REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

UPS SCS (PHILIPPINES), INC.,
Petitioner,

CTA CASE NO. 9462

-versus-

Members:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 24 2019
4:30 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This Petition for Review filed by UPS SCS (Philippines), Inc. prays for the cancellation and withdrawal of the Commissioner of Internal Revenue's deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, fringe benefit tax, documentary stamp tax, and improperly accumulated earning tax assessments, including compromise penalties, in the aggregate amount of ₱130,451,420.43 for the calendar year 2010.

THE FACTS

Petitioner UPS SCS (Philippines), Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Solar Land Compound, NAIA Avenue, Sto. Niño, Parañaque City.[1] It may be served orders, notices, resolutions, and other processes of this Court through its counsel.[2]

Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office No. 52, as shown by its Certificate of Registration dated July 15, 1992 with Taxpayer's Identification No. 001-776-941-000.[3]

On the other hand, Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter* alia, the power to decide on disputed assessments, pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.

On November 23, 2011, Respondent issued Letter of Authority (LOA) No. 052-2011-00000461[4] authorizing Revenue Officer Arnold M. Maggay and Group Supervisor Lina I. Inductivo to examine Petitioner's books of accounts and other accounting records for calendar year (CY) 2010.[5]

On December 4, 2014, Petitioner received a copy of the Preliminary Assessment Notice[6] (PAN) with attached Details of Discrepancies dated December 1, 2014, in which Respondent informed Petitioner of the proposed assessment for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefits tax (FBT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET) and imposition of compromise penalties for CY 2010 in the aggregate amount of ₱110,039,235.37.[7]

On December 19, 2014, Petitioner filed its Reply to the PAN[8] contesting the preliminary finding that it was liable for deficiency IT, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalty in the aggregate amount of ₱110,039,235.37.[9]

On December 23, 2014, Petitioner received a copy of the Formal Assessment Notice[10] (FAN) dated December 22, 2014 with attached Details of Discrepancies. In the FAN, Respondent ordered Petitioner to pay its alleged

[1] Exhibit "P-1".
[2] *Docket*, p. 590, Joint Stipulation of Facts and Issues (JSFI), Stipulated Facts, par. 1.
[3] *Id.*, p. 590, par. 2.
[4] Exhibit "P-3".
[5] *Id.* at Note 2, p. 591, par. 4.
[6] Exhibit "P-4".
[7] *Id.* at Note 5, par. 5.
[8] Exhibit "P-5".
[9] *Id.* at Note 5, par. 6.
[10] Exhibit "P-6".

deficiency income tax, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalty for CY 2010 in aggregate amount of ₱111,076,161.03.[11]

On January 22, 2015, Petitioner filed a Protest Letter[12] against the FAN requesting the cancellation and withdrawal of the deficiency assessments for IT, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalties for CY 2010. Petitioner attached supporting documents to its protest letter.[13]

On August 4, 2016, Petitioner received a copy of the Final Decision on Disputed Assessment[14] (FDDA) dated July 25, 2016 with attached Details of Discrepancies. In the FDDA, Respondent ordered Petitioner to pay alleged deficiency IT, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalties for CY 2010 in the total amount of ₱130,451,420.42.[15]

Aggrieved, Petitioner filed the instant Petition for Review[16] on September 2, 2016.

After granting being granted an extension of time,[17] Respondent filed his Answer[18], through registered mail, on November 18, 2016, interposing the following special and affirmative defenses, *viz.*:

> 4. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
>
> 5. Petitioner was assessed for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, fringe benefit tax, documentary stamp tax and improperly accumulated earnings tax for taxable year 2010 for the reason that during the administrative investigation of its tax case by the Bureau of Internal Revenue (BIR), petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN), Formal Assessment Notice (FAN) and FDDA dated July 25, 2016 which are briefly discussed hereunder, viz.:
>
> **<u>INCOME TAX:</u>**

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[11] *Id.* at Note 5, par. 7.
[12] Exhibit "P-7".
[13] *Id.* at Note 5, par. 8.
[14] Exhibit "P-9".
[15] *Id.* at Note 5, par. 9.
[16] *Id.* at Note 2, pp. 8-45.
[17] *Id.*, p. 164.
[18] *Id.*, pp. 165-171.

A.) Disallowed Expenses due to non-withholding amounting to ₱1,690,093.93:

- Verification disclosed that petitioner did not withhold the appropriate withholding tax due in their income payments. Section 34(K) of the NIRC expressly provides that 'any amount paid or payable which otherwise deductible form, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with the Section of this Code.' Hence, the aforementioned expenses have been disallowed.

B.) Salaries and Wages not subjected to withholding tax amounting to ₱3,219,555.28:

- Reconciliation of salaries and wages and other benefits per Financial Statements versus amount subjected to withholding tax per alphalist disclosed that there were salaries not subjected to withholding tax amounting to ₱3,219,555.28. Hence, this amount was disallowed as deduction from gross income for income tax purposes pursuant to Section 34(K) of the NIRC.

C.) Unaccounted Expenses amounting to ₱9,777,789.40:

- Verification disclosed that there are some professional fees that were not accounted/reflected in the Financial Statements. These differences were then treated as unaccounted source of cash which was considered as undeclared income pursuant to Section 32 of the NIRC as what has been in the case of *Perez vs. CTA and CIR* L-9193 dated May 29, 1957, 'unreflected sources of funds not accounted for in the taxpayer's tax return led to the influence that part of his income had not been reported.'

D.) Unsupported Expenses amounting to ₱1,558,778.00:

- Verification disclosed that petitioner did not provide supporting documents or evidence to support some of their expenses in violation of Section (A)(1)(b) of the NIRC as amended, which states that, 'no deductions from gross income shall be allowed under this Subsection (A) hereof, unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or adequate record; (i) the amount of expenses being deducted...'

E.) Gain on Disposal of Property & Equipment amounting to ₱99,446.00:

- Verification disclosed that the gain on disposal of property and equipment in the amount of ₱99,446.00 was not subjected to income tax, hence assessed pursuant to Section 22 of the NIRC.

F.) Excess of Tax Credit carried over to succeeding year amounting to ₱46,295,024.34:

- Excess tax credit carried over to succeeding period in the amount of ₱46,295,024.34 was deducted from the total allowable tax credit considering that the said amount has been credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable years pursuant to section 76 of the NIRC.

G.) Excess Minimum Corporate Income Tax (MCIT) carried over to succeeding period amounting to ₱3,567,631.00:

- The MCIT paid was not allowed as tax credit against the computed deficiency income tax, considering that the said amount shall be carried over and credited against the normal income tax for three (3) immediately succeeding taxable year in compliance with the provision imposed under Section 27(E)(2) of the Tax Code.

<u>VALUE ADDED TAX (VAT);</u>

H.) Unsupported zero-rated sales amounting to ₱405,307,580.50:

- The alleged zero-rated sales claimed per VAT returns filed were also subjected to VAT for failure to submit proof that the said sales were qualified for zero-rating. Section 105 of the NIRC states that, 'Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services and pay any person who imports goods in subject to the value-added tax (VAT) imposed in Section 106 and 108 of this Code which is ten percent (10%) (now 12% pursuant to RA 9337) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.'

I.) Revenues not subjected to VAT amounting to ₱15,388,557.49:

- Comparison of gross receipts computed based on the data reported per Financial Statements as against the amount of receipts subjected to VAT per returns showed that there are receipts not subjected to VAT amounting to ₱15,388,557.49. Pursuant to Section 105 in relation to Section 108 of the NIRC.

J.) Proceeds from Sale of Property & Equipment amounting to ₱99,446.00;

- Verification disclosed that the net proceeds from sale of property and equipment in the amount of ₱99,446.00 was not subjected to value-added tax, hence assessed pursuant to Section 105 in relation to Section 106 of the NIRC.

K.) Input Tax Carried Forward to Succeeding Quarter amounting to ₱38,692,725.42:

- The excess input tax amounting to ₱38,692,725.42 was not applied against the output tax in computing deficiency VAT since this shall be carried over to the next succeeding period/quarter(s) as provided under Section 110(B) of the NIRC.

EXPANDED WITHOLDING TAX;

L.) Basic Tax Due to Non-Withholding amounting to ₱65,639.54:

- Verification disclosed that petitioner failed to withhold/remit the correct withholding tax due on several income payments previously disallowed as deductions from gross income hence still liable to pay deficiency withholding tax pursuant to Section 2.57.1 of Revenue Regulations No. 2-98.

WITHHOLDING TAX ON COMPENSATION;

M.) Basic Withholding Tax on Compensation amounting to ₱539,145.51:

- Since petitioner failed to withhold/remit the correct withholding tax on the salaries and wages previously disallowed from gross income, petitioner is still liable to pay the withholding tax on compensation, pursuant to Section 79(A) of the NIRC and implemented under Section 2.78 of Revenue Regulations 2-98.

FRINGE BENEFIT TAX;

N.) Basic Tax Due amounting to ₱4,437,448.47:

- Investigation disclosed that petitioner failed to pay the fringe benefit tax on short term benefits provided to general managers and site controller in violation of Section 33 of the NIRC as implemented under Revenue Regulations No. 3-98, hence, assessed pursuant to the said provisions.

DOCUMENTARY STAMP TAX:

O.) Basic Documentary Stamp Tax Due amounting to ₱156,134.00:

- Verification disclosed that petitioner failed to subject their affiliates from documentary stamp tax due.

IMPROPERLY ACCUMULATED EARNINGS TAX;

P.) Basic Tax Due amounting to ₱479,680.60:

- Verification disclosed that petitioner's retained earnings exceeded one hundred percent (100%) of the corporation's paid-up capital, hence, permitted the same to accumulate beyond the reasonable needs of their business to avoid tax upon its shareholders. Accordingly, petitioner is liable for ten percent (10%) improperly accumulated earnings tax pursuant to Section 29 of the NIRC as implemented by Revenue Regulations No. 02-01 and RMC 35-2011.

COMPROMISE PENALTY;

- Verification disclosed that petitioner failed to comply with the enumerated provisions on time or times required by existing revenue laws, rules and regulations as stated hereunder, in relation to Section 255 of the NIRC as amended by RA 8424.

However, in lieu of instituting criminal action, BIR is amenable to settle the same extra judicially, subject to condition that petitioner shall pay the amount of ₱61,000.00 for above stated violations pursuant to the schedules of suggested compromise penalties prescribed under RMO No. 1-90 in relation to Section 7(C) and 204(B) of the NIRC.

Nature of Violation	Violated Provision	Amount Due
Failure to file Improperly Accumulated Earnings Tax	Sec. 29 of the NIRC	₱ 20,000.00
Failure to file Documentary Stamp Tax	Sec. 179 of the NIRC	₱ 16,000.00
Failure to File Fringe Benefit Tax	Sec. 33 of the NIRC	₱ 25,000.00
TOTAL		**₱61,000.00**

6. Petitioner was assessed by respondent for deficiency income tax, value added tax, expanded withholding tax, withholding tax on compensation, fringe benefit tax, documentary stamp tax and improperly accumulated earnings tax for taxable year 2010 within the prescriptive period under Section 222 (b) of the 1997 Tax Code, in view of the Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code duly executed by petitioner;

7. In the landmark case of **Aznar vs. Court of Tax Appeals and Collector of Internal Revenue (G.R. No. L-20569, August 23, 1974)** the Supreme Court stated that a false return is one which contains wrong information due to mistake, carelessness or ignorance. The word 'false' is defined as an adjective which means not true or not correct. Intent to evade is immaterial in case of filing false returns. As long as there is some deviation from the truth, whether it is due to mistake, ignorance or carelessness, falsity arises.

8. The assessments issued against petitioner for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, fringe benefit tax, documentary stamp tax and improperly accumulated earnings tax for taxable year 2010 were made in accordance with law and regulations;

9. Assessment are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed ***(Aban, law of Basic Taxation in the Philippines, 1st Edition, p. 109).***

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A Notice of Pre-Trial Conference[19] was then issued by this Court on November 25, 2016. Accordingly, Respondent's Pre-Trial Brief[20] was filed through registered mail on March 3, 2017, while Petitioner's Pre-Trial Brief[21] was filed on March 16, 2017.

On April 5, 2017, the parties filed their Joint Stipulation of Facts and Issues[22] (JSFI). Subsequently, a Pre-Trial Order[23] was issued by this Court on April 24, 2017, approving and adopting the parties' JSFI and which also deemed the pre-trial terminated.

Meanwhile, on July 5, 2017, Petitioner filed a Motion to Commission an Independent Certified Public Accountant[24], praying that Atty. Myra Myla S. Maralit of R.G. Manabat & Co. be commissioned as the independent certified public accountant (ICPA) for the present case. Thus, in the Order[25] dated July 11, 2017, this Court, there being no objection from Respondent, granted Petitioner's Motion thereby commissioning Atty. Maralit as the ICPA for the present case.

During trial, Petitioner presented as witnesses, Ms. Sarah Stephanie Torio[26], its Finance and Accounting Manager, and the court-commissioned ICPA, Atty. Maria Myla S. Maralit[27], who both testified on direct by way of judicial affidavits.

Thereafter, Petitioner filed a Formal Offer of Evidence[28] on November 9, 2017. In the Resolution respectively dated January 31, 2018[29] and May 22, 2018[30], this Court eventually admitted as evidence Petitioner's exhibits except for Exhibit "P-3136" which remained denied for not being found in the records of the case. With the admission of its exhibits, Petitioner was then deemed to have rested its case.

When called to present his case, counsel for Respondent filed a Manifestation[31] on July 12, 2018, stating that he will no longer be presenting any evidence/witness since he has had difficulty contacting the revenue officers

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[19] *Id.*, pp. 173-174.
[20] *Id.*, pp. 183-185.
[21] *Id.*, pp. 189-213.
[22] *Id.*, pp. 590-613.
[23] *Id.*, pp. 615-627.
[24] *Id.*, pp. 658-661.
[25] *Id.*, p. 679.
[26] *Id.*, pp. 685-716; Exhibits "P-65" and "P-65-1"; Amended Sworn Statement of Ms. Sarah Stephanie Torio dated August 3, 2017.
[27] *Id.*, pp. 1401-1425; Exhibits "P-66" and "P-66-1"; Sworn Statement of Atty. Maria Myla S. Maralit dated September 21, 2017.
[28] *Id.*, pp. 1478-1S13.
[29] *Id.*, pp. 1778-1780.
[30] *Id.*, pp. 1811-1814.
[31] *Id.*, pp. 1816-1817.

he intended to present as witnesses since all of them have retired from the service. As such, in the Resolution[32] dated July 27, 2018, this Court noted Respondent's manifestation and gave the parties a period of thirty (30) days within which to file their respective memoranda.

On August 29, 2018, Memorandum for Respondent[33] was filed through registered mail, while Petitioner filed its Memorandum[34] on September 20, 2018. Accordingly, in the Resolution[35] dated September 24, 2018, this Court deemed the present case submitted for decision.

THE ISSUE

The main issue[36] submitted by the parties for this Court's disposition is, whether or not Petitioner is liable for deficiency IT, VAT, EWT, WTC, FBT, DST, and IAET including compromise penalties for CY 2010 in the aggregate amount of ₱130,451,420.43.

THE RULING OF THE COURT

To begin, there is nothing in Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) that limits the power of this Court to resolve only issues that are duly raised by the parties. In fact, the rule permits this Court to resolve not only the issues brought forth by the parties, but also those related or interwoven with the issues raised and even those that are necessary to pass upon in order to achieve an orderly disposition of the case before it.

Section 1, Rule 14 of the RRCTA provides:

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

In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[37] the Supreme Court affirmed that the CTA can resolve an issue not raised by the parties in their pleadings or memoranda, thus:

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[32] *Id.*, p. 1820.
[33] *Id.*, pp. 1825-1829.
[34] *Id.*, pp. 1833-1889.
[35] *Id.*, p. 1891.
[36] *Id.*, pp. 592.
[37] G.R. No. 183408, July 12, 2017.

> "From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms 'other matters' under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.
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> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**. x x x
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> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda." *(Emphasis supplied)*

It is axiomatic that, at the heart of every assessment conducted by the BIR, there must be a valid grant of authority. This doctrine still prevails to this day almost a decade after it was embodied in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[38] where the Supreme Court pronounced 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. In the absence of such an authority, the assessment or examination is a nullity."[39]

Thus, prior to discussing the extent of Petitioner's liability for deficiency IT, VAT, EWT, WTC, FBT, DST, and IAET, including compromise penalties for CY 2010, if any, the Court deems it best to examine whether or not the examination of Petitioner was conducted under a valid grant of authority.

A Letter of Authority (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

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[38] G.R. No. 178797, November 17, 2010.
[39] *Id.*

amount of tax.[40] 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.[41]

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

> **SECTION 6.** *Power of Make Assessments and Requirements for Tax Enforcement.* –
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> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, the Commissioner or his 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.

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

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

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[40] *Id.*

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

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 Sections 10 and 13 of the 1997 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

(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.**"[42]

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

[42] *Emphasis and underscoring supplied.*

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 defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[43], 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."[44]

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. Apparently, while the power to make assessments is primarily lodged with Respondent, the power to issue LOA in relation thereto may be expressly delegated to the Revenue Regional Director.[45]

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

The said provision states:

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

[44] *Emphasis supplied.*

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

"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)"[46]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to Revenue Officer (RO) Arnold M. Magay and Group Supervisor (GS) Lina Inductivo who were originally named in the LOA, may be revoked, transferred and reassigned to RO Magay and GS Bernard U. Urbano, in the case of the First Memorandum of Assignment, and, subsequently, to RO Mariano M. Flores and GS Urban, subsequently, in the Second Memorandum of Assignment, 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,[47] which requires that an 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."[48]

Second, although the document may not be entitled "Letter of Authority", it contains all the elements necessary to establish a contract of agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[49] The title of the contract does not necessarily determine its true

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[46] *Emphasis supplied.*

[47] 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).

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

[49] *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.

nature.[50] 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.[51] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus.* This 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.[52]

In the present case, records reveal that LOA No. 052-2011-00000461[53] dated November 23, 2011 was issued by Regional Director Nestor S. Valeroso of Revenue Region No. 8 – Makati City, authorizing Revenue Officer (RO) Arnold M. Maggay and Group Supervisor (GS) Lina Inductivo of Revenue District Office (RDO) No. 52 – Parañaque to examine the Petitioner's books of accounts and other accounting records for internal revenue taxes for the period from January 1, 2010 to December 31, 2010.

On September 23, 2014, a Memorandum of Assignment (MOA) No. 052-1405-2014-MOA-ASS[54] was issued by OIC–Revenue District Officer Rosita Ung-Meniano of RDO No. 52 – Parañaque, instructing RO Arnold M. Maggay and, this time under the supervision of, GS Bernard U. Urbano, to evaluate and recommend the necessary appropriate action in regard to Petitioner's tax liabilities.

Thereafter, on February 26, 2015, another MOA No. 052-1464-2015-MOA-ASS[55] was issued by OIC–Revenue District Officer Rosita Ung-Meniano to RO Mariano M. Flores and GS Bernard U. Urbano, authorizing them to reinvestigate Petitioner's books of accounts due to the protest letter/request for reinvestigation filed by the Petitioner.

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

[51] *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).

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

[53] Exhibit "P-3".

[54] BIR Records, p. 533.

[55] BIR Records, p. 733.

Subsequently, on March 4, 2015, Petitioner received a Letter[56] dated February 26, 2015 from OIC–Revenue District Officer Rosita Ung-Meniano, informing Petitioner that the audit investigation of their case has been reassigned to RO Flores and GS Urbano.

Clearly, as per the LOA No. 052-2011-00000461[57] dated November 23, 2011, RO Flores and GS Urbano were not among those originally authorized to audit/examine Petitioner's books of account and other accounting records for CY 2010. In fact, the records reveal that the authority of RO Flores, under the supervision of GS Urbano, to examine Petitioner for possible deficiency taxes pertaining to CY 2010 only emanated from (MOA) No. 052-1405-2014-MOA-ASS[58] and, subsequently, MOA No. 052-1464-2015-MOA-ASS[59].

RO Flores and GS Urbano who conducted the examination of Petitioner's records may be deemed authorized to do so without need for a new LOA, **only if the MOAs were signed by the Revenue Regional Director.**

In the instant case however, the said MOAs were only signed by OIC–Revenue District Officer Rosita Ung-Meniano of RDO No. 52 – Parañaque. Therefore, RO Flores, and GS Urbano acted without authority when they performed the audit of petitioner and, subsequently, recommended the issuance of the assailed assessment. An assessment issued without valid authority is a nullity.

The rationale for requiring a valid LOA as a prerequisite to a valid assessment is not that difficult to perceive – it is to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to preserve its business while at the same time responding to the BIR's exercise of its statutory powers. The balance between the two is achieved by ensuring that any examination of a taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by statute.[60]

In view of the foregoing discussions, the Court deems it unnecessary to discuss the other issues raised by petitioner.

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[56] BIR Records, p. 734.
[57] Exhibit "P-3".
[58] BIR Records, p. 533.
[59] BIR Records, p. 733.
[60] *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8952, March 6, 2019.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated July 25, 2016 demanding payment for petitioner's deficiency IT, VAT, EWT, WTC, FBT, DST, IAET, and compromise penalties for calendar year 2010 in the total amount of ₱130,451,420.43 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
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

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice