REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2203** (CTA Case No. 9394)
	Present:
- versus -	Del Rosario, *PJ*, Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
PGA SOMPO INSURANCE CORPORATION, Respondent.	Promulgated: SEP 15 2021 2:30 pm

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DECISION

CASTAÑEDA, JR., *J.*:

In this Petition for Review, petitioner Commissioner of Internal Revenue seeks to set aside and cancel the assailed Decision[1] and Resolution[2] promulgated on August 8, 2019 and November 27, 2019, respectively, by the CTA Special First (1^{st}) Division.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the present Petition for Review is **GRANTED**. Accordingly, the assessment for deficiency

[1] Penned by Retired Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. uy concurring, Court *En Banc* Docket, pp. 32-47.
[2] Court *En Banc* Docket, pp. 48-52.

income tax, documentary stamp tax, value-added tax and administrative penalties as found in respondent's Final Decision dated June 30, 2016, in the aggregate amount of One Hundred One Million Twenty Nine Thousand Seven Hundred Seventy Two Pesos and 87/100 (₱101,029,772.87) are **CANCELLED and SET ASIDE**.

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

"**WHEREFORE**, premises considered, respondent's Motion for Reconsideration hereby **DENIED** for lack of merit.

SO ORDERED."[4]

THE FACTS

Culled from the records are the following facts:

"Petitioner [now respondent] PGA Sompo Insurance Corporation is a corporation duly organized and existing under Philippine laws, with principal address at 5th Floor, Corinthian Plaza Building, 121 Paseo de Roxas, Legazpi Village, Makati City. Petitioner is likewise registered with the Bureau of Internal Revenue (BIR) under Certificate of Registration (COR) dated 29 June 1994 and issued a Tax Identification Number (TIN) 000-486-759-000 and with the Insurance Commission under Certificate of Authority No. 2016/32-R dated January 1, 2016.

On the other hand, respondent [now petitioner] the Commissioner of Internal Revenue is the head of the BIR, the government agency tasked to, among others assess and collect all national internal revenue taxes. Respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code or other laws or portions thereof administered by the BIR. Respondent may be served with summons and other court processes at the 5th Floor, Bureau of Internal Revenue Building, Agham Road, Diliman, Quezon City. Jr

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[3] See Note 1, p. 46.
[4] See Note 2, p. 52.

On November 10, 2010, respondent issued Letter of Authority (LOA) No. 125-2010-00000229 signed by the Assistant Commissioner, Large Taxpayers Service, Nestor A. Valeroso, for the investigation of all revenue taxes for the period January 1, 2009 to December 31, 2009 (taxable year 2009). The LOA authorized Revenue Officer (RO) Saidamen Marohombsar and Group Supervisor (GS) Adora Alberto to examine petitioner's books of accounts and other accounting records.

During the course of the audit investigation for taxable year 2009, petitioner's Senior Executive Vice President and Chief Financial Officer, Philip K. Rico, executed four (4) successive Waiver of the Statute of Limitation, as follows:

Date of Execution	**Valid until**	**Date of Acceptance**	**Date of Receipt by the taxpayer**
July 30, 2012	March 31, 2013	August 13, 2012	August 13, 2012
January 9, 2013	December 31, 2013	January 15, 2013	January 25, 2013
August 27, 2013	June 30, 2014	September 9, 2013	September 20, 2013
March 24, 2014	December 31, 2014	March 31, 2014	April 3, 2014

On April 5, 2013, Mr. Edwin T. Guzman, OIC-Chief of Large Taxpayers Regular Audit Division, issued Memorandum of Assignment No. LOA-125-2013-203 and Memorandum of Assignment No. LN-125-2013-32, assigning RO Luzviminda A. Pedrosa and GS Fe F. Caling for the continuation of the audit/investigation to replace the previously assigned Revenue Officer.

On May 2, 2014, petitioner received the Preliminary Assessment Notice (PAN), assessing petitioner for deficiency taxes for the taxable year 2009 amounting to P216,233,988.25.

On May 19, 2014, petitioner filed with the BIR its position to the PAN dated May 16, 2014.

On September 17, 2014, petitioner received the Formal Letter of Demand/Formal Assessment Notice (FLD/FAN) dated September 15, 2014, as well as the Assessment Notices for deficiency IT, DST, VAT, Percentage Tax Expanded Withholding Tax and Final Withholding VAT in the total amount of P196,577,968.14, inclusive of interests, penalties and Administrative Penalties in the amount of P140,000.00 for the taxable year 2009.

On October 14, 2014, petitioner filed with the BIR its protest letter to the FLD/FAN dated October 13, 2014.

On December 3, 2014, petitioner filed with the BIR a Supplemental Protest Letter dated December 2, 2014 against the FLD/FAN.

On September 23, 2015, petitioner received the Final Decision on Disputed Assessment (FDDA) dated September 22, 2015 denying petitioner's protest.

On October 22, 2015, petitioner filed an Appeal Letter with the CIR.

On July 1, 2016, petitioner received the Final Decision of the CIR dated June 30, 2016, which partially denied the Appeal Letter filed before it by petitioner and demanded the payment of the total amount of P101,029,772.87, inclusive of interest and compromise penalties, as deficiency IT, DST and VAT and Administrative Penalties in the total amount of P90,000.

Petitioner filed the instant Petition for Review on July 27, 2016. Respondent filed his Answer by registered mail on October 25, 2016, interposing the following special and affirmative defenses:

xxx xxx xxx

A Notice of Pre-Trial Conference was issued on November 11, 2016 setting the case for Pre-Trial Conference on February 2, 2017. Accordingly, petitioner filed its Pre-Trial Brief on January 25, 2017.

Respondent filed an Urgent Motion to Defer Pre-Trial Conference on January 30, 2017, which the Court granted and reset the pre-trial conference on March 30, 2017. Respondent again moved for the resetting of the pre-trial conference, which was granted and rescheduled to May 25, 2017. Thus, respondent filed his Pre-Trial Brief[22] on May 22, 2017. 9

Pre-trial ensued. On June 21, 2017, petitioner filed a Manifestation stating that respondent's counsel was not able to file the Joint Stipulation of Facts and Issues due to the unacceptability of the admissions made in the Answer dated October 25, 2016 by the previous handling lawyer. Thereafter, the Pre-Trial Order was issued on August 18, 2017, and pre-trial was deemed terminated.

Petitioner presented its Assistant Vice President for the Accounting Department as its lone witness, Mr. Erwin V. Toribio. Thereafter, petitioner filed its Formal Offer of Evidence on December 5, 2017. In a Resolution dated January 31, 2018, the Court admitted all of petitioner's exhibits.

The admitted documentary exhibits offered by the petitioner are as follows:

xxx xxx xxx

On the other hand, respondent presented RO Luzviminda A. Pedrosa as his sole witness. Subsequently, respondent filed his Formal Offer of Evidence on May 2, 2018. The Court granted all of respondent's exhibits in a Resolution dated July 10, 2018.

Likewise, respondent's admitted documentary exhibits are as follows:

xxx xxx xxx

The Memorandum for the Petitioner was filed on September 13, 2018, whereas respondent filed his Memorandum on August 15, 2018. After such filing, the Court submitted this case for decision in a Resolution dated September 18, 2018."[5]

In its August 8, 2019 Decision, the Court in Division granted respondent's Petition for Review upon finding that the subject deficiency assessment is void for lack of authority of the revenue officer (RO) who conducted the audit investigation. Consequently, on November 27, 2019, the Court in Division issued a resolution denying petitioner's motion for reconsideration for lack of merit.

On December 18, 2019, petitioner filed the instant Petition for Review. On February 6, 2020, the Court *En Banc* issued a Resolution[6] ℛ

[5] See Note 1, pp. 32-42.
[6] Court *En Banc* Docket, pp. 54-55.

requiring respondent to file its comment. On February 21, 2020, respondent filed through registered mail its Comment and Opposition (to the Petition for Review dated December 18, 2019).

On March 9, 2020, the Court *En Banc* issued a Resolution[7] submitting the case for mediation.

On October 29, 2020,[8] the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUES

Petitioner raised the following issues to be decided by the Court *En Banc*: (1) Whether the Court in Division can rule on issues not raised during trial; (2) Whether the RO who conducted the audit investigation has no authority to conduct the same; and (3) Whether the subject deficiency tax assessment is void.

THE RULING

The Petition is unmeritorious.

Party-litigants must prove every minute aspect of their case

Petitioner argues that the issue of lack of Letter of Authority (LOA) was not raised during trial before the Court in Division. As such, it has no authority to rule on the same.

Section 1, Rule 14 of Revised Rules of the CTA pertinently provides:

> "**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."

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[9] the Supreme Court explained the above provision, as follows: ℛ

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[7] Court *En Banc* Docket, pp. 69-70.
[8] Court *En Banc* Docket, pp. 76-77.
[9] G.R. No. 183408, July 12, 2017.

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> 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:
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> > 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.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter."

Here, while the issue on lack of an LOA was never raised in the proceedings below, the pronouncement of the Supreme Court in *Lancaster* dictates that the CTA may also rule upon related issues necessary to achieve an orderly disposition of the case. Considering that the case involves deficiency tax assessment, it is imperative for the Court in Division to first determine the validity of the assessment before it can proceed to determine the merits of the case.

Considering the foregoing, the Court *En Banc* finds petitioner's argument untenable.

The RO who conducted the audit investigation has no authority to conduct the same. Hence, the deficiency tax assessment is void

In ruling against petitioner, the Court in Division found that:

> "In the instant case, the LOA dated November 10, 2010 that was issued to petitioner authorized RO Saidamen Marohombsar and GS Adora Alberto of LT Regular Audit

Division 2. The said LOA was signed by Assistant Commissioner Nestor S. Valeroso.

During the course of the audit investigation, on April 5, 2013, a MOA addressed to RO Luzviminda A. Pedrosa and GS Fe F. Caling was issued and signed by Mr. Edwin T. Guzman, OIC-Chief, RLTAD 2. Notably, the change in revenue officer and group supervisor occurred prior to the issuance of the assessment. Undoubtedly, RO Pedrosa and GS Caling completed the audit and recommended for the issuance of the assessment."[10]

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, 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, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the

[10] See Note 1, p. 45.

1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "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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> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: *Provided, however*, That assessments issued by the regional offices involving basic 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
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> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

As to the powers of a Revenue Regional Director, Section 10 of the 1997 NIRC pertinently provides:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance,

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> **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:**
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> x x x x x x x x x
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> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
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> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, as to the authority of an RO, Section 13 of the 1997 NIRC pertinently provides:

> "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." *(Emphasis supplied)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign an LOA. It may be noted that an OIC-Chief of the Regular Large Taxpayers Audit Division II is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
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> x x x x x x x x x
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority <u>but only upon prior authorization by the</u>**

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<u>Commissioner himself</u>." *(Emphasis and underscoring supplied)*

To reiterate, only the CIR or his duly authorized representatives can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated otherwise, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[11]

Considering that **only** the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another RO shall require the issuance of a new LOA. In any event, the same does not negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the 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 just 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.[12] 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 the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[13]

As mentioned earlier, OIC-Chief of LTS-RLTAD II Mr. Edwin T. Guzman issued a MOA to the concerned ROs. Not being one of the officials authorized to issue an LOA, the subject LOA is invalid for purposes of determining the validity of the assessment.

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[11] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[12] Revenue Administrative Order No. 001-12 dated April 2, 2012.
[13] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.

Consequently, a void assessment bears no fruit.[14] As such, the Court *En Banc* finds no reason to deviate from the ruling of the Court in Division.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice