REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1614 (CTA CASE No. 8787)
-versus-	*Present*: DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
BPI CAPITAL CORPORATION, *Respondent.*	Promulgated: JUL 3 1 2018 4:22 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as*

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[1] **SEC. 4.** *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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amended, of the Decision dated July 12, 2016[2] and the Resolution dated March 1, 2017,[3] rendered by the Third Division of this Court, the dispositive portion of which reads as follows:

Decision dated July 12, 2016:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for taxable year 2008 covering alleged deficiency income tax of P266,467.59, inclusive of interest, is **CANCELLED AND SET ASIDE**.

SO ORDERED."

Resolution dated March 1, 2017:

"**WHEREFORE,** finding no compelling reason to reverse the ruling of the Court in the assailed Decision, respondent's Motion for Reconsideration (Re: Decision Promulgated 12 July 2016) is hereby **DENIED** for lack of merit.

SO ORDERED."

The facts of the case, as recited by the Third Division in its Decision, read as follows:

"Petitioner BPI Capital Corporation is a corporation organized and existing under and by virtue of the laws of the Philippines, with principal place of business at 8th Floor BPI Building, Ayala Avenue corner Paseo de Roxas, Makati City.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with

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[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, *En Banc* Docket, pp. 18-35.
[3] Penned by Associate Justice Ma. Belen M. Ringpis-Liban concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, *En Banc* Docket, pp. 36-38.

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the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 2009, petitioner filed its Annual Income Tax Return (ITR) for taxable year 2008.

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Respondent issued a Formal Assessment Notice (FAN) with Details of Discrepancy and Assessment Notices on November 11, 2013, reiterating the PAN and demanding payment of deficiency income tax in the amount of P6,270,166.80, deficiency percentage tax in the amount of P250,012.58, deficiency expanded withholding tax in the amount of P958,152.36, and deficiency documentary stamp tax in the amount of P145,904.62; which petitioner received on November 20, 2013.

Consequently, petitioner protested the said FAN on December 18, 2013.

Nevertheless, petitioner paid the deficiency assessment for EWT, percentage tax, and DST on January 29, 2014.

Respondent issued a Final Decision on Disputed Assessment (FDDA) with Details of Discrepancy and Assessment Notice on February 20, 2014 and received by petitioner on February 24, 2014, upholding the deficiency income tax assessment, but in the reduced amount of P266,467.59.

Thus, petitioner filed this Petition for Review on March 26, 2014.

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The Third Division found out that the assessed deficiency income tax in the amount of ₱266,467.59 consists of unrecorded gross receipts in the amount of ₱370,395.53 and unexplained source of cash in the amount of

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₱11,801.24. The Third Division disregarded the amount of ₱11,801.24 since the findings of the CIR is unsupported by evidence but sustained the unrecorded gross receipts in the amount of ₱370,395.53. Adjusting the taxable income after considering the said amount, BPI Capital Corporation (BCC) still incurred a negative position or loss in the amount of ₱46,617,696.47. Considering the adjusted net loss for 2008, the Third Division simply applied the Minimum Corporate Income Tax (MCIT), which is 2% of the recorded gross income in BCC's ITR in the amount of ₱76,771,536.00 plus the unrecorded gross receipts in the amount of ₱370,395.53 or the total of ₱ 77,141,931.53. Thus, the adjusted MCIT, which is 2% of ₱ 77,141,931.53 is ₱1,542,838.63. However, this amount is offset against BCC's tax credits per its annual ITR in the amount of ₱ 9,339,842.00, which still would result in an overpayment in an amount of ₱7,797,003.37. Consequently, the assessment issued against BCC for taxable year 2008 covering alleged deficiency income tax of ₱266,467.59, inclusive of interest, was cancelled and set aside by the Third Division.

Also, the Third Division disregarded the stand of the CIR that since BCC benefitted from the Net Operating Loss Carry Over (NOLCO) when it applied its net loss for 2008 to its 2009 ITR, BCC can no longer apply MCIT to the remaining taxable item left from 2008. The Third Division ruled that the determination of the existence of net loss is proper regardless if the same is applied in the succeeding year as NOLCO or not. The application of the net loss to the year 2009 is also of no moment since the 2009 ITR is already beyond the scope of the subject assessment.

The CIR filed his Motion for Reconsideration[4] on July 29, 2016, which was denied by the Division as per Resolution promulgated on March 1, 2017, hence, the CIR filed his Petition for Review.

The CIR argues in his Petition for Review that the net loss in 2008 was already exhausted in 2009 when BCC carried it over as NOLCO in its 2009 ITR. Since there is no more loss in which the unrecorded gross receipts can be offset, the proper tax imposition should be the 35% regular

[4] Division docket, pp. 548-554.

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corporate income tax (RCIT), as enunciated in Section 27(A)[5] of the 1997 National Internal Revenue Code (NIRC), as amended. Even if the net loss in 2008 was not exhausted, the deduction therefrom is only allowed for three years therefrom or until 2011, thus the deduction of the unrecorded gross receipts from the net loss is improper.

We rule to DENY the Petition for Review.

It is clearly established that the undeclared gross receipts were for the year 2008 and any disallowed deduction must be offset from whatever net loss the taxpayer may have in the same year. Thus, it was simply proper for the Division to deduct from the stated net loss in BCC's 2008 ITR the undeclared gross receipts also from year 2008. Any alleged deficiency tax derived by BCC from the carry-over of the adjusted amounts redounds to the succeeding year 2009. Since the alleged tax deficiency will be in the succeeding year, at most, BCC may only be assessed in the said succeeding year, which is clearly not covered by the instant case herein. As stated in the case of *Armadillo Holdings, Inc. vs. Commissioner of Internal Revenue:*[6]

> "However, respondent <u>failed to present evidence to prove that petitioner used its 2007 net loss as NOLCO in the succeeding year</u>. Assuming *arguendo* that petitioner actually deducted its 2007 net loss as NOLCO in the succeeding year and the said deduction was not proper as petitioner did not incur net loss, <u>the same can only be the subject of assessment when it was claimed as deduction in the succeeding year and not in the year 2007, for such is beyond the scope of the present assessment</u>. xxx
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> The same holds true with the MCIT of P248,421.42 and excess tax credits of P23,688,886.89. It was improper for respondent to disallow <u>the said amounts because any tax benefit</u>

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[5] **SEC. 27.** ***Rates of Income tax on Domestic Corporations. -***
(A) *In General.* - Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: *Provided*, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%); xxx
[6] CTA Case No. 8323, June 11, 2014.

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derived by petitioner from the carry-over redounds to the succeeding year 2007. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year." (Italics in the original, Underlining supplied.)

As correctly observed by the Division, the fact of the matter is that BCC suffered net loss for year 2008 even after the adjustment considered from the unrecorded gross receipts, and the fact of net loss makes the imposition of MCIT, instead of RCIT, proper, applying Section 2.27(E) of Revenue Regulation (RR) No. 09-98, as amended by RR No. 12-07, implementing Section 27(E)[7] of the 1997 NIRC, which states:

"Sec. 2.27(E) MINIMUM CORPORATE INCOME TAX (MCIT) ON DOMESTIC CORPORATIONS-

(1) *Imposition of the Tax.-* A minimum corporate income tax (MCIT) of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year, depending on the accounting period employed) is hereby imposed upon any domestic corporation beginning on the fourth (4th) taxable year immediately following the taxable year in which such corporation commenced its business operations. The MCIT shall be imposed whenever such corporation has zero or negative taxable income or whenever the amount of minimum corporate income tax is greater than the normal income tax due from such corporation.

xxx xxx xxx" (Underlining supplied.)

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[7] (E) *Minimum Corporate Income Tax on Domestic Corporations. –*

(1) *Imposition of Tax.* - A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.

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Clearly, BCC had negative taxable income in 2008 even after offsetting the unrecorded gross receipts and the law could not be any clearer that when a corporation has a negative taxable income, the MCIT shall then apply, and not the RCIT.

More so, on the issue of deduction from net loss only within three years therefrom, such was never raised by the then CIR in his Answer and Pre-trial Brief, or other pleadings filed before the Division.[8] An issue not raised before the lower court could not be raised for the first time on appeal.[9]

With the existence of overpayment of tax credits per its Annual ITR that exceeds the supposed MCIT as found by the Division, it is but proper for the assessed deficiency income tax to be cancelled.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision dated July 12, 2016 and the Resolution dated March 1, 2017, rendered by the Third Division of this Court are hereby **AFFIRMED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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[8] *Commissioner of Internal Revenue vs. Transnational Plans, Inc.* (CTA EB No. 1337), consolidated with *Transnational Plans, Inc. vs. Commissioner of Internal Revenue* (CTA EB No. 1339), March 27, 2017.

[9] *Commissioner of Internal Revenue vs. Obayashi Philippines Corporation,* CTA EB No. 42 (CTA Case No. 6222), June 10, 2005, citing *Victorias Milling Co., Inc., vs. Court of Appeals*, 333 SCRA 663; *Jimenez vs. Patricia*, Inc., 340 SCRA 525

(with Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

BPI CAPITAL CORPORATION,
Respondent.

CTA EB No. 1614
(CTA Case No.8787)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

JUL 3 1 2018 4:22 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review filed by the Commissioner of Internal Revenue (CIR).

Records disclose the following:

- Letter of Authority (LOA) No. 200800033766 dated June 29, 2009 issued by petitioner, through Zenaida G. Garcia, OIC-ACIR, Large Taxpayers Service, specifically authorized **Revenue Officers (ROs) Daniela Gabaon, Maribel Serafica, Reynoso Bravo, Walter Batoon and Julieta Tubilla** of the Large Taxpayers Audit & Investigation Division I to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008;

- RO Adulhalim P. Usman and under Group Supervisor (GS) Sohailey A. Pandapatan were subsequently assigned to continue the audit of respondent.[1]

- RO III Belen C. Sevilla and GS Oscar A. Sable and subsequently transferred to RO Erlita Maria C. Vergara and GS Edenny S. Lingan continued the audit by virtue of Memorandum of Assignment dated April 3, 2013 issued by Edwin T. Guzman, OIC-Chief, RLTAD2.

In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,***[2] the Supreme Court, citing Section 1, Rule 4 of A.M. No. 05-11-07- CTA, or the Revised Rules of the Court of Tax Appeals, declared that the CTA can resolve the issue on the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda. For want of valid LOA, the Supreme Court ultimately resolved to declare the assessment void.

Moreover, in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue,***[3] the Supreme Court emphasized the importance of an LOA and the authority of ROs who conducted the audit and examination of the taxpayer. It went on further to declare as **void the subject disputed assessment for lack of an LOA authorizing the ROs to examine the taxpayer's books of account and other accounting records.**

While respondent failed to raise the issue of lack of an LOA which authorizes ROs Sevilla, Vergara and Usman, and GS Sable, Lingan, and Pandapatan to conduct and continue the audit, the Court is not precluded from considering this issue as the absence of a valid LOA renders an assessment intrinsically void. The importance of the ROs' authority to conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose.[4] RMO No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It

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[1] Exhibit R-10, BIR Records, p. 14.
[2] G.R. No. 183408, July 12, 2017.
[3] G.R. No. 222743, April 5, 2017.
[4] Section 13 of the National Internal Revenue Code of 1997, as amended.
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." *(Boldfacing and underscoring supplied)*

likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.
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>
> 4. 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**." *(Boldfacing supplied)*

RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, **requires the issuance of a new LOA**:

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

Unless and until modified by the Supreme Court *En Banc*, the doctrines laid down in *Medicard* and *Lancaster* should be applied in determining the validity of assessments issued against taxpayers *sans* any LOA specifically naming the ROs and GS authorized to conduct the audit. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[5]

In fine, the examination of respondent's records by ROs Sevilla, Vergara and Usman and GS Sable, Lingan and Pandapatan, having been made without the required authority as contained in an LOA,

[5] *Development Bank of the Philippines v. NLRC*, March 1, 1995, 242 SCRA 59; *Albert v. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948 cited in the Concurring Opinion of Sandoval-Gutierrez, J., *Raul L. Lambino v. The Commission on Elections*, G.R. No. 174153, October 25, 2006.

makes the disputed assessment a nullity. A void assessment bears no fruit,[6] which must be slain at sight.

All told, I **CONCUR** in the **result**.

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.

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Uy,
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Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

JUL 31 2018 4:22 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my esteemed colleague, Associate Justice Cielito N. Mindaro-Grulla in denying Commissioner of Internal Revenue's (CIR) Petition for Review for lack of merit. The basis of my concurrence is the invalidity of the assessment due to lack of requisite authority on the part of the revenue officers who actually conducted the audit investigation of BPI Capital Corporation's (BPI Capital) books of accounts and other accounting records for taxable year 2008.

A review of the records revealed that Letter of Authority (LOA) No. 200800033766 dated June 29, 2009[1] was issued by Zenaida G. Garcia, OIC-ACIR Large Taxpayers Service, authorizing Revenue Officers (ROs) Daniela Gabaon, Maribel Serafica, Reynoso Bravo, Walter Batoon and Julieta Tubilla of the Large Taxpayers Audit & Investigation Division I to examine BPI Capital's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008.

Through Memorandum issued by Angeles C. Bautista, OIC- Chief, LT Regular Audit Division II with Referral No. D-LOA-31-02-10 dated February 22, 2010,[2] the audit investigation of BPI Capital's books of accounts and other accounting records for taxable year 2008 was reassigned to Revenue Officer Abdulhamin P. Usman (RO Usman) under Group Supervisor Sohailey A. Pandapatan (GS Pandapatan).

The audit investigation of BPI Capital's books of accounts and other accounting records for taxable year 2008 was again subsequently reassigned to Revenue Officer Belen C. Sevilla (RO Sevilla) under Group Supervisor Melinda Ann A. Perez (GS Perez) through Memorandum of Assignment No. 125-D-LOA-042-02-11 dated February 21, 2011[3] issued by Edwin T. Guzman, OIC-Chief of LT Regular Audit Division II.

Through Memorandum of Assignment No. LOA-125-2013-195 dated April 3, 2013,[4] also issued by Edwin T. Guzman, OIC-Chief of LT Regular Audit Division II, the audit investigation of BPI Capital's books of accounts and other accounting records for taxable year 2008 was again reassigned to Revenue Officer Erlita Maria C. Vargara (RO Vargara) under Group Supervisor Edenny S. Lingan (GS Lingan).

The records do not show that new or replacement Letters of Authority were correspondingly issued in favor of the revenue officers to whom the audit investigation of BPI Capital's books of accounts and other accounting records for taxable year 2008 was subsequently reassigned.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

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[1] Exhibit "R-2"; BIR Records, p. 1.
[2] Exhibit "R-10; BIR Records, p. 13.
[3] Exhibit "R-13; BIR Records, p. 17.
[4] Exhibit "R-1"; BIR Records, p. 422.

"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.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

"SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
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> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "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**:
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> x x x x x x x x x
>
> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
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> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)* ℘

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "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)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that the Chief of LTS-RTAD II is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
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> x x x x x x x x x
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> 4. 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 <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, only the CIR or his duly authorized representatives who can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[5]

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

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, logically speaking, only them who can effect any modification or amendment to a previously issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. Be that as it may, this Court is of the view that the same would not necessarily negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of just issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[6] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[7]

In the present case, the revenue officers named under LOA No. 200800033766 dated June 29, 2009 were different from those who actually examined BPI Capital's books of accounts and other accounting records for the period from January 1, 2008 to December 31, 2008. As stated earlier, the records do not indicate that new or replacement Letters of Authority were correspondingly issued in favor of these revenue officers.

Guided by the foregoing disquisition, it is my view that the Memorandum issued by Angeles C. Bautista, OIC- Chief, LT Regular Audit Division II with Referral No. D-LOA-31-02-10 dated February 22, 2010, as well as Memorandum of Assignment No. 125-D-LOA-042-02-11 dated February 21, 2011 and Memorandum of Assignment No. LOA-125-2013-

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[6] Revenue Administrative Order No. 001-12 dated April 2, 2012.

[7] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.

195 dated April 3, 2013, both issued by Edwin T. Guzman, OIC-Chief of LT Regular Audit Division II, cannot validly grant to the revenue officers named therein the authority to conduct the examination pursuant to LOA No. 200800033766 dated June 29, 2009. In their capacity both as OIC-Chief of LT Regular Audit Division II, Angeles C. Bautista and Edwin T. Guzman are bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[8] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit/examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

In view of the foregoing, I vote to **DENY** the present Petition for Review.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

[8] G.R. No. 178697, November 17, 2010, 649 Phil. 519.