REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

NANOX PHILIPPINES, INC., Petitioner,	**CTA EB No. 1629** (CTA Case No. 8433)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** APR 15 2019 3:08 p.m.

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AMENDED DECISION

UY, J.:

For resolution is respondent's **"MOTION FOR RECONSIDERATION Re: Decision promulgated on October 11, 2018"** filed on November 5, 2018, with petitioner's **"COMMENT/OPPOSITION with MANIFESTATION (to the Motion for Reconsideration filed by the Commissioner of Internal Revenue)"** filed on December 21, 2018, praying for the reversal and setting aside the Court *En Banc*'s Decision dated November 24, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.
>
> Accordingly, the Decision dated November 24, 2016 and the Resolution dated March 2, 2017, both rendered by the Court in Division in CTA Case No. 8433 are **REVERSED** and **SET ASIDE**.

For being void, the FLD, covering FAN No. 021-1207000010346 dated March 24, 2010, assessing petitioner of deficiency VAT, EWT, FWT on royalty payments, and FBT for fiscal year ended March 31, 2007, are **CANCELLED** and **SET ASIDE.**

SO ORDERED."

In the instant *Motion for Reconsideration*, respondent contends that his basic right to fair play and due process was violated when the Court granted a relief that was not prayed for by petitioner; that assuming the court can resolved issues not raised by the parties, a Letter of Authority (LOA) is issued to taxpayers to inform them that their audit/examination has been authorized; that the written authority of the revenue officers to conduct audit of such taxpayers may be stated in the LOA itself or any other document executed for such purpose by respondent or his duly authorized representative; that a Revenue Memorandum Order (RMO) cannot in any case grant any vested right to any taxpayer over any particular work procedure, which is internal to the Bureau of Internal Revenue (BIR); that any violation thereof would only result in the administrative liability of the revenue officer, but it would most certainly not affect the assessment against petitioner; and that the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* (the "*Medicard* case")[1] cannot be applied to the case at bar.

On the other hand, in its *Comment/Opposition*, petitioner argues that the Court *En Banc* was correct and did not violate respondent's right to fair play and due process when it granted the *Petition for Review*, reversing and setting aside both the November 24, 2016 Decision and March 2, 2017 Resolution of the Court in Division, and in effect cancelling and setting aside the *Formal Letter of Demand* (FLD) against petitioner for being void due to lack of valid LOA; that a new LOA is required to authorize the subsequent revenue officer who will continue the examination of petitioner's books of accounts and other accounting records; that the Court correctly applied RMO No. 12-2007 to the present case; that the issue by respondent on the applicability of the *Medicard* case is irrelevant; and that petitioner should never be estopped from questioning the authority of respondent's revenue officers.

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[1] G.R. No. 222743, April 5, 2017.

THE COURT *EN BANC*'S RULING

The motion reconsideration lacks merit.

This Court is empowered to rule related issues necessary to achieve an orderly disposition of the case.

Respondent contends that his basic right to fair play and due process was violated when the Court granted a relief that was not prayed for by petitioner.

In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[2] this matter was already settled by the Supreme Court, and ruled as follows, to wit:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> 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:
>
>> SECTION 1. *Rendition of judgment.* — x x x.
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>> 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.**
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> 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 even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis supplied)*

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

Based on the foregoing jurisprudential pronouncements, the Supreme Court did not only affirm this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case; but also specifically states that this Court may consider the question on the scope of authority of revenue officers who were named in the LOA, which impliedly covers the issue of whether a revenue officer is authorized through an LOA in the first place. Thus, this Court is authorized to resolve the said issue, as in this case.

Furthermore, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[3] the Supreme Court held:

> "The general rule is that appeals can only raised questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
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> The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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> > **The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court**

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[3] G.R. No. 163835, July 7, 2010.

> **ignore, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]
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> xxx xxx xxx
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> Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance."

The above pronouncements by the High Court are clear: while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and (ii) questions involving *matters of public importance.*

The question of whether the revenue officers who conducted the investigation of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007 were authorized to do so is a matter of record. The BIR Records submitted by respondent on May 24, 2012 vis-à-vis the evidence presented by the parties in the proceedings below can easily be examined to answer the said question. Moreover, such question has some bearing on the issue raised by petitioner in the proceedings *a quo* of whether the subject *Formal Letter of Demand / Final Assessment Notice* (FLD/FAN) was validly issued. Furthermore, the same question is a matter of public importance. Taxpayers must always be assured that revenue officers who conduct examination of their books of accounts and other accounting records for any given period are properly authorized by an LOA, pursuant to Section 6(A) of the National Internal Revenue Code (NIRC) of 1997.

