REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

FPIP PROPERTY DEVELOPERS AND MANAGEMENT CORPORATION, Petitioner,	CTA CASE NO. 8980
	Members:
-versus-	FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 28 2019 1:24 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review, petitioner, FPIP Property Developers and Management Corporation prays to declare null and void the deficiency tax assessments for taxable year (TY) 2009, in the total amount of ₱568,003,320.94,[1] as stated in the Final Decision on Disputed Assessment (FDDA) issued by respondent Commissioner of Internal Revenue (CIR).

Petitioner is a domestic corporation primarily engaged in the business of building and managing ready-built factories and other facilities registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Facilities Enterprises at the First Philippine Industrial Park Economic Zone with Registration Certificate No. 00-04-F dated June 2, 2000.[2]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) with authority to collect all national internal revenue taxes and decide disputed assessments and refunds of internal revenue taxes,

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[1] Supplemental Petition for Review, docket, vol. 1, pp. 344-348.
[2] Par. 4, Statement of Facts, Petition for Review, docket, vol. I, p. 7.

fees or other charges in relation thereto, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Pursuant to the Letter of Authority (LOA) No. LOA-116-2010-00000057 dated May 14, 2010, which petitioner received on May 27, 2010,[4] the Large Taxpayers Service Regular Audit Division 1 of the BIR conducted a tax examination of petitioner for TY 2009.

On June 6, 2014, petitioner received a copy of the Formal Letter of Demand with Final Assessment Notice (FAN) of even date, finding it liable for deficiency Income Tax (IT), Value-Added Tax (VAT), Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), Final Withholding Tax (FWT), VAT Withholding, Documentary Stamp Tax (DST), and corresponding penalties in the sum of Five Hundred Fifty Two Million Five Hundred Forty Five Thousand One Hundred Sixty Four Pesos and Sixty Centavos (₱552,545,164.60) for TY 2009.[5]

On July 4, 2014, petitioner filed a protest against the said FAN.[6] Respondent however failed to act on the said protest within one hundred eighty (180) days from its filing.[7] Hence, petitioner lodged the instant Petition for Review on January 30, 2015.[8]

On March 4, 2015, petitioner received the Final Decision on Disputed Assessment (FDDA) of even date finding it liable for IT, VAT, WTC, EWT, FWT, VAT Withholding, DST, and their corresponding penalties, surcharges and interest, in the total amount of Five Hundred Sixty Eight Million Three Thousand Three Hundred Twenty and Ninety Four Centavos (₱568,003,320.94).[9]

On June 15, 2015, the Court granted[10] petitioner's Motion for Leave to File and Admit Attached Supplemental Petition for Review[11] filed on March 31, 2015, and

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[3] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 1, p. 475.
[4] Par. 2, JSFI, docket, vol. 1, p. 476.
[5] Par. 3, JSFI, docket, vol. 1, p. 476.
[6] Par. 12, Petition for Review, docket, vol. 1, p. 9.
[7] Par. 4, JSFI, docket, vol. 1, p. 476.
[8] Docket, vol. 1, pp. 1-68.
[9] Par. 5, JSFI, docket, vol. 1, p. 476.
[10] Resolution dated June 15, 2015, docket, vol. 1, pp. 418-419.
[11] Docket, vol. 1, pp. 340-349.

accordingly admitted the attached Supplemental Petition for Review.

In his Answer[12] to the Petition for Review, respondent points out that petitioner's prayer for a cease and desist order is untenable for collection of tax cannot be enjoined. Even an appeal to this Court cannot suspend the process of collection through the administrative remedies available under the law. The only exception, says respondent, is when such collection will jeopardize petitioner's interest, otherwise, the relief prayed for must be denied.

Contrary to petitioner's averment, his right to issue the subject assessments has not prescribed as the three (3)-year period to assess under Section 203 of the National Internal Revenue Code (NIRC), as amended, was extended by virtue of the five (5) Waivers of the defense of prescription executed by petitioner allowed under Section 222(b) of the same Code.

A Board Resolution authorizing petitioner's Treasurer, Emelita Sabella, to sign the Waivers was also not warranted since she was one of petitioner's responsible officers when the tax investigation was in progress. Under Revenue Memorandum Order (RMO) No. 20-1990, an authority to sign the waiver is not necessary when the waiver is signed by the taxpayer itself through its responsible official.

Besides, Emelita Sabella attested before the Notary Public that the five (5) Waivers were the voluntary acts and deeds of petitioner and that she was duly authorized to sign them.

Also contrary to petitioner's stance, the Waivers were validly signed and accepted by then OIC Alfredo V. Misajon, who had the authority to do so for tax cases pending investigation. Under Paragraph B, No. 15 of Revenue Delegated Authority (RDAO) No. 04-07 dated August 31, 2007, respondent may delegate to the Assistant Commissioner (ACIR), LTS or in his/her absence, the concerned Head Revenue Executive Assistant (HREA) the authority to approve and sign a Waiver of the Statute of Limitations duly signed by the taxpayer or his/her authorized representative. Since period to issue the subject

[12] Docket, vol. 1, pp. 381-400.

assessments was extended by virtue of the execution of the five (5) Waivers, the FAN was issued against petitioner within the extended period as indicated in the Waiver dated January 23, 2014.

Petitioner was likewise accorded due process since it was able to explain its position even if the FAN was issued within nine (9) days from its filing of reply to the Preliminary Assessment Notice (PAN). Moreover, Revenue Regulations (RR) No. 18-2013 mandates respondent to release the FAN within fifteen (15) days from petitioner's reply to the PAN.

Petitioner was also not denied of its Constitutional right to a speedy disposition of cases. The three-year prescriptive period to assess was extended at the instance of petitioner who requested for time to submit documents to dispute the assessments issued against it paving the way for the execution of the five (5) Waivers of the Defense of Prescription.

Respondent also points out that per its PEZA Certificate of Registration, petitioner's registered activity is "to engage in the construction and management of seven (7) factory buildings for lease to PEZA-registered Ecozone Export Enterprise at the First Philippine Industrial Park-Special Zone (FPIP-SEZ). In other words, buying and selling of real properties are not among its registered activity. Thus, its sale of property to HOGP Land Holdings, Inc. (HOGP) and Hoya Glass Disk Philippines, Inc. (HDGP) cannot be deemed "necessarily included in its registered activity", thus not entitled to a preferential tax rate of five per cent (5%).

Petitioner was also unable to show that the Park Charges, Insurance, Taxes and Licenses and other disallowed costs were directly related to its registered activity, hence, deemed as direct costs. No evidence, such as vouchers and official receipts, were submitted to support such claim. Thus, the IT assessment issued against petitioner must stand.

The same is true with regard petitioner's deficiency VAT as the transactions where VAT was imposed, were outside its PEZA-registered activity. Respondent points out that exemption to all national internal revenue taxes only pertains to the operation of PEZA-registered entity.

The assessment for deficiency WTC must also be sustained as petitioner was not able to substantiate its claim that the remuneration paid to its employees were not subject to WTC. The same is true with the assessed EWT which petitioner must pay in the absence of any proof that the professional fees and purchase of service were exempted from EWT.

Petitioner cannot also take refuge under the mantle of BIR Ruling No. DA (C-279) 678-2009 and BIR Ruling No. 115-2013 to contest the deficiency Withholding Tax Assessment relative to its acquisition of a building given that the transaction was also beyond its registered activity, not to mention the disparity in the factual milieu of the incidents covered. Further, the alleged exemption was premised on petitioner's representation that the sale of real property was among its registered activity.

With regard the assessment for deficiency FWT and VAT WT, petitioner argues that the fees it paid for services rendered "outside the Philippines" are not subject to Philippine Income Tax. The record however reveals that these "fees" pertained to sales commissions to a corporation for the sale of real properties located inside the First Philippine Industrial Park in Batangas. The contract to sell also indicates that the buyers were domestic corporations justifying the assessments for deficiency FWT and VAT Withholding Tax.

Finally, petitioner is also liable for Documentary Stamp Tax (DST) in the absence of any convincing evidence to prove payment thereof. In this regard, respondent invokes the tenet that tax exemption is construed against the claimant and its failure to adduce evidence to support its claim is fatal.

After the filing of the parties' Joint Stipulation of Facts and Issues on July 10, 2015,[13] a Pre-Trial Order was issued on August 18, 2015[14], terminating the pre-trial proceeding.

During the trial, petitioner presented as witnesses, Attorney Esmeraldo C. Amistad, Emelita D. Sabella, Victor Z.

[13] Docket, vol. 1, pp. 475-481-a.
[14] Docket, vol. 1, pp. 490-497.

Montinola, and the Independent Certified Public Accountant (ICPA) Ma. Fedna B. Parallag.

Attorney Esmeraldo C. Amistad,[15] testified that he is the Corporate Secretary of petitioner and as such, he is in custody of its corporate records. Upon verification of records, he was able to ascertain that no Board Resolution authorizing petitioner's Treasurer, Emelita D. Sabella, or anyone to sign for and in behalf of petitioner the five (5) Waivers of the defense of prescription executed in this case. There is also nothing in petitioner's Amended By-Laws authorizing its Treasurer, Emelita D. Sabella, to sign waivers of the defense of prescription for the corporation. For this reason, he issued a Negative Certification stating that no board resolution was issued authorizing petitioner's Treasurer, or ratifying her act of signing the waivers in behalf of petitioner.

The witness admitted that witness Emelita C. Sabella was not sanctioned nor penalized for her act of signing for petitioner in the five (5) Waivers. Further, he knows that a corporation, such as petitioner, can impliedly authorize or ratify an act of its officers.

Witness **Emelita D. Sabella**,[16] admitted that she is petitioner's Treasurer since the year 2005. Her duties include overseeing the financial aspects and cash flow of the corporation, filing of tax returns and payment of correspondent taxes. She also has the custody of petitioner's financial records.

The witness declared that LOA No. 116-2010-00000057 was issued on May 14, 2010, or barely thirty-one (31) days after petitioner filed its Annual Income Tax Return (ITR) on April 13, 2010. For her, during that short span of time, it was incredible for the BIR to have finished the examination of the numerous returns that petitioner filed showing the need for an order for a tax audit.

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[15] Minutes of the hearing dated September 28, 2015, docket, vol. 2, p. 761; Judicial Affidavit dated September 22, 2015, docket, vol. 2, pp. 729-737; with cross and redirect examination see TSN dated September 28, 2015.
[16] Minutes of the hearing dated November 23, 2015, docket, vol. 2, p. 773; Judicial Affidavit dated September 22, 2015, docket, vol. 2, pp. 510-543; with cross and redirect examination see TSN dated November 23, 2015.

Further, the said LOA was manually issued in violation of RMO No. 69-2010 which requires that LOA should be electronically issued through the BIR computer system. She however admitted that this policy was suspended shortly.

In any event, petitioner complied with the directive in the LOA and submitted the requested documents. Two years thereafter, or on May 10, 2012, petitioner received from the BIR a request for additional documents which petitioner considered to have been issued beyond the 120-day validity of the LOA, thereby depriving the assigned ROs of the authority to continue the audit. Nevertheless, petitioner complied if only to avoid the issuance of a formal assessment, said the witness.

On or around September 5, 2012, petitioner was asked to execute a Waiver of the defense of prescription, lest a formal assessment would be issued against it. The warning prompted her to sign the Waiver. She signed the second Waiver on December 19, 2012.

On January 10, 2013, petitioner received a Notice for Informal Conference (NIC) finding it liable for deficiency taxes. On January 15, 2013, September 19, 2013, and January 23, 2014, the third, fourth, and fifth Waivers were respectively executed by her.

The Preliminary Assessment Notice (PAN) issued on May 12, 2014 was received by petitioner the following day, May 13, 2014. Petitioner filed its protest on the PAN on May 28, 2014. On June 6, 2014 or nine (9) days later, petitioner received the FAN, which was substantially a replica of the PAN indicating that the BIR did not consider petitioner's protest against the PAN. Be that as it may, petitioner filed its protest against the FAN on July 4, 2014. Counting from the dates of the filing of its IT, VAT, WTC, EWT, and FWT Returns for TY 2009, the FAN was issued beyond the 3-year prescriptive period, rendering the assessments against petitioner void.

While the witness admitted having executed the five (5) Waivers in behalf of petitioner without any authority from petitioner's Board of Directors, she also admitted that not all her actions as Treasurer of petitioner need a Board resolution to be valid. Besides, she was unaware that such authority to execute the Waivers was necessary since the BIR never required its submission. She also confessed that she was not sanctioned for executing the Waivers nor was there any revocation thereof made by the Board of Directors which learned about it only upon the filing of the instant case before the Court.

She did not deal directly with the BIR during the assessment process as only her staff interacted with the BIR. She executed the Waivers upon the advice of her staff and at the behest of the BIR.

Moreover, the OIC-ACIR who accepted the Waivers had no authority to do so, for under RDAO 5-01, it should be the ACIR of the BIR Large Taxpayer Service who must accept the Waiver in behalf of respondent. The witness also emphasized that the first Waiver was accepted by the BIR beyond the 3-year prescriptive period contrary to the provision that the waiver should be executed and accepted within such 3-year period, rendering the same void.

In conclusion, the witness stated that since the five (5) waivers were invalidly executed, hence, void, the period to assess petitioner was not extended rendering the assessment in the FAN void as well.

Witness **Victor Z. Motinola** testified[17] that he is currently the Vice President for Land Acquisition of First Philippine Industrial Park, Inc. During the pertinent period, he was petitioner's Finance Officer, specifically from October 2008 to March 2015.

Petitioner's principal place of business is at the First Philippine Industrial Park - Special Economic Zone. It is engaged in building and managing ready-built factories and other facilities. It is registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Facilities Enterprise.

He was consulted when petitioner received the FDDA on March 4, 2015. He believed that the bulk of the deficiency IT assessment was on the sale of a parcel of land to HOGP and on the sale of a building to (HGDP) wherein respondent

[17] Minutes of the hearing dated December 7, 2015, docket, vol. 2, p. 940; Judicial Affidavit dated December 2, 2015, docket, vol. 2, pp. 781-798; with cross examination see TSN dated December 7, 2015.

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imposed the regular tax rate of 30% instead of preferential rate of 5% since petitioner is a PEZA-registered entity, thus, entitled to a preferential tax rate of 5% on its gross income in lieu of all taxes. Besides, both sales were activities within the ecozone and were necessary to the registered activity of petitioner. The witness however admitted that his opinion was based on a communication from PEZA stating that it was without objection thereto and that it acknowledged the sale.

Respondent also erroneously deemed the items "Staff Activities," "Other Benefits," and "Retirement" as falling under the category of "Salaries & Wages" subject to WTC. However, "Staff Activities" did not benefit any particular employee and were expenses for a company-wide improvement program, hence, should not be categorized as "Salaries & Wages" for which withholding was necessary.

The item "Other Benefits" refers to accumulated sick and vacation leave benefit plans of petitioner's employees which was included in the financial statements for presentation purposes. The same has not been utilized or availed by any of petitioner's employees.

The item "Retirement" was also included in the financial statements for presentation purposes only. It refers to an unfunded and non-contributory retirement plan. No payout has been made to any employee, neither was any amount used as deductible expense as no one has retired from the ranks of petitioner since 2000.

On EWT, the witness declared that the bulk of the assessment was on real properties acquired by petitioner located in the special economic zone in Tanauan City, Batangas. Petitioner acquired the said real properties from another PEZA-registered entity within an ecozone. Per BIR Ruling No. DA(C-270) 678-2009, the seller was entitled to the 5% preferential rate and petitioner need not withhold EWT.

On the other hand, the assessments for FWT and VAT withholding pertain to the sales commission and marketing fees that petitioner paid[18] to a non-resident foreign corporation for its successful marketing of petitioner to Japanese corporations. Since these services were wholly performed outside the country by a non-resident entity, there was no legal basis for the imposition and petitioner was of no obligation to withhold.

The Court-commissioned ICPA, **Ma. Fedna B. Parallag** testified[19] that per her audit and as reflected in the ICPA Report dated February 17, 2016, petitioner is a Securities and Exchange Commission (SEC) registered corporation, and also registered with PEZA, with primary purpose of purchasing, acquiring, building, constructing, developing, leasing, selling, conveying, mortgaging, operating and maintaining real properties.

She confirmed that witness Emelita Sabella executed five (5) Waivers of the defense of prescription without any notarized written authority to do so.

She declared that only the preferential rate of 5% and not the regular 30% IT should be imposed on petitioner's sale of real property as it is a PEZA-registered entity and that it was part of its PEZA- registered activity. She however admitted that petitioner failed to secure the required written consent of PEZA fifteen (15) days prior to the sale as required in its Supplemental Agreement with the latter.

The ICPA further declared that not all the items under various costs and deductions under the 5% preferential rate should be disallowed since petitioner was able to substantiate certain items. Likewise, the imposition of VAT should be reduced since petitioner was also able to substantiate certain items under this category.

The ICPA recommended the cancellation of WTC assessment since these were imposed on employee benefits which were treated as non-deductible expenses.

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[18] Minutes of the hearing dated September 4, 2017, docket, vol. 4, p. 1815; Supplemental Judicial Affidavit dated August 30, 2017, docket, vol. 4, pp. 1802-1809; no cross examination see TSN dated September 4, 2017, p. 8.

[19] Minutes of the hearing dated March 14, 2016, docket, vol. 3, p. 1139; Judicial Affidavit dated March 9, 2016, docket, vol. 3, pp. 1051-1071; with cross and redirect examination see TSN dated March 14, 2016.

The EWT assessment on Professional fees, Rentals, Purchase of services and goods, and building acquisition should also be reduced per the evidence presented. The purchase of buildings from another PEZA-registered entity within another ecozone means that the seller is exempt from EWT being subject to the 5% rate, hence there was no need for petitioner to withhold.

The FWT assessment imposed on the payment for services performed out of the country by a non-resident company to a resident company should be cancelled.

According to the ICPA, petitioner is not liable to pay DST on its rentals as it is a PEZA-registered entity renting to another PEZA-registered entity located within the ecozone.

Lastly, the imposition of compromise penalty was justified since petitioner failed to report its monthly zero-rated sales in its VAT returns for TY 2009. It also failed to submit the alpha list of income payments in its 2009 e-submission of files and to file a Summary of Regular Suppliers and Real Estate Inventory for 2009.

After its formal offer of evidence, petitioner rested.[20]

In support of its defense, respondent presented Revenue Officers Reynoso C. Bravo and Josa C. Gomez as his witnesses.

Revenue Officer (RO) **Reynoso C. Bravo**[21] testified that pursuant to the LOA issued in this case, he conducted an audit of all internal revenue taxes for TY 2009 of petitioner.

The said Letter of Authority, Letter Request for production of documents, and Checklist of Requirements for the submission of the books of accounts and related records were served to petitioner on May 27, 2010. Petitioner was however not able to submit the required documents and since the period to assess was about to expire, petitioner, through its Treasurer, executed a Waiver of the Defense of

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[20] Resolutions dated July 26, 2016, January 9, 2017 and November 20, 2017, docket, vol. 4, pp. 1629-1634, pp. 1772-1773 and pp.1847-1848, respectively.
[21] Minutes of the hearing dated December 5, 2017, docket, vol. 4, p. 1849; Judicial Affidavit dated June 19, 2015, docket, vol. 1, pp. 435-442; with cross and redirect examination see TSN dated December 5, 2017.

Prescription dated September 5, 2012, which the BIR accepted on September 25, 2012. This was followed by a Notice of Informal Conference served upon petitioner through registered mail on December 10, 2012.

Petitioner, again through its Treasurer, executed the second Waiver of the Defense of Prescription dated December 19, 2012 which was accepted by the BIR on December 21, 2012.

On January 10, 2013, the Informal Conference was held, and thereupon the third Waiver of the Defense of Prescription dated January 15, 2013 was executed and accepted by the BIR on January 28, 2013.

Since he was assigned to another BIR office, he had no further participation in the audit.

Witness RO **Josa C. Gomez,** testified[22] that by virtue of a Memorandum of Assignment, he continued the audit of petitioner. As petitioner requested for time to submit additional documents to refute the finding of deficiency taxes as contained in the NIC, it was asked to execute the the fourth and fifth Waivers of the Defense of Prescription dated September 19, 2013 and January 23, 2014, and accepted by the BIR on October 2, 2013 and January 28, 2014, respectively.

Upon the recommendation of the audit group contained in the Memorandum dated April 21, 2014, the PAN dated May 12, 2014 was issued and served on petitioner on May 13, 2014, to which the latter filed protest on May 28, 2014. Also at their instance, the FAN was issued and served to petitioner on June 6, 2014. Petitioner likewise protested the FAN. Thereafter, the audit group recommended in the Memorandum dated October 27, 2014 the issuance of the FDDA which was served to petitioner on March 4, 2015.

Per Resolution of June 22, 2018, respondent rested his case.[23]

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[22] Minutes of the hearing dated December 5, 2017, docket, vol. 4, p. 1849; Judicial Affidavit dated June 19, 2015, docket, vol. 1, pp. 424-430; with cross examination see TSN dated December 5, 2017.
[23] Resolution dated June 22, 2018, docket, vol. 4, pp. 1876-1877.

THE ISSUES

The parties submitted the following issues for the Court's disposition:[24]

1. Whether the right of respondent to assess petitioner with deficiency taxes has already prescribed;

2. Whether petitioner was afforded due process in the issuance of the formal letter of demand and final assessment notice;

3. Whether petitioner's right to a speedy disposition of its case was violated; and

4. Whether petitioner is liable for deficiency Income Tax, Value Added Tax, Withholding Tax on Compensation, Expanded Withholding Tax, Final Tax, Value Added Tax Withholding Tax, Documentary Stamp Tax, and Miscellaneous Taxes for taxable year 2009.

THE RULING OF THE COURT

On the timeliness of the filling of the present petition, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> **SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

[24] Issues, Pre-Trial Order, docket, vol. 2, pp. 491-492.

> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Thus, a taxpayer has thirty (30) days from receipt of the FLD/FAN within which to file its administrative protest. It also has sixty (60) days from filing of the administrative protest to submit all relevant supporting documents. Thereafter, the taxpayer has another thirty (30) days from receipt of Commissioner's adverse decision, or in case of his inaction, from the lapse of 180-day period from submission of documents, within which to file a Petition for Review with the Court of Tax Appeals (CTA).

In this case, petitioner received a copy of the FLD with the FAN on June 6, 2014, finding it liable for deficiency IT, VAT, WTC, EWT, FWT, VAT withholding, DST, and corresponding penalties in the total amount of Five Hundred Fifty Two Million Five Hundred Forty Five Thousand One Hundred Sixty Four Pesos and Sixty Centavos (₱552,545,164.60) for TY 2009. Petitioner had 30 days from receipt of the FLD with the FAN or until July 6, 2014, within which to file its administrative protest. Hence, petitioner seasonably instituted its Protest[25] to FAN on July 4, 2014.

However, respondent did not act on the protest within one hundred eighty (180) days from the filling of the protest.[26] Counting thirty (30) days from the lapse of 180 days or from December 31, 2014, petitioner had until January 30, 2015 to elevate its case to the CTA. Evidently, the instant Petition for Review was also timely filed on January 30, 2015.

On March 4, 2015, petitioner received the FDDA. Thereafter, petitioner filed a Supplemental Petition for Review on March 31, 2015.

Now on the merits of the case.

Under Section 6(A) of the NIRC of 1997, as amended, the power to authorize examination of a taxpayer and issue assessments is primarily lodged with respondent CIR, thus:

> SECTION 6. Power of Make Assessments and Requirements for Tax Enforcement.
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> (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/her] 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 xxxx

Plainly, the power to make assessments is primarily lodged with respondent. However, the said power may be delegated as expressly authorized under Section 7, in relation to Sections 10 and 13 of the same Tax Code, to wit:

> SEC 7. Authority of the Commissioner to Delegate Power. - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate

[25] BIR Records, Folder 3, pp. 314-324.
[26] Par. 4, JSFI, docket, vol. 1, p. 476.

> officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner:
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> xxx xxx xxx

That the authority of respondent Commissioner to issue assessments can be delegated to subordinate officials with the rank equivalent to a division chief or higher, is confirmed in Section 10 of the Tax Code which authorizes the Revenue Regional Director, to issue Letters of Authority for the examination of taxpayers, to wit:

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

Clearly, the power to issue LOA in relation to the power of respondent to make assessments is expressly delegated to the Revenue Regional Director.[27]

LOA is defined as the authority given to the appropriate revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct internal revenue liabilities and for the purpose of collecting the correct amount of tax, in accordance with Section 5 of the Tax Code, which gives the CIR the power to obtain information, to summon/examine, and take testimony of persons. The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[28]

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[27] Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8952, November 14, 2018.

[28] Commissioner of Internal Revenue vs. De La Salle University, Inc., G.R. No. 196596; De La Salle University Inc. vs. Commissioner of Internal Revenue, G.R. No. 198841; Commissioner of Internal Revenue vs. De La Salle University, Inc., G.R. No. 198941, November 9, 2016.

Thus, a RO, prior to actual conduct of audit on the taxpayer, must first be authorized through a validly issued LOA, pursuant to Section 13 of the Tax Code, which provides, as follows:

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

In the instant case, Letter of Authority (LOA) No. LOA-116-2010-00000063[29], dated May 14, 2010, was issued by Commissioner, Joel L. Tan-Torres authorizing Revenue Officers (ROs) Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Walter Batoon, Aileen Grace Parra, Laurel Eleda and Group Supervisor (GS) Erlinda Ulgado and Ana Marie Perez to examine the petitioner's books of accounts and other accounting records for internal revenue taxes for TY 2009.

RO Reynoso Bravo testified that while he was authorized to conduct the audit, he was not able to finish the same due to his re-assignment to the Large Taxpayer Division-Makati after petitioner's execution of the third Waiver. RO Josa Gomez, by virtue of the Memorandum of Assignment (MOA) No. LOA-116-2013-0426[30] issued by Mr. Cesar Escalada, Chief, Regular LT Audit Division 1 on February 25, 2013, continued the audit under the supervision of Group Supervisor Olivia Aviles. Such examination ended with the issuance of the FLD/FAN and the FDDA.[31]

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[29] BIR Records, Main Folder, p. 247; Exhibit P-45, docket, vol. 3, p. 1342.
[30] Exhibit "R-7", BIR Records, Folder 1, p.514.
[31] Judicial Affidavit dated June 19, 2015, docket, vol. 1, p. 427.

Note that RO Josa Gomez and RO Felina Guimbao who recommended the issuance of PAN, FLD with FAN and FDDA against petitioner through memorandum report[32], were not among those named as examiners in the LOA issued for TY 2009.

Section C (1) and (5) of RMO No. 43-90[33], specifically requires the issuance of a new LOA in cases of reassignment or transfer of the investigating RO to another revenue office, to wit:

> C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> xxx xxx xxx
>
> 5. **Any <u>re-assignment/transfer</u> of cases to another RO(s), and revalidation of L/As which have already expired, <u>shall</u> require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.** (Emphasis supplied)

On this regard, the Court has already ruled that the issuance of a new LOA in cases of reassignment or transfer of the investigator is mandatory, thus:

> Therefore, the use of the word "shall" in RMO No. 43-90 can only mean that the issuance of a new LOA in cases of reassignment or transfer of investigation is mandatory. Hence, before an assessment can be made, the RO conducting the audit must first be authorized to do so. Absent such new LOA, any assessment issued resulting from such audit is void. [34]

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[32] Exhibit "R-10", Memorandum Report for issuance of PAN, dated April 21, 2014; Memorandum Report for issuance of FLD and Assessment Notice, dated May 28, 2017; and Exhibit "R-13", Memorandum Report for issuance of FDDA, dated October 27, 2014; BIR Records, Folder 1, pp. 535-541, 571-572 and 638-647, respectively.

[33] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letter of Authority to Audit dated September 20, 1990.

[34] Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8952, November 14, 2018.

A 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. x x x **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.**[35]

It has also been ruled that a RO may only examine the taxpayer's books pursuant to a LOA issued by the Regional Director and that the Referral Memorandum issued by the Revenue District Officer ("RDO") directing another RO to continue with the examination of the taxpayer's records is not equivalent to a LOA nor does it cure the RO's lack of authority, *viz.:*

> As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA *en banc* found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> Moreover, the Court agrees with the CTA *en banc* that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not

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

> equivalent to an LOA nor does it cure RO Cruz's lack of authority. To be sure, Revenue Memorandum Order No. 43- 90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA. [36]

Considering that the LOA issued for TY 2009 against petitioner did not include the names of RO Gomez or RO Guimbao, hence, the named ROs did not have the required authority to conduct the audit or examination of petitioner for the subject TY.

Established is the rule that a revenue officer must be clothed with authority before proceeding with an examination or assessment. That authority must be in a form of a LOA, and not a mere Memorandum Referral, as obtaining in the present case.[37]

There is no denying that the authority of RO Gomez to examine petitioner for possible deficiency taxes pertaining to TY 2009 originated from MOA No. LOA-116-2013-0426 issued on February 25, 2013. This is not true with regard RO Felina Guimbao, who co-signed the memorandum recommending the issuance of the assessment against petitioner. No similar MOA was issued in her favor authorizing her to conduct an audit/investigation of all internal revenue taxes of petitioner for TY 2009.

Accordingly, the absence of a new LOA naming RO Gomez and RO Guimbao as the new ROs rendered them without authority to continue the examination/audit of petitioner's internal revenue tax liability for TY 2009. In other words, RO Gomez and RO Guimbao acted without authority when they continued the audit of petitioner and thereafter recommended issuance of the assailed assessment. Consequently, the investigation and corresponding assessments issued against petitioner are void.

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[36] Commissioner of Internal Revenue vs. Composite Materials, Inc., G.R. No. 238352, September 12, 2018.

[37] Linde Philippines, Inc. (formerly, Consolidated Industrial Gases, Inc.) vs. Commissioner of Internal Revenue, CTA Case No.8783, March 28, 2019.

Let it be stressed that a LOA is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit, it is an express grant of authority. Thus, absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation per RMO No. 43-90, there is no authority to conduct the investigation/audit. Consequently, the assessment is null and void. And a void assessment bears no valid fruit.[38]

The rationale for requiring a valid LOA as a prerequisite to a valid assessment is not that difficult to perceive - it is to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[39]

Since the subject deficiency tax assessments are clearly void for lack of authority of the examining ROs, discussion on the other issues raised by the parties becomes unwarranted.

It may be argued that the authority of the Revenue Officer/s who conducted the audit and examination of petitioner was not raised as an issue by the parties. On the matter, the Supreme Court ruled, thus:

> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> 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

[38] Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8952, November 14, 2018.
[39] Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8952, Resolution, March 6, 2019.

necessary to achieve an orderly disposition of the case. The text of the provision reads:

> SECTION 1. Rendition of judgment. - xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

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 scope of authority of revenue officers who were named in the LOA even though the parties has 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. [40]

An appellate court has an inherent authority to review unassigned errors, e.g. (1) which are closely related to an error properly raised; (2) upon which the determination of the error properly assigned is dependent; or (3) where the Court finds that consideration of them is necessary in arriving at a just decision of the case.[41]

Therefore, "where the issues already raised also rest on other issues not specifically presented as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them."[42]

WHEREFORE, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment for income tax, VAT, WTC, EWT, FWT, VAT withholding, DST, and their corresponding penalties, surcharges and interest, in the total amount of Five Hundred

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[40] Commissioner of Internal Revenue vs. Lancaster Philippines, Inc., G.R. No. 183408, July 12, 2017.
[41] Adelfa Demafelis vs. Court of Appeals and Fernando Condez, G.R. No. 152164, November 23, 2007.
[42] Republic of the Philippines, Represented By The Presidential Commission On Good Government (PCGG) vs. COCOFED Et Al. and Ballares Et Al., Eduardo M. Cojuangco Jr. and the Sandiganbayan (First Division), G.R. Nos. 147062-64, December 14, 2001.

Sixty Eight Million Three Thousand Three Hundred Twenty and Ninety Four Centavos (₱568,003,320.94) are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

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

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Acting Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

FPIP PROPERTY DEVELOPERS AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8980

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

1:24 p.m.

x---x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.:*

With due respect to my esteemed colleague, Associate Justice Fabon-Victorino, I concur with the dispositive portion of the *ponencia* in granting the Petition for Review filed by FPIP Property Developers and Management Corporation ("FPIP") for lack of authority of the examining Revenue Officer ("RO"), but for the reasons to be discussed below.

I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in his favor, RO Josa Gomez may be given the authority to continue the audit and examination of Petitioner's books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, by the Revenue Regional Director, upon the reassignment of RO Reynoso Bravo who was the originally named RO in the LOA. I submit that this could be validly done under the National Internal Revenue Code of 1997 ("1997 NIRC") and the laws on agency under the Civil Code.

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

"SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –

(A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[1]

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

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

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

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

[1] *Emphasis and underscoring supplied.*

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

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

> "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:
>
> xxx
>
> (c) **<u>Issue Letters of authority for the examination of taxpayers</u> within the region**;
>
> xxx
>
> (h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[2]

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

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[3], the Supreme Court had the occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons

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[2] *Emphasis and underscoring supplied.*

[3] G.R. No. 188288, January 16, 2012.

> dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[4]

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

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

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[5]

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

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the 1997 NIRC[6], which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[7]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of

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[4] *Emphasis supplied.*

[5] *Emphasis supplied.*

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

[7] Civil Code of the Philippines, Article 1869.

agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[8] The title of the contract does not necessarily determine its true nature.[9] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the 1997 NIRC, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[10] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[11]

I am not unaware of Revenue Memorandum Order No. 43-90[12] which states that "[a]ny re-assignment/transfer of cases to another RO(s)...shall require the issuance of a new L/A" However, I humbly stress and emphasize that an administrative issuance must conform, not contradict, the provisions of the enabling law. Any rule that is not consistent with the law is null and void.[13]

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

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

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

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

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

12 Issued September 20, 1990.

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

signed by the Chief of the Regular LT Audit Division 1, Mr. Cesar Escalada, and, therefore, RO Gomez was without authority to continue the audit.

As pointed out in the *ponencia,* RO Felina Guimbao was not mentioned in the memorandum. Neither was a similar memorandum issued in her favor authorizing her to conduct an audit/investigation of the taxpayer. Her act of continuing the audit and co-signing the memorandum recommending the issuance of assessment against FPIP is defective due to lack of written grant of authority.

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice