REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2560** (CTA Case No. 9161)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and,* **FERRER-FLORES,** *JJ.*
ROBINSONS TOYS, INC., Respondent.	Promulgated: JUL 13 2023 1:10 pm

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DECISION

BACORRO-VILLENA, J.:

Assailing the Third Division's Decision dated 02 September 2020[1] (**assailed Decision**) and Resolution dated 11 December 2021[2] (**assailed Resolution**) in CTA Case No. 9161, entitled *Robinsons Toys, Inc., v. Commissioner of Internal Revenue*, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the instant Petition for Review[3]

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1 Division Docket, Volume III, pp. 1065-1094.
2 Id., pp. 1499-1508.
3 Filed on 02 February 2022, *Rollo*, pp. 7-51.

pursuant to 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 Appeals[6] (**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 National Internal Revenue Code (**NIRC**) of 1997, as amended.

On the other hand, respondent Robinsons Toys, Inc. (**respondent/Robinsons**) is a corporation duly organized and existing under Philippine laws, with office address at 110 E. Rodriguez, Jr. Avenue, Libis, Quezon City.[7] It is engaged in the business of selling general merchandise of all kinds, such as textiles, clothes, bags, belts, shoes, toys, school supplies, groceries, dry goods, wearing apparels, and all other wares and any kind of merchandise, either retail or wholesale, and to carry on such business as importer or exporter of such goods.[8]

FACTS OF THE CASE

On 20 May 2010, respondent received from the BIR a copy of Letter of Authority (**LOA**) No. LOA-127-2010-00000027 dated 14 May 2010[9], authorizing the conduct of an audit of its accounting records for "all

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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 II (1), Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 228.

8 Amended Articles of Incorporation of Robinsons Toys, Inc. id., p. 310.

9 Exhibit "R-1" or "P-3", BIR Records, p. 650.

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**) Myrna Ramirez (**Ramirez**), Ma. Salud Maddela (**Maddela**), Joel Aguila (**Aguila**), Zenaida Paz (**Paz**), Cletofel Parungao (**Parungao**), and Group Supervisor (**GS**) Glorializa Samoy (**Samoy**) of the Large Taxpayer (**LT**) Regular Audit Division 4, to conduct the audit and/or investigation.

During the investigation, James L. Go (**Go**), respondent's then Chief Executive Officer (**CEO**)[11], and Lance Y. Gokongwei (**Gokongwei**), respondent's authorized representative, executed a series of Waivers of the Defense of Prescription under the Statute of Limitations (**subject waivers**) of the NIRC of 1997, as amended, particularly[12]:

a. On 08 March 2012, Go executed the first (1st) waiver which extended the period of assessment until 30 June 2012. Officer-in-Charge, Assistant Commissioner for Large Taxpayer Services Alfredo V. Misajon (**OIC-ACIR Misajon**) accepted the same on 27 April 2012. The 1st waiver pertained to the assessment for value-added tax (**VAT**) and withholding taxes (**WT**) [13];

b. On 09 May 2012, Go executed the second (2nd) waiver which extended the period of assessment until 31 December 2012. OIC-ACIR Misajon received the same on 14 May 2012. The 2nd waiver covered the assessment of VAT and WT[14];

c. On 31 October 2012, Go executed the third (3rd) waiver which extended the period of assessment until 30 June 2013. OIC-ACIR Misajon accepted it on 14 November 2022. The 3rd waiver pertained to the assessment for VAT and WT [15];

d. On 05 April 2013, Gokongwei executed the fourth (4th) waiver which extended the period of assessment until 31 December 2013. OIC-ACIR Misajon accepted it on 17 April 2013. The 4th waiver covered all taxes [16] for TY 2009; and,

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10 Par. I(2), JSFI, Division Docket, Volume I, p. 227.
11 See signatory in the Statement of Management's Responsibility for Annual Income Tax Return, BIR Records, p. 631.
12 Par. II(4), JSFI, Division Docket, Volume I, p. 228.
13 Exhibit "R-7", BIR Records, p. 782.
14 Exhibit "R-8", id., p. 784.
15 Exhibit "R-9", id., p. 784-B.
16 Exhibit "R-11", id., p. 784-A.

e. On 08 October 2013, Gokongwei executed the fifth (5th) waiver which extended the period of assessment until 30 June 2014. It was accepted by OIC-ACIR Misajon on 17 October 2013. The 5th waiver covered all taxes for TY 2009.[17]

In the *interim*, petitioner issued Memorandum of Assignment (**MOA**) No. LOA-116-2013-0302 dated 18 February 2013[18], replacing the previously assigned ROs and directing RO Allan M. Maniego (**Maniego**) and GS Wilfredo S. Reyes (**Reyes**) to continue the audit and/or investigation of respondent's books of account.

Later, or on 26 May 2014, respondent received a copy of the Preliminary Assessment Notice (**PAN**)[19] of even date which petitioner signed. The said PAN stated that after investigation, respondent was found liable for deficiency income tax (**IT**), VAT, withholding tax on compensation (**WTC**), expanded withholding tax (**EWT**), final tax (**FT**) and documentary stamp tax (**DST**) for TY 2009.[20] On 10 June 2014, respondent filed a Reply to the PAN[21] and opposed the deficiency tax assessments.

On 27 June 2014, respondent received a copy of the Formal Letter of Demand[22] (**FLD**) with Assessment Notices (**ANs**).[23] Aside from the amount of interest, the FLD contained the same deficiency tax assessments for IT, VAT, WTC, EWT, FT, and DST for TY 2009.[24] On 25 July 2014, respondent filed its Protest[25] to the FLD and requested for a reinvestigation of the alleged deficiency taxes.

On 03 September 2015, respondent received a copy of the Final Decision on Disputed Assessment (**FDDA**) with attached Details of Discrepancies.[26] The FDDA contained deficiency tax assessments in the amount of ₱286,445,331.49.[27] Respondent also received another FDDA

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17 Exhibit "R-12", id., p. 784-C.
18 See Exhibit "R-3", id., p. 883a.
19 Exhibit "R-15", id., pp. 948-955.
20 Par. I(3), JSFI, Division Docket, Volume I, p. 227.
21 BIR Records, pp. 1050-1064.
22 Exhibit "R-17", id., pp. 979-986.
23 Id., pp. 966-971.
24 Par. I(4), JSFI, Division Docket, Volume I, pp. 227-228.
25 BIR Records, pp. 1231-1250.
26 Exhibit "R-20", id., pp. 1281-1288.
27 Par. II(3), JSFI, Division Docket, Volume I, p. 228.

(Part II) which demanded payment for compromise penalty in the amount of ₱438,500.00.[28]

PROCEEDINGS BEFORE THE THIRD DIVISION

On 02 October 2015, respondent, as then petitioner, filed its Petition for Review[29] before this Court. The case was raffled to the Third Division and was docketed as CTA Case No. 9161.[30]

In petitioner's Answer[31], as then respondent, to the aforementioned petition, he or she raised the following special and affirmative defenses: (1) the assessments are valid because the MOA was issued when the audit was reassigned to a new RO and GS; (2) respondent actively participated in the audit and/or investigation, hence, it admitted the authority of the reassigned RO and GS to conduct the said audit; (3) the instant case falls within the exceptions stated under Section 222(a)[32] of the NIRC of 1997, as amended, thus, the prescriptive period to assess is ten (10) years instead of the regular three (3) years; (4) the assessments have factual and legal bases ; and, (5) respondent is liable to pay the deficiency taxes.

In the trial that ensued, respondent presented the following witnesses, namely: (1) Lovely V. Palmero (**Palmero**), respondent's Controller; and, (2) Ria Anne P. Abanto (**Abanto**), the court-commissioned Independent Certified Public Accountant (**ICPA**).

In her Judicial Affidavit[33], Palmero testified that: (1) respondent was the subject of a BIR tax examination for which an LOA was issued; (2) respondent, however, did not receive an electronic LOA (**eLOA**) for the said examination; (3) upon its receipt of the PAN and the FLD,

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28 BIR Records, pp. 1279-1280.

29 Division Docket, Volume I, pp. 12-119, with attached annexes.

30 The Third Division was then composed of Associate Lovell R. Bautista (Ret.), Associate Justice Esperanza R. Fabon-Victorino (Ret.), and Associate Justice Ma. Belen M. Ringpis-Liban.

31 Filed on 28 December 2015; Division Docket, Volume I, pp. 134-150.

32 **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

33 Exhibit "P-121", Division Docket, Volume I, pp. 285-307.

respondent filed written protests against the assessments and findings; (4) respondent executed a series of waivers to extend the period of assessment; (5) the waivers can be classified into two (2) sets: the first set pertained to waivers for VAT and WT, while the second set covered all taxes; (6) petitioner accepted the 1st waiver only on 27 April 2012 and respondent was informed of the acceptance on 09 May 2012; (7) with the late acceptance and notice, the assessment for the VAT and WT for the 1st quarter of TY 2009 had already prescribed; (8) petitioner accepted the 4th waiver only on 17 April 2013 and respondent was informed of the acceptance on 22 April 2013; (9) with the late acceptance and notice, the period to assess IT for TY 2009 had already prescribed; (10) respondent submitted reconciliations for the alleged discrepancies that petitioner claimed to have discovered during the audit but the latter did not consider them and proceeded to issue the FLD and FDDA; and, (11) the assessments and the resulting alleged deficiency taxes are void for lack of factual and legal bases.

In her cross-examination[34], Palmero confirmed that although respondent did not receive an eLOA, the latter participated in the conduct of the audit and/or investigation. When asked about the waivers, she reiterated that the 1st waiver was limited to VAT and WT, and that the notice of acceptance was only conveyed on 09 May 2012. Notwithstanding, respondent still executed the succeeding waivers. Moreover, Palmero stated that the issue of prescription was not mentioned nor raised in respondent's protest to the FLD. No redirect and re-cross examinations were conducted.

Abanto assumed the witness stand next. In her Judicial Affidavit[35], she testified that: (1) she examined respondent's supporting documents and performed the procedures that she herself had devised to validate the latter's contentions on the alleged deficiencies; (2) she was not able to verify or substantiate some of the BIR findings for lack of details and/or basis; and, (3) she submitted the result of her audit through the ICPA Report[36] that was filed before the Third Division on 14 October 2016. No cross-examination was conducted.

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34 TSN dated 16 August 2016, pp. 11-15.
35 Exhibit "P-122", Division Docket, Volume II, pp. 543-552.
36 A copy of the ICPA Report is attached in the Division Docket, Volume II, pp. 505-539.

Palmero was later recalled to the witness stand to testify on her Supplemental Affidavit.[37] There, she identified some of the supporting documents that may affect the findings in the ICPA report, particularly the certifications from respondent's suppliers confirming the latter's purchases in December 2009. Unfortunately, respondent failed to produce the original copies of the two (2) duplicate certifications despite diligent efforts to locate them. Additionally, Palmero identified respondent's monthly alphalist of payees with the Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) from February 2009 to January 2010, and the reconciliation schedules between the purchases from a certain supplier and the withheld taxes.

On cross-examination[38], Palmero explained that respondent had reached out to the suppliers through letters, emails and phone calls to secure the originals of the 2 duplicate certifications. Unfortunately, up until the day of her testimony, the originals were never retrieved. No redirect and re-cross examinations were conducted.

On 07 April 2017, respondent filed its Formal Offer of Evidence with Motion for Production of Documents and Additional Commissioner's Hearing[39] (**FOE**). Following petitioner's failure to comment on the FOE[40], the Court resolved to admit respondent's exhibits except "**P-79.148**", "**P-79.153**", "**P-79.155**", and "**P-104.6.127**"[41] for not being found in the case records.[42] The denied exhibits were later admitted when respondent moved for reconsideration.[43]

On the other hand, petitioner (as then respondent) presented its lone witness, RO Joel M. Aguila (**Aguila**), who testified through his Judicial Affidavit.[44] He stated that: (1) he was authorized to conduct the

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37 See Exhibit "P-123", Division Docket, Volume II, pp. 594-600.
38 TSN dated 24 January 2017, pp. 15-19.
39 Division Docket, Volume II, pp. 670-693.
40 See Records Verification dated 19 April 2017, id., p. 851.
41

Exhibit	Description
"P-79.148"	Supporting Documents - Purchases
"P-79.153"	Supporting Documents – Purchases
"P-79.155"	Supporting Documents – Purchases
"P-104.6.127"	Bank Charges

42 See Resolution dated 14 February 2018, id., pp. 875-877.
43 See Motion for Reconsideration (of the Resolution dated 14 February 2018 on Petitioner's Formal Offer of Evidence), id., pp. 878-888, and Resolution dated 22 May 2018, id., pp. 898-899.
44 Exhibit "R-22", id., pp. 906-913.

audit by virtue of the issued LOA; (2) respondent executed five (5) waivers and were all accepted by OIC-ACIR Misajon; and, (3) despite notice, respondent failed to submit additional documents to rebut the audit findings; and, (4) after the audit and/or investigation, he recommended in his Memoranda[45] the issuance of the PAN, FLD and FDDA.

On cross-examination[46], RO Aguila confirmed that in the Memoranda, RO Maniego and GS Reyes were among the signatories therein. However, RO Maniego and GS Reyes were not included as the authorized BIR officers in the issued LOA. Upon the Court's inquiry, RO Aguila answered that RO Maniego and GS Reyes were only authorized by an MOA to conduct the audit. No redirect and re-cross examinations were conducted.

Later, or on 22 March 2019, petitioner filed his or her FOE.[47] After respondent filed its Comment[48] thereon, the Court admitted all of petitioner's exhibits.[49] On 25 July 2019, respondent filed its Memorandum[50], while petitioner filed his or her Memorandum on 30 August 2019.[51]

Thereafter, the Third Division promulgated the now assailed Decision[52], the dispositive portion of which reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the subject assessments issued against [respondent] for deficiency income tax, VAT, EWT, WTC, FT, DST, and compromise penalties in the total amount of ₱286,445,331.48, for taxable year 2009, as embodied in the FLD dated June 27, 2014 and FDDA dated September 3, 2015, are hereby **ANNULLED, CANCELLED, and SET ASIDE.**

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45 See Memorandum dated 03 April 2014, Exhibit "R-14", BIR Records, pp. 934-940; Memorandum dated 13 June 2014, Exhibit "R-16", id., p. 965; Memorandum dated 22 June 2015, id., Exhibit "R-19", id., p. 1264.

46 TSN dated 12 March 2019, pp. 9-11.

47 Division Docket, Volume II, pp. 937-943.

48 Filed on 10 April 2019, id., pp. 946-948.

49 See Resolution dated 13 June 2019, id., pp. 954-955.

50 Id., pp. 956-978.

51 Id., pp. 988-1036.

52 Supra at note 1.

SO ORDERED.

...

In the assailed Decision, the Third Division held that the LOAs issued from 01 March 2010 covering cases for 2009 and other TYs should have been retrieved and replaced with a new eLOA pursuant to Revenue Memorandum Order (**RMO**) No. 69-2010.[53] It found that the BIR personnel who conducted the audit were not authorized by an eLOA; hence, the resulting assessment should be invalidated.

The Third Division also ruled that the FLD contained an indefinite amount of tax liabilities since the wordings therein, "***Please note that the interest and the total amount due will have to be adjusted if paid beyond July 9, 2014***" subjected the total amount of tax due to a further adjustment depending on when it will be actually paid. Moreover, the accompanying ANs failed to indicate any due date for the payment of the deficiency taxes. For this reason, the Third Division resolved to cancel the subject tax assessments.

Aggrieved, on 08 October 2020, petitioner filed a Motion for Reconsideration[54] (**MR**), to which respondent filed its Comment/Opposition[55] on 16 December 2020.

Subsequently, the Third Division promulgated the assailed Resolution[56] denying petitioner's MR. The dispositive portion thereof reads:

...

WHEREFORE, finding no cogent reason to reverse the ruling in the Assailed Decision, Respondent's "Motion for Reconsideration [Decision dated September 2, 2020] is **DENIED** for lack of merit.

SO ORDERED.

...

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53 Guidelines on the Issuance of Electronics Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.
54 Division Docket, Volume III, pp. 1095-1133.
55 Id., pp. 1263-1276.
56 Supra at note 2.

Unsatisfied, on 02 February 2022, petitioner filed before the Court *En Banc* the instant Petition for Review.[57] Respondent filed its Comment (To Petition for Review dated 31 January 2022)[58] on 12 April 2022.

On 02 May 2022, the Court *En Banc* directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for conciliation proceedings.[59] However, the parties refused to have their case mediated[60] hence, the case was submitted for decision on 13 July 2022.[61]

ISSUES

Before Us, petitioner forwards the following issues for resolution:

> I.
> WHETHER THE THIRD DIVISION ERRED IN RULING ON AN ISSUE THAT RESPONDENT ROBINSONS TOYS, INC. NEVER RAISED IN ITS PRIOR OR ORIGINAL PETITION;
>
> II.
> WHETHER THE THIRD DIVISION ERRED IN RULING THAT THE ABSENCE OF AN ELECTRONIC LETTER OF AUTHORITY (ELOA) RENDERED THE SUBJECT TAX ASSESSMENTS VOID; AND,
>
> III.
> WHETHER THE THIRD DIVISION ERRED IN RULING THAT THE SUBJECT TAX ASSESSMENTS ARE VOID DUE TO LACK OF DEFINITE AMOUNT OF TAX LIABILTIES AND FAILURE TO STATE THE DEFINITE DUE DATE OF PAYMENT.

ARGUMENTS AND DISCUSSIONS

In support of the above, petitioner contends that it was deprived of due process when respondent failed to raise the issues on (1) the lack of definite amount of tax liabilities; and, (2) the absence of due date for payment in the ANs in its original petition before the Third Division and in the JSFI. According to petitioner, it was not given an opportunity to

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57 Supra at note 3.
58 *Rollo*, pp. 97-114.
59 See Resolution dated 02 May 2022, id., pp. 128-129.
60 See No Agreement to Mediate, id., p. 130.
61 See Resolution dated 13 July 2022, id., pp. 132-133.

form an argument on the said issues. He or she adds that although the RRCTA permits the Court to resolve issues not included in the stipulations, the Court may only do so if the said issues are related to the main contentions reflected in the Pre-Trial Order. Petitioner insists that deciding issues that are neither raised by the parties nor derived from the pleadings are blindsiding and antithetical to the orderly disposition of the case.

Petitioner also argues that the Court in Division's jurisdiction is strictly appellate in nature and limited to judicial review. Citing the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[62], petitioner claims that a judicial review is not a trial *de novo*; thus, the inquiry is restricted only to the findings of the administrative agencies. Since the absence of an eLOA is not an issue disposed during the administrative level, the Court cannot rule on the said matter.

Assuming that the Court can rule on undisputed matters, petitioner asserts that the assessment is still valid despite the lack of an eLOA because there was an issued LOA that previously authorized the BIR personnel to conduct the audit and/or investigation. Petitioner adds that RMO Nos. 62-2010[63] and 69-2010 were substantially complied with when the MOA was issued for the reassignment of the audit to a new RO.

Petitioner likewise argues that the absence of due dates on the ANs should not be a ground to invalidate the assessment. According to him or her, the FLD already contained a definite amount of tax liability (as it has already been computed) and it is only the interest that will be adjusted if payment is made beyond 09 July 2014. A further scrutiny of the FLD would also reveal that respondent was duly informed of the facts and the law on which the assessments were based.

Petitioner also insists that the Third Division erred in relying heavily on the principles enunciated in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[64] (***Fitness by Design***) which, according to petitioner, is not an interpretation of the law but merely a

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62 G.R. No. 207112, 08 December 2015.
63 Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.
64 G.R. No. 215957, 09 November 2016.

reiteration of a previous ruling. Petitioner explains that the prevailing ruling therein should be revisited because it misquoted a portion of the Supreme Court decision in the case of *Commissioner of Internal Revenue v. Dominador Menguito*[65], which was resolved on a very dissimilar issue from that of *Fitness by Design*.

With the above, petitioner reiterates that the subject tax assessments against respondent are valid and the latter is liable to pay the deficiency tax liabilities for IT, VAT, DST, FT, WTC, and EWT in the aggregate amount of ₱286,445,331.49, inclusive of surcharges and interests with additional penalties until it is fully paid.

On the other hand, respondent counters that petitioner was not deprived of due process. As borne by the records, it raised the defects in the FLD and its FOE. The fact that petitioner failed to comment on its FOE could not translate to a violation of due process.

Respondent likewise contends that when the parties agreed in the JSFI that the issue to be resolved is respondent's liability for the deficiency taxes, such stipulated issue is broad enough to cover the FLD's and the ANs' validity or invalidty. In addition, both documents were offered by the parties in their FOEs. Since they have become part of the Court docket, the Third Division could examine and rule upon them.

Lastly, respondent maintains that there could be no way to uphold the assessments as they were legally infirm owing to the absence of the required LOA for RO Maniego and GS Reyes (to conduct an audit and/or examination) and the fact that no due dates (in the ANs) were indicated for the payment of a supposed fixed tax liability.

RULING OF THE COURT *EN BANC*

Except on the supposed invalidity of the assessments due to the absence of an eLOA, the Court *En* Banc fully agrees with the Third Division's actions in this case.

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65 G.R. No. 167560, 17 September 2008.

THE COURT CAN RULE ON ISSUES THAT ARE RELEVANT OR NECESSARY FOR THE FULL DISPOSITION OF THE CASE.

Under Section 8 of Republic Act (**RA**) No. 1125, as amended[66], cases filed before this Court are litigated *de novo* therefore, party-litigants should prove every minute aspect of their cases.[67]

In the case of *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*[68], the Supreme Court declared that this Court can consider evidence even when they have not been presented before the BIR during the administrative proceedings. Likewise, as evidence are evaluated and reviewed again, the scope of this Court's scrutiny may include factual findings. The relevant part states:

> ...
>
> The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:
>
> > Section 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.
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> ...

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66 2005 REVISED RULES OF THE COURT OF TAX APPEALS, AS AMENDED.

67 *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

68 G.R. Nos. 206079-80, 17 January 2018; Citations omitted and italics in the original text.

In the instant case, it is noted that the FLD and the ANs were offered formally and thus became part of the records of the case.[69] Similarly, the BIR also transmitted to the Court the entire BIR records and offered the same as evidence.[70] Thus, while it may indeed be true that the eLOA was a non-issue, this Court is not hand-tied, neither precluded from reviewing and acting upon the pieces of evidence before it, specially so if it intends to make a judicious disposition of the case.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[71] the Supreme Court ruled that this Court can resolve an issue which the parties did not raise, *viz*:

> ...
>
> 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 CT A 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.
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> ...

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69 Petitioner offered the FLD as Exhibit "R-17"; while respondent offered it as Exhibit "P-6".

70 Folder 1 and Folder 2 of the BIR records were offered and admitted as "R-21" and "R-21-a" respectively.

71 G.R. No. 183408, 12 July 2017; Citation omitted.

THE ABSENCE OF AN ELECTRONIC LETTER OF AUTHORITY (eLOA) DOES NOT AUTOMATICALLY INVALIDATE THE ASSESSMENTS.

Based on Section 13[72] of the NIRC of 1997, as amended, the LOA is the authority given to the RO to perform assessment functions. It empowers or enables the RO to examine a taxpayer's books of account and other accounting records for the purpose of collecting the correct amount of tax.[73] The necessity of a valid LOA to authorize the audit and investigation of a taxpayer is not only an administrative but a statutory requirement. Indisputably, a valid LOA is essential to the legitimacy of an audit, and consequently, of the assessment that may be issued thereafter.

As the records show, the Third Division held that the LOAs issued on 01 March 2010 (covering cases for 2009 and other TYs) should have been retrieved and replaced with a new eLOA to sustain the assessment. RMO No. 69-2010 provides:

> ...
> 6. All [LOAs], whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years, as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, **shall be retrieved and replaced with the new [eLOA] form (BIR Form No. 1966)**.
>
> 7. All revenue officers ordered to conduct investigation/audit through manually issued [LOAs] prior to July 1, 2010 should continue the conduct of audit/investigation, **subject to the retrieval and replacement of [LOAs] as mandated under Item No. III 6 of this Order.**[74]
> ...

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72 **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.

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

74 Emphasis supplied.

In the instant case, petitioner issued LOA No. LOA-127-2010-00000027 on 14 May 2010 authorizing the examination of respondent's books of accounts for TY 2009.[75] Indeed, RMO No. 69-2010 requires that manual LOAs be retrieved and be replaced with the new eLOA. However, a careful scrutiny of the RMO does not suggest that the conduct of the audit pursuant to the previously-issued manual LOA would be invalidated in the event that a new eLOA is not issued. Neither does it provide a blanket revocation of the manual LOA if the said manual LOA is not replaced with an eLOA.

As it is, a manual LOA still validly clothes an RO the authority needed to conduct an examination or assessment in accordance with Sections 10 and 13 of the NIRC of 1997, amended.

Despite the foregoing disquisition, the Court *En Banc*, however, still finds the assessments against respondent as void on grounds hereinafter discussed.

REVENUE OFFICER (RO) MANIEGO AND GROUP SUPERVISOR (GS) REYES WERE NOT AUTHORIZED BY A LETTER OF AUTHORITY (LOA) TO CONDUCT THE AUDIT.

Contrary to petitioner's claim that an MOA sufficiently clothes an RO with authority to examine and investigate a taxpayer's tax liability, or that it has the same force and effect as that of an LOA, the Court *En Banc* finds otherwise.

The Court *En Banc* has been consistent in ruling that the RO tasked to examine the books of accounts of taxpayers must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

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

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75 Supra at note 10.

> (A) *Examination of Return and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative** may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided*, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[76]
>
> ...

Section 10(c) of the NIRC of 1997, as amended, provides:

> ...
>
> **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[.][77]
>
> ...

In relation to the above, Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books of accounts must be armed with an LOA, *viz*:

> ...
>
> **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.[78]
>
> ...

Under the said provision, an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer.

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76 Emphasis supplied.
77 Emphasis supplied.
78 Emphasis supplied.

Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon petitioner.

Section D(4) of Revenue Memorandum Order (**RMO**) No. 43-90[79] dated 20 September 1990, provides:

> ...
>
> 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.[80]
>
> ...

As can be gleaned from the foregoing, RO Maniego's and GS Reyes's authority merely sprung from an MOA issued by the Chief of Regular LT Audit Division I. It is worthy to note that the MOA dated 18 February 2013 and the corresponding change in RO and GS happened prior to the issuance of the PAN and FLD on 26 May 2014 and 27 June 2014, respectively.

In addition to the aforequoted Sections 6(A), 10(c) and 13 of the NIRC of 1997, as amended, which provide that only the CIR and his or her duly authorized representatives (*i.e.*, Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR) may issue the LOA, **petitioner's own rules, specifically, RMO No. 43-90[81] mandates the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.** It reads —

> ...
>
> **Any reassignment/transfer of cases to another RO(s),** and revalidation of [LOAs] which have already expired, **shall require the issuance of a new [LOA]**, with the corresponding notation thereto,

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79 *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated 20 September 1990.*

80 Emphasis supplied.

81 Supra at note 79.

including the previous [LOA] number and date of issue of said [LOAs].[82]

...

Moreover, in the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[83] (**McDonald's**), the Supreme Court highlighted the difference between an MOA and an LOA in this wise:

...

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

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82 Emphasis and underscoring supplied.
83 G.R. No. 242670, 10 May 2021; Emphasis supplied.

> 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.**
>
> ...

Applying the above principles to the case at bar, the MOA signed by the Chief of Regular LT Audit Division I, does not and cannot confer authority to RO Maniego and GS Reyes to continue the audit or investigation of respondent's books of accounts for TY 2009. As both are not authorized through an LOA, their investigation and subsequent assessments of respondent's tax deficiency could not be sanctioned.

Incidentally, while it may be gainsaid that *McDonald's* does not do away with the reassignment by the CIR himself, such is not the case here.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[84], the Supreme Court underscored the importance of an LOA, *viz*:

> ...
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** ...
>
> ...
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable,

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

> inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, 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.**
>
> ...
>
> ... To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. ...
>
> ...

The Supreme Court, citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[85], went on to state:

> ...
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.**
>
> ...

Further, the Supreme Court in *McDonald's*[86] concluded that:

> ...
>
> 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, the records indisputably show that RO Maniego and GS Reyes continued the audit and/or investigation of respondent's

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85 G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

86 Supra at note 83; Emphasis and underscoring supplied.

books of account solely by virtue of an MOA.[87] 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 13[88] in relation Section 10(c)[89] of the NIRC of 1997, as amended, Item D(4) of RMO No. 43-90[90] and Item II(2)[91] of RMO No. 29-07[92]) signed the MOA. As such, RO Maniego and GS Reyes could not be deemed to have been validly clothed with the proper authority to continue the audit and recommend the issuance of the assessments against respondent.

Although We are not unaware that petitioner's witness, RO Aguila, was named in the manual LOA and was also a signatory in the memoranda (which recommended the issuance of the PAN and the FLD), the fact remains that RO Maniego and GS Reyes, who continued and conducted an actual audit, were not issued with a new LOA.

Assuming *arguendo* that the assessment may be upheld through the lone authority of RO Aguila to conduct the audit, the deficiency assessments will still be invalidated for failure to observe procedural due process in their issuance.

PETITIONER FAILED TO OBSERVE DUE PROCESS WHEN HE OR SHE ISSUED THE FINAL LETTER OF DEMAND (FLD) AND FINAL DECISION ON DISPUTED ASSESSMENT (FDDA).

An examination of the PAN, FLD and FDDA, together with their attached Details of Discrepancies, reveals that they contained the same findings and basic tax deficiency assessments. This is despite respondent's timely submission of its reply to the PAN and protest letter to the FLD.

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87 Supra at note 18.
88 Supra at note 72.
89 Supra at note 77.
90 Supra at note 79.
91 **II. AUDIT POLICIES AND GUIDELINES.**
...
2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/ Head Revenue Executive Assistants.
92 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

In the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[93] that bears a similar factual backdrop as herein case, the Supreme Court discussed exhaustively the importance of informing the taxpayer of the factual and legal bases of the issued assessment; the absence of which is tantamount to the taxpayer's deprivation of due process. The pertinent part states:

> ...
>
> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.**
>
> ...
>
> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.
>
> ...
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.**
>
> ...

Here, petitioner simply issued the same assessments as contained in the PAN, FLD and FDDA without noting the arguments raised by

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93 G.R. Nos. 201398-99, 03 October 2018; Citations omitted and emphasis supplied.

respondent in its reply and protest letter. As required, petitioner should have provided the reasons and the particular facts upon which his or her conclusions are based. As a result, respondent was left with no clue as to whether the reconciliations it made was even considered or reviewed.

THE FINAL LETTER OF DEMAND (FLD) AND THE ASSESSMENT NOTICES (ANs) DO NOT INDICATE A DEFINITE DUE DATE FOR PAYMENT.

More importantly, the ANs do not indicate any due date for the payment of the alleged deficiency tax assessments hence, they (ANs) violate the requirement of demand. As ruled in *Fitness by Design*[94], the absence of the specific period within which to pay the tax due makes the assessment invalid, *viz*:

> ...
>
> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]"Thus, it must be "sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period.**"
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> ...
>
> Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

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94 Supra at note 64; Citations omitted, emphasis supplied and italics in the original text.

> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. **The notice, therefore, did not contain a definite and actual demand to pay.**
>
> ...

Here, the FLD provides: "... you are requested to pay your aforesaid deficiency tax liabilities through eFPS using BIR Payment Form (BIR Form 0605) *within the time shown in the enclosed assessment notice...*"[.][95] However, the six (6) Audit Result/ANs[96] conspicuously do not show any due date for payment. Thus, the FLD and the ANs attached to it are void for failure to demand payment of the taxes due within a specific period.[97]

As the Court *En Banc* similarly finds the assessments against respondent void, it would also necessarily strike down the imposed compromise penalty. Further, in the same vein, a discussion of whether the assessments had prescribed would no longer have any bearing on the outcome of this instant case.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 02 February 2022 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 02 September 2020 and Resolution dated 11 December 2021, respectively, of the Third Division in CTA Case No. 9161 entitled *Robinsons Toys, Inc. 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

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95 BIR Records, p. 983.

96 Supra at note 23. The following are the Assessment Notices:

Assessment Number	Tax Type	Amount
DS-116-LOA-0000027-09-14-995	Documentary Stamp Tax	₱ 100,262.11
WF-116-LOA-0000027-09-14-994	Final Tax	5,011,886.22
WE-116-LOA-0000027-09-14-993	Expanded Withholding Tax	5,477,812.47
WC-116-LOA-0000027-09-14-992	Compensation Withholding Tax	2,067,632.11
VT-116-LOA-0000027-09-14-991	Value-Added Tax	83,142,439.51
IT-116-LOA-0000027-09-14-990	Income Tax	₱ 161,685,521.08

97 *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), 24 August 2020.

proceeding with the collection of the taxes assessed against respondent Robinsons Toys, Inc. as provided in the Final Decision on Disputed Assessment dated 03 September 2015 in the total amount of ₱286,445,331.49, representing deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, final and documentary stamp tax, inclusive of increments; and the Final Decision on Disputed Assessment (Part II) of even date for the payment of compromise penalty in the amount of ₱438,500.00 for taxable year 2009.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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