

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

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE**
Petitioner,

CTA EB NO. 2503
(CTA Case No. 9616)

Present:

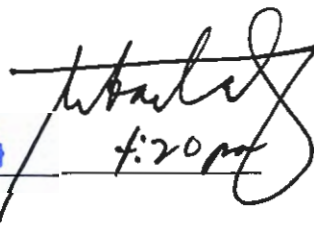
- versus -

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

**SCICINDUSTRIAL
CORP.,**
Respondent.

Promulgated:

MAY 27 2024



x ----- x

DECISION

FERRER-FLORES, J.:

Before this Court is a Petition for Review filed on July 15, 2021 by the **Commissioner of Internal Revenue (CIR/petitioner)** against the **SCICIndustrial Corp. (SCIC/respondent)** appealing the *Decision* dated August 27, 2020 (**assailed Decision**)¹ and *Resolution* dated May 25, 2021 (**assailed Resolution**)² rendered by the Second Division of this Court.

¹ Penned by Associate Justice Juanito C. Castañeda, Jr and concurred in by Associate Justice Jean Marie A. Bacorro-Villena; *Rollo*, pp. 31 to 58.

² *Rollo*, pp. 59 to 62.

The dispositive portions of the assailed Decision and assailed Resolution read as follows:

Assailed Decision

WHEREFORE, the *Petition for Review* is **GRANTED**. Accordingly, the Formal Assessment Notice (FAN) dated January 23, 2017 under *Assessment Notice Nos. IT-ELA78214-13-17-396* and *VT-ELA78214-13-17-396* issued against petitioner for taxable year 2013 is **CANCELLED** and **SET ASIDE**, for being void.

SO ORDERED.

Assailed Resolution

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

SO ORDERED.

THE PARTIES

Petitioner is the duly appointed CIR, vested with authority to carry out all the functions, duties and responsibilities of said office, such as the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).

Respondent SCIC, on the other hand, is a corporation duly organized and existing under the laws of the Republic of the Philippines.³

THE ANTECEDENT FACTS

As found by the Court in Division, the facts are as follows:⁴

THE FACTS

On July 10, 2014, the *Letter of Authority* (LOA) No. LOA-052-2014-00000230 was issued by Regional Director Jonas DP Amora of Revenue Region 8-Makati City, authorizing Revenue Officer (RO) Filipina Ocampo and Group Supervisor (GS) Manuel Baltazar of Revenue District

³ *Parties, Petition For Review, Rollo*, pp. 7 to 8.

⁴ *Facts, Decision* dated January 20, 2021, *Rollo*, pp. 32 to 45; citations omitted.

Office (RDO) No. 052-Parañaque, to examine petitioner's books of accounts for all internal revenue taxes covering the period from January 1, 2013 to December 31, 2013.

On April 13, 2016, petitioner filed with the respondent all relevant documents, books of accounts, receipts, and the like, as evidenced by the *Listing of 2013 Documents for Submission* dated April 12, 2016.

Thereafter, on December 21, 2016, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) dated December 19, 2016 for taxable year 2013, informing petitioner that it was found liable for deficiency income tax and value-added tax (VAT).

On January 25, 2017, petitioner received a copy of the Formal Assessment Notice (FAN) dated January 23, 2017 under *Assessment Notice Nos. IT-ELA78214-13-17-396* and *VT-ELA78214-13-17-396*. The FAN contains deficiency tax assessments for income tax and VAT for taxable year 2013, in the total amount of P11,024,947.24, broken down as follows:

Tax Type	Amount
Income tax	P8,398,821.71
VAT	2,626,125.53
Total	P11,024,947.24

Thus, on February 23, 2017, petitioner filed via registered mail a *Protest* to the respondent.

On May 15, 2017, petitioner received a copy of the *Letter* dated April 25, 2017 from Regional Director Glen A. Geraldino of Revenue Region No. 8-Makati City, denying the *Protest* dated February 23, 2017.

Petitioner filed the present *Petition for Review* via registered mail on June 7, 2017 and was received by this Court on June 16, 2017. The case was initially raffled to this Court's First Division.

However, in the Resolution dated July 17, 2017, this Court dismissed the said *Petition* due to petitioner's failure to timely pay the docket fees; and that the signatory in the *Petition* does not show that he was duly authorized by the board of directors to file, sign, and execute for and in behalf of petitioner, including the verification and certification of non-forum shopping.

On August 7, 2017, petitioner filed via registered mail a *Motion for Reconsideration (of the Resolution dated 17 July 2017)*, praying that the said Resolution be reversed and set aside, explaining that it was only mere inadvertence on its part in filing the present *Petition*. Thus, in the Resolution dated September 11, 2017, this Court granted petitioner's *Motion for Reconsideration* and reversed and set aside the Resolution dated July 17, 2017.

Respondent then filed its *Answer* via registered mail on November 6, 2017, interposing the following special and affirmative defenses, to wit:

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On November 21, 2017, respondent forwarded the *BIR Records* for the instant case.

The Pre-Trial Conference was set and held on March 1, 2018.

The *Respondent's Pre-Trial Brief* was filed via licensed private courier on February 27, 2018, while *Pre-Trial Brief for the Petitioner SCICINDUSTRIAL CORP.* was filed via registered mail on February 26, 2018.

On March 16, 2018, the parties filed their *Joint Stipulation of Facts & Issues*, which was approved by this Court in the Resolution dated April 30, 2018, thereby terminating the Pre-Trial stage. Thereafter, the Pre-Trial Order dated May 17, 2018 was issued.

Trial ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimony of Mr. Christian Dale C. Cong, its Corporate Treasurer and General Manager, as its sole witness.

On July 13, 2018, petitioner filed a *Formal Offer of Evidence for Petitioner SCICINDUSTRIAL CORP.*; while respondent's *Comment (To Petitioner's Formal Offer of Evidence)* was filed on July 13, 2018. Subsequently, petitioner filed on September 17, 2018 a *Motion to Render Judgment on the Basis of Petitioner's Evidence*.

In the Resolution dated October 8, 2018, this Court admitted all of petitioner's Exhibits; and denied petitioner's *Motion to Render Judgment on the Basis of Petitioner's Evidence* for lack of merit.

In the meantime, the present case was transferred to the Second Division of this Court.

Respondent likewise presented its documentary and testimonial evidence. It offered as its sole witness, RO Danilo Y. Elardo, of RDO No. 052-Parañaque.

Respondent's Formal Offer of Evidence was filed via registered mail on May 6, 2019. Petitioner failed to file its comment thereon. Thus, in the Resolution dated June 28, 2019, this Court admitted respondent's exhibits, except for Exhibit "R-15", for failure to present the original for comparison. Upon motion for reconsideration of respondent's counsel, however, Exhibit "R-15" was admitted, at the hearing held on July 3, 2019.

The *Memorandum for Respondent* was filed via registered mail on August 2, 2019. Petitioner, however, failed to file its memorandum. 

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In the Resolution dated September 3, 2019, the present case was considered submitted for decision.

On August 27, 2020, the Court in Division rendered the assailed Decision granting SCIC's original *Petition for Review* (original *Petition*) and, consequently, cancelling the assessment for taxable year (TY) 2013 for being void.⁵

Aggrieved, the CIR filed its *Motion for Reconsideration* on September 18, 2020,⁶ *sans* comment of SCIC.⁷

On May 25, 2021, the Court in Division promulgated the assailed Resolution, denying the CIR's motion for reconsideration for lack of merit.⁸

Hence, the instant *Petition for Review*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On June 28, 2021, the CIR filed *via* registered mail his *Motion for Extension of Time (To File Petition for Review)*, which was received by the Court on July 13, 2021, seeking an additional fifteen (15) days from June 30, 2021, or until July 15, 2021, to file a *Petition for Review*.⁹

Finding the filing of the CIR's *Motion for Extension of Time (To File Petition for Review)* insufficient in number of copies, the Court ordered the submission of six (6) more copies within ten (10) days from notice, otherwise, the same shall be deemed not filed.¹⁰

Meanwhile, on July 22, 2021, the Court received the instant *Petition for Review* filed by the CIR *via* registered mail on July 15, 2021.¹¹

On November 15, 2021, the Court reiterated its order requiring the CIR to submit additional copies of his *Motion for Extension of Time (To File*

⁵ *Supra* note 1.

⁶ Docket, pp. 472 to 481.

⁷ Records Verification dated February 3, 2021 issued by the Judicial Records Division of this Court, Docket, p. 491.

⁸ *Supra* note 2.

⁹ *Rollo*, pp. 1 to 4.

¹⁰ Minute Resolution dated July 14, 2021; *Rollo*, p. 6.

¹¹ *Rollo*, pp. 7 to 29.

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Petition for Review) within ten (10) days from notice.¹² Despite due notice, however, the CIR failed to file the additional copies.¹³

The Court issued the Resolution dated March 31, 2022 dismissing the instant *Petition for Review* for lack of jurisdiction for failure of the CIR to file his *Petition for Review* within the fifteen (15)-day reglementary period.¹⁴

The CIR filed his *Motion for Reconsideration (Of the Resolution dated 31 March 2022)* via registered mail on April 21, 2022, which was received by the Court on May 5, 2022.¹⁵

In the Resolution dated June 7, 2022, the Court granted the CIR's motion for reconsideration. Consequently, the Court deemed the *Motion for Extension of Time (To File Petition for Review)* as filed and granted. Nonetheless, the Court required the CIR to submit the lacking documents/attachments to his *Petition for Review* within five (5) days from notice.¹⁶

On July 8, 2022, the Court received the CIR's *Compliance with Manifestation* filed via registered mail on June 30, 2022, submitting documents/attachments required by the Court in the Resolution dated June 7, 2022.¹⁷ The Court noted the same and ordered respondent SCIC to file a comment to the instant petition.¹⁸

Notwithstanding due notice, respondent SCIC failed to file a comment on the *Petition for Review*; ¹⁹ thus, the case was referred to mediation at the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).²⁰

The Court then received a report on March 6, 2023 from the PMC-CTA stating that the parties decided not to have their case mediated.²¹

On April 13, 2023, this Court submitted the case for decision.²²

¹² *Rollo*, pp. 67 to 69.

¹³ Records Verification dated March 4, 2022 issued by the Judicial Records Division of this Court, *Rollo*, p. 70.

¹⁴ *Rollo*, pp. 72 to 74.

¹⁵ *Rollo*, pp. 75 to 80.

¹⁶ *Rollo*, pp. 87 to 90.

¹⁷ *Compliance with Manifestation* with attachments; *Rollo*, pp. 91 to 133.

¹⁸ *Rollo*, pp. 136 to 138.

¹⁹ Records Verification dated November 28, 2022 issued by the Judicial Records Division of this Court, *Rollo*, p. 139.

²⁰ *Rollo*, pp. 141 to 142.

²¹ PMC-CTA Form 6 - *No Agreement to Mediate*; *Rollo*, p. 214.

²² *Rollo*, pp. 145 to 1148.

THE ISSUE

In the CIR's *Petition for Review*, the sole issue raised is whether or not the Court in Division erred in granting SCIC's [original] *Petition for Review* by ordering the cancellation of the Formal Assessment Notice (FAN) dated January 23, 2017 under Assessment Notice Nos. IT-ELA78214-13-17-396 and VT-ELA78214-13-17-396 issued against SCIC for TY 2013.

THE ARGUMENTS

The arguments of the CIR in support of its petition are summarized as follows:

A. The revenue officers (ROs) who conducted the audit investigation are validly authorized to conduct the same.

The CIR claims that the officers who conducted the examination and audit of SCIC's account were validly clothed with authority to conduct the same and, consequently, to recommend the assessment of the subject deficiency taxes. According to the CIR, Section 6 of the NIRC of 1997, as amended, does not limit the power of the CIR to examine and to determine tax deficiency of any taxpayer only through issuance of a Letter of Authority (LOA). Moreover, revenue district officers are considered duly authorized representatives of the CIR to authorize the examination of a taxpayer for a taxable period.

The taxpayer's right to due process is not violated when a LOA was issued for the examination of taxpayer's books but the ROs named therein were eventually transferred to a different revenue district office and new ROs were reassigned to continue the audit investigation through a duly issued *Memorandum of Assignment (MOA)*. A case of an assessment issued without any valid LOA is different from that of an assessment which proceeded from a valid issued LOA which named ROs who were replaced by new ROs by reason of the originally named ROs' transfer. In the first case, the taxpayer was never properly informed that he/she is subject of a tax audit; while in the second case, the taxpayer was already informed of the tax audit through the previously issued valid LOA. The CIR posits that the continuation of the audit and examination of the same taxpayer by the new ROs should still be considered duly authorized under the previously issued valid LOA.

Furthermore, the CIR argues that the issue on whether or not the ROs who examined SCIC's books of account were authorized by the CIR or his

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duly authorized representative, was never raised by SCIC. Moreover, estoppel by laches has already set in in this case.

B. The [original] Petition for Review must be dismissed for lack of cause of action and/or lack of legal capacity to sue.

According to the CIR, SCIC failed to allege its legal standing as a corporation to sue and be sued and to attach a Board Resolution or Secretary's Certificate showing proof that Atty. Benzon Judd C. Cong is authorized to act in behalf of the corporation.

C. SCIC failed to perfect an appeal when it paid the docket beyond the thirty (30)-day reglementary period under Section 228 of the NIRC, as amended.

The CIR insists that, since SCIC failed to timely pay the docket fees within the period to appeal the decision of the CIR, the appeal was not perfected. According to jurisprudence, the requirement of an appeal fee is not a mere technicality of law or procedure but an essential requirement without which the decision appealed would become final and executory as if no appeal was filed.

D. SCIC's remedy is to refile the case and not file a motion for reconsideration, considering that the Court in Division lacks jurisdiction.

The CIR maintains that, since no valid petition for review was ever filed with the Court, then the Court in Division does not have jurisdiction over the petition. Jurisprudence has consistently held that, for the court to have authority to dispose the case on the merits, it must acquire, among other, jurisdiction over the subject matter. As such, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.

E. The CIR was not given the opportunity to comment on or oppose to SCIC's Motion for Reconsideration dated August 4, 2017.

The records of the case show that the CIR was not afforded the opportunity to comment on or oppose to SCIC's *Motion for Reconsideration* seeking the reversal of the Court's earlier dismissal of the original *Petition*. According to the CIR, this is considered a violation of his right to due process. Consequently, the grant of SCIC's *Motion for Reconsideration* dated August 4, 2017 is void.

THE RULING OF THE COURT *EN BANC*

The Petition for Review lacks merit.

The instant Petition for Review was timely filed.

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

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

(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. (*Emphasis supplied*)

Based on the foregoing, the CIR had fifteen (15) days from receipt of the assailed Resolution within which to file his Petition for Review.

Records show that the assailed Resolution of the Court in Division was served through registered mail on May 25, 2021. Upon examination of the records, there was no Registry Return Receipt (RRR) corresponding to said mail matter.²³ In relation thereto, the CIR alleged in the instant petition that the assailed Resolution dated May 25, 2021 was received on **June 15, 2021**.²⁴ The CIR, thus, had fifteen (15) days from such receipt, or until **June 30, 2021**, to file its Petition for Review.

On June 28, 2021, the CIR filed a *Motion for Extension of Time (To File Petition for Review)* ²⁵ seeking an additional period of fifteen (15) days from June 30, 2021, or until July 15, 2021, which was granted by this Court.²⁶

The CIR, thus, timely filed the instant *Petition for Review* on **July 15, 2021**.²⁷

²³ Docket, p. 321.

²⁴ *Timeliness of the Petition and Statement of Material Dates*, Petition for Review, *Rollo*, p. 8.

²⁵ *Supra* note 9.

²⁶ *Supra* note 10.

²⁷ Filed via registered mail on July 15, 2021 and received by the Court on July 22, 2021; *Rollo*, p. 7.

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That having been settled, the Court shall now proceed to the arguments raised by the CIR. For an orderly disposition of this case, the Court deems it proper to address the arguments related to the procedural aspect of the case before delving into the merits of the case.

The Court in Division has jurisdiction over the original Petition for Review.

The CIR maintains that the Court in Division has no jurisdiction over the original *Petition* for the following deficiencies:

1. Failure to attach the Secretary's Certificate authorizing SCIC's counsel, Atty. Benzon Judd C. Cong, to sign the Petition;
2. Failure to allege its legal capacity to sue and be sued; and,
3. Failure to perfect the appeal when it paid the docket fees beyond the thirty (30)-day reglementary period under Section 228 of the NIRC, as amended.

We discuss first the alleged belated payment of the docket fees before proceeding to the *first* and *second* alleged deficiencies.

The belated payment of docket fees was justified and properly allowed by the Court in Division.

It would be recalled that the Court in Division granted²⁸ SCIC's *Motion for Reconsideration (of the Resolution dated 17 July 2017)* and set aside its earlier dismissal of the original *Petition* due to late payment of docket fees. The Court took into consideration the *Manifestation* filed by SCIC on June 14, 2017 and *Affidavit* executed by Mr. Arnulfo L. Tarrayo stating the tender of payment of the docket fees within the period to perfect an appeal and explaining the circumstances behind the refusal of the Court's Judicial Records Division to assess and receive the docket fees.²⁹ In the same resolution, the Court noted the filing of the *Secretary's Certificate*.³⁰

In SCIC's *Manifestation* dated June 14, 2017, SCIC explained that it attempted to have original *Petition* assessed for proper docket fees on June 7,

²⁸ Docket, pp. 61 to 62.

²⁹ Docket, pp. 54 to 56.

³⁰ Docket, pp. 61 to 62.

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2017 or seven (7) days before the last day to file the appeal (June 14, 2017). The Judicial Records Division of the Court, however, refused to assess the same as the Court has yet to receive the original *Petition*, which was filed *via* registered mail. On June 14, 2017, the last day to file the appeal, SCIC tried to pay the docket fees but to no avail since the original *Petition* has not yet been received by the Court.

On June 16, 2017, the Judicial Records Division of the Court notified SCIC of the receipt of the original *Petition* and was able to pay the proper docket fees on the same day.

Jurisprudence is replete with cases stating that the general rule is that a petition for review is perfected by timely filing it and paying the requisite docket fees and other lawful fees. All general rules, however, admit of certain exceptions. Specifically, in the case of *Mactan Cebu International Airport Authority (MCIAA) vs. Mangubat (MCIAA case)*,³¹ where the docket fees were paid six (6) days late, the Supreme Court allowed the late payment of the required fees showing the party's willingness to abide by the rules, and, in view of the significance of the issues raised in the case, which calls for judicial leniency. The Supreme Court, citing the *MCIAA* case, among others, declared in *Carolina B. Villena vs. Romeo Z. Rupisan and Rodolfo Z. Rupisan*:³²

In all, what emerges from all of the above is that the rules of procedure in the matter of paying the docket fees must be followed. However, there are exceptions to the stringent requirement as to call for a relaxation of the application of the rules, such as: (1) most persuasive and weighty reasons; (2) **to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure**; (3) **good faith of the defaulting party by immediately paying within a reasonable time from the time of the default**; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) **exercise of sound discretion by the judge guided by all the attendant circumstances**. Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. Anyone seeking exemption from the application of the Rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure.

(Emphasis supplied)

³¹ G.R. No. 136121, August 16, 1999.

³² G.R. No. 167620, April 3, 2007.

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Thus, in the case of *La Sallian Educational Innovators Foundation, Inc. vs. Commissioner of Internal Revenue*,³³ reiterating the ruling in the case of *Spouses David Bergonia and Luzviminda Castillo vs. Court of Appeals and Amado Bravo, Jr.*,³⁴ the Court held that, “while procedural rules are important in the administration of justice, they may be excused for the most persuasive and meritorious reasons in order to relieve a litigant of an injustice that is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.”

In the instant case, the docket fees were paid two (2) days late. Considering, however, SCIC’s explanation on the circumstances surrounding the belated payment of the docket fees coupled with its willingness and earnest efforts to pay the same on time, we find the foregoing to be sufficient justification for the Court in Division’s application of judicial leniency and the relaxation of the rules of procedure.

The belated filing of the Secretary’s Certificate is considered substantial compliance with the Rules.

A perusal of the records reveals that the original *Petition*³⁵ and the *Verification with Certification of Non-Forum Shopping*³⁶ were signed by Atty. Cong. The Secretary’s Certificate showing his authority to sign the said documents, however, was not appended to said *Petition*. Meanwhile, the original *Petition* was dismissed for the late payment of docket fees.³⁷ SCIC then sought the reconsideration of the said dismissal and likewise belatedly submitted the *Secretary’s Certificate* as proof of Atty. Cong’s authority. When the Court in Division granted SCIC’s *Motion for Reconsideration*, setting aside its earlier dismissal of the original *Petition*, the Court also noted the filing of the *Secretary’s Certificate*.³⁸

As a general rule, the authorization of the affiant to act on behalf of a party should be attached to the pleading. Sections 4 and 5 of Rule 7 of the Rules of Court, as amended by A.M. No. 19-10-20-SC or the 2019 Amendments to the 1997 Rules of Civil Procedure (Revised Rules of Court), provide as follows:

Section 4. Verification. — Except when otherwise specifically required by law or rule, pleadings need not be under oath or verified.

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³³ G.R. No. 202792, February 27, 2019.

³⁴ G.R. No. 189151, January 25, 2012.

³⁵ Docket, pp. 10 to 20.

³⁶ Docket, p. 21.

³⁷ Docket, pp. 44 to 48.

³⁸ Docket, pp. 61 to 62.

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A pleading is verified by an affidavit that the affiant duly authorized to sign said verification. The **authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading**, and shall allege the following attestations:

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Section 5. Certification against forum shopping. —The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) calendar days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

The **authorization of the affiant to act on behalf of a party**, whether in the form of a secretary's certificate or a special power of attorney, **should be attached to the pleading.** (*Emphasis supplied*)

Notwithstanding the foregoing, the Supreme Court, in several cases, considered the belated filing of the proof of authority (i.e., Secretary's Certificate) as substantial compliance with Rule 7 of the Revised Rules of Court. Specifically, in the case of *Swedish Match Philippines, Inc. vs. Treasurer of the City of Manila* (*Swedish Match case*),³⁹ the Supreme Court ruled in this wise:

Time and again, this Court has been faced with the issue of the validity of the verification and certification of non-forum shopping, absent any authority from the board of directors.

The power of a corporation to sue and be sued is lodged in the board of directors, which exercises its corporate powers. It necessarily follows that "an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors." Thus, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.

Consequently, a **verification signed without an authority from the board of directors is defective**. However, the requirement of verification is simply a condition affecting the form of the pleading and non-compliance does not necessarily render the pleading *fatally* defective. The court may in fact order the correction of the pleading if verification is lacking or, it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed with so that the ends of justice may be served.

³⁹ G.R. No. 181277, July 3, 2013.

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Given the present factual circumstances, **we find that the liberal jurisprudential exception may be applied to this case.**

A distinction between noncompliance and substantial compliance with the requirements of a certificate of non-forum shopping and verification as provided in the Rules of Court must be made. In this case, it is undisputed that the **Petition filed with the RTC was accompanied by a Verification and Certification of Non-Forum Shopping signed by Ms. Beleno, although without proof of authority from the board. However, this Court finds that the belated submission of the Secretary's Certificate constitutes substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure. (Emphasis and underscoring supplied)**

The Supreme Court, citing the *Swedish Match* case, ruled similarly in *Yap, Sr. vs. Siao*⁴⁰ and *Good Earth Enterprises, Inc. vs. Garcia*.⁴¹

Inasmuch as SCIC still submitted, although belated, the *Secretary's Certificate* dated May 30, 2017⁴² on August 10, 2017, the same is already considered substantial compliance with Sections 4 and 5 of Rule 7 of the Revised Rules of Court. As such, this Court finds no error on the part of the Court in Division in accepting such submission as compliant with the rules.

SCIC sufficiently alleged its legal capacity to sue and be sued.

With regard to the argument that SCIC failed to allege in its original *Petition* its legal capacity to sue and be sued, a review of the *Pre-Trial Order*⁴³ shows that the CIR and SCIC jointly stipulated that "... petitioner *SCICINDUSTRIAL CORP. (SCIC)*, a corporation duly organized and existing under the laws of the Republic of the Philippines. Petitioner is herein represented by *B.J. CONG & ASSOCIATES...*". It should be noted that the CIR himself agreed to said stipulation as evidenced by the signature of his representative in the *Joint Stipulation of Facts and Issues*.⁴⁴ The CIR cannot agree to such stipulated fact and thereafter assail the same when he already admitted said fact by signifying his conformity to the *Joint Stipulation of Facts and Issues* and *Pre-Trial Order*.

⁴⁰ G.R. Nos. 212493 & 212504, June 1, 2016.

⁴¹ G.R. No. 238761, January 22, 2020.

⁴² Docket, p. 57.

⁴³ Dated May 17, 2018; Docket, pp. 227 to 234.

⁴⁴ *Paragraph II(1) of the Joint Stipulation of Facts and Issues*; Docket, pp. 201 to 206.

Clearly, SCIC's legal capacity to sue and be sued has been established based on the case records.

In view of the foregoing discussions, contrary to the CIR's arguments, the Court in Division properly acquired jurisdiction over the original *Petition*.

The CIR's right to due process was not violated.

The CIR claims that he was not afforded the opportunity to comment on SCIC's *Motion for Reconsideration* relative to the earlier dismissal of the case in the Resolution dated August 4, 2017.

On this matter, this Court adopts and quotes, with approval, the discussion of the Court in Division in the assailed Resolution:

As to respondent's claim that he was not given the opportunity to comment or oppose petitioner's Motion for Reconsideration filed on August 7, 2017, perusal of the records of the case reveals that it was on September 11, 2017 that the Court issued a resolution that, among others, gave due course to petitioner's Petition for Review. Consequently, it was only on September 13, 2017 that Summons was served to respondent's counsels, the Legal Division of the Bureau of Internal Revenue and the Office of the Solicitor General, which were received on September 22, 2017 and September 26, 2017, respectively. Clearly then respondent could not have been required to file a comment to petitioner's Motion for Reconsideration because the Court does not have yet jurisdiction over respondent.

Having settled the procedural matters, the Court will now delve into the merits of the case.

The Court in Division did not err in cancelling the FAN dated January 23, 2017.

In the assailed Decision, the Court in Division invalidated the deficiency assessments for being intrinsically void due to the absence of authority on the part of the RO who conducted the examination of SCIC's books of accounts and other accounting records. According to the Court in Division, while the lack of authority of the RO to conduct the audit was not specifically raised as an issue, the Court in Division declared that, based on the RRCTA, 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.

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At the outset, the Court is one with the Court in Division that it can rule on the issue of the authority of the ROs to conduct an audit despite not being raised as an issue. In relation thereto, Section 1 of Rule 14 of the RRCTA provides as follows:

SECTION 1. *Rendition of judgment.* – xxx

xxx xxx xxx

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*)

As discussed by the Court in Division, in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,⁴⁵ the Supreme Court, citing the above rule, has held that the CTA can resolve an issue which was not raised by the parties.

In this case, the sole issue stipulated by the parties is “whether or not the FAN dated January 23, 2017 under Assessment Nos. IT-ELA78214-13-170396 and VT-ELA78214-13-17-396 is void.”

Evidently, to resolve the aforestated issue, the existence of a valid authority to conduct the audit is an essential consideration and, thus, a related issue which the Court may rule upon as it is necessary for the orderly disposition of the case.

Proceeding now to the validity of the deficiency tax assessments, Sections 6, 10(c), and 13 of the NIRC of 1997, as amended, provide as follows:

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

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

xxx xxx xxx ✓

⁴⁵ G.R. No. 183408, July 12, 2017.

SECTION 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:

XXX XXX XXX

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

XXX XXX XXX

SECTION 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. (*Emphasis and underscoring supplied*)

From the foregoing provisions, it is clear that, before an examination can be conducted by an RO, he must first be authorized through an LOA issued by the CIR or his duly authorized representative.

In the instant case, the LOA No. LOA-052-2014-00000230 dated July 10, 2014 was issued by Regional Director Jonas DP Amora of Revenue Region 8-Makati City, authorizing RO Filipina Ocampo and Group Supervisor (GS) Manuel Baltazar of Revenue District Office No. 052-Parañaque, to examine SCIC's books of accounts for all internal revenue taxes covering the period from January 1, 2013 to December 31, 2013.

A perusal of the records reveals that RO Danilo Y. Elardo (RO Elardo) and GS Ma. Christina S. Carsolin (GS Carsolin) were the ones who conducted the tax audit of SCIC's books of account for TY 2013 by virtue of *MOA No. 052-1892-206-REASSIGNMENT* dated May 2, 2016 issued by Revenue District Officer (RDO) Christina C. Barroga.⁴⁶

This Court finds that the Court in Division did not err in invalidating the subject assessment for having been issued on the basis of an examination conducted by ROs acting under the authority of a mere MOA issued by the RDO.

We expound. 

⁴⁶ Exhibit "R-15" (copy marked as "R-14"), Docket, p. 401.

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The MOA issued by RDO Barroga did not give ample authority to RO Elardo and GS Carsolin to continue with the audit investigation of SCIC's books of accounts and other accounting records.

The CIR argues that the MOA issued by RDO Barroga was sufficient authority granted to RO Elardo and GS Carsolin considering that RDOs are duly authorized representatives of the CIR to authorize the examination of a taxpayer.

We rule otherwise.

As cited earlier, Section 6 of the NIRC of 1997, as amended, provides that the authority to examine the books of account of taxpayers must be granted by the CIR or his duly authorized representatives. Section D(4) of Revenue Memorandum Order (RMO) No. 43-90⁴⁷ provides who these duly authorized representatives of the CIR are, to wit:

D. Preparation and issuance of L/As.

xxx

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. *(Emphasis supplied)*

Based on the foregoing, only the CIR and the duly authorized BIR officials, *i.e.*, Regional Directors and the Deputy Commissioners may issue an LOA. As elucidated by the Supreme Court in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,⁴⁸ unless authorized by the CIR himself or by his duly authorized representative pursuant to RMO No. 43-90, an examination of a taxpayer's books of accounts cannot be ordinarily undertaken. In the absence of such an authority, the assessment or examination is a nullity.⁴⁹

Evidently, the RDO is not among the BIR officials authorized to issue an LOA; hence, the MOA issued by RDO Barroga cannot serve to authorize

⁴⁷ Dated September 20, 1990; Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

⁴⁸ G.R. No. 222743, April 5, 2017.

⁴⁹ *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

RO Elardo and GS Carsolin to conduct an examination of SCIC's books of accounts.

This is further clarified by the Supreme Court in *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp. (McDonald's case)*.⁵⁰ In said case, the Supreme Court firmly ruled that the use of **MOA**, Referral Memorandum or any other equivalent document directing the continuation of audit or investigation by an unauthorized RO is a usurpation of the functions of the LOA under the NIRC of 1997, as amended, and that the issuances referring to reassignment of the audit or investigation from one RO to another and the actual authority of the RO who will conduct the actual audit or investigation are different. It is therefore specifically required that **a new LOA be issued if ROs are reassigned or transferred**, to wit:

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

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

⁵⁰ G.R. No. 242670, May 10, 2021.

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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.

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

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

Any re-assignment/transfer of cases to another RO(s), 64(64) and revalidation of L/As 65(65) which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.

The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases. The provision involves the following two separate phrases: "re-assignment/transfer of cases to another RO(s)," on the one hand, and "revalidation of L/As which have already expired," on the other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA. The new LOA must then have a corresponding relevant notation, including the previous LOA number and date of issue of the said LOAs.

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) of RMO No. 43-90 is repugnant to Sections 6 (A), 10 and 13 of the NIRC. Hence, pursuant to Section 291 of the NIRC, RMO No. 43-90 remains effective and applicable.

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Even the Operations Group of the BIR now recognizes 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 LOA, is no longer tenable. Thus, in Operations Memorandum No. 2018-02-03 dated February 9, 2018, the Operations Group has decided that "the issuance of a MOA for reassignment of cases in the aforementioned instances [i.e., the original revenue officer's transfer to another office, resignation, retirement, etc.] shall be discontinued. (*Emphasis supplied; citations omitted*)

In this case, RO Elardo and GS Carsolin continued the audit investigation of SCIC solely by virtue of the MOA issued by RDO Barroga without the required new LOA issued by the CIR or his duly authorized representative. Applying the above principles, the MOA issued by the RDO did not give ample authority to RO Elardo and GS Carsolin to continue the audit investigation of SCIC's books of accounts.

No new LOA was issued authorizing RO Elardo and GS Carsolin to continue with the audit investigation of SCIC's books of accounts and other accounting records.

Inasmuch as the only document reassigning the audit investigation of SCIC's books of accounts to RO Elardo and GS Carsolin was the MOA signed by RDO Barroga, said RO and GS are deemed unauthorized to continue the audit.

The Supreme Court, in the *McDonald's* case,⁵¹ also categorically concluded that the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation, 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

⁵¹ G.R. No. 242670, May 10, 2021.

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investigation; and (iv) the new revenue officer continues the audit or investigation, supposedly under the authority of the previously issued LOA.

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The Court hereby puts an end to this practice.

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

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.

xxx

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

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. 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. xxx (*Emphasis supplied*)

Considering that the authority of RO Elardo and GS Carsolin to examine of SCIC's books is anchored on a mere MOA and not a new or amended LOA, the tax assessments are void *ab initio* for having been issued pursuant to the examination conducted by said unauthorized RO and GS.

Accordingly, the FAN dated January 23, 2017 and the assessment notices issued by the CIR are null and void.

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In fine, the Court in Division committed no reversible error in granting SCIC's original *Petition*, thereby cancelling the assessment of the CIR for TY 2013.

WHEREFORE, premises considered, the Commissioner of Internal Revenue's *Petition for Review* is **DENIED** for lack of merit. The assailed *Decision* dated August 27, 2020 and assailed *Resolution* dated May 25, 2021 rendered by the Second Division of this Court in CTA Case No. 9616 are **AFFIRMED**.

Accordingly, respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the deficiency Income Tax and VAT assessed against petitioner SCICIndustrial Corp. arising from *Formal Assessment Notice* dated January 23, 2017 and *Assessment Notice* Nos. IT-ELA78214-13-17-396 and VT- ELA78214-13-17-396.

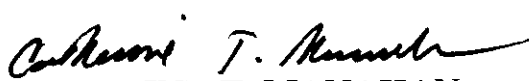
SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

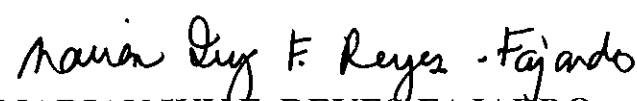

CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



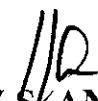
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



HENRY S. ANGELES
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