REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AIRGLOBE, INC.,
Respondent.

CTA EB NO. 2348
(CTA Case No. 9466)

Present:

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

Promulgated:
MAY 2 3 2022 4:28pm

x - x

DECISION

BACORRO-VILLENA, J.:

Assailing the Third Division's Decision dated 19 February 2020[1] (**assailed Decision**) and Resolution dated 27 July 2020[2] (**assailed Resolution**) in CTA Case No. 9466, entitled *Airglobe, Inc. v. Commissioner of Internal Revenue*, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the instant Petition for Review[3]

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1 Division Docket, Volume II, pp. 569-595; Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

2 Id., pp. 612-615.

3 Filed on 22 October 2020, *Rollo*, pp. 7-20.

pursuant to Section 3(b)[4], Rule 8, in relation to Section 2(a)(1)[5], Rule 4 of the Revised Rules of the Court of Tax Appeals[6] (**RRCTA**).

PARTIES OF THE CASE

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (**BIR**) who is vested with authority to carry out all the functions, duties and responsibilities of the said office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997 or other laws or portions thereof administered by the BIR.[7]

On the other hand, respondent Airglobe, Inc. (**respondent/Airglobe**) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at S-322 Pair Pags Center, Ninoy Aquino Avenue, Pasay City.[8]

FACTS OF THE CASE

On 29 July 2008, OIC Regional Director (**RD**) Ma. Niev A. Guerrero (**Guerrero**) issued Letter of Authority No. LOA 2007 00044111[9] (**LOA**) authorizing Revenue Officer (**RO**) Myrabel Dela Cruz

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4 **SEC. 3.** *Who may appeal; period to file petition.*
...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

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

6 A.M. No. 05-11-07-CTA.

7 *Rollo*, pp. 8-9.

8 Paragraph 1, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 290.

9 BIR Records, p. 31.

(**RO Dela Cruz**) and Group Supervisor (**GS**) Josefina B. Yu (**Yu**) to examine respondent's books of accounts and other accounting records for all internal revenue taxes relative to the period of 01 January 2007 to 31 December 2007 (**TY 2007**).

Subsequently, a Revalidation/Reassignment Notice dated 06 May 2009[10] (**Revalidation/Reassignment Notice**), with the subject "Letter of Authority No. LOA000044111 dated July 29, 2008" was issued by RD Alfredo V. Misajon (**Misajon**), authorizing RO Karen Joy D. Deveza[11] [with married name of Karen Joy D. Lutching (**Lutching**)] and GS Cherryflor C. Dela Cruz (**GS Dela Cruz**) to continue the audit on respondent. The same was served on respondent on 18 May 2009.[12]

On 29 May 2009, a Final Request for Presentation of Records[13] was also served on respondent. Thereafter, RO Lutching submitted a Memorandum Report dated 21 December 2009[14] to RD Misajon recommending the issuance of a Preliminary Assessment Notice (**PAN**).

On 19 November 2010, an Amended Notice of Informal Conference[15] (**NIC**) was issued requesting for an informal conference with respondent. On 30 December 2010[16], a PAN, with Details of Discrepancies dated 29 December 2010[17], was served on respondent.

Still later, respondent received a Formal Assessment Notice (**FAN**) dated 14 January 2011[18] stating that it has deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**) and withholding tax on compensation (**WTC**) for TY 2007.[19] The said FAN was accompanied by Details of Discrepancies[20] and Assessment Notices[21] (**ANs**).

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10 Id., p. 53.
11 Question and Answer (Q&A) No. 16, Judicial Affidavit of Karen Joy D. Lutching, Division Docket, Volume I, p. 251.
12 Q&A No. 7, id., p. 250.
13 Exhibit "R-1", BIR Records, p. 54.
14 Exhibits "R-2", "R-2-a", "R-2-b" and "R-2-c", id., pp. 374-375.
15 Exhibits "R-3" and "R-3-a", id., p. 405.
16 See TSN dated 18 September 2018, pp. 8-9.
17 BIR Records, pp. 443-448.
18 Exhibit "P-1", Division Docket, Volume I, p. 345.
19 Paragraph 3, JSFI, id., p. 290.
20 Exhibit "P-1-A", id., pp. 346-350.
21 Exhibits "P-1-B" to "P-1-E", id., pp. 352-355.

On 23 February 2011, respondent filed its Formal Protest[22] against the FAN.[23]

On 04 August 2011, respondent received a Final Decision on Disputed Assessment (**FDDA**) dated 28 July 2011[24] issued by RD Jaime B. Santiago (**Santiago**), denying the protest and reiterating the assessments in the amounts of ₱24,430,076.57, ₱8,135,862.73, ₱83,559.11, and ₱149,095.38, representing alleged IT, VAT, EWT and WTC deficiencies for TY 2007.[25]

On 02 September 2011, respondent appealed[26] the FDDA with the CIR.[27] On 10 August 2016, respondent received a Decision dated 28 June 2016[28] (**CIR Decision**) of then CIR Kim Jacinto-Henares denying the said appeal.[29]

PROCEEDINGS BEFORE THE COURT IN DIVISION

On 09 September 2016, respondent filed its Petition for Review[30] before the Court in Division and prayed that the CIR Decision of 28 June 2016 assessing it of deficiency taxes in the total amount of ₱32,798,593.79 be cancelled and withdrawn. The same was raffled to the First Division.

As then respondent, petitioner filed its Answer[31] to the above petition and raised the following defenses, to wit: (1) the deficiency tax assessments have legal and factual bases; (2) a close scrutiny of the IT, VAT, EWT and WTC returns filed by respondent reveals that its declarations were substantially deficient in amount hence the ten-year prescriptive period should apply due to falsity in the said returns; (3) the prescriptive period for collection of taxes is suspended in cases of disputed assessments; (4) assessments are *prima facie* presumed correct and made in good faith; and, (5) taxes are important because it

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22 Exhibit "P-2", id., pp. 356-363.
23 Paragraph 4, JSFI, id., p. 291.
24 Exhibit "P-4", id., pp. 367-371.
25 Paragraph 5, JSFI, id., p. 291.
26 Exhibit "P-5", id., pp. 372-379.
27 Paragraph 6, JSFI, id., p. 291.
28 Exhibit "P-6", id., pp. 380-397.
29 Paragraph 7, JSFI, id., p. 291.
30 Id., pp. 11-34.
31 Filed on 29 November 2016; id., pp. 107-117.

is the lifeblood of the government and so should be calculated without unnecessary hindrance.

In support of its then petition, respondent presented Jocelyn Custorio (**Custorio**) as its lone witness.[32] Through her Judicial Affidavit[33], Custorio testified, among others, that: (1) she is respondent's General Accountant; (2) she has in her custody all financial documents, including tax returns, financial statements and all tax-related matters; (3) on 24 January 2011, they received the FAN[34], Details of Discrepancies[35] and ANs[36] all dated 14 January 2011; (4) respondent, through its external counsel, filed[37] on 21 February 2011 the Formal Protest[38] against the FAN; (5) on 25 April 2011, its external counsel filed another letter[39] submitting therewith documents in support of the said Formal Protest; (6) on 05 August 2011, they received the FDDA[40]; (7) respondent appealed[41] the same to the Office of the CIR on 02 September 2011; (8) they received the CIR Decision[42] on 10 August 2016; and, (9) they filed quarterly VAT, monthly withholding tax and annual IT returns for TY 2007.

Petitioner did not conduct cross examination.[43]

On the other hand, on 18 September 2018[44], petitioner presented RO Lutching, who testified through her Judicial Affidavit[45] that: (1) she learned of respondent when she received the Revalidation/Reassignment Notice[46] (which she served on respondent on 18 May 2009); (2) it was followed by a Final Request for Presentation of Records[47] issued and served on respondent on 29 May

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32 See Order dated 14 June 2018, id., pp. 331-332.
33 Dated 19 January 2017, Exhibits "P-37" and "P-37-A", id., pp. 130-142.
34 Supra at note 18.
35 Supra at note 20.
36 Supra at note 21.
37 The Court *En Banc* notes while the Formal Protest is dated 21 February 2011, the same was in fact filed on 23 February 2011, as stipulated by the parties (supra at note 23) and as reflected in Exhibit "P-2" (supra at note 22).
38 Supra at note 22.
39 Exhibit "P-3", Division Docket, Volume I, p. 364.
40 Supra at note 24.
41 Supra at note 26.
42 Supra at note 28.
43 See Order dated 14 June 2018, supra at note 32.
44 See Order dated 18 September 2018, Division Docket, Volume II, pp. 491-492.
45 Dated 28 February 2017, id., pp. 249-258.
46 Supra at note 10.
47 Exhibit "R-1", BIR Records, p. 54.

2009; (3) thereafter, she submitted a Memorandum Report dated 21 December 2009[48]; (4) on 19 November 2010, an Amended NIC[49] was sent to respondent; (5) later, the PAN with Details of Discrepancies both dated 29 December 2010[50] were issued; (6) this was followed by the FAN[51] with attached Details of Discrepancies[52] both dated 14 January 2011; (7) the Details of Discrepancies attached to the FAN clearly informed respondent of the legal and factual bases of the assessed deficiency taxes for TY 2007; (8) subsequently, they received a letter from respondent dated 20 January 2011[53] requesting for an extension of time to file a reply to the PAN; (9) in response, a letter dated 01 February 2011[54] was sent to respondent informing the latter that a FAN was already issued due to its failure to respond to the PAN; (10) thereafter, they received respondent's Formal Protest requesting for reinvestigation, which the BIR granted on 14 March 2011[55]; (11) later, the FDDA was issued and respondent appealed the same to the CIR; (12) subsequently, the CIR Decision was issued affirming the FDDA; and, (13) the ten-year prescriptive period applies herein as respondent failed to report receipts in an amount exceeding thirty percent (30%) of that declared in their returns.

On cross examination, RO Lutching confirmed that: (1) there was no new LOA issued in her name but she has a Revalidation Notice[56]; (2) the PAN was received on 30 December 2010, a holiday[57]; and, (3) there is no showing in the FAN that it was received by respondent.[58] Petitioner did not conduct re-direct examination.[59]

On 25 September 2018, the case was transferred to the Third Division[60] pursuant to CTA Administrative Circular No. 02-2018.[61] Thereafter, the Third Division promulgated the assailed Decision.[62] The dispositive portion of which reads:

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48 Exhibit "R-2", id., pp. 374-375.
49 Exhibit "R-3" id., p. 405.
50 Supra at note 17.
51 Supra at note 18.
52 Supra at note 20.
53 Exhibit "R-8", BIR Records, p. 461.
54 Exhibit "R-9", id., p. 466.
55 Exhibit "R-10", id., p. 507.
56 TSN dated 18 September 2018, p. 8.
57 Id., p. 9.
58 Id., p. 11.
59 Id., p. 12.
60 See Order dated 25 September 2018, Division Docket, Volume II, p. 494.
61 Reorganizing the Three (3) Divisions of the Court.
62 Supra at note 1.

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WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, Respondent's Final Decision dated June 28, 2016 on the alleged deficiency income tax, VAT, EWT, WTC, and compromise penalty, plus penalties and interests, in the total amount of Php32,798,593.79 for the fiscal year ending in June 2007 is hereby **WITHDRAWN** and **SET ASIDE**.

SO ORDERED.

...

In the assailed Decision, the Third Division found that petitioner failed to prove that RO Lutching was authorized, through an LOA, to examine respondent's records. Since RO Lutching had no valid authority, the subject tax assessments are inescapably void.

Furthermore, the Third Division also found that petitioner violated respondent's right to due process when the FAN was issued before the period to reply to the PAN expired. As a result, the Third Division declared the tax assessments issued against respondent in violation of its due process rights and thus void.

Aggrieved, petitioner filed a Motion for Reconsideration[63] (**MR**) on 13 March 2020, to which respondent filed its Comment/ Opposition[64] on 10 June 2020.

Subsequently, the Third Division promulgated the equally assailed Resolution[65] denying petitioner's MR.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On 22 October 2020, petitioner filed the instant Petition for Review[66] before the Court *En Banc*. Respondent filed its Comment[67] thereto on 23 December 2020.

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63 Division Docket, Volume II, pp. 596-601.
64 Id., pp. 603-608.
65 Supra at note 2.
66 Supra at note 3.
67 *Rollo*, pp. 68-77.

On 07 January 2021, the Court *En Banc* directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for conciliation proceedings.[68] Unfortunately, the parties decided not to mediate[69]; hence, the case was submitted for decision on 26 May 2021.[70]

ISSUES

Petitioner forwards the following arguments in support of the instant petition:

> I.
> THE SUBJECT DEFICIENCY TAX ASSESSMENTS ARE VALID BECAUSE THE EXAMINING REVENUE OFFICER, KAREN JOY D. LUTCHING, WAS DULY AUTHORIZED TO CONDUCT THE AUDIT OF RESPONDENT AIRGLOBE, INC.'S BOOKS OF ACCOUNTS AND OTHER ACCOUNTING RECORDS; AND,
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> II.
> RESPONDENT AIRGLOBE, INC.'S RIGHT TO DUE PROCESS WAS NOT VIOLATED.

Petitioner contends that the Court in Division erred in applying the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[71] (**Medicard**) in resolving respondent's case. According to it, *Medicard* is not in all fours with respondent's case as there was no LOA issued there, unlike in the latter's case.

Petitioner adds that the reassignment of the subject assessments to RO Lutching was made pursuant to a Revalidation/Reassignment Notice that actually made reference to the subject LOA. Further, the issuance of the said Revalidation/Reassignment Notice is based on the guidelines and procedures laid down in Revenue Memorandum Order (**RMO**) No. 69-2010[72] which provides that a manual serially-numbered Memorandum of Assignment (**MOA**) shall be issued with respect to "[reassignment] for the continuation of the audit/investigation of a

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68 See Resolution dated 07 January 2021, id., pp. 79-80.
69 PMC-CTA Form 6 – No Agreement to Mediate, id., p. 81.
70 See Resolution dated 26 May 2021, id., pp. 83-84.
71 G.R. No. 222743, 05 April 2017.
72 Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.

case to another RO due to resignation/retirement/transfer of the original RO."

Petitioner also argues that while RMO No. 69-2010 did not specify the signatories for such MOA, RMO No. 62-2010[73] contains a sample MOA which indicated that the "Authorized Revenue Official/Head, Investigating Office" is a valid signatory thereto. According to petitioner, this clearly shows that an MOA may be validly signed by the Revenue District Officer (**RDO**), being the head of the investigating office which, in this case, is Revenue District Office No. 51 (**RDO 51**) – Pasay City.

In case the manual serially-numbered MOA is not in accordance with the specified cases mentioned in RMO No. 69-2010, petitioner insists that the taxpayer's remedy is to invoke Item 11[74] thereof which allows taxpayers not to entertain the audit/investigation using such MOA. According to petitioner, such right may be waived as what happened to respondent when it did not object nor question the continuation of the audit/investigation by RO Lutching.

Additionally, petitioner maintains that an audit by an RO through a mere Reassignment Notice is valid pursuant to RMO No. 8-2006.[75] *Per* this RMO, only one (1) LOA shall be issued to the same taxpayer for the same tax type and period hence, there is no need for the issuance of a new LOA to authorize RO Lutching (as a prior valid LOA has already been issued to respondent for TY 2007).

Relatedly, petitioner contends that RMO No. 8-2006 simply provides that in cases of reassignment of the original investigating RO, "a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS".

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73 Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.

74 III. Policies and Guidelines.

...

11. Taxpayers should not entertain audit/investigation using TVNs or MOAs for taxable year 2009 unless for the specified cases in the preceding paragraphs.

...

75 Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

Citing *Commissioner of Internal Revenue v. Steelasia Manufacturing Corporation*[76], petitioner further asserts that respondent was afforded due process because it was able to file its protest to the notices that were sent to it.

As to the alleged prematurity of the FAN's issuance, petitioner contends that its issuance before the lapse of the fifteen (15)-day period to file a reply to the PAN did not prejudice respondent as it was still able to file a protest to the FAN. In fact, its request for reinvestigation was even granted in a letter dated 14 March 2011 and it was also able to transmit pertinent documents in support of its protest. Lastly, respondent was also able to appeal to the CIR the FDDA that RD Santiago issued. Clearly, respondent was given the notice and opportunity to present its side.

On the other hand, respondent insists on the invalidity of the assessments against it. According to it, the issuance of an LOA prior to the conduct of an examination of a taxpayer's books of account and other accounting records by any RO is indispensable to the validity of the assessment. Citing *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[77], respondent maintains that there must be a grant of authority before any RO can conduct an examination or assessment and in the absence of such authority, the assessment or examination is void.

Respondent likewise avers that during RO Lutching's cross examination, the latter already admitted that she was not named in a valid LOA.[78]

Further citing the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[79], respondent submits that the use of the word "shall" in Section 228[80] of the NIRC of 1997, as amended, as

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76 CTA EB Nos. 631 and 632 (CTA Case No. 6678), 22 December 2011.
77 G.R. No. 178697, 17 November 2010.
78 TSN dated 18 September 2018, pp. 8 and 12.
79 G.R. Nos. 201398-99, 03 October 2018.
80 **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 pre-assessment notice shall not be required in the following cases:
...

well as in Revenue Regulations (**RR**) No. 12-99[81], as amended, indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision against it is mandatory. Such is an essential requirement of due process which applies to the PAN, FAN, and FDDA.

In this case, RO Lutching testified that the PAN was issued by the BIR on 29 December 2010[82] and the same was served upon respondent on 30 December 2010.[83] Respondent thus had fifteen (15) days therefrom or on until 14 January 2011 within which to file a reply to the PAN. However, on the same last day for the submission of reply, petitioner already issued the FAN, thus, the same was prematurely issued in violation of respondent's right to due process.

RULING OF THE COURT *EN BANC*

After a careful consideration of the arguments raised by the parties vis-à-vis the pertinent laws, rules and jurisprudence, the Court *En Banc* finds no merit in the instant petition.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If 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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

81 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.

82 Question and Answer (Q&A) No. 26, Judicial Affidavit of Karen Joy D. Lutching, Division Docket, Volume I, p. 252.

83 TSN dated 18 September 2018, p. 9.

Although the Court *En Banc* upholds the authority of RO Lutching to continue the audit through the subject Revalidation/Reassignment Notice, petitioner still violated respondent's right to due process as the FAN was issued and mailed within the 15-day period for respondent to file a reply to the PAN.

A more exhaustive discussion follows below, in *seriatim*.

SINCE THE REVALIDATION/ REASSIGNMENT NOTICE WAS ISSUED BY THE REGIONAL DIRECTOR AND CONTAINS THE SAME INFORMATION AS IN A LETTER OF AUTHORITY, THE FORMER MAY BE CONSIDERED AS THE FUNCTIONAL EQUIVALENT OF THE LATTER.

In this case, RO Lutching continued the examination of respondent's books of accounts and other accounting records on the strength of the Revalidation/Reassignment Notice. The same explicitly referred to "Letter of Authority No. LOA000044111 dated July 29, 2008" and indicated RO Lutching's and GS Dela Cruz's authority to continue such examination.

A closer scrutiny of the said Revalidation/Reassignment Notice yields that its contents are similar to the contents of an LOA.

First, both documents were particularly addressed to respondent. *Second*, both documents specifically named the ROs authorized to examine the books of accounts and other accounting records. *Third*, both documents stated that the taxes covered by the examination are respondent's all internal revenue taxes. *Lastly and more importantly*, both documents were signed by the RD, who is duly authorized to issue LOAs under Section 10(c)[84] of the NIRC of 1997, as amended.

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[84] **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[.]
...

Furthermore, while the Court *En Banc* notes that the period indicated in the Revalidation/Reassignment Notice only states "from December 31, 2007", its specific reference to the subject LOA, which shows that the period subject thereof is in fact "from January 1, 2007 to December 31, 2007" would indubitably show that the period subject of RO Lutching's authority to continue the audit is the period of pertinent to this claim – TY 2007.

Clearly, for all intents and purposes, the Revalidation/ Reassignment Notice issued to respondent, which specifically referred to "Letter of Authority No. LOA00004411 dated July 29, 2008" and contains essentially all the essential details of an LOA, is sufficient authorization for RO Lutching to continue the examination of the books of account and other accounting records of respondent.

The conclusion that the Revalidation/Reassignment Notice is sufficient basis for RO Lutching's authority further finds support in Revenue Audit Memorandum Order **(RAMO)** No. 01-00[85] which provides that:

> ...
>
> 2.3. A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue, otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. **Revalidation is done** by issuing a new Letter of Authority **or by just simply stamping the words "Revalidated on _____" on the face of the copy of the Letter of Authority issued.**[86]
>
> ...

Since, on its face, the subject LOA was stamped with the words "Revalidated on May 13 2009" due to a reassignment to Revenue Officer Karen Joy Deveza[87] and signed by RD Misajon, the revalidation of said LOA was properly made pursuant to RAMO No. 01-00.

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85 Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).
86 Emphasis supplied.
87 Supra at note 9.

Moreover, the variance in the title or denomination does not make the Revalidation/Reassignment Notice any less effective or valid. Except for the title or denomination, there is nevertheless a clear and direct reference to the prior LOA and thus, in its truest essence, it remains to carry a valid authorization for RO Lutching to continue the audit of respondent.

The Court *En Banc* is not unaware of the Supreme Court's recent pronouncement in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[88] (**McDonald's**) that "[t]he practice of reassigning or transferring revenue officers originally named in the Letter of Authority *(LOA)* and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (**i**) violates the taxpayer's right to due process in tax audit or investigation; (**ii**) usurps the statutory power of the Commissioner of Internal Revenue *(CIR)* or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and, (**iii**) does not comply with existing Bureau of Internal Revenue *(BIR)* rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts."

However, a closer reading of *McDonald's* would reveal that what is proscribed is the practice of substituting the ROs named in the LOA with new ROs who do not have a separate LOA issued in their name or merely by virtue of a MOA, referral memorandum, **or such other equivalent internal document** of the BIR directing the reassignment or transfer of ROs which is signed by mere **revenue district officer or other subordinate official**, and not by the CIR or his duly authorized representative under Sections 6[89], 10(c)[90] and 13[91] of the NIRC of 1997,

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

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

90 Supra at note 84.

91 **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

as amended. The Supreme Court expounded on this in *McDonald's, viz*:

> ...
>
> 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 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.**[92]
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> ...

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due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

92 Supra at note 88; Emphasis supplied.

In this case, the Revalidation/Reassignment Notice was addressed to and in fact received by respondent on 18 May 2009; hence, not a mere internal document. More importantly, it was issued by RD Misajon, who is among those officials duly authorized to issue LOAs.

In fine, the Court *En Banc* finds that the subject Revalidation/Reassignment Notice is a functional equivalent of the new LOA required for the transfer or reassignment of the case to a new RO. **Its denomination or nomenclature as "Revalidation/Reassignment Notice" and not "Letter of Authority" does not negate its nature as an LOA especially so that their contents are similar and it was issued by the official duly authorized to issue LOAs pursuant to existing laws.**

CONSIDERING THAT THE FINAL ASSESSMENT NOTICE (FAN) WAS ISSUED WITHOUT WAITING FOR THE LAPSE OF THE 15-DAY PERIOD FOR RESPONDENT AIRGLOBE, INC. TO FILE A REPLY TO THE PRELIMINARY ASSESSMENT NOTICE (PAN), THE ASSESSMENTS ARE NEVERTHELESS VOID SINCE THERE IS A VIOLATION OF RESPONDENT AIRGLOBE INC.'S RIGHT TO DUE PROCESS.

In this case, the subject PAN was issued on 29 December 2010 and was served upon respondent on 30 December 2010. Thus, respondent had 15 days therefrom or until 14 January 2011, within which to file its reply. However, on the last day that it was supposed to reply to the PAN or on 14 January 2011, the FAN was immediately issued and mailed to respondent. Since petitioner did not wait for the 15-day period to lapse for respondent to file a reply to the PAN (before issuing the FAN), respondent was thus deprived of the opportunity to contest the PAN. Resultantly, its right to due process was violated.

In *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[93], the Supreme Court, in a Resolution dated 19 June 2019, resolved to deny the Petition for

[93] G.R. No. 227616; Citations omitted, emphasis supplied and underscoring in the original text.

Review on *Certiorari* subject thereof for failure to show that the Court of Tax Appeals (**CTA**) *En Banc* committed a reversible error in cancelling and withdrawing the assessments issued against respondent therein. The Supreme Court went on to rule that:

> ...
>
> In this case, the records show that respondent received the PAN on February 5, 2009. **However, without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**
>
> In *CIR v. Metro Star Superama, Inc.*, **the Court emphasized that the PAN is part of due process. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules, as in this case, is a denial of the taxpayer's right to due process.**
>
> ...

In the more recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[94], the Supreme Court also ruled:

> ...
>
> To implement the procedural and substantive rules on assessment of national internal revenue taxes, the BIR issued RR No. 12-99, Sec. 3 of which provides:
>
> > SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
> >
> > 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
> >
> > 3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed,

[94] G.R. No. 222476, 05 May 2021; Citations omitted, emphasis and italics in the original text and underscoring supplied.

in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based x x x. **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**

x x x x

3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based,

> otherwise, the formal letter of demand and assessment notice shall be void x x x. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

Clearly from the aforequoted provisions, the taxpayer has fifteen (15) days from date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.

Per the evidence on record, the BIR issued a PAN dated December 16, 2010, which it posted by registered mail the next day, December 17, 2010. It then issued and mailed the FLD/FAN on January 10, 2011. Although posted on different dates, the PAN and FLD/FAN were both received by the Post Office of Dasmariñas, Cavite, on January 17, 2011, and served upon and received by respondent on January 18, 2011. Under the circumstances, respondent was not given any notice of the preliminary assessment at all and was deprived of the opportunity to respond to the same before being given the final assessment.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon case)*, the Court enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices with due regard for the taxpayers' constitutional rights. It is mandatory that the BIR not only inform the taxpayer through the PAN, FLD, and FAN of the facts, law and regulations, and jurisprudence on which the assessment against it is based, but it must also accord the taxpayer the opportunity to be heard through the entire process, *i.e.*, from tax investigation until tax assessment. Pertinent portions of the *Avon Case* are reproduced below:

...

> "The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory." This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the

> Final Assessment Notices, and the Final Decision on Disputed Assessment.
>
> ...
>
> That respondent was able to file a protest to the FLD/FAN is of no moment. In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, the BIR ignored RR No. 12-99 and did not issue to the taxpayer, Pilipinas Shell Petroleum Corporation (*PSPC*), a notice for informal conference and a PAN as required; and as a result, deprived PSPC of due process in contesting the formal assessment levied against it. The Court pronounced therein that "[w]hile PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued." The Court once more reminded the BIR to be more circumspect in the exercise of its functions as the power of taxation is also sometimes called the power to destroy and, therefore, should be exercised with caution to minimize injury to the proprietary rights of the taxpayer.
>
> ...

From the disquisitions above, it is evident that the subject assessments are void since petitioner violated respondent's right to due process as a result of the immediate issuance of the FAN without waiting for respondent's reply or default. Furthermore, the Supreme Court also made it clear that this is the case notwithstanding the fact that the taxpayer was able to file a protest to the FAN, as this "does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued".

Thus, despite the holding that RO Lutching is authorized to continue the examination of respondent's books of accounts and other accounting records, the resulting assessments are still void.

Incidentally, while the Court *En Banc* finds no sufficient reason to disturb the assailed Decision and Resolution, We find the need to correct what appears to be an error in the dispositive portion of the assailed Decision, insofar as it referred to respondent's supposed taxable period of "fiscal year ending in June 2007".

In this case, the records do not support that respondent chose fiscal year (**FY**) as its TY. On the contrary, the returns[95] subject of the

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[95] Exhibits "P-7" to P-35", Division Docket, Volume I, pp. 399-445.

instant assessments as well as its Audited Financial Statements[96] (**AFS**) clearly signify that respondent's TY is the calendar year.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 22 October 2020 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 19 February 2020 and Resolution dated 27 July 2020, respectively, of the Third Division in CTA Case No. 9466, entitled *Airglobe, Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED** with modification *only* to correct the *error in the dispositive portion* of the Decision dated 19 February 2020 to read as follows:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, Respondent's Final Decision dated June 28, 2016 on the alleged deficiency income tax, [value-added tax, expanded withholding tax and withholding tax on compensation], and compromise penalty, plus penalties and interests, in the total amount of Php32,798,593.79 for calendar year 2007 is hereby **WITHDRAWN** and **SET ASIDE**.
>
> **SO ORDERED.**
>
> ...

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes assessed against respondent as provided in the Final Decision in Disputed Assessment dated 28 July 2011 as affirmed in the Decision dated 28 June 2016 in the total amounts of ₱24,430,076.57, ₱8,135,862.73, ₱83,559.11 and ₱149,095.38, representing deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation, respectively, all for the calendar year 2007.

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[96] BIR Records, pp. 1-26.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I concur in the result)
ERLINDA P. UY
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join J. Liban's Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I join the Concurring and Dissenting Opinion of J. Liban)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2348** (CTA Case No. 9466)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
AIRGLOBE, INC., Respondent.	Promulgated: MAY 2 3 2022 4:20pm

x- -x

CONCURRING & DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue ("Petitioner") and declaring the subject assessments as void, for violating Respondent's due process as a result of the immediate issuance of the Formal Assessment Notice (FAN) without waiting for Respondent's reply to the Preliminary Assessment Notice (PAN).

I also agree that Revalidation/Reassignment Notice dated May 06, 2009 ("Revalidation Notice") may be a functional equivalent of a Letter of Authority (LOA) if signed by Petitioner or his duly authorized representative. In this case however, it is my humble view that no documentary evidence was presented to support the authority of Revenue Officer Karen Joy D. Lutching to examine Respondent's accounting records.

Section 34, Rule 132 of the Revised Rules on Evidence is clear that evidence must be formally offered for it to be considered by the courts; otherwise, it is excluded and rejected, to wit:

> "**SEC. 34.** *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Simply put, the rule is that a document is not evidence when it is not formally offered and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it.[1]

This rule however admits of an exception. In *Federico Sabay v. People of the Philippines*[2], the Supreme Court enumerated the requirements so that evidence, not previously offered, can be admitted: first, the evidence must have been duly identified by testimony duly recorded and, second, the evidence must have been incorporated in the records of the case.

In the case at bar, both the general rule and the exception does not apply. Although the Revalidation Notice had been incorporated in the Bureau of Internal Revenue ("BIR") records, Petitioner's witness did not identify them by testimony duly recorded.[3] Also, the document was not marked considering that it was neither included in Respondent's Pre-Trial Brief[4] nor in the Pre-Trial Order[5]. More importantly, the Revalidation Notice was not offered as an exhibit by Respondent[6] and admitted by the court as evidence[7]. Even the BIR records itself was not formally offered and introduced as evidence. Hence, the Revalidation Notice is inadmissible and cannot be considered by this Court in ruling the petition.

From all the foregoing, I vote to **DENY** the instant Petition for Review for lack of merit.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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1 *See* Heirs of Serapio Mabborang, Et. Al. v. Hermogenes Mabborang and Benjamin Mabborang, G.R. No. 182805, April 22, 2015.
2 G.R. No. 192150, October 01, 2014.
3 Docket, Exhibit "R-11", Judicial Affidavit of Karen Joy D. Lutching, pp. 249-259.
4 *Id.*, Respondent's Pre-Trial Brief, pp. 260-268.
5 *Id.*, Pre-Trial Order, pp. 317-328.
6 *Id.*, Respondent's Formal Offer of Exhibits, pp. 499-503.
7 *Id.*, Resolution dated January 17, 2019, pp. 513-514.