With the foregoing disquisitions, the Court *En Banc* is justified in resolving, in the assailed Decision, the issue of whether the revenue officer who conducted the investigation of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007 were authorized to do so.

An LOA is the authority given to revenue officers to perform assessment functions.

In the instant *Motion for Reconsideration*, respondent contends that an LOA is not an "authorization letter" of the revenue officers; and that there is no requirement in the law that revenue officers must be identified in the LOA to have authority.

In the *Medicard* case, the Supreme Court defined what is an LOA, to wit:

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

Thus, respondent's contention is contrary to the above-stated definition. Clearly, an LOA is, in fact, an authorization letter for the appropriate revenue officers assigned to perform assessment functions. It is so because the power to examine was ***not*** statutorily given to the said revenue officers, and for the latter to exercise such power, authority must be given to them by respondent or his duly authorized representative. Such being the case, it is required that the revenue officers so authorized must be identified in the LOA. Without such authority to examine, the revenue officer cannot perform assessment functions.

Section 17 of the NIRC of 1997 cannot be used as a legal basis to dispense with the issuance of an LOA to authorize revenue officers who would perform assessment functions.

Respondent also argues that Section 17 of the NIRC of 1997 provides the transfer or reshuffling of revenue officers, which means that, in natural occurrence of things, the revenue officer indicated in the LOA need not be the one to complete the audit; and that there will be instances where the revenue officers would either retire, be reassigned, be taken ill, or die, prior to the completion of the audit investigation.

For easy reference, Section 17 of the NIRC of 1997 provides as follows:

> "SEC. 17. *Assignment of Internal Revenue Officers and Other Employees to Other Duties.* – The Commissioner may, subject to the provisions of Section 16 and the laws on civil service, as well as the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, assign or reassign internal revenue officers and employees of the Bureau of Internal Revenue, without change in their official rank and salary, to other or special duties connected with the enforcement or administration of the revenue laws as the exigencies of the service may require: *Provided*, That internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years: *Provided, further,* That assignment of internal revenue officers and employees of the Bureau to special duties shall not exceed one (1) year."

A cursory reading of the foregoing provision would reveal that the NIRC of 1997 indeed grants respondent the power to assign or re-assign internal revenue officers and employees, subject to certain limitations, one of which is that internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years. However, nothing in the said provision states that the required LOA can be dispensed with; neither does it provide an exemption to the legal requirement that a revenue officer must be authorized, through an LOA, to perform his/her assessment or collection functions.

It must be emphasized that the issue here is not whether a revenue officer can be re-assigned to another BIR office, without completing the audit being made on a taxpayer. Rather, it is whether or not the revenue officers who conducted the investigation of the taxpayer are authorized to do so, through an LOA, as required by law and jurisprudence.

It must be noted that there can be instances where a revenue officer, previously authorized through an LOA, may not be able to complete the examination of the concerned taxpayer, by reason of retirement, reassignment, illness, or death, of the said revenue officer. But what is not acceptable to this Court is respondent's proposition that because of such instances, there can already be an excuse not to issue an LOA. However, the said proposition finds no basis in law and jurisprudence. For sure, despite the presence of any of the above-enumerated instances, respondent or his/her duly authorized representative can still legally issue another LOA in favor of the revenue officers who are intended to replace the one(s) previously authorized. In other words, there is no legal impediment to the issuance of a subsequent LOA authorizing another revenue officer, or new set of revenue officers, to continue the examination of books of accounts and other accounting records of the concerned taxpayer.

The assailed Decision did not rule that the subject LOA was rendered invalid.

Respondent further argues that a duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred; and that to hold otherwise would be tantamount to placing importance to form over substance.

The argument of respondent is erroneous.

A careful reading of the ruling in the assailed Decision would reveal that the Court *En Banc* did not state that LOA No. 00003651 dated October 4, 2007[4] automatically became invalid because the revenue officers named therein was reassigned or transferred. In fact, such supposed invalidity of the said LOA was not even considered or mentioned in the disquisitions of the Court *En Banc*.

To be clear, the ruling in the assailed Decision October 11 2018 is to the effect that Revenue Officer (RO) Rey K. Lugtu, the revenue officer who conducted the examination of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007, and who recommended the issuance of the PAN against petitioner,[5] was **not authorized** to conduct the said examination, **through an LOA**. Correspondingly, on the basis of the jurisprudential pronouncement in the *Medicard* case, We concluded

[4] BIR Records, p.1.
[5] Exhibit "R-3", BIR Records, pp. 1051 to 1052.

that the subject tax assessments, which came about as a result of the said RO's examination, are void.

Such being the case, the said argument of respondent has no merit.

Administrative issuances, such as RMOs, have the force and effect of law.

Respondent also argues that an RMO cannot in any case grant any vested right to any taxpayer over any particular work procedure, which is internal to the BIR.

This argument is misplaced.

To be clear, the Court *En Banc*'s reliance on RMO No. 12-2007 and RMO No. 20-08, as stated in the assailed Decision, is not based on the notion that We are recognizing that such BIR issuance is a source of a vested right of petitioner. Rather, it is because We adhere to the principle that administrative issuances, such as the said RMOs, have the force and effect of law; and that they benefit from the same presumption of validity and constitutionality enjoyed by statutes.[6] Thus, any provision in any administrative issuance must be accorded with the same level as any statute, so long as they are not contrary to the laws or the Constitution.[7] Such being the case, since there is no showing that RMO No. 12-2007 and RMO No. 20-08 are contrary to law or the Constitution, the same must be given effect.

Moreover, an RMO, as it has the force and effect of law, has been, by jurisprudence, equated with laws in general, and tax laws, in particular. Some more notable examples are RMO No. 59-97 and RMO No. 63-97. In sustaining the requirements under the said administrative issuances, the Supreme Court, in *Commissioner of Internal Revenue vs. Ariete*,[8] held as follows:

> **"It is well-settled that where the language of <u>the law</u> is clear and unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter**

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[6] *Chevron Philippines, Inc. vs. Bases Conversion and Development Authority, et al.*, G.R. No. 173863, September 15, 2010.
[7] Article 7, Civil Code of the Philippines (Republic Act No. 386).
[8] G.R. No. 164152, January 21, 2010.

> **in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication. A careful reading of the RMOs** pertaining to the VAP shows that the recording of the information in the Official Registry Book of the BIR is a mandatory requirement before a taxpayer may be excluded from the coverage of the VAP."

Based on the foregoing ruling, the High Court accorded the said RMOs as if they are laws themselves.

Thus, RMOs, may not be simply dismissed as issuances *"directed to BIR personnel containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives."* Like all administrative issuances, they have the force of law and are entitled to great weight.[9]

The* Medicard *case is applicable to the instant case.

Respondent is also of the view that the *Medicard* case cannot be applied to the case at bar. In support thereof, he asserts that the *Medicard* case has no relevance to the instant case, since in the former case, no LOA was involved, nor issued to Medicard Philippines, Inc., and thus, the case involved a complete absence of an LOA. According to respondent, in the present case, nothing is irregular in the LOA and it clearly grants the authority to conduct examination of petitioner's records.

For ease of reference, We quote again the pertinent ruling in the *Medicard* case, to wit:

> "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 tax returns is a power that statutorily belongs only to

[9] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

the CIR himself or his duly 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 Return 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</u> 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 <u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, 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.,*[10] the Court said that:

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

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[10] 649 Phil. 519 (2010).

> 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 is 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. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>**" *(Emphases and underscoring supplied)*

A more careful reading of the foregoing would reveal that the High Court has specifically interpreted Section 6(A) of the NIRC of 1997 in this wise: (1) that unless authorized by respondent himself or his duly authorized representative, **<u>through an LOA</u>**, an examination of the taxpayer cannot ordinarily undertaken; and (2) that 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. On the basis of the foregoing interpretation, the Supreme Court applied the same by ruling that since the revenue officers did not have authority to examine the taxpayer in the first place, the assessment issued by respondent is inescapably void.

It must be remembered that judicial decisions applying the laws [such as Section 6(A) of the NIRC of 1997] or the Constitution shall form part of the legal system of the Philippines.[11] These decisions, although in themselves not laws, constitute evidence of what the laws

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[11] Article 8, Civil Code of the Philippines (Republic Act No. 386).

