REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

VESTA PROPERTY HOLDINGS, INC., Petitioner,	**CTA EB No. 1847** (CTA Case No. 9234)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1848** (CTA Case No. 9234)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
VESTA PROPERTY HOLDINGS, INC., Respondent.	***Promulgated:*** SEP 27 2019 3:13 p.m.

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DECISION

UY, J.:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, namely: CTA EB No. 1847 entitled "*Vesta Property Holdings, Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent*", and CTA EB No. 1848, entitled "*Commissioner of Internal Revenue, Petitioner, v. Vesta Property Holdings, Inc., Respondent*", both filed before the Court *En Banc* on May 15, 2018 and May 16, 2018, respectively. Both Petitioners assail the Decision dated November 28, 2017[1] and Resolution dated April 6, 2018[2], rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9234 entitled "*Vesta Property Holdings, Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read:

Decision dated November 28, 2017:

"**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Petitioner is **ordered to pay** the deficiency donor's tax of **₱48,259,401.75** inclusive of 25% surcharges pursuant to Section 248(A)(1) of the NIRC of 1997 as amended, computed as follows:

Basic Deficiency Donor's Tax	₱ 38,607,521.40
25% Surcharge	9,651,880.35
Total	₱ 48,259,401.75

In addition, petitioner is **ordered to pay** deficiency interest of 20% per annum on the basic donor's tax due computed from the date prescribed for its payment until the full payment thereof pursuant to 249(A)(1) of the NIRC of 1997.

SO ORDERED."

Resolution dated April 6, 2018:

"**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration Re: Decision dated 28 November 2017,** and petitioner's **Motion for Reconsideration** are hereby **DENIED** for lack of merit.

SO ORDERED."

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[1] Penned by Associate Justice Caesar A. Casanova, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan, EB Docket (CTA EB No. 1847), pp. 35 to 48; and EB Docket (CTA EB No. 1848), pp. 17 to 31.

[2] *Id.*, EB Docket (CTA EB No. 1847), pp. 50 to 57; EB Docket (CTA EB No. 1848), pp. 32 to 39.

NO

THE FACTS

Vesta Property Holdings, Inc. (or VPHI) is a corporation duly organized and existing under Philippine laws, with principal office address at the 31st Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.

On the other hand, the Commissioner of Internal Revenue (or CIR) is the head of the Bureau of Internal Revenue (BIR), holding office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On September 11, 2009, VPHI sold two (2) parcels of land with a combined area of 404,691 square meters located at Canlubang, Calamba, Laguna (hereinafter referred as the "Property"). VPHI sold the Property at a price equivalent to ₱882.00 per square meter.

Thereafter, VPHI received a *Letter of Authority* (LOA) from the BIR covering the investigation/audit of its internal revenue taxes for taxable year (TY) 2009.

On June 13, 2014 VPHI received from the BIR a *Preliminary Assessment Notice* (PAN) dated June 11, 2014 covering TY 2009.

On June 30, 2014, VPHI, through a *letter* dated June 27, 2014, protested the deficiency donor's taxes in the PAN and informed the CIR that it paid the other taxes (income tax, value added tax, and expanded withholding tax) included therein.

VPHI then received *Formal Letter Demand* (FLD) with the *Final Assessment Notice* (FAN) on August 28, 2014, assessing it of deficiency donor's tax, surcharge, interest and compromise penalty for TY 2009. On September 26, 2014, VPHI filed its protest to the FLD.

Subsequently, VPHI received, on December 10, 2015, the FDDA finding it liable for deficiency donor's tax, surcharge, interest and compromise penalty for TY 2009, computed as follows:

Basic Deficiency Donor's Tax		₱ 38,607,521.40
Add:	25% Surcharge	9,651,880.35
	Interest up to May 30, 2015	43,494,281.64
	Compromise	50,000.00
Total Amount Due		**₱ 91,803,683.39**

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VPHI then filed a *Petition for Review* with the Court in Division on January 11, 2016 entitled "*Vesta Property Holdings, Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent*", docketed as CTA Case No. 9234.[3]

On April 15, 2016, the CIR filed his *Answer* in CTA Case No. 9234[4], alleging certain special and affirmative defenses, to wit: (a) that this Court in Division has no jurisdiction over the Petition in said case on the ground that the CIR's assessment (Formal Letter of Demand and Final Assessment Notice) has become final and executory for failure of VPHI to submit supporting documents within sixty (60) days from the filing of its request for reinvestigation; (b) assuming without admitting that the Court in Division has jurisdiction, the assessed deficiency donor's tax has bases in fact and law.

After the Pre-Trial Conference held on May 26, 2016[5], a Pre-Trial Order was issued by the Court in Division on June 23, 2016.[6]

During trial, VPHI presented witness, Maria Rochelle S. Diaz; while the CIR presented witness Revenue Officer Cristina C. Lati.

Thereafter, VPHI filed its *Memorandum* on December 1, 2016, while the CIR filed his *Memorandum* on December 5, 2016. Hence, on December 12, 2016,[7] the Court in Division issued a Resolution submitting CTA Case No. 9234 for decision.

In the assailed Decision dated November 28, 2017,[8] the Court in Division denied VPHI's *Petition for Review*, and ordered it to pay the deficiency donor's tax of ₱48,259,401.75, inclusive of the 25% surcharge. VPHI was likewise ordered to pay deficiency interest of 20%.

The CIR filed his *Motion for Partial Reconsideration Re: Decision dated 28 November 2017*,[9] and VPHI filed its *Motion for Reconsideration*,[10] both on December 14, 2017.

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[3] Division Docket – Vol. I (CTA Case No. 9234) pp. 10-28
[4] Division Docket – Vol. I (CTA Case No. 9234) pp. 69-83
[5] Minutes of Hearing held on May 26, 2016, Division Docket – Vol. I (CTA Case No. 9234) p. 185
[6] Division Docket – Vol. I (CTA Case No. 9234) pp. 208-211
[7] Division Docket – Vol. I (CTA Case No. 9234), p. 337.
[8] EB Docket (CTA EB No. 1847), pp. 35 to 48; EB Docket (CTA EB No. 1848), pp. 17 to 31; and Division Docket – Vol. II (CTA Case No. 9234), pp. 349 to 363.
[9] Division Docket – Vol. I (CTA Case No. 9234), pp. 364 to 368.
[10] Division Docket – Vol. I (CTA Case No. 9234), pp. 370 to 382.

On January 17, 2018, the CIR filed its *Comment/Opposition Re: Petitioner's Motion for Reconsideration*;[11] while VPHI failed to file its *Comment* per *Records Verification Report* dated January 23, 2018 issued by the Judicial Records Division of this Court.[12]

In the assailed Resolution dated April 6, 2018,[13] the Court in Division denied both VPHI's *Motion for Reconsideration* and the CIR's *Motion for Partial Reconsideration Re: Decision dated 28 November 2017,* for lack of merit.

Thus, on April 27, 2018, VPHI filed before the Court *En Banc a Motion for Extension of Time to File Petition for Review,*[14] praying for an additional period of fifteen (15) days from April 27, 2018, or until May 12, 2018, to file its *Petition for Review.* The Court *En Banc* granted VPHI the period prayed for, but qualified the same as "final and non-extendible".[15]

Likewise, on April 30, 2018, the CIR filed a *Motion for Extension of Time to File Petition for Review,*[16] praying for an additional period of fifteen (15) days from May 1, 2018, or until May 16, 2018, within which to file his *Petition for Review.* The Court *En Banc* also granted the CIR a final and non-extendible period of fifteen (15) days from May 1, 2018, or until May 16, 2018, within which to file his *Petition for Review.*[17]

On May 15, 2018, the VPHI filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1847;[18] while on May 16, 2018, the CIR filed his *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1848.[19]

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[11] Division Docket – Vol. I (CTA Case No. 9234), pp. 390 to 395.
[12] Division Docket – Vol. II (CTA Case No. 9234), p. 390.
[13] EB Docket (CTA EB No. 1847), pp. 50 to 57; EB Docket (CTA EB No. 1848), pp. 32 to 39; and Division Docket – Vol. II (CTA Case No. 9234), pp. 392 to 399.
[14] EB Docket (CTA EB No. 1847), pp. 1 to 4.
[15] Minute Resolution dated April 30, 2018, EB Docket (CTA EB No. 1847), p. 5.
[16] EB Docket (CTA EB No. 1848), pp. 1 to 4.
[17] Minute Resolution dated May 2, 2018, EB Docket (CTA EB No. 1848), p. 6.
[18] EB Docket (CTA EB No. 1847), pp. 6 to 27. It must be noted that the deadline for the filing of VPHI's *Petition for Review*, *i.e.*, May 12, 2018, fell on a Saturday. The next working day was on May 15, 2018, since May 14, 2018 was declared as a special non-working holiday, to give way to the Barangay and Sangguniang Kabataan elections, pursuant to Proclamation No. 479, series of 2018.
[19] EB Docket (CTA EB No. 1848), pp. 7 to 13.

In its *Petition for Review* in CTA EB No. 1847, VPHI prays that the assailed Decision and Resolution of the Court in Division in CTA Case No. 9234 be reversed and set aside, and a judgment be rendered canceling the deficiency tax assessment for TY 2009 in the aggregate amount of ₱91,803,683.39.

On the other hand, in his *Petition for Review* in CTA EB No. 1848, the CIR prays that the same Decision and Resolution be partially reconsidered and set aside, and that in addition to its total tax liabilities, VPHI be ordered to pay compromise penalty amounting to ₱50,000.00.

Considering that the instant cases are appeals from the Decision promulgated on November 28, 2017 and Resolution promulgated on April 6, 2018, rendered by the Court in Division in CTA Case No. 9234, CTA EB No. 1848 was consolidated with CTA EB No. 1847 on May 17, 2018 in the minute Resolution dated May 17, 2018.[20]

In the Resolution dated June 20, 2018,[21] the Court *En Banc* ordered the CIR in CTA EB No. 1847, and VPHI in CTA EB No. 1848, to file their respective *Comments* to the corresponding *Petitions for Review*.

On July 6, 2018, VPHI filed *a Motion for Extension of Time to File Comment (Re: Petition for Review dated May 15, 2018)*,[22] praying for an additional period of fifteen (15) days from July 6, 2018 or July 21, 2018, within which to file its *Comment*. The Court *En Banc* granted VPHI a final and non-extendible period of fifteen (15) days from July 6, 2018, or until July 21, 2018, within which to file its *Comment*.[23]

The CIR filed its *Opposition (Re: Petition for Review dated 10 May 2018)* on July 6, 2018,[24] while VPHI filed its *Comment (Re: Petition for Review dated May 15, 2018)*.[25]

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[20] Minute Resolution dated May 17, 2018, EB Docket (CTA EB No. 1847), p. 58.
[21] EB Docket (CTA EB No. 1847), pp. 60 to 62.
[22] EB Docket (CTA EB No. 1847), pp. 63 to 65.
[23] Minute Resolution dated July 9, 2018, EB Docket (CTA EB No. 1847), p. 73.
[24] EB Docket (CTA EB No. 1847), pp. 66 to 71.
[25] EB Docket (CTA EB No. 1847), pp. 74 to 79.

In the Resolution dated August 16, 2018,[26] both parties were directed to submit their respective memorandum. VPHI filed a *Motion for Extension of Time to File Memorandum* on September 21, 2018,[27] praying for an additional period of ten (10) days from September 21, 2018, or until October 1, 2018, to file its *Memorandum*. The Court *En Banc* granted VPHI a final and non-extendible period of ten (10) days from September 21, 2018, or until October 1, 2018, within which to file its *Memoranda*.[28]

The CIR filed his *Memorandum* on September 18, 2018,[29] while VPHI filed its *Memorandum* on October 1, 2018.[30]

Thereafter, the instant consolidated cases were submitted for decision in the Resolution dated November 22, 2018.[31]

Hence, this Decision.

ASSIGNMENTS OF ERRORS

In **CTA EB No. 1847**, VPHI raises the following errors supposedly committed by the Court in Division, to wit:

> "11. With all due respect, Petitioner humbly submits that the CTA-Division erred in dismissing the Petition for Review, based on the following grounds:
>
> 11.1. A donation cannot be inferred from the sale of the Property considering that the sale was made in the Petitioner's ordinary course of business;
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> 11.2. The zonal value of ₱1,200.00 per square meter used in determining the fair market value (FMV) of the Property is erroneous since the Property is an interior lot and not located along the road; and

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[26] EB Docket (CTA EB No. 1847), pp. 81 to 82.
[27] EB Docket (CTA EB No. 1847), pp. 95 to 98.
[28] Minute Resolution dated September 25, 2018, EB Docket (CTA EB No. 1847), p. 100.
[29] EB Docket (CTA EB No. 1847), pp. 83 to 93.
[30] EB Docket (CTA EB No. 1847), pp. 101 to 127.
[31] EB Docket (CTA EB No. 1847), pp. 129 to 130.

> 11.3. Even assuming that Respondent may value the Property at Php1,200.00 per square meter, Respondent failed to make proper adjustments with regard to the size of the Property to determine the real value of the Property." [32]

In **CTA EB No. 1848**, the CIR assigns the following error supposedly committed by the Court in Division, to wit:

> "THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS NOT LIABLE FOR COMPROMISE PENALTY." [33]

VPHI's arguments:

VPHI argues that a donation cannot be inferred from the sale of the Property considering that the sale was made in VPHI's ordinary course of business.

Allegedly, the Court in Division erred in not applying the US Code of Federal Regulations as well as the ruling of the US Supreme Court in the case of *Commissioner of Internal Revenue vs. Wemyss* (hereinafter referred to as "*Wemyss* case"), which allegedly states that a sale of real property made in the ordinary course of business will be considered made for an adequate and full consideration.

The CIR has held in several of its rulings that if a transaction is for a bona fide business purpose and there is no donative intent, no donor's tax can be imposed even if the property is transferred for less than its value.

Moreover, the zonal valuation of ₱1,200.00 per square meter used by the CIR in determining the fair market value (FMV) of the Property is allegedly erroneous, since the said Property is an interior lot and not located along the road.

Even assuming that the value of the Property is at ₱1,200.00 per square meter, the CIR allegedly failed to make proper adjustments with regard to the size of the Property for purposes of determining its real value. Considering the extensive size of the

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[32] *Petition for Review*, EB Docket (CTA EB No. 1847), pp. 10 to 11.
[33] *Petition for Review*, EB Docket (CTA EB No. 1848), p. 9.

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Property and that the same has been determined by the CIR himself to be raw and undeveloped or underdeveloped, adjustments should have been made to reflect the actual valuation of the property.

Finally, VPHI maintains that it cannot be held liable for compromise penalties since the imposition of the same is illegal and unauthorized.

The CIR's arguments:

The CIR argues that VPHI is liable for deficiency donor's tax in the amount of ₱48,259,401.75 plus surcharge and interest, in view of its failure to provide evidence to support its contentions.

Allegedly, the US Code of Federal Regulations and the *Wemyss case* find no relevance in the instant case. Under Section 100 of the National Internal Revenue Code (NIRC) of 1997, donative intent is allegedly not relevant. Section 100 comprises any transfer for less than adequate and full consideration, regardless of whether such transfer is an ordinary commercial transaction or not. As such, the excess of the FMV over the consideration received shall be deemed a gift which is subject to donor's tax under Sections 98 and 99 of the NIRC of 1997.

As regards the BIR rulings relied upon by VPHI, these rulings do not allegedly apply in this case since these are based only on a set of facts as represented by the taxpayer, and made applicable only to the facts and circumstances thereto. Moreover, the said BIR rulings can only be utilized by the taxpayer to whom the rulings were issued.

Further, contrary to the arguments of VPHI, the CIR maintains that the zonal value prescribed for land classified as general purpose is applicable to the subject lot sold by VPHI. Allegedly, at the time of the subject transaction, the FMV of the subject lot amounts to ₱1,200.00 per square meter.

The CIR likewise asserts that the assessment issued is valid and lawful. Thus, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but the taxpayer is right.

With respect to the compromise penalty, VPHI is allegedly liable for compromise penalty for its failure to file return and pay that tax, pursuant to Revenue Memorandum Order (RMO) No. 7-2015, in relation to RMO No. 1-90, which provides for the Revised Consolidated Schedule of Compromise Penalties for Violations of the NIRC. The CIR alleges that the said RMOs have not been revoked, cancelled or abandoned and they remain valid regulations which have the force and effect of law.

THE COURT *EN BANC*'S RULING

Before resolving the errors assigned by both parties in the instant consolidated *Petitions for Review*, the Court *En Banc* finds it necessary to resolve a vital issue to achieve an orderly disposition of these cases, to wit:

> "Whether or not the revenue officer(s) who conducted the audit of the books of accounts and other accounting records of VPHI for TY 2009 was authorized by the CIR or his duly authorized representative, through an LOA."

Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, reads, in part, as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. - *Rendition of judgment* - xxx
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**" *(Emphasis supplied)*

Based on the said provision, this Court is not limited to resolve only the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case. Such power of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[34] to wit:

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

> "**On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* – x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA <u>even though the parties had not raised the same in their pleadings or memoranda.</u>** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis and underscoring supplied)*

Applying the foregoing, this Court finds it necessary to resolve first the issue regarding the authority of the revenue officer (RO) to conduct an audit investigation of VPHI's books of accounts and other accounting records for TY 2009, to achieve an orderly disposition of the case.

The concerned RO was not duly authorized to conduct the audit investigation on VPHI.

Section 6(A) of the NIRC of 1997 lays down the power of the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, to wit:

> "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 of any taxpayer and the assessment of the correct amount of tax</u>**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

Based on the foregoing, an authority emanating from the CIR or his duly authorized representative is required before an examination and an assessment may be made.

The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time, it authorizes or empowers a **designated RO** to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period. [35]

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[36] (hereinafter referred to as the *Medicard* case), the Supreme Court elucidated on the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers, and in assessing internal revenue taxes, to wit:

> "**<u>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</u>**. 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.

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[35] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[36] G.R. No. 222743, April 5, 2017.

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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 before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**
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> 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. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void</u>.**" *(Emphases and underscoring supplied)*

Based on the foregoing, the LOA is the authority given to the appropriate ROs to enable them to examine the books of account and other accounting records of a taxpayer. In the absence of such authority, the tax assessments issued against such taxpayer shall be void.

The CIR, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018[37], recognized the *Medicard* case, in this wise:

> "The judicial ruling, invoking a specific statutory mandate, states that no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the

[37] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

> Commissioner of Internal Revenue (CIR) or his duly authorized representative, through an LOA. **The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
>
> xxx xxx xxx
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." *(Emphasis supplied)*

Moreover, in the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[38] (hereinafter referred to as the *Sony Philippines case*), the Supreme Court held that:

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

It is evident from the foregoing that a grant of authority is indispensable before a revenue officer can conduct an examination or assessment and that the absence thereof results to the nullity of the examination or the tax assessment itself.

In the instant case, a perusal of the records show that under LOA-126-2010-0000058 dated May 14, 2010,[39] only ROs Wenceslao Jr Concepcion, Gerald Alan Quebral, Belinda Balagtas, Cecille Uy, and Group Supervisor (GS) Noemi Castro, were authorized to examine the books of accounts and other accounting records of VPHI for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.

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[38] GR. No. 178697, November 17, 2010.

[39] BIR Records – Folder 2 (Exhibits "P-7" and "R-15"), p. 1

However, it bears noting that RO Cristina C. Lati, the BIR officer who recommended the issuance of the PAN[40] and the FLD[41] per her *Memorandum* dated April 14, 2014[42] and *Memorandum* dated July 14, 2014[43], respectively, was not named in the said LOA. Her supposed authority to continue the audit investigation of VPHI was merely based on the *Memorandum of Assignment* (MOA) No. 126-RE-2013-0082 dated March 21, 2013,[44] signed by OIC Chief, Regular LT Audit Division 3, Antonio Jonathan G. Jaminola. This was confirmed by RO Cristina Lati in her *Judicial Affidavit*,[45] to wit:

> "9Q: Why are you familiar with the case?
>
> 9A: I am the one who continued the audit/investigation of petitioner, Vesta Property Holdings, Inc., for taxable year 2009.
>
> 10Q: **You mentioned that you continued the audit/investigation of petitioner, Vesta Property Holdings, Inc. for taxable year 2009, what is your authority to do so?**
>
> 10A: **<u>I was authorized under a Memorandum of Assignment referring the case/docket of petitioner to me for continuation of the audit/investigation and replacing the previously assigned revenue officer.</u>** *(Emphasis and underscoring supplied)*

Evidently, the sole basis for the authority of RO Lati to continue the audit and investigation of VPHI for taxable year 2009 is only the said MOA. The record is bereft of any evidence showing that a new LOA was issued specifically authorizing the said RO to conduct the audit investigation.

Moreover, it must be noted that the failure of the CIR or his duly authorized representative to issue a new LOA runs counter to RMO No. 43-90 dated September 20, 1990, which lays down the guidelines for the audit/investigation and issuance of LOA (hereinbelow referred to as L/A), pertinent portions of which state:

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[40] BIR Records – Folder 2 (Exhibits "P-7" and "R-15"), pp. 554 to 560.
[41] BIR Records – Folder 2 (Exhibits "P-7" and "R-15"), pp. 586 to 592.
[42] Exhibit "R-8", BIR Records – Folder 2 (Exhibits "P-7" and "R-15"), pp. 554 to 560.
[43] Exhibit "R-10", BIR Records – Folder 2 (Exhibits "P-7" and "R-15"), pp. 587 to 592.
[44] Exhibit "R-1", BIR Records – Folder 2 (Exhibits "P-7" and "R-15"), p. 448.
[45] Exhibit "R-16", Division Docket-Vol. I (CTA Case No. 9234), pp. 161 to 171.

"C. Other policies for issuance of L/As.

1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.

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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." *(Emphases and underscoring supplied.)*

It is explicit from the foregoing that all audit investigations must be conducted by a duly designated RO authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA. In case of re-assignment or transfer of cases to another RO, it is mandatory that a new L/A or LOA be issued with the corresponding notation thereto.

In this case, no new LOA was issued designating RO Lati to continue the audit investigation of VPHI.

Applying the foregoing BIR issuance and the aforecited doctrines laid down by the Supreme Court in the *Medicard* and *Sony Philippines* cases the subject tax assessment is void, in view of the lack of the requisite authority of RO Lati to conduct the audit investigation of VPHI for taxable year 2009. It must be emphasized in this connection that a void assessment bears no valid fruit.[46]

With the foregoing ruling, it becomes unnecessary to address the respective assignment of errors by the CIR and VPHI in their respective *Petition for Review.*

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 1847 filed by VPHI is **GRANTED**;

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[46] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

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while the *Petition for Review* in CTA EB No. 1848 filed by the CIR is **DENIED** for lack of merit.

Accordingly, the Decision dated November 28, 2017 and the Resolution dated April 6, 2018, both rendered by the Court in Division in CTA Case No. 9234, are **REVERSED** and **SET ASIDE**. The deficiency tax assessment issued against VPHI for taxable year 2009 is **CANCELLED** and **SET ASIDE** for being void.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

(With Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 cases were 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

VESTA PROPERTY HOLDINGS, INC., *Petitioner,*	**CTA EB NO. 1847** (CTA Case No. 9234)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent*	

x- x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1848** (CTA Case No. 9234)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
	Promulgated:
VESTA PROPERTY HOLDINGS, INC., *Respondent.*	SEP 27 2019 3:13 p.m.

x- x

DISSENTING OPINION

MANAHAN, J.:

I respectfully register my dissent to the granting of the Petition for Review in CTA EB No. 1847 and the finding that the assessment is null and void for lack of a valid Letter of Authority (LOA) issued in case of re-assignment or transfer of cases to another revenue officer (RO).

I am aware that I have previously subscribed to this position, however, after reviewing the facts and circumstances of the case, I am constrained to reverse my position and vote that a Memorandum of Assignment (MOA), arising from a validly issued LOA, sufficiently cloaks the subsequent ROs with authority.

In the instant case, LOA No. LOA-126-2010-0000058 dated May 14, 2010 was issued authorizing ROs Wenceslao Jr Concepcion, Gerald Alan Quebral, Belinda Balagtas, Cecille Uy, and Group Supervisor Noemi Castro, to examine Vesta Property's books of accounts and other accounting records for taxable year 2009.

On March 21, 2013, Memorandum of Assignment No. 126-RE-2013-0082 was issued by OIC Chief, Regular LT Audit Division 3, Antonio Jonathan G. Jaminola, referring the continuation of the investigation to RO Cristina C. Lati.

In Revenue Memorandum Order (RMO) No. 069-2010, a manual serially-numbered MOA shall be issued for "[r]eassignment for the continuation of the audit/investigation of a case to another RO due to resignation/retirement/transfer of the original RO." Under this RMO, there is no requirement for the issuance of a new LOA for reassignment or transfer of cases. Neither is there a specified signatory for MOAs. Thus, I hold that the MOA signed by the OIC Chief, Regular LT Audit Division 3, validly assigned the new ROs, with the authority flowing from the previously issued LOA.

In analyzing the technicalities surrounding the validity of an LOA and MOA, they must be perceived in the light of their purpose and practicality and not merely as rigid rule that have to be observed regardless of the surrounding circumstances.

The processes internal to an administrative agency are numerous and complex at best, oftentimes depending on the availability of the signatories and the back and forth communications of examiners and taxpayers in the process of investigation/examination. Thus, I reiterate the Honorable Justice Juanito C. Castañeda, Jr.'s disquisition, as follows:

> A duly issued LOA, valid in all respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or

> transferred. Indeed, to construe it otherwise would be tantamount to curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance 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. As such, they do 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 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.

The majority also cited Revenue Memorandum Circular (RMC) No. 75-2018[1], where the Bureau of Internal Revenue (BIR) recognized that "[a]ny tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void'." This is undisputed. An assessment issued without an LOA is void. However, it is my position that in the cases involving a validly issued LOA, and later continued through a MOA, there is in fact, an LOA. These cases do not involve assessments "without an LOA".

I reiterate that the case of *CIR v. Medicard* involved an assessment from a mere Letter Notice, without the issuance of a LOA, while the case of *CIR v. Sony Philippines, Inc.* involved a LOA which covered more than one taxable year. These factual circumstances render these cases inapplicable to the instant case.

For the foregoing, I vote to deny the Petition for Review in CTA EB No. 1847 filed by Vesta Property Holdings, Inc. and affirm the Court in Division's Decision dated November 28, 2017.

CATHERINE T. MANAHAN
Associate Justice

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[1] The Mandatory Statutory Requirement and Function of a Letter of Authority, September 5, 2018.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

VESTA PROPERTY HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1847
(CTA CASE NO. 9234)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

VESTA PROPERTY HOLDINGS, INC.,
Respondent.

CTA EB NO. 1956

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:

SEP 27 2019 3:13 p.m.

x---x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the Decision which denied the Petition for Review on the ground that the Revenue Officer (RO) named in the Memorandum of Assignment (MOA) was not validly authorized to conduct the investigation.

However, I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in her favor, RO Cristina C. Lati, may be given the authority to continue the audit and examination of Vesta Property Holdings, Inc.'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:

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1 *Emphasis and underscoring supplied.*

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

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

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

(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]

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2 *Emphasis and underscoring supplied.*

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

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

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

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

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 Wenceslao Jr. Concepsion, Gerald Alan Quebral, Belinda Balagtas, Cecille Uy, and group Supervisor (GS) Noemi Castro, who were originally named in the LOA may be revoked, transferred and reassigned to RO Cristina C. Lati and GS Merly G. Santiago 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

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5 *Emphasis supplied.*

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

7 Civil Code of the Philippines, Article 1869.

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.

is possible, the laws must be reconciled in that manner.[10] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[11]

I am not unaware of Revenue Memorandum Order ("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 Cristina C. Lati who conducted the examination of Vesta Property Holdings, Inc.'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.

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

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

[12] Issued September 20, 1990.

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

[14] Issued September 26, 2007.

> 2. **All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants.**"[15]

In the instant case however, the MOA No. 126-RE-2013-0082 dated March 21, 2013 was only signed by Antonio Jonathan G. Jaminola, OIC Chief, Regular LT Audit Division 3. Therefore, RO Cristina C. Lati was without authority to continue the audit.

From all the foregoing, I vote for the **DENIAL** of the Petition for Review filed by the Commissioner of Internal Revenue.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[15] *Emphasis and underscoring supplied.*