REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

RIECKERMANN PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 2704
(CTA Case No. 9613)

Present:

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

Promulgated:
MAY 13 2024 4:25

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue on October 28, 2022, praying for the Court to reverse and set aside the Decision[2] dated July 22, 2021 (*assailed Decision*), rendered by this Court's Third Division (Court in Division) in CTA Case No. 9613 entitled "*Rieckermann Philippines, Inc. v. Commissioner of Internal Revenue.*" The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the subject FLD/FAN, dated 24 May 2010, and the FDDA dated 12 May 2017, assessing petitioner for deficiency income tax, VAT and EWT, and DST, for taxable year 2006, are hereby **CANCELLED** and **SET ASIDE**. Consequently, Respondent is

[1] *En Banc (EB)* Docket, pp. 5-14.
[2] *EB* Docket, pp. 20-38.

ENJOINED and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

The aforesaid Decision declared the deficiency tax assessment issued by petitioner against respondent null and void for failure to prove the authority of the Revenue Officers (ROs) to conduct the audit/examination of respondent's books of accounts and other accounting records for taxable year (TY) 2006.

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.[3]

Respondent Rieckermann Philippines, Inc. is a domestic corporation organized and existing under Philippine laws, with address at 89 West Capitol Drive, Kapitolyo, Pasig City.[4]

THE FACTS AND THE PROCEEDINGS

The relevant facts, as narrated by the Court in Division in the assailed Decision, are as follows:

> On 29 April 2010, [respondent] received a Preliminary Assessment Notice ("PAN"), dated 23 April 2010, finding it liable for deficiency taxes for the taxable year 2006. In response, [respondent] filed with [petitioner] on 13 May 2010 its Reply to the PAN, dated 11 May 2010.
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> On 24 May 2010, [petitioner] issued the Formal Letter of Demand and its corresponding Assessment Notices ("FLD/FAN"). [Respondent] received a copy of the FLD/FAN on 1 June 2010. On 15 June 2010, [respondent] filed its Protest to the FLD/FAN, dated 4 June 2010, along with its relevant supporting documents.
>
> On 12 August 2010, [petitioner] issued Tax Verification Notice No. 00123593 ("TVN"), stating that revenue officer Janice Solomon will conduct the reinvestigation requested in the Protest to the FLD/FAN. The TVN was received by [respondent] on 17 August 2010.

[3] *Id.*, p.6.
[4] *Id.*

On 15 August 2011, [respondent] received a Letter from [petitioner], stating that revenue officer Carmencita Villanueva, under the supervision of group supervisor Antonio Ilagan, has been authorized "to continue the audit and investigation" of [respondent's] internal revenue taxes for taxable year 2006.

Subsequently, on 8 November 2012, [respondent] received a Letter, dated 25 October 2012, from [petitioner], providing that the assessments issued against [respondent] have become final and executory as [respondent] failed to controvert the assessment made in the FLD/FAN considering that the supporting documents submitted by [respondent] to accompany its Protest only contained summaries and schedules without the necessary receipts, invoices, and other documents to support the same.

On 18 December 2012, [respondent] submitted to [petitioner] a Letter, dated 14 December 2012 and addressed to Regional Director Jonas D.P. Amora, explaining that the Protest contained schedules and other information that would disprove the deficiency tax assessments and that while some documents were not attached due to volume, these were easily verifiable with [respondent] had [petitioner's] revenue officers exerted even a little time and effort. In the said Letter, [respondent] also requested the approval to submit its consideration letter addressed to Revenue District Officer Florante R. Aninag with the photocopies of [respondent's] receipts, invoices, and other documents in support of its Protest.

On 1 February 2013, [petitioner], through his then Chief of the Legal Division, Atty. Amado Rey B. Pagarigan, issued his Denial Letter, disapproving the requests made by [respondent] in its Letter, dated 14 December 2012. He similarly reiterated therein the conclusion reached in his Letter, dated 25 October 2012, that the deficiency tax assessments have become final and executory due to [respondent's] failure to submit the necessary supporting documents. [Respondent] received this Denial Letter, dated 1 February 2013, on 14 February 2013.

On 4 February 2014, [respondent] submitted a Letter, dated 2 December 2013, to Atty. Rommel Curiba, [petitioner's] Chief of the Legal Division on said date, requesting for assistance on the denial made by the previous Chief of the Legal Division, Atty. Pagarigan.

On 12 May 2017, [respondent] received the FDDA.

This led to [respondent's] filing of the instant Petition on 8 June 2017.

In his *Answer*[5] filed on November 16, 2017, petitioner submits that respondent's *Petition for Review* should be dismissed. He argued that the assessment had become final and executory considering respondent's admission in its *Petition* that the photocopies of the necessary receipts, invoices, and other documents attached to support the protest were only submitted on December 18, 2012, which is more than sixty (60) days from the filing of the *Protest Letter* on June 4, 2010. He also argued that respondent's allegations in his *Petition* were not proven by documentary evidence nor supported by official receipts/sales invoices and other documents to prove such allegations.

After the *Pre-trial Conference*, a *Pre-Trial Order*[6] was issued on November 5, 2018.

The trial then ensued, during which both parties presented documentary and testimonial evidence in support of their respective claims.

On July 22, 2021, the Court in Division rendered the assailed Decision granting respondent's *Petition for Review*. In finding in favor of respondent, the Court in Division ruled that the failure to offer in evidence Letter of Authority (LOA) No. 00009175 or any other LOA was detrimental to petitioner's cause as there was no proof that the ROs who initially examined respondent's books of accounts were indeed authorized to do so. According to the Court in Division, without proof that the examination of respondent was authorized, the said examination must be deemed as not authorized at all. Hence, all resulting assessments from such examination are null and void.

On October 25, 2021, petitioner filed a *Motion for Reconsideration (Decision dated 22 July 2021)*.[7] On March 25, 2022, respondent filed its *Comment/Opposition (to the Motion for Reconsideration dated 22 October 2021)*.[8]

On September 16, 2022, petitioner's *Motion for Reconsideration (Decision dated 22 July 2021)* was denied.[9] The dispositive portion of the Resolution reads:

[5] Division Docket – Vol. 1, pp. 174-179.
[6] Division Docket – Vol. 2, pp. 429-437.
[7] Division Docket – Vol. 2, pp. 883-893.
[8] Division Docket – Vol. 2, pp. 897-900.
[9] Division Docket – Vol. 2, pp. 905-908.

WHEREFORE, the instant Motion for Reconsideration (Decision dated 22 July 2021) is hereby **DENIED** for lack of merit.

SO ORDERED.

On October 14, 2022, petitioner filed before the Court *En Banc* a *Motion for Extension of Time to File Petition for Review,*[10] praying for an extension of fifteen (15) days from October 15, 2022, or until October 30, 2022, to file his *Petition for Review.* The Motion was granted in the *Minute Resolution*[11] dated October 18, 2022.

On October 28, 2022, petitioner filed his *Petition for Review.* However, the Court *En Banc* noted that petitioner's counsel, Atty. Victor Rico P. Lopez, failed to state the date of issuance of his Mandatory Continuing Legal Education (MCLE) Compliance No. VII-0005515, as required in Section 6, Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA). Hence, in the Resolution[12] dated January 13, 2023, petitioner's counsel was directed to comply with the noted deficiency within five (5) days from notice.

On January 25, 2023, petitioner's counsel filed his *Compliance,* [13] which the Court *En Banc* noted in the Resolution[14] dated March 2, 2023. In the same Resolution, the Court *En Banc* directed respondent to file its comment, not a motion to dismiss, on the *Petition for Review* within ten (10) days from notice.

On March 13, 2023, respondent filed its *Comment to the Petition for Review,*[15] which the Court *En Banc* noted in the Resolution[16] dated May 22, 2023. In the same Resolution, the Court *En Banc* referred the instant case to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.*

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[10] *EB* Docket, pp. 1-3.
[11] *EB* Docket, p. 4.
[12] *EB* Docket, pp. 46-48.
[13] *EB* Docket, pp. 49-50.
[14] *EB* Docket, pp. 53-54.
[15] *EB* Docket, pp. 55-58.
[16] *EB* Docket, pp. 61-63.

On July 5, 2023, the instant case was submitted for decision considering the report of the PMC-CTA dated June 8, 2023, which stated that the parties had decided not to have their case mediated by the PMC-CTA.[17]

Hence, this Decision.

THE ASSIGNMENT OF ERRORS

Petitioner assigns the following errors allegedly committed by the Court in Division, to wit:

I. THE HONORABLE COURT THIRD DIVISION ERRED IN RULING THAT THE REVENUE OFFICERS WHO CONDUCTED THE AUDIT EXAMINATION HAVE NO AUTHORITY TO DO SO.

