REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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SUNNYPHIL INCORPORATED, Petitioner,	**CTA Case No. 9421**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** OCT 09 2019 10:50 a.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on August 10, 2016 by Sunnyphil Incorporated against the Commissioner of Internal Revenue, praying for the refund or issuance a tax credit certificate in the amount of ₱8,906,107.84.

THE FACTS

Petitioner Sunnyphil Incorporated is a corporation duly organized and existing under the Philippine Laws and is registered with the Bureau of Internal Revenue (BIR) under Certificate of Registration (COR) No. 9RC0000190247 with Tax Identification No. 226-852-389-000, with principal office at Lot 91, A. Bagsakan Road, FTI Complex, Western Bicutan, Taguig City.[1]

Respondent, on the other hand , is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties and

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[1] Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 141.

responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) and other tax laws, rules and regulations.[2]

On January 14, 2010, respondent issued a *Formal Assessment Notice* (FAN)[3] IT-LA1154-06-10-0084, WE-LA1154-06-10-0084, IT-LA1154-06-10-0084 and MC-LA1154-06-10-0084, all dated January 14, 2010, representing income tax, expanded withholding tax, improperly accumulated earning tax and compromise penalty for the taxable year 2006.[4]

Petitioner then filed, on January 27, 2010, its *Formal Protest* dated January 26, 2010,[5] seeking reconsideration against the FAN dated January 14, 2010.[6]

On May 3, 2016, petitioner received a *Preliminary Collection Letter* (PCL)[7] dated April 27, 2016.[8]

Subsequently, on May 13, 2016, petitioner received the *Decision* dated April 12, 2016,[9] issued by former Commissioner of Internal Revenue, Kim S. Jacinto-Henares, affirming the assessment against petitioner and ordering the payment of the total amount of ₱8,906,107.84, representing alleged deficiency income, expanded withholding tax, improperly accumulated earnings tax and compromise penalty, for the taxable year 2006.[10]

On May 16, 2016, petitioner received a *Final Notice Before Seizure* (FNBS),[11] reiterating the demand for payment of the total amount of ₱8,906,107.84.[12]

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[2] Par. 2, Facts Admitted, JSFI, Docket, p. 141.
[3] Exhibit "P-1", Docket, pp. 181 to 185.
[4] Par. 3, Facts Admitted, JSFI, Docket, p. 142.
[5] Exhibit "P-2", Docket, pp. 186 to 202.
[6] Par. 4, Facts Admitted, JSFI, Docket, p. 142.
[7] Exhibit "P-3", Docket, p. 203.
[8] Par. 5, Facts Admitted, JSFI, Docket, p. 142.
[9] Exhibit "P-4", Docket, pp. 204 to 212.
[10] Par. 6, Facts Admitted, JSFI, Docket, p. 142.
[11] Exhibit "P-5", Docket, p. 213.
[12] Par. 7, Facts Admitted, JSFI, Docket, p. 142.

On May 25, 2016, petitioner paid the following amounts:[13]

Tax Type	Amount Paid
IT	₱8,235,954.78[14]
IAET	637,217.77[15]
WE	16,935.32[16]
MC	16,000.00[17]
TOTAL	**₱8,906,107.84**

Petitioner then submitted, on May 26, 2016, a letter to Abilia S. Bentulan, Chief Collection Division, Revenue Region No. 8,[18] informing her that the assessment was paid under protest. Thereafter, another letter was sent to Bentulan,[19] reiterating that the payment made by petitioner on May 25, 2016 was under protest.

The instant *Petition for Review* was filed by petitioner on August 10, 2016.

On September 16, 2016, respondent filed a *Motion to Dismiss*,[20] on the ground that petitioner failed to file an administrative claim with him.

In petitioner's *Comment (To Respondent's Motion to Dismiss)* filed on October 20, 2016,[21] petitioner insisted that an administrative claim was duly filed with Office of Regional director of Revenue Region No. 8 and Administrative Section of Revenue District Office No. 44 (Taguig/Pateros) on August 1, 2016.

In the Resolution dated January 27, 2017,[22] this Court denied respondent's *Motion to Dismiss* for lack of merit. Subsequently, in the Order dated February 1, 2017,[23] respondent was directed to file an *Answer*.

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[13] Par. 8, Facts Admitted, JSFI, Docket, p. 142.
[14] Exhibit "P-6", Docket, pp. 213-A to 216.
[15] Exhibit "P-7", Docket, pp. 217 to 219.
[16] Exhibit "P-8", Docket, pp. 220 to 224.
[17] Exhibit "P-9", Docket, pp. 225 to 229.
[18] Exhibit "P-10", Docket, p. 230.
[19] Exhibit "P-11", Docket, p. 231.
[20] Docket, pp. 84 to 87.
[21] Docket, pp. 91 to 95.
[22] Docket, pp. 99 to 102.
[23] Docket, p. 103.

Upon respondent's *Motion for Additional Time To File Answer* filed on February 22, 2017,[24] and within the extended time granted by the Court in the Order dated March 13, 2017,[25] respondent filed his *Answer* on March 10, 2017,[26] interposing the following special and affirmative defenses, *inter alia*:

(1) petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
(2) taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;
(3) it is incumbent upon the petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;
(4) petitioner's claim for refund or issuance of tax credit certificate in the amount of eight million nine hundred six thousand one hundred seven and 84/100 pesos (₱8,906,107.84) is misplaced;
(5) the period to collect the deficiency taxes through the issuance of the FNBS has not yet prescribed;
(6) petitioner is estopped from claiming that the collection of the payment of deficient assessed taxes is erroneous and illegal;
(7) in a claim for tax refund or tax credit, the taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit; and
(8) claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

The Pre-Trial Conference was set on May 24, 2017.[27] Respondent filed his *Pre-Trial Brief* on May 11, 2017.[28] Subsequently, on May 19, 2017, petitioner's *Pre-Trial Brief* was filed.[29]

The parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on June 2, 2017,[30] and the same was approved in the

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[24] Docket, pp. 105 to 107.
[25] Docket, pp. 109 to 110.
[26] Docket, pp. 111 to 115.
[27] *Notice of Pre-Trial Conference* dated March 29, 2017, Docket, pp. 117 to 118.
[28] Docket, pp. 119 to 122.
[29] Docket, pp. 123 to 128.
[30] Docket, pp. 141 to 145.

Resolution dated June 13, 2017.[31] Subsequently, the Court issued its Pre-Trial Order dated July 18, 2017,[32] thereby terminating pre-trial.

During trial, petitioner presented its witness, Rosalie Tanguanco.[33] On September 18, 2017, petitioner filed its *Formal Offer of Evidence* on September 18, 2017,[34] offering Exhibits "P-1" to "P-14-a". In the Resolution dated November 16, 2017,[35] the said Exhibits were admitted by this Court.

For his part, respondent presented the testimony of Aileen R. Sarreal,[36] and filed its *Formal Offer of Evidence* on February 12, 2018,[37] offering Exhibits "R-1" to "R-6, inclusive of sub-markings. The Court likewise admitted the said Exhibits in the Resolution dated July 5, 2018.[38]

In the Resolution dated November 8, 2018,[39] the instant case was deemed submitted for decision, taking into consideration petitioner's *Memorandum* filed on August 14, 2018,[40] and respondent's *Memorandum* filed on September 13, 2018.[41]

Hence, this Decision.

THE ISSUES

The parties stipulated the following issues[42] for this Court's resolution, to wit:

> "1. Whether the running of the prescriptive period for the collection of the deficiency Income Tax, Expanded Withholding Tax, Improperly Accumulated Earnings Tax

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[31] Docket, p. 155.
[32] Docket, pp. 157 to 163.
[33] Minutes of the hearing held on, and Order dated, August 8, 2017, Docket, pp. 169 to 172; and Exhibit "P-14", Docket, pp. 131 to 140.
[34] Docket, pp. 175 to 180.
[35] Docket, pp. 264 to 265.
[36] Minutes of the hearing held on, and Order dated, February 6, 2018, Docket, pp. 281 to 284; and Exhibit "R-6", Docket, pp. 268 to 272.
[37] Docket, pp. 289 to 291.
[38] Docket, pp. 300 to 301.
[39] Docket, p. 336.
[40] Docket, pp. 302 to 319.
[41] Docket, pp. 325 to 332.
[42] Issues, JSFI, Docket, pp. 142 to 143.

and Compromise Penalty for the taxable year 2006 has been suspended; and

2. Whether Petitioner is entitled to a tax refund or a tax credit certificate in the amount of **Php 8,906,107.84** representing deficiency income, expanded withholding, improperly accumulated earnings taxes and compromise penalty for the taxable year 2006."

Petitioner's arguments:

Petitioner argues that the period of respondent commissioner to collect deficiency taxes has already prescribed; that petitioner paid the alleged deficiency taxes contained in the FNBS under protest; that the payment under protest by petitioner of the alleged deficiency assessment, is unenforceable, erroneous and illegal; and that the filing of an administrative claim for refund is not a condition *sine qua non* to the filing of a judicial claim for refund.

Respondent's counter-arguments:

Respondent counter-argues that the running of the period to collect deficiency taxes has been suspended and that the collection of the deficiency tax assessment of petitioner is legal and valid.

Since the claim for refund/tax credit of petitioner is by nature a tax exemption, and is construed *strictissimi juris* against petitioner, who is claiming the exemption without the clearest grant of the law, the fact that petitioner failed to fully substantiate by proper documents its claim, the same must necessarily fail.

THE COURT'S RULING

It is well-settled that the issuance of a valid formal assessment is a substantive prerequisite to tax collection.[43]

Thus, and in order to achieve an orderly disposition of the instant case, before addressing the issues raised by the parties which are directly related to the collection of the subject deficiency taxes

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[43] *Commissioner of Internal Revenue vs. Menguito*, G.R. No. 167560, September 17, 2008.

and penalty, this Court finds it necessary to resolve an antecedent and vital issue, which delves into the validity of the subject tax assessments, to wit:

> **"Whether or not the revenue officers who conducted the audit or examination of petitioner were validly authorized to do so, through a Letter of Authority (LOA)."**

Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, reads, in part, as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. - *Rendition of judgment* - xxx
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**" *(Emphasis supplied)*

Thus, this Court is not limited to resolve only the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case. The said power of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[44] to wit:

> "**On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative.</u>**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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> SECTION 1. *Rendition of judgment.* – x x x

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

> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA <u>even though the parties had not raised the same in their pleadings or memoranda.</u>** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, this Court finds it necessary to look into the authority of the concerned revenue officers to conduct an audit investigation of petitioner's books of accounts and other accounting records for taxable year 2006, to achieve an orderly disposition of the instant case.

The audit process normally commences with the issuance by respondent of an LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time, it authorizes or empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[45]

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[46] (hereinafter referred to as the "*Medicard* case"), the Supreme Court held as follows, to wit:

> "**<u>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</u>.** An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly

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[45] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[46] G.R. No. 222743, April 5, 2017.

authorized representatives. Section 6 of the NIRC clearly provides as follows:

> 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.
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> x x x x (Emphasis and underlining ours)

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.**

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[47] the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can

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[47] 649 Phil. 519 (2010).

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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)

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Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**

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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**." *(Emphases and underscoring supplied)*

Based on the foregoing, the LOA is the authority given to the appropriate ROs to enable them to examine the books of account and other accounting records of a taxpayer. In the absence of such authority, the tax assessments issued against such taxpayer shall be void.

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Respondent himself, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018[48], recognized the *Medicard* case, in this wise:

> "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. <u>Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void</u>.'**
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> xxx xxx xxx
>
> 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 and underscoring supplied)*

Moreover, as a corollary, Section 13 of the NIRC of 1997, provides as follows, to wit:

> "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, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, 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." *(Emphases and underscoring supplied)*

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[48] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

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Based on the foregoing provision, and in relation to the *Medicard* case, an RO, who is assigned to perform assessment functions in any district, may ***only*** examine taxpayers within the jurisdiction of the said district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due, pursuant to an LOA issued by the concerned Revenue Regional Director.

In the instant case, a perusal of the records shows that under LOA 2007 00001154 dated December 6, 2007,[49] a certain RO, namely, Eliza Guevarra, and Group Supervisor (GS) Onofre de Guzman, of the BIR Revenue District Office (RDO) No. 44 – Taguig/Pateros, were authorized to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from January 1, 2006 to December 31, 2006. The said LOA was signed by OIC-Regional Director Ma. Nieva A. Guerrero, of BIR Revenue Region No. 8 – Makati.

Subsequently, on June 4, 2009, *Re-Assignment Notice*[50] was issued by Revenue District Officer, Gerry O. Dumayas, replacing RO Gueverra and GS de Guzman, with RO Luzviminda Sabile and GS Virginia Repito, for the examination of petitioner's internal revenue taxes for the same taxable period, with reference to the said LOA 2007 00001154.

Eventually, RO Sabile, in the *Memorandum* dated October 30, 2009,[51] recommended to Revenue District Officer Dumayas, the issuance of a *Preliminary Assessment Notice* (PAN) against petitioner. Consequently, the PAN dated December 3, 2009 was issued against petitioner,[52] indicating the result of investigation for taxable year 2006.

Thereafter, on January 14, 2010, respondent issued a FAN with *Assessment Notices* and *Details of Discrepancies*,[53] assessing petitioner for deficiency income tax, expanded withholding tax, improperly accumulated earning tax, and compromise penalty for the taxable year 2006.[54]

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[49] BIR Records, p. 19.
[50] BIR Records, p. 72.
[51] BIR Records, pp. 748 to 751.
[52] BIR Records, pp. 764E to 764I.
[53] Exhibit "P-1", Docket, pp. 181 to 185; BIR Records, pp. 785 to 793.
[54] Par. 3, Facts Admitted, JSFI, Docket, p. 142.

Clearly, RO Sabile, the BIR officer who recommended the issuance of the PAN against petitioner, was **not** authorized to examine petitioner for taxable year 2006, through an LOA issued by the pertinent BIR Regional Director. Consequently, she was not likewise authorized to recommend the issuance of a tax assessment of any deficiency tax due against petitioner. Her supposed authority to continue the audit investigation of petitioner was merely based on the *Re-Assignment Notice* dated June 4, 2009 issued by Revenue District Officer Dumayas.[55]

It must be emphasized that Revenue Memorandum Order (RMO) No. 43-90 dated September 20, 1990, which lays down the guidelines for the audit/investigation and issuance of LOA (herein below referred to as L/A), pertinent portions of which, provide as follows:

> "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**.
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> xxx xxx xxx
>
> 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." *(Emphases and underscoring supplied.)*

It is clear from the foregoing that **all audit investigations must be conducted under an LOA** by a duly designated RO authorized to perform audit and examination of taxpayer's books and accounting records. In case of re-assignment or transfer of cases to another RO, it is mandatory that a new L/A or LOA be issued with the corresponding notation thereto.

In this case, no new LOA was issued designating RO Sabile to continue the audit investigation of petitioner for all its internal revenue taxes for taxable year 2006.

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[55] BIR Records, p. 72.

Applying the aforecited doctrine laid down by the Supreme Court in the *Medicard* case, and the foregoing BIR issuances (RMC No. 75-2018 and RMO No. 43-90), the subject tax assessments are void, in view of the lack of the requisite authority of RO Sabile, through an LOA, to conduct the audit investigation of petitioner for taxable year 2006.

Relative thereto, it must be emphasized that a void assessment bears no valid fruit.[56] Correspondingly, in view of the nullity of the subject tax assessments, the aggregate amount of ₱8,906,107.84 should not have been paid by petitioner. Thus, the said amount must perforce be refunded to the latter.

With the foregoing findings, it becomes unnecessary to address the issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Petitioner is entitled to the refund of taxes it paid for taxable year 2006, as the same was collected under a void assessment.

Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE**, in favor petitioner, the aggregate amount of **₱8,906,107.84**, representing its payment of assessed deficiency taxes, including penalties, for taxable year 2006.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I join the Separate Concurring Opinion of Associate Justice Ma. Belen M. Ringpis-Liban)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[56] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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

Third Division

SUNNYPHIL INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9421

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 09 2019 10:50 a.m.

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SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in granting the Petition for Review filed by Sunnyphil Incorporated ("Petitioner") for lack of authority of the examining Revenue Officer ("RO"). However, I dissent with the *ponencia's* reason to do so.

I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in her favor, RO Luzviminda Sabile may be given the authority to continue the audit and examination of Petitioner's books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, by the Regional Director, upon the replacement of RO Eliza Guevarra who was originally named in the LOA.

I submit that this could be validly done under the National Internal Revenue Code of 1997 ("NIRC of 1997"), as amended and the laws on agency under the Civil Code.

The power of the Commissioner of Internal Revenue ("CIR") to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

> "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, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> 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."[1]

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz:*

> "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;
>
> (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,

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[1] *Emphasis and underscoring supplied.*

Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

"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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(c) **<u>Issue Letters of authority for the examination of taxpayers</u> within the region;**

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(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[2]

To implement said provision, Revenue Memorandum Order ("RMO") No. 36-99[3] was issued, entitled as "Guidelines and Procedures in the Issuance of Letters of Authority, Approval of Audit Reports and Issuance of Assessment Notices and Amending Certain Provisions of Revenue Memorandum Order (RMO) Nos. 26-94, 37-94 and 23-97". The RMO clearly emphasized that it is the Revenue Regional Directors who have the authority to issue LOAs for all audit cases within their regional jurisdiction, *viz*:

"I. OBJECTIVES

1. **To delineate the power to issue Letters of Authority (LAs) to the Revenue Regional Directors pursuant to Sec. 10 (c) of the Tax Code.**

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[2] *Emphasis and underscoring supplied.*
[3] February 09, 1999.

2. To prescribe the revised guidelines and procedures in the issuance of LAs, approval of audit reports and issuance of assessment notices.

II. GUIDELINES AND PROCEDURES

1. Section E of RMO No. 26-94 is hereby amended to read as follows:

The Revenue Regional Director shall approve and sign LAs for all audit cases within his regional jurisdiction...

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2. Section C.2.2.1 of RMO No. 23-97 is hereby amended to read as follows:

The Regional Director shall issue the corresponding Letter of Authority if indications of fraud have been established, and the same has been confirmed by the Regional Tax Fraud Committee (RTFC), composed of the following:

a. Regional Director — Chairman
b. Assistant Regional Director — Vice-Chairman
c. Chief, SID — Member
d. Chief, Assessment Division — Member
e. Chief, Legal Division — Member

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6. The following additional guidelines on the issuance of LAs shall be observed:

6.1 **All LA forms for use by the Revenue District Offices** and Special Investigation Divisions **shall be requisitioned by the Regional Director** from the Accountable Forms Divisions in the National Office.

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6.6 **The Regional Director shall maintain an LA Register for all LAs issued by him.** All issuances, revalidations, cancellations, case closures, assessments and other matters in relation to LAs should be entered in the LA Register. Entries in the LA Register must be complete and updated."[4]

In fact, this is what happens in reality. The Regional Director is the one who issues and signs an LOA, and not the CIR. Case in point is LOA No. 2007 00001154[5] dated December 06, 2007 issued by OIC-Regional Director Ma. Nieva A. Guerrero, authorizing RO Guevarra to examine the books of accounts and other accounting records of Petitioner for all internal revenue taxes for the period from January 01, 2006 to December 31, 2006.

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[6], the Supreme Court had the occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[7]

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Regional Director, his agent.

Now, may the Regional Director, the CIR's agent, appoint a sub-agent, in this case, the RO named in the LOA? Article 1892 of the Civil Code says that he can. The said provision states:

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[4] *Emphasis and underscoring supplied.*
[5] BIR Records, p. 19.
[6] G.R. No. 188288, January 16, 2012.
[7] *Emphasis supplied.*

"Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;
(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[8]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to RO Guevarra who was originally named in the LOA may be revoked, transferred and reassigned to RO Sabile, for continuance of audit, when the former was re-assigned.

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[9] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[10]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[11] The title of the contract does not necessarily determine its true nature.[12] In fact, this Court has, time and again, declared certain documents

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8 *Emphasis supplied.*

9 SEC. 13. Authority of a Revenue Officers. - 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).*

10 Civil Code of the Philippines, Article 1869.

11 Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

12 Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[13] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[14]

I am not unaware of RMO No. 43-90[15] which states that "[a]ny re-assignment/transfer of cases to another RO(s)...shall require the issuance of a new L/A" However, I humbly stress and emphasize that an administrative issuance must conform, not contradict, the provisions of the enabling law. Any rule that is not consistent with the law is null and void.[16]

It is for the reasons above that, in my opinion, RO Sabile who conducted the examination of Petitioner's records may be deemed authorized to do so without need for a new LOA, only if said letter or notice or memorandum was signed by the Regional Director.

In the instant case however, the Re-Assignment Notice[17] was only signed by Revenue District Officer Gerry O. Dumayas. Therefore, RO Sabile was without authority to continue the audit.

From all the foregoing, I vote for the **GRANT** of the Petition for Review filed by Petitioner.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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13 Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).

14 Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.

15 Issued September 20, 1990.

16 Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.

17 BIR Records, pp. 748-751.