REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***EN BANC***

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** | **CTA EB NO. 2733** (CTA Case No. 9514) |
| - versus - | |
| **TRICOM SYSTEMS (PHILIPPINES), INC.,** | |
| x----------x | |
| **TRICOM SYSTEMS (PHILIPPINES), INC.,** | **CTA EB NO. 2745** (CTA Case No. 9514) |
| | *Present:* |
| - versus - | **DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.* |
| | Promulgated: |
| **COMMISSIONER OF INTERNAL REVENUE,** | SEP 19 2024 4:02 p.m. |

x----------x

# DECISION

***BACORRO-VILLENA, J.:***

At bar are two (2) consolidated Petitions for Review[1] filed by the Commissioner of Internal Revenue[2] (**CIR**) on 28 February 2023 and Tricom Systems (Philippines), Inc.[3] (**Tricom**) on 14 April 2023, assailing the Decision dated 07 July 2022[4] (**assailed Decision**) and the subsequent Resolution dated 23 January 2023[5] (**assailed Resolution**), respectively, of the Court's Special Third Division[6] in CTA Case No. 9514, entitled *Tricom Systems (Philippines), Inc. v. Commissioner of Internal Revenue.* The assailed Decision and Resolution cancelled the tax assessments of Tricom for taxable year (**TY**) 2006 for deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**) and withholding tax on compensation (**WTC**) and interests thereon.

## PARTIES TO THE CASE

Tricom is a corporation duly organized and existing under the laws of the Republic of the Philippines with address at 2nd Floor, Metro House Building, 345 Sen. Gil Puyat Avenue, Makati City 1200.[7] It may be served with notices, resolutions, orders, decisions, and other legal processes through its counsel, Feria Tantoco Daos Law Offices, at their office address 8th Floor DPC Place, 2322 Chino Roces Avenue, Makati City 1231.[8]

---

1 Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals (RRCTA).
**Section 3**. *Who may appeal; period to file petition.* —
...
(b) Any party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

2 *Rollo* (CTA EB Case No. 2733), pp. 6-22.

3 *Rollo* (CTA EB Case No. 2745), pp. 6-32.

4 Division Docket, Volume VI, pp. 3148-3171.

5 Id., pp. 3240-3249.

6 Penned by Associate Justice Erlinda P. Uy (Ret.) and concurred by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro.

7 Exhibit "P-16-a", Division Docket, Volume VI, p. 2845.

8 Id., Volume I, p. 47.

The CIR, on the other hand, is charged with the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. He or she may be served with all notices, pleadings, resolutions, orders, decisions, and other legal processes of this Court at the Legal Division, Revenue Region 8, 2nd Floor, Bureau of Internal Revenue (**BIR**) Building, 313 Gil Puyat Avenue, Makati City.[9]

## FACTS OF THE CASE

On 13 July 2007, Tricom received Letter of Authority (**LOA**) No. 2001 00046967[10] (**LOA No. 00046967**) signed by then Regional Director (**RD**) Nelson M. Aspe (**Aspe**), informing it that some BIR officers have been authorized to examine its books of accounts and other accounting records for all internal revenue taxes for the period 01 January 2006 to 31 December 2006. Attached to it is the BIR's Checklist of Requirements and First Notice[11] (**BIR Checklist**).

On 07 August 2007, Tricom submitted several documents to Revenue Officer (**RO**) Rodolfo De Guzman, Jr. (**De Guzman**).[12] On 03 October 2007, Tricom received a Reassignment/Revalidation Notice dated 10 July 2007, informing it that LOA No. 00046967 was revalidated on 07 September 2007 for the reassignment of the audit examination to RO Conchita Cruz (**Cruz**).[13] Also on even date, Tricom received a Second Notice dated 14 September 2007, letting it know of its alleged failure to present the records as enumerated in the BIR Checklist.[14]

In a letter dated 03 October 2007, Tricom informed the BIR (through Assistant Revenue District Officer [**RDO**] Fe G. Sevidal [**Sevidal**]) that it had previously submitted photocopies of some documents shown in the BIR Checklist. It also undertook to submit more records.[15]

---

9 Id., Volume II, p. 541.
10 Exhibit "P-17", id., Volume VI, p. 2866.
11 Exhibit "P-17-a", id., p. 2867.
12 Exhibit "P-18", id., p. 2868.
13 Pre-Trial Order, Statement of Facts and Issues, par. 5, id., Volume IV, p. 1895; Exhibit "P-56", ICPA USB.
14 Exhibit "P-56.1", ICPA USB.
15 Exhibit "P-56.2", id.

On 16 October 2007, Tricom submitted additional documents as evidenced by an Acknowledgment Receipt duly signed and received by RO Cruz of even date.[16] Despite the foregoing, the BIR, through RDO Manuel V. Mapoy (**Mapoy**), issued a Final Notice dated 15 November 2007, reiterating that Tricom submit the records requested by the BIR.[17]

Tricom thus forwarded additional documents to the BIR as evidenced by Acknowledgment Receipts signed and received on 20 November 2007 and 22 November 2007.[18]

On 30 October 2008, Tricom received another Revalidation/ Reassignment Notice informing it that LOA No. 00046967 was revalidated/reassigned on 28 October 2008 to replace the previously assigned ROs with RO Maryrose M. Vega (**Vega**) and Group Supervisor (**GS**) Roland F. Zamora (**Zamora**). The LOA authorized Vega and Zamora to continue the examination of Tricom's books of accounts and other accounting records.[19]

On 22 January 2009, Tricom sent a letter to the BIR through RDO Mapoy stating that it had submitted additional accounting books and records pursuant to the former's Second Notice to produce them.[20] The BIR acknowledged receipt of said letter.[21]

Later, on 18 December 2009, Tricom received a Notice for Informal Conference (**NIC**) from RDO Teodoro G. Galicia (**Galicia**). The NIC directed Tricom to submit, within five (5) days from receipt thereof, other documentary evidence to support its objection to the BIR's assessment.[22]

---

16 Exhibit "P-19", Division Docket, Volume VI, p. 2869.
17 Exhibit "P-56.4", ICPA USB.
18 Exhibits "P-20" and "P-20-a", Division Docket, Volume VI, pp. 2870-2871.
19 Pre-Trial Order, Statement of Facts and Issues, par. 6, id., Volume IV, p. 1895; Exhibit "P- 56.8", ICPA USB.
20 Exhibit "P-21", Division Docket, Volume VI, p. 2872; see note at 14.
21 Pre-Trial Order, Statement of Facts and Issues, par. 7, id., Volume IV, p. 1895.
22 Pre-Trial Order, Statement of Facts and Issues, par. 8, id., pp. 1895-1896; Exhibit "P-60", ICPA USB.

While the assessment process was ongoing, Tricom, through its Accounting Manager, Joel Medina (**Medina**), executed a series of Waivers of the Defense of Prescription (**waivers**) under the Statute of Limitations of the National Internal Revenue Code (**NIRC**) of 1997, as amended, as follows:

a. First Waiver executed on 29 December 2009 to extend the right of the government to assess Tricom's tax liabilities for TY 2006 not later than 30 April 2009. RD Alfredo V. Misajon (**Misajon**) accepted the same.[23]

b. Second Waiver executed on 06 April 2010 to extend the period of assessment until 30 June 2010. RDO Galicia accepted the same.[24]

c. Third Waiver executed on 21 June 2010 to extend the period of assessment until 31 December 2010. RD Jaime B. Santiago (**Santiago**) accepted it.[25]

d. Fourth Waiver executed on 28 December 2010 to extend the period of assessment until 30 June 2011. RDO Galicia accepted it on the same day.[26]

e. Fifth Waiver executed on 30 June 2011 to extend the period of assessment until 31 December 2011. RDO Galicia accepted it on the same day.[27]

In the *interim*, or on 18 February 2010, Tricom sent a letter to RDO Galicia, with several attached documents that were to clarify the discrepancies in the BIR's 2006 audit assessment.[28] On 23 March 2010, Tricom received a Post Reporting Notice from the BIR informing it that the audit/investigation of all its internal liabilities for TY 2006 was already due for review. Based on the report of investigation, Tricom had an alleged tax deficiency of ₱29,021,342.23.[29] The Post Reporting Notice

---

23 Exhibit "P-11", Division Docket, Volume III, p. 1067.
24 Exhibit "P-11-A", id., p. 1068.
25 Exhibit "P-11-B", id., p. 1069.
26 Exhibit "P-11-C", id., p. 1070.
27 Exhibit "P-11-D", id., p. 1071.
28 Exhibit "P-23", id., Volume VI, p. 2874.
29 Pre-Trial Order, Statement of Facts and Issues, par. 9, id., Volume IV, p. 1896.

also mentioned that RO Robertson Gazzingan (**Gazzingan,**) as supervised by GS Raul G. Gorospe (**Gorospe**) conducted the audit.[30]

On 04 June 2010, Tricom received a Preliminary Assessment Notice (**PAN**) and Details of Discrepancies from the BIR reiterating its deficiencies for IT, VAT, EWT, and WTC for TY 2006.[31] On 13 July 2010, Tricom forwarded its Letter-Protest to the PAN dated 13 July 2010.[32]

Subsequently on 18 November 2011, Tricom also received the Formal Assessment Notice (**FAN**) and Details of Discrepancies dated 15 November 2011, informing it that its request for reinvestigation was granted, [33] the Letter- Protest dated 13 July 2010 did not however include a request for reinvestigation. Based on RO Gazzingan's Report, Tricom allegedly failed to submit the relevant documents for the PAN's cancellation. As a result, the FAN was issued against Tricom for its alleged deficiency IT, VAT, EWT and WTC for TY 2006.[34]

On 05 December 2011, Tricom filed its Protest to the FAN.[35] In the BIR's letter dated 03 February 2012, it was stated that RO Helalla M. Lao (**Lao**), as supervised by GS Gorospe, was to conduct the reinvestigation of all of Tricom's internal revenue liabilities for TY 2006.[36]

Later, on 15 October 2015, Tricom received the Final Decision on Disputed Assessment (**FDDA**), dated 09 October 2015, wherein its deficiency IT, VAT, EWT, and WTC for TY 2006 were stated.[37] Tricom again sent its letter, dated 20 October 2015, protesting the assessment in the FDDA and requesting its cancellation.[38]

---

30 Exhibit "P-24", id., Volume VI, p. 2880.
31 Id., par. 10, id., Volume IV, p. 1896; Exhibit "P-57", ICPA USB.
32 Exhibit "P-25", id., Volume VI, pp. 2887-2894.
33 The Letter-Protest dated 13 July 2010 did not, however, include a request for investigation.
34 Exhibit "P-12", Division Docket, Volume III, pp. 1072-1076; see also Pre-Trial Order, Statement of Facts and Issues, par. 12, id., Volume IV, p. 1896.
35 Exhibit "P-26", id., Volume VI, pp. 2895-2900.
36 Pre-Trial Order, Statement of Facts and Issues, par. 14, id., Volume IV, pp. 1896-1897; Exhibit "P-59", ICPA USB.
37 Pre-Trial Order, Id., par. 15, Division Docket, Volume IV, p. 1897; Exhibit "P-13", Division Docket, Volume III, pp. 1077-1078.
38 Exhibit "P-28", id., Volume VI, pp. 2902-2903.

Still later on 06 December 2016, Tricom received the CIR's Decision dated 25 November 2016, denying its appeal on the FDDA and demanding payment, within thirty (30) days from receipt, of the total amount of ₱49,493,899.07 (representing the alleged deficiency IT, VAT, EWT, and WTC, all with interest) for TY 2006.[39]

## PROCEEDINGS BEFORE THE COURT IN DIVISION

Aggrieved, Tricom filed a Petition for Review[40] on 04 January 2017, which was initially raffled to the First Division of this Court.

On 10 April 2017, the CIR filed his or her Answer[41] interposing special and affirmative defenses which include, among others, the following: (1) Tricom's protest against the FAN is focused on the items under the disallowances under the IT assessment, as well as the withholding taxes found due upon Tricom; (2) the assessment was issued against Tricom due to its failure to submit the additional relevant supporting documents within sixty (60) days from the date of the filing of its protest, as required under Section 228 of the NIRC of 1997, as amended; (3) the FAN's issuance did not violate Tricom's right to due process as it was able to present its side (on the disputed assessments) on numerous occasions; (4) the legal and factual bases on which the protest is based must be stated in order for it to be considered valid, pursuant to Revenue Regulations (**RR**) No. 12-99[42], as amended; (5) the effect of a void protest is as if no protest was filed by the taxpayer, thus, the assessment attained finality pursuant to RR No. 12-99, as amended; (6) Tricom failed to sufficiently rebut the presumption of regularity of the audit examination in case of disputed assessments; and, (7) the reconciliation that Tricom offered in its protest to the FAN is a mere reiteration (of the reconciliation) it previously forwarded in its protest to the PAN.

---

39 Exhibit "P-14", id., Volume III, pp. 1086-1099.
40 Id., Volume I, pp. 10-49.
41 Id., Volume II, pp. 541-549.
42 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

The CIR added that considering that the FAN was issued subsequently even after Tricom had raised issues in its Letter-Protest to the PAN, this should have been taken to mean that the BIR personnel handling the case had already passed upon such issues. Absent any showing that the assessment is arbitrary and without legal basis, it must be upheld. Furthermore, as regards Tricom's protest to the FAN, the CIR found that the former failed to successfully dispute the VAT assessment, thus, it had become final pursuant to RR No. 12-99[43], as amended.

On 08 May 2017, Tricom filed an "Urgent Omnibus Motion for the Suspension of Collection of Taxes and to Dispense with the Posting of Bond"[44] (**Urgent Omnibus Motion**) before the Court.

In the hearing of Tricom's Urgent Omnibus Motion on 16 May 2017, Tricom presented Medina. On the witness stand, he testified on direct examination, by way of his Judicial Affidavit[45], that: (1) the immediate tax collection of Tricom's alleged tax liability would substantially jeopardize its interests; (2) the government's right to assess and collect the alleged tax liability had already prescribed; (3) Tricom's alleged tax liability was based on a totally void and erroneous assessment that should thereby exempt it from posting the required bond (for the suspension of collection of taxes); and, (4) the CIR's tax assessment had yet to become final and executory due to the timely filing of Tricom's Petition for Review before the First Division.[46]

On 19 May 2017, Tricom filed a "Manifestation [Re: Willingness to Post a Surety Bond]".[47] On 22 May 2017, the CIR filed a "Very Strong Opposition/Comment (to the [Urgent Omnibus Motion])".[48] According to the CIR, Tricom had failed to provide evidence that it will suffer irreparable damage and injury considering that it had more or less ₱104 million in assets. Of even date, Tricom filed its "Formal Offer of Documentary Exhibits (**FOE**) (In Support of [Tricom's Urgent Omnibus Motion])".[49]

---

43 Supra at note 42.
44 Division Docket, Volume II, pp. 553-597.
45 Exhibit "P-15", id., pp. 609-618.
46 See Minutes of the Hearing and Order, both dated 16 May 2017, id., pp. 782-787 and pp. 789-790, respectively.
47 Id., pp. 796-806.
48 Id., Volume II, pp. 927-930.
49 Id., Volume III, pp. 931-939.

On 22 June 2017, Tricom filed a "Reply (To [CIR's] Very Strong Opposition/Comment To the [Urgent Omnibus Motion])".[50]

On 10 August 2017, Tricom filed a "Motion for Production, Inspection and Copying of Documents"[51], praying that the CIR be ordered to produce the documents enumerated therein for inspection and copying.

