**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**THIRD DIVISION**

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| **RIZAL PROVINCIAL GOVERNMENT Represented by Provincial Administrator Jorge N. Bernardo,** *Petitioner,* | **CTA Case No. 8918** |
| | ***Members:*** |
| **- versus -** | **UY**, *Chairperson,* **RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO**, *JJ.* |
| **BUREAU OF INTERNAL REVENUE,** *Respondent.* | ***Promulgated:*** MAR 12 2020 2:00 p.m. |

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# DECISION

**UY, J.:**

Before this Court is the *Petition for Review with Urgent Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion to Quash Warrant of Distraint and/or Levy*[1] filed on November 6, 2014, by the Rizal Provincial Government, represented by Provincial Administrator Jorge N. Bernardo, against the Bureau of Internal Revenue, praying that the questioned Warrant of Distraint and/or Levy dated October 3, 2014 be declared null and void.

## THE FACTS

Petitioner is a local government unit, with principal office address at Rizal Provincial Capitol Building, Ynares Center Complex, Barangay. San Roque, Antipolo City. It is represented by Provincial Administrator, Jorge N. Bernardo.[2]

Respondent is the national government agency, represented by

[1] Docket – Vol. 1, pp. 6 to 30.
[2] Par. 1, Admitted Facts, JSFI, Docket – Vol. 1, p. 436.

the Commissioner of Internal Revenue, vested by law in general to implement and enforce the provisions of National Internal Revenue Code and with authority to exercise the functions of the said office, including among others, the assessment of deficiency taxes.[3]

Petitioner received[4] a Letter of Authority No. LOA 2001 00066934[5] dated September 7, 2007, authorizing Revenue Officers Susana M. Bundoc, Rufina M. De Jesus, Pilipina U. Ocampo, and Group Supervisor Eudosia P. Bago to examine the books of accounts and other accounting records for all of petitioner's withholding taxes for the year 2006.

Thereafter, petitioner received[6] a Letter[7] dated October 23, 2008 issued by Revenue District Officer Rey Asterio L. Tambis, informing petitioner that RO Mariano M. Flores, under the supervision of Praxedio F. Tulio II, will continue the audit and reinvestigation for the year 2006, pursuant to LOA No. 00066934 dated September 7, 2007. The subject Letter was issued pursuant to Referral No. 043-AS-10-17-2008-232,[8] reassigning the case to RO Mariano M. Flores and Group Supervisor Praxedio F. Tulio II.

On August 13, 2009, RO Mariano M. Flores issued a Memorandum Report,[9] recommending the issuance of a Preliminary Assessment Notice against petitioner.

Pursuant thereto, a Preliminary Assessment Notice[10] was issued on December 28, 2009, assessing petitioner for deficiency expanded withholding tax and deficiency withholding tax on government money payments.

Subsequently, petitioner received[11] the Assessment Notices dated January 15, 2010,[12] and Formal Letter of Demand[13] dated January 15, 2010.

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[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. 1, p. 436.
[4] Par. 4, Admitted Facts, JSFI, Docket – Vol. 1, p. 437.
[5] Exhibit "P-2", Docket – Vol. 1, p. 176; Exhibit "R-2," BIR Records, p. 1.
[6] Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 437.
[7] Exhibit "R-4-a," BIR Records, p. 5.
[8] Exhibit "R-4," BIR Records.
[9] Exhibit "R-8," BIR Records.
[10] Exhibit "R-9," BIR Records, p. 328.
[11] Par. 7, Admitted Facts, JSFI, Docket – Vol. 1, p. 437.
[12] Exhibits "P-9" to "P-9-a," Docket – Vol. 1, pp. 184 to 185; Exhibit "R-10," BIR Records, pp. 329 to 331.
[13] Exhibit "P-10," Docket – Vol. 1, pp. 186 to 187.

On March 22, 2010, Tax Verification Notice (TVN) No. 2003 00123415[14] was issued, authorizing RO Reymel Jacinto to conduct a re-investigation of petitioner's tax liability for the year 2006.

Subsequently, petitioner received the subject TVN,[15] as well as a Letter[16] dated March 23, 2010, informing petitioner that RO Reymel Jacinto was authorized to continue the audit and reinvestigation of deficiency taxes for 2006, pursuant to LOA No. 00066934 dated September 7, 2007 and TVN No. 2003 00123415 dated March 22, 2010.

Pursuant thereto, RO Reymel Jacinto submitted his Memorandum,[17] recommending that the case be forwarded to the Collection Division, to enforce the collection of the assessed tax liabilities. On October 25, 2012, petitioner received[18] the Final Decision on Disputed Assessment.[19]

Finally, on October 9, 2014, petitioner received[20] the assailed Warrant of Distraint and/or Levy[21] dated October 3, 2014.

On November 6, 2014, petitioner filed the instant *Petition for Review with Urgent Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion to Quash Warrant of Distraint and/or Levy.*[22]

For his part, respondent filed his *Opposition (On Petitioner's Motion for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion to Quash Warrant of Distraint and/or Levy)*[23] on December 11, 2014.

In the Resolution[24] dated June 23, 2015, this Court granted the suspension of the collection of taxes, it appearing that the collection

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[14] Exhibit "P-12," Docket – Vol. 1, p. 191; Exhibit "R-11," BIR Records, p. 513.
[15] Par. 9, Admitted Facts, JSFI, Docket – Vol. 1, p. 437.
[16] Exhibit "P-13," Docket – Vol. 1, p. 192; Exhibit : "R-11-a," BIR Records, p. 512.
[17] Exhibit "R-12," BIR Records, p. 514.
[18] Par. 11, Admitted Facts, JSFI, Docket – Vol. 1, p. 437.
[19] Exhibit "P-15," Docket – Vol. 1, p. 194; Exhibit "R-13," BIR Records, p. 517.
[20] Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, p. 437.
[21] Exhibit "P-1", Docket – Vol. 1, p. 175; Exhibit "R-20," BIR Records, p. 525.
[22] Docket – Vol. 1, pp. 6 to 30.
[23] Docket – Vol. 1, pp. 134 to 136.
[24] Docket – Vol. 1, pp. 212 to 216.

of deficiency taxes will jeopardize the financial position and interest of the petitioner, subject to the filing of a surety bond equivalent to double the amount of basic deficiency taxes due.

Respondent filed his *Answer*[25] on January 29, 2015, interposing the following special and affirmative defenses: 1) all presumptions are in favor of the correctness of the assessment; 2) the assessment has already become final, executory and demandable by reason of the failure of the petitioner to timely file a petition for review in accordance with the provisions of Section 228 of the NIRC, as amended; and 3) in fact, summary remedies for the collection of taxes has already been commenced by the respondent.

After the Pre-Trial Conference held on October 27, 2015,[26] the parties submitted their *Joint Stipulation of Facts and Issues*[27] on January 22, 2016. The same was admitted by this Court on January 28, 2016.[28] Thereafter, the Court issued a Pre-Trial Order on February 3, 2016.[29]

On March 22, 2016, respondent filed a *Motion to Dismiss,*[30] alleging that this Court has no jurisdiction over the case, as the petitioner failed to timely file a Petition for Review, in accordance with Section 228 of the Tax Code. Since the Final Decision on Disputed Assessment was issued on September 10, 2012, and received by the petitioner on October 25, 2012, the Petition for Review filed before this Court on November 6, 2014 was allegedly filed beyond the thirty (30) day period provided under Section 228 of the Tax Code.

In its *Comment to Motion to Dismiss*[31] filed on May 10, 2016, petitioner counters that: 1) respondents erred when it issued the questioned Warrant, as the period to assess and collect was already barred by prescription; and 2) respondent prematurely issued the Final Decision, on which the questioned Warrant was based.

In the Resolution[32] dated June 9, 2016, this Court denied the *Motion to Dismiss*, ratiocinating, as follows:

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[25] Docket – Vol. 1, pp. 163 to 166.
[26] Docket – Vol. 1, p. 420.
[27] JSFI, Docket – Vol. 1, pp. 436 to 442.
[28] Docket – Vol. 1, p. 445.
[29] Docket – Vol. 1, pp. 448 to 456.
[30] Docket – Vol. 1, pp. 468 to 470.
[31] Docket – Vol. 1, pp. 481 to 489.
[32] Docket – Vol. 1, pp. 492 to 494.

> "We observe that there is only one set of Assessment Notices, those dated January 15, 2010, accompanied by a Formal Letter of Demand. Part of due process in the issuance of deficiency tax assessments, according to Revenue Regulations No. 12-99, is that a preliminary assessment notice (PAN) be issued to the taxpayer, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. The taxpayer is given the opportunity to dispute the PAN before a final assessment notice (FAN) can be validly issued.
>
> It is unclear to us, based on the record, whether the Assessment Notices were the PAN or the FAN; which begs the question of whether another set of assessment notices were issued to complement the same.
>
> True, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favour of the correctness of a tax assessment unless proven otherwise. However, in light of the foregoing discussion, this presumption cannot be made the basis of dismissing the instant case.
>
> Justice will be better served if the case continues through its natural course, rather than truncated at this juncture with serious questions left unresolved."

During trial, petitioner presented the following witnesses: Cecilia C. Almajose, Florante Aninag and Generoso M. Bunyi, Jr. Thereafter, petitioner submitted its *Formal Offer of Documentary Evidence*[33] on January 4, 2017, to which respondent filed his *Comment (To Petitioner's Formal Offer of Evidence)*[34] on January 5, 2017.

In the Resolution[35] dated February 3, 2017, the Court admitted the evidence presented, with the exception of exhibits "P-2," "P-3," "P-4," "P-5," "P-6," "P-6-a," "P-6-b" to "P-6-b-3," "P-6-c" to "P-6-c-3," "P-6-d" to "P-6-d-2", "P-7," and "P-8," for failure to present their originals for comparison.

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[33] Docket – Vol. 2, pp. 543 to 549.
[34] Docket – Vol. 2, pp. 550 to 551.
[35] Docket – Vol. 2, pp. 555 to 556.

On March 15, 2017, petitioner filed a *Manifestation with Motion for Reconsideration*[36] praying that the following denied exhibits "P-2," "P-3," "P-4," "P-5," "P-6," "P-6-a," "P-6-b" to "P-6-b-3," "P-6-c" to "P-6-c-3," "P-6-d" to "P-6-d-2", "P-7," and "P-8," be admitted as evidence.

In the Resolution[37] dated June 5, 2017, the Court partially granted petitioner's *Manifestation with Motion for Reconsideration*, and admitted exhibits "P-2," "P-6-a," "P-6-b" to "P-6-b-3," "P-6-c" to "P-6-c-3," "P-6-d" to "P-6-d-2," subject to final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case. However, the admission of exhibits "P-3", "P-4", "P-5", "P-6", "P-7" and "P-8" were still denied.

For his part, respondent presented the following witnesses: Mary Grace S. Luces and Reymel E. Jacinto. Thereafter, respondent filed his *Formal Offer of Evidence*[38] on August 22, 2018, to which petitioner filed his *Comment (To: Respondent's "Formal Offer of Evidence" dated August 20, 2018)*[39] on September 13, 2018.

On August 20, 2018, petitioner filed a *Manifestation with Motion to Strike Out*[40] praying that the following exhibits be stricken out, as the said documents were not attached to the submitted Judicial Affidavit, nor presented during trial, nor were they identified by the witness through his testimony: 1) "R-1" – Tax docket of Rizal Provincial Government for taxable year 2007; 2) "R-5-a" – Third and Final Notice; and 3) "R-6" – Revalidation Notice.

In the Resolution[41] dated January 30, 2019, petitioner's *Motion to Strike Out* was denied for lack of merit, while all of respondent's exhibits were admitted, subject to this Court's final evaluation and/or appreciation of their probative value to the issues involved in the case.

On March 15, 2019, petitioner filed its *Memorandum*,[42] without respondent's Memorandum as per Records Verification Report dated

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[36] Docket – Vol. 2, pp. 558 to 563.
[37] Docket – Vol. 2, pp. 686 to 692.
[38] Docket – Vol. 2, pp. 769 to 774.
[39] Docket – Vol. 2, pp. 813 to 820.
[40] Docket – Vol. 2, pp. 775 to 779.
[41] Docket – Vol. 2, pp. 824 to 826.
[42] Docket – Vol. 2, pp.834 to 857.

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March 20, 2019.[43] Thereafter, the case was submitted for decision on March 29, 2019.[44]

Hence, this Decision.

## THE ISSUES

The parties raised the following issues for resolution, to wit:

> "1. Whether or not the Warrant of Distraint and/or Levy issued on October 3, 2014 by Ms. Alice S. Gonzales, Chief of the Collection Division, Revenue Region No. 7 of the Bureau of Internal Revenue, Quezon City is null and void on grounds of deprivation of the petitioner's right to due process;
>
> 2. Whether or not the Assessment has become final, executory and demandable by reason of the failure of petitioner to timely file the petition for review;
>
> 3. Whether petitioner Provincial Government of Rizal is liable for any deficiency assessments for taxable year ending December 2006 or has petitioner paid all revenue taxes in relation thereto."[45]

***Petitioner's arguments:***

Petitioner argues that the respondent gravely erred when it issued the questioned warrant, notwithstanding the fact that it had no right and/or power to do so because its right to assess and collect was already barred by prescription.

On the assumption, however, that the issuance of the questioned warrant is not barred by prescription, respondent gravely erred when it failed to consider and appreciate the documents submitted to prove that petitioner is not liable for any deficiency taxes because all revenue taxes have been paid.

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[43] Docket – Vol. 2, p. 832.
[44] Docket – Vol. 2, p. 860.
[45] Issues to be Tried and Resolved, JSFI, Docket – Vol. 1, p. 437. /0

Moreover, petitioner asserts that assuming the issuance of the questioned warrant is not barred by prescription, respondent gravely erred when it issued the Final Decision based solely on the alleged ground that the required documents had not been submitted.

Finally, on the assumption that the issuance of the questioned warrant is not barred by prescription, petitioner insists that the respondent gravely erred when it prematurely issued the Final Decision upon which the questioned warrant was based.

***Respondent's counter-arguments:***

Respondent counters that all presumptions are in favor of the correctness of the assessment. In addition, the assessment has already become final, executory and demandable by reason of the failure of the petitioner to timely file a petition for review, in accordance with the provisions of Section 228 of the NIRC, as amended. In fact, summary remedies for the collection of taxes has already been commenced by the respondent.

**THE COURT'S RULING**

The Petition for Review has merit.

***This Court has jurisdiction to entertain the present appeal.***

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[46] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[47]

This Court, being a court of special jurisdiction, can only take cognizance of such matters as are clearly within its jurisdiction.[48]

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[46] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, citing *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals*, G.R. No. L-23988, January 2, 1968.
[47] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.
[48] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

Section 7 (a) (1) of R.A. No. 1125, as amended by R.A. Nos. 9282 and 9503, states the jurisdiction of the CTA over other matters arising under the NIRC or other laws administered by the BIR, to wit:

> "**SEC. 7.** ***Jurisdiction***. — The CTA shall exercise:
>
> (a) *Exclusive appellate jurisdiction to review by appeal,* as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue**;
> xxx xxx xxx." *(Emphasis supplied)*

Corollary thereto, Section 3 (a) (1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "**SEC. 3.** ***Cases within the jurisdiction of the Court in Division***. — The Court in Division shall exercise:
>
> (a) *Exclusive original or appellate jurisdiction to review by appeal* the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;
> xxx xxx xxx." *(Emphasis supplied)*

In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[49] the Supreme Court held that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. Rather, the term "**other matters**" encompasses the determination of whether the warrant of distraint and levy issued by the BIR is valid, to wit:

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[49] G.R. No. 162852, December 16, 2004.

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> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected."

Based on the foregoing, the determination of the validity of a warrant of distraint and levy issued by the BIR, falls within the ambit of this Court's jurisdiction, under the term "**other matters arising under the NIRC or other laws administered by the Bureau of Internal Revenue**." Thus, this Court has jurisdiction over the subject appeal, under the term "other matters," pursuant to the aforequoted Section 7 (a) (1) of RA No. 1125, as amended, and Section 3 (a) (1), Rule 4 of the RRCTA.

In this case, records show that petitioner received[50] the assailed Warrant of Distraint and/or Levy on October 9, 2014.[51] Thus, petitioner had thirty (30) days from October 9, 2014, or until November 8, 2014, within which to file its Petition for Review. Considering that petitioner filed the instant Petition for Review[52] on November 6, 2014, the same is timely filed, and this Court has jurisdiction to entertain the subject appeal.

***The revenue officers who conducted the audit and subsequent reinvestigation of petitioner, were not authorized to examine the latter's books of accounts and other tax records. Thus, the subject tax assessments are void.***

While not specifically raised by the parties, this Court resolves to rule on the authority of the revenue officers who conducted the audit and subsequent reinvestigation of the petitioner, as the

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[50] Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, p. 437.
[51] Exhibit "P-1", Docket – Vol. 1, p. 175; Exhibit "R-20," BIR Records, p. 525.
[52] Docket – Vol. 1, pp. 6 to 30.

determination thereof affects the validity of the subject tax assessments. After all, this Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.[53]

In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[54] the Supreme Court elucidated on the importance of the authority of the revenue officer relative to the performance of assessment functions, 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**. Section 6 of the NIRC clearly provides as follows:
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> > **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
> >
> > (A) **Examination of Return and Determination of Tax Due**. — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> > xxx xxx xxx

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[53] Section 1, Rule 14 of the RRCTA; *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017.
[54] G.R. No. 222743, April 5, 2017.

Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, <u>through an LOA</u>**, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations <u>without prior authority</u>**.

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

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

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

Based on the foregoing jurisprudential pronouncements, revenue officers must be authorized by a valid LOA, prior to the exercise of its assessment functions, such as the examination of books of accounts and accounting records of the taxpayer. In the absence of such LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

Relative thereto, Section 13 of the NIRC of 1997, as amended, provides as follows:

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

Thus, in order for a Revenue Officer to validly examine taxpayers and perform tax assessment and collection functions, the said Revenue Officer must first be clothed with authority by a valid LOA.

The significance of the LOA and the authority it confers upon the Revenue Officer, is further highlighted in RMO No. 43-90, which prescribes the revised policy guidelines for the audit/investigation and issuance of letters of authority to audit. Specifically, it requires that **<u>all</u>** audits/investigations should be conducted under a Letter of Authority, and requires the issuance of a **<u>new LOA</u>** in case of any reassignment or transfer of cases to another Revenue Officer, 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.
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> xxx xxx xxx
>
> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have

already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As."

In this case, Letter of Authority No. LOA 2001 00066934[55] dated September 7, 2007, authorizes ROs Susana M. Bundoc, Rufina M. De Jesus, Pilipina U. Ocampo, and Group Supervisor Eudosia P. Bago to examine the books of accounts and other accounting records for all of petitioner's withholding taxes for the year 2006.

However, it was RO Mariano M. Flores who issued a Memorandum Report[56] on August 13, 2009, recommending the issuance of a Preliminary Assessment Notice against petitioner. The subject recommendation was pursuant to Referral No. 043-AS-10-17-2008-232,[57] reassigning the case to RO Mariano M. Flores and Group Supervisor Praxedio F. Tulio II.

Thereafter, Tax Verification Notice (TVN) No. 2003 00123415[58] was issued on March 22, 2010, authorizing RO Reymel Jacinto to conduct a re-investigation of petitioner's tax liability for the year 2006.

Subsequently, RO Reymel Jacinto submitted his Memorandum,[59] recommending that the case be forwarded to the Collection Division, to enforce the collection of the assessed tax liabilities.

From the foregoing, it is clear that RO Mariano M. Flores was not authorized by a new LOA, when he exercised assessment functions, such as making a recommendation for the issuance of a PAN against the petitioner. Rather, the authority of RO Flores stems from a mere Referral, in direct contravention of RMO No. 43-90. In addition, there was likewise no valid LOA issued authorizing RO Reymel Jacinto to conduct a re-investigation of petitioner's tax liability for the year 2006, as he was merely authorized to conduct a re-investigation by a mere TVN.

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[55] Exhibit "P-2", Docket – Vol. 1, p. 176; Exhibit "R-2," BIR Records, p. 1.
[56] Exhibit "R-8," BIR Records.
[57] Exhibit "R-4," BIR Records.
[58] Exhibit "P-12," Docket – Vol. 1, p. 191; Exhibit "R-11," BIR Records, p. 513.
[59] Exhibit "R-12," BIR Records, p. 514.

Considering that the ROs who acted on petitioner's case were not properly clothed with proper authority through a requisite LOA, the subject tax assessments, resulting from the investigation, audit, and recommendation of ROs Flores and Jacinto are void.

Aside from the lack of authority of the revenue officers, which rendered the subject tax assessments void, this Court notes that the assessments also suffer from other infirmities, which affect its validity, as will be discussed below.

***The amount stated in the Formal Letter of Demand (FLD) remains indefinite as it did not set and fix the tax due from the petitioner, thus rendering the subject tax assessment void and of no effect.***

An assessment "refers to the determination of amounts due from a person obligated to make payments."[60] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[61]

The tax assessments under the NIRC of 1997, as amended, is required to be communicated to the taxpayer, in a Formal Letter of Demand and Assessment Notice, in accordance with Section 3.1.4 of Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-13. In this case, the Formal Letter of Demand[62] dated January 15, 2010 issued by the respondent against the petitioner, states that the interest and total amount due will be adjusted in paid beyond February 15, 2010, to wit:

> ***"Please note that the interest and the total amount due will have to be adjusted if paid beyond February 15, 2010."*** *(Underscoring supplied.)*

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[60] *SMI-ED Phil. Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.
[61] *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[62] Exhibit "P-10," Docket – Vol. 1, pp. 186 to 187.

A perusal of the foregoing reveals that while the FLD presented computations of the supposed tax liabilities of the petitioner, it still stated that the interest and total amount due would be subject to adjustment if payment is made beyond February 15, 2010. The foregoing uncertainty cannot be countenanced, since it falls short of the requirement that the written notice contains a demand from the taxpayer for the "*settlement of a due tax liability that is there definitely set and fixed.*"[63]

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,[64] the Supreme Court held that a Final Assessment Notice that lacks the definite amount of tax liability for which the taxpayer is accountable, is not a valid assessment, to wit:

> "The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.
>
> xxx xxx xxx
>
> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An

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[63] *Adamson, et al. vs. Court of Appeals, et al., supra.*
[64] G.R. No. 215957, November 9, 2016.

> assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' **Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment**. Thus:
>
> > 'The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. ***Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004***.'
>
> xxx xxx xxx
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. **It is not a mere formality**. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." *(Emphasis supplied.)*

From the foregoing, it is clear that an FLD, which contains the statement that the "*interest and total amount due will have to be adjusted if paid beyond xxx*," will not be considered as a valid assessment, as the amount of tax due therein remains indefinite, as it is subject to modification, depending on the date of payment.

As applied to this case, the amount of tax liability due from the petitioner remains indefinite in the subject FLD, thus rendering the subject tax assessment void and of no effect.

***The subject FDDA is void for failing to comply with Section 3.1.5 of Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-13.***

Finally, this Court notes that the subject Final Decision on Disputed Assessment is void for failing to comply with Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-13, which states that:

> "**SEC. 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
>
> xxx xxx xxx
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* — The decision of the Commissioner or his duly authorized representative **shall** state the (i) **facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void** (see illustration in ANNEX "C" hereof), and (ii) that the same is his final decision." *(Emphasis supplied.)*

The foregoing provision, states, in no uncertain terms, that the failure of an FDDA to state the facts, law and jurisprudence on which it is based, is considered void and of no effect.

For easy reference, pertinent portions of the subject FDDA reads as follows:

> "Madam:
>
> This refers to your internal revenue tax liabilities for the calendar year 2006 for which you have filed a protest letter dated January 15, 2010.
>
> Please be informed that your case was returned by the investigating officer of Revenue District Office No. 43A, Pasig City, recommending for the reiteration of the assessments issued against you considering that you failed to submit documents in support of your protest.

In view thereof, it is requested that your tax liability per Final Assessment Notice/Demand Letter No. F43-473A dated January 15, 2010 be paid immediately with the authorized agent bank in which you are enrolled and to submit to this office the proof/s of payment.

This is our **FINAL DECISION**. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from the date of receipt hereof, otherwise our said deficiency tax liabilities shall become final, executory and demandable.

Thank you."

A perusal of the foregoing FDDA shows that it does not contain any statement of facts, law or jurisprudence, on which the decision is based, in contravention of Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-13. Thus, the subject FDDA is void and of no effect.

Considering the above-stated infirmities of the subject tax assessment, this Court is bound to its duty to declare the same as void and of no effect, as a void assessment bears no fruit.[65]

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED.** Accordingly, the assessment for deficiency withholding taxes and the Warrant of Distraint and/or Levy issued against the petitioner for taxable year 2006 is hereby **CANCELLED** and **SET ASIDE.**

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

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

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WE CONCUR:

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

**MARIA ROWENA MODESTO-SAN PEDRO**
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.

**ERLINDA P. UY**
*Associate Justice*
Chairperson, 3rd Division

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
*Presiding Justice*

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

***Third Division***

**RIZAL PROVINCIAL GOVERNMENT Represented by Provincial Administrator Jorge N. Bernardo,**
*Petitioner,*

**CTA CASE NO. 8918**

-versus-

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

**BUREAU OF INTERNAL REVENUE,**
*Respondent.*

**Promulgated:**
MAR 12 2020
3:00 p.m.

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

# SEPARATE CONCURRING OPINION

**RINGPIS-LIBAN, J.:**

I concur with the Decision which granted the Petition for Review thereby cancelling the assessment for deficiency withholding taxes and the Warrant of Distraint and/or Levy issued against petitioner on the following grounds: that the Revenue Officer (RO) and Group Supervisor (GS) named in the Memorandum were not validly authorized to conduct the investigation; that the Formal Letter of Demand (FLD) failed to state the definite amount of tax liability due from petitioner; and that the Final Decision on Disputed Assessment (FDDA) failed to comply with the provisions of Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-13.

However, I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in their favor, RO Mariano M. Flores and GS Praxedio F. Tullio II may be given the authority to continue the audit and examination of Rizal Provincial Government's books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, issued by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.

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

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

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[1]

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

> "SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

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[1] *Emphasis and underscoring supplied.*

(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."

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

"SEC. 10. **Revenue Regional Director.** – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:

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."

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[2] *Emphasis and underscoring supplied.*

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 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 Regional Director, his agent.

May the Regional Director, the CIR's agent, appoint a sub-agent, in this case, the Revenue Officer 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 ROs Susana M. Bundoc, Rufina M. De Jesus, Pilipina U. Ocampo, and GS EUdosia P. Bago, who were

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3 G.R. No. 188288, January 16, 2012.
4 *Emphasis supplied.*
5 *Emphasis supplied.*

originally named in the LOA may be revoked, transferred and reassigned to RO Mariano M. Flores and GS Praxedio F. Tullio II 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 NIRC of 1997, as amended,[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 agency between the CIR and the new Revenue Officer. 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 NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[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

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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.

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. 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.

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).

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 ("RMO") 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 Mariano M. Flores and GS Praxedio F. Tullio II who conducted the examination ofRizal Provincial Government's records may be deemed authorized to do so without need for a new LOA, **only if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service**.

Under RMO No. 29-07[14], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant</u> <u>Commissioner/Head</u> <u>Revenue</u> <u>Executive</u> <u>Assistants</u>.**"[15]

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[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.

[14] Issued September 26, 2007.

[15] *Emphasis and underscoring supplied.*

In the instant case however, **the Memorandum with Referral No. 043-AS-10-17-2008-232[16] was only signed by Mr. Rey Asterio L. Tambis, Revenue District Officer. Therefore, RO Mariano M. Flores and GS Praxedio F. Tullio II were without authority to continue the audit.**

From all the foregoing, I vote that the Petition for Review be GRANTED.

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

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16 Exhibit "R-4."