22-000568-0048

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11037

PRO STAR SPORTS PHILIPPINES, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. JUFFALI A. ABDULLAH
Bureau of Internal Revenue
Legal Division, Revenue Region No.7B - East NCR
25th Floor, The Podium-West Tower
ADB Avenue, Ortigas Center
Mandaluyong City

GALIAS & RIVERA LAW OFFICES
3/F Prestige Tower, F. Ortigas Jr. Road
Ortigas Center, Pasig City 1605

GREETINGS:

You are hereby notified by these presents that on **June 20, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 24, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PRO STAR SPORTS PHILIPPINES, INC.,	**CTA CASE NO. 11037**
Petitioner,	*Members:*
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUN 20 2025, 8:50AM

x- - - -

Respondent is the Commissioner of Internal Revenue duly appointed to perform the duties of his office, including, inter alia, the power to decide disputed assessments subject to the exclusive appellate jurisdiction of this Court pursuant to Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

THE FACTUAL ANTECEDENTS

The facts, as culled from the records, are as follows:

On October 23, 2014, respondent issued a Letter of Authority (LOA) with Serial No. eLA201100091599/LOA-041-2014-00000416,[4] authorizing Revenue Officer (RO) **Mariflor Exmundo (RO Exmundo)** and Group Supervisor (GS) **Emma Dulfo (GS Dulfo)** of Revenue District Office (RDO) No. 041 – Mandaluyong, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for FY ending June 30, 2013. The LOA, together with the *First Request for Presentation of Records*[5] dated October 24, 2014, was allegedly served on December 1, 2014, by a certain Rosendo Dantes, who was neither an authorized representative nor an employee of respondent.

On December 10, 2014, petitioner filed a *Legal Petition Notice*[6] dated December 9, 2014, informing respondent that the LOA was: (1) served beyond the 30-day period prescribed under Revenue Audit Memorandum Order (RAMO) No. 1-2000; and (2) improperly served by a person not assigned as the RO in the case, which is contrary to RAMO No. 1-2000.

On August 8, 2016, petitioner received a letter[7] dated August 4, 2016, signed by Mandaluyong Revenue District Officer Atty. Armando F. Tria (Atty. Tria), informing it that the audit of its internal revenue tax liabilities for FY ending June 30, 2013 had been referred to **RO Hapsah S. Baunto (RO Baunto)** under **GS Marinelia N. German (GS German),** for continuance of audit pursuant to Memorandum of Assignment

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3 *Id.*
4 Exhibit P-3, Docket, p. 35.
5 Exhibit R-2, BIR Record, pp. 1–2.
6 Exhibit P-4, Docket, pp. 40–45.
7 Exhibit P-5, Docket, p. 50.

(MOA) with No. MOA-041-2014-LOA14802[8] dated July 21, 2016. Allegedly, nothing in the letter mentioned the arguments raised in its *Legal Petition Notice* dated December 9, 2014.

Likewise, on August 8, 2016, petitioner received a *Second and Final Request for Presentation of Records*[9] dated August 4, 2016, reiterating respondent's request for presentation of records to finish the investigation.

On September 28, 2016, respondent issued a Preliminary Assessment Notice (PAN), [10] with attached Details of Discrepancies, assessing petitioner for deficiency IT (Part I) and Compromise Penalty (Part II) for FY ending June 30, 2013, in the aggregate amount of ₱9,013,098.94, inclusive of interest.

On October 11, 2016, petitioner filed its reply to the PAN through a document denominated as *Legal Petition Notice*[11] dated October 10, 2016.

Thereafter, on October 13, 2016, respondent issued a Formal Letter of Demand (FLD), [12] with attached Details of Discrepancies and Assessment Notices (FAN), [13] finding petitioner liable for deficiency IT and Compromise Penalty, in the aggregate amount of ₱9,105,248.69, inclusive of interest.

On November 8, 2016, petitioner protested the FLD/FAN by filing a request for reinvestigation denominated as a *Legal Petition Notice*[14] dated November 7, 2016, which respondent gave due course through a letter[15] dated November 21, 2016.

On January 6, 2017, petitioner filed a *Legal Petition Notice*[16] dated January 4, 2017, submitting relevant documents in support of its request for reinvestigation.

Allegedly, no Final Decision on Disputed Assessment (FDDA) was issued in this case. Instead, respondent, through Regional Director Romulo L. Aguilar Jr., issued a letter[17] dated January 10, 2020, stating that due to petitioner's failure to

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8 BIR Records, p. 406.
9 Exhibit R-3, BIR Record, pp. 407–408.
10 Exhibit P-6, Docket, pp. 51–52.
11 Exhibit P-7, Docket, pp. 56–63.
12 Exhibit P-8, Docket, pp. 75–76; Exhibit R-6, BIR Record, pp. 576–577.
13 Exhibits R-6-A and R-6-B; BIR Records, pp. 578–579.
14 Exhibit P-9, Docket, pp. 82–92.
15 Exhibit P-10, Docket, p. 93.
16 Exhibit P-11, Docket, pp. 94–99.
17 Exhibit P-12, BIR Record, p. 696.

submit relevant supporting documents, its protest was deemed invalid, thereby rendering the assessment "*final, executory and demandable*" despite the absence of an FDDA.

Hence, on February 21, 2020, petitioner filed a *Motion for Reconsideration and Formal Demand to Retract* [18] dated February 17, 2020. Respondent denied said Motion in a Decision[19] dated October 6, 2022, which petitioner received on October 24, 2022.

Aggrieved, petitioner elevated the matter to this Court via the instant *Petition for Review* filed on November 23, 2022.

In his *Answer,*[20] filed via registered mail on February 6, 2023, respondent asked for the dismissal of the instant *Petition for Review* on jurisdictional grounds and for lack of merit.

A *Pre-Trial Conference* was then set for July 20, 2023.[21] However, in a *Minute Resolution*[22] issued on July 14, 2023, the case was referred to mediation, and the parties were directed to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on August 7, 2023 at 10:00 a.m. Accordingly, the *Pre-Trial Conference* set on July 20, 2023 was cancelled until further notice.

On August 7, 2023, the PMC-CTA submitted CTA Form 6 – No Agreement to Mediate,[23] indicating that the parties decided not to have their case mediated. Thus, in a Resolution[24] dated August 11, 2023, the Court reset the *Pre-Trial Conference* to October 12, 2023.

After the Pre-Trial Conference, the parties filed their *Joint Stipulation of Facts and Issues*[25] (JSFI) on October 27, 2023, based on which the Court issued a *Pre-Trial Order*[26] on January 16, 2024.

Trial then ensued.

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18 Exhibit P-13, Docket, pp. 101–118.
19 Exhibit P-2, Docket, pp. 31–34.
20 Docket, pp. 154–161.
21 Notice of Pre-trial Conference, Docket, pp. 163–164.
22 Docket, p. 201.
23 *Id.* at 240.
24 *Id.* at 243.
25 *Id.* at 255–261.
26 *Id.* at 267–280.

On February 29, 2024, petitioner presented only **Ms. Russel M. Membrebe**, its *Accounting and Administrative Department Head.*[27] The presentation of the other witness, **Ms. Diana O. Baldoza**, was dispensed with at petitioner's instance.[28]

Petitioner filed its *Formal Offer of Evidence*[29] on March 11, 2024, to which respondent filed a *Comment [Re: Petitioner's Formal Offer of Evidence]*[30] on March 18, 2024. In a Resolution[31] promulgated on April 26, 2024, the Court admitted all of petitioner's documentary exhibits.

On July 16, 2024, during respondent's presentation of evidence, petitioner's counsel failed to attend. Thus, upon the instance of respondent's counsel, the presentation of respondent's witnesses, namely, **ROs Baunto** and **Dennis C. Villafuerte**, proceeded, and petitioner's right to cross-examine them was deemed waived.[32]

On July 29, 2024, petitioner filed a *Motion for Reconsideration (Re: Order dated 16 July 2024)*,[33] praying that the Court (*i*) reconsider the Order dated July 16, 2024, and (*ii*) set another date for the presentation of respondent's evidence to allow cross-examination of respondent's witnesses. It also requested the deferral of the filing of respondent's *Formal Offer of Evidence* and its *Comment to Formal Offer of Evidence.*

On July 30, 2024, the Court received *Respondent's Formal Offer of Evidence*[34] filed on July 22, 2024.

In a Resolution[35] promulgated on December 10, 2024, the Court resolved: (1) to admit all of respondent's offered documentary exhibits; and (2) to deny petitioner's *Motion for Reconsideration (Re: Order dated 16 July 2024)* for lack of merit. The parties were likewise directed to submit their respective memoranda within thirty (30) days from notice.

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27 Exhibit P-14, Docket, pp. 120–130.
28 Docket, pp. 294–294-B, Minutes of the Hearing held on February 29, 2024.
29 *Id.* at 304–311.
30 *Id.* at 312–313.
31 *Id.* at 319–320.
32 *Id.* at 323–323-B, Minutes of the Hearing held on July 16, 2024; 324–325, Order.
33 *Id.* at 327–331.
34 *Id.* at 332–338.
35 *Id.* at 392–397.

On January 21, 2025, the Judicial Records Division reported that the parties failed to file their memoranda.[36] Hence, the Court issued a *Minute Resolution*[37] submitting the case for decision *sans* the parties' memoranda.

On February 4, 2025, petitioner filed a *Motion to Admit Memorandum*, which the Court granted.

With the admission of the *Memorandum*, the case was deemed submitted anew for decision in a Resolution promulgated on February 24, 2025.

Hence, this Decision.

THE ISSUE

As stipulated by the parties, the sole issue[38] for this Court's resolution is:

> WHETHER OR NOT PETITIONER IS LIABLE TO PAY FOR THE ALLEGED DEFICIENCY INCOME TAX (IT) IN THE AMOUNT OF ₱9,055,248.69, INCLUSIVE OF INTEREST, AND COMPROMISE PENALTY IN THE AMOUNT OF ₱50,000.00 FOR THE PERIOD JULY 1, 2012 TO JUNE 30, 2013.

Petitioner's arguments:

Petitioner submits that the subject tax assessment should be declared void due to violation of its right to due process.

First, petitioner claims that the LOA was served by an unauthorized person. According to petitioner, RAMO No. 1-2000 mandates that the LOA be served by the RO assigned to the case and no one else. It also mandates that the LOA must be served or presented to the taxpayer within 30 days from its date of issue. Otherwise, it becomes null and void unless revalidated.

Allegedly, the LOA was served/presented beyond the 30-day period and had therefore become void. Further, the one who served/presented the LOA was a certain Rosendo Dantes, who was not the assigned RO.

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36 *Id.* at 398, Records Verification Report dated January 21, 2025.
37 *Id.* at 399.
38 *Id.* at 473, Pre-Trial Order, Stipulation of Issue.

According to petitioner, respondent failed to address the above issues despite being raised at the earliest opportunity, that is, before the issuance of the PAN, and reiterated in petitioner's reply to the PAN through the *Legal Petition Notice* dated October 10, 2016.

Second, petitioner claims that the tax assessment is invalid because no new LOA was issued for the alleged reassignment.

Petitioner avers that the assessment against it was based on the LOA, which authorized RO Exmundo and GS Dulfo to examine its books of accounts for FY ending June 30, 2013. However, the BIR later informed petitioner that its case had been reassigned to RO Baunto and GS German, who were not named in the original LOA. Moreover, petitioner alleges that no new LOA was issued and the original LOA was never revalidated.

Petitioner maintains that RO Baunto and GS German lacked the authority to conduct the audit. It added that the grant of authority to RO Baunto and GS German should be in the form of a new LOA, as an MOA is not equivalent to an LOA. Citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, [39] petitioner asserts that an LOA is the authority given to the appropriate RO assigned to perform assessment functions, and in its absence, the assessment or examination is a nullity.

Third, petitioner claims that the FAN is void for failure to indicate a definite due date. Citing the case of *Commissioner of Internal Revenue v. Fitness by Design Inc.*,[40] petitioner avers that the FLD issued against it similarly states that the tax due is subject to modification based on the payment date, as it notes, "Please note that the interest and the total amount due will need to be adjusted if paid after the date specified herein." However, no due date was indicated. Hence, petitioner submits that the assessment should be cancelled.

Fourth, petitioner claims that the assessment is void because respondent did not consider its defenses in its various *Legal Petition Notices* and submission of relevant supporting documents.

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[39] G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].
[40] G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

Petitioner asserts that the basic or principal amounts of the deficiency IT reflected in the PAN and FLD, including the items in the Details of Discrepancies, remained unchanged despite its explanations and submission of accounting records and other relevant supporting documents. It argues that, similar to *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*),[41] its efforts—from responding to the LOA, replying to the PAN, and protesting the FLD—were rendered futile. According to petitioner, respondent failed to meaningfully review or consider its submissions, including the attached supporting documents, having already resolved to finalize the assessment without regard for its right to due process.

Respondent's counter-arguments:

Respondent submits that the subject assessment has long become final, executory, and demandable; hence, the Court no longer has jurisdiction over the instant *Petition for Review*.

Respondent explains that when petitioner filed its request for reinvestigation, it failed to specify the newly discovered or additional evidence it intended to present. Moreover, petitioner was unable to prove that it had submitted the relevant supporting documents.

Accordingly, respondent contends that petitioner failed to file a valid protest. As a result, the deficiency assessment became final, executory, and demandable pursuant to Section 228 of the NIRC of 1997, as amended, in relation to Section 3, paragraph 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013. Given the finality of the assessment, respondent maintains that the Court no longer has jurisdiction to review the matter.

Anent petitioner's assertion that the LOA was belatedly served by an unauthorized person, respondent counters that, even assuming improper service, petitioner is now estopped from raising this issue due to its failure to exercise its right to refuse such service at the outset. With respect to the service of the LOA by an unauthorized person, respondent submits that it does not invalidate the LOA, as there is nothing in RAMO No. 1-2000 stating that an LOA is invalidated on the ground that it was served by an unauthorized person.

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[41] G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

Finally, respondent disagrees with petitioner's assertion that its right to due process was violated by the grant of authority to RO Baunto and GS German through an MOA, rather than a new LOA.

According to respondent, due process is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.

While he admits that there is a slight infirmity, he believes that petitioner was not deprived of its right to seek a reconsideration of the assessment. Further, the issuance of an MOA in favor of RO Baunto and GS German instead of an LOA, and the absence of a specified due date for payment in the FAN, do not negate the existence of deficiency tax liabilities found during the audit of petitioner's tax liabilities for the FY ending June 30, 2013.

THE COURT'S RULING

Before turning to the merits, the Court must first determine the timeliness of the filing of the present *Petition for Review* and its jurisdiction over the case.

Under Section 228[42] of the NIRC of 1997, as amended, a taxpayer adversely affected by a decision of the CIR may appeal to the Court of Tax Appeals (CTA) within 30 days from receipt of

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42 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:

... ...

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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (*Emphasis supplied*)

such decision. Failure to do so renders the decision final, executory, and demandable.

It is undisputed that on October 24, 2022, petitioner received respondent's Decision dated October 6, 2022. In that Decision, respondent denied petitioner's *Motion for Reconsideration* and *Formal Demand to Retract* and affirmed the FLD/FAN dated October 13, 2016. Thus, petitioner had 30 days from October 24, 2022, or until November 23, 2022, to file an appeal with this Court.

Evidently, the instant *Petition for Review* was seasonably filed on November 23, 2022, thereby vesting this Court with jurisdiction pursuant to Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282.[43]

Proceeding now to the merits.

In its *Petition for Review*, petitioner asserts that the deficiency tax assessment issued against it is void on the following grounds: (1) the ROs who conducted the audit were not duly authorized through an LOA; (2) the LOA was served by an unauthorized person; (3) the FAN is void for failure to indicate a definite due date; and (4) respondent failed to consider petitioner's defenses as stated in its various *Legal Petition Notices* and supporting documents.

After a careful review of the records, the Court finds merit in the present *Petition for Review*.

The ROs who audited and examined petitioner's books of accounts and other accounting records for FY ending June 30, 2016 were not armed with a valid LOA.

It is well-settled that a valid LOA is a prerequisite for any revenue officer to lawfully conduct a tax audit or examination. Section 6 (A) of the NIRC of 1997, as amended, vests in the CIR

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[43] SEC. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; ...

the authority to examine taxpayers and assess the correct amount of tax, to wit:

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

Relative thereto, Section 13 provides that an LOA is the specific authority given to a revenue officer assigned to perform assessment functions, to examine the books of accounts and other accounting records of a taxpayer. It reads:

> SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due in the same manner** that the said acts could have been performed by the Revenue Regional Director himself. *(Emphasis supplied)*

Clearly, no revenue officer may conduct an audit or issue an assessment in the absence of a valid LOA. Without such authority, the assessment or examination is a nullity.[44]

The Supreme Court's ruling in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[45] *(Medicard)* is particularly instructive on this matter:

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

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[44] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

[45] G.R. No. 222743, April 5, 2017 [Per J. Reyes, Third Division].

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 clearly provides as follows:

. . . .

Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, **unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**.

. . . .

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,* the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is, that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)

. . . .

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

Notably, to highlight the doctrinal rule established in *Medicard* and reiterate the statutory requirement for an LOA,

the BIR issued Revenue Memorandum Circular (RMC) No. 75-2018,[46] which states:

> The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, through an LOA. The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.**
>
> . . . .
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions. (*Emphasis supplied*)

Indeed, an LOA is indispensable. Without it, any examination or assessment undertaken is void.

In the instant case, records reveal that on October 23, 2014, respondent issued an LOA[47] authorizing **RO Exmundo** and **GS Dulfo** of RDO No. 041 – Mandaluyong, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for FY ending June 30, 2013.

However, on August 8, 2016, petitioner received a letter[48] dated August 4, 2016, signed by Mandaluyong Revenue District Officer Atty. Tria, stating that the audit of its internal revenue tax liabilities for FY ending June 30, 2013 had been reassigned to **RO Baunto** under **GS German** for continuation of the audit, pursuant to an MOA[49] dated July 21, 2016. Subsequently, it was **RO Baunto** and **GS German** who recommended the issuance of the assessment notice, as reflected in an undated *Memorandum*.[50]

Crucially, however, no new LOA was issued authorizing **RO Baunto** and **GS German** to conduct the audit. Their

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46 SUBJECT: *The Mandatory Statutory Requirement and Function of a Letter of Authority.*
47 Exhibit P-3, Docket, p. 35.
48 Exhibit P-5, Docket, p. 50.
49 BIR Records, p. 406.
50 Exhibit R-4, BIR Records, pp. 536–537.

purported authority rested solely on the MOA—*not* on a duly issued LOA.

This failure to issue a new LOA violates Revenue Memorandum Order (RMO) No. 43-90[51] dated September 20, 1990, which mandates that all audit investigations be conducted by a duly designated RO under an LOA, and that in case of reassignment or transfer, a new LOA must be issued with proper notation. In the absence of such authority, the assessment or examination is a nullity.[52] The pertinent provisions read:

> C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> ... ...
>
> 5. **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. (*Emphasis and underscoring supplied*)

In this case, it is undisputed that no such new LOA was issued and that the only basis for the continued audit by **RO Baunto** and **GS German** was the MOA.

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[53] the Supreme Court held that an MOA does not constitute proof of authority for a substitute or replacement RO, to wit:

> 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**

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

52 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

53 G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

> **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**, 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**.
>
> ... ...
>
> In summary, We rule that **the practice of reassigning or transferring revenue officers originally named in the LOA and substituting 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 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 BIR rules and regulations; particularly RMO No. 43-90** dated September 20, 1990. (*Emphasis and underscoring supplied*)

Applying the above pronouncement, **RO Baunto** and **GS German** lacked the requisite authority to continue the audit, as the MOA, standing alone, was insufficient to clothe them with such authority. Accordingly, the deficiency tax assessment issued against petitioner for FY ending June 30, 2013 is inescapably void and bears no valid fruit.[54]

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[54] *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per CJ Panganiban, First Division].

Undoubtedly, the absence of a valid LOA is a fatal procedural defect that renders the assessment null and void. As consistently held by the Supreme Court, the LOA is not a mere procedural formality but a mandatory prerequisite to the BIR's authority to audit and assess. Without it, the assessment lacks legal basis and violates the taxpayer's right to due process.

Given the nullity of the assessment, it is unnecessary to address the remaining issues raised by petitioner, namely: (i) the alleged improper service of the LOA by an unauthorized individual; (ii) the purported invalidity of the FAN for failure to indicate a specific due date; and (iii) respondent's alleged failure to consider petitioner's defenses stated in its protest documents. These issues have been rendered *moot* by the lack of authority of the ROs who conducted the audit, which alone warrants the outright nullification of the assessment.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Letters of Demand (Part I and Part II) and Assessment Notices, all dated October 13, 2016, assessing petitioner Pro Star Sports Philippines, Inc. of deficiency Income Tax and Compromise Penalty in the aggregate amount of ₱9,105,248.69, inclusive of interest, are **CANCELLED** and **SET ASIDE**.

Furthermore, respondent Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** and **PROHIBITED** from collecting the amount of ₱9,105,248.69 from petitioner.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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