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mean. The application or interpretation placed by the Supreme Court upon a law is part of the law as of the date of the enactment of the said law since the High Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.[12] In other words, judicial decisions of the Supreme Court assume the same authority as the statute itself.[13]

Relative thereto, it is the duty of this Court to obey the said decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[14] As eloquently declared by Justice J.B.L. Reyes, *"There is only one Supreme Court from whose decisions all other courts should take their bearings."*[15]

To reiterate, in this case, the revenue officer, who conducted the examination of petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007, and who recommended the issuance of the PAN against petitioner,[16] was **not authorized** to conduct the said examination, **through an LOA**. Thus, considering that the applicable provision is Section 6(A) of the NIRC of 1997—the provision of law which deals with the issuance of an LOA, and the *Medicard* case expresses the interpretation by the Supreme Court of the said provision, the same ruling in the said *Medicard* case is therefore applicable, and must perforce be applied, to the present case.

The doctrine of estoppel may not be invoked in this case.

Respondent likewise avers, in effect, that the doctrine of estoppel should work against petitioner, since during the audit process, the latter never questioned the authority of respondent's authority.

The doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right.[17] Equity, however, is applied only in the

[12] *Floresca, et al. vs. Philex Mining Corporation, et al.*, G.R. No. L-30642, April 30, 1985.
[13] *Id.*
[14] *Manila Electric Company vs. Philippine Consumers Foundation, Inc., et al.*, G.R. No. 101783, January 23, 2002.
[15] *Id.*
[16] Exhibit "R-3", BIR Records, pp. 1051 to 1052.
[17] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

absence, never in contravention, of statutory law.[18] **Remedies in equity address only situations tainted with inequity, not those expressly governed by statutes.**[19]

As already pointed out, the governing statutory provision in this case is Section 6(A) of the NIRC of 1997, as interpreted by the Supreme Court in the *Medicard* case. Thus, in view of the presence thereof, the doctrine of estoppel may not be applied against petitioner.

Despite the foregoing majority view of the members of this Court, the instant Motion for Reconsideration must be granted.

During the deliberation of the instant *Motion for Reconsideration*, the members of the Court *En Banc* were divided in their votes. The majority view, as maintained by the ponente, the Presiding Justice Roman G. Del Rosario, and Associate Justice Cielito N. Mindaro-Grulla and Associate Justice Catherine T. Manahan, is that the said *Motion* must be denied on the basis of the foregoing disquisitions. The minority view, as held by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, is that the Decision dated November 24, 2016 and Resolution dated March 2, 2017 rendered by the Court in Division in CTA Case No. 8433 must be upheld.

The foregoing situation calls for the application of Section 2 of Republic Act (RA) No. 1125[20], as last amended by RA No. 9503, and Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA), which respectively provide as follows, to wit:

> Section 2 of the RA No. 1125, as last amended by RA No. 9503:
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> "SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings.* — The CTA may sit en banc or in three (3) Divisions, each Division consisting of three (3) Justices.

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[18] *Agra, et al. vs. Philippine National Bank*, G.R. No. 133317, June 29, 1999.
[19] *Id.*
[20] AN ACT CREATING THE COURT OF TAX APPEALS.

> Five (5) Justices shall constitute a quorum for sessions *en banc* and two (2) Justices for sessions of a Division: *Provided*, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Division of the Court to sit temporarily therein.
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> **The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level." *(Emphasis supplied)*

<u>Section 3, Rule 2 of the RRCTA</u>:

> "SEC. 3. *Court en banc; quorum and voting.* — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. **The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. **Where the necessary majority vote cannot be had, the petition shall be dismissed**; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied." *(Emphases supplied)*

Based on the foregoing, the affirmative votes of five (5) members of the Court *En Banc* are necessary to reverse a Decision of a Division thereof.

Hence, considering that in the present case, the affirmative votes garnered for the reversal of the Court in Division's Decision dated November 24, 2016 and Resolution dated March 2, 2017 in CTA Case No. 8433, were attained only through four (4) members of this Court *En Banc*, the instant *Petition for Review* in CTA EB 1629 must be dismissed, while the instant Motion for Reconsideration must be granted. Correspondingly, the assailed Court in Division's

Decision in CTA Case No. 8433 must be deemed affirmed, in accordance with Section 2 of RA No. 1125, as last amended by RA No. 9503, and Section 3, Rule 2 of the RRCTA.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **GRANTED**. Accordingly, the Court *En Banc*'s Decision dated November 24, 2018 is hereby **MODIFIED** to read as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED**.
>
> Accordingly, the Decision dated November 24, 2016 and the Resolution dated March 2, 2017, both rendered by the Court in Division in CTA Case No. 8433 are **AFFIRMED**.
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> **SO ORDERED**."

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(I reiterate my Dissenting Opinion in the original Decision and vote to deny Petition)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(I join Justice Castañeda's opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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