II. THE HONORABLE COURT THIRD DIVISION ERRED IN RULING THAT THE FAILURE ON THE PART OF PETITIONER IN NOT OFFERING AS EVIDENCE THE LOA CAUSED THE ASSESSMENT TO BE VOID.

Petitioner's Arguments:

Citing Section 13[18] of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Memorandum Order (RMO) No. 8-2006[19] and the subsequent RMO Nos. 62-2010[20] and 69-2010,[21] petitioner asserts that based on the foregoing issuances, the standard operating procedure of the ROs has been to issue a memorandum to other ROs who will continue the audit examination which the previous ROs, due to their reassignment, could not continue the audit examination.

According to petitioner, the ROs indicated in the LOA would not always be able to complete their audit investigation as there will be instances where the ROs would either retire, be

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[17] Minute Resolution, *EB* Docket, p. 65.

[18] 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.

[19] SUBJECT: *Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).*

[20] SUBJECT: *Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.*

[21] SUBJECT: *Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.*

reassigned, be taken ill, or die prior to the completion of the audit investigation. In these instances, the government should not be made to suffer. This is the reason why memoranda and/or memorandum of assignment are given to other ROs to continue the audit investigation made by the original ROs. He added that the Memorandum of Assignment, which the Head of the Investigating Office may sign, is merely for the continuation of the audit, which was already authorized under the LOA.

Petitioner likewise points out that Section 17[22] of the NIRC of 1997, as amended, provides the transfer or reshuffling of the ROs. For petitioner, this means that the ROs indicated in the LOA need not be the ones to complete the audit. Further, petitioner asserts that an LOA is not an "authorization letter" of the ROs. An LOA is issued to the taxpayer to inform the latter that the Commissioner has authorized an audit of his person. Once served, any duly authorized RO may now conduct an audit not because of, but rather "pursuant" to such letter of authority. Their authority to conduct an audit may be included in the letter or any other document issued by the Commissioner or his duly authorized representative. Hence, either a memorandum, referral memorandum and/or memorandum of assignment is given to other ROs to continue the audit investigation made by other ROs. According to petitioner, what is important is that an LOA has previously authorized the audit of the taxpayer.

Lastly, petitioner disagrees with the Court in Division's ruling that the LOA should have been offered as evidence to consider the authority given to the ROs who conducted the audit examination. Citing Section 4,[23] Rule 129 of the Rules of Court, petitioner argues that in this case, both parties admitted and never made an issue about the issuance of the said LOA. Hence, for petitioner, the same constitutes judicial admission, and proof of the same is no longer necessary and indispensable.

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[22] SEC. 17. *Assignment of Internal Revenue Officers and Other Employees to Other Duties.* — The Commissioner may, subject to the provisions of Section 16 and the laws on civil service, as well as the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, assign or reassign internal revenue officers and employees of the Bureau of Internal Revenue, without change in their official rank and salary, to other or special duties connected with the enforcement or administration of the revenue laws as the exigencies of the service may require: Provided, That internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years: Provided, further, That assignment of internal revenue officers and employees of the Bureau to special duties shall not exceed one (1) year.

[23] SEC. 4. *Judicial Admissions.* — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Respondent's Counter-arguments:

By way *of Comment,* respondent submits that petitioner's *Petition for Review* should be denied for lack of merit. According to respondent, the two (2) grounds cited by petitioner in his *Petition for Review* are a mere reiteration of petitioner's arguments in his *Motion for Reconsideration*[24] dated October 22, 2021 filed before the Court in Division, which have been sufficiently passed upon and judiciously resolved in the assailed Decision of the Court in Division as asserted in the Resolution dated September 16, 2022. Nevertheless, citing the Supreme Court ruling in *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corporation*,[25] respondent submits that in the absence of an LOA specifically naming ROs Janice Solomon and Carmencita Villanueva to conduct and continue the audit and examination of its books of accounts for taxable year 2006, the Court in Division correctly ruled in cancelling and setting aside the assessments issued to it by petitioner.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is without merit.

The present Petition for Review was seasonably filed; hence, the Court En Banc has jurisdiction over the same.

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the present *Petition for Review* was timely filed.

Section 3(b), Rule 8 of the RRCTA states:

> **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

[24] Division Docket – Vol. 2, pp. 883-893.
[25] G.R. No. 242670, May 10, 2021.

> 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.

Records show that petitioner received the Resolution dated September 16, 2022, which denied his *Motion for Reconsideration (Decision dated 22 July 2021)* on September 30, 2022.[26] Thus, petitioner had fifteen (15) days from September 30, 2022, or until October 15, 2022, to file his *Petition for Review* before the Court *En Banc*.

On October 14, 2022, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[27] asking for an additional fifteen (15) days from October 15, 2022, or until October 30, 2022, to file his *Petition for Review*. The Court *En Banc* granted the *Motion* in a *Minute Resolution*[28] dated October 18, 2022.

Considering that the present *Petition* was filed on October 28, 2022, which is within the extended period granted by the Court, it was timely filed. Hence, the Court *En Banc* validly acquired jurisdiction over it.

We shall now ascertain the merits of the instant *Petition for Review*.

The Court in Division did not err in ruling that petitioner's failure to present proof that his ROs were duly authorized to examine respondent for taxable year 2006 rendered the assessments null and void.

Citing Section 4, Rule 129 of the Rules of Court, petitioner submits that the subject LOA is not mandatory to be offered. Allegedly, in this case, both parties admitted and never made an issue about the issuance of the said LOA. For petitioner, this constitutes judicial admission; hence, proof of the same is no longer necessary and indispensable.

Petitioner's assertion has no basis.

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[26] Notice of Resolution, *EB* Docket, p. 39.
[27] *EB* docket, pp. 1-3.
[28] *EB* Docket, p. 4.

Let it be emphasized that despite the opportunity given by the Court in Division, the parties still failed to submit their *Joint Stipulation of Facts and Issues*. Moreover, a perusal of the *Pre-Trial Order* dated November 5, 2018, reveals the following stipulations made by the parties, to wit:

> II. STATEMENT OF FACTS AND ISSUES
>
> As agreed in the Pre-trial Conference held on September 6, 2018, **including the admissions in the Petition for Review and Answer, the parties, through their counsels, stipulated as follows**:
>
> A. Facts
>
> 1. [Petitioner] Commissioner of Internal Revenue is vested with authority to administer all laws pertaining to internal revenue taxes and has the jurisdiction to decide disputed tax assessments.
>
> 2. In the Final Decision on Disputed Assessment dated 12 May 2017, the [Petitioner] assessed the [Respondent] deficiency income tax for taxable year 2006 amounting to Three Million Nine Hundred Seventy Eight Thousand Eighty Six and 03/100 Pesos (Php3,978,086.03) for alleged non-deductible representation and entertainment expense, unaccounted income, income payments not subjected to withholding tax (disallowed expenses due to non-withholding), and undeclared sales/services.
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> 3. In the Details of Discrepancies attached to the subject Final Decision on Disputed Assessment, the [Petitioner] stated that there is an overstatement of depreciation by [respondent] as there is difference of One Million One Hundred Thirty One Thousand Three Hundred Thirty Four and 78/100 Pesos (Php1,131,334.78) between the Depreciation per Income Statement and the Depreciation per Balance Sheet.
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> 4. The difference was considered by the [Petitioner] as unaccounted income, which was added to [Respondent's] taxable income pursuant to Section 31 of the National Internal Revenue Code (NIRC).
>
> 5. In addition, [Petitioner] disallowed [Respondent's] payment/expenses amounting to Two Million Four Hundred Eighty Three Thousand Five Hundred Forty Two and 08/100 Pesos (Php2,483,542.08) for

alleged failure to submit the same to withholding tax under Revenue Regulations No. 2-98.

6. In the Details of Discrepancies attached to the subject Final Decision on Disputed Assessment, [Petitioner] stated that sales/services were not properly recorded in the financial statements, which resulted to an under declaration of [Respondent's] reported taxable sales/services.

7. [Petitioner] assessed [Respondent] the deficiency value-added tax (VAT) of One Million Nine Hundred Ninety Three Thousand Four Hundred Seventy Nine and 39/100 Pesos (Php1,993,479.39) on the basis that sales/receipts in the total amount of Php244,806.60 were allegedly not subjected to VAT.

8. [Petitioner] alleges that a Comparison of Gross Sales computed based on the data reported in the Final Statements against the amount of receipts subjected to VAT per returns show that there are sales/receipts not subjected to VAT in the total amount of Php244,806.60.

9. [Petitioner] also alleged that a portion of [Respondent's] exempt sales per VAT returns in the total amount of Php279,455.16 were not supported as determined from the audit of [Respondent's] Financial Statements. As such, [Petitioner] disallowed the same pursuant to Section 110 of the NIRC.

10. [Petitioner] assessed [Respondent] deficiency expanded withholding tax in the amount of One Hundred Eighty Four Thousand Three Hundred Seventy Five and 65/100 Pesos (Php184,375.65) for its alleged failure to subject its payment/expenses amounting to Two Million Four Hundred Eighty Three Thousand Five Hundred Forty Two and 08/100 Pesos (Php2,483,542.08) to withholding tax under Revenue Regulations No. 2-98.

11. Furthermore, [Petitioner] alleges that payments to [Respondent's] contractors and/or subcontractors in the amount of Php2,357,213.25 should be subjected to expanded withholding tax. [*Emphasis supplied*]

From the foregoing, it is clear that there was no admission on the existence or issuance of an LOA.

Indeed, a certain LOA No. 00009175 was mentioned in (a) the *Notice of Informal Conference* and *Memorandum* dated December 10, 2009 found in the BIR Records, which allegedly authorized RO Rosalina T. Reyes and GS Antonio L. Ilagan to examine respondent's books of accounts and other accounting records for TY 2006; and (b) the *Letter* to Atty. Pagarigan, attached to the Letter dated December 2, 2013 to Atty. Curiba, which allegedly authorized RO Rosalina T. Reyes and GS Roberto Dureza to examine respondent. However, as the Court in Division observed in the assailed Decision, no LOA had been attached or incorporated in the records, much less offered in evidence.

The Court in Division correctly pointed out that the LOA needs to be examined as this would prove that petitioner's examination was duly authorized. Furthermore, the parties provided different details of LOA No. 00009175—petitioner refers to Roberto Dureza as the group supervisor, while respondent identifies Antonino L. Ilagan, not *Roberto Dureza,* as the named group supervisor. The presentation of the LOA will clarify and resolve the discrepancies.

Thus, petitioner's failure to offer in evidence LOA No. 00009175 is detrimental to his case as there is no proof that the revenue officers who initially examined respondent's books of accounts are duly authorized to do so.

We find it fit to quote with approbation the Court in Division's disquisition on the matter:

> Consequently, there are no means by which this Court can determine first, whether LOA No. 00009175 properly conferred authority to the revenue officers named therein to conduct an examination of petitioner's books of accounts and other accounting records for the purpose of collecting the correct internal revenue taxes for taxable year 2006; and second, assuming that there was, indeed, such authority, that said revenue officers performed their functions within said authority.
>
> The need to examine the actual LOA No. 00009175 or its certified true copy cannot be overemphasized as this would prove that the examination of petitioner was duly authorized and, as such, that the deficiency tax assessments issued from such examination were valid.

What is more, **the fact that the parties provide different details of LOA No. 00009175 highlights the need to have the actual LOA No. 00009175 presented to the Court** so that it may be perused and examined. Indeed, **while petitioner refers to the group supervisor named therein as Roberto Dureza, respondent identifies the named group supervisor as Antonino L. Ilagan**.

The failure to offer in evidence LOA No. 00009175 or any other LOA is detrimental to respondent's cause as there is no proof that the revenue officers who initially examined petitioner's books of accounts were indeed authorized to do so. Without proof that the examination of petitioner was properly authorized, said examination must be deemed as not authorized at all. Thus, all resulting assessments from such examination are null and void.

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, the Supreme Court had the occasion to rule that each party-litigant should prove every minute aspect of a tax assessment case.

... ...

Consequently, party-litigants in a tax assessment case (*i.e.*, both the taxpayer and the Commissioner of Internal Revenue) are duty bound to present and offer their corresponding pieces of evidence to prove every minute aspect of their respective cases. One party cannot simply rely on the weakness of the other party's evidence to win a deficiency tax assessment case. The party to whom the judgment will be favorable should be that party who proved, through the evidence adduced, that said party is indeed entitled to such ruling.

Following this, and to the point of being repetitive, LOA No. 00001975 cannot be considered in determining whether the examinations of petitioner in relation to the subject deficiency tax assessments have been properly authorized since respondent failed to offer the said LOA, or any other LOA for that matter, as part of his evidence and especially since he failed to even merely attach or incorporate a copy of the same as part of this Court's records nor identify it through the testimony of his witnesses. **To stress, without proof that the examination was properly authorized, all assessments that were derived from such examination are null and void**. [*Citations omitted; emphasis supplied*]

While the law specifically requires an LOA to be addressed to a revenue officer before an examination of a taxpayer and recommendation of an assessment may be had, the law does not specifically require the same for purposes of reinvestigation.

In the instant case, the Court in Division also ruled thus:

The TVN and the Memorandum of Assignment did not properly transfer and re-assign the examination of [respondent's] books of accounts and other accounting records to the revenue officers named therein.

Even assuming that LOA No. 00009175 was offered as part of [petitioner's] evidence and provides definite proof of authority of the revenue officers named therein (*i.e.*, revenue officer Rosalina T. Reyes and group supervisor Antonino L. Ilagan or Roberto Dureza), the examination of [respondent's] accounting records had already been transferred and re-assigned to other revenue officers, namely, Janice Solomon via the TVN and Carmencita Villanueva through Memorandum of Assignment No. 043A-0000339 ("MOA"). As such, there is still a need to determine whether such transfer or re-assignment was properly made and conferred authority to said new revenue officers to examine the books of accounts of [respondent].

Revenue Memorandum Order No. 43-90 (RMO 43-90) governs the re-assignments and transfers of cases among revenue officers. It expressly provides, to wit:

> "**Any reassignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As."

It stands clear that in re-assignments and transfers of cases, the new revenue officer assigned to examine a taxpayer's accounting records should be armed with a new LOA. A cardinal rule in statutory construction is that where

the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application. The use of the word "shall" connotes a mandatory order, denotes an imperative obligation, and is inconsistent with the idea of discretion. Hence, the use of the word "shall" in ***RMO 43-90*** can only mean that the issuance of a new LOA in cases of transfer of audits to another set of revenue officers is mandatory.

But what can be classified as a valid LOA? The nomenclature of a document will certainly not determine whether such is a valid LOA. To be effective, an LOA should authorize a revenue officer to examine a taxpayer's books of accounts and other accounting records to collect the correct amount of taxes. Equally important is the requisite that it must be issued either by [petitioner] himself or by his duly authorized representative, who under ***Section 13 of the NIRC***, is the Revenue Regional Director. Subsequently, under ***Section D (4) of RMO 43-90***, [petitioner] expanded his list of duly authorized representatives who may issue LOAs that will authorize the examination of taxpayers for deficiency taxes to include the following:

1. Regional Directors;
2. Deputy Commissioners;
3. Commissioner; and
4. Other officials that may be authorized by the Commissioner for the exigencies of service.

Accordingly, a Memorandum of Assignment or a Referral Memorandum, Tax Verification Notice, or any other letter emanating from the BIR which seeks to authorize the audit/tax investigation of a taxpayer may be considered a valid LOA, provided that it was issued by any of the persons listed above.

In the case at bar, the examination of [respondent] was initially transferred Revenue Officer Janice Solomon through the TVN. A perusal of the said TVN shows that the same was issued by Mr. Florante R. Aninag, a Revenue District Officer.

Applying the above discussions, the TVN did not properly authorize Revenue Officer Janice Solomon to continue the audit of [respondent's] books of accounts as the authority to do so did not emanate from respondent himself or any of his duly authorized representatives. Mr. Florante R. Aninag, a Revenue District Officer, is not a duly authorized representative who may issue LOAs for [petitioner].

> With respect to the transfer of the case to Ms. Carmencita Villanueva, the same was made through the MOA. A perusal of the said MOA would show that it was similarly issued by Revenue District Officer Mr. Florante R. Aninag for the purpose of continuing the audit as a result of the transfer to another district office of the previous revenue officer assigned to the case. This was confirmed in the Letter issued by Revenue District Officer Mr. Florante R. Aninag to [respondent] informing the latter of such transfer.
>
> As in the TVN, above, Mr. Florante R. Aninag, a Revenue District Officer, is not a duly authorized representative who may issue LOAs for [petitioner].
>
> Moreover, Ms. Carmencita Villanueva admitted that aside from the MOA, she was not issued any other document authorizing her to perform the audit of petitioner, to wit:
>
> ... ...
>
> All told, with the absence of proof showing the authority of Revenue Officers to conduct any audit, whether at the first instance or upon re-assignment, against petitioner, the resulting deficiency tax assessment charged against petitioner is null and void.

We clarify.

There is no denying that the NIRC of 1997, as amended, requires authority from the Commissioner of Internal Revenue or from his duly authorized representatives before an examination of a taxpayer may be made.[29] Section 6 thereof provides:

> SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. — (A) *Examination of Returns and Determination of Tax Due* — After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. ... [*Emphasis supplied*]

[29] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

Relatedly, Section 13 of the NIRC of 1997, as amended, states:

> 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. [*Emphasis supplied*]

While the law explicitly requires an LOA to be addressed to a revenue officer before an examination of a taxpayer and recommendation of an assessment may be had, the law does not specifically require the same for purposes of recommending a final decision on a disputed assessment.

Needless to say, the requirement for the issuance of an LOA by the Commissioner or his duly authorized representative, as mandated under Sections 6 and 13 of the NIRC of 1997, as amended, pertains to such stage where the RO and GS would conduct an audit of the books of accounts and other accounting records of the taxpayer after the filing of the latter's tax returns, and recommend the issuance of a PAN and FAN. It does not envision a situation where a reinvestigation will have to be conducted to come up with a *decision* on the *Protest* to the FAN or Assessment Notice by way of an FDDA.

Moreover, even **assuming that an LOA is required to conduct the reinvestigation, the absence thereof would only invalidate the resulting *decision*, such as the FDDA**. For sure, the disquisition of the Supreme Court in the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[30] *(Liquigaz case)*, is most enlightening, to wit:

> *"A void FDDA does not ipso facto render the assessment void.*
>
> ... ...

[30] G.R. Nos. 215534 & 215557, April 18, 2016.

In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an 'assessment' from a 'decision.' In *St. Stephen's Association v. Collector of Internal Revenue,* the Court has long recognized that a 'decision' — differs from an 'assessment,' to wit:

> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section II of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review 'decisions of the Collector of Internal Revenue in cases involving disputed assessment. . .'

The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. **From the foregoing, it is clear that what is appealable to the CTA is the 'decision' of the CIR on disputed assessment and not the assessment itself**.

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. **As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer**. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other — unless the law or regulations otherwise provide.**
>
> ... ...
>
> The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.**
>
> As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.
>
> ... ...
>
> To recapitulate, a 'decision' differs from an 'assessment' and failure of the FDDA to state the facts and law on which it is based renders the decision void — but not necessarily the assessment. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided." [*Citations omitted; emphasis supplied*]

Clearly, a decision on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other.

In the instant case, records reveal that a FAN has already been issued when the case was re-assigned for **reinvestigation** (per protest letter/request for reinvestigation of respondent) to RO Janice Solomon *via* a Tax Verification Notice (TVN), and subsequently, to RO Carmencita Villanueva through Memorandum of Assignment No. 043A-0000339, who recommended that the findings per FAN be reiterated. Thereafter, or on May 12, 2017, upon the recommendation of RO Villanueva, an FDDA was issued reiterating the findings as stated in the FAN.

Thus, following the doctrine enunciated in the *Liquigaz case*, even assuming that an LOA is required for purposes of conducting the reinvestigation, the absence thereof would only invalidate the resulting FDDA after the conduct of reinvestigation.

Records reveal that petitioner violated respondent's right to due process.

At this juncture, it is also worth to emphasize that even assuming the RO's authority was duly proven, the deficiency tax assessments against respondent are still void for having been issued in violation of respondent's right to administrative due process.

Let it be stressed that the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. In the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*[31] (*Avon case*), the Supreme Court discussed the utmost importance of observing due process in issuing deficiency tax assessments, to wit:

> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**
>
> ... ...

[31] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. ... **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights**.

... ...

In carrying out these quasi-judicial functions, the Commissioner is required to "investigate facts or ascertain the existence of facts, hold hearings, **weigh evidence, and draw conclusions from them** as basis for their official action and exercise of discretion in a judicial nature." **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons**.

... ...

In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies "may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character." It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings**:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) The administrative tribunal or body must consider the evidence presented.

... ...

(7) **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**

... ...

The second to the sixth requirements refer to the party's "inviolable rights applicable at the deliberative stage." **The decision-maker must consider the totality of the evidence presented as he or she decides the case**.

The last requirement relating to the form and substance of the decision is the decision-maker's "'duty to give reason' to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker."

... ...

"**[A] fair and reasonable opportunity to explain one's side" is one aspect of due process. Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party**.

... ...

In *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, this Court held that the Food and Drug Administration failed to observe the basic requirements of due process when it did not act on or address the oppositions submitted by petitioner Alliance for the Family Foundation, Philippines, Inc., but proceeded with the registration, recertification, and distribution of the questioned contraceptive drugs and devices. It ruled that petitioner was not afforded the genuine opportunity to be heard.

Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.

... ...

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**. [*Citations omitted; emphasis supplied*]

The foregoing doctrinal pronouncement affirms that the issuance of a PAN is a part of due process; that the issuance thereof gives both the taxpayer and the BIR the opportunity to settle the case at the earliest possible time without the need for issuance of a FAN or to reduce the assessment at the earliest opportunity; that this purpose is not served in case the BIR fails to consider the taxpayer's explanations or arguments before the FAN is issued; that the failure of the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process; and that the disregard by the BIR of the standards and rules renders the deficiency tax assessment null and void.

In the instant case, record reveals that on April 23, 2010, the BIR issued the PAN[32] finding respondent liable for deficiency taxes for taxable year 2006, as follows:

Tax Type	Basic Tax	Interest	Total
Income Tax	P1,310,470.58	P792,026.88	P2,102,497.45
Value-Added Tax	647,348.73	419,978.58	1,067,327.31
Expanded Withholding Tax	59,777.15	39,108.99	98,886.14
TOTAL	**P2,017,596.46**	**P1,251,113.87**	**P3,268,710.90**

In its Reply[33] to the PAN, respondent gave explanations why it should not be held liable to each of the aforesaid deficiency taxes, offering certain documents and schedules to support its claim.

[32] Exhibit P-1, Division Docket, pp. 618-619.
[33] Exhibit P-2, Division Docket, pp. 622-639.

However, in the FLD/FAN [34] dated May 24, 2010, respondent was still found liable for the following deficiency tax assessments, to wit:

Tax Type	Basic Tax	Interest	Total
Income Tax	P1,310,470.58	P835,828.91	P2,146,299.48
Value-Added Tax	647,348.73	441,615.99	1,088,964.72
Expanded Withholding Tax	59,777.15	41,107.03	100,884.17
TOTAL	**P2,017,596.46**	**P1,318,551.93**	**P3,336,148.39**

While the total amount of taxes being assessed increased, a comparison of the figures stated in the PAN dated April 23, 2010, and the foregoing figures in the FLD/FAN reveals that the respective amounts of the *basic taxes* due remained unchanged. The BIR merely adjusted the *interests* being imposed. Moreover, a perusal of the Details of Discrepancy attached to the FLD/FAN shows that the BIR merely reiterated the same findings as stated in the Details of Discrepancies attached to the PAN without giving any reason for rejecting the explanations made by respondent in its Reply to the PAN.

To emphasize, the right of a taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto; and that the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process. Right to due process is the opportunity to be heard. However, such an opportunity would be wasted if the reply or protest to assessments submitted to the BIR is not considered. It is an empty and meaningless exercise if the BIR does not even consider the same.

As part of the due process requirement in the issuance of tax assessments, petitioner must give the reason/s for rejecting respondent's explanations and must provide the particular facts upon which his conclusions are based, and those facts must appear on the record. Petitioner has obviously not observed such a requirement in the issuance of the subject FLD/FAN. Thus, the inevitable conclusion is that petitioner violated respondent's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, and implemented by RR No. 12-1999, as amended by RR No. 18-2013. As a consequence of such violation, the said deficiency tax assessments are rendered void and cannot be enforced against respondent.

[34] Exhibit P-3, Division Docket, pp. 640-646.

Conclusion:

In fine, the failure of petitioner to offer in evidence LOA No. 00009175 to prove that the ROs who initially examined respondent' books of accounts were indeed authorized to do so, rendered the resulting assessments from such examination null and void. Moreover, even assuming that the authority of the ROs were duly proven, the deficiency tax assessments against respondent are still void for having been issued in violation of respondent's right to administrative due process.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit. The assailed Decision dated July 22, 2021 is **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice