

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,

Petitioner,

CTA EB NO. 2438
(CTA Case No. 9064)

Present:

- versus -

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

FIRST PHILEC, INC. (Formerly
First Electro Dynamics Corp.),
Respondent.

Promulgated:

FEB 15 2023

X ----- X

DECISION

BACORRO-VILLENA, J.:

Assailing the Third Division's Decision dated 09 March 2020¹ (**assailed Decision**) and Resolution dated 27 January 2021² (**assailed Resolution**) in CTA Case No. 9064, entitled *First Philec, Inc. (Formerly: First Electro Dynamics Corporation) v. Commissioner of Internal Revenue*, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the instant Petition for Review³ pursuant to

¹ Division Docket, Volume III, pp. 1163-1186.

² Id., pp. 1219-1223.

³ Filed on 10 February 2021, *Rollo*, pp. 1-29.

Section 3(b)⁴, Rule 8, in relation to Section 2(a)(1)⁵, Rule 4 of the Revised Rules of the Court of Tax Appeals⁶ (RRCTA).

PARTIES OF THE CASE

Petitioner is the head of the Bureau of Internal Revenue (**BIR**) with the power or authority to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code or other laws or portion thereof administered by the BIR.⁷

Respondent First Philec, Inc. (**respondent/FPI**) is a corporation duly organized and existing under Philippine laws, with office address at Barangay Anastacia, Sto. Tomas, Batangas. It is engaged in the business of manufacturing, fabrication and repair of industrial products, industrial goods and commodities such as but not limited to electrical, electronic, industrial chemical and mechanical, and marketing or selling of these products locally or abroad.⁸

FACTS OF THE CASE

Respondent received a copy of Letter of Authority (LOA) No. LOA-116-2010-00000032 dated 14 May 2010⁹, issued by the BIR, authorizing the conduct of an audit of its accounting records for “all

⁴ 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.

⁵ SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

...
⁶ A.M. No. 05-11-07-CTA.

⁷ Paragraph (Par.) B(3), Facts Stipulated by the Parties, Pre-Trial Order, Division Docket, Volume II, p. 795.

⁸ Par. B(1), *id*; see Amended Articles of Incorporation, *id.*, p. 888.

⁹ Exhibit “P-5”, BIR Records, p. 1.

DECISION

Page 3 of 33

X-----X

internal revenue taxes” for the period of 01 January 2009 to 31 December 2009 or taxable year (TY) 2009.¹⁰ The said LOA authorized Revenue Officers (ROs) Maribel Serafica (**Serafica**), Olivia Sison (**Sison**), Walter Batoon (**Batoon**), Reynoso Bravo (**Bravo**), Daniela Gabaon (**Gabaon**), Julieta Tubilla (**Tubilla**), and Group Supervisor (**GS**) Erlinda Ulgado (**Ulgado**) of the Large Taxpayer (LT) Regular Audit Division 1, to conduct the audit and/or investigation.

During the investigation, Alejandra D. Marquez, (**Marquez**), respondent’s Assistant Vice-President for Finance-Controller (Comptroller), and Ariel C. Ong (**Ong**), respondent’s President, executed a series of Waivers of the Defense of Prescription under the Statute of Limitations (**subject waivers**) of the National Internal Revenue Code (**NIRC**) of 1997, as amended.¹¹

On 03 January 2013, Marquez executed a waiver (**first waiver**)¹² to suspend the operation of the Statute of Limitations until 30 June 2013. Then Officer-in-Charge, Assistant Commissioner for Large Taxpayer Services Alfredo V. Misajon (**OIC-ACIR Misajon**) accepted the first waiver on 04 January 2013.¹³ On 12 April 2013, Marquez executed another waiver (**second waiver**)¹⁴ to extend the agreed period of suspension until 31 December 2013. OIC-ACIR Misajon accepted the second waiver on 17 April 2013.¹⁵ On 19 September 2013, Ong executed a subsequent waiver (**third waiver**)¹⁶ that further extended the period of suspension until 30 June 2014. OIC-ACIR Misajon accepted the third waiver on 23 September 2013.¹⁷

In the *interim*, petitioner issued a Memorandum of Assignment (**MOA**) No. LOA-116-2013-0417 dated 25 February 2013¹⁸, replacing the previously assigned ROs and directing RO Felina B. Guimbao (**Guimbao**) to continue the audit and/or investigation of respondent’s books of account.

¹⁰ Par. A(2), Admitted Facts, Pre-Trial Order, Division Docket, Volume II, p. 794.

¹¹ Par. A(3), Admitted Facts, Pre-Trial Order, id., p. 794.

¹² Exhibit “P-6”, id., p. 900.

¹³ See Exhibits “P-6-C” and “P-6-D”, id.

¹⁴ Exhibit “P-7”, id., p. 901.

¹⁵ See Exhibits “P-7-C” and “P-7-D”, id.

¹⁶ Exhibit “P-8”, id., p. 902.

¹⁷ See Exhibits “P-8-C” and “P-8-D”, id.

¹⁸ See Exhibit “R-2”, BIR Records, p. 447.

Later, or on 19 May 2014, respondent received a copy of the Preliminary Assessment Notice (PAN)¹⁹ of even date which petitioner signed. The aforementioned PAN stated that after investigation, respondent was found liable for deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), and documentary stamp tax (DST) for TY 2009.²⁰ On 03 June 2014, respondent filed a Reply to the PAN²¹ and opposed the deficiency tax assessments.

On 16 June 2014, respondent received a copy of the Formal Letter of Demand with Final Assessment Notice²² (FLD-FAN).²³ The FLD-FAN contained deficiency tax assessments for IT, VAT, WTC, EWT, and DST for TY 2009 in the total amount of ₱188,739,566.00, inclusive of interests and penalties.²⁴ On 15 July 2014, respondent filed its Protest²⁵ to the FLD-FAN and requested for reinvestigation of the alleged deficiency taxes.

On 07 May 2015, respondent also received a copy of the Final Decision of Disputed Assessment (FDDA) with attached Details of Discrepancies.²⁶ The FDDA contained deficiency tax assessments in the amount of ₱128,181,133.03.

PROCEEDINGS BEFORE THE COURT

On 05 June 2015, respondent filed the prior Petition for Review²⁷ before this Court. The case was raffled to the First Division and was docketed as CTA Case No. 9064.²⁸

In petitioner's Answer²⁹, the following special and affirmative defenses were raised: (1) the assessments were made within the

¹⁹ Exhibit "P-12", id., p. 637.

²⁰ Par. A(5), Admitted Facts, Pre-Trial Order, Division Docket, Volume II, p. 795.

²¹ Exhibit "P-13", id., pp. 915-927.

²² Exhibit "P-14", BIR Records, pp. 686-695.

²³ Par. A(6), Admitted Facts, Pre-Trial Order, Division Docket, Volume II, p. 795.

²⁴ Par. A(7), id.

²⁵ Exhibit "P-15", id., pp. 928-951.

²⁶ Exhibit "R-13", BIR Records, pp. 1308-1316; Par. A(8), Admitted Facts, Pre-Trial Order, Division Docket, Volume II, p. 795.

²⁷ Id., Volume I, pp. 10-212, with attached annexes.

²⁸ The First Division was then composed of Presiding Justice Roman G. Del Rosario, Associate Justice Erlinda P. Uy, and Associate Justice Cielito N. Mindaro-Grulla (Ret.).

²⁹ Filed on 08 October 2015; Division Docket, Volume I, pp. 234-247, with attached annexes.

prescriptive period to assess since respondent validly executed the subject waivers to extend the period of assessments; (2) petitioner observed both procedural and substantive due process in issuing the assessments; (3) the assessments are valid and lawful; and, (4) the assessments have factual and legal bases.

In the trial that ensued, respondent presented the following witnesses: (1) Atty. Martin Antonio A. Lacdao (**Atty. Lacdao**), respondent's former Corporate Secretary (but currently the Assistant Vice-President for business development at First Filipino Holdings Corporation); and, (2) Elmer T. Cortes, Jr. (**Cortes**), respondent's former Tax Consultant. Respondent waived the presentation of the court-commissioned Independent Certified Public Accountant (ICPA) for failure to submit the ICPA report, the judicial affidavit, and the ICPA's accreditation with the Board of Accountancy.³⁰

In his Judicial Affidavit³¹, Atty. Lacdao testified that: (1) the board of directors (**BOD**) did not issue a resolution authorizing Marquez and Ong to sign the subject waivers on respondent's behalf; (2) Marquez and Ong did not also have any implied authority to sign the subject waivers; (3) there was no BOD resolution that ratified the acts of Marquez and Ong; and, (4) he issued a Negative Certification³² stating that respondent did not issue the above-mentioned BOD resolutions.

In his cross-examination³³, Atty. Lacdao reiterated that there was no BOD resolution authorizing Marquez and Ong to represent the company during the assessment process. Neither was there a BOD resolution authorizing any officer of the company to represent it.

In his re-direct examination³⁴, Atty. Lacdao explained that there were instances in the past where BOD resolutions were not issued with respect to how a transaction and/or case was processed and/or prosecuted. Upon the Court's inquiry³⁵, Atty. Lacdao confirmed that Marquez and Ong held high positions in the company, and respondent

³⁰ See Resolution dated 24 January 2017, *id.*, Volume II, p. 820.

³¹ Exhibit "P-39", *id.*, pp. 290-296.

³² See Exhibit "P-20", *id.*, pp. 961-962.

³³ TSN dated 08 December 2016, pp. 9-15.

³⁴ *Id.*, pp. 15-16.

³⁵ *Id.*, pp. 16-19.

did not take any administrative actions against them. No re-cross examination was conducted.

Cortes assumed the witness stand next. In his Judicial Affidavit³⁶, he testified that: (1) he was involved in the handling of the tax assessment and was consulted in the drafting of respondent’s prior Petition for Review; (2) the assessment against petitioner is patently void because it was done beyond the prescribed period to assess; (3) the subject waivers are fatally defective because the signatories thereof were not authorized to execute them; and, (4) the manual LOA was not replaced by an electronic LOA (eLA) as mandated by Revenue Memorandum Order (RMO) No. 69-10.³⁷

In his cross-examination³⁸, Cortes clarified that at the time the subject waivers were signed, he was no longer employed with respondent. He also stated that in the Reply to the PAN and in the Protest to the FLD-FAN, respondent did not raise any issue on the invalidity of the subject waivers. No re-direct and re-cross examinations were conducted.

On 05 February 2018, respondent filed its Formal Offer of Evidence³⁹ (FOE). Without any objection to the FOE⁴⁰, the Court admitted respondent’s exhibits except “P-9”, “P-9-A”, “P-10”, “P-10-A”, “P-11”, “P-11-A”, “P-16” and “P-16-A”⁴¹ for failure of respondent’s witnesses to identify and authenticate them.⁴²

³⁶ Exhibit “P-40”, Division Docket, Volume II, pp. 627-651.
³⁷ Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices and Memoranda of Assignment.
³⁸ TSN dated 11 July 2017, pp. 9-14.
³⁹ Division Docket, Volume II, pp. 876-884.
⁴⁰ See Petitioner’s Comment filed on 19 February 2018, id., pp. 1020-1021.
⁴¹

Exhibit	Description
“P-9”	Notice of Informal Conference dated December 06, 2012.
“P-9-A”	Date of Issuance.
“P-10”	Response to the Notice of Informal Conference.
“P-10-A”	Date of Receipt by the BIR.
“P-11”	Transmittal letter dated March 14, 2014.
“P-11-A”	Date of Receipt by the BIR.
“P-16”	Submission of Documents dated September 12, 2014.
“P-16-A”	Date of Receipt by the BIR.

⁴² See Resolution dated 05 April 2018, id., pp. 1027-1028.

On the other hand, petitioner presented its lone witness, RO Guimbao, who testified through her Judicial Affidavit.⁴³ She stated that: (1) she continued the audit of respondent's books of account after giving the Notice of Continuation of Audit dated 28 February 2013⁴⁴ and MOA to the latter; (2) respondent executed three (3) waivers and the same were accepted by OIC-ACIR Misajon; and, (3) after the audit and/or investigation, she recommended the issuance of the PAN, FLD-FAN and FDDA.

On cross-examination, RO Guimbao confirmed that the BIR did not issue a new LOA after the MOA's issuance.⁴⁵ On re-direct examination, she declared that Marquez (who signed two [2] waivers) was then respondent's comptroller.⁴⁶ On re-cross examination, RO Guimbao reiterated that Marquez was an authorized officer of the company.⁴⁷ Upon the Court's inquiry, RO Guimbao also stated that the LOA had no stamp of revalidation since the previous practice of BIR was only to issue an MOA. In addition, RO Guimbao pointed out that it was the Chief of the Regular LT Division 1 who signed the MOA.⁴⁸

Still later, petitioner filed its FOE on 04 June 2018.⁴⁹ After respondent's Comment and/or Opposition⁵⁰, the Court admitted petitioner's exhibits except "R-14"⁵¹ for failure of the description to correspond with the document marked.⁵² The Court subsequently admitted exhibit "R-15"⁵³ after petitioner filed an amended FOE.⁵⁴

Petitioner filed its Memorandum 08 January 2019⁵⁵ while respondent filed its Memorandum on 26 February 2019, through registered mail.⁵⁶

⁴³ Exhibit "R-14", id., Volume I, pp. 279-284.

⁴⁴ Exhibit "R-1", BIR Records, p. 460.

⁴⁵ TSN dated 22 May 2018, pp. 8-12.

⁴⁶ Id., p. 13.

⁴⁷ Id., p. 14.

⁴⁸ Id., pp. 14-16.

⁴⁹ Division Docket, Volume II, pp. 1033-1040.

⁵⁰ Filed on 20 June 2018, id., pp. 1043-1046.

⁵¹ Previously offered as "Entire BIR Records of CTA Case No. 9064".

⁵² See Resolution dated 09 August 2018, Division Docket, Volume II, pp. 1051-1052.

⁵³ Subsequently offered as "Entire BIR Records of CTA Case No. 9064".

⁵⁴ See Amended Formal Offer of Evidence, Division Docket, Volume II, pp. 1057-1064; and Resolution dated 04 December 2018, id., Volume III, pp. 1078-1079.

⁵⁵ Id., pp. 1080-1090.

⁵⁶ Received by the Court on 04 March 2019, id., pp. 1105-1158.

After the trial, the case was transferred to the Third Division⁵⁷ which promulgated the assailed Decision.⁵⁸ The dispositive portion thereof reads:

...

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the FDDA dated May 7, 2015 demanding that Petitioner pay the assessed deficiency income tax, VAT, WTC, EWT, and DST in the aggregate amount of ₱128,181,133.03, covering taxable year 2009, is **WITHDRAWN** and **SET ASIDE**.

SO ORDERED.

...

In the assailed Decision, the Third Division found that the subject waivers are invalid because they failed to indicate the nature and the amount of the tax due as pronounced in the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc. (La Flor)*⁵⁹ that cited the cases of *Commissioner of Internal Revenue v. Systems Technology Institute, Inc. (Systems Technology)*⁶⁰ and *Commissioner of Internal Revenue v. Standard Chartered Bank (Standard Chartered Bank)*.⁶¹ As a result, the subject waivers did not extend the assessment period.

In addition, the Third Division found that only an MOA directed RO Guimbao to continue the audit and/or investigation of respondent's books of account. The said MOA was signed by Cesar D. Escalada - Chief of the Regular LT Audit Division 1. *Sans* the signature of the CIR or the Revenue Regional Director (who has the power to authorize examination of taxpayer and issue assessments), the MOA is thus invalid. Considering that the assessments resulted from an unauthorized examination of a reassigned RO, the assessments were then void.



⁵⁷ Reorganized pursuant to Administrative Circular No. 02-2018 dated 18 September 2018.
⁵⁸ *Supra* at note 1.
⁵⁹ G.R. No. 211289, 14 January 2019.
⁶⁰ G.R. No. 220835, 26 July 2017.
⁶¹ G.R. No. 192173, 29 July 2015.

Aggrieved, on 15 June 2020, petitioner filed a Motion for Reconsideration⁶² (MR), to which respondent filed its Comment⁶³ thereto on 06 October 2020.

Subsequently, the Third Division promulgated the assailed Resolution⁶⁴ denying respondent's MR. The dispositive portion of which reads:

...

WHEREFORE, premises considered, Respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

...

Unsatisfied, petitioner filed with the Court *En Banc* the instant Petition for Review⁶⁵ on 10 February 2021. Respondent filed its Comment (Re: Commissioner of Internal Revenue's Petition for Review dated February 10, 2021)⁶⁶ on 22 July 2021.

On 03 November 2021, the Court *En Banc* directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for conciliation proceedings.⁶⁷ Unfortunately, respondent refused to mediate⁶⁸, hence the case was submitted for decision on 16 February 2022.⁶⁹

ISSUES

Before Us, petitioner raises the following grounds in support of the instant petition: 

⁶² Division Docket, Volume III, pp. 1187-1204.

⁶³ Received by the Court on 20 October 2020, id., pp. 1208-1216.

⁶⁴ Supra at note 2.

⁶⁵ Supra at note 3.

⁶⁶ See Motion for Leave to File and to Admit attached Comment on Petition for Review, *Rollo*, pp. 67-80. See par. 2, *En Banc* Resolution No. 4-2021 (Pleadings, motion, and other submissions filed by email after 4:30 p.m. cut-off time shall be considered as filed on the next working day).

⁶⁷ See Resolution dated 03 November 2021, id., pp. 83-84.

⁶⁸ See Manifestation filed on 06 December 2021, id., pp. 100-101; and PMC-CTA Back to Court, id., p. 103.

⁶⁹ See Resolution dated 16 February 2022, id., pp. 107-108.

I.

WHETHER THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE SUBJECT WAIVERS ARE INVALID AND DID NOT EXTEND THE PERIOD TO ASSESS RESPONDENT FIRST PHILEC, INC. (FORMERLY FIRST ELECTRO DYNAMICS, CORP.); AND,

II.

WHETHER THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE SUBJECT TAX ASSESSMENTS ARE VOID FOR WANT OF VALID AUTHORITY ON THE PART OF THE REVENUE OFFICER WHO CONTINUED THE AUDIT AND/OR INVESTIGATION OF PETITIONER COMMISSIONER OF INTERNAL REVENUE.

ARGUMENTS AND DISCUSSIONS

Petitioner contends that the subject waivers are valid. The specific tax involved and the amount thereof are to be indicated in the waiver *only when the period to collect is being waived*. Compared to the assessment stage wherein the tax liability is still being determined, the amount is already ascertained once the collection thereof is pursued. It is at such instance that petitioner should already state in the waiver the exact amount of the tax and what kind of tax is involved.

Petitioner also argues that respondent is estopped from raising the defense of prescription because through its repeated requests and positive acts, it prompted petitioner to delay the collection of the assessed tax. Citing the Presiding Justice Roman G. Del Rosario's Dissenting Opinion in the case of *Commissioner of Internal Revenue v. Lepanto Consolidated Mining Company*⁷⁰, petitioner avers that estoppel applies against a taxpayer who did not raise at the earliest opportunity the invalidity of the subject waivers and thus, cannot impugn their validity after benefiting from the effects thereof.

Petitioner pleads for the application of the equitable principles or doctrines of *in pari delicto*, estoppel, and unclean hands as the Supreme Court has espoused consistently in the cases of *Asian Transmission Corporation v. Commissioner of Internal Revenue*⁷¹ (**Asian Transmission**) and *Commissioner of Internal Revenue v. Next Mobile*,

⁷⁰ CTA EB No. 1962, 30 June 2020.

⁷¹ G.R. No. 230861, 19 September 2018.

*Inc. (Formerly Nextel Communications Phils., Inc.)*⁷² (**Next Mobile**). With these doctrines being applicable to its case, petitioner insists that this Court should deem the subject waivers valid.

Further, petitioner asserts that RO Guimbao was duly authorized to continue the audit and/or investigation of respondent's tax liabilities for TY 2009 because the MOA was allegedly issued pursuant to a valid LOA.

Petitioner alleges that based on RMO No. 8-2006⁷³, the continuation of the audit is permitted and no new LOA for the reassigned RO is required. According to petitioner, the aforesaid RMO states that "[i]n case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS". As the same was duly observed in the instant case, the assessments made by RO Guimbao were therefore valid.

Petitioner also avers that it is not a statutory requirement to indicate the names of the ROs in the LOA as it is just an internal procedure which has been incorporated in the form used. Petitioner thus submits that the law merely requires that the examination of the RO be done "pursuant to" an LOA but it is not necessary to specifically identify the RO in the LOA itself.

Petitioner likewise points out that RMO No. 43-90⁷⁴ is not an implementing rule of any statute. According to it, it is error for this Court to assume that the same is the implementing rule for Section 13⁷⁵ of the NIRC of 1997, as amended, because RMO No. 43-90 was promulgated on 20 September 1990 or seven (7) years prior to the enactment of the NIRC of 1997, as amended. Neither can it be said that

⁷² G.R. No. 212825, 07 December 2015.

⁷³ Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

⁷⁴ Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

⁷⁵ **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.

RMO No. 43-90 is the implementing rule of the equivalent provision in the NIRC of 1977, as amended, as the LOA was not yet in the statute books back then.

Petitioner adds that, prior to the enactment of the NIRC of 1997, as amended, an LOA was merely an administrative tool to manage or monitor audit activities under an audit program. As such, petitioner submits that RMO No. 43-90 was overtaken by the NIRC of 1997, as amended, and its applicability has now become suspect. Moreover, RMO No. 43-90 is a mere a statement of policies and carries no penal provisions or punitive clauses.

Petitioner also faults the Third Division in applying the rulings laid down in the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*⁷⁶ (**Medicard**). According to it, the factual backgrounds of *Medicard* and instant case are entirely contrasting.

On the other hand, respondent counters that the waivers of the defense of prescription must be in compliance with RMO No. 20-90⁷⁷ and Revenue Delegation Authority Order (RDAO) No. 05-01.⁷⁸ Pursuant to these administrative orders, the nature and amount of tax must be indicated as likewise enunciated in the *La Flor* case. Without compliance with the said requirements, the subject waivers are to be deemed invalid or void.

Respondent likewise contends that the tax assessments against it are void as the RO who conducted the audit and/or investigation was not one of the authorized officers named under the original LOA. Respondent maintains that a valid LOA is not a mere technical requirement but part of a substantial due process and must not be denied to any taxpayer. Citing Section 13 of the NIRC of 1997, as amended, respondent insists that the RO who conducts the examination of taxpayers must be authorized by a validly issued LOA. 

⁷⁶ G.R. No. 222743, 05 April 2017.

⁷⁷ Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

⁷⁸ Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription under the Statute of Limitations.

To bolster its contention, respondent cites the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*⁷⁹ where the Supreme Court reiterated the need for a valid authority in favor of an RO before he or she can proceed with the assessment. Respondent claims that neither an MOA nor a referral memorandum can validly grant the authority or the power to conduct a tax examination to newly assigned ROs.

Lastly, respondent clarifies that the *Medicard* case highlighted the importance of an LOA whenever petitioner conducts examination of a taxpayer's books. Summarizing the foregoing principles, respondent claims that the Third Division did not err in declaring petitioner's assessments as void due to the absence of a newly issued LOA for RO Guimbao.

RULING OF THE COURT EN BANC

Except on the matter of the subject waivers being invalid and that the assessments of respondent have prescribed, the Court *En Banc* fully agrees with the Third Division's declarations and actions in this case.

THE SUBJECT WAIVERS WERE VALID
AND COMPLIANT WITH THE
NECESSARY REQUIREMENTS.

In the assailed Decision, the Third Division ruled that the waivers must faithfully comply with the provisions of RMO No. 20-90 and RDAO No. 05-01 in order to be valid and binding.

The relevant portion of RMO No. 20-90 reads:

...

... This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:



⁷⁹ G.R. No. 178697, 17 November 2010.

DECISION

Page 14 of 33

X-----X

1. **The waiver must be in the form identified hereof.** This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after _____ 19 ____" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
2. **The waiver shall be signed by the taxpayer himself or his duly authorized representative.** In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, **the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver.** The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

...

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**⁸⁰

...

Corollarily, RDAO No. 05-01 states:

...

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

- A. For National Office cases
Designated Revenue Official



- 1. Assistant Commissioner (ACIR), — For tax fraud and policy, Enforcement Service cases
- 2. **ACIR, Large Taxpayers Service** — For large taxpayers cases other than those cases falling under Subsection B hereof
- ...

The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The "WAIVER" should not be accepted by the concerned BIR office and official unless duly notarized.⁸¹

...

Based on the foregoing issuances, the requirements for the proper execution of a valid waiver are as follows:

- 1. The waiver must be in the proper form prescribed by RMO No. 20-90 (Annex "A" of RDAO No. 05-01⁸²). The phrase "but

⁸¹ Emphasis supplied.
⁸² WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE

I, _____ of _____ request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its _____ tax liabilities for the year _____. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than _____.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code.

The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue.

Executed this _____ day of _____ in _____ Philippines. 

not after _____ 19 __", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

- 2. The waiver must be signed by the taxpayer himself or herself, or his or her duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
- 3. The waiver should be duly notarized.
- 4. The CIR, or his or her duly authorized revenue official must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The BIR's date of such acceptance should be indicated. However, before signing the waiver, the CIR or the authorized revenue official must make sure that the waiver is in the prescribed form, duly notarized, and

TAXPAYER OR DULY AUTHORIZED SIGNATORY POSITION		ACCEPTED BY: Commissioner of Internal Revenue BY:	
WITNESS		REVENUE OFFICIAL/POSITION	
		OFFICE	DATE

ACKNOWLEDGMENT

Republic of the Philippines) S.S.
_____)

In the City of _____, on this _____ day of _____, personally appeared before me _____, with Community Tax Certificate No. _____ issued at _____ on _____, in his/her capacity as _____ of _____, known to me and to me known to be the same person who executed the foregoing waiver for and in behalf of the said taxpayer, and he/she acknowledged to me that the same is the voluntary act and deed of _____, and that he/she is duly authorized to sign the same.

WITNESS MY HAND AND SEAL at the place and on the date first above written.

Notary Public Until _____
PTR No. _____ Issued at _____ On _____
Doc. No. _____
Page No. _____
Book No. _____
Series No. _____



executed by the taxpayer or his duly authorized representative.

- 5. Both the date of the taxpayer’s execution (of the waiver) and date of the BIR’s acceptance thereof should be before the expiration of the period of prescription or before the lapse of the period agreed upon (in case a subsequent agreement is executed).
- 6. The waiver must be executed in triplicate, the original of which to be attached to the docket of the case; the second copy for the taxpayer; and, the third copy for the Office accepting the waiver. The fact of receipt of the taxpayer’s copy must be indicated in the original copy to show that the said taxpayer was notified of the BIR’s acceptance and the perfection of the agreement.⁸³

In herein case, an examination of the subject waivers reveals that they have duly complied with the said requirements. The table below shows the compliance:

Requirement No. ⁸⁴	First Waiver ⁸⁵	Second Waiver ⁸⁶	Third Waiver ⁸⁷
1	✓	✓	✓
2	✓ Signed by Marquez, respondent’s Comptroller.	✓ Signed by Marquez, respondent’s Comptroller.	✓ Signed by Ong, respondent’s President.
3	✓ Notarized on 03 January 2013.	✓ Notarized on 12 April 2013.	✓ Notarized on 19 September 2013.
4	✓ Signed by OIC-ACIR Misajon.	✓ Signed by OIC-ACIR Misajon.	✓ Signed by OIC-ACIR Misajon.

⁸³ *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue* (G.R. No. 202105, 28 April 2021) citing *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, 814 Phil. 933, 942-943 (2017) citing *Commissioner of Internal Revenue v. The Stanley Works-Sales (Phils.), Inc.*, 749 Phil. 280, 290 (2014), citing *Commissioner of Internal Revenue v. Kudos Metal Corporation*, 634 Phil. 314, 325-326 (2010), further citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, 488 Phil. 218, 228-229 (2004).

⁸⁴ See pp. 15-17.

⁸⁵ Supra at note 12.

⁸⁶ Supra at note 14.

⁸⁷ Supra at note 16.

	Accepted on 04 January 2013.	Accepted on 17 April 2013.	Accepted on 23 September 2013.
5	✓ Executed on 03 January 2013 and accepted on 04 January 2013. The original prescription period was on 15 April 2013 for All Internal Revenue Taxes. ⁸⁸	✓ Executed on 12 April 2013 and accepted on 17 April 2013. The first prescription period was on 30 June 2013.	✓ Executed on 19 September 2013 and accepted on 23 September 2013. The second prescription period was on 31 December 2013.
6	✓ Received by respondent on 08 January 2013. ⁸⁹	✓ Received by respondent on 08 May 2013. ⁹⁰	✓ Received by respondent on 26 September 2013. ⁹¹

Anent the 4th requirement where the authorized revenue official should ensure that the waiver is accomplished and signed by the taxpayer or the authorized representative before he or she affixes a signature, We are of the opinion that petitioner has complied with the same. The signatories to the subject waivers (Marquez and Ong) occupied the positions of Comptroller and President, respectively. Even in the documents filed before petitioner’s office⁹², it was either Marquez or Ong who signed respondent’s documents. Undeniably, both are high-ranking and responsible officers of the latter, thus petitioner could not be faulted for relying on their representations (by reason of their positions).



⁸⁸ For clarification, these are the specific prescription period for each tax types:

Tax Type	Prescription Period
Income Tax	15 April 2013
Fourth quarter of Value Added Tax	25 January 2013
December Expanded Withholding Tax and December Withholding Tax on Compensation	20 January 2013
Documentary Stamp Tax	07 January 2013

⁸⁹ See Exhibit “R-4”, BIR Records, p. 445.
⁹⁰ See Exhibit “R-3”, id., p. 446.
⁹¹ See Exhibit “R-3-1”, id., p. 466.
⁹² See Exhibit “R-5”, Request for Extension of Deadline, filed before the LT Regular Audit Division on 11 February 2013, BIR Records, p. 444; Reply to the Notice of Informal Conference filed before LT Regular Audit Division on 01 March 2013, BIR Records, pp. 495-497; Request for Reinvestigation to the Formal Letter of Demand and Final Assessment Notices filed before the LT Regular Audit Division on 15 July 2014, BIR Records, pp. 1018-1037; Submission of Documents filed before the LT Regular Audit Division on 12 September 2014, BIR Records, pp. 1241-1243.

As to the form of the waiver, the Third Division ruled that the waivers must indicate the nature and the amount of the tax due. As cited in the assailed Decision, the Supreme Court in *La Flor* ruled:

...

In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, the Court had ruled that **waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due**, to wit:

These **requirements are mandatory and must strictly be followed**. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.

...

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

Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:

...

3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific

information in the waiver is necessary for its validity.

In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — **the assessments had prescribed as there was no valid waiver.**⁹³

...

However, a perusal of the requirements laid down in RMO No. 20-90 and RDAO No. 05-01 do not provide that the nature and amount of the tax liabilities must be indicated therein. Even the format prescribed in Annex “A” does not provide for the amount of the tax liabilities. It merely specifies for a description of the tax liability or liabilities involved.

The records of the case bear that the subject waivers specified respondent’s tax liabilities as “**ALL INTERNAL REVENUE TAX LIABILITIES**”.⁹⁴ The said description is similar to what was stated in the original LOA – “to examine your books of accounts and other accounting records for **ALL INTERNAL REVENUE TAXES** for the period”.⁹⁵ Thus, We submit that the subject waivers were duly accomplished.

Moreover, the cited cases of *La Flor, Systems Technology*, and the *Standard Chartered Bank* are not in all fours with the instant case.

⁹³ Supra at note 1; Emphasis and underscoring in the original text.

⁹⁴ In the first waiver, it was indicated **ALL INTERNAL TAX LIABILITES**. However, on the second and third waivers, it was indicated as “**ALL INTERNAL REVENUE TAX LIABILITIES**”. We opined that the word REVENUE was omitted in the first waiver. The apparent intention of the parties was to specify it as “**ALL INTERNAL REVENUE TAX**”.

⁹⁵ Supra at note 9.

First, in *Standard Chartered Bank*⁹⁶, the Supreme Court found the following violations in the executed waivers, viz:

...

... As correctly found by the CTA in Division, and affirmed *in toto* by the CTA *En Banc*, the subject waivers of the Statute of Limitations were in clear violation of RMO No. 20-90:

- 1) This case involves assessment amounting to more than ₱1,000,000.00. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR. A perusal of the First and Second Waivers of the Statute of Limitations shows that they were signed by Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad and Assistant Commissioner-Large Taxpayers Service Edwin R. Abella respectively, and not by the Commissioner of Internal Revenue;
- 2) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad of the First Waiver was not indicated therein;
- 3) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Edwin R. Abella of the Second Waiver was not indicated therein;
- 4) The First and Second Waivers of Statute of Limitations did not specify the kind and amount of the tax due; and
- 5) The tenor of the Waiver of the Statute of Limitations signed by petitioner's authorized representative failed to comply with the prescribed requirements of RMO No. 20-90. The subject waiver speaks of a request for extension of time within which to present additional documents, whereas the waiver provided under RMO No. 20-90 pertains to the approval by the Commissioner of Internal Revenue of the taxpayer's request for re-investigation and/or reconsideration of his/its pending internal revenue case.

...

In stark contrast to the waivers in *Standard Chartered Bank*, the subject waivers in the instant case were compliant: 

1. The subject waivers were duly signed by OIC-ACIR Misajon as the assessments fell under the Large Taxpayer cases;
2. The dates of acceptance were indicated in the subject waivers; and,
3. The subject waivers conformed to the prescribed format, thus the tenor of the waivers requested for the approval of the CIR for additional time in connection with investigation/reinvestigation/re-evaluation of the pending internal revenue case.

Second, in *Systems Technology*⁹⁷, the following defects were discovered, viz:

...

Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:

1. At the time when the first waiver took effect, on June 2, 2006, the period for the CIR to assess STI for deficiency EWT and deficiency VAT for fiscal year ending March 31, 2003, had already prescribed. To recall, the CIR only had until April 17, 2006 (for EWT) and May 25, 2006 (for VAT), to issue the subject assessments.
2. STI's signatory to the three waivers had no notarized written authority from the corporation's board of directors. It bears to emphasize that RDAO No. 05-01 mandates the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same; and in case the authority is delegated by the taxpayer to a representative, as in this case, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The waiver should not be accepted by the concerned BIR office and official unless notarized.
3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the

⁹⁷ Supra at note 60; Citations omitted.

period to assess or collect deficiency taxes on a certain date. Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity.

...

Again, contrary to *Systems Technology*, the subject waivers here were duly executed before the expiration of the period of prescription and before the lapse of the period agreed upon in the previous waivers.

Lastly, in the *La Flor* case, it is noteworthy that the Supreme Court's declaration on the invalidity of the waivers therein appears to be an *obiter dictum* which means "words of a prior opinion entirely unnecessary for the decision of the case".⁹⁸

An examination of *La Flor* reveals that the CIR failed to present the two prior waivers into evidence while only the existence of the last waiver was stipulated by the parties. This fact led the CTA to conclude that the assessments had already prescribed given the lack of the previous waivers. In the CIR's appeal before the Supreme Court, the CIR raised the argument that the previous waivers should have been considered although they failed to submit the same during trial. In denying the CIR's argument, the Supreme Court held that even if the waivers were considered, they would still be invalid as they did not specify the kind and amount of tax due.⁹⁹ Thus, the fact of whether or not the previous waivers were defective in *La Flor* was not essential for the case's disposal as none of these previous waivers were offered or presented into evidence by the CIR¹⁰⁰, and as a rule "evidence not offered is excluded in the determination of the case".¹⁰¹

In contrast with the waivers in *La Flor*, the subject waivers here were identified, marked, and offered into evidence before the Court in Division. Hence, these were duly considered in the determination of their validity. 

⁹⁸ *Sta. Lucia Realty and Development, Inc., et al. v. Leticia Cabrigas, et al.*, G.R. No. 134895, 19 June 2001, Black's Law Dictionary, p. 1222, citing the case of *Noel v. Olds*, 78 U.S. App. D.C. 155.

⁹⁹ See *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, supra at note 59.

¹⁰⁰ Id.

¹⁰¹ *Republic of the Philippines v. Fe Roa Gimenez, et al.*, G.R. No. 174673, 11 January 2016.

With the foregoing, it becomes indisputable that in *La Flor, Systems Technology*, and *Standard Chartered Bank*, the Supreme Court invalidated the waivers therein not solely on the basis of their failure to indicate the nature and the amount of tax due, but more so because of other serious and substantial violations and lapses on the CIR's part.

RESPONDENT IS ESTOPPED FROM
QUESTIONING THE VALIDITY OF THE
WAIVERS.

In addition, the surrounding circumstances reveal that respondent is estopped from assailing the validity of the waivers it executed.

In the *Next Mobile*¹⁰² case, the Supreme Court ruled that impugning the validity of the waiver after benefiting from its effects is an act of bad faith. The pertinent part provides:

... Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.

...

DECISION

Page 25 of 33

X ----- X

In the same case, the Supreme Court ruled that respondent therein was estopped from questioning the validity of waivers when it delivered the waivers to (the) petitioner therein and allowed the latter to rely on them, to wit:

...

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. **Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. ...**

...

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.¹⁰³

...

Relative thereto, in *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*¹⁰⁴, the Supreme Court held that estoppel applies where the taxpayer failed to raise the invalidity of the waivers at the earliest opportunity, viz: 

¹⁰³ Id.; Emphasis supplied and italics in the original text.

¹⁰⁴ G.R. No. 227544, 22 November 2017; Citations omitted, italics and emphasis in the original text and underscoring supplied.

DECISION

Page 26 of 33

X-----X

...

Estoppel similarly applies in this case

Indeed, the Bureau of Internal Revenue was at fault when it accepted respondent's Waivers despite their non[-]compliance with the requirements of RMO No. 20-90 and RDAO No. 05-01.

Nonetheless, respondent's acts also show its implied admission of the validity of the waivers. First, respondent never raised the invalidity of the Waivers at the earliest opportunity, either in its Protest to the PAN, Protest to the FAN, or Supplemental Protest to the FAN. It thereby impliedly recognized these Waivers' validity and its representatives' authority to execute them. Respondent only raised the issue of these Waivers' validity in its Petition for Review filed with the Court of Tax Appeals. In fact, as pointed out by Justice Del Rosario, respondent's Protest to the FAN clearly recognized the validity of the Waivers, when it stated:

This has reference to the Final Assessment Notice ("[F]AN") issued by your office, dated November 28, 2008. The said letter was received by Transitions Optical Philippines[,] Inc. (TOPI) on December 5, 2008, **five days after the waiver we issued which was valid until November 30, 2008 had prescribed.**

...

In the instant case, respondent executed more than one waiver and delivered them to petitioner with the intent to waive the defense of prescription and to buy additional time to submit documents (in connection with the tax assessments). Respondent's own action then led petitioner to rely on the validity of the subject waivers and hence, deferred the collection of the taxes. Likewise, when respondent filed its Reply to the PAN and Protest to the FLD-FAN, it did not also question or attack the subject waivers. Instead, it addressed the issues in the tax assessments. Clearly, respondent benefited from the effects of the subject waivers and impliedly admitted their validity.

For the foregoing reasons, as stated, the Court *En Banc* finds the subject waivers valid. Accordingly, respondent is precluded from questioning the validity thereof for reasons of equity.

DECISION

Page 27 of 33

x-----x

REVENUE OFFICER GUIMBAO WAS NOT DULY AUTHORIZED TO CONTINUE WITH THE AUDIT AND/OR INVESTIGATION OF RESPONDENT'S BOOKS OF ACCOUNT.

In its petition, petitioner argues that: (1) RMO No. 43-90 cannot be used as a basis for requiring the issuance of a new LOA as the same cannot be an implementing rule of a statute that would be enacted 7 years after its issuance; (2) there is no need to specifically indicate the names of the ROs as there is no requirement to that effect; and, (3) issuance of an MOA is sufficient to confer authority upon the substitute ROs.

We do not agree.

The above arguments have already been passed upon and rejected by the Supreme Court in the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*¹⁰⁵, to wit:

...
This case is an occasion for the Court to rule on a disturbing trend of tax audits or investigations conducted by revenue officers who are not specifically named or authorized in the LOA, under the pretext that the original revenue officer authorized to conduct the audit or investigation has been reassigned or transferred to another case or place of assignment, or has retired, resigned or otherwise removed from handling the audit or investigation.

This practice typically occurs as follows: (i) a valid LOA is issued to an authorized revenue officer; (ii) the revenue officer named in the LOA is reassigned or transferred to another office, case or place of assignment, or retires, resigns, 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.

...

DECISION

Page 28 of 33

X ----- X

The Court hereby puts an end to this practice.

...

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. 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.

...

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. 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.

...

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral

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

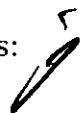
The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who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

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

...

The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the law it supposedly implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.

The petitioner is mistaken. Section 291 of the NIRC states:



SECTION 291. In General. - All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.

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) 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.

...

In summary, We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers 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 representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

...

In this case, RO Guimbao continued the audit and/or investigation of respondent solely by virtue of an MOA and without the required LOA. Furthermore, only the Chief of Regular LT Audit Division I (an official who is not among those authorized to issue LOAs pursuant to existing laws and regulations, particularly Section 13¹⁰⁶ in relation Section 10(c)¹⁰⁷ of the NIRC of 1997, as amended, Item D(4)¹⁰⁸ of RMO No. 43-90¹⁰⁹ and Item II(2)¹¹⁰ of RMO No. 29-2007¹¹¹) signed the MOA.

¹⁰⁶ Supra at note 75.

¹⁰⁷ **Sec. 10. Revenue Regional Director.** - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...
(c) Issue Letters of Authority for the examination of taxpayers within the region[.]

¹⁰⁸ D. Preparation and issuance of L/As.

...
4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

¹⁰⁹ Supra at note 74.

¹¹⁰ II. AUDIT POLICIES AND GUIDELINES.

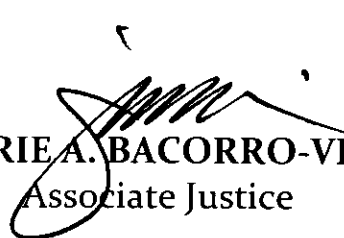
...

With the foregoing, We could thus not agree that the Third Division erred in striking down the assessments against respondent.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 10 February 2021 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 09 March 2020 and Resolution dated 27 January 2021, respectively, of the Third Division in CTA Case No. 9064 entitled *First Philec, Inc. (Formerly: First Electro Dynamics Corporation) v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes assessed against respondent First Philec, Inc. (Formerly First Electro Dynamics Corp.) as provided in the Final Decision on Disputed Assessment dated 07 May 2015 in the total amounts of ₱128,181,133.03, representing deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax and documentary stamp tax, inclusive of increments, for taxable year 2009.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

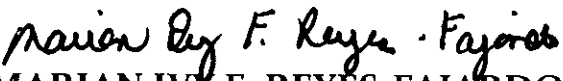
2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/ Head Revenue Executive Assistants.
111 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.


ERLINDA P. UY
Associate Justice

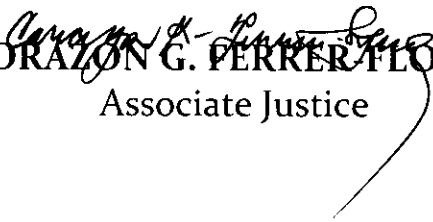

MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER FLORES
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.


ROMAN G. DEL ROSARIO
Presiding Justice