REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2648** (CTA Case No. 9818)
	Present:
- versus -	DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES, and ANGELES, *JJ.*
8196 CONVENIENCE CORPORATION, Respondent.	Promulgated: JAN 0 5 2024 4:20 pm

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) pursuant to Section 3(b)[2], Rule 8 of

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[1] Filed on 20 July 2022, *Rollo*, pp. 5-16.

[2] **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.

the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks to reverse and set aside the Decision dated 10 June 2021[3] (**assailed Decision**) and the Resolution dated 14 June 2022[4] (**assailed Resolution**) of this Court's First Division in CTA Case No. 9818, entitled *8196 Convenience Corporation v. Commissioner of Internal Revenue*. Both assailed Decision and Resolution granted respondent 8196 Convenience Corporation's (**respondent**'s) prior Petition for Review and cancelled the Formal Letter of Demand (**FLD**) and Assessment Notices (**ANs**) that the Bureau of Internal Revenue (**BIR**) had issued against it.

PARTIES OF THE CASE

Petitioner, as the CIR, is charged with, among others, the duty of assessing and collecting internal revenue taxes. He or she holds office at the BIR, National Office Building, BIR Road, Diliman, Quezon City and may be served with summons and other legal processes through the undersigned counsels, with office address at Legal Division, BIR Revenue Region No. 6 (**RR No. 6**), 5/F BIR Bldg. I, Solana Street, Intramuros, Manila.[5]

Respondent, on the other hand, is a corporation duly registered and existing under the laws of the Philippines. It holds its principal office at Maria Orosa St. near cor. T.M. Kalaw St., Ermita, Manila.[6]

FACTS OF THE CASE

In 2010, Regional Director Alfredo V. Misajon (**RD Misajon**) of Revenue Region No. 6 (RR No. 6) issued Letter of Authority (**LOA**) No. 200700022984, authorizing Revenue Officer (**RO**) Remigio N. Tiangco, Jr. (**Tiangco**), under the supervision of Group Supervisor (**GS**) Marvin C. Sevilla (**Sevilla**), to examine petitioner's books and other accounting records for all internal revenue taxes for the period covering 01 January 2009 to 31 December 2009.

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3 *Rollo*, pp. 25-50; Penned by Associate Justice Catherine T. Manahan, with Presiding Justice Roman G. Del Rosario concurring.

4 Id., pp. 52-58.

5 Paragraph 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume. I, pp. 135-136.

6 Par. 1, id., p. 135; Exhibit "P-2", Volume II, p. 499.

In September 2012, an Assignment Slip was also issued to RO Mirabel R. Vidal (**Vidal**) for the review of respondent's 2009 audit investigation. Later, petitioner issued a Notice of Informal Conference (**NIC**). Thereafter, a Preliminary Assessment Notice (**PAN**) dated 26 December 2012 with Details of Discrepancies was also released assessing respondent of deficiency Income Tax (**IT**), Value-Added Tax (**VAT**), and Expanded Withholding Tax (**EWT**), in the aggregate amount of ₱6,131,193.90.

On 16 January 2013, respondent received the FLD and AN Nos. 33-09-1T-4378, 33-09-VT-4379, and 33-09-WE-4380, all dated 14 January 2013 (from the BIR RR No. 6 – Manila) for its alleged deficiency IT, VAT, and EWT, detailed as follows:

I. Income Tax (Assessment No. 33-09-IT-4378)

Taxable Income Return		
Add Adjustments		
50% Disallowances	₱4,257,261.00	
Non-withholding	373,938.00	₱4,631,199.60
Total		₱4,631,199.60
Income Tax due		₱1,389,359.88
Less: Payments/Credits		19,066.65
Deficiency Income Tax		₱1,370,293.23
Add: Surcharge (Sec. 248)		-
Interest		799,327.67
Total Tax Due		**₱2,169,620.90**

II. VAT (Assessment No. 33-09-VT-4379)

Sales subject to VAT	₱21,872,315.00
Output Tax	₱2,624,677.80
Less: Creditable Input Tax	-
VAT payable	₱2,624,677.80
Less: Tax Paid	64,300.51
Deficiency VAT	₱2,560,377.29
Add: Surcharge	-
Interest	₱1,521,980.43
Total Amount Due	₱4,082,357.72

III. EWT (Assessment No. 33-09-WE-4380)

Security Services	₱316,510.00	2%	₱6,330.20
Professional Fee	87,500.00	10%	8,750.00
EWT due			₱15,080.20
Less: Remittance			601.44
Deficiency EWT			₱14,478.76
Add: Surcharge			-
Interest			8,687.26
Total Amount Due			**₱23,166.02**

On 06 February 2013, respondent filed with petitioner (through RR No. 6 – Manila) its protest to the said FLD. Relative thereto, in the Letter dated 06 March 2013 of Officer-in-Charge Regional Director Simplicio A. Madulara (**OIC-RD Madulara**), petitioner was informed that respondent's entire case docket (together with its letters) was returned to Revenue District Office (**RDO**) No. 033-Ermita-Intramuros-Malate-Port Area Manila, for appropriate action.

In the Letter dated 21 May 2013, respondent learned that OIC-RD Madulara approved its request for reinvestigation. It was given a period of sixty (60) days from receipt of the Letter dated 21 May 2013 to submit the required documents and accounting records; otherwise, respondent shall be considered in default.

On 07 October 2013, respondent received a Letter/Decision dated 01 October 2013[7], signed by OIC-RD Madulara, finding it liable to pay deficiency IT, VAT, and EWT, for taxable year (**TY**) 2009, in the amount of ₱2,169,620.90, ₱4,082,357.72, and ₱23,166.02, respectively. The Letter/Decision contained the statement - "This serves as our Final Decision on Disputed Assessment [**FDDA**]".[8]

On 25 October 2013, respondent filed with then Commissioner Kim S. Jacinto-Henares (**Commissioner Jacinto-Henares**) a Motion for Reconsideration (**MR**) of the aforesaid Letter/Decision of 01 October 2013. On 18 October 2013, a similar MR was filed before RR No. 6 - Manila.

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7 Exhibit "R-30", Division Docket, Volume II, p. 735.

8 Id.

On 21 March 2018, the then incumbent CIR, Caesar R. Dulay (**Dulay**), issued a Decision affirming the assessment against respondent for IT. However, modifications were made on the assessed deficiency VAT and EWT.

Upon learning of the aforesaid 21 March 2018 Decision, on 19 April 2018, respondent filed a Petition for Review[9] before this Court. The case was raffled to this Court's Second Division.

On 28 June 2018, petitioner filed his or her Answer to the Petition for Review.[10] The Pre-Trial Conference thereafter proceeded 02 August 2018.[11] Prior thereto, both petitioner and respondent submitted their respective Pre-Trial Briefs (**PTBs**) separately on 30 July 2018.[12] On 30 July 2018, petitioner transmitted the BIR Records.[13]

On 07 September 2018, the parties presented their Joint Stipulation of Facts and Issues[14] (**JSFI**), which was later approved in an Order dated 10 September 2018.[15] Subsequently, the Second Division issued a Pre-Trial Order dated 13 November 2018.[16]

Later, upon respondent's motion[17], the Court commissioned Schwendi S. Fajardo (**Fajardo**) as an Independent Certified Public Accountant (**ICPA**) for this case.[18] Still later, this case was transferred to this Court's First Division pursuant to the Order dated 24 September 2018.[19]

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9 Division Docket, Volume I, pp. 10-25.
10 Id., pp. 89-96.
11 Notice of Pre-Trial Conference dated 03 July 2018, id., pp. 97-98; Minutes of the hearing held on, and Order dated 02 August 2018, id., pp. 122-123.
12 Respondent's Pre-Trial Brief, id., pp. 102-110 and Petitioner's Pre-Trial Brief, id., pp. 113-118.
13 See Compliance, id., pp. 111-112.
14 Id., pp. 135-142.
15 Id., pp. 144-145; Refer also to the Minutes of the hearing held on 10 September 2018, id., p. 135.
16 Id., pp. 184-192.
17 See Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals filed on 04 September 2018, id., pp. 124-126.
18 Oath of Commission dated 10 September 2018, id., p. 134; Minutes of the hearing held on, and Order dated September 10, 2018, id., pp. 143-146.
19 Reorganizing the Three (3) Divisions of the Court pursuant to CTA Administrative Circular No. 02-2018 dated 18 September 2018. d., p. 147.

At the trial that ensued, respondent presented the testimony of Joseph Cedric V. Calica[20] (**Calica**), its authorized representative in all matters relating to the 2009 tax audit. Due to the failure of respondent's counsel to file the Judicial Affidavit of the Court-commissioned ICPA (Fajardo), her presentation to the witness stand was deemed waived.[21]

On 10 October 2018, the Report of the ICPA was submitted.[22]

Subsequently, on 23 July 2019, respondent filed its Formal Offer of Evidence[23] (**FOE**). On 07 August 2019, petitioner filed his or her "Comment/Opposition (To [respondent's] Formal Offer of Evidence)".[24] In Resolution dated 22 October 2019[25], the Court admitted respondent's Exhibits "P-2", "P-4", "P-5", "P-5-1", "P-6", "P-7", "P-7-1", "P-8", "P-16" and "P-16-a"[26]; but denied Exhibits "P-3", "P-3-1", "P-9", "P-9-1", "P-9-2", "P-8", "P-8-1", "P-8-2", "P-8-3", "P-8-4", "P-8-5", "P-8-6", "P-8-7", "P-8-8" and "P-14"[27], for failure to submit the duly marked exhibits.

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20 Exhibit "P-16", id., pp. 213-222; Minutes of the hearing held on, and Order dated 04 June 2019, id., pp. 372-375.

21 Minutes of the hearing held on, and Order dated 09 July 2019, id., pp. 486-488.

22 Id., pp. 151-173; Minute Resolution dated 22 October 2018, id., p. 174.

23 Id., pp. 493-498.

24 Id., Volume II, pp. 679-680.

25 See Resolution dated 22 October 2019, id., pp. 695-697.

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Exhibit	Description
"P-2"	Letter of Authority (LOA) No. 2007-00022984 issued and signed by its Regional Director of Revenue Region No. 6 – Manila, Alfredo V. Misajon.
"P-4"	Formal Letter of Demand (FLD), addressed to petitioner, and Assessment Notice Nos. 33-09-IT-4378; 33-09-[V]T-437[9], 33-09-WE-4380, all dated January 14, 2013.
"P-5"	Protest letter to the FLD dated February 5, 2013, filed by petitioner on February 6, 2013 submitted through its representative, AMC & Associates.
"P-5-1"	Stamp "Received" by the BIR, RR No. 6 on February 6, 2013, on the February 5, 2013 Protest letter of petitioner.
"P-6"	Final Decision on Disputed Assessment (FDDA), dated October 1, 2013, signed by Simplicio A. Madulara, OIC-Regional Director of Revenue Region No. 6, addressed to petitioner's authorized representative.
"P-7"	Petitioner's Motion for Reconsideration to the FDDA addressed to the Commissioner of Internal Revenue, submitted through its authorized representative on October 25, 2013.
"P-7-1"	Petitioner's Motion for Reconsideration addressed to Mr. Simplicio A. Madulara, OIC-Regional Director, Revenue Region No. 6 filed through its authorized representative on October 18, 2013.
"P-8"	Decision signed by Commissioner of Internal Revenue Caesar R. Dulay.
"P-16"	Judicial Affidavit of Joseph Cedric V. Calica, dated May 29, 2019.
"P-16-a"	Signature of Joseph Cedric V. Calica.

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For his or her part, petitioner presented the testimonies of the following witnesses, namely: (1) Atty. Maricel C. Casison-Dungca[28] (**Atty. Dungca**), petitioner's Action Attorney; and, (2) Vidal[29], petitioner's RO-Reviewer.

On 05 December 2019, petitioner filed his or her FOE.[30] Respondent failed to file its comment thereon.[31] In the Resolution dated 11 February 2020[32], the Court admitted all of petitioner's exhibits. On 17 June 2020, petitioner's Memorandum[33] was filed while respondent's Memorandum[34] was submitted on 29 June 2020. On 16 July 2020, the First Division submitted the case for decision.[35]

Exhibit	Description
"P-3"	Transmittal letter dated June 24, 2010 addressed to Revenue Officer Remigio N. Tiangco, Jr. submitted through its representative, AMC & Associates.
"P-3-1"	Handwritten note "Received by" with signature and date June 28, 2010.
"P-9"	Quarterly VAT Return for the 1st Quarter of 2009.
"P-9-1"	Quarterly VAT Return for the 2nd Quarter of 2009.
"P-9-2"	Quarterly VAT Return for the 3rd Quarter of 2009.
"P-8"	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of January 2009.
"P-8-1"	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of February 2009.
"P-8-2"	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of March 2009.
"P-8-3"	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of April 2009.
"P-8-4"	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of May 2009.
"P-8-5"	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of June 2009.
"P-8-6"	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of July 2009.
"P-8-7"	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of August 2009.
"P-8-8"	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of September 2009.
"P-14"	Year 2009 Annual Income Tax Return and Audited Financial Statements.

28 See Judicial Affidavit, Exhibit "R-36", id., Volume I, pp. 412-415; Minutes of the hearing held on, and Order dated 24 September 2019, id., Volume II, pp. 684-688.

29 See Judicial Affidavit, Exhibit "R-37", id., pp. 441-447; Order dated 19 November 2019, id., Volume II, pp. 699-700.

30 Id., Volume II, pp. 705-711.

31 See Records Verification dated 08 January 2020 issued by the Judicial Records Division of this Court, id., p. 760.

32 See Resolution dated 11 February 2020, id., pp. 767-768.

33 Id., pp. 769-781.

34 Id., pp. 784-805.

35 See Resolution dated 16 July 2020, id., p. 807.

On 10 June 2021, the First Division promulgated its now assailed Decision[36] cancelling and setting aside petitioner's deficiency assessments against respondent. The dispositive portion thereof reads:

> ...
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> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FLD and Assessment Notice Nos. 33-09-IT-4378, 33-09-VT-4379, and 33-09-WE-4380, all dated January 14, 2013, issued against petitioner [herein respondent], are **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED**.
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> ...

In resolving respondent's Petition for Review and applying the principles laid down in *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*[37], the First Division rejected petitioner's argument that the ANs had become final and demandable for respondent's failure to submit all relevant supporting documents within sixty (60) days from the filing of the protest.[38] It also ruled that respondent has already submitted documents to support its protest.[39] It added that it was up to the taxpayer (and not the BIR) to determine which documents are relevant in disputing an assessment.[40] According to it, the BIR can only inform the taxpayer to submit additional documents but it cannot demand what type of supporting documents should be submitted.[41]

The First Division also rejected petitioner's contention that respondent committed forum-shopping by filing two (2) separate MRs to the Letter/Decision dated 01 October 2013 (with the Office of the CIR) and to the Letter dated 06 March 2013 of OIC-RD Madulara of RR No. 6.[42] The First Division stressed that the rule on forum-shopping only applies to judicial cases or proceedings and not to administrative cases.[43]

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36 Supra at note 3.
37 G.R. Nos. 172045-46, 16 June 2009.
38 *Rollo*, pp. 33-36.
39 Id.
40 Id.
41 Id.
42 Id., pp. 36-37.
43 Id.

Significantly, the First Division ruled that the ROs who conducted the reinvestigation had no authority to do so thus rendering the assessments null and void.[44] While the ROs who initially investigated respondent's tax liabilities were authorized by an LOA, the ROs who conducted the reinvestigation were not.[45] The First Division held that since a reinvestigation connotes that the same case is being given a fresh ground of review, the same set of ROs designated under the LOA should have conducted it.[46] If new ROs are appointed for the reinvestigation, a new LOA should have been issued to them.[47]

Finally, the First Division ruled that it did not help petitioner that the new ROs were only given a Referral Memorandum or a Memorandum of Assignment (**MOA**).[48] Citing *Commissioner of Internal Revenue v. Composite Materials, Inc.*[49], the First Division held that the MOA could not be equated to an LOA.[50]

On 12 July 2021, petitioner filed his or her MR.[51] Not swayed by petitioner's arguments, the First Division denied the same.[52]

On 07 July 2022, petitioner filed a "Motion for Extension of Time to File Petition for Review"[53] for fifteen (15) days or until 22 July 2022. Respondent opposed the motion.[54] On 20 July 2022, within the period of extension that petitioner requested, petitioner filed his or her Petition for Review[55] before the Court *En Banc*.

On 28 September 2022, the Court referred the parties for mediation.[56] On 10 November 2022, the Philippine Mediation Center Unit – Court of Tax Appeals (**PMC-CTA**) certified that the parties decided not to have their case mediated.[57] Thus, on 05 January 2023, the

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44 Id., pp. 37-43.
45 Id., p. 41.
46 Id.
47 Id.
48 Id., p. 42.
49 G.R. No. 238352, 12 September 2018 (Resolution).
50 *Rollo*, p. 42.
51 Division Docket, Volume II, pp. 836-845.
52 See Resolution dated 14 June 2022, id., pp. 52-58.
53 Id., pp. 1-3.
54 See Comment/Opposition by Respondent received on 12 September 2022, id., pp. 62-67.
55 Supra at note 1.
56 See Resolution dated 28 September 2022, *Rollo*, pp. 69-70.
57 No Agreement to Mediate Certification issued by the Philippine Mediation Center Unit on 10 November 2022, id., p. 71.

Court resolved to give due course to petitioner's Petition for Review and deemed the case submitted for decision.[58]

ISSUES

Before us, petitioner puts forward the following issues for the Court *En Banc*'s resolution:

> I.
> WHETHER THE FIRST DIVISION ERRED IN RULING THAT THE ASSESSMENTS AGAINST RESPONDENT 8196 CONVENIENCE CORPORATION HAD NOT YET BECOME FINAL AND DEMANDABLE; AND,
>
> II.
> WHETHER THE FIRST DIVISION ERRED IN DECLARING THE ASSESSMENTS VOID FOR THE ALLEGED FAILURE ON THE PART OF PETITIONER COMMISSIONER OF INTERNAL REVENUE TO ISSUE A SEPARATE LETTER OF AUTHORITY (LOA) IN FAVOR OF REVENUE OFFICER MIDA PEREZ AND GROUP SUPERVISOR OSCAR P. DERA.[59]

ARGUMENTS

As regards the first issue, petitioner asks the Court to take a second look at the *ratio of* the assailed Decision. He or she contends that the 2009 subject deficiency tax assessment against respondent arose from disallowances due to its failure to provide the necessary purchase and expense vouchers to substantiate the latter's tax return declarations.[60] While petitioner admits that respondent submitted its first (1st), second (2nd), and third (3rd) Quarterly VAT returns and Filing References for the EWT Returns (**BIR Form No. 1601-E**) as supporting documents for the reinvestigation, the First Division failed to consider that these documents were already in his or her possession when respondent's 2009 deficiency tax assessment was computed.[61] Thus, according to petitioner, he or she could no longer make amendments to the assessments since respondent failed to submit newly discovered or

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58 See Resolution dated 05 January 2023, id., pp. 73-74.
59 *Rollo*, p. 8.
60 Id., p. 9.
61 Id., p. 10.

additional evidence to support its purchases and expenses.[62] Petitioner also alleges that the case of *First Express Pawnshop Company Inc.*, which the First Division heavily relied on in resolving the petition, is not on all fours with the instant case.[63]

As for the second issue, petitioner argues that while it concedes to the First Division's interpretation that a reinvestigation connotes that the same case is being given a fresh ground of review, he or she could not agree that the same is applicable to the instant case. According to petitioner, since respondent failed to submit documents to support its claim within the reglementary period, the assessment had already become final, executory, and demandable.[64] As such, RO Mida Perez (**Perez**) and GS Oscar P. Dera (**Dera**) merely issued a Memorandum reiterating the deficiency tax assessments in the FLD/Final Assessment Notice (**FAN**) and no new ground of review was conducted by the said ROs.

Petitioner also asks the Court to distinguish the instant case from the cases that the First Division cited.[65] In the cases that the First Division cited in its assailed Decision, there was no LOA issued in favor of the examiners who conducted the audit investigation or examination of the taxpayer's books of accounts and relevant accounting records.[66] In contrast to the instant case, the ROs who conducted the investigation and recommended petitioner's 2009 deficiency tax assessment were authorized by an LOA.[67] Thus, when RO Vidal reviewed the proposed assessment, the audit investigation was already terminated.[68] Consequently, when respondent sought a reinvestigation and thereafter failed to submit new documents (which may be considered by RO Perez and GS Dera), the issuance of a new LOA was no longer necessary as petitioner did not conduct any further investigation.[69]

On the other hand, respondent agrees with the First Division's ruling that the subject assessments did not become final and executory.[70] As to the relevance of the returns and documents submitted

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62 Id., p. 11.
63 Id., p. 10.
64 Id., p. 12.
65 Id.
66 Id., p. 13.
67 Id.
68 Id.
69 Id., p. 14.
70 Id., pp. 62-63.

in connection with its request for reinvestigation, it avers that they were submitted in support of its arguments in relation to the issue of prescription.[71] It did so to establish the reckoning date of counting the period for purposes of prescription.[72] Moreover, respondent insists that in the absence of an LOA authorizing RO Perez and GS Dera to conduct the reinvestigation, the subject assessments are void.[73]

RULING OF THE COURT *EN BANC*

After a careful review of the records of the case and the contrasting arguments of the parties, the Court *En Banc* finds the petition bereft of merit.

THE ASSESSMENTS HAD NOT BECOME FINAL, EXECUTORY, AND DEMANDABLE.

A taxpayer may protest a FAN by way of a request for reconsideration or reinvestigation. For a request for reinvestigation, Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides:

> ...
>
> **SEC. 228**. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> ...
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**[74]
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> ...

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71 Par. 6, id., p. 63.
72 Id.
73 Par. 7-12, id., pp. 63-66.
74 Emphasis supplied.

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of its protest within sixty (60) days from date of filing of its letter of protest. Otherwise, **the assessment shall become final.**[75] The term "relevant supporting documents" refers to those **documents necessary to support the legal and factual bases in disputing a - tax assessment as determined by the taxpayer.**[76]

Here, petitioner does not dispute that respondent submitted documents in connection with the latter's request for reinvestigation. Petitioner argues that the resubmission of these documents was a superfluity since the same were already in his or her possession when the subject assessments were issued against respondent. For petitioner, the assessment could no longer be modified following respondent's failure to submit newly discovered or additional evidence to support its purchases and expenses.

We are not persuaded.

In *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*[77] that the First Division cited in its assailed Decision, the Supreme Court clarified the meaning of the term "relevant supporting documents", to wit:

> ...
>
> Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.
>
> We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.

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75 Section 3.1.4, Revenue Regulations No. 18-2013.
76 Id.
77 G.R Nos. 172045-46, 16 June 2009; Emphasis supplied.

> **The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.**
> ...

Petitioner's contention that it was a superfluity for respondent to submit documents that were already in the BIR's possession (when the subject assessments) loses ground with above-quoted ruling or declaration. Obviously, petitioner's interpretation of the term "relevant supporting documents" is erroneous. As it is, the relevance of documents to be submitted by the taxpayer is dependent upon the purpose for which they are being submitted and not on whether they are in the BIR's possession. A document may be in the possession of the CIR, or his or her representatives, but at the same time be irrelevant to dispute an assessment (and *vice-versa*).

In the present case, respondent submitted the subject documents to show the material dates for purposes of establishing prescriptive periods and not to support the existence of purchases or expenses as petitioner has argued.[78] Thus, those documents were relevant for respondent's purposes.

Even granting that respondent failed to submit the relevant supporting documents to support its protest, this should not automatically render the assessments final, executory, and demandable. As previously stated, **the BIR can only inform the taxpayer to submit additional documents. It cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the BIR's mercy, which may require the production of documents that a taxpayer cannot submit. Differently put, taxpayers will be at the BIR's mercy and the period within which they can elevate their case to the CTA will never run, to their extreme prejudice.**[79]

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78 Refer to Exhibit "P-5", Division Docket, Volume II, pp. 507-537.

79 *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, 01 February 2023.

Moreover, a taxpayer's failure to submit the relevant supporting documents within the reglementary period would only render the assessment against it **final**, as opposed to being not only **final but also executory and demandable**. The distinction is apparent from the provisions of Section 228 of the NIRC 1997, as amended:

> ...
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> **SEC. 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided*, however, That a preassessment notice shall not be required in the following cases:
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> ...
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.**[80]
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> ...

Under Revenue Regulations (**RR**) No. 18-2013[81], the phrase "the assessment shall become final" shall mean that **the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.**[82] In other words, the failure to submit relevant supporting documents will not automatically result in the assessment becoming final, executory, and demandable. The immediate consequence of such failure is that the protest will be denied and the issuance of the FDDA shall subsequently follow. The FDDA, *however*, may still be appealed to the CIR by way of a request for

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80 Emphasis and underscoring supplied.

81 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

82 Section 3.1.4, Revenue Regulations No. 18-2013.

reconsideration, or to the CTA by way of a petition for review. In *Commissioner of Internal Revenue v. Max's Sta. Mesa, Inc.*[83], this Court held:

> ...
>
> From the foregoing, it is indubitable that the word "*final*" in the phrase "*the assessment shall become final*" means that taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence which, consequently, leads to the [Protest] being denied. **It cannot be taken to mean as a bar to avail the remedy of appeal because the rules also say that if the taxpayer opts to await the final decision of the Commissioner on the disputed assessment, the taxpayer can appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision.**
>
> It is, in fact, exactly what happened in the case at bar. Petitioner filed its protest to the FLD/FAN on February 20, 2013. Although it could have appealed to the CTA within 30 days after the expiration of the 180-day period which would have ended on August 19, 2013, petitioner opted to await the final decision of respondent which it received on March 4, 2014. The rules state that petitioner had 30 days therefrom within which to appeal to the CTA. Therefore, petitioner had until April 3, 2014 within which to file its appeal. Since the Petition for Review was timely filed on March 21, 2014, the appeal has been perfected and this Court has jurisdiction over this case.
>
> ...

Considering that the alleged failure of respondent to submit the relevant documents occurred before the issuance and effectivity of RR No. 18-2013, it is relevant to determine whether RR No. 18-2013 may be given retroactive effect insofar as the meaning of the phrase "the assessment shall become final" is concerned. To this, the Court *En Banc* rules that a retroactive application is proper.

In *Commissioner of Internal Revenuer v. United Salvage and Towage (Phils.), Inc.*[84], the Supreme Court, in holding that RR No. 12-99 (the precursor of RR No. 18-2013) should be given retroactive effect, explained:

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83 CTA EB No. 2036 (CTA Case No. 8786), 18 November 2020; Citation omitted, emphasis supplied and italics in the original text.

84 G.R. No. 197515, 02 July 2014; Emphasis and italics in the original text, and underscoring supplied.

...

Second, **the non-retroactive application of Revenue Regulation (RR) No. 12-99 is of no moment, considering that it merely implements the law.**

A tax regulation is promulgated by the finance secretary to implement the provisions of the Tax Code. While it is desirable for the government authority or administrative agency to have one immediately issued after a law is passed, ***the absence of the regulation does not automatically mean that the law itself would become inoperative***.

At the time the pre-assessment notice was issued to Reyes, RA 8424 already stated that the taxpayer must be informed of both the law and facts on which the assessment was based. Thus, the CIR should have required the assessment officers of the Bureau of Internal Revenue (BIR) to follow the clear mandate of the new law. The old regulation governing the issuance of estate tax assessment notices ran afoul of the rule that tax regulations – old as they were – should be in harmony with, and not supplant or modify, the law.

It may be argued that the Tax Code provisions are not self-executory. It would be too wide a stretch of the imagination, though, to still issue a regulation that would simply require tax officials to inform the taxpayer, in any manner, of the law and the facts on which an assessment was based. That requirement is neither difficult to make nor its desired results hard to achieve.

Moreover, an administrative rule interpretive of a statute, and not declarative of certain rights and corresponding obligations, is given retroactive effect as of the date of the effectivity of the statute. RR 12-99 is one such rule. Being interpretive of the provisions of the Tax Code, even if it was issued only on September 6, 1999, this regulation was to retroact to January 1, 1998 – a date prior to the issuance of the preliminary assessment notice and demand letter.

...

It is well to note that the NIRC of 1997, as amended, already uses the term "the assessment shall become final" even before the issuance of RR No. 18-2013. RR No. 18-2013 merely thus interpreted what the term means and did *not* declare a new right in favor of taxpayers. With this, We find that RR No. 18-2013 may be given retroactive effect as of the date of effectivity of Section 228 of the NIRC of 1997, as amended, insofar as the meaning of the term "the assessment shall become final" is concerned.

Incidentally, it is equally important to note that a retroactive application of RR No. 18-2013 in this case is not proscribed nor does it fall under the exceptions provided in Section 246 of the NIRC of 1997, as amended. The provision reads:

> ...
>
> **SEC. 246.** *Non-Retroactivity of Rulings.* - Any revocation, **modification** or reversal **of any of the rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith.[85]
>
> ...

Here, the retroactive application of RR No. 18-2013 will not prejudice respondent. The circumstances under paragraphs (a) to (c) of the above provision are also not present in this case.

THE SUBJECT ASSESSMENTS ARE VOID FOR PETITIONER'S FAILURE TO ISSUE THE NECESSARY LETTER OF AUTHORITY (LOA) IN FAVOR OF REVENUE OFFICER (RO) MIDA PEREZ AND GENERAL SUPERVISOR (GS) OSCAR P. DERA.

An assessment "refers to the determination of amounts due from a person obligated to make payments".[86] "In the context of national internal revenue collections, it refers to the determination of the taxes due from a taxpayer under the [NIRC of 1997, as amended]".[87] The

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85 Emphasis supplied.
86 *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, 09 November 2016.
87 Id.

assessment process starts with the filing of tax return and payment of tax by the taxpayer.[88] It culminates with the issuance of the FDDA (or in appropriate cases the CIR's decision on the request for reconsideration) or after 180 days of inaction by the CIR reckoned from the appropriate date.[89]

Under the NIRC of 1997, as amended, it is the CIR who principally exercises the power to make assessments. The same law, however, also delegates this power to the Revenue Regional Directors (**RRDs**). The NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> > (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**, 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. ...
>
> ...
>
> **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**:
>
> > (a) Implement laws, policies, plans, programs, rules and regulations of the department or agencies in the regional area;
> >
> > **(b)** Administer and enforce internal revenue laws, and rules and regulations, **including the assessment and collection of all internal revenue taxes, charges and fees;**
> >
> > (c) Issue Letters of authority for the examination of taxpayers within the region[.] ...[90]
>
> ...

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88 Id.

89 See Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-2013.

90 Emphasis supplied.

While the CIR and the RRDs may perform assessments themselves by the express authority of the NIRC of 1997, as amended, assessments are usually carried out by ROs by way of delegation. This delegation is in the form of an LOA.

The LOA is the authority given to the appropriate RO assigned to perform assessment functions.[91] It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[92] An RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a validly issued LOA.[93] Stated differently, under the NIRC of 1997, as amended, the investigatory powers of the ROs flow from the LOA, which is the statutorily designated means by which the CIR delegates its investigative powers to the BIR ROs.[94]

Section 13 of the NIRC of 1997, as amended, provides:

> ...
>
> **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.[95]
>
> ...

Based on the afore-quoted provision, the authority under an LOA is two-fold: (1) the authority to examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax; and/or, (2) **the authority to recommend the assessment of any deficiency tax due.**

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91 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, 14 May 2021.

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

93 *Republic of the Philippines v. Robiegie Corporation*, G.R. No. 260261, 03 October 2022.

94 Id.

95 Emphasis supplied.

Generally, only the CIR, Deputy Commissioners, and the RRDs are authorized to issue an LOA. Other officials may be authorized to issue and sign LOAs but *only* upon prior authorization by the CIR himself and *only* in furtherance of the exigencies of the service. Section D(4) of Revenue Memorandum Order (**RMO**) No. 43-90[96] 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.**[97]
>
> ...

In addition, RMO No. 43-90 requires 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, including the previous [LOA] number and date of issue of said [LOAs].[98]
>
> ...

Based on the foregoing, the issuance of a new LOA for the reassignment/transfer of cases need not specify a particular stage in the assessment process when this requirement applies. The inescapable conclusion is that this requirement is obligatory at every stage of the assessment process. Stated otherwise, regardless of the specific point wherein a case undergoes reassignment or transfer, the issuance of a new LOA is mandatory. This is because, as previously discussed, ROs do not have authority to make assessments in the absence of an LOA.

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

97 Emphasis supplied.

98 Section C(5), RMO No. 43-90; Emphasis supplied.

The mandate of the BIR to observe due process in all stages of the assessment is well-settled. In *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*[99]:

> ...
>
> **The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality.** In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that "[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case." The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.
>
> **To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts.** The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.** ...
>
> ...

Clearly, an LOA is required in all stages of the assessment, including reinvestigation:

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[99] G.R. No. 242670, 10 May 2021; Citations omitted, emphasis supplied and italics in the original. text.

...

The question now arises whether an LOA is required for a reinvestigation as requested by a taxpayer. We rule in the affirmative. This is in consonance with Section 13 of the NIRC of 1997, as amended[.] ...

...

The reinvestigation is but another investigation of the taxpayer's books of accounts in light of the newly submitted supporting documents submitted by the taxpayer with its request for reconsideration, for the purpose of recommending the assessments of deficiency taxes which must be upheld or modified in the FDDA, or to recommend collection of the tax, as when a Preliminary Collection Letter is issued instead of an FDDA. **Thus, whether at the start of the audit, continuation of the audit, or reinvestigation after protest, the RO assigned must be authorized through a valid LOA.**

Further, while the *McDonald's case* merely discussed the continuation of an audit, a valid LOA should still be required for reinvestigation considering that the same due process considerations apply to a reinvestigation. The taxpayer has the same right to due process in a reinvestigation, which includes knowing that the RO conducting the reinvestigation is properly authorized. That the reinvestigation was at the instance of the taxpayer, or requested by the taxpayer, does not do away with the requirement that the RO be properly armed with an LOA. ...[100]

...

Petitioner does not dispute that a "reinvestigation" connotes that it is the same case being given a fresh round of review. In other words, petitioner agrees that a reinvestigation remains a part of the entire assessment process. Moreover, petitioner does not question that RO Perez and GS Dera were not clothed with an LOA when the case was re-assigned to them for reinvestigation. As the First Division aptly observed:

...

In this case, LOA No. 2007-00022984 authorized RO Remigio N. Tiangco, Jr. and GS Marvin C. Sevilla to examine the books and other accounting records of petitioner for all internal revenue taxes for the period covering January 1, 2009 to December 31, 2009. While RO Tiangco, Jr. and GS Sevilla initially investigated petitioner, the reinvestigation of the latter was already conducted by RO Mida Perez

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100 CTA EB No. 2271 (CTA Case No. 9462), 24 February 2022; Emphasis supplied.

> and GS Oscar P. Dera, with RO Mirabel R. Vidal as reviewer. **However, there is no indication that the latter were armed with an LOA to conduct such reinvestigation. If at all, based on the assailed Decision dated March 21, 2018, it is only through *Memorandum of Assignment* No. RR06-033-PR0-0313-8371 dated March 21, 2013 that petitioner's case was reassigned to RO Perez and GS Dera. Let it be noted that the term "reinvestigation" connotes that it is the same case being given a fresh round of review.** Thus, it should have been the same original set of ROs designated under the LOA which should have conducted it. By appointing new ROs for the reinvestigation, a new LOA should have been issued.[101]
>
> ...

Disagreeing with the First Division, petitioner is insistent that an LOA was not required in this case as respondent's failure to submit documents in relation to its request for reinvestigation **deemed the audit or investigation terminated**. Since the FAN became final and executory due to respondent's failure to submit relevant supporting documents within the reglementary period, petitioner believes **there was no reinvestigation that was conducted necessitating an LOA hence,** RO Perez merely recommended to reinstate the findings in the FAN.

The preceding contention is related to the first issue. Having settled that the assessments had not become final, executory, and demandable, petitioner's arguments on this point must necessarily fail.

At any rate, even if the Court *En Banc* proceeds to resolve petitioner's argument on its merits, it could no longer change the outcome of the case. The fact that RO Perez and GS Dera merely recommended to reiterate the findings in the FLD/FAN is of no moment. As discussed above, even the power to recommend the assessment of any deficiency tax due must be anchored on a valid LOA. Without such authority, ROs do not have the power to recommend the assessment of any deficiency tax. To be certain, the recommendation to reinstate the findings in the FAN is included in the power to recommend the assessment of any deficiency tax due.

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101 *Rollo*, p. 41; Citations omitted, emphasis supplied and italics in the original text.

Similarly crucial in the resolution of the case at bar is the fact that during the reinvestigation stage, when the case was reassigned to RO Perez and GS Dera, such reassignment lacked the requisite LOA as mandated by RMO No. 43-90. Without the LOA, RO Perez and GS Dera were devoid of authority to participate in the audit of respondent (including reinvestigation). Certainly, they could not also make any recommendations such as proposing the reinstatement of the findings in the FAN. We agree with the First Division when it ruled —

> ...
> ... **Correspondingly, not having a valid authority to examine or reinvestigate petitioner, the subject tax assessments issued against the latter are inescapably void**. Such being the case, the said tax assessments must perforce be cancelled and set aside following the principle that **void assessments bear no valid fruit.** In the case of *CIR vs. Opulent Landowners Inc.*, the Supreme Court reiterated the ruling that **if the Revenue Officers are not authorized, in the absence of a new LOA in their favor, their resulting assessments are void.**[102]
> ...

WHEREFORE, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 20 July 2022 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 10 June 2021 and assailed Resolution dated 14 June 2022, of the First Division in CTA Case No. 9818, entitled *8196 Convenience Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ENJOINED** from pursuing any actions against respondent 8196 Convenience Corporation relative to herein case.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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102 *Rollo*, p. 42; Citations omitted and emphasis supplied.

WE CONCUR:

ON LEAVE
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

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice