REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2734** (CTA Case No. 9912)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.*****, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
ERMILO TAN NG HUA, Respondent.	Promulgated: APR 14 2025 4:20 pm

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DECISION

BACORRO-VILLENA, J.:

In its bid to reverse the First Division's Amended Decision[1] promulgated on 25 August 2022 (**assailed Amended Decision**) and its Resolution[2] (**assailed Resolution**) issued on 01 February 2023, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the present Petition for Review *Ad Cautelam*[3] pursuant to Section

[1] *Rollo*, pp. 37-43. Penned by Associate Justice Catherine T. Manahan and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo (On Leave).

[2] Id., pp. 46-49.

[3] Filed on 10 March 2023, id., pp. 7-29. The Petition for Review *Ad Cautelam* was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a "Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 27 February 2023, id., p. 6.

2(a)(1)[4], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

In the assailed Amended Decision and Resolution, the First Division granted respondent Ermilo Tan Ng Hua's, (**respondent**'s) prior Petition for Review and declared void petitioner's deficiency assessment for income tax (**IT**) and value-added tax (**VAT**), in the total amount of ₱2,260,073.57, including interest, for the period from 01 January 2010 to 31 December 2010 (**TY 2010**). It also cancelled and set aside petitioner's Formal Letter of Demand with Assessment Notice No. 065-10-114-096-192[5] (**FAN/FLD**) and Final Decision on Disputed Assessment (**FDDA**) dated 06 March 2014.[6]

PARTIES OF THE CASE

Petitioner is the duly appointed CIR tasked to decide disputed assessment, refunds of internal revenue taxes, fees or charges, penalties imposed in relation thereto, as provided by law. He or she may be served with all notices, pleadings, resolutions, orders, decisions, and other legal processes of this Court at the Litigation Division, Room 703, Bureau of Internal Revenue (**BIR**) Building, Diliman, Quezon City.[7]

Respondent, on the other hand, is a Filipino, of legal age, married, with registered address at Quirino Hi-way, Panaytayan, Ragay, Camarines Sur, where he prefers to be served with court notices and processes.[8]

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4 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motion for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
1. Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry and Department of Agriculture[.]

5 Exhibit "R-5", BIR Records, pp. 53-55.

6 Exhibit "R-7", id., pp. 86-87.

7 *Rollo*, pp. 9 and 29, respectively.

8 See par. 3, Petition for Review, *vis-a-vis* par. 1, Answer, Division Docket, pp. 11 and 61, respectively.

FACTS OF THE CASE

On 03 September 2012, petitioner, issued a Letter Notice (**LN**) No. 065-RLF-10-00-00071[9], informing respondent that based on the computerized matching conducted on the information provided by third-party sources against his VAT returns for TY 2010, it had an underdeclaration of its local purchases in the amount of ₱8,786,015.36, computed as follows:

Per Summary List of Sales (**SLS**) submitted by your suppliers	₱36,171,064.44
Domestic Purchases *per* Tax Returns filed	₱27,385,049.08
Underdeclaration of Local Purchases	₱8,786,015.36
Percentage % of Discrepancy	24.29

Later, on 10 September 2012, Manuel Llagas (**Llagas**), respondent's former bookkeeper, received the said LN.[10]

On 15 May 2013, petitioner issued a Notice for Informal Conference[11] (**NIC**) informing respondent of the assessment for deficiency taxes in the aggregate amount of ₱2,218,525.65.

On 21 October 2013, petitioner issued against respondent a Preliminary Assessment Notice[12] (**PAN**), through Regional Director Esmaralda M. Tabule (**RD Tabule**), assessing the latter with deficiency IT and VAT, including interest in the aggregate amount of ₱2,229,888.14. According to the PAN, respondent's assessment for deficiency IT and VAT arose out of its underdeclaration of purchases. The BIR concluded that since respondent's supplier, namely, Bicol Top Trade Center Ltd. Co. and Pilipinas Shell Petroleum Corporation reported sales in its SLS that is higher compared to the declared purchases in respondent's VAT return, the difference will result in a deficiency IT and VAT.

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9 Exhibit "R-1", BIR Records, p. 1.
10 Exhibit "R-1", id., p. 1; See Q&A 12-13, Exhibit "P-3", Judicial Affidavit of Ermilo Tan Ng Hua dated 28 December 2018, Division Docket, p. 106; TSN dated 08 October 2019, pp. 10-13.
11 Exhibit "R-2", BIR Records, p. 23.
12 Exhibit "R-4", id., pp. 47-49.

Subsequently, on 14 November 2013, petitioner, through RD Tabule of the Office of the Regional Director, Region No. 10 issued against respondent issued an FAN/FLD[13] with Details of Discrepancies. Therein, the BIR retained its assessment based on underdeclared purchases and reiterated its allegations in the PAN, finding respondent liable for deficiency IT and VAT in the aggregate amount of ₱2,260,073.57.

On 18 December 2013, respondent filed its "Protest to the [FAN/FLD]"[14] (**Protest to FAN**). There, respondent intimated that he will submit additional documents to support its Protest to FAN within three (3) months from the date of the filing. Specifically, his Exclusive Dealership Agreement with San Miguel Corporation prohibiting him from imposing mark-ups on the products that he sells. Contrary to his requested period, the BIR only allowed respondent a period of sixty (60) days from 18 December 2013 to submit his documents.[15] Along with his Letter dated 19 February 2014, respondent submitted new documents to support his Protest to FAN.[16]

On 07 March 2014, respondent received the FDDA, dated 06 March 2014[17], stating that he submitted his supporting documents "three days beyond the due date." There, he was also ordered to immediately pay its deficiency IT and VAT. Then RD Tabule issued and signed the FDDA.

On 11 April 2014[18], respondent filed his Request for Reconsideration dated 10 April 2014[19], against the FDDA. There, he contended that: (***i***) in the BIR's computation of deficiency VAT, it failed to consider the input taxes he had legitimately paid to his suppliers; and (***ii***) he requested for an extension of time of ninety (90) days to reconstruct his documents because Super Typhoon Yolanda destroyed the ground floor of his warehouse.

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13 Supra at note 5.
14 BIR Records, p. 58.
15 Exhibit "R-6", id., p. 61.
16 Id., p. 85.
17 Supra at note 6.
18 See date of receipt as confirmed in paragraph 1, Exhibit "R-9", BIR Records, p. 101.
19 Id., pp. 99-100.

Additionally, in petitioner's Letter Reply dated 14 April 2014[20], it informed respondent that his Request for Reconsideration should have been filed with the Office of the Regional Director. On 20 May 2014, respondent refiled his Request for Reconsideration.[21]

Despite respondent's contentions in his Request for Reconsideration, petitioner still issued a Decision dated 16 July 2018 or the Final Decision on the Request for Reconsideration[22] (**FDRR**) and maintained all of his or her findings in the FAN. According to petitioner, based on the BIR's Records, the assessment against respondent had become final for his failure to submit his documents within sixty (60) days from the filing of his Protest to FAN. Respondent submitted his supporting documents on 19 February 2014, which was three (3) days beyond the 60-day period.

PROCEEDINGS BEFORE THE COURT IN DIVISION

Disagreeing with the FDRR, respondent filed a Petition for Review[23] with this Court on 23 August 2018. The case was docketed as CTA Case No. 9912 and was initially raffled to the Second Division.

In the petition filed with the Second Division, respondent argued that: (1) the subject assessment is void *ab initio* since no Letter of Authority (**LOA**) was issued; and (2) the subject assessment had no factual and legal basis as petitioner merely compared the data (that his suppliers provided) against his tax returns and presumed that he had unreported sales, unreported purchases and unreported taxable income.

In the *interim*, in an Order dated 24 September 2018, the case was transferred from the Second Division to the First Division pursuant to Administrative Circular No. 02-2018 dated 18 September 2018.[24]

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20 Exhibit "R-9", id., p. 101.
21 Id., pp. 109-110.
22 Exhibit "P-1", Division Docket, pp. 27-33.
23 Id., pp. 10-26.
24 Reorganizing the Three (3) Divisions of the Court following the retirement of Associate Justice Lovell R. Bautista and Caesar A. Casanova, id., p. 41.

Later, on 03 December 2018, petitioner filed his or her Answer within the extension of time allowed to file a responsive pleading.[25] There, petitioner raised the following arguments in his or her bid to have respondent's case dismissed: (1) the assessment had already become final due to respondent's belated filing of his Request for Reconsideration, hence this Court has no jurisdiction over the petition; (2) this Court cannot rule upon matters that respondent failed to dispute at the administrative level; (3) an LOA is only indispensable when it is the RD that authorizes a taxpayer's audit; (4) the assessment has factual and legal basis as petitioner can readily and validly obtain third party information to properly discharge his or her assessment functions; and (5) tax assessments are presumed valid and respondent has the duty to prove the impropriety of the assessment.

Still later, the First Division ordered both parties to undergo conciliation proceedings before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[26] Unfortunately, the mediation bogged down and the case was referred back to the Court for the resumption of proceedings.[27] The Pre-Trial Conference was thus set on 15 August 2019.[28]

In the meantime, on 04 March 2019, respondent filed his Pre-Trial Brief[29] while petitioner's Pre-Trial Brief was submitted on 09 August 2019.[30]

Prior to the conclusion of the Pre-Trial Conference, on 15 February 2019, petitioner transmitted to the First Division the BIR Records, consisting of one (1) folder, with 236 pages.[31] On 18 September 2019, the parties filed their "Joint Stipulation of Facts and Issues"[32] (**JSFI**), which the First Division subsequently approved.[33] The First Division then issued the Pre-Trial Order dated 11 October 2019.[34]

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25 Id., pp. 61-75.
26 See Resolution dated 04 March 2019, id., pp. 99-100.
27 No Agreement to Mediate dated 17 June 2019, id., p. 126.
28 See Resolution dated 05 July 2019, id., p. 129; Minutes of the Hearing, dated 15 August 2019, id., pp. 148-149.
29 Id., pp. 101-103.
30 Id., pp. 131-134.
31 See Compliance dated 12 February 2019, id., pp. 86-88.
32 Id., pp. 158-161.
33 See Resolution dated 03 October 2019, id., p. 164.
34 Id., pp. 177-182.

Trial ensued thereafter.

During the hearing on 08 October 2019, respondent assumed the witness stand.[35] In his Judicial Affidavit dated 28 December 2018[36], which was adopted as his direct testimony, he declared essentially that: (**1**) he assailed petitioner's FDRR dated 16 July 2018; (**2**) he received the FDRR on 03 August 2018; (**3**) he did not receive any LOA in relation to the BIR's audit for TY 2010; (**4**) instead of receiving an LOA, he immediately received a PAN from the BIR's Regional Office; (**5**) he only learned about the LN when he received the PAN; (**6**) he did not authorize Llagas (his former bookkeeper) to receive any letter from the BIR; (**7**) Llagas did not inform him about the LN; (**8**) he is seventy-one (71) years old; (**9**) he suffers from an impaired memory after he had quintuple heart by-pass surgery in 2015; (**10**) he could no longer recall where he had kept the PAN, FDDA and Request for Reconsideration; and (**11**) all assessments and decisions coming from the BIR Regional Office were all delivered by mail.

During his cross-examination, respondent testified on the following: (**1**) Llagas was his former bookkeeper; (**2**) Llagas failed to inform him that the former received an LN from the BIR ; (**3**) he was no longer able to question the authority of Llagas to receive documents on his behalf; (**4**) Llagas can no longer be contacted and this might be due to his health condition; (**5**) he was informed of the existence of the LN after receipt of the PAN; and (**6**) Llagas was his bookkeeper during the BIR's audit investigation.[37] No redirect examination was conducted.[38]

On 23 October 2019, respondent filed his Formal Offer[39] (**FOE**), to which petitioner failed to file his or her comment thereto despite the Court's directive to do so.[40] In the Resolution dated 31 January 2020[41], the First Division admitted all of respondent's offered exhibits.

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35 See Minutes of the Hearing and Order, both dated 08 October 2019, id., pp. 173-173-B and 174-174-A, respectively.
36 Exhibit "P-3", Judicial Affidavit of Ermilo T. Ng Hua, id., pp. 104-109.
37 TSN dated 08 October 2019, pp. 9-13.
38 Id., p. 13.
39 Division Docket, pp. 184-185.
40 See Records Verification dated 05 December 2019, id., p. 188.
41 Id., pp. 194-195.

For his or her part, petitioner presented Revenue Officer Jane M. Garfin (**RO Garfin**) as the sole witness.[42] In her Judicial Affidavit dated 09 August 2019, RO Garfin declared that: (**1**) she started working for the BIR in 1992; (**2**) she is currently the Officer In Charge-Assistant Revenue District Officer, assigned at Revenue District Office No. 66, Iriga City, Camarines Sur; (**3**) previously, she was assigned to examine respondent's books of accounts pursuant to LN No. 065-RLF-10-00-00071; (**4**) an NIC dated 15 May 2013 was issued to respondent; (**5**) as a result of her investigation, she recommended the issuance of a PAN which was released on 21 October 2013; (**6**) on 14 November 2013, petitioner issued the FAN/FLD; (**7**) respondent filed his Protest to FAN and requested for additional time for submission of his documents; (**8**) through a Letter dated 06 February 2014, the BIR allowed respondent to submit his supporting documents within 60 days from the filing of his Protest to FAN; (**9**) respondent thereafter submitted his documents in support of his Protest to FAN; (**10**) after evaluation, the BIR issued the FDDA dated 06 March 2014; (**11**) the First Collection Notice was issued on 15 May 2014; (**12**) respondent filed his Request for Reconsideration dated 10 April 2014; (**13**) petitioner issued his or her Letter Reply dated 14 April 2014, informing respondent that his Request for Reconsideration should have been filed before the Office of the Regional Director; (**14**) petitioner refiled his Request for Reconsideration dated 20 May 2014 before the Office of the Regional Director, but the same was denied and a Second Collection Notice was issued on 11 September 2014; and (**15**) the Final Notice Before Seizure (**FNBS**) was issued on 24 November 2014.

During her cross-examination, RO Garfin elaborated that: (**1**) her basis of authority for respondent's audit is an LN and not an LOA; (**2**) no LOA was issued during the conduct of her audit; and (**3**) she did not secure Sworn Affidavits from the suppliers in relation to their declared purchases.[43] No redirect examination followed.[44]

Subsequently, on 16 June 2020, petitioner's FOE was filed.[45] Respondent filed his comment thereto on 30 July 2020.[46] On 09 October

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42 Exhibit "R-13", id., pp. 140-147; Minutes of the hearing held on and Order, both dated 12 March 2020, id., pp. 196-199 and 200-201, respectively.
43 TSN dated 12 March 2020, pp. 7-9.
44 Id., p. 9.
45 See FOE, Division Docket, pp. 204-208.
46 Id., pp. 217-219.

2020, the First Division issued a Resolution[47] that admitted all of petitioner's exhibits.

On 17 November 2020, petitioner filed his or her Memorandum[48], while respondent filed his Memorandum[49] on 18 December 2020. Thereafter, the case was deemed submitted for decision on 12 January 2021.[50]

Later, or on 07 December 2021, the First Division issued a Decision dismissing respondent's Petition for Review[51] for lack of jurisdiction. Therein, the Court found that although there was an allegation that the FDRR was received on 03 August 2018, there was no documentary evidence presented by respondent to show the FDRR's actual date of receipt. The First Division added that in view of respondent's failure to prove that he received the FDRR on 03 August 2018, the 30-day period to file an appeal was to be reckoned from 16 July 2018 (the FDRR's date of issuance).

On 04 April 2022, respondent filed his "Motion for Reconsideration"[52] (**respondent's MR**) to the above Decision. In respondent's MR, he stated that under the Judicial Affidavit Rule, the judicial affidavit of a witness should have already constituted as the direct testimony. His testimonial evidence thus proved that he received the FDRR on 03 August 2018. Respondent pointed out that petitioner's Answer lacked any specific denial and merely alleged that he or she lacked knowledge of respondent's receipt of the FDRR. In other words, petitioner admitted that respondent received the FDRR on 03 August 2018. Lastly, it would have been absurd and unrealistic for him (respondent) to have received the FDRR on the same day it was issued, since petitioner holds office in Quezon City, while respondent is residing in Ragay, Camarines Sur.

Along with the MR, respondent also submitted to the First Division the following documents: (1) print out of the scanned copy of

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47 See Resolution dated 09 October 2020, id., pp. 226-227.
48 Id., pp. 228-243.
49 Id., pp. 247-263.
50 See Resolution dated 12 January 2021, id., p. 269.
51 Supra at note 23.
52 Division Docket, pp. 299-304.

the mailing envelope[53] which contained the FDRR dated 16 July 2018 Decision; and (2) Certification dated 29 March 2022[54] from the Postmaster of Ragay, Camarines Sur. Despite notice[55], petitioner failed to file his or her Comment thereto.[56]

In the now assailed Amended Decision of 25 August 2022[57], the First Division granted respondent's Petition for Review and cancelled the assessment against respondent. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, [respondent's] *Motion for Reconsideration* is **GRANTED**. Accordingly, the dispositive portion of the assailed Decision dated December 7, 2021 is hereby **AMENDED** to read, as follows:
>
> > **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**.
> >
> > Accordingly, Formal Letter of Demand dated November 14, 2023, Assessment Notice No. 065-10-114-096-192 and Final Decision on Disputed Assessment dated March 6, 2014, assessing [respondent] for deficiency income tax and VAT in the aggregate amount of Php2,260,073.57 for taxable year 2010, are **CANCELLED.**
> >
> > [Petitioner], his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from collecting or taking any further action on the subject assessments.
> >
> > **SO ORDERED.**
>
> ...

In granting respondent's Petition for Review, the First Division mainly held that: (1) it validly acquired jurisdiction over the case because of respondent's unrebutted testimony that he received the FDRR on 03 August 2018; (2) the date of receipt on 03 August 2018 is corroborated by the exhibits[58] submitted with respondent's MR; (3) substantial justice justifies the admission of exhibits attached to the MR; (4) petitioner violated respondent's right to due process as a

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53 Id., p. 306.
54 Id., p. 307.
55 See Resolution dated 22 April 2022, id., p. 312.
56 See Records Verification dated 23 May 2022, id., p. 313.
57 Supra at note 1.
58 Supra at notes 53 and 54.

mere LN was issued notifying respondent of a discrepancy based on computerized matching from third party sources; (**5**) no LOA was issued prior to the issuance of PAN and FAN; and (**6**) petitioner's assessment was based on a mere presumption that the alleged undeclared purchases constitute or give rise to undeclared income.[59]

Meanwhile, on 16 September 2022, petitioner filed an "[MR] (Re: Amended Decision promulgated on 25 August 2022)"[60] (**petitioner's MR**). Notwithstanding the directive to comment, respondent failed to file his comment thereto.[61] On 01 February 2023, the First Division issued the assailed Resolution denying petitioner's MR.[62]

In the assailed Resolution, the First Division found that: (1) respondent's Petition for Review before it was timely filed based on respondent's unrebutted testimony that he received the FDRR on 03 August 2018; (2) petitioner's assessment is invalid since no LOA was issued prior to the release of the PAN and FAN; (3) an LN cannot be converted into an LOA; and (4) in the absence of a valid LOA, petitioner's assessment or examination is a nullity.[63]

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the First Division's actions, petitioner filed the present petition on 10 March 2023 (following the extension of time granted to it).[64] On 05 June 2023, respondent filed his "Comment".[65] On 17 April 2024, the Court *En Banc* resolved to give due course to the instant case and submitted it for decision.[66]

ISSUE

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

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59 Supra at note 1.
60 Division Docket, pp. 324-345.
61 See Resolution dated 03 October 2022, id., p. 348; See also Records Verification dated 11 November 2022 and 24 November 2022, id., pp. 349 and 358, respectively.
62 Supra at note 2.
63 Supra at note 2.
64 *Rollo*, p. 6.
65 Id., pp. 51-63.
66 Id., pp. 117-119.

WHETHER THE FIRST DIVISION ERRED IN CANCELLING THE FORMAL LETTER OF DEMAND DATED 14 NOVEMBER 2013, ASSESSMENT NOTICE NO. 065-10-114-096-192 (FAN/FLD), FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) DATED 06 MARCH 2014 AND RULING THAT THE DEFICIENCY INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) ASSESSMENTS IN THE TOTAL AMOUNT OF ₱2,260,073.57, INCLUDING INTEREST FOR THE PERIOD 01 JANUARY 2010 TO 31 DECEMBER 2010 ARE VOID.

ARGUMENTS

In calling for the reversal of the First Division's actions, petitioner insists that the assessment against respondent is valid and that there is no violation of respondent's right to due process.[67] Petitioner argues that the First Division erred in admitting the documents attached to respondent's MR.[68] Petitioner further argues that the First Division has no jurisdiction over respondent's Petition.[69] Petitioner also asserts that the BIR's assessment is presumed correct and made in good faith, thus the collection of taxes should not be enjoined considering that petitioner could still appeal the assailed Amended Decision (as it did).[70]

As for respondent, he argued that the present petition should be denied for the following reasons, to wit: (1) the documents (exhibits) attached to respondent's MR were merely considered corroborative to its unrebutted testimonial evidence, thus, even if the First Division will not consider the assailed exhibits attached to the MR, jurisdiction was duly vested to it; (2) the First Division has the authority to enjoin petitioner's collection of taxes as this is a necessary consequence of the cancellation of the subject assessment; and (3) a grant of authority to examine or audit (from the CIR) must precede the assessment of a taxpayer and in the absence thereof, an assessment must be cancelled as how the First Division did so in this case.[71]

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67 See Petition for Review *Ad Cautelam*, supra at note 3.
68 See Par. 2, id., p. 10.
69 See Par. 3, id., p. 14.
70 See Par. 6, id., p. 15.
71 See Comment, supra at note 65.

RULING OF THE COURT *EN BANC*

At the outset, it is noted that the present petition before the Court *En Banc* has been timely filed.

The records show that petitioner received a copy of the assailed Resolution (denying his or her MR) on 08 February 2023.[72] It had fifteen (15) days from receipt of the assailed Resolution, pursuant to Section 3(b)[73], Rule 8 of the RRCTA, or until 23 February 2023, to file a Petition for Review before the Court *En Banc*. On 22 February 2023, petitioner filed a "Motion for Extension of Time to File Petition for Review" and the Court *En Banc* granted the same.[74] Petitioner timely filed the present Petition for Review on 10 March 2023.[75]

We now proceed to the merits of the case.

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.

It is worthwhile to note that the allegations and arguments in the instant petition are but reiterations of petitioner's pleadings before the First Division, which have already been exhaustively discussed and passed upon in the assailed Amended Decision and Resolution. However, for emphasis and for petitioner's further enlightenment, We will oblige to discuss anew the more salient points in *seriatim*.

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72 See Notice of Resolution dated 07 February 2023, Division Docket, pp. 412-413.

73 **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.

74 *Rollo*, pp. 1-4; see also p. 6.

75 Supra at note 3.

THE COURT IN DIVISION VALIDLY ACQUIRED JURISDICTION OVER RESPONDENT'S PETITION FOR REVIEW.

Here, petitioner insists that it was only when respondent filed his MR that he submitted to the First Division the following documents: (1) print out of the scanned copy of the mailing envelope[76] which contained the FDRR dated 16 July 2018 Decision; and (2) Certification dated 29 March 2022[77] from the Postmaster of Ragay, Camarines Sur.[78] Had the First Division rejected the belatedly filed documents, there is insufficient proof that respondent received the FDRR dated 16 July 2018 on 03 August 2018. Hence, the First Division could not have validly acquired jurisdiction over the case.[79]

Petitioner's arguments fail to convince Us.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. For the court or an adjudicative body to have authority to dispose of the case, it must acquire jurisdiction over the subject matter.[80]

Verily, the CTA, being a special court, can take cognizance only of matters that are clearly within its jurisdiction. In relation to this, Section 7 of RA 1125, as amended by RA 9282[81], specifically provides:

> ...
> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue** in cases involving **disputed**

76 Supra at note 53.
77 Supra at note 54.
78 Par. 2, *rollo*, p. 11.
79 Par. 2, id., p. 14.
80 *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, 17 June 2015.
81 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> **assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.][82]

...

Moreover, Section 11 of RA 1125, as amended, states in part:

...

> **Sec. 11.** *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction of the **Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the [**Court of Tax Appeals**] **within thirty (30) days after the receipt of such decision** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.[83]

...

Section 3(a)(1), Rule 4 of the RRCTA complements the foregoing provision, to wit:

...

> SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) **Decisions of the Commissioner of Internal Revenue** in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.][84]

...

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82 Emphasis supplied and italics in the original text.
83 Emphasis supplied and italics in the original text.
84 Emphasis supplied and italics in the original text.

From the foregoing, this Court has appellate jurisdiction over petitioner's decisions, rulings or inactions. The appeal must be filed within thirty (30) days from receipt of respondent's decision or ruling, or after the expiration of the period fixed by law for action. This statutory privilege is echoed in Section 3(a), Rule 8 of the RRCTA, *viz*:

> ...
>
> SEC. 3. *Who may appeal; period to file petition.* —
>
> (a) **A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act** on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[85]
>
> ...

Thus, under Section 228 of the NIRC of 1997, as amended, if the CIR or petitioner denies, in whole or in part, a taxpayer's protest or administrative appeal, the taxpayer may appeal to the CTA within 30 days from the receipt of the CIR's decision or ruling, or in case of inaction, from the lapse of 180-day period to decide the said filed protest. The provision reads —

> ...
>
> **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[.] ...
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> ...
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If

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85 Emphasis supplied and italics in the original text.

the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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. ...

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.**[86]

...

Revenue Regulations (**RR**) No. 12-99[87], as amended by RR No. 18-13[88], further provides —

...

SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

...

3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

> (i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> (ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
> ...

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86 Emphasis supplied and italics in the original text.

87 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
>
> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
>
> **If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.**[89]
>
> ...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[90] **(PAGCOR)**, explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit —

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:

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89 Emphasis supplied and italics in the original text.

90 G.R. No. 208731, 27 January 2016; Citation omitted, emphasis, italics and underscoring in the original text.

> 1. If the protest is wholly or partially denied by the CIR ***or*** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> ...

To avoid confusion, the Supreme Court in *PAGCOR* further summarized the rules as follows —

> ...
>
> To further clarify the three options: **A whole or partial denial by the CIR's authorized representative may be appealed to the CIR** or the CTA. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.[91]
>
> ...

In the case at bar, the records show clearly that on 07 March 2014[92], respondent received the FDDA dated 06 March 2014 and that RD Tabule signed the same. The FDDA denied respondent's Protest and declared the assessment against respondent final and demandable. Instead of filing its judicial appeal before this Court, respondent opted to file with petitioner a letter-reply to the FDDA on 20 May 2014.[93] The letter-reply reads –

> ...
>
> I am requesting for reconsideration because I believe I was denied due process as I was not afforded the opportunity to reconcile the discrepancies as stated in the Letter Notice (LN) for the calendar

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91 Id.; Emphasis supplied.
92 See receiving date of FDDA; supra at note 6.
93 Supra at note 21.

> year 2010 of which I have not received, thereby, leaving me uninformed about it.[94]
>
> ...

Based on the foregoing, respondent could be deemed to have filed an administrative appeal with the CIR through an MR. Later, respondent has also alleged that it received petitioner's FDRR dated 16 July 2018[95] issued by then CIR Caesar Dulay (**Dulay**) on 03 August 2018.[96]

Aside from respondent's declaration in his Judicial Affidavit that he received the FDRR on 03 August 2018, the Court *En Banc* agrees with respondent that this was unrebutted. Further, while respondent assails the First Division's admission of the (1) print out of the scanned copy of the mailing envelope[97] which contained the FDRR dated 16 July 2018 Decision; and (2) Certification dated 29 March 2022[98] from the Postmaster of Ragay, Camarines Sur, the Court *En Banc* is constrained to uphold the First Division's action.

In the case of *Filminera Resources Corporation v. Commissioner of Internal Revenue*[99] (**Filminera**) the taxpayer, in trying to prove its entitlement to a refund claim, belatedly attached in its MR an Amended BIR Form 2550Q for the first quarter of 2012 (**Annex P-1**), the Supreme Court, in reversing the CTA *En Banc*, upheld the admission of the Exhibit even after the decision has already been promulgated. It held:

> ...
>
> In *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*, the taxpayer was able to prove that it had excess withholding taxes for the year 1989 and was, thus, entitled to a refund amounting to P112,491.00. The CTA and the CA, however, denied the claim for tax refund. Since petitioner declared in its 1989 Income Tax Return that it would apply the excess withholding tax as a tax credit for the following year, the tax court held that petitioner was presumed to have done so. The CTA and the CA ruled that petitioner failed to overcome this presumption because it did not present its 1990 Return, which would have shown that the amount in dispute was not applied as a tax credit. **However, a copy of the Final Adjustment Return for 1990 was attached to**

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94 Id., p. 109.
95 Supra at note 22.
96 Par. 2, Respondent's Petition for Review, Division Docket, p. 11.
97 Id., p. 306.
98 Id., p. 307.
99 G.R No. 233581 (Notice), 11 March 2019; Citations omitted, emphasis supplied and italics in the original text.

petitioner's Motion for Reconsideration filed before the CTA. Thus, the Court has held:

> True, **strict procedural rules generally frown upon the submission of the Return after the trial.** The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it "**shall not be governed strictly by the technical rules of evidence." The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.**
>
> In the present case, **the Return attached to the Motion for Reconsideration** clearly showed that petitioner suffered a net loss in 1990. Contrary to the holding of the CA and the CTA, petitioner could not have applied the amount as a tax credit. **In failing to consider the said Return, as well as the other documentary evidence presented during the trial, the appellate court committed a reversible error.**
>
> It should be stressed that the rationale of the **rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But there can be no just determination of the present action if we ignore, on grounds of strict technicality**, the Return submitted before the CTA and even before this Court. To repeat, the undisputed fact is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the petitioner.
>
> ...
>
> Finally, respondents argue that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the claimant. Under the facts of this case, we hold that petitioner has established its claim. Petitioner may have failed to strictly comply with the rules of procedure; it may have even been negligent. These circumstances, however, should not compel the Court to disregard this cold, undisputed fact: that petitioner suffered a net loss in 1990, and that it could not have applied the amount claimed as tax credits.

> **Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens.** If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.
> ...

A careful scrutiny of Annex "P-19" shows that there is nothing indicated on the spaces provided for "VAT refund/TCC claimed," thus, it could not serve the very purpose of offering the said exhibit, and consequently it was the basis of the CTA Division in denying the claim. **However, upon the presentation of the amended form which was attached as Annex "P-1" in petitioner's Motion for Reconsideration,** it became clear and evident that it was the form that petitioner was referring to in its Formal Offer of Evidence. **Therefore, we see no reason to deprive petitioner of what is rightfully theirs only because the aforesaid amended BIR Form was belatedly submitted.**

This is not to say that we should overlook the government's right to due process by allowing the admission of the document without petitioner having formally offered the same and without giving the CIR the chance to examine its due execution and authenticity. In admitting Annex "P-1," We bear in mind that this form was submitted to the BIR thru its electronic filing and payment system (eFPS), thus, it has every opportunity to verify through its system the veracity of the attached document.

It is worthy to reiterate that substantial justice dictates that the government should not keep money that does not belong to it at the expense of citizens. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.

...

In assailing the First Division's action, petitioner cites Section 34[100], Rule 132 of the Rules of Court, as amended, and argued that the Court should not accept any evidence not formally offered. We think otherwise. It is clear that: (1) existing jurisprudence, as above cited, has justified the admission of exhibits belatedly attached to an MR to serve the interest of substantial justice; (2) respondent was able to prove that he received the FDRR on 03 August 2018 through his unrebutted testimony and the exhibits attached in his MR; and (3) the CTA is not strictly governed by technical rules of evidence, technicalities should not be used to frustrate, but rather promote the interest of substantial justice. It should still be the ascertainment of the truth that should be the paramount consideration.

Based on the foregoing provisions and jurisprudence, where the CIR, through his or her authorized representative, denies a taxpayer's protest, the latter may appeal to the CTA within 30 days from the date of receipt of the CIR's decision.

In this case, the following are the pertinent dates and events in determining the timeliness of respondent's judicial appeal filed before the Court in Division[101]:

Date	Event
14 November 2013	Petitioner issued respondent's FAN/FLD.[102]
18 December 2013	Respondent filed its undated Request for Reinvestigation (Protest to FAN).[103]
06 February 2014	Petitioner issued a Letter[104], allowing respondent a period of sixty (60) days from 18 December 2013 to submit his supporting documents.
19 February 2014	Respondent submitted additional supporting documents in connection with the Request for Reinvestigation beyond the 60-day reglementary period.[105]
07 March 2014	Respondent received petitioner's FDDA dated 06 March 2014[106], signed by RD Tabule.
11 April 2014	Respondent filed his Request for Reconsideration dated 10 April 2014[107] against the FDDA.

100 SEC. 34. *Offer of Evidence.*
101 Initially raffled to the Second Division but transferred to the First Division; supra at note 24.
102 Exhibit "R-5", supra at note 5.
103 Supra at note 14.
104 Supra at note 15.
105 Supra at note 16.
106 Supra at note 6.
107 Supra at note 19.

Date	Event
14 April 2014	Petitioner issued a Letter[108], informing respondent that his Request for Reconsideration should have been filed with the Office of the Regional Director.
20 May 2014	Respondent re-filed his Request for Reconsideration.[109]
03 August 2018	Respondent received the FDRR dated 16 July 2018.[110]
23 August 2018	Respondent filed its Petition for Review[111] within the 30-day reglementary period.

Since respondent's judicial appeal[112] was timely filed on 23 August 2018, within the 30-day appeal period (reckoned from respondent's receipt of petitioner's FDRR on 03 August 2018), the Court in Division validly acquired jurisdiction over the case.

PETITIONER'S ASSESSMENT IS VOID FOR VIOLATION OF RESPONDENT'S RIGHT TO DUE PROCESS.

Upon a careful study of the arguments and scrutiny of the evidence and testimony submitted by both parties, the Court *En Banc* finds that petitioner's assessment of respondent bears an incurable defect that necessarily voids the whole assessment.

As the First Division aptly ruled, petitioner's assessment against respondent pursuant to an investigation that the ROs conducted without any authority (granted through an LOA) is null and void.

It is settled that the audit process normally commences with the CIR's issuance of the required LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment. At the same time, the LOA authorizes or empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[113] This function of an LOA is emphasized in the case of *Medicard*

108 Supra at note 20.
109 Supra at note 21
110 Supra at note 22.
111 Supra at note 23.
112 Supra at note 23.
113 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017.

Philippines, Inc. v. Commissioner of Internal Revenue[114] (**Medicard**), where the Supreme Court explained, thus:

> ...
>
> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.
>
> ...

In the case at bar, the LOA's absence is undisputed. The records are scant of proof that a valid LOA or its functional equivalent has been issued. In its place, what the records show will be the LN.[115]

The transcript of stenographic notes (**TSN**) on RO Garfin's declaration on the witness stand reveals:

> ...
>
> ATTY. PEREZ:
>
> Q: In your answer to Question No. 8, you said that you conducted an examination of petitioner's books pursuant to [an LN], dated September 3, 2012, correct?
>
> MS. GARFIN:
>
> A: Yes.
>
> ATTY. PEREZ:
>
> Q: That means, Madam Witness, that **your basis for such an examination is not [an LOA] but only [an LN]**, correct?
>
> MS. GARFIN:
>
> **A: Yes.**
>
> ATTY PEREZ:
>
> Q: Therefore, you will agree with me that you had **no [LOA] when you conducted the examination**, correct?

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114 G.R. No. 222743, 05 April 2017; Citation omitted.
115 Supra at note 9.

MS. GARFIN:

A: **Yes, Sir.**[116]

...

Unrelenting, petitioner justifies the assessment to be valid because a prior LOA is not necessary. According to petitioner, Section 6(A) of the NIRC of 1997, as amended, provides the legal basis for his or her use of LNs. Furthermore, petitioner insists that there is no requirement for an LOA when an audit investigation is conducted under his or her own office (as it is an inherent power to examine tax returns and determine the correct amount of tax as provided under Section 6 of the NIRC of 1997, as amended). Additionally, under Revenue Memorandum Order (**RMO**) No. 42-2003[117], her or she is mandated to assess proper taxes based on an examination of returns without the necessity of an LOA. Likewise under Section 6(A) of the NIRC of 1997, as amended, the only requirement is that notice be given to the taxpayer.

Lastly, petitioner maintains that respondent's right to due process was not violated as he was given ample opportunity to respond to the LN and dispute the assessment.

We do not share any of petitioner's views.

The pertinent sections of the NIRC of 1997, as amended, provide clearly:

...

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**

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116 TSN dated 12 March 2020. p. 8; Emphasis supplied.

117 Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Taxes covered by a Letter Notice (LN) issued under the RELIEF System as defined in Revenue Memorandum Order (RMO) No. 30-2003 and other data matching processes.

> **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.
> ...
>
> **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.
> ...
>
> **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[.][118]
> ...

The RO tasked to examine the books of accounts of taxpayers must be authorized *via* LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void.

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[119], the Supreme Court sees similarly:

> ...
> Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
> ...

---

118 Emphasis supplied and italics in the original text.
119 G.R. No. 178697, 17 November 2010; Citation omitted.

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.
>
> ...

Thus, for the examination of a taxpayer to be lawful, a valid LOA must be issued either by the CIR or his or her duly authorized representative.

Pursuant to the abovementioned Section 13, in relation to Section 10(c)[120] of the NIRC of 1997, as amended, as well as Revenue Memorandum Order (**RMO**) No. 43-90[121] and RMO No. 29-2007[122], the CIR's duly authorized representatives are as follows: (1) Regional Directors; (2) Deputy Commissioners; (3) Assistant Commissioner/ Head Revenue Executive Assistants (for Large Taxpayers); and (4) other officials but only upon the CIR's prior authorization.

The above-cited *Medicard*[123] case enlightens further:

> ...
> **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** ...
> ...
>
> **Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not**

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120 **SEC. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
...
(c) Issue Letters of Authority for the examination of taxpayers within the region[.]
...

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

122 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

123 Supra at note 114; Citation omitted and emphasis supplied.

> **validly conduct any of these kinds of examinations without prior authority.**
> ...
>
> ... To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made.
> ...

In the same fashion, the Supreme Court has been rejecting similar arguments.[124] Similarly, in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[125], the Supreme Court enunciated thusly:

> ...
> Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. The revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.
> ...
>
> 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

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124 *Commissioner of Internal Revenue v. Manila Medical Services Inc. (Manila Doctors Hospital)*, G.R No. 255473, 13 February 2023; *People of the Philippines v. Corazon Gernale*, G.R. No. 256868, 04 October 2023; *Commissioner of Internal Revenue v. Port Barton Development Corporation*, CTA EB No. 2703 (CTA Case No. 9674), 14 March 2024.

125 G.R. No. 242670, 10 May 2021; Citations omitted.

> 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.
>
> ...

Thus, it is beyond dispute that an LOA is a crucial prerequisite to the observance of the taxpayer's due process rights. The RO's authority to audit a taxpayer stems from the LOA. Contrary to petitioner's contentions, it is not enough that a notice (through an LN) is given to the taxpayer.

It is further worth noting that, by way of exception, the grant of authority by a valid LOA may be dispensed with when the CIR personally undertakes the investigation.[126] However, that is not the case here. It is also equally recognized that any other person who intends so must be duly clothed with authority. Petitioner in this case had not exhibited any basis for exempting the handling ROs from needing to derive authority from a valid LOA.

As the First Division aptly ruled, a mere LN was issued notifying respondent on the discrepancy of his purchases as a result of computerized matching on information provided by third-party sources. There is also no dispute that no LOA was issued prior to the issuance of the PAN and FAN/FLD. In the absence of such an authority, the assessment or examination is a nullity.[127]

We echo the First Division's position when it deemed the *Medicard* case particularly instructive to the case at bar. There, the Supreme Court refused to assign value to the LN as a substitute for a validly-issued LOA[128]:

> ...
>
> **The Court cannot convert the LN into the LOA required under the law** even if the same was issued by the CIR himself. ... **Since the law specifically requires an LOA** and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, **the absence thereof cannot be simply swept under the rug**, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003

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126 See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 114.
127 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, supra at note 119.
128 Supra at note 114; Emphasis supplied.

considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

... **Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands**, as recognized under RMO No. 32-2005, **that after an LN 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.

...

... In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.

...

In addition, petitioner makes issue of the alleged discrepancy on respondent's purchases a result of computerized matching on information provided by third-party sources. According to petitioner, respondent's declared purchases *per* tax returns were compared against the SLS that his suppliers submitted. The said discrepancy allegedly resulted in an underdeclaration of purchases amounting to ₱8,786,015.36, from which petitioner then imputed underdeclared sales that eventually served as a basis of an assessment for deficiency IT and VAT. Petitioner anchors the finding on a presumption that an underdeclaration of purchases in respondent's returns will in itself result in the imposition of IT and VAT.

We disagree.

In *Commission[er] of Internal Revenue v. Hantex Trading Co., Inc.*[129], the Supreme Court ruled that for an assessment to stand judicial scrutiny, it must be based on facts supported by credible evidence. We quote:

> ...
>
> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. ***Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.***
>
> ...
>
> Thus, the computations of the EIIB and the BIR on the quantity and costs of the importations of the respondent in the amount of P105,761,527.00 for 1987 have no factual basis, hence, arbitrary and capricious. **The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*, in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of**

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[129] G.R. No. 136975, 31 March 2005; Citations omitted, italics in the original, emphasis and underscoring supplied.

> **an assessment, being a mere presumption, cannot be made to rest on another presumption.**
> ...

While it is axiomatic that all presumptions are in favor of the correctness of tax assessment, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on *actual* facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[130] Thus, aside from the lack of a valid LOA, the assessment is also void for lack of a factual basis.

In consideration of all the foregoing, We find no cogent reason to side with petitioner. Well-entrenched are the doctrines that in the absence of the requisite authority, the assessment or examination is a nullity[131]; and, a void assessment bears no fruit.[132]

As the Court *En Banc* similarly finds the assessment against respondent inescapably void, further discussions of the remaining grounds in support of petitioner's position can no longer alter the outcome of this instant case. Accordingly, in the absence of any reversible error, the Court *En Banc* has no other recourse but to dismiss this case and to leave undisturbed the First Division's assailed actions.

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[133] Relative thereto, a void assessment bears no valid fruit.[134] Such being the case, the subject IT and VAT assessment cannot be enforced against respondent, and the BIR has no right to collect the same.

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130 *The Collector of Internal Revenue (now Commissioner) v. Alberto D. Benipayo*, G.R. No. L-13656, 31 January 1962.
131 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, supra at note 119.
132 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010.
133 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398- 99 & 201418-19, 03 October 2018.
134 *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, 10 December 2014.

WHEREFORE, with the foregoing considered, the instant Petition for Review *Ad Cautelam* filed by petitioner Commissioner of Internal Revenue on 10 March 2023 is **DENIED** for lack of merit. Accordingly, the assailed Amended Decision dated 25 August 2022 and assailed Resolution dated 01 February 2023, of the First Division in CTA Case No. 9912, entitled *Ermilo Tan Ng Hua v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice