REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MYTEL MOBILITY SOLUTIONS, INC. (NOW MERGED WITH MY SOLID TECHNOLOGIES & DEVICES CORPORATION), *Petitioner,*	**CTA CASE NO. 9786** Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	SEP 2 3 2020 2:48 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition") filed on 19 March 2018[1] by petitioner Mytel Mobility Solutions, Inc., which has been merged with My Solid Technologies & Devices Corporation,[2] against respondent, the Commissioner of Internal Revenue, pursuant to ***Section (7) (a) (1) of Republic Act No. ("RA") 1125, as amended by RA 9282***, in relation to ***Rule 4, Section 3 (a) (1) of the Revised Rules of the Court of Tax Appeals ("RRCTA")*** praying for the cancellation and withdrawal of respondent's assessment for deficiency income tax, expanded withholding tax ("EWT") and documentary stamp tax ("DST") for the period 1 January 2010 to 31 December 2010 ("CY 2010") in the aggregate amount of Php 9,975,026.33, inclusive of interest.[3]

The Parties

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at 2000 East Service Road, Brgy. San Martin de Porres, Bicutan, Paranaque City. It is a registered taxpayer of Bureau of Internal Revenue ("BIR"), Revenue Region

[1] Records, Vol. 1, pp. 10-100.
[2] See Exhibit "P-1", Records, Vol. 1, pp. 430-451.
[3] See Prayer in the Petition for Review; Records, Vol. 1, pp. 33-34.

No. 8 ("RR 8"), Revenue District Office No. 52 ("RDO 52"). It has been issued a BIR Certificate of Registration dated 23 July 2009, bearing Tax Identification No. 007-324-860-000.

Respondent is the duly appointed Commissioner of the BIR vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including the power to decide disputed assessments, and to cancel and abate tax liabilities, pursuant to the ***National Internal Revenue Code ("NIRC")***, and other tax laws, rules, and regulations.

The Facts

On 4 July 2011, Letter of Authority ("LOA") No. eLA201000051352 was issued by then Regional Director of RR 8, Mr. Jaime B. Santiago, authorizing revenue officers from Revenue District Office No. 48 ("RDO 48"), namely, Mr. Jamael Hamid and Mr. Roberto Dureza, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2010.[4]

When petitioner changed its business address to 2000 East Service Road, Brgy. Sto. Nino, Bicutan, Paranaque City, it was removed from the jurisdiction of RDO 48 and was transferred to RDO 52.[5] In line with this, Memorandum of Assignment No. 911-2012-MOA was issued on 27 November 2012 by then OIC-Revenue District Officer of RDO 52, Ms. Regina C. Dela Cruz, assigning the continuation of the audit of petitioner's books of accounts and other accounting records for CY 2010 to revenue officer, Mr. Philipp King S. Cartagena ("RO Cartagena"), and group supervisor, Ms. Rebecca Victoria Martinez ("Group Supervisor Martinez").[6] On 2 September 2013, a Memorandum Report was submitted by RO Cartagena recommending the issuance of a formal assessment against petitioner.[7] Hence, on 17 December 2013, a Preliminary Assessment Notice ("PAN") was issued against petitioner.[8] Petitioner then filed a Reply to the PAN on 17 January 2014.[9]

On the same date that petitioner filed its Reply to the PAN, petitioner received a copy of respondent's Final Assessement Notice ("FAN"), issued through the BIR's RR 8, in which respondent demanded payment of deficiency income tax, EWT, donor's tax, and compromise penalty for CY 2010 in the total amount of Php12, 620,275.47, broken down as follows:[10]

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[4] See BIR Records, p. 1.
[5] *Id.*, p. 7.
[6] See Exhibit "R-1", BIR Records, p. 312.
[7] See Exhibit "R-2", BIR Records, pp. 376-378.
[8] See BIR Records, pp. 389-393.
[9] *Id.*, pp. 408-411.
[10] See Facts in the Pre-Trial Order, Records, Vol. 1, p. 347. See Exhibit "P-4", Records, Vol. 1, pp. 469-479.

KIND OF TAX	BASIC TAX	INTEREST	SURCHARGE	TOTAL
Income Tax	5,342,060.85	3,029,607.11		8,371,667.96
EWT	171,261.82	105,572.35		276,834.17
DST	1,120,506.00	696,862.64	280,126.50	2,097,495.14
Donor's Tax	941,008.50	678,016.57	235,252.13	1,854,277.20
Sub-Total	**7,574,837.17**	**4,510,058.67**	**515,378.63**	**12,600,274.47**
Compromise Penalty				20,000.00
Total				**12,620,274.47**

On 14 February 2014, petitioner filed with the BIR, through RR 8, a Request for Reinvestigation of the FAN, in which the petitioner requested the cancellation and withdrawal of the aforesaid deficiency taxes.[11]

Subsequently, on 14 March 2014, then OIC-Revenue District Officer of RDO 52, Ms. Rosita Ung-Meniano, issued Memorandum of Assignment No. 052-1314-2014-MOA-ASS., referring the continuation of the audit of petitioner's books of accounts and other accounting records for CY 2010 to revenue officer, Jose M. Magsombol, III ("RO Magsombol"), and Group Supervisor Martinez.[12]

On 15 April 2014, petitioner submitted to the BIR, through RDO 52, the supporting documents of the Request for Reinvestigation in accordance with ***Section 228 of the NIRC***.[13]

On 15 February 2015, RO Magsombol submitted a Memorandum Report recommending the approval of his report of reinvestigation for Final Decision on Disputed Assessment ("FDDA"). [14]

On 15 February 2018, petitioner received the FDDA, wherein respondent partially granted petitioner's Request for Reinvestigation by reducing the deficiency income tax assessment and cancelling the assessment for deficiency donor's tax for CY 2010. Nevertheless, petitioner was ordered to pay deficiency income tax, EWT, and DST for CY 2010 in the aggregate amount of Php9,975,026.33, detailed as follows:[15]

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[11] See Facts in the Pre-Trial Order, Records, Vol. 1, p. 347. See Exhibit "P-5", Records, Vols. 1-2, pp. 480-502.
[12] See Exhibit "R-3", BIR Records, p. 487.
[13] See Facts in the Pre-Trial Order, Records, Vol. 1, p. 347. See Exhibit "P-6", Records, Vol. 2, pp. 503-507.
[14] See Exhibit "R-4", BIR Records, pp. 527-528.
[15] See Facts in the Pre-Trial Order, Records, Vol. 1, p. 348. See Exhibit "P-7", Records, Vol. 2, pp. 508-513.

KIND OF TAX	BASIC TAX	INTEREST	SURCHARGE	TOTAL
Income Tax	2,731,532.23	3,803,190.90		6,534,723.13
EWT	171,261.82	246,898.55		418,160.37
DST	1,120,506.00	1,621,510.33	280,126.50	3,022,142.83
Total				**9,975,026.33**

Hence, the instant Petition was filed on 19 March 2018. [16]

On 6 April 2018, Summons was issued to respondent.[17]

On 30 April 2018, respondent filed via registered mail a Motion for Extension of Time to File Answer,[18] which was granted in a Resolution, dated 10 May 2018.[19]

On 29 May 2018, respondent filed via registered mail a Motion for Additional Time to File Answer,[20] which was granted in a Resolution, dated 13 June 2018.[21]

On 25 June 2018, respondent filed via registered mail his Answer.[22]

On 13 July 2018, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference on 23 August 2018, at 9:00 a.m.[23]

On 14 August 2018, respondent filed his Pre-Trial Brief[24] and submitted the Judicial Affidavits of RO Cartagena[25] and RO Magsombol.[26]

On 17 August 2018, petitioner filed its Pre-Trial Brief[27] and submitted the Judicial Affidavit of Ms. Caridad D. Dascil.[28]

On 23 August 2018, the Pre-Trial Conference ensued.[29]

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[16] Records, Vol. 1, pp. 10-100.
[17] See Summons, Records, Vol. 1, pp. 101-103.
[18] See Motion for Extension of Time to File Answer, Records, Vol. 1, pp. 104-106.
[19] See Resolution, dated 12 May 2018, Records, Vol. 1, pp. 107-108.
[20] See Motion for Extension of Time to File Answer, Records, Vol. 1, pp. 109-112.
[21] See Resolution, dated 13 June 2018, Records, Vol. 1, pp. 113-115.
[22] See Answer, Records, Vol. 1, pp. 116-123.
[23] See Notice of Pre-Trial Conference, Records, Vol. 1, pp. 124-125.
[24] See Respondent's Pre-Trial Brief, Records, Vol. 1, pp. 126-129.
[25] See Judicial Affidavit of Philipp King S. Cartagena, Exhibit "R-5", Records, Vol. 1, pp. 130-138.
[26] See Judicial Affidavit of Jose DR. Magsombol III, Exhibit "R-6", Records, Vol. 1, pp. 139-148.
[27] See Petitioner's Pre-Trial Brief, Records, Vol. 1, pp. 300-311.
[28] See Judicial Affidavit of Ms. Caridad D. Dascil, Exhibit "P-13", Records, Vol. 1, pp. 149-299.
[29] Records, Vol. 1, pp. 311-a-316.

On 30 August 2018, respondent elevated the entire BIR Records in relation to the Petition,[30] which was noted by this Court.[31]

On 12 September 2018, the parties filed their Joint Stipulation of Facts and Issues,[32] which was approved by this Court.[33]

On 24 September 2018, petitioner filed a Motion to Commission Independent Certified Public Accountant ("ICPA"), attaching therein the Judicial Affidavit of Mr. Neil U. Sison,[34] which was granted by this Court in open court on 16 October 2018.[35]

On 12 October 2018, a Pre-Trial Order was issued.[36]

On 13 November 2018, petitioner presented its witness, Ms. Caridad D. Dascil.[37]

On 15 November 2018, petitioner submitted its ICPA Report.[38] The Compact Disk containing the soft copies of the summaries, schedules, and exhibits supporting the ICPA Report was submitted on 27 November 2018.[39] These were admitted in a Resolution, dated 3 December 2018.[40]

On 28 November 2018, petitioner submitted the Judicial Affidavit of Mr. Neil U. Sison in relation to the ICPA Report.[41]

On 4 December 2018, petitioner presented Mr. Neil U. Sison who identified the ICPA Report.[42]

On 19 December 2018, petitioner filed a Motion for Additional Time to File Formal Offer of Evidence,[43] which was granted by this Court.[44]

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[30] See Compliance, dated 30 August 2018, Records, Vol. 1, p. 317.
[31] See Resolution, dated 18 September 2018, Records, Vol. 1, pp. 329-331.
[32] See Joint Stipulation of Facts and Issues, Records, Vol. 1, pp. 318-328.
[33] See Resolution, dated 18 September 2018, Records, Vol. 1, pp. 329-331.
[34] See Motion to Commission Independent Certified Public Accountant, Records with attached Judicial Affidavit of Mr. Neil U. Sison, Vol. 1, pp. 332-343.
[35] Records, Vol. 1, pp. 355-359.
[36] See Pre-Trial Order, Records, Vol. 1, pp. 345-354.
[37] Records, Vol. 1, pp. 365-366
[38] See Independent Certified Public Accountant Report on Court of Tax Appeals Case No. 9786, Records, Vol. 1, pp. 367-388.
[39] Records, Vol. 1, p. 389.
[40] See Resolution, dated 3 December 2018, Records, Vol. 1, p. 406.
[41] See Judicial Affidavit of Mr. Neil U. Sison, Exhibit "P-14", Records, Vol. 1, pp. 390-405.
[42] Records, Vol. 1, pp. 407-409.
[43] See Motion for Additional Time to File Formal Offer of Evidence, Records, Vol. 1, pp. 410-412.
[44] See Resolution, dated 4 January 2019, Records, Vol. 1, pp. 608-609.

On 3 January 2019, petitioner filed its Formal Offer of Evidence,[45] to which respondent did not interpose any objection.[46] In a Resolution, dated 24 January 2019, this Court submitted petitioner's Formal Offer of Evidence for Resolution.[47] In a Resolution, dated 22 March 2019, this Court admitted petitioner's **Exhibits "P-1", "P-2", "P-2-a", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10-a", "P-10-b", "P-10-c", "P-10-d", "P-10-e", "P-10-f", "P-10-g", "P-10-h", "P-10-i", "P-10-j", "P-10-k", "P-10-l", "P-11", "P-12", "P-13", "P-13-a", "P-14", "P-14-a", "P-15", "P-15-A", "P-15-B", "P-15-C", "P-15-D", "P-15-E", "P-15-F", "P-15-G", "P-15-H", "P-15-I", "P-15-J", "P-15-J-1" to "P-15-J-2", "P-15-K", "P-15-K-1" to "P-15-K-116", "P-15-L", "P-15-L-1" to "P-15-L-2", "P-15-M", "P-15-M-1" to "P-15-M-45", "P-15-N", "P-15-N-1", "P-15-O", "P-15-O-1" to "P-15-O-8", "P-15-P", "P-15-Q", "P-15-R", "P-15-R-1", "P-15-S-1" to "P-15-S-8", "P-15-T", "P-15-U", "P-15-V", "P-15-W", "P-15-W-1" to "P-15-W-12", "P-15-X", "P-15-X-1" to "P-15-X-3", "P-15-AA", and "P-15-AB."**[48]

On 16 May 2019, respondent presented his witnesses, RO Cartagena and RO Magsombol.[49]

On 31 May 2019, respondent filed his Formal Offer of Evidence,[50] which was noted by this Court in a Resolution, dated 4 June 2019,[51] and to which petitioner interposed no objection.[52] In a Resolution, dated 17 June 2019, this Court submitted respondent's Formal Offer of Evidence for resolution.[53] On 4 July 2019, this Court admitted respondent's **Exhibits "R-1", "R-1-a", "R-2", "R-2-a", "R-2-b", "R-2-c", "R-3", "R-3-a", "R-4", "R-4-a", "R-4-b", "R-4-c", "R-5", "R-5-a", "R-6", and "R-6-a"**.[54]

On 13 August 2019, respondent filed via registered mail his Memorandum,[55] which was noted by this Court in a Resolution, dated 27 August 2019.[56]

On 19 August 2019, petitioner filed via registered mail a Motion for Additional Time to File Memorandum,[57] which was granted by this Court in

[45] See Formal Offer of Evidence, Records, Vols. 1-2, pp. 413-607.
[46] See Comment (To Petitioner's Formal Offer of Evidence), Records, Vol. 2, pp. 610-612.
[47] See Resolution, dated 24 January 2019, Records, Vol. 2, pp. 613-614.
[48] See Resolution, dated 22 March 2019, Records, Vol. 2, pp. 615-617.
[49] Records, Vol. 2, pp. 620-622.
[50] See Respondent's Formal Offer of Evidence, Records, Vol. 2, pp. 623-628.
[51] See Resolution, dated 4 June 2019, Records, Vol. 2, p. 629.
[52] See Comment (Re: Respondent's Formal Offer of Evidence dated May 31, 2019), Records, Vol. 2, pp. 630-632.
[53] See Resolution, dated 17 June 2019, Records, Vol. 2, pp. 633-634.
[54] See Resolution, dated 5 July 2019, Records, Vol. 2, pp. 635-637.
[55] See Memorandum for Respondent, Records, Vol. 2, pp. 638-648.
[56] See Resolution, dated 27 August 2019, Records, Vol. 2, p. 649.
[57] See Motion for Additional Time to File Memorandum, Records, Vol. 2, pp. 651-655.

a Resolution, dated 4 September 2019.[58] On 17 September 2019, petitioner filed its Memorandum.[59]

On 20 September 2019, this Court issued a Resolution submitting the instant Petition for decision.[60]

Hence, this Decision.

The Issues[61]

WHETHER OR NOT RESPONDENT'S RIGHT TO ASSESS PETITIONER'S ALLEGED DEFICIENCY EWT FOR CY 2010 HAS ALREADY PRESCRIBED; AND

WHETHER OR NOT THERE IS BASIS FOR RESPONDENT'S DEFICIENCY INCOME TAX, EWT, AND DST ASSESSMENTS AGAINST PETITIONER FOR CY 2010.

Arguments of the Parties

Petitioner's Arguments[62]

Petitioner averred the following in its Memorandum:

a) Respondent's right to assess petitioner's alleged deficiency EWT for CY 2010 has already prescribed;

b) There is no basis for respondent's assessments against petitioner for deficiency income tax, EWT, and DST for CY 2010;

    i. Respondent's deficiency tax assessments against petitioner for CY 2010 are null and void because the Revenue Officers who conducted the audit investigation had no authority to examine petitioner's books of accounts for CY 2010; and

    ii. There is no factual basis for respondent's deficiency income tax, EWT, and DST assessments against petitioner for CY 2010.

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[58] See Resolution, dated 4 September 2019, Records, Vol. 2, pp. 656-657.
[59] See Memorandum, Records, Vol. 2, pp. 658-679.
[60] See Resolution, dated 20 September 2019, Records, Vol. 2, pp. 680-681.
[61] See Issues in the Pre-Trial Order; Records, Vol. 1, p. 349.
[62] See Memorandum, Records, Vol. 2, pp. 662-679.

Respondent's Counter-Arguments[63]

Respondent alleged the following in his Memorandum:

a) The assessment of petitioner's deficiency tax liabilities was issued within the period allowed by law; and

b) The deficiency tax assessment for Income Tax, EWT, and DST has basis in fact and law.

The Ruling of the Court

We rule to **GRANT** the instant **Petition for Review.**

The deficiency tax assessments issued against petitioner are void as the revenue officers who conducted the audit of its books of accounts and other accounting records have no authority to do so.

Elementary is the rule that revenue officers conducting an examination of a taxpayer for purposes of determining the correct amount of taxes due must be armed with an LOA. An LOA is a guarantee that tax agents will act only within the authority given them in auditing a taxpayer. It is an instrument of due process for the protection of taxpayers.

Section 13 of the NIRC is clear that revenue officers conducting examinations of taxpayers must be authorized to do so, *viz:*

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

[63] See Memorandum for Respondent, Records, Vol. 2, pp. 641-648.

In fact, even respondent is aware of the necessity of an LOA before a revenue officer can conduct an audit of a taxpayer as shown by his revenue issuances on the matter. ***Revenue Memorandum Order No. 43-90 ("RMO 43-90")***[64] provides:

> "**Any reassignment/ 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."
> (Emphasis, Ours)

A cardinal rule in statutory construction is that where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application. The use of the word "shall" connotes a mandatory order and denotes an imperative obligation and is inconsistent with the idea of discretion.[65] Hence, the use of the word "shall" in ***RMO 43-90*** can only mean that the issuance of a new LOA in cases of transfer of audits to another set of revenue officers is mandatory. Therefore, it is clear that before an assessment can be made, the revenue officer conducting the same must first be authorized to do so.

The importance of an LOA as a due process requirement in audits of taxpayers for issuing deficiency tax assessments was given paramount consideration by the High Court in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue ("Medicard Case")***,[66] *viz:*

> "**An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
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> > **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

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[64] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.
[65] ***Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue***, G.R. Nos. 175707, 180035, 181092, 19 November 2014.
[66] G.R. No. 222743, 5 April 2017, *citing Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

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

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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. **In the absence of such an authority, the assessment or examination is a nullity**.

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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That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior**

> **approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**
> (Emphasis and Underscoring, Ours)

Based on the foregoing pronouncement by the Supreme Court, an LOA is the authority given to the appropriate revenue officers 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.

Respondent even recognized the importance of the Supreme Court's ruling on LOAs in the ***Medicard Case*** when he issued ***Revenue Memorandum Circular No. 75-2018 ("RMC 75-18")***[67] which provides, as follows:

> "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 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.'**
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> xxx xxx xxx
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> **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 and Underscoring, Ours)

Therefore, the importance of an LOA before revenue officers can pursue an audit of a taxpayer to assess and collect deficiency taxes cannot be over-emphasized. Without an LOA, deficiency tax assessments issued are inescapably void.

In the case at bar, LOA No. eLA201000051352 was issued by then Regional Director of RR 8, Mr. Jaime B. Santiago, authorizing revenue officers from RDO 48, namely, Mr. Jamael Hamid and Mr. Roberto Dureza, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2010.[68]

[67] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.
[68] See BIR Records, p. 1.

However, when petitioner changed its business address to 2000 East Service Road, Brgy. Sto. Nino, Bicutan, Paranaque City, and hence was transferred to the jurisdiction of RDO 52,[69] a new set of revenue officers pursued the examination of its books of accounts and other accounting records. The new set of revenue officers, namely Group Supervisor Martinez and RO Cartagena was merely armed with Memorandum of Assignment No. 911-2012-MOA.[70]

Through Memorandum of Assignment No. 911-2012-MOA, RO Cartagena and Group Supervisor Martinez examined petitioner and recommended the issuance of formal deficiency tax assessments against petitioner,[71] which resulted in the issuance of the PAN and FAN on 17 December 2013 and 17 January 2014, respectively.

Later on, while petitioner's Request for Reinvestigation of the FAN was being reinvestigated, Memorandum of Assignment No. 052-1314-2014-MOA-ASS. was issued on 14 March 2014 assigning the continuation of the examination of petitioner's books of accounts and other accounting records for CY 2010 to RO Magsombol and Group Supervisor Martinez.[72]

Through Memorandum of Assignment No. 052-1314-2014-MOA-ASS., RO Magsombol and Group Supervisor Martinez were able to recommend the issuance of the instant FDDA against petitioner.[73]

In each of these two (2) separate occasions, the revenue officers who pursued the examination of petitioner's books of accounts and other accounting records were merely armed with a Memorandum of Assignment. In both instances, no LOAs were procured and issued to authorize these revenue officers in pursuing the audit of petitioner's books of accounts and other accounting records.

This was confirmed during the cross-examination of RO Cartagena and RO Magsombol, as follows:

With respect to RO Cartegena:

"ATTY. DILAG:

Thank you, your Honors. Good morning, Mr. Witness. Mr. Witness, I have a few questions. You mentioned in Question No. 6 that you came

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[69] *Id.*, p. 7.
[70] See Exhibits "R-1", BIR Records, p. 312.
[71] See Exhibit "R-2", BIR Records, pp. 376-378.
[72] See Exhibit "R-3", BIR Records, p. 487.
[73] See Exhibit "R-4", BIR Records, pp. 527-528.

to know about this case when you received a copy of the Memorandum of Assignment.

Q: Can you please confirm if this memorandum of assignment is your authority to conduct an investigation of this case?

MR. CARTAGENA

A: Yes.

ATTY. DILAG

Q: And do you have any other proof of your authority aside from this memorandum of assignment?

MR. CARTAGENA

A: None, Attorney.

ATTY. DILAG

Q: All right. Mr. Witness, do you have a letter of authority that authorizes you to conduct the audit of petitioner?

MR. CARTAGENA

A: None, Attorney. None that I'm aware of."[74]

With respect to RO Magsombol:

"ATTY. DILAG

Good morning, Mr. Witness.

MR. MAGSOMBOL

Good morning.

ATTY. DILAG

In Question No. 6, you mentioned as well a memorandum of assignment.

Q: Can you confirm that this is your only authority to handle the reinvestigation of this case?

MR. MAGSOMBOL

A: At that time, that is the only authority I have.

ATTY. DILAG

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[74] TSN, 16 May 2019 Hearing, pp. 7-8.

No further questions, your Honors."[75]

Applying the pronouncements laid down by the Supreme Court in the ***Medicard Case***, ***Section 13 of the NIRC***, and the foregoing BIR issuances (*i.e.*, ***RMC No. 75-2018 and RMO No. 43-90***), the deficiency tax assessments issued against petitioner are void, in view of the lack of the requisite authority of Group Supervisor Martinez, RO Cartagena, and RO Magsombol, through an LOA, to conduct the audit investigation of petitioner for CY 2010.

Even if the two (2) Memorandum of Assignment issued to RO Cartagena and RO Magsombol are to be treated as an LOA, the same were not issued by the Revenue Regional Director, as required under the *NIRC*.

It is the firm view of my distinguished colleague, Justice Ma. Belen M. Ringpis-Liban, that despite the absence of a new LOA authorizing a new set of revenue officers, said revenue officers may be given authority to continue the audit examination of a taxpayer through the issuance of a Re-Validation Notice or Memorandum of Assignment or any letter in this case, provided it is issued by the appropriate Revenue Regional Director. This could be done through the provision of the ***NIRC*** and the provisions on agency under ***The New Civil Code***.

The power of respondent to conduct assessments is granted to him by virtue of ***Section 6 of the NIRC***, *viz:*

> "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."
> (Emphasis and underscoring, Ours)

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[75] *Id.*, at p. 15.

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

> "SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (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 respondent may pass on to Revenue Regional Directors, as expounded on in ***Section 10 of the NIRC:***

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

(c) **Issue Letters of authority for the examination of taxpayers within the region**;

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner**."
(Emphasis and underscoring, Ours)

To implement said provision, ***Revenue Memorandum Order No. 36-99 ("RMO 36-99")***[76] was issued, entitled as "Guidelines and Procedures in the Issuance of Letters of Authority, Approval of Audit Reports and Issuance of Assessment Notices and Amending Certain Provisions of Revenue Memorandum Order (RMO) Nos. 26-94, 37-94 and 23-97." ***RMO 36-99*** clearly emphasized that it is the Revenue Regional Directors who have the authority to issue LOAs for all audit cases within their regional jurisdiction, *viz*:

"I. OBJECTIVES

1. **To delineate the power to issue Letters of Authority (LAs) to the Revenue Regional Directors pursuant to Sec. 10 (c) of the Tax Code.**

2. To prescribe the revised guidelines and procedures in the issuance of LAs, approval of audit reports and issuance of assessment notices.

II. GUIDELINES AND PROCEDURES

1. Section E of RMO No. 26-94 is hereby amended to read as follows:

The Revenue Regional Director shall approve and sign LAs for all audit cases within his regional jurisdiction...

xxx

2. Section C.2.2.1 of RMO No. 23-97 is hereby amended to read as follows:

The Regional Director shall issue the corresponding Letter of Authority if indications of fraud have been established, and the

[76] 9 February 1999.

same has been confirmed by the Regional Tax Fraud Committee (RTFC), composed of the following:

a. Regional Director — Chairman
b. Assistant Regional Director — Vice-Chairman
c. Chief, SID — Member
d. Chief, Assessment Division — Member
e. Chief, Legal Division — Member

xxx

6. The following additional guidelines on the issuance of LAs shall be observed:

6.1 **All LA forms for use by the Revenue District Offices** and Special Investigation Divisions **shall be requisitioned by the Regional Director** from the Accountable Forms Divisions in the National Office.

xxx

6.6 **The Regional Director shall maintain an LA Register for all LAs issued by him.** All issuances, revalidations, cancellations, case closures, assessments and other matters in relation to LAs should be entered in the LA Register. Entries in the LA Register must be complete and updated."
(Emphasis and underscoring, Ours)

In fact, this is what happens in reality. The Revenue Regional Director is the one who issues and signs an LOA and not the CIR. Case in point is LOA No. eLA201000051352,[77] dated 4 July 2011, which was issued by then Regional Director of RR 8, Mr. Jaime B. Santiago, authorizing Mr. Jamael Hamid and Mr. Roberto Dureza, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2010.

An LOA is, in essence, a contract of agency. ***Article 1868 of The New 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.***,[78] the Supreme Court had the occasion to expound on the elements of agency, to wit:

[77] BIR Records, p. 1.
[78] G.R. No. 188288, 16 January 2012.

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

In an LOA, respondent is the principal - as he is the one mandated by the law to make assessments - while the Revenue Regional Director is his agent.

Now, may the Revenue Regional Director, respondent's agent, appoint a sub-agent, in this case, the revenue officer named in the LOA? ***Article 1892 of The New 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)"
> (Emphasis, Ours)

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to Mr. Jamael Hamid and Mr. Roberto Dureza who were originally named in the LOA may be revoked, transferred and reassigned to RO Cartagena, RO Magsombol, and Group Supervisor Martinez, 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***,[79] which requires that assessment be done by revenue officers 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."[80]

Second, although the document may not be entitled "Letter of Authority," it can contain all the elements necessary to establish a contract of agency between respondent and the new revenue officers. 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.[81] The title of the contract does not necessarily determine its true nature.[82] In fact, this Court has, time and again, declared certain documents emanating from respondent as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in ***Section 13 of the NIRC***, the laws on contracts and agency embodied in ***The New 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.[83] 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 New Civil Code***.[84]

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[79] "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, Ours)*.

[80] The New Civil Code of the Philippines, Article 1869.

[81] ***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, 11 October 2012 *citing* ***Spouses Villaceran v. De Guzman***, G.R. No. 169055, 22 February 2012; ***Ramos v. Heirs of Honorio Ramos, Sr.***, G.R. No. 140848, 25 April 2002, 381 SCRA 594, 601; ***Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta***, G.R. Nos. 165748 & 165930, 14 September 2011 *citing* ***Lopez v. Lopez***, G.R. No. 161925, 25 November 2009, 605 SCRA 358, 36.

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

[83] ***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, 10 December 2014, *citing* ***Lopez v. The Civil Service Commission***, 273 Phil. 147, 152 (1991).

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

Applying this view of my respected colleague, Justice Ma. Belen M. Ringpis-Liban, (*i.e.,* that a Memorandum of Assignment may properly authorize revenue officers to pursue an audit investigation of taxpayer's books of accounts and other accounting records provided it is signed by the proper Revenue Regional Director) to the present Petition, Memorandum of Assignment No. 911-2012-MOA, which authorized RO Cartagena to examine petitioner, and Memorandum of Assignment No. 052-1314-2014-MOA-ASS., which empowered RO Magsombol to continue the audit investigation of petitioner, both still fail to qualify as LOAs considering that the signatories in both were mere OIC-Revenue District Officers of RDO 52 and not the required Revenue Regional Director.

Similarly, therefore, based on this discussion, the deficiency tax assessments issued against petitioner are void for lack of authority by the revenue officers to conduct the examination.

Respondent failed to observe the fifteen (15)-day period given to taxpayers to file a Reply to the PAN.

In ***Commissioner of Internal Revenue v. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Science Institute), Inc.,***[85] the Court *En Banc* had the occasion to discuss the importance of the fifteen (15)-day period to file a Reply to the PAN *vis-à-vis* due process in tax assessment, *viz:*

> "As oft-repeated, Section 228 of the NIRC of 1997, as amended and RR No. 12-99, specifically Section 3.1.2 thereof, prescribed a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. It is well-settled that the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding respondent's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated respondent's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended and RR No. 12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, sans giving the taxpayer an opportunity to respond thereto.
>
> In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* the Supreme Court emphasized the importance of complying with the requirement to send a PAN to the taxpayer as an integral part of due process in the issuance of a deficiency tax assessment. It then declared in no uncertain terms that **the failure of the CIR to strictly comply with the requirements**

[85] CTA EB No. 1151, 17 February 2015

<u>laid down by law and its own rules</u> is a denial of Metro Star's right to due process. Undeniably, providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it within the prescribed period would be ignored.

Although petitioner was given ample opportunity to contest the Formal Letter of Demand dated January 9, 2009 and Assessment Notice No. 54-2005, **the fatal infirmity that attended its issuance prior to the lapse of the period to respond to the PAN is not cured thereby.** In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,* the Supreme Court categorically ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz:*

> 'In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued. xxx.'

It is worthy to note that, in a number of cases, the Court of Tax Appeals (CTA) has declared void any assessment that fails to comply with the due process requirement. In A Brown Co., Inc. vs. Commissioner of Internal Revenue, the CT A ruled that an assessment is void because of the multiple violations of due process committed by the BIR. The violations include, among others: **(1) issuance of the final assessment only four (4) days after the issuance of the PAN; and (2) the lack of opportunity given to the taxpayer to reply to the PAN within fifteen (15) days from its receipt.**

Similarly, in *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue,* the Court ruled that:

> **<u>'Given that the FAN was issued on the same day petitioner received the PAN, it is evident that respondent violated the provisions of Section 228 of the NIRC of 1997, as well as of the provisions of Revenue Regulations Nos. 12-85 and 12-99 and Revenue Memorandum Order No. 37-94, which give the taxpayer a period of fifteen days within which to reply to the PAN.</u>** Even assuming that there was an Informal Conference that took place between petitioner and respondent, and that during the conference and even thereafter, petitioner, through its counsel, requested a copy of the FAN, the fact remains that as indicated in the FAN, it was issued on the same day the PAN was received by petitioner. Clearly, petitioner was denied of its right to due process.'

The above rulings were reiterated in Yumex Philippines Corporation vs. Commissioner of Internal Revenue wherein the assessments were cancelled on the ground of non-observance by the CIR of the 15-day period granted to the taxpayer to respond to the PAN, viz:

> 'Respondent violated Section 228 of the NIRC of 1997, as amended, and the provisions of Revenue Regulations No. 12-99, which give the taxpayer a period of fifteen days within which to reply to the PAN. **In view of respondent's violation of petitioner's right to due process, the assessment would thus be considered void.'**

In view of the palpable violation of respondent's right to procedural due process pursuant to Section 228 of the NIRC of 1997, as amended, and the provisions of RR 12-99, the Formal Letter of Demand dated January 9, 2009 and Assessment Notice No. 54-2005- - being fatally infirmed - - should be considered void.

Truth to tell, a void assessment bears no fruit and it cannot give rise to an obligation to pay deficiency taxes. In the absence of a valid assessment, there is no legal basis for petitioner to collect from respondent, through the Preliminary Collection Letter dated March 4, 2010, the deficiency EWT in the aggregate amount of Php3,531,893.24 (inclusive of interest and compromise penalty) for fiscal year ending May 31, 2005."

Applying the above pronouncements, petitioner was clearly deprived of its guaranteed period to file a Reply to the PAN. When it received a copy of the PAN on 2 January 2014,[86] petitioner became entitled to a full fifteen (15)-day period, or until 17 January 2014, within which to file a Reply to said PAN in order to contest the deficiency tax assessment contained therein before a final assessment is issued against it. Unfortunately, on the last day of the fifteen (15)-day period, on 17 January 2014, respondent immediately issued the FAN. Hence, petitioner was denied the full fifteen (15)-day period guaranteed under ***Revenue Regulation No. 12-99 ("RR 12-99")*** within which to file a Reply to the PAN, which severely violated his right to due process.

Given the foregoing discussions, this Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. The Final Decision on Disputed Assessment issued by respondent against petitioner for CY 2010 covering deficiency Income Tax, EWT and DST in the total amount of **NINE MILLION NINE HUNDRED SEVENTY FIVE THOUSAND TWENTY SIX PESOS AND 33/100 PESOS (PHP9,975,026.33),** inclusive of interest up to 30 March 2018 is hereby **CANCELLED** and **WITHDRAWN**.

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[86] See BIR Records, pp. 408-411.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

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