In the Resolution dated 16 August 2017[52], the First Division (1) admitted Tricom's FOE (In Support of Tricom's [Urgent Omnibus Motion]); (2) partially granted Tricom's Urgent Omnibus Motion, wherein it deemed proper to maintain *status quo* since the case involved a determination of a factual issue (prescription and validity of the waivers issued); (3) noted Tricom's Manifestation [Re: Willingness to Post a Surety Bond], and ordered Tricom to deposit a cash bond in the amount of ₱18,119,503.51; and, (4) ordered the CIR's suspension of the collection of taxes.

During the Pre-Trial Conference on 17 August 2017, the parties' counsels agreed to submit their Joint Stipulation of Facts and Issues (**JSFI**).[53] On 17 August 2017, the CIR filed his or her Comment (on the Motion for Production, Inspection and Copying of Documents)[54] and Reply (to Request for Admission).[55] Meanwhile, on 23 August 2017, the CIR filed a Compliance[56] forwarding the entire BIR Records of Tricom to the First Division.

On 29 August 2017, Tricom filed its "Compliance [With the Resolution Promulgated on 16 August 2017 on Posting of Surety Bond]"[57], stating that it deposited a cash bond with the First Division.

---

50 Id., pp. 1125-1137.
51 Id., pp. 1223-1229.
52 Id., pp. 1232-1239.
53 See Minutes of the Hearing and Order, both dated 17 August 2017, id., pp. 1251-1253 and pp. 1257-1260, respectively.
54 Id., pp. 1268-1269.
55 Id., pp. 1264-1266.
56 Id., p. 1263.
57 Id., pp. 1271-1274.

On 18 September 2017, Tricom filed: (1) a "Manifestation (Re: [JSFI])"[58]; and, (2) a copy of the draft JSFI.[59]

In a Resolution dated 06 December 2017[60], the First Division also partially granted Tricom's Motion for Production, Inspection and Copying of Documents, and noted the admitted/denied statements in CIR's Reply (to Request for Admission). On 08 January 2018, Tricom filed a "Motion for Partial Reconsideration (**MPR**) [Of this Honorable Court's Resolution Promulgated on December 06, 2017]".[61] Meanwhile, in the Records Verification dated 19 January 2018[62], it was noted that both parties failed to file their JSFI.

In a Resolution dated 24 January 2018[63], the First Division, among other things, directed the CIR to file his or her Comment on Tricom's MPR within ten (10) days from notice. As for the parties' failure to file their JSFI, their right to file the same was deemed waived.

During the 25 January 2018 hearing[64], the Independent Certified Public Account (**ICPA**), Garry S. Pagaspas (**Pagaspas**) identified his Judicial Affidavit dated 17 January 2018[65] where he declared essentially that: (1) he is an ICPA accredited with the BIR and Securities and Exchange Commission (**SEC**); (2) Tricom is engaging his services for the review of voluminous documentary exhibits that will be filed before the First Division; and, (3) the exhibits attached to his affidavit are faithful reproductions of the originals. On the said hearing, the First Division also granted the motion to commission Pagaspas as the Court-commissioned ICPA.

On 29 January 2018, the CIR filed his or her "Opposition/ Comment (to the Motion for Reconsideration [**MR**])".[66] Subsequently, the First Division issued the Pre-Trial Order[67] on 02 February 2018.

---

58 Id., pp. 1303-1304.
59 Id., pp. 1307-1311.
60 Id., Volume IV, pp. 1789-1795.
61 Id., pp. 1799-1821.
62 Id., p. 1823.
63 Id., pp. 1873-1874.
64 See Minutes of the Hearing and Order, both dated 25 January 2018, id., pp. 1875-1876 and 1878-1879, respectively.
65 Id., pp. 1849-1854.
66 Id., pp. 1888-1890.
67 Id., pp. 1894-1909.

On 12 February 2018, Tricom filed a "Reply (To [CIR's] Opposition/Comment dated January 29, 2018]".[68]

On 03 May 2018, the Court granted Tricom's "Motion to Amend [The Pre-Trial Order Dated 2 February 2018]"[69].[70] However, *in lieu* of an amended Pre-Trial Order, the Clerk of Court was directed to issue a Supplemental Pre-Trial Order[71] and include therein a list of Tricom's additional documentary exhibits.

During the trial proper, Tricom presented its witnesses, namely, (1) Medina, Tricom's Finance Officer; and, (2) ICPA Pagaspas.

During the 20 February 2018 hearing[72], Medina identified his Judicial Affidavit dated 18 September 2017[73] where he declared essentially that: (1) he is Tricom's Chief Finance Officer; (2) he handles the financial affairs and tax matters of Tricom; (3) he has custody of the corporate records and documents of Tricom; (4) he has submitted the records and documents pursuant to the BIR Checklist attached to LOA No. 00046967; and, (5) Tricom had executed five (5) waivers.

On cross-examination, Medina testified that he is not aware that the First and Second Waivers are undated. He also did not notice that these waivers are undated when the BIR returned them to him. Hence, he was not able to bring such matter to the latter's attention.[74]

On redirect examination, Medina went on to state that Tricom's waivers are notarized but he never appeared before a notary public.[75] On re-cross examination, he confirmed that the waivers identified during his direct examination are all original copies.[76]

---

68 Id., pp. 1912-1921.
69 Id., pp. 1923-1929.
70 See Resolution dated 03 May 2018, id., Volume VI, pp. 2633-2639.
71 The Supplemental Pre-Trial Order was issued on 25 July 2019, id., pp. 2983-2987.
72 See Minutes of the Hearing and Order, both dated 20 February 2018, id., Volume IV, pp. 1861-1862 and 1863-1864.
73 Id., pp. 1519-1536
74 TSN dated 20 February 2018, pp. 37-38.
75 Id., pp. 39-42.
76 Id., pp. 42-43.

On 03 May 2018 hearing, ICPA Pagaspas testified by way of Judicial Affidavit dated 20 March 2018.[77] There, he testified: (1) on the summary of his findings in relation to the five (5) waivers executed by Tricom; (2) after performing the audit procedures, no undeclared income of ₱16,996,556.31 for TY 2006 for IT and VAT yielded, as the noted discrepancy pertained to 12% VAT on Trade Debtors and duplication of Maintenance Income in the BIR's findings; (3) Tricom failed to withhold EWT in the total amount of ₱5,745,307.56; (4) Tricom has no under remittances of WTC for TY 2006; (5) Tricom had no unsupported CWT; and, (6) based on the result of his audit, Tricom is liable for deficiency taxes in the total amount of ₱3,916,492.73.

On cross-examination, ICPA Pagaspas admitted that he failed to check the BIR Records kept at the Court's Records Division.[78]

On 18 May 2018, Tricom filed its FOE[79], which was resolved in the Resolution dated 03 September 2018.[80]

In the Order dated 01 October 2018[81], the instant case was transferred to the Third Division of this Court pursuant to Court of Tax Appeals (**CTA**) Administrative Circular No. 02-2018, entitled "Reorganizing the Three (3) Divisions of the Court" dated 18 September 2018.

For his or her part, the CIR presented as witnesses RO Gazzingan and RO Lao.

During the hearing held on 20 November 2018, RO Gazzingan identified his Judicial Affidavit dated 12 July 2017[82] where he declared that: (1) he was assigned to Tricom's case by virtue of a Memorandum of Assignment (**MOA**) issued by RDO Galicia; (2) pursuant to LOA No. 00046967, RO De Guzman Jr. and GS Joriz U. Saldajeno (**Saldejano**) were authorized to examine Tricom's books of accounts and records for TY 2006. However, on 07 September 2007, the LOA was revalidated and

---

77 Exhibit "P-82", Division Docket, Volume V, pp. 2324-2347.
78 TSN dated 03 May 2018, p. 13.
79 Division Docket, Volume VI, pp. 2800-2835.
80 Id., pp. 2954-2958.
81 Id., p. 2959.
82 Exhibit "R-33", id., Volume III, pp. 1169-1184.

the investigation was reassigned to RO Cruz; (3) that Tricom executed five (5) waivers; (4) the BIR issued Assessment Notices (**ANs**) to Tricom; and, (5) the BIR received a protest letter dated 05 December 2011 from Tricom. Moreover, on 28 October 2008, the BIR again revalidated the LOA and RO Vega and GS Zamora were tasked to continue with the audit.

During cross-examination, RO Gazzingan testified that[83]: (1) there are two (2) copies of the waiver executed on 06 April 2010, one on page 373 and another one on page 443 of the BIR Records; (2) the waiver on page 373 indicated a date of acceptance which was 06 April 2010, but the copy on page 443 did not contain any date of acceptance; (3) there are two (2) copies of the waiver executed on 21 June 2010, one on page 450 and another one on page 449 of the BIR Records; and, (4) the waiver on page 450 indicated a date of acceptance which was 21 June 2010, but the copy on page 449 did not contain any date of acceptance.

During the redirect examination, RO Gazzingan stated that Tricom's waivers were issued one after the other, *i.e.* if a waiver was about to lapse, a new one was issued to extend the previous waiver. No re-cross examination was conducted.[84]

As for RO Lao, she also identified her Judicial Affidavit dated 12 July 2017[85], where she declared that: (1) she was assigned to conduct the reinvestigation of Tricom pursuant to an MOA dated 21 December 2011 signed by RDO Galicia; (2) she prepared a memorandum containing a recommendation for the issuance of an FDDA; (3) on 09 October 2015, an FDDA was issued, which Tricom's received on 15 October 2015; (5) Tricom filed a reply letter to the FDDA on 20 October 2015; and, (6) the CIR rendered his or her decision on 25 November 2016.

During his cross-examination, RO Lao explained that: (1) despite being transferred to Revenue Distric Office No. 50, she was still aware of the developments of Tricom's reinvestigation; and, (2) she could no longer remember if there was any finding of fraud in relation to the investigation. No redirect examination followed.[86]

---

83 TSN dated 27 June 2019, pp. 41-43.
84 Id., pp. 53-54.
85 Exhibit "R-34", Division Docket, Volume III, pp. 1217-1222
86 TSN dated 27 June 2019, pp. 59-65.

Upon completion of the testimonies of the CIR's witnesses, the Third Division granted the motion of Tricom's counsel to present a rebuttal witness, Atty. Ronald Mark S. Daos (**Atty. Daos**).[87]

Thereafter, on 10 July 2019, the CIR filed his or her FOE.[88] In the Resolution dated 26 September 2019[89], the Third Division denied admission of some of the CIR's documentary exhibits.[90] On 10 October 2019, the CIR filed an "[MR] (on the Resolution promulgated on September 26, 2019)"[91], that prayed for the setting of the commissioner's hearing and for the marking of his or her exhibits (that were denied admission due to the absence of actual markings).

On 01 October 2019, Tricom filed a "Manifestation [Re: Submission of Judicial Affidavit]"[92] with attached Judicial Affidavit [Of [Atty. Daos] on Rebuttal][93] to refute the testimony of RO Gazzingan. The Third Division noted the Manifestation in a Minute Resolution dated 15 October 2019.[94]

Acting on the CIR's MR, on 09 January 2020[95], the Third Division granted the same and set a commissioner's hearing for the marking and comparison of the CIR's denied exhibits.[96]

In the Resolution dated 26 June 2020[97], the Third Division, among other things, partially granted the CIR's MR (on the Resolution promulgated on September 26, 2019).

---

87 See Order dated 27 June 2019, Division Docket, Volume VI, pp. 2964-2964.

88 Id., pp. 2966-2975.

89 Id., pp. 3020-3021.

90 The Court admitted respondent's exhibits except for Exhibits "R-3", "R-3-a", and "R-7-a", for failure to present the originals for comparison; and Exhibits "R-14", "R-14-a", "R-14-b", "R-14-c", "R-14-d", "R-14-e", "R-15", "R-15-a", "R-15-b", "R-15-c", "R-15-d", "R-15-e", "R-16", "R-17", "R-18", "R-18-a", "R-19", "R-20", "R-21", "R-22", "R-23", "R-24", "R-26", "R-26-a", "R-27", "R-27-a", "R-28", "R-28-a", "R-29", "R-29-a", "R-29-b", "R-30", "R-30-a", "R-31", "R-32", and "R-32-a", for failure to mark these exhibits.

91 Division Docket, Volume VI, pp. 3022-3024.

92 Id., pp. 3025-3026.

93 Exhibit "P-93", id., pp. 3028-3035.

94 Id., p. 3046.

95 See Resolution dated 09 January 2020, id., pp. 3056-3058.

96 Exhibits "R-3", "R-3-a", "R-7-a", "R-14", "R-14-a", "R-14-b", "R-14-c", "R-14-d", "R-14-e", "R-15", "R-15-a", "R-15-b", "R-15-c", "R-15-d", "R-15-e", "R-16", "R-17", "R-18", "R-18-a", "R-19", "R-20", "R-21", "R-22", "R-23", "R-24", "R-26", "R-26-a", "R-27", "R-27-a", "R-28", "R-28-a", "R-29", "R-29-a", "R-29-b", "R-30", "R-30-a", "R-31", "R-32", and "R-32-a".

97 The Court admitted Exhibits "R-14", "R-14-a", "R-14-b", "R-14-c", "R-14-d", "R-14-e", "R-15", "R-15-a", "R-15-b", "R-15-c", "R-15-d", "R-15-e", "R-16", "R-17", "R-18", "R-18-a", "R-19",

During the rebuttal hearing, Atty. Daos, through his Judicial Affidavit dated 01 October 2019[98], declared that: (**1**) he is one of the counsels handling Tricoms's case before this Court; (**2**) Exhibit "R-11" is a forgery as this document indicated that Tricom extended its waiver of the defense prescription until 30 April 2010, when in fact the signed waivers as requested from the Records Division of this Court, marked as Exhibit "P-86" indicated that it was extended only until 30 April 2009; (**3**) Exhibit "R-11" is likewise a forgery since the exhibit showed that the waiver was accepted on 06 April 2010 when in fact, the waivers requested from the Records Division of this Court showed that it did not bear any date as to when RDO Galicia accepted the said waiver; and, (**4**) the waivers are void and ineffectual hence they failed to extend the prescriptive period for the BIR audit.

During cross-examination, the Court inquired from Atty. Daos if the alleged forged exhibits are also found on other pages of the BIR Records. According to Atty. Daos, it was possible that RO Gazzingan failed to check the other pages of the BIR Records where the originals could be found. Atty. Daos also admitted that he was not able to examine the entire BIR Records.

Thereafter on 26 October 2020, Tricom filed its "Formal Offer of Supplementary Documentary Exhibits [Rebuttal Evidence]"[99] (**Supplementary FOE**).

In the Resolution dated 27 January 2021[100], the Third Division admitted all of Tricom's supplementary exhibits (on rebuttal) and ordered the parties to file their respective memoranda within a period of thirty (30) days from receipt of said Resolution. Considering, the failure of both parties to file their respective memoranda[101], the Third Division declared the filing of the same as waived.

In the *interim*, the Court reorganized the members of the Second and the Third Divisions pursuant to Administrative Circular No.

---

"R-20", "R-21", "R-22", "R-23", "R-24", "R-26", "R-26-a", "R-27", "R-27-a", "R-28", "R-28-a", "R-29", "R-29-a", "R-29-b", "R-30", "R-30-a", "R-31", "R-32", and "R-32-a", Division Docket, Volume VI, pp. 3100-3103.

98 Exhibit "P-93", supra at note 93.

99 Id., pp. 3110-3120.

100 Id., pp. 3131-3132.

101 Id., p. 3143.

01-2022[102] dated 21 June 2022, leaving thus the hearing of the case to a Special Third Division.

On 07 July 2022, the Special Third Division rendered the assailed Decision.[103] The relevant portions of the assailed Decision read:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, [CIR's] Decision dated November 25, 2016 is **REVERSED** and **SET ASIDE**; the tax assessments covering [Tricom's] TY 2006 for the alleged deficiency income tax, VAT, EWT, WTC, and interests thereon, are **CANCELLED** and **SET ASIDE**.
>
> Consequently, [CIR], or any person acting on his behalf, is **ENJOINED** from enforcing the collection of deficiency taxes assessed against [Tricom].
>
> **SO ORDERED.**
>
> ...

In the above Decision, the Special Third Division found that the authority of the ROs and GSs were either based on a revalidated LOA or an MOA. It also found that no new LOA was issued specifically authorizing the ROs and GSs to continue the audit or investigation of Tricom, contrary to the express provisions of Revenue Memorandum Order (**RMO**) No. 43-90.[104] According to the said RMO, any reassignment or transfer of cases to another RO(s), and revalidation of new LOAs which have already expired shall require the issuance of a new LOA. The Special Third Division also cited the principle enunciated in both *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[105] (**Medicard**), and *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[106] (**Sony**), that an assessment is void in the absence of a valid LOA. It then concluded that since no new LOA was issued the resulting assessments of Tricom are inescapably void.

---

102 Reorganizing the Second and Third Divisions of the Court.
103 Supra at note 4.
104 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated 20 September 1990.
105 G.R. No. 222743, 05 April 2017.
106 G.R. No. 178697, 17 November 17, 2010.

On 17 August 2022, Tricom filed an "[MPR] (of the [Special Third Division's] 07 July 2022 Decision)".[107] On the other hand, on 18 August 2022, the CIR filed an "[MR]" on the same Decision.[108]

On 23 January 2023, the Special Third Division issued the assailed Resolution denying the CIR's MR and Tricom's MPR for lack of merit.[109] The dispositive portion of the assailed Resolution reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, [Tricom's] *Motion for Partial Reconsideration [Of this Honorable Court's 07 July 2022 Decision]* and [CIR's] Motion for Reconsideration are **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

## PROCEEDINGS BEFORE THE COURT *EN BANC*

Following the grant of extensions to file their Petitions for Review[110], both parties filed their respective Petitions for Review (CTA EB No. 2733[111] and CTA EB No. 2745[112]) with the Court *En Banc*, pursuant to Rule 8, Section 4(b)[113] of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

On 13 April 2023, the Court *En Banc* required Tricom to comment on the CIR's Petition for Review.[114] On 19 April 2023, it issued a Minute Resolution consolidating CTA EB No. 2733 filed on 28 February 2023 and CTA EB No. 2745 filed on 14 April 2023 (**Consolidated Cases**).[115] On

---

107 Division Docket, Volume VI, pp. 3172-3193.
108 Id., pp. 3197-3209.
109 Supra at note 5.
110 See Minute Resolutions dated 21 February 2023 and 30 March 2023, *rollo* (CTA EB Case No. 2733), p. 5 and *rollo* (CTA EB Case No. 2745), p. 5, respectively.
111 Supra at note 2.
112 Supra at note 3.
113 **SEC. 4.** *Where to appeal; mode of appeal.*
...
(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.
114 See Resolution dated 13 April 2023, *rollo* (CTA EB Case No. 2733), p. 73.
115 Id., p. 75.

04 May 2023, Tricom filed its "Comment/Opposition [On/ To CIR's Petition for Review]".[116]

On 23 June 2023, the Court *En Banc* directed the CIR to file his or her comment/opposition to Tricom's Petition for Review.[117] *Per* Records Verification Report dated 08 August 2023, the CIR failed to file his or her Comment on Tricom's Petition for Review.[118] On 22 August 2023, the Court *En Banc* issued a Resolution submitting the consolidated cases for decision.[119]

Thus, for Our consideration are the following -

1. The "PETITION FOR REVIEW IN CTA EB NO. 2733", filed on 28 February 2023 of the CIR with Tricom's "Comment/Opposition [on/to CIR' s Petition for Review]" filed on 04 May 2023; and,

2. The "PETITION FOR REVIEW IN CTA EB NO. 2745", filed by Tricom on 14 April 2023.

Both petitions forward a singular issue for the Court *En Banc*'s resolution -

## ISSUE

WHETHER THE SPECIAL THIRD DIVISION ERRED IN RULING THAT TRICOM'S ASSESSMENT FOR TAXABLE YEAR 2006 FOR DEFICIENCY INCOME TAX (IT), VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT), WITHHOLDING TAX ON COMPENSATION (WTC) AND INTERESTS THEREON SHOULD BE CANCELLED AND SET ASIDE.

## ARGUMENTS

Relative to the CIR's Petition for Review in CTA EB No. 2733, the CIR ascribes the following errors to the assailed Decision and Resolution, to wit: (1) the Special Third Division erred in its findings that

---

116 Id., pp. 76-91.
117 See Resolution dated 23 June 2023, id., pp. 94-96.
118 Id., p. 97.
119 Id., p. 98.

RO Cruz, RO Vega, GS Zamora, RO Gazzingan, GS Gorospe and RO Lao were not authorized to conduct an audit examination's based merely on the MOAs submitted; (2) the issue of lack of authority on the part of the examining BIR officers was raised for the first time on appeal; (3) RMO No. 43-90 is a mere statement of policy and should not be heavily relied upon; and, (4) the cases of *Medicard* and *Sony*[120] cited in the assailed Decision are not applicable or on all fours with the instant case and should not be applied.[121] According to the CIR, the *Medicard* case is not applicable since it pertains to the audit of "unverrified prior years," and the issue involved was the validity of the assessments for the unverified years. While, the *Sony* case involved the issuance of a Letter Notice (**LN**), and the issue was whether the assessment issued is valid based on the said LN.

Tricom, in its Comment/Opposition[122] in CTA EB No. 2733 argues that: (1) CIR's Petition for Review is a mere reiteration of the arguments raised in his or her MR that had already been passed upon by the Special Third Division; (2) the ROs/GSs that conducted Tricom's assessment were not duly authorized to do so; (3) the Court is not limited to the issues stipulated by the parties; and, (4) lack of a valid LOA makes the assessment void.

On other hand, Tricom, in its own petition in CTA EB No. 2745, seeks a partial reconsideration based on additional grounds and arguments particularly: (1) the CIR's tax assessment is invalid for failure to clearly state the facts and the law upon which the deficiency assessment are based; (2) the right of the government to assess the alleged tax deficiency of Tricom for TY 2006 had already prescribed; and, (3) there is no factual and/or legal basis for the alleged deficiency IT, VAT, EWT, and WTC for TY 2006, including the imposition of 20% interest *per* year.[123] The CIR failed to file his or her comment on Tricom's petition despite due notice.[124]

---

120 Supra at notes 105 and 106.
121 Supra at note 2.
122 *Rollo* (CTA EB Case No. 2733), p. 76-91.
123 *Rollo* (CTA EB Case No. 2745), p. 9.
124 Id., p. 98.

## RULING OF THE COURT *EN BANC*

At the outset, it is noted that the present petitions before the Court *En Banc* have been timely filed.

For CTA EB Case No. 2733, the CIR received a copy of the assailed Resolution on 31 January 2023.[125] The CIR had fifteen days from receipt of the assailed Resolution, pursuant to Section 3(b)[126], Rule 8 of the RRCTA or until 15 February 2023 to file a Petition for Review before the Court *En Banc*. On 10 February 2023, the CIR filed a "Motion for Extension of Time to File his or her Petition for Review".[127] The Court *En Banc* granted the said motion and allowed the CIR until 02 March 2023.[128] On 28 February 2023, the CIR filed this Petition for Review.[129]

On the other hand, in CTA EB Case No. 2745, Tricom received a copy of the assailed Resolution on 15 March 2023.[130] It had fifteen days from receipt of the assailed Resolution, pursuant to Section 3(b)[131], Rule 8 of the RRCTA or until 30 March 2023 to file a Petition for Review before the Court *En Banc*. On 29 March 2023, Tricom filed an "Urgent Motion [For Extension of Time to file Petition]".[132] The Court *En Banc* granted

---

125 Division Docket, Volume VI, p. 3214.

126 **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

127 *Rollo* (CTA EB Case No. 2733), pp. 1-3.

128 Id., p. 5.

129 Supra at note 2.

130 *Rollo* (CTA EB Case No. 2745), p. 60.

131 Supra at note 126.

132 *Rollo* (CTA EB Case No. 2745), pp. 1-3

the said motion and allowed Tricom until 14 April 2023.[133] On 14 April 2023, Tricom filed this Petition for Review.[134]

**We proceed to the merits of the case.**

After a careful review of the records of the case and the contrasting arguments of the parties, the Court *En Banc* finds these consolidated petitions bereft of merit.

It is worthwhile to note that the allegations and arguments in the instant petitions are but reiterations of the parties' pleadings before the Court in Division which has already been exhaustively discussed and passed upon. For emphasis and for the parties' further enlightenment, We will, however, oblige to discuss anew the more salient points in *seriatim*.

THE FINDING ON THE ABSENCE OF AUTHORITY ON THE PART OF THE BUREAU OF INTERNAL REVENUE'S (BIR'S) OFFICERS IS DULY SUPPORTED BY EVIDENCE.

The CIR insists that the Special Third Division's finding that there was no valid authority vested unto the BIR officers for the audit examination of Tricom is not supported by evidence. According to the CIR, since the BIR officers' authority was never in question, the MOAs were offered not to prove the existence of such authority. Thus, the same should not have been scrutinized to address an issue relating to the BIR officers' authority. The CIR adds that, in such case, there was really no evidentiary mooring for the Court in Division's conclusion.[135]

The CIR's argument in this respect is quite incredulous. The fact he or she did not offer the exhibits for a particular purpose could not mean that a court of law is restricted by how a party landscapes its case. On the contrary, this Court, whether it exercises its jurisdiction in Division or *En Banc*, can rightfully pass upon the probative value of any

---

133 Id., p. 5.
134 Supra at note 3.
135 *Rollo* (CTA EB Case No. 2733), p. 12.

exhibit even outside the purpose of its offer. Thus, insofar as the MOAs here are concerned, this Court can validly utilize them as basis for its conclusion that indeed no proper authority was given to the BIR officers who conducted the audit of Tricom's books of account and records. Here, based on the evidence, the Special Third Division did not err when it ruled that, indeed, no such authority existed in favor of these BIR officers.

Consistently, We have held that the RO tasked to examine the books of accounts of taxpayers must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

> ...
>
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Return and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative** may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided*, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[136]
>
> ...

Section 10(c) of the NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 10.** *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
>
> ...
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.][137]
>
> ...

---

136 Emphasis supplied and italics in the original text.
137 Emphasis supplied and italics in the original text.

Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books of accounts must be armed with an LOA, *viz*:

> ...
>
> **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.[138]
>
> ...

Under the said provision, an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon the CIR.

Corollarily, Section D(4) of RMO No. 43-90[139] dated 20 September 1990, provides:

> ...
>
> D. Preparation and issuance of L/As.
>
> ...
>
> 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.[140]
>
> ...

---

138 Emphasis supplied and italics in the original text.
139 Supra at note 104.
140 Emphasis supplied.

From the foregoing, only the CIR and his or her duly authorized representatives (*i.e.*, Deputy Commissioners, the Revenue [RDs], and such other officials as may be authorized by the CIR) may issue the LOA.

In addition, **CIR's own rules, specifically Section C(5) of RMO No. 43-90**[141]**, mandate the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.** It reads —

> ...
> C. Other policies for issuance of L/As.
> ...
>
> 5. <u>**Any reassignment/transfer of cases to another RO(s),**</u> and revalidation of [LOAs] which have already expired, <u>**shall require the issuance of a new [LOA]**</u>, with the corresponding notation thereto, including the previous [LOA] number and date of issue of said [LOAs].[142]
>
> ...

Also, in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[143] (**McDonald's**), the Supreme Court has already highlighted the difference between an MOA and an LOA in this wise:

> ...
>
> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers.** However, **notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the**

---

141 Supra at note 104.
142 Emphasis and underscoring supplied.
143 G.R. No. 242670, 10 May 2021; Emphasis supplied.

**purpose of reassignment and transfer of cases of revenue officers.**

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.

**The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative.** The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. **Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.**

...

Incidentally, while it may be gainsaid that *McDonald's* does not do away with the reassignment by the CIR himself or herself, such is not the case here.

In *Medicard*[144], the Supreme Court underscored the importance of an LOA, *viz*:

...

**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 is premised on the fact that the examination of a taxpayer who has already filed his**

---

144 Supra at note 105; Citation omitted and emphasis supplied.

**tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** ...

...

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.**

...

... 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 Supreme Court, citing the case of *Sony*[145], went on to state:

...

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.**

...

Further, the Supreme Court in *McDonald's*[146] concluded that:

...

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**

---

145 Supra at note 106; Emphasis and underscoring supplied.
146 Supra at note 143; Emphasis and underscoring supplied.

> **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.**
>
> ...

In the case at bar, the records indisputably show that RO Gazzingan, RO Lao and GS Gorospe continued the audit and/or investigation of Tricom's books of account solely by virtue of an MOA.[147] Furthermore, only RDO Galicia, an official who is *not* among those authorized to issue LOAs pursuant to existing laws and regulations, particularly Section 13 in relation to Section 10 (c)[148] of the NIRC of 1997, as amended, Item D(4)[149] of RMO No. 43-90 and Item II(2)[150] of RMO No. 29-07[151], issued and signed the said MOA.

Only armed with an MOA and *not* an LOA, RO Gazzingan, RO Lao and GS Gorospe could not be deemed to have been validly clothed with the proper authority to continue the audit and recommend the issuance of the assessments against Tricom. Both RO Gazzingan and RO Lao admitted in their Judicial Affidavits that they were both assigned to audit Tricom's books of accounts and accounting records, pursuant to an MOA signed by RDO Galicia.[152] We quote below the relevant portion of RO Gazzingan's Judicial Affidavit[153]:

> ...
>
> Q7: How did you came to know petitioner Tricom Systems (Phils.) Inc. (Tricom for brevity) in this case?
>
> A7: I came to know petitioner Tricom in this case when I received a **Memorandum of Assignment issued by Revenue District Officer Teodoro Galicia,** directing me to continue the audit and investigation of [Tricom's] all internal revenue taxes for taxable year 2006 pursuant to Letter of Authority No. 0004697 dated July 13, 2007. ...
>
> ...

[147] Exhibit "R-25", Division Docket, Volume VI, p. 2976 and Exhibit "R-26", BIR Records, p. 485.
[148] Supra at p. 22.
[149] Supra at p. 23.
[150] **II. AUDIT POLICIES AND GUIDELINES.**
...
2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants.
[151] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.
[152] Supra at notes 82 and 85.
[153] Supra at note 82; Emphasis supplied.

As for RO Lao's Judicial Affidavit[154], his declarations are clear, *viz*:

> ...
> Q7: How did you came to know petitioner Tricom Systems (Phils.) Inc. (Tricom for brevity) in this case?
>
> A7: I came to know petitioner Tricom in this case when I received a **Memorandum of Assignment dated December 21, 2011, issued by Revenue District Officer Teodoro G. Galicia,** directing me to conduct the reinvestigation of [Tricom's] all internal revenue taxes for taxable year 2006 pursuant to Letter of Authority No. 0004697 dated July 13, 2007.
>
> ...

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[155] (**Opulent**), the Supreme Court further reiterated that only the ROs actually named in the LOA are authorized to examine the taxpayer, to wit:

> ...
> Likewise, the CTA EB correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, an LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. **It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer. ... In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.**
>
> ...

In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*[156], which also involved a reassignment of a deficiency tax investigation to another RO without the issuance of a new LOA, the Supreme Court nullified the Formal Letter of Demand and Assessment Notice issued against the taxpayer on the basis of such investigation, thus:

---

154 Supra at note 85; Emphasis supplied.
155 G.R. Nos. 249883-84 (Resolution), 27 January 2020; Citations omitted and emphasis supplied.
156 G.R. No. 241848, 14 May 2021.

...

A perusal of the records of the case discloses that electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 issued against petitioner specifically authorized revenue officer Cacdac and group supervisor Andaya, to examine the books of accounts of petitioner for taxable year 2009[.] ...

...

However, it appeared that Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Bagauisan who audited petitioner by virtue of a memorandum of assignment signed by revenue district officer Nacar[.] ...

...

The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 from revenue officer Cacdac to revenue officer Bagauisan necessitates the issuance of a new LOA. This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit"[.] ...

...

Here, there was no new LOA issued naming Bagauisan as the new revenue officer who would conduct the examination of petitioner's books of accounts. The authority of Bagauisan is anchored only upon the memorandum of assignment signed by revenue district officer Nacar.

Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer[.]

...

Well-entrenched is the principle that in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessments shall be void and ineffectual.[157]

We proceed to rule on the revalidated LOA's issued by the CIR.

---

157 See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 105.

It can be recalled that on 07 September 2007, LOA No. 00046967 was revalidated[158] and the investigation of Tricom was reassigned to RO Cruz to replace RO De Guzman, Jr. and GS Saldajeno (the BIR officers authorized in the LOA). Subsequently, on 28 October 2008, the LOA was again revalidated[159] and reassigned to RO Vega and GS Zamora. Thus, the authority of RO Cruz, RO Vega and GS Zamora were all based on the revalidated LOA.

The necessity of a validly issued LOA for the valid conduct of a taxpayer investigation by an RO is a well-settled doctrine embodied in our statutory and case laws.

Considering that an LOA clothes the appropriate RO with the authority to assess and examine the books of account and records of a taxpayer, such power is necessarily subject to reasonable limitations. In particular, Section C(5) of RMO No. 43-90, specifically requires that any reassignment/transfer of cases to another RO shall require the issuance of a new LOA.

The CIR's witnesses admitted that the revalidation notices were issued because the original ROs in the LOA No. 00046967 were actually reassigned and transferred.[160] Thus, considering the reassignment of the RO, a new LOA should have been issued and not a mere Revalidation Notice. Put differently, in view of the absence of a new and valid LOA authorizing them to examine Tricom's books of accounts and other accounting records (as a result of the reassignment/transfer of the case to them), the deficiency tax assessment issued against Tricom is inescapably void.

THE COURT CAN RULE UPON ANY ISSUE RELATED TO THE CASE, ALTHOUGH NOT RAISED BY THE PARTIES.

The CIR also contends that the Special Third Division should not have passed upon the validity of the LOA since Tricom did not raise the same as an issue during the administrative proceedings. The lack of

158 Exhibit "P-56", ICPA USB.
159 Exhibit "P-56.8", ICPA USB.
160 Question and Answer No. 14, Judicial Affidavit, Division Docket, Volume III, p. 1171.

authority of the ROs and GSs should not have been tackled since issues not raised in the administrative proceedings cannot be raised for the first time on appeal. According to the CIR, Tricom did not even question the validity of the LOA hence, the Special Third Division should not have ruled on the same.

We do not agree.

Section 1, Rule 14 of the RRCTA, provides:

> ...
> SEC. 1. *Rendition of judgment.* — ...
> ...
>
> 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 Supreme Court has already settled the authority of the CTA to rule upon issues not stipulated by the parties. In *Opulent*[161], it held:

> ...
> As correctly ruled by the CTA EB, the **CTA was authorized to rule on the authority of the revenue officers to conduct the audit and recommend the issuance of the deficiency tax assessments against respondent, notwithstanding the fact that this was not raised at any point in the proceedings.** The Court has already upheld the CTA's authority to do so, pursuant to Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals and Section 7 of Republic Act No. 1125, as amended, given that such issue falls under the jurisdiction of the CTA. Likewise, **the CTA EB correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so.** Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. It is axiomatic that **only the revenue officers actually named under the LOA are authorized to examine the taxpayer. This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90, which provides that any re-assignment/transfer of cases to another revenue officer(s), and revalidation of a LOA which had already expired, shall require**

---

161 Supra at note 155; Citations omitted and emphasis supplied.

> **the issuance of a new LOA.** In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.
>
> ...

THE DOCTRINE LAID DOWN IN BOTH THE *MEDICARD* AND *SONY* CASES IS APPLICABLE TO THE CASE AT BAR.

The CIR, in his or her bid to reverse the assailed Decision and Resolution, also argued that *Medicard* and *Sony* are inapplicable in Tricom's case. Again, We do not share the CIR's view. Indisputably, in *Medicard*, the Supreme Court had the opportunity to underscore the importance of an LOA (that grants authority to the BIR officials to examine taxpayers, or to recommend the assessment of any deficiency tax due). It held emphatically –

> ...
>
> 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 is 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.
>
> ...
>
> 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.**[162]
>
> ...

[162] Supra at note 105; Emphasis supplied and italics in the original text.

In *Sony*, the Supreme Court highlighted the importance of a valid LOA, stating that in the absence of such an authority any assessment made by the BIR is void. The Supreme Court held:

> ...
>
> Based on Section 13 of the Tax Code, **a Letter of Authority or 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.** The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> > 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. ...
>
> 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.**[163]
>
> ...

It can be recalled that the only basis for RO Cruz, RO Vega and GS Zamora's authority was the revalidated LOA No. 00046967; for RO Gazzingan and GS Gorospe's authority, the MOA dated 4 November 2009; and for RO Lao and GS Gorospe's authority, the MOA dated 21 December 2011. There was no valid authority delegated to any of the ROs nor GSs assigned to Tricom's audit for the following reasons: (1) a change or reassignment of an RO requires a new LOA and not a mere revalidation; and, (2) the signatory of the MOA is an RDO and not

---

163 Supra at note 106; Italics, underscoring and emphasis in the original text and supplied.

among those duly authorized officer under the law who can issue and sign an LOA).

REVENUE MEMORANDUM ORDER (RMO) NO. 43-90 IS NOT A MERE STATEMENT OF POLICY. IN FACT, THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, HAS ALREADY CODIFIED THE LETTER OF AUTHORITY (LOA) REQUIREMENT IN RMO NO. 43-90.

The CIR went on to argue that RMO No. 43-90 dated 20 September 1990 is merely a statement of policy. RMO No. 43-90 was promulgated on 20 September 1990 or seven years prior to the law was supposed to implement. Because of this, the CIR maintained that RMO No. 43-90, dated 20 September 1990, could not be the legal basis to require a new and separate LOA in case of a reassignment and transfer of cases.

To this argument, We refer to the Supreme Court's declaration in *McDonald's*[164] that -

...

> The petitioner is mistaken. Section 291 of the NIRC states:
>
> > **SECTION 291.** In General. — All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.
>
> **Section D(5) of RMO No. 43-90 dated September 20, 1990 is not contrary to or inconsistent with the NIRC. In fact, the NIRC codifies the LOA requirement in RMO No. 43-90.** While RMO No. 43-90 was issued under the old tax code, nothing in Section D(5) of RMO No. 43-90 is repugnant to Sections 6(A), 10 and 13 of the NIRC. Hence, pursuant to Section 291 of the NIRC, RMO No. 43-90 remains effective and applicable.

---

164 Supra at note 143; Emphasis supplied.

> Even the Operations Group of the BIR now recognizes 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 LOA, is no longer tenable. Thus, in Operations Memorandum No. 2018-02-03 dated February 9, 2018, the Operations Group has decided that "the issuance of a MOA for reassignment of cases in the aforementioned instances [i.e., the original revenue officer's transfer to another office, resignation, retirement, etc.] shall be discontinued."
>
> ...

The CIR further argued that RMO No. 8-2006, a more recent RMO, provides that: "[i]n case of reassignment, [an MOA] to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned taxpayer and the concerned RO and/or GS". The Court *En Banc* remains unconvinced. An LOA must still be issued in case of reassignment or transfer. In fact, in the BIR's more recent issuance, Operations Memorandum No. 2018-02-03 dated 09 February 2018, it adopted the *McDonald's* case. It provides:

> ...
>
> In line with the said provision, **in the reassignment of cases to another Revenue Officer (RO) due to transfer to another office, retirement, resignation, etc.**, of the original RO handling the case, the Revenue District Officer (RDO) issues a Memorandum of Assignment (MOA) to the new RO for the continuation of the audit/investigation. We issue a MOA, using a pre-numbered accountable form in order to monitor and tract the reassignment of cases. However, in the recent decisions issued by the Court, **there must be an authority in the form of an [LOA] given to the RO,** otherwise the examination or assessment is void (*McDonald's Philippine Realty Corporation vs. CIR*, CTA Case No. 8655; *Ithiel Corporation vs. CIR*, CTA Case No. 8689; *Strawberry Foods Corporation vs. CIR*, CTA Case No. 8569).
>
> In view of the foregoing, **the issuance of a MOA for reassignment of cases in the aforementioned instances shall be discontinued.** However, before the RDO can request for the issuance for the replacement eLA, the previous eLA must be cancelled by the Regional Director.[165]
>
> ...

---

[165] Italics and underscoring in the original text and emphasis supplied.

**WHEREFORE**, with the foregoing considered, the consolidated Petitions for Review filed by Commissioner of Internal Revenue on 28 February 2023 and Tricom Systems (Philippines), Inc. on 14 April 2023, respectively, are **DENIED** for lack of merit.

Accordingly, the assailed Decision dated 07 July 2022 and the assailed Resolution dated 23 January 2023, respectively, of the Court's Special Third Division in CTA Case No. 9514, entitled *Tricom Systems (Philippines), Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**WE CONCUR:**

(With Concurring Opinion)
**ROMAN G. DEL ROSARIO**
Presiding Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

(I join PJ's Concurring Opinion)
**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

(I join PJ's Concurring Opinion)
**LANEE S. CUI-DAVID**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice

**HENRY S. ANGELES**
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 cases were assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice

**REPUBLIC OF THE PHILIPPINES**
***Court of Tax Appeals***
QUEZON CITY

## ***EN BANC***

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE**, *Petitioner,* | **CTA EB NO. 2733** (CTA Case No. 9514) |
| -versus- | |
| **TRICOM SYSTEMS (PHILIPPINES), INC.** *Respondent.* | |
| x----------x | |
| **TRICOM SYSTEMS (PHILIPPINES), INC.,** *Petitioner,* | **CTA EB NO. 2745** (CTA Case No. 9514) |
| | *Present:* |
| -versus- | **DEL ROSARIO**, *PJ*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, and |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | **ANGELES**, *JJ.* |
| | Promulgated: SEP 19 2024 4:02 p.m. |
| X----------X | |

## CONCURRING OPINION

***DEL ROSARIO, P.J.:***

I concur in the denial of the present Petitions for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 2733 and by Tricom Systems (Philippines), Inc. (Tricom) in CTA EB No. 2745, for lack of merit.

I, however, wish to expound on the authority of the Revenue Officers (RO) and Group Supervisors (GS) to conduct or continue the audit and examination of Tricom.

Records reveal that **prior to the issuance by the Bureau of Internal Revenue** (BIR) of the Notice for Informal Conference dated December 18, 2009,[1] Undated Post Reporting Notice (received by Tricom on March 23, 2010),[2] Preliminary Assessment Notice dated June 4, 2010,[3] and Formal Assessment Notice dated November 15, 2011,[4] the audit and examination of Tricom's books of accounts and other accounting records for taxable year (TY) January 1, 2006 to December 31, 2006, were conducted or continued by the following ROs and GS:

| Source of Authority to Audit/Examine | Names of RO and GS |
|---|---|
| **Undated Letter of Authority (LOA) No. 2001 00046967** (received by Tricom on July 13, 2007), signed by **Regional Director** Nelson M. Aspe[5] | RO Rodolfo De Guzman<br>GS Joriz U. Saldajei |
| **Reassignment/Revalidation Notice (RN)** dated September 7, 2007, signed by **OIC-Regional Director** Ma. Nieva A. Guerrero[6] | RO Conchita Cruz |
| **RN** dated October 28, 2008, signed by **OIC-Regional Director** Ma. Nieva A. Guerrero[7] | RO Mayrose M. Vega<br>GS Roland F. Zamora |
| **Memorandum of Assignment (MOA)** dated November 4, 2009,[8] signed by ***Revenue District Officer*** Teodoro G. Galicia | RO Robertson T. Gazzingan<br>GS Raul G. Gorospe |

Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires an authority from the CIR or from his duly authorized representative before an examination of a taxpayer may be made.[9] Under Section 13 of the NIRC of 1997, as amended, the *"authorized representative"* contemplated under Section 6 of the NIRC of 1997, as amended, who may authorize the examination of any taxpayer and the assessment of the correct amount of tax is, at the very least, no other than **a Regional Director**.

---

[1] Exhibit R-1.
[2] Exhibit R-9.
[3] Exhibit R-16.
[4] Exhibit P-12
[5] Exhibit R-2.
[6] Exhibit P-56.
[7] Exhibit P-56.8.
[8] Exhibit R-25.
[9] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

On this point, I submit that the ROs and GS named in the LOA and the two (2) RNs were clothed with ample authority to audit and examine Tricom's books of accounts and other accounting records for TY January 1, 2006 to December 31, 2006. Notably, the LOA and the two (2) RNs were signed by the **Regional Director and OIC-Regional Directors**, respectively. The two (2) RNs, while denominated as such, are considered equivalent of an LOA since they contain all the necessary information or details found in an LOA and the same were issued by the OIC-Regional Director, who is an officer authorized to issue an LOA.

On the other hand, the MOA authorizing RO Gazzingan and GS Gorospe to continue the audit of Tricom for TY January 1, 2006 to December 31, 2006 was signed by **Revenue District Officer Galicia**. He is neither the CIR nor the Regional Director of Revenue Region No. 8. The MOA did not validly authorize RO Gazzingan and GS Gorospe to continue the audit and examination of Tricom for TY January 1, 2006 to December 31, 2006. The audit and examination of Tricom was legally flawed, and as a consequence thereof, the assessments issued against it are inescapably void. Needless to say, a void assessment bears no fruit[10] and must be slain at sight.

All told, I VOTE to DENY the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 2733 and the Petition for Review filed by Tricom Systems (Philippines), Inc. in CTA EB No. 2745, both for lack of merit

**ROMAN G. DEL ROSARIO**
Presiding Justice

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