA since it is a special grant of authority to a specific set of ROs to examine a taxpayer's books of accounts and other accounting records for the purpose of determining the tax due.

Respondent points out that in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*¹⁸ (*McDonald's case*), the Supreme Court held that the failure to issue a new LOA when reassigning ROs with new ones violates the taxpayer's right to due process, rendering the assessment null and void.

Lastly, respondent asserts that it is not estopped from questioning the authority of the ROs, even though it participated in the audit process. Respondent pointed out that in the *McDonald's* case, the Supreme Court, in invalidating the assessment, did not hold *McDonald* in estoppel even if it did not question the authority of the new RO to continue the examination of its books of accounts and other accounting records.



¹⁸ G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

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THE COURT EN BANC'S RULING

Before delving into the merits of the case, the Court *En Banc* must first determine whether the present *Petition for Review* was timely filed.

The present Petition for Review was seasonably filed; hence, the Court En Banc has jurisdiction over the same.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

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

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(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.

The records show that petitioner received the Resolution dated October 6, 2023,¹⁹ which denied his *Motion for Reconsideration (Re: Decision dated 9 May 2023)*, on November 3, 2023. Thus, petitioner had fifteen (15) days from November 3, 2023, or until November 18, 2023, to file his *Petition for Review* before this Court.

On November 16, 2023, petitioner filed a *Motion for Extension to File Petition for Review*,²⁰ requesting an additional fifteen (15) days from November 18, 2023, or until December 3, 2023, to file the *Petition for Review*. The Court granted the *Motion* in a *Minute Resolution*²¹ dated November 17, 2023.

¹⁹ EB Docket, p. 47, Notice of Resolution.

²⁰ *Id.* at 1–4.

²¹ *Id.* at 6.

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Considering that the *Petition* was filed on December 4, 2023 (with December 3, 2023, falling on a Sunday), it was timely filed. Accordingly, the Court *En Banc* validly acquired jurisdiction over the case.

Now, on the merits.

After a thorough evaluation and consideration of the records, the Court *En Banc* finds no merit in the present *Petition for Review*.

The records of the case evidently show that the Court in Division has already fully and exhaustively addressed the issues raised in this appeal. These issues are merely a rehash of the arguments proffered by petitioner in his *Memorandum* dated December 22, 2020,²² and his *Motion for Reconsideration (Re: Decision dated 9 May 2023)*²³ filed on June 8, 2023.

Nevertheless, in the interest of clarity and to put petitioner's concerns to rest, the Court *En Banc* deems it proper to reiterate the key points highlighted by the Court in Division.

The Court in Division did not err in ruling that the assessment issued against respondent is invalid due to the absence of an LOA authorizing the Revenue Officers to audit and examine respondent's books of accounts and other accounting records for taxable year 2008.

To be sure, the National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring authority from the CIR or his duly authorized representatives before an examination of a taxpayer may be conducted.²⁴ Section 6 of 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.* —

²² Division Docket – Vol. II, pp. 780–804.

²³ *Id.* at. 976–996.

²⁴ *Supra* note 6.



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(A) *Examination of Return and Determination of Tax Due* - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."

In relation to this, Section 13 of the NIRC of 1997, as amended, requires that all audit examinations and assessments by ROs must be conducted pursuant to an LOA, to wit:

"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."

The importance of an LOA cannot be understated. It is an essential prerequisite before an RO can proceed with the audit and assessment of a taxpayer. This requirement exists because the authority to audit and assess taxes is explicitly vested only in the CIR and his duly authorized representatives. Thus, it is imperative that ROs be granted such authority through an LOA before they commence any audit or assessment.

This mandate under Section 13 of the NIRC of 1997, as amended, has been clarified by the Supreme Court in the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*²⁵ (*Sony Case*), to wit:

Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.**

²⁵ G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

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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. In the absence of such an authority, the assessment or examination is a nullity.

The importance of an LOA was highlighted in the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,²⁶ where the Supreme Court categorically declared that an LOA is indispensable to the validity of an assessment, *viz.*:

"The absence of an LOA violated MEDICARD's right to due process

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... In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.** (Citations omitted; boldfacing supplied)



²⁶ *Supra* note 6.

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The requirement for a valid LOA applies even when an audit case is reassigned due to the resignation, retirement, or transfer of an RO. This is made clear under RMO No. 43-90,²⁷ which provides:

C. Other policies for issuance of L/As.

1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

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5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As. (*Emphases supplied*)

Furthermore, in the relatively recent *McDonald's case*, the Supreme Court addressed the troubling trend of tax audits and investigations conducted by ROs who were not specifically named or authorized in the original LOA. These substitutions were often justified under the pretext that the originally designated RO had retired, resigned, or otherwise removed from handling the audit or investigation. The Supreme Court ruled:

This practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been the subject of several CTA decisions, including *Ithiel Corporation v. CIR*, *Strawberry Foods Corporation v. CIR*, *Sugar Crafts, Inc. v. CIR*, *CIR v. Marketing Convergence, Inc.*, *Exclusive Networks-PH, Inc. v. CIR*, and the decision in the court *a quo*.

The Court hereby puts an end to this practice.

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

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the

²⁷ SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

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books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. ... The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.

Section 6 of the NIRC provides:

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

(A) Examination of Return and Determination of Tax Due. — After a return has been filed as required under the provisions of this Code, the **Commissioner** or **his duly authorized representative** may authorize the examination of any taxpayer and the assessment of the correct amount of tax. (Emphasis supplied)

Section 10 (c) of the NIRC provides:

SECTION 10. Revenue Regional Director. — the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:

(c) **Issue Letters of Authority** for the examination of taxpayers within the region. (Emphasis supplied)

Section 13 of the NIRC provides:

SECTION 13. Authority of a Revenue Officer. — ... a **Revenue Officer** assigned to perform assessment functions in any district may, pursuant to a **Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, ... (Emphasis supplied)

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

... the **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. (Emphasis supplied)



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

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

A. Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation

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

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

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

The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the representatives to the revenue officers, pursuant to Sections 6, 10 (c) and 13 of the NIRC. Naturally,



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this grant of authority is issued or bestowed upon an agent of the BIR, i.e., a revenue officer. Hence, **petitioner is mistaken** to characterize the LOA as a document "issued" to the taxpayer, and that once so issued, **"any" revenue officer** may then act pursuant to such authority.

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

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

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

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, ... is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use 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.



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

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

Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.

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

...

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

Clearly, the practice of reassigning or transferring revenue officers originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representatives to grant the power to examine the books of accounts of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

In the present case, it is undisputed that an LOA²⁸ was initially issued authorizing ROs Michael Anthony Caymo, Lilybeth Perez, Amelia Molinos, Mariesol Girang, and Pearl Marie Sta. Maria, and GS Roberto P. Castro, to audit and examine respondent's books of accounts and other accounting records to determine any deficiency tax liability, except for DST, covering the period January 1, 2008 to December 31, 2008.

²⁸ Exhibit P-3, BIR Records, p. 2.

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However, the audit of respondent was later transferred to RO Merly D. Santiago and GS Fe F. Caling through a Memorandum dated March 3, 2010,²⁹ and was subsequently reassigned to RO Manuel T. Tasarra, with the same GS, through a Memorandum of Assignment dated February 14, 2013.³⁰

The records further reveal that ROs Santiago, Tasarra, and GS Caling, who were not named in the original LOA, performed significant portions of the audit of respondent, as evidenced by the following:

1. RO Santiago and GS Caling prepared a Briefer,³¹ which led to the issuance of a Notice of Informal Conference (NIC)³² against respondent;
2. RO Tasarra and GS Caling prepared a Memorandum,³³ resulting in the issuance of a Preliminary Assessment Notice (PAN);³⁴ and
3. A Final Letter of Demand/ Final Assessment Notice³⁵ (FLD/FAN) was issued based on the Memorandum³⁶ prepared by RO Tasarra and GS Caling.

As enunciated in the *McDonald's case*, the reassignment, transfer, or substitution of ROs requires the issuance of a new or amended LOA to authorize the new RO to continue the audit or investigation. A Memorandum of Assignment, Referral Memorandum, or any equivalent document cannot serve as a substitute for the required LOA.

In light of the *McDonald's case*, the Court *En Banc* concurs with the ruling of the Court in Division, which held:

In totality, ROs Tasarra and Santiago and GS Caling, through a mere Memorandum and MOA, were able to audit, examine, and inspect [respondent's] books of accounts and other accounting records which led to the issuance of the present deficiency tax assessments, despite the clear requirement that all revenue officers conducting an audit/investigation of a taxpayer should be properly authorized with an LOA.

²⁹ Exhibit P-9, BIR Records, p. 3.

³⁰ Exhibit P-10, BIR Records, p. 932.

³¹ Exhibit P-4, BIR Records, pp. 894-914.

³² Exhibit P-31, BIR Records, pp. 915-929.

³³ Exhibit P-5, BIR Records, pp. 1013-1025.

³⁴ Exhibit P-35, BIR Records, pp. 1033-1042.

³⁵ Exhibit P-37, BIR Records, pp. 1076-1090.

³⁶ Exhibit P-6, BIR Records, pp. 1069-1074.

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As discussed above, assessments issued without the requisite LOA are inescapably void. Consequently, due to the absence of an LOA authorizing ROs Tasarra and Santiago and GS Caling to examine [respondent], the deficiency tax assessments are void. No tax collection can thus be pursued based on these assessments. (*Citations omitted*)

Respondent is not estopped from questioning the Revenue Officers' authority despite failing to raise this issue at the administrative level.

Petitioner argues that respondent is already estopped from challenging the authority of the ROs in question, given its failure to raise this issue at the administrative level.

Petitioner's assertion lacks merit.

As held in the recent case of *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*,³⁷ the taxpayer's failure to raise the lack of authority of the ROs at the earliest opportunity does not preclude the Court from considering this issue, as it pertains to the intrinsic validity of the assessment itself.

Further, jurisprudence dictates that the doctrine of estoppel cannot validate an act prohibited by law or contrary to public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.³⁸

In the instant case, the lack of authority of the revenue officers to conduct an audit investigation directly contradicts the provisions of the law and will result in a void assessment. Consequently, petitioner cannot invoke the doctrine of estoppel to legitimize an irregular act or a void assessment.

Thus, the Court *En Banc* concurs with the Court in Division, which ruled that:



³⁷ G.R. No. 241848, May 14, 2021 [Per J. Carandang, First Division].

³⁸ *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010 [Per J. Del Castillo, Second Division].

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"In the case at bar, respondent contends that petitioner is already estopped from questioning the authority of the ROs who audited its books since it did not raise this issue at the administrative level. This is misplaced.

The taxpayer's right to know the specific revenue officers who are authorized to examine its books of accounts and other accounting records is a due process requirement enshrined not only in the *NIRC* but also in the *1987 Constitution*. It protects a taxpayer from unnecessary encroachment by the State on its person and property. As such, the principle of estoppel can never justify non-compliance with the LOA requirement. In *Commissioner of Internal Revenue v. BASF Philippines, Inc.*, the Court *En Banc* recognized the necessity of an LOA such that it may not be the subject of estoppel, *viz.*:

'As regards petitioner's argument that respondent is estopped from questioning the authority of the ROs, the Court *En Banc* finds the same without merit. Estoppel cannot be applied in this case to ratify the validity of the assessments made. The authority of the ROs who conducted the audit are vital in the assessment process. It is provided by the rules. The assessments cannot be considered valid just because respondent actively participated in the audit conducted by the ROs who replaced the originally named ROs in the LOA.'

Simply put, an LOA must identify the specific revenue officers authorized to audit/investigate a particular taxpayer. Otherwise, if the new revenue officer assigned to take over the audit of a taxpayer (due to the resignation, transfer, or death of the previous revenue officer) is not provided an LOA specifically to his or her name, any resulting assessment arising from the audit conducted by such new revenue officer is null and void. Further, a taxpayer's continuous participation in the audit conducted by a revenue officer not armed with an LOA does not preclude the former from assailing the lack of authority of the latter in later proceedings."

The Court in Division did not err in enjoining petitioner from collecting the assessed deficiency taxes.

Petitioner claims that the Court in Division erred in enjoining him from collecting the assessed deficiency taxes in

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the absence of a final and executory resolution declaring the assessment invalid.

Petitioner's claim deserves scant consideration.

As correctly pointed out by the Court in Division, the "enjoinment and prohibition stem from a judgment on the merits of the case."

The Court in Division aptly discussed:

"... the Court has already found that [petitioner's] assessments in this case were void due to the examining ROs' lack of authority. [Petitioner] has failed to prove that this Court was mistaken and that the assessments were actually valid. By extension, he has also failed to prove that any attempt to collect the Disputed Amount would not jeopardize the interests of the Government, at minimum.

Furthermore, to collect the Dispute Amount would be to act as if the disputed assessment is valid, undermining this Court's judgment on the same. It would render this Court's adjudicative functions without force and effect on reality, as [petitioner] would be able to collect any amount he sees fit, regardless of whether or not We find his assessments valid. It would also ignore the fact that appeal to both the Court of Tax Appeals En Banc and to the Supreme Court are still open to [petitioner]. As such, any effort by [petitioner] to collect the Dispute Amount would directly disregard the judiciary's decisions and jurisdiction, jeopardizing the interests of the Government."

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

Accordingly, the assailed Decision dated May 9, 2023, and Resolution dated October 6, 2023, rendered by this Court's Special Third Division in CTA Case No. 10080, are **AFFIRMED**.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

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WE CONCUR:


ROMAN G. DEL ROSARIO

Presiding Justice


MA. BELEN M. RINGPIS-LIBAN

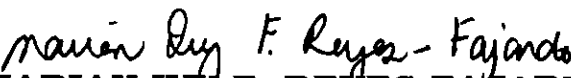
Associate Justice

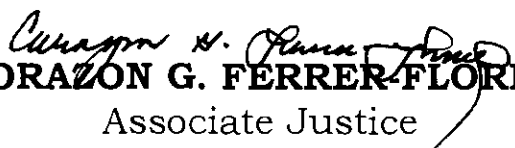

CATHERINE T. MANAHAN

Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

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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.



ROMAN G. DEL ROSARIO

Presiding Justice

