

En Banc

Petitioner,

CUI-DAVID, JJ.

-versus-

Respondent.

Promulgated:

JUL 12 2022

X

⁴ Court of Tax Appeals- First Division.

The Parties

Petitioner is the duly appointed CIR, vested with authority to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the provisions of the National Internal Revenue Code of 1997 (“Tax Code”), as amended.⁵

Respondent Omya Chemical Merchants, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal place of business at the 17/F, BDO Plaza, 8737 Paseo de Roxas, Makati City.⁶

The Facts

The antecedent facts as found by the Court in Division and as culled from the records of the case follow:

On 20 February 2012, petitioner (then respondent) issued a Letter of Authority (LOA) No. LOA-050-2012-00000036 [SN: eLA201000078095], dated 16 February 2012, authorizing Revenue Officer Ricaredo Balderas (“RO Balderas”) and Group Supervisor Rebecca Bailon (“GS Bailon”) of BIR Revenue District Office (“RDO”) No. 50 to examine the books of accounts and other accounting records of respondent (then petitioner) for all internal revenue taxes for the period 1 January 2010 to 31 December 2010.⁷ The said LOA was signed by Regional Director Nestor S. Valeroso.⁸

On 30 August 2012, respondent received a Notice of Informal Conference, dated 23 August 2012, from BIR RDO No. 50, stating that based on the revised report of RO Balderas under GS Bailon, respondent is liable for deficiency taxes in the aggregate amount of ₱10,097,397.26.⁹ Respondent was requested to attend an informal conference within fifteen (15) days from receipt of said notice.¹⁰

On 9 July 2014, respondent received a copy of petitioner’s Preliminary Assessment Notice (“PAN”), dated 8 July 2014, with attached Details of Discrepancies. According to the PAN, respondent was liable for deficiency taxes for calendar year (“CY”) 2010 in the total amount of ₱5,089,874.82.¹¹

⁵ Decision, dated 14 October 2019, Division Records Vol. 6.

⁶ Joint Stipulation of Facts and Issues (“JSFI”) as approved and adopted in the Pre-Trial Order, dated 2 October 2015, Division Records Vol. 4, pp. 1512-1524.

⁷ *Ibid*; Exhibit “R-1”, BIR Records Folder 1, p. 37.

⁸ Exhibit “R-1”, *id.*, p. 37.

⁹ JSFI as approved and adopted in the Pre-Trial Order, dated 2 October 2015, Division Records Vol. 4, pp. 1512-1524.

¹⁰ *Ibid*.

¹¹ *Ibid*; Exhibit “P-20”, *id.*, pp. 1719-1729.

On 23 July 2014 respondent filed its reply to the PAN, requesting for a reinvestigation of the alleged deficiency Income Tax, Value-Added Tax ("VAT"), Expanded Withholding Tax ("EWT"), Final Withholding Tax ("FWT"), Documentary Stamp Tax ("DST"), Final VAT Withholding ("FWVAT"), and compromise penalty for CY 2010.¹²

On 28 July 2014, respondent received a copy of petitioner's Formal Assessment Notice, with attached Details of Discrepancies. In the said Formal Assessment Notice, petitioner ordered respondent to pay its alleged deficiency taxes for CY 2010 in the aggregate amount of ₱5,132,892.82.¹³

On 27 August 2014, respondent filed a Request for Reinvestigation against the Formal Assessment Notice seeking the cancellation and withdrawal of the assessments for deficiency income tax, VAT, EWT, FWT, DST, FWVAT, and compromise penalty for CY 2010.¹⁴

On 20 October 2014, respondent submitted to petitioner additional documents in support of its Request for Reinvestigation.¹⁵ Pursuant to **Section 228 of the Tax Code, as amended**, and **Section 3.1.4 of Revenue Regulations ("RR") No. 12-99**, petitioner had one hundred eighty (180) days from submission of the documents or until 18 April 2015, to act on such request for reinvestigation.¹⁶ The period, however, lapsed without any Decision from petitioner.¹⁷

Respondent then had thirty (30) days from 18 April 2015, or until 18 May 2015, within which to file its Petition for Review before this Court. It timely filed its Petition for Review on 15 May 2015.¹⁸

After service of summons,¹⁹ petitioner filed his Answer,²⁰ praying for the dismissal of the Petition for Review for lack of merit and claiming, among others, that: (1) respondent validly executed a waiver dated 26 September 2016 through its Treasurer; (2) assuming the waiver is invalid, the ten (10) year prescriptive period pursuant to **Section 222(A) of the Tax Code, as amended**, applies; (3) assessments are *prima facie* presumed correct, made in good faith, and the taxpayer has the duty of proving otherwise; and (4) taxes are the lifeblood of the government and should be collected without unnecessary hindrance. ✓

¹² JSFI as approved and adopted in the Pre-Trial Order dated 2 October 2015, *id.*, pp. 1512-1524.

¹³ *Ibid*; Exhibit "P-20", *id.*, pp. 1719-1729.

¹⁴ JSFI as approved and adopted in the Pre-Trial Order dated 2 October 2015, *id.*, pp. 1512-1524.

¹⁵ Decision dated 14 October 2019.

¹⁶ *Ibid*.

¹⁷ *Ibid*.

¹⁸ *Ibid*.

¹⁹ Division Records Vol. 1, pp. 158-159.

²⁰ *Id.*, pp. 164-166.

On 27 August 2015, respondent filed a Motion for Preliminary Hearing on the Issue of Prescription,²¹ which hearing was granted during the Pre-Trial Conference.²²

After the Pre-Trial Conference,²³ the parties filed their Joint Stipulation of Facts and Issues ("JSFI")²⁴ on 23 September 2015, which was approved and adopted in the Pre-Trial Order issued on 2 October 2015.²⁵

During the hearing on the issue on prescription, respondent presented two (2) witnesses, namely: (1) Ms. Crystal Mae C. Lapitan,²⁶ its Accountant; and (2) Ms. Purificacion S. Samson,²⁷ its Head of Finance and Controlling. Thereafter, respondent proceeded to file its Formal Offer of Evidence (Re: Preliminary Hearing to Resolve Issue on Prescription).²⁸ The Court admitted all of respondent's exhibits in a Resolution,²⁹ dated 25 November 2016.

On the other hand, petitioner presented: (1) Revenue Officer Ricaredo O. Balderas;³⁰ and (2) Assistant Revenue District Officer Rhodora Icaranom.³¹ After the presentation of witnesses, petitioner filed its Formal Offer of Evidence.³² Thereafter, the Court in Division admitted all of petitioner's formally offered exhibits, except for Exhibit "R-7", through a Resolution,³³ dated 18 May 2016.

In a Resolution,³⁴ dated 30 August 2016, the Court in Division granted respondent's Motion for Preliminary Hearing on the Issue of Prescription. The dispositive portion of the Resolution reads:

"WHEREFORE, petitioner's motion praying that the assessment for deficiency income tax, VAT, and EWT for calendar year 2010 be declared void is GRANTED. Accordingly, the Formal Assessment Notice for calendar year 2010 against petitioner is declared void but only as to the alleged deficiency income tax, VAT and EWT.

Let this case be set for trial on the remaining deficiency tax assessments for calendar year 2010.

SO ORDERED. 

²¹ Division Records Vol. 1, pp. 174-182.

²² Division Records Vol. 4, p. 1505.

²³ *Id.*, p. 1505.

²⁴ *Id.*, pp. 1512-1524.

²⁵ *Id.*, pp. 1525-1530.

²⁶ Exhibits "P-71" and "P-71-A", Division Records Vol. 2, pp. 295-321.

²⁷ Exhibits "P-70" and "P-70-A", Division Records Vol. 4, pp. 1534-1539.

²⁸ *Id.*, pp. 1641-1647.

²⁹ *Id.*, pp. 1769-1770.

³⁰ Exhibits "R-9" and "R-9-A", *id.*, pp. 1735-1739.

³¹ Exhibits "R-14" and "R-14-A", *id.*, pp. 1779-1783.

³² *Id.*, pp. 1811-1814.

³³ *Id.*, pp. 1769-1770.

³⁴ *Id.*, pp. 1913-1920.

Petitioner's Motion for Reconsideration of the above Resolution was denied in a Resolution,³⁵ dated 12 January 2017. Petitioner then filed a Petition for Review with the Court *En Banc*, docketed as CTA EB No. 1593, but the same was likewise denied by the Court *En Banc* in a Resolution,³⁶ dated 7 June 2017. Respondent's Motion for Reconsideration filed with the Court *En Banc* was also denied in a Resolution,³⁷ dated 11 January 2018. Petitioner then filed a Petition for Review with the Supreme Court, docketed as G.R. No. 237079, assailing the 7 June 2017 and 11 January 2018 Resolutions of the Court *En Banc*. The Supreme Court denied the petition in a Resolution, dated 7 November 2018.

In the meantime, trial on the remaining issues proceeded. Respondent again presented its Accountant, Ms. Crystal Mae C. Lapitan.³⁸ Respondent also filed its Formal Offer of Evidence. The Court admitted all of petitioner's exhibits except for Exhibit "P-66" and Exhibits "P-38-1", "P-38-2", "P-38-3", "P-39", "P-40", "P-41", "P-42", "P-43", "P-43-2", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-50-2", "P-51", "P-51-1", "P-52", "P-52-1", "P-53", and "P-53-1", which were tendered as excluded evidence.³⁹

Petitioner manifested that he would no longer present additional witnesses and documentary evidence and would just adopt the evidence proffered for the issue on prescription. Accordingly, the Court ordered the parties to file their respective memoranda.⁴⁰

With the filing of respondent's Memorandum⁴¹ on 12 September 2018 and petitioner's failure to file his Memorandum within the time provided, per Records Verification,⁴² dated 18 September 2018, the Court submitted the case for decision.

On 14 October 2019, the Court in Division rendered the Decision holding petitioner partially liable for the amount of ₱3,606,555.02. The dispositive part of the Decision reads:

"WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for CY 2010 covering deficiency IT, VAT, EWT and compromise penalties are **CANCELLED** and **WITHDRAWN**. However, the assessments covering deficiency DST, FWT and FWVAT are **AFFIRMED** with **MODIFICATIONS**. Accordingly, petitioner ✓

³⁵ *Id.*, pp. 1954-1960.

³⁶ Division Records Vol. 5, pp. 2510-2518.

³⁷ Division Records Vol. 6, pp. 2577-2581.

³⁸ Exhibits "P-72" and "P-72-A", Supplemental Judicial Affidavit, Division Records Vol 5, pp. 2001-2007.

³⁹ Division Records Vol. 6, pp. 2493-2495 and 2525-2529.

⁴⁰ *Id.*, pp. 2587-2591.

⁴¹ *Id.*, pp. 2695-2718.

⁴² *Id.*, p. 2720.

is **ORDERED TO PAY** respondent the aggregate amount of **THREE MILLION SIX HUNDRED SIX THOUSAND FIVE HUNDRED FIFTY-FIVE PESOS AND TWO CENTAVOS (P3,606,555.02)**, broken down below, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248 (A) (3), 249 (B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017:

20% Delinquency Interest Still Due on the Deficiency DST Assessment Paid on October 15, 2014	P5,598.67
Increments for belated filing of BIR Form No. 1601F and payment of FWT on interest on foreign currency loan	56,877.52
Deficiency FWT	P3,544,078.83
Total	P3,606,555.02

The above amounts are computed as follows:

20% Delinquency Interest Still Due on the Deficiency DST Assessment Paid on October 15, 2014		
Basic Deficiency DST		P179,693.00
25% Surcharge		44,923.25
20% Deficiency Interest from January 6, 2011 to August 25, 2014 ($P179,693.00 \times 20\% \times 1328/365 \text{ days}$)		130,757.43
Total Amount Due as of August 25, 2014		P355,373.68
20% Deficiency Interest from August 26, 2014 to October 15, 2014 ($P179,693.00 \times 20\% \times 51/365 \text{ days}$)		1,476.93
20% Delinquency Interest from August 26, 2014 to October 15, 2014 ($P355,373.68 \times 20\% \times 51/365 \text{ days}$)		9,930.99
Total Amount Due as of October 15, 2014		P366,781.60
Less: Payment made on October 15, 2014		
Basic Tax	P179,693.00	
Surcharge	44,923.25	
Interest	136,566.68	361,182.93
20% Delinquency Interest Still Due as of October 15, 2014		P5,598.67

Increments for belated filing of BIR Form No. 1601F and payment of FWT on interest on foreign currency loan	
25% Surcharge	P9,457.40
Total Deficiency Interest as of December 9, 2013	24,587.03
Total Amount Due as of December 9, 2013	P34,044.43
Add: 20% Delinquency Interest from August 26, 2014 to December 31, 2017 ($P34,044.43 \times 20\% \times 1,224/365 \text{ days}$)	22,833.09
Total Amount Due as of December 31, 2017	P56,877.52

Deficiency FWT	
Basic Tax	P894,119.28
25% Surcharge	223,529.82

20% Deficiency Interest from January 17, 2011 to August 25, 2014 ($P894,119.28 \times 20\% \times 1,316/365 \text{ days}$)	644,745.74
Total Amount Due as of August 25, 2014	P1,762,394.84
Add: 20% Deficiency Interest from August 26, 2014 to December 31, 2017 ($P894,119.28 \times 20\% \times 1,224/365 \text{ days}$)	599,672.33
20% Delinquency Interest from August 26, 2014 to December 31, 2017 ($P1,762,394.84 \times 20\% \times 1,224/365 \text{ days}$)	1,182,011.66
Total Amount Due as of December 31, 2017	P3,544,078.83

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the **aggregate amounts due of P34,044.43, and P1,762,394.84** as of 09 December 2013 and 25 August 2014, respectively, **or in the total amount of P1,796,439.27**, as determined above, computed from 01 January 2018 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.”

On 4 November 2019, respondent filed a Motion for Partial Reconsideration (Re: Decision dated 14 October 2019),⁴³ assailing the Decision, dated 14 October 2019. Petitioner likewise filed a Motion for Reconsideration (of the Decision dated October 14, 2019) on 31 October 2019.⁴⁴

On 29 June 2020, the Court in Division rendered the assailed Amended Decision, modifying the Decision, dated 14 October 2019, and cancelling the Formal Assessment Notice, dated 25 July 2014, with attached Details of Discrepancies. The dispositive portion of the assailed Amended Decision reads:

“**WHEREFORE**, premises considered, respondent’s *Motion for Reconsideration (of the Decision dated October 14, 2019)* is hereby **DENIED** for lack of merit. On the other hand, petitioner’s *Motion for Partial Reconsideration (Re: Decision dated October 14, 2019)* is **GRANTED** and the assailed Decision dated October 14, 2019 is **MODIFIED**. Accordingly, the Formal Assessment Notice dated July 25, 2014, with attached Details of Discrepancies, is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.” ✓

⁴³ *Id.*
⁴⁴ *Ibid.*

On 20 July 2020, petitioner filed a Motion for Reconsideration (of the Amended Decision dated June 29, 2020),⁴⁵ which the Court in Division denied for lack of merit in the assailed Resolution,⁴⁶ dated 21 October 2020. Petitioner received the assailed Resolution on 9 November 2020.

On 9 December 2020, petitioner filed the instant Petition for Review,⁴⁷ assailing the Amended Decision, dated 29 June 2020, and Resolution, dated 21 October 2020. Following the Court *En Banc*'s Resolution,⁴⁸ dated 26 January 2021, respondent filed its Comment/ Opposition (Re: Petition for Review dated 09 December 2020).⁴⁹

On 8 June 2021, the Court *En Banc* received PMC-CTA Form 6, dated 4 June 2021,⁵⁰ stating that the parties decided not to have their case mediated by the Philippine Mediation Center Unit- CTA.

On 23 June 2021, the Court *En Banc* issued a Resolution⁵¹ submitting the instant case for decision.

Issue⁵²

The sole issue submitted for the Court's resolution is:

Whether there is a valid authority to conduct the audit of respondent for its 2010 taxes.

Arguments of the Parties

Petitioner's Arguments⁵³

Petitioner argues that the Regional Director, as the CIR's authorized representative, is authorized under *Section 6(A) of the Tax Code* to conduct the examination of a taxpayer. Pursuant to this, it is the Regional Director who signed the LOA authorizing the audit of the taxpayer. The Regional Director also exercised his delegated power when he signed the assessment notices pursuant to *Section 6(A) of the Tax Code* and not under *Section 13* where revenue officers may be assigned to perform assessment functions. ✓

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *EB Records*, pp. 8- 76, with annexes.

⁴⁸ *Id.*, pp. 77-79.

⁴⁹ *Id.*, pp. 80-91

⁵⁰ *Id.*, p. 95.

⁵¹ *Id.*, pp. 95-97.

⁵² *See Statement of Issue, Petition for Review, id.*, p. 13.

⁵³ *See Grounds for the Petition, Petition for Review, id.*, pp. 13-23.

According to petitioner, these two functions under *Section 6(A) and Section 13 of the Tax Code* must be differentiated. There is no legal basis to cancel the subject assessments as the lack of authority pursuant to *Section 13 of the Tax Code* refers to the authority of Revenue Officers and not the authority of the Regional Director to conduct audit under *Section 6(A) of the Tax Code*. Petitioner adds that the misapplication of *Revenue Memorandum Order (“RMO”) No. 43-90* cannot operate to cancel a validly issued assessment.

Petitioner further contends that the alleged lack of authority of the Revenue Officers who conducted the audit should have been raised during the administrative protest and not on appeal. He submits that respondent is estopped from questioning the authority of the revenue officers at the judicial level for the first time on appeal. He cites *Section 3.1.4 of RR No. 18-13*, which purportedly requires the taxpayer to state the facts, applicable law, rules and regulations, or jurisprudence in support of its protest, with the failure to do so causing these to be considered undisputed issues.

Finally, petitioner argues that the *Medicard Case* finds no application in this case as the assessment in the said case involves a mere Letter Notice in the absence of an LOA. He reiterates that there is a valid LOA issued by the Regional Director warranting the audit of taxpayer’s 2010 tax liabilities in the present case.

Respondent’s Arguments⁵⁴

Meanwhile, respondent avers that the Petition for Review should be denied outright for being a mere rehash of petitioner’s previous arguments that have been considered and passed upon by the Court. It further claims that these arguments lack merit for the following reasons:

First, respondent contends that the Court in Division correctly ruled that the reassignment of the audit through a mere Memorandum of Assignment (“MOA”) is not equivalent to a LOA and any assessment arising thereto is void.

Respondent faults petitioner’s argument that the substitution of the revenue officer through a MOA is immaterial to the validity of the audit since the PAN and Formal Assessment Notice which bear the assessment of deficiency taxes were signed by the Regional Director. According to respondent, while the Regional Director is authorized to *issue* a Letter of Authority, the crux of the controversy lies on the lack of authority of the

⁵⁴ See Comment/ Opposition, *id.*, pp. 112-114.

revenue officers to *actually conduct the audit investigation* on respondent's books of account and other accounting records.

In support of its claim, respondent cites ***Section 13 of the Tax Code, as amended***, which unequivocally requires the issuance of a LOA for a revenue officer to conduct audit or examination. Additionally, it cites ***RMO No. 43-90***, which requires the issuance of a new LOA, not a mere MOA, in any re-assignment or transfer of cases. Moreover, under ***Section 6(A) of the Tax Code***, only the CIR or his duly authorized representative is empowered to authorize the examination of any taxpayer.

Respondent points out that, in the present case, LOA No. LOA-050-2012-00000036 authorized RO Balderas and GS Bailon to examine respondents books of accounts and other accounting records. However, it was RO Ruby Munion who completed the audit investigation pursuant to MOA No. RR8-050-RET-REA-121712-030, signed by Revenue District Officer Ricardo Espiritu, and the case was again re-assigned to RO Michael Felipe, who recommended the issuance of the PAN pursuant to MOA No. RR8-050-REA-031714-025. Records are bereft of any showing that an LOA was issued in favor of RO Munion or RO Felipe. The MOA is not only an invalid substitute of an LOA but also defective for having been issued only by an RDO. Thus, respondent insists that due to their lack of authority, any assessment borne by their unauthorized audit is null and void.

Second, respondent is mistaken that the ***Medicard Case*** has no application in the present case. While the ***Medicard Case*** involved a mere Letter Notice, it discussed the significance of a LOA which has been applied in similar cases ruled upon by the CTA.

Third, the CTA has authority to rule on the validity of the audit which gave rise to the assessment being assailed before it as the issue is purely a legal question. Respondent insists that it never admitted the validity of the subject MOAs even at the administrative level and has consistently held the position that the petitioner's assessment is without legal and factual basis. It further contends that the rule on exhaustion of administrative remedies does not apply where the issue raised is purely a legal question. The application of ***Sections 6(A) and 13 of the Tax Code*** in relation to ***RMO No. 43-90*** and the relevant jurisprudence in resolving the validity of the assessment is purely a legal issue.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the Petition for Review. 

At the onset, the Court notes that the issues and arguments raised by the CIR in the present Petition for Review are mere reiterations of what have been considered and passed upon by the Court in Division in the assailed Resolution, dated 21 October 2020.

This Court can rule on issue on the validity of the assessment.

Petitioner claims that respondent's failure to raise the issue of the alleged lack of authority of the revenue officers at the administrative level bars respondent from raising the issue on appeal.

We disagree.

Cases filed before the CTA are litigated *de novo*, and party-litigants must prove every minute aspect of their case.⁵⁵ As such, respondent is not barred from assailing the validity of the assessment and introduce evidence to prove its claim.

In fact, *Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* provides that the CTA is not limited by issues raised by the parties but may also rule upon related issues necessary to achieve the orderly disposition of the case.⁵⁶ *Section 1, Rule 14 of the RRCTA* pertinently provides:

"RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. Rendition of judgment. – The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *En Banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *En Banc* or in Division agree on the draft decision, the ponente shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *En Banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the *rollo*. ✓

⁵⁵ Edison (Bataan) Cogeneration Corp. v. Commissioner of Internal Revenue, G.R. Nos. 201665 & 201668, 30 August, 2017 *citing* Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, 2 July 2014.

⁵⁶ Metro Rail Transit Corporation v. Commissioner of Internal Revenue, CTA Case No. 9016, 4 December 2019; Makati Agro Trading, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9735, 10 June 2020; and Jinzai Experts, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9473, 18 February 2020.

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.”
(Emphasis and underscoring supplied.)

The Supreme Court, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,⁵⁷ affirmed the authority of this Court to rule on issues not raised by the parties in this wise:

“On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.”

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the **CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:

SECTION 1. Rendition of judgment. — x x x

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA **even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.”
(Citations omitted; Emphasis supplied)

Based on the foregoing, respondent is not barred from assailing the alleged lack of authority of the revenue officers on appeal. This Court is likewise not barred from resolving the issue on the alleged lack of authority of the revenue officers even if this was not raised by the parties as the issue brought before the Court is petitioner's deficiency assessment. The resolution of this issue necessarily involves the determination of the validity of the assessment.

Anent respondent's claim that *Section 3.1.4 of RR No. 18-13*⁵⁸ requires the taxpayer to state the facts, applicable law, rules and regulations, or jurisprudence in support of its protest, with failure to do so causing these to be considered undisputed issues, a reading of the provision shows that the effect of failure to state such facts, applicable laws, rules and regulations, or

⁵⁷ G.R. No. 183408, 12 July 2017.

⁵⁸ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 28 November 2013

jurisprudence is that it renders the assessment final, executory, and demandable:

“3.1.4 Disputed Assessment.—. . .

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, **the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable;** and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

. . .”

(Emphasis supplied.)

It is a long-settled principle that a void assessment cannot attain finality.⁵⁹ Notwithstanding respondent’s alleged failure to raise the lack of authority of the revenue officers at the administrative level, the Court is not precluded from resolving this issue and cancelling an intrinsically void assessment.

The Court in Division did not err in cancelling the assessment for lack of authority of the revenue officers who conducted the audit.

Contrary to petitioner’s contention, the Court in Division correctly applied the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*⁶⁰ to the instant case as it sheds light on the importance of a LOA.

The more recent case of *Commissioner of Internal Revenue v. McDonald’s Philippines Realty Corp.*⁶¹ instructs that due process requires the 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

⁵⁹ Commissioner of Internal Revenue v. Fitness by Design, Inc., G.R. No. 215957, 9 November 2016; Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp., G.R. Nos. 197945 & 204119-20, 9 July 2018; Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue, G.R. No. 241848, 14 May 2021.

⁶⁰ G.R. No. 222743, 5 April 2017.

⁶¹ G.R. No. 242670, 10 May 2021.

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.

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.**" (Emphasis supplied.)

The doctrine in the *McDonald's Case* contradicts petitioner's contention that the assessment remains valid considering that the assessment notices were signed by the Regional Director pursuant to its authority under *Section 6(A) of the Tax Code*. Following the jurisprudential pronouncement in the *McDonald's Case*, due process requires that the taxpayer should be informed of the names of the revenue officers who are duly authorized to conduct examination and assessment of the taxpayer's books and accounting records. It is a jurisdictional requirement of a valid audit and, therefore, of a valid assessment.

In the present case, as found by the Court in Division and supported by evidence on record, an LOA⁶² was issued initially authorizing **RO Balderas** and **GS Bailon** to examine respondent's books of accounts and other accounting records for CY 2010. Subsequently, the case was reassigned to another revenue officer, **RO Ruby S. Munion**, pursuant to an MOA signed by Revenue District Officer Ricardo B. Espiritu.⁶³ Thereafter, another MOA was issued when RO Munion retired in favor of **RO Michael T. Felipe**, who continued the examination and investigation of respondent's books. An examination of the said MOA reveals that it was issued by Revenue District Officer Maridur V. Rosario.⁶⁴ ✓

⁶² Exhibit "R-1", BIR Records Folder 1, p. 37.

⁶³ BIR Records Folder 3, p. 1446.

⁶⁴ *Id.*, p. 1492.

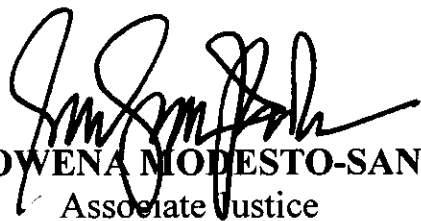
Based on the foregoing, the Court in Division did not err in its finding that the re-assignment of the audit investigation to RO Felipe through a mere MOA is not equivalent to an LOA and will not cure his lack of authority. Consequently, any succeeding reports and assessment notices are a nullity.

The Court also cannot consider the MOA as an equivalent of a LOA as it was only signed by a Revenue District Officer. While a MOA or any equivalent document may still be considered as an equivalent of a new LOA, it must contain all the elements necessary to establish a Contract of Agency between the CIR or his/her duly authorized representative and the new RO. Included in these elements is the authority of the person issuing the equivalent document who must be the CIR or his/her duly authorized representative. The CIR's duly authorized representatives are the Revenue Regional Director⁶⁵ and the Assistant Commissioner/ Head Revenue Executive Assistants.⁶⁶ A Revenue District Officer is not among the duly authorized representatives of the CIR for purposes of granting authority to examine the books of accounts of a taxpayer. A Revenue District Officer is not the CIR, Revenue Regional Director, or the Assistant Commissioner/Head Revenue Executive Assistants.

Thus, the authority of RO Munion and RO Felipe from a MOA signed by a Revenue District Officer is defective. As such, they are not authorized to continue the audit examination of respondent's books and other accounting records, and any assessment arising from their unauthorized examination is void.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Amended Decision, dated 29 June 2020, and assailed Resolution, dated 21 October 2020, both rendered by the Court in Division, are hereby **AFFIRMED**.

SO ORDERED.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

⁶⁵ Sec. 10, National Internal Revenue Code of 1997, as amended.

⁶⁶ RMO No. 29-07: Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



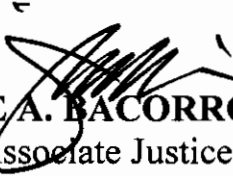
ERLINDA P. UY
Associate Justice



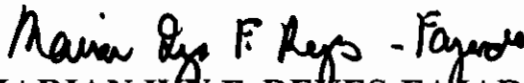
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE

CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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



ROMAN G. DEL ROSARIO
Presiding Justice ✓