Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMPOSITE MATERIALS, INC., Petitioner,	**CTA EB NO. 1314** (CTA Case No. 8306)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN,JJ.
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 15 2017 3:28 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

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dated October 10, 2014, rendered by the Third Division of this Court in CTA Case No. 8306, and its Amended Decision[3] dated May 11, 2015.

The Third Division of this Court denied petitioner Composite Material, Inc.'s (CMI) petition praying for the cancellation of respondent Commissioner of Internal Revenue's (CIR) assessment of deficiency income tax and expanded withholding tax for taxable year 2007.

Petitioner assails both the aforesaid Decision and Amended Decision, the dispositive portions of which, respectively, read as follows:

Decision dated October 10, 2014:

*"**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit. The assessments issued by respondent against petitioner covering deficiency income tax and EWT for calendar year 2007 are hereby **AFFIRMED**. Accordingly, petitioner is **ORDERED** to **PAY** respondent the amount of P3,499,243.57, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A) (3) of the NIRC of 1997, as amended, computed as follows:*

Deficiency Tax	*Basic*	*Surcharge*	*Total*
Income Tax	*P2,465,285.73*	*P616,321.43*	*P3,081,607.16*
Expanded Withholding Tax	*334,109.13*	*83,527.28*	*417,636.41*
Total	*P2,799,394.86*	*P699,848.71*	*P3,499,243.57*

In addition, petitioner is ORDERED to PAY the following:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of P2,465,285.73 computed from April 15, 2008 and on the basic deficiency EWT of P334,109.13 computed from January 15, 2008 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total deficiency taxes of P3,499,243.57 and on the 20% deficiency interest which have accrued as afore-mentioned in (a), computed from July 28, 201068

[2] En Banc Docket, pp. 59-82.
[3] En Banc Docket, pp. 84-97.

until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED."

Amended Decision dated May 11, 2015:

"***WHEREFORE,*** *petitioner's Motion for Reconsideration is* ***PARTIALLY GRANTED.*** *Accordingly, the assailed Decision promulgated on October 10, 2014 is hereby* ***AFFIRMED*** *with some* ***MODIFICATIONS.*** *Petitioner is* ***ORDERED TO PAY*** *the amount of* ***EIGHT MILLION THREE HUNDRED FORTY EIGHT THOUSAND NINE HUNDRED SIXTY TWO PESOS & 5/100 (P8,348,962.05),*** *representing the unpaid balance as of February 14, 2014 of its deficiency income tax and EWT liabilities for calendar year 2007, inclusive of increments, computed as follows:*

Deficiency Income Tax	*P7,966,191.91*
Deficiency	*382,770.14*
Total Amount Due as of February 14, 3014	***P8,348,962.05***

In addition, petitioner is hereby ORDERED TO PAY:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of P1,479,171.4428 computed from February 15, 2014 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended;

(b) Delinquency interest at the rate of twenty percent (20°/o) per annum: (i) on the amount of P2,095,492.87, representing basic deficiency income tax of P1,479,171.44 and 25°/o surcharge of P616,321.4329, and (ii) on the amount of P83,527.28 representing 25% surcharge on basic deficiency EWT of P334,109.13, computed from February 15, 2014 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997.

SO ORDERED."

The pertinent facts as narrated by the Court in Division in its Decision read as follows:

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"Petitioner Composite Materials, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 11 Joe Borris St., Bo. Bagong Ilog, Pasig City and duly registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 005-581-218.

On the other hand, respondent is the duly appointed Commissioner of the BIR vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including, inter alia, the power to decide disputed assessments, and cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.

On July 1, 2010, petitioner received respondent's Formal Letter of Demand (Demand No. 043-B32-07) dated June 28, 2010, with attached Details of Discrepancies and accompanying Assessment Notices, assessing petitioner of deficiency income tax and EWT in the total amount of P4,093,805.74, inclusive of interest, for calendar year ending December 31, 2007.

Petitioner flied its protest letter to the Formal Letter of Demand on July 7, 2010 and the same was duly received by respondent.

However, respondent denied petitioner's protest by issuing the Final Notice Before Seizure, which was received by petitioner on June 2, 2011.

Petitioner then appealed the Final Notice by filing the instant Petition for Review on July 4, 2011.

On July 8, 2011, petitioner filed an Urgent Omnibus Motion (I) To Quash Warrant of Distraint and / or Levy, and (II) To Enjoin Collection of Taxes, praying, among others, for the suspension of collection of petitioner's alleged deficiency income tax, expanded withholding tax and interests for calendar year 2007 until the case is resolved with finality.

The omnibus motion was granted by this Court via Resolution dated August 11, 2011, requiring petitioner to file a surety bond equivalent to double the amount sought to be collected by respondent.

Respondent filed her Answer on August 26, 2011, interposing the following special and affirmative defenses:

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4. Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of the assessments. (Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 134062, April 17, 2007);

5. The Formal Letter of Demand and Assessment Notices (FAN) dated 28 June 2010 for calendar year ending 31 December 2007 against the petitioner was issued in compliance with the provisions of Section 228 of the National Internal Revenue Code (NIRC) and in accordance with existing Revenue Rules and Regulations relative to the right of the petitioner to be informed of the factual and legal bases upon which the assessment was made. Petitioner was informed in writing of the law and the facts on which the assessment is made, otherwise, they would not have filed their protest on July 7, 2010;

6. Petitioner was assessed deficiency income tax because it failed to substantiate with sufficient evidence the deductibility of commissions and professional fees from gross income in violation of Section 34 (A) of the NIRC of 1997, as amended. In addition, petitioner's claimed purchases per Income Tax Return (ITR) is greater than the actual expenses incurred, therefore, the overstatement is added back to their taxable income pursuant to Section 34 of the aforesaid law;

7. Petitioner was assessed deficiency withholding tax because it failed to fully withhold and remit the expanded withholding tax on income payments for commissions as required under Revenue Regulations No. 2-98, as amended;

8. The 20% per annum has been imposed pursuant to the provisions of Section 249(B) of the NIRC of 1997, as amended; and

9. The 25% surcharge has been imposed pursuant to the provisions of Section 248(A) of the NIRC of 1997, as amended."

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Thereafter, trial ensued. Petitioner CMI and respondent CIR presented their respective witnesses and evidences.

On October 10, 2014, the Court in Division denied petitioner CMI's petition. Subsequently, petitioner CMI timely filed a Motion for Reconsideration assailing the October 10, 2014 Decision of the Court's Division. In the said Motion for Reconsideration petitioner CMI manifested the partial payment it made on the deficiency tax assessment.

On May 11, 2015, the Court in Division granted petitioner CMI's Motion for Reconsideration. While the Court in Division granted the motion, it exhaustively discussed and denied petitioner CMI's arguments raised in its Motion for Reconsideration, nevertheless, the Court in Division took into consideration the partial payments made by petitioner CMI on the deficiency tax assessment. The Court in Division modified the October 10, 2014 decision to reflect the partial payments made by petitioner CMI on the deficiency tax assessment, thus, the Amended Decision dated May 11, 2015.

Hence, the present petition was filed.

On July 30, 2015, respondent CIR was directed to file a Comment on the petition. Respondent CIR failed to file a Comment. Thereafter, on January 29, 2016 the petition was given due course and the parties were directed to submit their respective memoranda.

On July 1, 2016, the petition was submitted for decision after respondent CIR filed a memorandum while petitioner CMI adopted its arguments in the petition and other pleadings as its Memorandum.

Petitioner CMI raised the following issues and assigns the following errors committed by the Court in Division, to wit:

A.

THE CTA-DIVISION ERRED IN NOT RULING THAT RESPONDENT VIOLATED PETITIONER'S RIGHT TO DUE PROCESS OF LAW.

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B.
THE CTA-DIVISION ERRED IN DISALLOWING PETITIONER'S COMMISSION AND PROFESSIONAL FEES AS VALID EXPENSES FOR CY 2007.

C.
THE CTA-DIVISION ERRED IN RULING THAT PETITIONER'S PURCHASES FOR CY 2007 WERE OVERSTATED AND UNSUBSTANTIATED BY PROPER DOCUMENTS.

D.
THE CTA-DIVISION ERRED IN ITS COMPUTATION OF THE DEFICIENCY AND DELINQUENCY INTEREST DUE ON PETITIONER'S DEFICIENCY INCOME TAX AND EWT FOR CY 2007.

Petitioner CMI argues that respondent CIR violated its right to due process of law on the ground that the assessment is null and void for failure to provide factual and legal bases; and that the officer who conducted the examination was not duly authorized. Petitioner CMI claims that the disallowance of the commission payments and professional fees for calendar year 2007 was based on assumption and baseless conclusions. Petitioner CMI claims that it was able to substantiate its purchases for calendar year 2007. Lastly, petitioner CMI argues that pursuant to Revenue Memorandum Circular (RMC) No. 46-99, deficiency interest and delinquency interest should not be simultaneously imposed.

On June 27, 2017, the case was re-raffled[4] to the *ponente* in view of the issue pertaining to the lack of authority of Revenue Officer Cruz to examine petitioner CMI's books and records as well as the application of the case of *Asiatrust*[5]. The Supreme Court in *Asiatrust* provides

[4] Associate Justice Erlinda P. Uy, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito Mindaro-Grulla and Associate Justice Catherine Manahan joined the Dissenting Opinion of Presiding Justice Roman Del Rosario. Associate Justice Lowell R. Bautista Concurred with the draft Decision of Associate Justice Caesar A. Casanova while Associate Justice Juanito C. Bautista, Jr. and Associate Justice Ma. Belen M. Ringpis-Liban drafted their respective Separate Concurring Opinion.

[5] Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 20130 & 201680-81, April 19, 2017.

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that the failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of a petition before the CTA *En Banc*.

We resolve.

This Court deems it proper to address the procedural aspect of the case. Section 1, Rule 8 of the 2005 RRCTA, as amended, reads as follows:

> *"RULE 8*
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> *PROCEDURE IN CIVIL CASES*
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> *Section 1. Review of cases in the Court en banc. - In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division."*

Evidently, before an appeal may be filed with the Court *En Banc* by an aggrieved party, the appeal must be preceded by the filing of a timely motion for reconsideration or new trial with the Division that rendered the questioned decision. Moreover, an amended decision which modifies or reverse a decision, is a new and different decision, thus, is a proper subject of a motion for reconsideration. Pertinently, the Supreme Court in the case of *Asiatrust* ruled as follows:

> *"Thus, in order for the CTA En Banc to take cognizance of an appeal via a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.*
>
> *The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as "[a]ny action modifying or reversing a decision of the Court en banc or in Division." As explained in CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration."*

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However, related thereto is the rule that a second motion for reconsideration is prohibited. Section 7 of Rule 15 of the RRCTA provides:

> *"SEC. 7. No second motion for reconsideration or for new trial. -* ***No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order.*** *" (Emphasis supplied)*

In the instant case, petitioner CMI complied with the above mandatory requirement when the petition for review before the Court *En Banc* was preceded by the timely filing of a Motion for Reconsideration with the Court in Division on October 30, 2014[6], assailing the Decision dated October 10, 2014, (the decision which denied petitioner CMI's petition.) Thus, in a Resolution[7] dated January 19, 2016, the Court *En Banc* gave due course to the petition for review.

In addition, it is noteworthy to mention that the Amended Decision dated May 11, 2015, found bereft of merit petitioner CMI's arguments raised in its Motion for Reconsideration but nevertheless, took into consideration the partial payments made by petitioner CMI on the deficiency tax assessment. It is actually already a resolution reconsidering the original decision.

Although it was denominated as an "Amended Decision" pursuant to Section 3 Rule 14 of the RRCTA[8], it does not necessarily deviate from its nature that it is a resolution of a motion for reconsideration. The fact is the Court in Division in its disquisition in the Amended Decision did not alter nor modify but rather upheld the findings and conclusions in the Decision dated October 10, 2014.

Concomitantly, although denominated as "Amended Decision", in this case it was not a new decision or a different decision subject of another motion for reconsideration, in contrast to the facts in the case of *Asiatrust,* whereby the amended decision was considered as a new and a different decision. To require another motion for reconsideration would violate the rule that a second motion

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[6] Division Docket. pp 1017-1094.
[7] En banc Docket pp.122-124.
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for reconsideration is a prohibited pleading and not allowed under Section 7 of Rule 15 of the RRCTA.

As to the lack of authority of a Revenue Officer, only the CIR or his duly authorized representative may authorize the examination of the taxpayer or assessment of the correct amount. Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides as follows:

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

Pursuant to said provision, an authorization from the CIR or from his duly authorized representative is needed in order to examine any taxpayer. In relation to Sections 10 and 13 of the NIRC of 1997, as amended, the authorization needed to examine any taxpayer is the "Letter of Authority" (LOA) and the duly authorized representative referred is the Revenue Regional Director, 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: xxx*
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> *xxx xxx xxx.*
>
> *(c) **Issue Letters of authority for the examination of taxpayer within the region**;*
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> *xxx xxx xxx.*
>
> *SEC. 13. Authority of a Revenue Officer.- Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment***

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> ***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 ours)*

Evidently, an LOA from the Revenue Regional Director is needed before a Revenue Officer can 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. Otherwise stated, a Revenue Officer cannot examine a taxpayer or recommend the assessment of any deficiency tax due in the absence of a LOA.

The absence of authorization or an LOA of a Revenue Officer, to examine taxpayers in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due cannot be overly emphasized. In the case of Medicard Philippines, Inc. vs. Commissioner of Internal Revenue[9], the Supreme Court ruled that the absence of an LOA violated a taxpayer's right to due process and the assessment thereon is inescapably void, 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.*
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> *xxx xxx xxx.*
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> *xxx, [I]t is clear that* ***unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily. be undertaken.*** *The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the*

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

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> *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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> *xxx xxx xxx.*
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> *That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives.* ***Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.***" *(Emphasis Supplied)*

In the case at bar, it is undisputed that the person who conducted the examination of petitioner CMI's records, Revenue Officer Mary Anne P. Cruz, is not among the revenue officers authorized in LOA No. 0008746[10] dated September 9, 2008. Evidently, Revenue Officer Mary Anne P. Cruz is not authorized under LOA No. 0008746, to examine petitioner CMI.

Based on the Judicial Affidavit[11]of Revenue Officer Mary Anne P. Cruz, she informed petitioner CMI of the re-assignment and continuance of audit pursuant to Referral Memorandum No. 043-AS-12-23-2008-93[12] dated December 23, 2008 issued by Revenue District Officer Rey Asterio L. Tambis. However, the abovementioned Referral Memorandum for the re-assignment and continuance of audit signed by a Revenue District Officer is not equivalent to a LOA.

The Referral Memorandum signed by the Revenue District Officer does not give authority to Revenue Officer Mary Anne P. Cruz to conduct examination of petitioner CMI's records. On the contrary, pursuant to Section 10 and 13 of the NIRC of 1997, as amended, it is the Revenue Regional Director who may issue an LOA.

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[10] Exhibit "1" Division Docket, p.864.
[11] Exhibit "14" Division Docket, pp.890-898.
[12] Exhibit "2" Division Docket, p.865.

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In the case of *Medicard*, the Supreme Court ruled that an assessment is inescapably void due to the absence of an LOA and that a Letter of Notice even if signed by the CIR does not convert it to an LOA. Moreover, in the case of Commissioner of Internal Revenue vs. Sony Philippines, Inc.[13], even if there was a valid LOA, it is equally important that the revenue officer so authorized must not go beyond the authority given, otherwise, the assessment or examination is a nullity. In the case at bar, the conclusions are inevitable.

In sum, the Court cannot treat the Referral Memorandum into the LOA required under the law. Revenue Officer Mary Anne P. Cruz is not authorized under LOA No.0008746 to examine petitioner CMI. The examination of Petitioner CMI's records by Revenue Officer Mary Anne P. Cruz was made without authority, thus, the examinations and the assessments thereon are void.

Having discussed that the examinations and the assessments are void, the Court will not belabor on the other issues raised for it is well-settled that a void assessment bears no fruit[14].

WHEREFORE, premises considered, the Petition for Review docketed as CTA EB No. 1314 is **GRANTED**. The Decision[15] dated October 10, 2014, rendered by the Third Division of this Court in CTA Case No. 8306, and its Amended Decision [16] dated May 11, 2015 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the deficiency Income Tax and Expanded Withholding Tax assessments for taxable year 2007 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

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

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[13] G.R. No. 178697, November 17,2010.
[14] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.
[15] En banc Docket, pp. 62-87.
[16] En banc Docket, pp. 88-93.

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(With Dissenting 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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMPOSITE MATERIALS, INC., Petitioner,	**CTA EB NO. 1314** (CTA Case No. 8306)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 15 2017 3:28 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed and learned colleague, the Honorable Cielito N. Mindaro-Grulla, granting the Petition for Review filed by Composite Materials Inc.; reversing and setting aside the Court in Division's Decision dated October 10, 2014 and its Amended Decision dated May 11, 2015; and, cancelling and withdrawing the deficiency income tax and expanded withholding tax assessments issued against petitioner for the taxable year 2007.

I wish, however, to expound on the issue of authority of Revenue Officer Mary Anne P. Cruz (RO Cruz) to conduct an audit and examination of petitioner's books of accounts and other accounting records for the taxable year 2007.

Petitioner challenges the authority of respondent to assess the disputed tax on the ground that RO Cruz was not authorized to conduct the examination of petitioner's records. The Court in Division rejected this contention as it took into consideration the Referral Memorandum No. 043-AS-12-23-2008-939, the testimony of RO Cruz that she informed petitioner of the re-assignment of the case, and the fact that the issue of lack of authority was not mentioned in petitioner's protest letter at the administrative level nor raised in the Petition for Review as well as in the Joint Stipulation of Facts and Issues.

I submit that the failure to raise the issue of lack of authority in the administrative level does not by itself preclude a taxpayer from subsequently assailing an assessment that is intrinsically void. While it is a well-settled rule in this jurisdiction that a void assessment bears no valid fruit,[1] **the issue of lack of authority of RO Cruz was in fact raised during trial, specifically during the May 27, 2013 hearing for the testimony of RO Cruz**.

The National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **Commissioner of Internal Revenue (CIR) or from his duly authorized representatives** before an examination of a taxpayer may be made.[2] Section 6 of the NIRC provides:

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

A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

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[1] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.
[2] Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 222743, April 5, 2017.

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

Revenue Memorandum Order (RMO) No. 43-90 specifies the policy guidelines in the issuance of Letters of Authority (LOAs) to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.
>
> 1. All L/As for cases selected and listed pursuant to RMO No. 36-90 to be audited in the revenue regions shall be prepared and signed by the Regional Director (RD).
>
> 2. The Regional Director shall prepare and sign the L/As for returns recommended by the RDO for assignment to the ROs, indicating therein the name and address of the taxpayer, the name of the RO(s) to whom the L/A is assigned, the taxable period and kind of tax; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.
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> 3. The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the procedures in the preceding paragraph, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue.
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> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself**."
> (Boldfacing supplied)

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

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

Simply put, the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. In the language of *CIR vs. Sony Philippines, Inc.*[3] *(Sony),* its absence makes the assessment or examination a nullity, *viz:*

> "Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx
>
> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**." *(Boldfacing supplied)*

Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,[4] a fairly recent case, re-echoes *Sony* and declares as void a disputed assessment for lack of an LOA to examine the taxpayer

[3] G.R. No. 178697, November 17, 2010.
[4] G.R. No. 222743, April 5, 2017.

and despite the fact that the issue was only brought up during trial, *viz:*

> "**An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions**. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives**. Section 6 of the NIRC clearly provides as follows:
>
> xxx xxx xxx
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, **other tax agents may not validly conduct any of these kinds of examinations without prior authority**.
>
> xxx xxx xxx
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the **issue of their lack of authority was only brought up during the trial of the case**. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**." (Boldfacing supplied)

RO Cruz - - the revenue officer who conducted the audit and investigation of petitioner's books of accounts and other accounting records for the taxable year 2007- - is not among the personnel named in LOA No. 0008746 issued against petitioner by the BIR. The authority of RO Cruz to examine petitioner's books and records was undeniably through mere "Referral Memorandum No. 043-AS-12-23-2008-939 dated December 23, 2008." **Yet, the continuation of audit of petitioner's books and records by RO Cruz requires not just a mere referral memorandum but a new LOA**. Worse,

the Referral Memorandum was issued only by a <u>Revenue District Officer (RDO)</u> which is contrary to the clear mandate of Section 13 of the NIRC of 1997, as amended, that the LOA must be issued, at the very least, by a Revenue Regional Director. The NIRC does not confer upon the RDO an authority to issue an LOA, nor authorized the Revenue Regional Director to further delegate the authority to an RDO.

To recognize as valid the act of a revenue officer by applying the laws on contract and agency is not supported by jurisprudence. The law on contracts and agency cannot substitute *nay* supersede the provision of the NIRC (a special law which governs, among others, the conduct of the audit and examination of taxpayers to determine the payment of correct amount of internal revenue taxes) which categorically requires the issuance of an LOA by the Revenue Regional Director before an audit and examination of a taxpayer's books and accounting records may be conducted. It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. **The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.**[5]

The Revalidation Notice[6] issued by Regional Director Alfredo V. Misajon, dated January 29, 2009, which is part of the BIR Records, cannot be given evidentiary value as said document was not offered in evidence. The declaration in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*,[7] is instructive, *viz.*:

> "Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove every *minute aspect* of their cases. Section 8 of R.A. No. 1125, as amended by R.A. No. 9282, categorically described the CTA as a court of record. Indubitably, **no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA**. xxx

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[5] Commissioner of Internal Revenue vs. Julieta Ariete, G.R. No. 164152, January 21, 2010
[6] BIR Records, p. 8.
[7] G.R. No. 195876, December 5, 2016.

> xxx xxx xxx
>
> As a matter of fact, **even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court, this does not permit the trial court to consider the same in view of the fact that the Rules prohibit it**. The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. Unless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the court *a quo*, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it.
>
> xxx xxx xxx
>
> Clearly therefore, **evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into account on appeal**. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected." *(Boldfacing supplied)*

Even assuming *arguendo* that said Revalidation Notice was offered in evidence, there still exists a procedural infirmity in the proceedings that led to the issuance of deficiency assessments against petitioner on account of the BIR's failure to issue a new LOA authorizing RO Cruz to conduct the audit and examination of petitioner's books of accounts and other accounting records. As aforementioned, RMO No. 43-90 is explicit in requiring that any re-assignment/transfer of cases, and revalidation of LOAs which have expired, shall require the issuance of new LOA.

In fine, the examination of petitioner's records by RO Cruz, having been made without the required authority, makes the disputed assessment a nullity.

On the procedural aspect of the present case, I concur with the *ponencia* that petitioner is not required to file a motion for reconsideration to assail the Court in Division's Amended Decision before filing its Petition for Review before the Court *En Banc*.

m

I am not unaware of the doctrine laid down in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue* (*Asiatrust*)[8] which in *esse* declared that a Motion for Reconsideration of an Amended Decision must be filed prior to the filing of a Petition for Review before the Court *En Banc*. The pronouncement in *Asiatrust*, however, should not be construed in a way where the rule against the filing of a second motion for reconsideration is nullified.

On this point, I wish to reiterate the disquisition I made in my Concurring and Dissenting Opinion in the consolidated cases of ***Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation and Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue***[9] anent the requirement to file a motion for reconsideration of an amended decision:

> "A careful perusal of the *Asiatrust case* reveals that the Supreme Court, in declaring that a motion for reconsideration of an amended decision is a condition precedent to an appeal to the Court *En Banc,* is confined to its finding that the **CIR** failed to file a motion for reconsideration of the Court in Division's amended decision, which granted an **entirely new relief** in favor of Asiatrust. The procedural propriety of Asiatrust in filing a motion for reconsideration of the amended decision is not an issue resolved therein.
>
> Interestingly, the *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue (CE Luzon case)* where the Supreme Court did not declare as fatal the **non-filing by CE Luzon of a motion for reconsideration of the amended decision** which increased the amount of refund granted in favor of CE Luzon from P14 Million to P17 Million. The facts of the case (which are similar to the present case) reveal that CE Luzon directly appealed the Court in Division's amended decision before the Court *En Banc* even as it remained unsatisfied with the increased amount of refund granted in its favor [in the amended decision]. **Truth to tell, the Supreme Court, despite CE Luzon's non-filing of a motion for reconsideration of the Court in Division's amended**

[8] G.R. No. 201530, April 19, 2017.
[9] CTA EB Nos. 1410 & 1414, July 11, 2017.

decision before filing an appeal with the Court *En Banc*, proceeded to rule on the substantive aspect of CE Luzon's claim. On the other hand, with regard to the CIR who filed a motion for reconsideration of the Court in Division's amended decision, the Supreme Court ruled that the same does not constitute a second motion for reconsideration since, **in so far as the CIR is concerned**, the amended decision which **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate, is a different decision which is the proper subject of a motion for reconsideration on the part of the CIR. The pronouncement of the Supreme Court is quoted hereunder:

> 'At the outset, the Court deems it proper to address CE Luzon's claim that the **CIR filed a "second" motion for reconsideration of the CTA Division's January 19, 2010 Amended Decision**. Considering that a second motion for reconsideration is a prohibited pleading and, thus, did not toll the period to file an appeal, CE Luzon maintained that the June 24, 2009 Decision had long become final and executory.
>
> Under Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals, an amended decision is issued when there is any action **modifying or reversing a decision** of the CTA *En Banc* or in Division. Pursuant to these parameters, it is clear that the CIR's motions for partial reconsideration – i.e., (a) motion for partial reconsideration of the June 24, 2009 Decision; and (b) motion for partial reconsideration of the January 19, 2010 Amended Decision – assailed separate and distinct decisions that were rendered by the CTA Division. Notably, its amended decision **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate in the amount of 17,277,938.47. Essentially, it was therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on **the part of the CIR**. Thus, CE Luzon's procedural objection must fail.' (Boldfacing supplied)

From the foregoing, it is clear that the pronouncement in the *Asiatrust case* should not be construed in a way where the rule against the filing of a second motion for reconsideration is nullified.

Note should be made that Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA") merely specifies the proper 'denomination' of the Court's action modifying or reversing a previously issued Decision. Thus, the provision reads:

> 'SEC. 3. *Amended Decision.* – Any action modifying or reversing a decision of the Court *en banc* or in Division shall be **denominated as Amended Decision**.' (Boldfacing supplied)

The fact that an amended decision is eventually issued does not necessarily deviate from its nature, which may in certain instances, be strictly a mere **resolution of a motion for reconsideration**. If the amended decision results from a re-evaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious (in whole or in part), I submit that a **second** motion for reconsideration of the amended decision is unwarranted. To allow a **second** motion for reconsideration raising the same ground which the amended decision already considered would render the proscription against a **second** Motion for Reconsideration meaningless even as it would result to unnecessary delay in the disposition of cases. Section 7, Rule 15 of the RRCTA is clear on this aspect, *viz.*:

> 'SEC. 7. *No second motion for reconsideration or new trial.* - No party shall be allowed to file a second motion for reconsideration or for new trial or decision, final resolution or order.'

Parenthetically, it would be inconsistent to the concept of speedy determination of controversies to allow -- much more -- require a party litigant to rehash, amplify or recycle in a **second** Motion for Reconsideration matters and arguments, which s/he had already presented in Court and which, necessarily have been considered in the amended decision. After all, the movant should have embodied in the **first** motion for reconsideration all supporting arguments relative to the assailed original decision pursuant to Section 3, Rule 15 of the RRCTA." (Citations omitted)

Relative to petitioner's motion for partial reconsideration and eventual filing of its Petition for Review with the Court *En Banc*, records disclose the following:

- May 11, 2015 – the Court in Division denied petitioner's Petition for Review;

- October 30, 2014 – petitioner filed its Motion for Reconsideration assailing the May 11, 2015 Decision; and, manifesting partial payment of the deficiency tax assessments on February 14, 2014;

- May 11, 2015 – the Court in Division issued the assailed Amended Decision which partially granted petitioner's Motion for Reconsideration; and, recomputed petitioner's deficiency income tax and expanded withholding tax liabilities after taking into account the amount partially paid by petitioner on February 14, 2014;

- June 15, 2015 – Petitioner filed the Petition for Review assailing the Court in Division's Decision and Amended Decision.

Based from aforementioned factual antecedents, petitioner correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review to assail the Decision and Amended Decision of the Court in Division. Petitioner already observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[10] when it filed its Motion for Reconsideration of the assailed Decision within fifteen (15) days from receipt thereof. The Amended Decision already considered the arguments raised in petitioner's Motion for Reconsideration. Thus, petitioner may not file another Motion for Reconsideration to assail the Amended Decision since the Court in Division already acted and considered all the arguments raised in its Motion for Reconsideration when it upheld the deficiency income tax and expanded withholding tax assessments, *albeit* reducing the amount to be paid by petitioner after considering petitioner's partial payment on February 14, 2014.

Clearly, **the filing of a motion for reconsideration by petitioner assailing the Court in Division's <u>Amended Decision</u> would have been in the nature of a second motion for**

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[10] Section 1. Review of cases in the Court en banc. – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (Sec. 1, Rule 8 of RRCTA)

reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA.

All told, I VOTE to GRANT the Petition for Review filed by Composite Materials Inc. The Court in Division's Decision dated October 10, 2014 and its Amended Decision dated May 11, 2015 should be reversed and set aside and the deficiency income tax and expanded withholding tax assessments issued against petitioner for the taxable year 2007 should be cancelled and withdrawn.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMPOSITE MATERIALS, INC, *Petitioner,*	**CTA *EB* No. 1314** (CTA Case No. 8306)
-*versus*-	Present: *Del Rosario, P.J. Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 15 2017 3:28 p.m.

x---x

CONCURRING OPINION

BAUTISTA, J.:

With due reverence to the *ponente,* while I agree with the grant of the Petition for Review, I would like to emphasize some matters. For this, I believe that a brief discussion of the factual antecedents of the case is in order.

Records reveal that Revenue Officer Elizabeth M. De Guzman ("RO De Guzman") and Group Supervisor Antonio M. Lumanog ("GS Lumanog") were originally authorized to conduct the audit of petitioner's books for taxable year 2007. The Letter of Authority[1] ("LOA") reads as follows:

LOA 2008 00008746

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[1] *BIR Records,* p. 6.

LETTER OF AUTHORITY

005-581-218
COMPOSITE MATERIALS INC
11 Joe Borris St., Bagong Ilog
Pasig City

SIR/MADAM/GENTLEMEN:

The bearer(s) hereof, ROs ELIZABETH M. DE GUZMAN / GS ANTONIO M. LUMANOG of the Revenue District Office No. 43, Pasig City is/are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from January 1, 2007 to December 31, 2007. He is/They are provided with the necessary identification card(s) which shall be presented to you upon request.

xxx xxx xxx

Very truly yours,

(Sgd.)
DR. MARTINA C. DE GUZMAN
SIGNATURE OF AUTHORIZED OFFICER
Asst. Regional Director (OIC)
TITLE/POSITION

xxx xxx xxx

RECEIVED BY:

(Sgd.)
MUTYA FALGAO 9/30/08
TAXPAYER/AUTHORIZED REPRESENTATIVE DATE
Signature Over Printed Name

The above LOA has a stamp reading "revalidated on September 9, 2008," signed by Regional Director Alfredo V. Misajon ("RD Misajon").

On December 23, 2008, Revenue District Officer Rey Asterio L. Tambis ("RDO Tambis") issued a Memorandum[2] addressed to

[2] *BIR Records, Exhibit "2,"* p. 131a.

Revenue Officer Mary Anne Cruz ("RO Cruz") and Group Supervisor Alfredo Santos ("GS Santos") referring the 2007 case dockets of petitioner for re-assignment and continuance of audit pursuant to *Revenue Travel Assignment Order ("RTAO") No. 196-2008* dated September 29, 2008 issued to RO De Guzman. Assigned thereto was Referral No. 043-AS-12-23-2008-939.

RO Cruz then requested for the revalidation of the LOA through a Memorandum[3] addressed to RDO Tambis. This was received by the Office of the Assistant RDO on January 22, 2009.

Consequently, on January 29, 2009, a Revalidation Notice[4] was issued by RD Misajon, authorizing RO Cruz to continue the audit of petitioner's books. The Revalidation Notice provides, *viz.*:

> REVALIDATION NOTICE
>
> JAN 29 2009
>
> COMPOSITE MATERIALS, INC.
> 11 Joe Borris St. Bagong Ilog, Pasig City
>
> | | | |
> |---|---|---|
> | LOA No. | : | 00008746 |
> | Date Issued | : | September 9, 2008 |
> | Taxable Year | : | 2007 |
>
> Sir/Madam/Gentlemen:
>
> With reference to the subject Letter of Authority for the examination of your all internal revenue liabilities covering taxable year 2007, which remains pending to date, please be informed that the aforesaid Letter of Authority has been revalidated on 30 JAN 2009 due to the following:
>
> ( ) xxx
>
> (x) The report of investigation cannot be rendered within the prescribed period due to:
>
> ( ) xxx
> ( ) xxx
> ( ) xxx
> (x) Investigation is still on going.

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[3] *BIR Records*, p. 7.
[4] *BIR Records*, p. 8.

( ) xxx

In view thereof, the bearer hereof Revenue Officer Mary Anne P. Cruz is now authorized to continue the examination of your books of accounts, and all other accounting records and related documents.

xxx xxx xxx

Very truly yours,

(Sgd.)
ALFREDO V. MISAJON
Regional Director

Rec'd by
(sgd.) 2/9/09[5]

At issue now is whether RO Cruz has authority to conduct an examination of petitioner's books. If the answer is the affirmative, the resulting assessment is valid. Otherwise, the assessment shall be declared void for lack of authority of the revenue officer.

On the matter of the re-assignment, *Section 13 of the 1997 NIRC* provides that:

> 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, 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.[6]

In order to implement *Section 13 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC), Revenue Memorandum Order ("RMO") No. 43-90*[7] was issued, which provides the following:

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[5] Underscoring ours.
[6] Underscoring ours.
[7] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, Dated September 20, 1990.

> <u>Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A</u>, with the corresponding notation thereto, <u>including the previous L/A number and date of issue of said L/As</u>.

Basic is the rule in statutory construction that the use of the word "shall" connotes a mandatory order. Where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed. Hence, the use of the word "shall" in *RMO No. 43-90* can only mean that the issuance of a new LOA, in cases of re-assignment, is mandatory.

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. Thus, RO Cruz acted without authority when she conducted the audit of petitioner, hence, the assessment is null and void. Accordingly, a void assessment bears no valid fruit.

Having said the foregoing, I vote to **GRANT** the Petition for Review.

LOVELL R. BAUTISTA
Associate Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMPOSITE MATERIALS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1314
(CTA Case No. 8306)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
RINGPIS-LIBAN, ***JJ.***

Promulgated:

AUG 15 2017 3:28 p.m.

x- x

DISSENTING OPINION

CASANOVA, *J.*:

With utmost respect to the *ponencia* of my esteemed colleague, the Honorable Justice Cielito N. Mindaro-Grulla, I dissent in granting the present Petition for Review[1], filed by petitioner Composite Materials, Inc. which, in effect, reverses and sets aside the Decision[2] dated October 10, 2014 and Amended Decision[3] dated May 11, 2015 rendered by the Third Division of this Court in CTA Case No. 8306.

In the instant case, petitioner assails the authority of Revenue Officer Mary Anne P. Cruz, alleging that the said revenue officer is not

[1] CTA *En Banc* Rollo, pp. 8-57
[2] Division Docket (Vol. II), pp. 1023-1046
[3] *Ibid.*, pp. 1126-1139

the one authorized in the Letter of Authority (LOA) No. 200800008746[4] to conduct the examination of its records. Petitioner believes that respondent's failure to inform it of the re-assignment of the original officers named in the said LOA is a violation of Revenue Memorandum Order (RMO) No. 08-06[5] and, also, its right to due process of law.

I do not agree.

A reading of the said RMO shows that the same was issued to prescribe guidelines and procedures in implementing the Letter of Authority Monitoring System. It is merely a guide for revenue officers to monitor and track issued LOAs. As a matter of fact, the RMO has the following as its objectives:

> "II. OBJECTIVES
>
> This Order is issued to:
>
> 1. Prescribe policies, guidelines and procedures in encoding Letters of Authority (LAs) whether issued, spoiled, cancelled, lost or missing.
>
> 2. Monitor and track LAs issued from the time it is released up to its closure.
>
> 3. Prevent issuance of multiple LAs for a particular taxpayer for the same taxable period and tax type.
>
> 4. Provide real-time status updates of LAs by authorized revenue officers/officials.
>
> 5. Define the accountability and responsibility of concerned offices and officials/employees over LAs assigned to them.
>
> 6. Ensure timely generation of LA reports for management purposes."

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[4] Exhibit "1", BIR Records, p. 6
[5] "PRESCRIBING GUIDELINES AND PROCEDURES IN THE IMPLEMENTATION OF THE LETTER OF AUTHORITY MONITORING SYSTEM (LAMS)", dated February 1, 2006

Clearly, the said RMO is primarily for encoding and updating the status of all issued LOAs. Nowhere does it confer any right to the taxpayer, nor nullify an assessment in case of non-observance thereof.

In this regard, I find the case of *MEDICARD PHILIPPINES, INC. (MEDICARD) vs. COMMISSIONER OF INTERNAL REVENUE*[6], as instructive on the matter, *viz*:

> "A revenue memorandum order or RMO is an issuance 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. RMC Order No. 32-2007 afore-quoted, and relied upon petitioner here as basis for saying that an LOA should have been issued in this case, is one such issuance that is a natural and necessary incident to the power of the Commissioner to lay down delineations of functions among BIR officials. **It does not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.**" *(Emphasis Ours)*

With regard to the allegation of violation of due process, the same was already answered in the Amended Decision dated May 11, 2015, the relevant portion is hereafter quoted, *viz*:

> "The records of the case proved otherwise. Although RO Cruz is not one of those named in the LOA, the case was referred to her for re-assignment and continuance of audit pursuant to RTAO No. 196-2008 dated September 29, 2008 as per the Referral Memorandum No. 043-AS-12-23-2008-939.
>
> Furthermore, RO Cruz testified through Judicial Affidavit that she was authorized to continue the audit and investigation pursuant to LOA No. 0008746 dated September 9, 2008. She

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[6] CTA Case No. 7948, June 5, 2014

> testified that petitioner was informed of the re-assignment of the case. This was never controverted by petitioner.
>
> Notably, the supposed lack of authority was raised only before this Court, at the judicial level, and was not mentioned in petitioner's protest letter at the administrative level. The issue was neither raised in the Petition for Review nor in the Joint Stipulation of Facts and Issues. Clearly, it was a mere afterthought in trying to justify petitioner's prayer to nullify the assessments. *x x x*"[7] *(Citations Omitted)*

Accordingly, in view of the foregoing, I vote to **DENY** the instant Petition for Review for lack of merit, and **AFFIRM** both the Amended Decision dated May 11, 2015 and Decision dated October 10, 2014 in CTA Case No. 8306.

CAESAR A. CASANOVA
Associate Justice

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[7] Page 4 of the Amended Decision dated May 11, 2015, Division Docket (Vol. II), p. 1129

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMPOSITE MATERIALS, INC., *Petitioner,*	**CTA EB NO. 1314** (CTA Case No. 8306)
- versus -	*Present:*
	DEL ROSARIO, *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN ,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** AUG 15 2017 3:28 p.m.

x---x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleague, Associate Justice Mindaro-Grulla, I register my dissent to the *ponencia* with respect to the finding that the continuation of audit of petitioner's books and records by Revenue Officer (RO) Cruz requires not just a mere referral memorandum but a new Letter of Authority (LOA).

I believe that both the *Sony*[1] and the *Medicard*[2] case are not on all fours with the case at bar. In *Sony,* the primordial issue was not the lack of an LOA but the agents exceeding the authority given. Where the "LOA 19734 covered the period 1997 and unverified prior years", the CIR acting through its revenue officers went beyond the scope of their authority because they included records from January to March 1998 in coming up with their assessment. The Supreme

[1] *Commissioner of Internal Revenue v. Sony Philippines,* Inc., G.R. No. 178697, November 17, 2010.
[2] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

Court then concluded that "the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA."

The *Medicard* case, on the other hand, involved a total absence of an LOA which the Court concluded could not be supplanted by a mere Letter Notice as it violated Medicard's right to due process.

The above-captioned *Composite* case differs from *Sony* and *Medicard* in that an LOA exists in *Composite* and the assessment was limited to examining books of account or accounting records within the period indicated in the LOA. The main issue raised in the *Dissent* goes to the authority of the actual RO that continued the assessment and concluded the same. This was given by way of a Referral Memorandum upon the reassignment of the RO named in the LOA. In concurring with the *Ponencia*, I submit that this could validly be done under the NIRC of 1997, as amended, (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 NIRC, thus:

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

The NIRC, in Section 7 thereof[3], likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised

[3] **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;

exclusively by him. Notably, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC, thus:

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

On the other hand, a Revenue Officer may perform assessment functions pursuant to a validly issued LOA under Section 13 of the NIRC, thus:

> "**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

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(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

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

> manner that the said acts could have been performed by the Revenue Regional Director himself."

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code states that "[b]y the contract of agency 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 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. The RO/s named in the LOA are mere sub-agents of the (RRD).

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[4], the Supreme Court had occasion to expound on the elements of agency, to wit:

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

May the RRD, the CIR's agent, appoint a sub-agent? 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;

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

> (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." *(Emphasis supplied)*

This power to appoint a sub-agent necessarily includes the power to revoke the same. This is what happened when the authority given to the RO De Guzman who was originally named in the LOA was revoked and transferred and reassigned to RO Cruz for continuance of audit by way of Referral Memorandum.

Much emphasis has been placed in the Dissenting Opinion on how a Referral Memorandum is not equivalent to a Letter of Authority. Under the provisions on Agency, Article 1869 states that "[a]gency may be oral, unless the law requires a specific form", referring to those instances wherein a Special Power of Attorney is necessary. Section 13 of the NIRC, on the other hand, requires that assessment be done by ROs pursuant to a Letter of Authority which, in essence is a directive that the grant of authority be done ***in writing.***

Although the Referral Memorandum was not entitled "Letter of Authority", it contains all the elements necessary to establish a contract of agency between the CIR and RO Cruz. The testimony of RO Cruz also points to her acceptance and carrying out of the agency, to wit:

> **"Q5: Why are you familiar with the herein Petitioner?**
>
> **A:** Because I recall having been issued a Memorandum Referral No. 043-AS-12-23-2008-939 dated December 23, 2008 which directed me and GS Alfredo M. Santos to continue the audit and investigation of all internal revenue taxes of Petitioner COMPOSITE MATERIALS, INC. for taxable year 2007 pursuant to Letter of Authority No. 0008746 dated September 9, 2008.
>
> **Q6. If shows you a copy of this Memorandum, would you be able to identify the same?**
>
> **A.** Yes, your Honor.
>
> **Q7. I am showing you a document previously marked as Exhibit "2". Couple you please go over the same and tell**

his honorable Court what the relations of this document to the Memorandum you mentioned?

A. This is the same Memorandum I mentioned.

Q8. If shown you a copy of the Letter of Authority No. 0008746 dated September 9, 2008 issued to Petitioner Composite Materials, Inc. would you be able to identify the same?

A. Yes, Your Honor.

Q9. I am showing you a document previously marked as Exhibit "1". Couple you please go over the same and tell his honorable Court what the relation of this document to the Letter of Authority you mentioned?

A. This is the same Letter of Authority I mentioned.

Q10. After receipt of the Memorandum, what did you do next, if any?

A. I went over Petitioner's BIR Records to determine the extent of the investigation conducted by the previous examiner. At the time of re-assignment, the previous examiner had just requested for the Presentation of Books of Accounts and Other Accounting Records which was served to Petitioner on September 30, 2008. **On January 8, 2009, Petitioner was informed of the re-assignment of the case to me and that I am authorized to continue the audit and investigation pursuant to Letter of Authority No. 0008746 dated September 9, 2008. I then served a Second Request (for Presentation of Records) to the Petitioner to which it responded with the submission of some documents on January 15, 2009. Afterwards, I started the actual tax audit and investigation of the Petitioner.**

Q11. What did you do next if any?

A. I concluded my audit and prepared a Notice for Informal Conference to be signed by Revenue District Officer Rey Asterio L. Tambis which contained the result of my tax audit and investigation.

x x x x x x x x x"

Considering that, given the facts of the case, RO Cruz did not exceed the authority given to her and the audit was limited to examining books of account or accounting records within the period indicated in the LOA in coming up with the assessment, all the elements for a contract of agency are present. That the document granting authority to RO Cruz to continue the audit under the LOA is referred to as a Referral Memorandum is of no moment. 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.[5] The title of the contract does not necessarily determine its true nature.[6] 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 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.[7] 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 optimum interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws.[8]

On a final note, but not any less important, is the glaring fact that the principal, the CIR, has acknowledged, if not ratified, the agency granted to RO Cruz to conduct the audit through the act of championing this very case.

It is for the reasons above that, in my opinion, RO Cruz who conducted the examination of petitioner's records was deemed authorized to do so.

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[5] *Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac vs. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada*, G.R. No. 173211, October 11, 2012 citing *Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr.*, G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; *Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta*, G.R. Nos. 165748 & 165930, September 14, 2011 citing *Lopez v. Lopez*, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.
[6] *Tiu Peck vs. Court of Appeals*, G.R. No. 104404, May 6, 1993.
[7] *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Buñag, 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).
[8] *Gordon vs. Veridiano II*, 167 SCRA 51 (1988).

I therefore vote to **DENY** the Petitions for lack of merit and **AFFIRM** the Decision dated October 10, 2014 and the Amended Decision dated May 11, 2015 in CTA Case No. 8306.

Ma. Belen R. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice