REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2281** *(CTA Case No. 9280)*
-versus-	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
MARKET STRATEGIC FIRM, INC., *Respondent.*	Promulgated: NOV 04 2022

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A M E N D E D D E C I S I O N

MODESTO-SAN PEDRO, J.:

Before the Court are the following submissions from the respondent:

1. Motion for Reconsideration, filed on 2 March 2022, without comment from petitioner;
2. Manifestation and Motion to Admit the Attached Supplement To The Motion for Reconsideration, filed on 4 July 2022 with attached Supplement To The Motion for Reconsideration with petitioner's Comment (Re: Respondent's Manifestation and Motion to Admit Supplemented Motion for Reconsideration), filed on 7 September 2022; and
3. Manifestation, filed on 12 July 2022, which simply listed the titles of four (4) cases it manifested would aid in the resolution of its Motion for Reconsideration.

With the filing of the Comment by petitioner on 7 September 2022, the incidents ripened for resolution.

On the Manifestation and Motion to Admit the Attached Supplement to the Motion for Reconsideration

Respondent avers that from the filing of its Motion for Reconsideration, it came across jurisprudence which may help the Court in its resolution of its Motion, hence its Supplement to the Motion for Reconsideration. In objecting to the admission of the Supplement, petitioner banks on ***Section 6, Rule 10 of the 1997 Rules of Court, as amended***, which holds that the Court may permit the service of a "supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented". Advancing that the matters pleaded in the Supplement already happened even before the filing of respondent's Petition for Review, petitioner insists that the Supplement should not be admitted.

The Supreme Court, however, has also ruled that "(A)s a general rule, leave will be granted to file a supplemental complaint which alleges any material fact which happened or came within plaintiff's knowledge since the original complaint was filed, such being the office of a supplemental complaint."[1]

A reading of the Supplement would show that included in support of its arguments is the ruling of this Court in ***CIR v. EDS Manufacturing, Inc.***, docketed as ***CTA EB No. 2411***, which was promulgated on 22 April 2022, or more than a month after the filing of respondent's Motion for Reconsideration. This, alone, being an occurrence which happened since the date of the Motion for Reconsideration sought to be supplemented, allows admission of the Supplement. The rest of the allegations in the Supplement may be construed to have come across the respondent's knowledge since the Motion for Reconsideration was filed.

The Court also notes the purpose of supplemental pleadings, to wit:

> "As its very name denotes, a supplemental pleading only serves to bolster or adds something to the primary pleading. A supplement exists side by side with the original. It does not replace that which it supplements. Moreover, a supplemental pleading assumes that the original pleading is to stand and that the issues joined with the original pleading remained an issue to be tried in the action. It is but a continuation of the complaint. Its usual office is to set up new facts which justify, enlarge or change the kind of

[1] Spouses Lambino v. Hon. Presiding Judge, Regional Trial Court, Branch 172, Valenzuela City, et al., G.R. No. 169551, 24 January 2007, *citing* Bush v. Pioner Mining Co. Aloha, 179 F. 78 (1910) *and* Rio Grande Dam & Irrigation Co. v. United States, 54 L.ed. 190 (1909).

> relief with respect to the same subject matter as the controversy referred to in the original complaint."[2]

Here, the arguments contained in the Supplement merely serve to support the arguments already raised in its Motion for Reconsideration, as follows:

> "(T)hat the assessment issued was invalid due to the following reasons:
>
> a) The new set of Revenue Officers (RO) who continued the audit have no authority from the Memorandum of Assignment (MOA) issued by Chief, RLTAD I, Mr. Cesar D. Escalada on February 18, 2013
> b) As the audit team was reconstituted, neither can RO Allan Maniego continue to draw authority to do the audit from the original Letter of Authority (LOA) issued last September 20, 2011, despite his name appearing in both original LOA and the subsequent MOA.
> c) Worst, other ROs, neither named in the LOA nor in the MOA, participated in the continuation of the audit."[3]

As such, it conforms to the purpose of supplemental pleadings and may, thus, be admitted.

On the Motion for Reconsideration

As may be gleaned, above, the Motion for Reconsideration is anchored upon respondent's position that the assessment issued was invalid considering that the revenue officers who conducted the audit were not authorized to do so.

The relevant facts as stated in the Decision sought to be reconsidered are as follows:

> "The records show that the then Officer-in-Charge- Assistant Commissioner for Large Taxpayer's Service, Mr. Alfredo V. Misahon, issued LOA No. 116-2011-00000050 on September 20, 2011 to authorize the examination of respondent's books of account and other accounting records for all internal revenue taxes for TY 2010. The ROs named in said LOA were Ma. Salud Madela, Myrna Ramirez, Zenaida Paz, Cletofel Parungao, Allan Maniego and Joel Aguila under Group Supervisor (GS) Glorializa Samoy. Records also show that a MOA was subsequently issued referring the continuation of the audit/investigation (of the same TY 2010) to RO Allan Maniego under GS Wilfredo S. Reyes. The said MOA was signed by the Chief of the RLTAD I, Mr. Cesar D. Escalada."[4]

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2 Planters Development Bank v. LZK Holdings and Development Corporation, G.R. No. 153777, 15 April 2005.
3 Supplement To The Motion For Reconsideration, p. 2, Records, p. 160.
4 Decision, p. 11, Records, p. 108.

The Decision found the authority of Revenue Officer ("RO") Allan Maniego to have emanated from the original Letter of Authority ("LOA"), dated 20 September 2011, which it believed to have clothed him with requisite authority to continue the audit/investigation of respondent's books for taxable year ("TY") 2010 and that such authority prevailed under the subsequent Memorandum of Assignment ("MOA"). Thus, the Decision of the Second Division in the case appealed canceling the assessment against respondent[5] was reversed and set aside.

After assiduously going through the arguments in respondent's Motion for Reconsideration and Supplement thereto, the Court finds merit in the same.

The importance and necessity of a Letter of Authority for the examination of a taxpayer's books of accounts is hornbook law, as recently reiterated in ***Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.***[6] ***("McDonald's Case")***:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.
>
> Section 6 of the NIRC provides:
>
> SECTION 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –
>
> (A) Examination of Return and Determination of Tax Due. - After a return has been filed as required under the provisions of this Code, the **Commissioner** or **his duly authorized representative** may authorize the examination of any taxpayer and the assessment of the correct amount of tax[.] (Emphasis supplied)
>
> Section 10(c) of the NIRC provides:
>
> SECTION 10. Revenue Regional Director. - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
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> x x x

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5 Decision in CTA Case No. 9280, Division Records Vol. 9.
6 G.R. No. 242670, 10 May 2021.

> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.] (Emphasis supplied)
>
> Section 13 of the NIRC provides:
>
> SECTION 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to **a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (Emphasis supplied)
>
> Section D(4) of RMO No. 43-90 dated September 20, 1990 provides:
>
> For the proper monitoring and coordination of the **issuance of Letter of Authority**, the only BIR officials authorized **to issue and sign Letters of Authority** are the **Regional Directors**, the **Deputy Commissioners** and the **Commissioner**. For the exigencies of the service, **other officials** may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself. (Emphasis supplied)
>
> Pursuant to the above provisions, only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR." (Citations omitted.)

It is not disputed that the LOA for the examination of respondent's books of account and other accounting records for all internal revenue taxes for TY 2010 was issued on 20 September 2011. The Revenue Officers named in said LOA were Ma. Salud Madela, Myrna Ramirez, Zenaida Paz, Cletofel Parungao, Allan Maniego and Joel Aguila, under Group Supervisor ("GS") Glorializa Samoy.

Also undisputed is that the MOA referring the continuation of the audit/investigation (of the same TY 2010) to RO Maniego under GS Wilfredo S. Reyes was issued on 18 February 2013.

While the Decision found the MOA sufficient to have vested RO Allan Maniego with authority to continue the audit of respondent, the Court now disagrees.

Pivotal to our finding are ***Revenue Memorandum Order (RMO) No. 43-90*** and the ***McDonald's Case***, which illuminated the directives of said RMO as follows:

> "Section D(5) of RMO No. 43-90 dated September 20, 1990 provides:
>
> > Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.
>
> The above provision expressly and specifically **requires the issuance of a new LOA if revenue officers are reassigned or transferred** to other cases. The provision involves the following two separate phrases: "**re-assignment/transfer of cases to another RO(s)**", on the one hand, and "**revalidation of LOAs which have already expired**", on the other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA. The new LOA must then have a corresponding relevant notation, including the previous LOA number and date of issue of the said LOAs."
> (Citations omitted; emphasis and underscoring, Ours.)

Here, the subject MOA clearly indicated that it was issued for the "continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office".[7]

Accordingly, in view of such reassignment, retirement or transfer of the Revenue Officers, following the ***McDonald's Case***, a new LOA is required. Then, too, as stressed in the ***McDonald's Case***, a new LOA is likewise required for revalidation of LOAs which have already expired.

AFP General Insurance Corporation v. Commissioner of Internal Revenue,[8] ***("AFP General Insurance")*** in turn, illustrates the expiration of an LOA and the corresponding revalidation needed upon its expiration. The Supreme Court there clarified as follows:

> "The issuance confirms that **a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance**. The *120-day period for rendering an investigation report* was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.
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> Nonetheless, **the revenue officer may validly request for LOA revalidation, which shall be supported by a progress report and an enumeration of reasons to justify his request.**

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[7] BIR Records, p. 455.
[8] G.R. No. 222133, 4 November 2020.

> The superior officer or the Division Chief/Revenue District Officer (RDO) shall review the request. If justified, he/she shall recommend the LOA's revalidation and endorse the request to the CIR/his duly authorized representative for the latter's approval.
>
> Without revalidation, the LOA shall be considered void and the assigned revenue officer is "prohibited from *further* investigation and contact with the taxpayer." The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of audit*. It contemplates a *served LOA* and *an on-going audit investigation*. Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.
>
> Given this context, it is clear that failure to comply with the 120-day rule does not void LOA *ab initio*. **The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his *expired authority to audit* to be able to validly continue investigation beyond the first 120 days**.
>
> That the revenue officer is unable to conduct *further* investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued."
> (Citations omitted; emphasis and underscoring, Ours.)

Here, the LOA was issued on 20 September 2011. Notably, the very first documents in relation to the audit of respondent were the Memorandum recommending the issuance of the Preliminary Assessment Notice ("PAN") and the PAN itself with Details of Discrepancy, which were only issued on 7 July 2014. These were issued way obviously beyond the 120 days from the issuance of the LOA.

In the words of ***AFP General Insurance***, above, the expiration of the 120-day period rendered the LOA unenforceable, and the *revenue officer must have sought ratification* of their expired authority to audit to be able to validly continue investigation beyond the first 120 days.

Here, however, not only was there no showing of any valid request for LOA revalidation, much less was there proof of any progress report or an enumeration of reasons to justify such request as support. Without such revalidation, the original LOA, itself, was rendered void.

Clearly, then, under the standards imposed by the ***McDonald's Case*** and ***AFP General Insurance***, there being no new LOA nor a revalidation of the original LOA, the audit conducted was void.

The absence of a new LOA or a revalidation of the original LOA was not cured by the issuance of the MOA naming RO Maniego under GS Reyes to continue the audit/investigation.

Again, the McDonald's case was emphatic in stating that–

> "It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. **The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.
>
> The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, **the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives**."
> (Emphasis and underscoring, Ours.)

That the MOA could not be considered proof of authority of the Revenue Officers named therein is underscored by the fact that the same was merely issued by Cesar D. Escalada, OIC-Chief of RLTAD I. Not being the Commissioner of Internal Revenue or his duly authorized representative, OIC-Chief Escalada did not have the requisite power to authorize such Revenue Officers, a power which belongs exclusively to the former.

What is more, the Court finds the date of the issuance of the Memorandum of Authority as a further indication of its insufficiency to vest authority upon the Revenue Officers named therein. Having only been issued on 18 February 2013, it preceded all important documents relative to the audit of respondent. The records bear the following documents and their corresponding dates of issuances:

1. Memorandum recommending issuance of PAN – 7 July 2014;[9]
2. PAN with Details of Discrepancy – 7 July 2014;[10]
3. Memorandum recommending issuance of the Formal Letter of Demand (FLD) – 8 September 2014;[11]
4. FLD with attached Details of Discrepancy – 15 September 2014;[12]
5. Memorandum recommending the issuance of the Final Decision of Disputed Assessment (FDDA) – 20 August 2015;[13] and
6. Final Decision of Disputed Assessment (FDDA) – 10 September 2015.[14]

Obviously, then, it was only after the MOA that all these vital findings were issued. Indeed, the very first documents, the Memorandum recommending issuance of the PAN, and the PAN itself, were issued more than one (1) year after the MOA. Between the issuance of the LOA on 20 September 2011 and of the MOA on 18 February 2013, there was no report, Memorandum, much less PAN issued. Stated differently, there was no evidence of audit conducted under the authority of the original LOA and before the issuance of the insufficient MOA.

WHEREFORE, the Motion to Admit the Attached Supplement To The Motion for Reconsideration and the Motion for Reconsideration of respondent is hereby **GRANTED** and the Supplement To The Motion for Reconsideration is **ADMITTED**. Respondent's Motion for Reconsideration and Supplement To The Motion for Reconsideration are hereby **GRANTED**.

Accordingly, the Decision of the Court En Banc, dated 9 February 2022, is hereby **VACATED**, and the Decision of the Court acting under its Second Division in CTA Case No. 9280, declaring the Formal Letter of Demand/Assessment Notice against respondent for alleged deficiency taxes, penalties, and interests in relation to taxable year 2010, issued on 15 September 2014, and the Final Decision on Disputed Assessment, issued on 14 September 2015, as **CANCELED AND WITHDRAWN** is hereby **REINSTATED**.

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9 BIR Records, pp. 502-512.
10 *Id.*, pp. 521-546.
11 *Id.*, pp 563-564.
12 *Id.*, pp. 565-597.
13 *Id.*, p. 1632.
14 *Id.*, pp. 1633-1662.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(See Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(I join PJ Del Rosario's Separate Concurring Opinion)
ERLINDA P. UY
Associate Justice

(I concur in the result)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

(I concur in the result)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, I join the Dissenting Opinion of Justice Catherine T. Manahan and maintain my concurrence with the ponencia dated Feb. 9, 2022)

LANEE S. CUI-DAVID
Associate Justice

(On Official Business)
CORAZON G. FERRER-FLORES
Associate Justice

C E R T I F I C A T I O N

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

MARKET STRATEGIC FIRM, INC.,
Respondent.

CTA EB NO. 2281
(CTA Case No. 9280)

Present:

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

PROMULGATED:
NOV 04 2022 4:05pm

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in: (i) granting respondent's Motion for Reconsideration and Supplement to the Motion for Reconsideration; (ii) vacating the Decision of the Court *En Banc* dated February 9, 2022; and, (iii) reinstating the Decision dated February 10, 2020 of the Court's Second Division in CTA Case No. 9280 cancelling and withdrawing Formal Letter of Demand/Assessment Notice against respondent for alleged deficiency taxes, penalties and interests in relation to taxable year 2010 issued on September 15, 2014, and the Final Decision on Disputed Assessment issued on September 14, 2015.

I am of the view that the Formal Letter of Demand (FLD), with Details of Discrepancies, and the Final Assessment Notice (FAN) are void for having been issued in violation of the due process

requirements under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, Revenue Regulations (RR) No. 12-99, as amended, and jurisprudence.

Records reveal that on July 12, 2022, respondent filed a Manifestation, stating that the pronouncements on **administrative due process by the Supreme Court[1] (and as echoed by the Court of Tax Appeals (CTA) in recent cases)[2]** would aid in the judicious resolution of respondent's pending Motion for Reconsideration.

The cases cited in respondent's Manifestation highlighted the **repercussion** on the validity of an assessment in instances where FLD and FAN are mere reiteration of the contents of the Preliminary Assessment Notice (PAN), without addressing the arguments raised by the taxpayer in the reply to the PAN.

Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. and Avon Products Manufacturing Inc. vs. Commissioner of Internal Revenue[3] *("Avon")*, as cited by respondent, stress the significance of the CIR's duty to apprise the taxpayer of the legal and factual bases of the assessments issued against it, to consider the explanations or defenses raised by the taxpayer in connection with the assessments, and further instructs that the reason for the rejection of such explanations or defenses be communicated to taxpayers, lest the assessment be deemed **void**:

> "**The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; **otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void**. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on

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[1] ***Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.**
[2] ***Bac-Man Geothermal, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9728, November 19, 2021; *Fluor Daniel, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9267, May 28, 2021; and, *Dizon Farm Produce, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9711, January 5, 2021.**
[3] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

which the decision is based. **Failure to do so would invalidate the Final Decision on Disputed Assessment.**

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On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

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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.

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, **this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**

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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.

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The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.

xxx xxx xxx

In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. **Her disregard of the standards and rules renders the deficiency tax assessments null and void.**" *(Boldfacing and underscoring supplied)*

A careful perusal of the PAN and FLD issued against respondent indeed disclosed that the FLD is a verbatim reproduction of the wordings of the PAN, differing only in the computation of the interest. The FLD also neither referred to respondent's reply nor addressed its arguments therein. Worse, the Details of Discrepancies attached to the FLD is a verbatim reproduction of the Details of Discrepancies attached to the PAN. Since the FLD failed to inform respondent of the reasons for petitioner's apparent rejection of its arguments in the reply to the PAN, petitioner failed to observe the standards of due process in issuing the FLD and FAN.

Indeed, issuing the FLD which is an exact replica of the PAN, *sans* any indication in the FLD that due consideration was accorded on respondent's explanations or arguments as stated in its Reply to the PAN, is fatal to petitioner's cause. The issuance of a PAN is an important part of due process. It gives both the taxpayer and CIR the opportunity to settle the case at the earliest possible time without the need for the issuance of a final assessment notice.[4] To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the BIR to actually consider the taxpayer's reply thereon.

Incidentally, the fact that the foregoing issue was not previously raised by respondent does not preclude the Court from making a ruling thereon in the interest of justice.

In *Lianga vs. Lianga*[5] and *Quasha vs. LCN Construction Corp.*[6] the Supreme Court was categorical in its pronouncement that "in the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory."

Canlas vs. Tubil[7] also elucidates:

> "As a rule, a change of theory cannot be allowed. However, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly

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[4] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017, citing *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[5] G.R. No. L-38685, March 31, 1977.
[6] G.R. No. 174873, August 26, 2008.
[7] G.R. No. 184285, September 25, 2009.

> meet the issue raised in the new theory, as in this case, the Court may give due course to the petition and resolve the principal issues raised therein."

To be sure, by just perusing the PAN and its Details of Discrepancies and the FLD and its Details of Discrepancies (the contents of which are not disputed), it could readily be ascertained that they are identical, except for the interest. No further evidence is required to be presented in connection with the manner and bases by which this fact can be validated. These documents speak for themselves.

As so elucidated in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[8] citing Section 1, Rule 4 of A.M. No. 05-11-07- CTA, or the Revised Rules of the Court of Tax Appeals, the CTA can resolve an issue which was not raised by the parties when the same is necessary to achieve an orderly disposition of the case.

In fine, I submit that the FLD, with Details of Discrepancies, and the FAN are void for having been issued in violation of the due process requirements under Section 228 of the NIRC of 1997, as amended, RR No. 12-99, as amended, and *Avon*.

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

[8] G.R. No. 183408, July 12, 2017.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2281** (CTA Case No. 9280)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
MARKET STRATEGIC FIRM, INC., *Respondent.*	Promulgated: NOV 04 2022 4:05pm

x- -x

DISSENTING OPINION

MANAHAN, *J.:*

I respectfully register my dissent to the majority opinion and vote to deny respondent's *Motion for Reconsideration* and *Supplemental Motion for Reconsideration.*

The majority resolved to vacate the assailed Decision of the Court *En Banc* dated February 9, 2022 and cancel the Formal Letter of Demand/Assessment Notice issued against respondent for alleged deficiency taxes for taxable year 2010 for the lack of authority of the Revenue Officers (ROs) to conduct the audit and examination of its books of accounts and other accounting records.

I disagree.

There is no longer any dispute as to the tenet that unless authorized by the Commissioner of Internal Revenue (CIR)

herself or by her duly authorized representative, through a Letter of Authority (LOA), an examination of a taxpayer cannot ordinarily be undertaken.[1] Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.[2] In the absence of such an authority, the assessment or examination is a nullity.[3]

There is also no qualm or quarrel over the fact that an LOA[4] was issued for the examination of respondent's books of accounts and other internal revenue taxes for taxable year 2010 followed by a Memorandum of Assignment (MOA) for the continuation of the audit.

Records clearly show that RO Allan Maniego who was authorized under the original LOA No. 116-2011-00000050 has again been named in the MOA as the one authorized to continue the audit/investigation. For clarity, I quote the findings of fact of the Court in Division, thus:

> "The BIR Records show that LOA No. 116-2011-00000050 was issued authorizing ROs Ma. Salud Madela, Myrna Ramirez, Zenaida Paz, Cletofel Parungao, **Allan Maniego** and Joel Aguila under Group Supervisor (GS) Glorializa Samoy to examine MSFI's books of accounts and other accounting records for the period from January 1 to December 31, 2010. However, records show that Mr. Cesar D. Escalada, Chief of RLTAD I issued Memorandum of Assignment (MOA) No. LOA-116-2013-0306 referring the continuation of the audit/investigation to **RO Allan Maniego** under GS Wilfredo S. Reyes. xxx xxx"

The undersigned believes that in this particular circumstance, the authority of RO Allan Maniego emanates from the original LOA dated September 20, 2011, hence, he is amply clothed with the requisite authority to *continue* the audit/investigation of respondent's books for taxable year 2010 without the other original ROs who presumably have been transferred/reassigned, resigned or retired. Regardless of the reason for discontinuing the audit/investigation of respondent's tax records, the fact remains that RO Allan Maniego was tasked to continue the audit/investigation. Respondent's argument that a Referral Memorandum is not equivalent to an LOA citing the Supreme Court resolution in the case of *Composite*

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[1] *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corporation,* G.R. No. 242670, May 10, 2021.
[2] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178797, supra.
[3] *Ibid.*
[4] LOA No. 116-2011-00000050.

Materials, Inc. vs. Commissioner of Internal Revenue,[5] finds no application in the instant case because there was no substitution of ROs but a mere reduction of ROs to only one (1), i.e., RO Allan Maniego.

I concur with the majority that a Referral Memorandum or a MOA is not equivalent to an LOA when such will refer the continuance of the audit/investigation to a *new set* of ROs but I reiterate my firm position that such does not refer to a situation where the RO named in the original LOA will just continue the audit/investigation without the other ROs named in the original LOA under an MOA.

In resolving issues on the alleged lack of authority of ROs to conduct an examination of a taxpayer's records, we must go beyond the curtain of technicalities and not lose sight of the very purpose of the law, i.e., to prevent undue harassment by only allowing specific BIR personnel named in the LOA to communicate with the taxpayer and gain access to its records for a particular taxable year and to create a paper trail from the beginning of the examination up to the time an assessment is issued to the taxpayer.

RO Allan Maniego was one of those named in the original LOA[6] and remained to be the one left to continue the audit of petitioner's books of accounts for taxable year 2010 under an MOA, hence, the possibility of undue harassment or so-called "unauthorized investigation" is miniscule or nil.

Accordingly, I vote to deny respondent's *Motion for Reconsideration* and *Supplement to the Motion for Reconsideration* filed on March 2, 2022 and July 4, 2022, respectively, for lack of merit and to remand this case to the Court in Division for the determination of respondent's deficiency tax liabilities for taxable year 2010.

CATHERINE T. MANAHAN
Associate Justice

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[5] G.R. No. 241673, June 10, 2019.
[6] Exhibit "P-3"; Exhibit "R-1", BIR Records.