REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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OPULENT LANDOWNERS, INC., Petitioner,	**CTA EB NO. 1802** (CTA Case No. 8956)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1803** (CTA Case No. 8956)
	Present:
- versus -	**DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, JJ.**
OPULENT LANDOWNERS, INC., Respondent.	**Promulgated:** JUL 05 2019 11:37 a.m.

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DECISION

UY, J.:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, CTA EB No. 1802 and CTA EB 1803, both filed before the Court *En Banc* on March 16, 2018 and March 21, 2018, respectively, assailing the Decision dated September 19, 2017[1] and Resolution

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred by Associate Justice Caesar A. Casanova and Associate Justice Catherine T. Manahan, EB Docket

dated February 14, 2018[2], rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8956 entitled "*Opulent Landowners, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read:

Decision dated September 19, 2017:

"**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly the Compromise Penalty imposed upon petitioner is **CANCELLED.** On the other hand, the assessments issued by respondent against petitioner for deficiency Income Tax, deficiency Value Added Tax, deficiency Documentary Stamp Tax, and deficiency Improperly Accumulated Earnings Tax are **UPHELD**, but in the reduced amount of ₱15,372,714.26, inclusive of 25% surcharge, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Income Tax	₱ 263,060.57	₱ 65,765.14	₱ 328,825.71
Value Added Tax	543,484.02	135,871.01	679,355.03
Documentary Stamp Tax	630,506.99	157,626.75	788,133.74
Improperly Accumulated Earnings Tax	10,861,119.82	2,715,279.96	13,576,399.78
Total	**₱ 12,298,171.40**	**₱ 3,074,542.86**	**₱ 15,372,714.26**

In addition, petitioner is liable to pay:

(a) Deficiency interest at the rate of 20% per annum on the following basic deficiency taxes pursuant to Section 249(B) of the NIRC of 1997, as amended:

Deficiency Tax	Basic Tax	20% Deficiency Interest computed from
Income Tax	₱ 263,060.57	April 5, 2010
Value Added Tax	543,484.02	January 25, 2010
Documentary Stamp Tax	630,506.99	January 5, 2010
Improperly Accumulated Earnings Tax	10,861,119.82	January 15, 2011

(b) Delinquency interest at the rate of 20% per annum in the total amount due of ₱15,372,714.26 representing basic deficiency income tax, deficiency value added tax, deficiency documentary stamp tax, Improperly Accumulated Earnings Tax, and on the deficiency

(CTA EB No. 1802), pp. 38 to 84; and EB Docket (CTA EB No. 1803), pp. 28 to 74.
[2] *Id.*, EB Docket (CTA EB No. 1802), pp. 86 to 106; EB Docket (CTA EB No. 1803), pp. 75 to 95.

> interest which has accrued as stated above in (a) computed from November 19, 2014 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.
>
> **SO ORDERED**."

Resolution dated February 14, 2018:

> "**WHEREFORE**, petitioner's **Motion for Partial Reconsideration (of the Decision Promulgated on September 19, 2017)** and respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 19 September 2017)** are **DENIED**, for lack of merit.
>
> **SO ORDERED**."

CTA EB No. 1802

CTA EB No. 1802 is the *Petition for Review* filed on March 16, 2018 by Opulent Landowners, Inc. (OLI), as petitioner, against the Commissioner of Internal (CIR), as respondent,[3] wherein OLI prays that the above-stated Decision and Resolution be reconsidered and vacated, and a new one be entered declaring as null and void the deficiency tax assessments, inclusive of penalties, for the period January 1, 2009 to December 31, 2009

CTA EB No. 1803

CTA EB No. 1803 is the *Petition for Review* filed on March 21, 2018 by the CIR, as petitioner, against OLI, as respondent,[4] wherein the CIR prays for the reversal and setting aside of the same assailed Decision and Resolution, and that a new one be entered ordering OLI to pay the aggregate amount of ₱34,635,662.74 for deficiency income tax, value-added tax (VAT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET) for taxable year 2009, as well as compromise penalties, surcharge and deficiency and delinquency interest.

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[3] EB Docket (CTA EB No. 1802), pp. 5 to 35.
[4] EB Docket (CTA EB No. 1803), pp. 7 to 22.

THE FACTS

OLI is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with Tax Identification Number (TIN) 003-937-632-000 and registered with the Securities and Exchange Commission (SEC) on August 4, 1989 under SEC Company Registration No. 0000166739. The principal purpose for its incorporation is to acquire by purchase, lease, donation or otherwise, and to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds.

On the other hand, the CIR is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On May 25, 2010, OLI received the Letter of Authority (LOA) No. 124-2010-00000061 dated May 14, 2010 from the CIR. Meanwhile, OLI filed several *Waivers of the Defense of Prescription*.

Thereafter, on January 17, 2014, OLI received the *Preliminary Assessment Notice* (PAN) with *attached Details of Discrepancies*. On February 3, 2014, OLI filed its written reply to the PAN.

On May 5, 2014, OLI received the *Formal Letter of Demand* (FLD) with attached *Details of Discrepancies* and *Assessment Notice* Nos. ELTAD-II-IT-09-0010, ELTAD-II-VT-09-0009, ELTAD-II-DS-0900006 and ELTAD-II-IE-09-0003, all dated April 30, 2014 and representing petitioner's deficiency Income Tax, VAT, DST and IAET, respectively.

Subsequently, on June 4, 2014, OLI filed an *Administrative Protest — Request for Reconsideration* against the FLD and prayed for the cancellation and withdrawal of the proposed assessments. On October 28, 2014, OLI filed a *Supplemental Protest*.

On November 19, 2014, OLI received the *Final Decision on Disputed Assessment* (FDDA). OLI then filed the instant *Petition for Review* on December 19, 2014.

On March 30, 2015, the CIR filed his *Answer* where he raised, among others, Special and Affirmative Defenses, to wit: that the tax assessment has basis both in fact and in law; and, that OLI is liable for deficiency income tax and VAT resulting from understated sales. Allegedly, OLI has: undeclared income from collected receivables from its tenants; undeclared income from unaccounted disbursement; unsubstantiated creditable withholding tax. Further, petitioner is allegedly liable for: deficiency DST from lease contracts, loan contracts and advances from stockholders; and IAET. According to the CIR, the LOA, *Notice of Informal Conference* (NIC), PAN, FLD, *Final Assessment Notice* (FAN), and FDDA were issued in accordance with law, rules and jurisprudence.

The parties filed their *Joint Stipulation of Facts and Issues* on July 7, 2015; and on July 20, 2015, the Court in Division issued a Pre-Trial Order.

During the hearing, OLI presented witnesses Josephine G. Bautista — Finance Officer of OLI, and Prudencio F. Tatunay — the Court-commissioned Independent Certified Public Accountant (ICPA). Thereafter, OLI filed its Formal Offer of Evidence on December 22, 2015. [5]

On the other hand, the CIR presented witness Melinda M. Rugayan — Revenue Officer II of the BIR. On March 10, 2016, the CIR filed Formal Offer of Evidence.[6]

On May 18, 2016, OLI presented its rebuttal witness, Gary Tan Jao — Head of the Engineering Department of Basic Holdings, Inc. Thereafter, on May 25, 2016, OLI filed its *Formal Offer of Evidence for the Petitioner (Arising from the Presentation of Rebuttal Witness).*[7]

On June 3, 2016, the Court in Division issued a Resolution directing the parties to submit their respective memoranda. The CIR filed his *Memorandum* on September 5, 2016, while OLI filed its *Memorandum* on September 19, 2016.

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[5] Division Docket (CTA Case No. 8956) – Vol. II, pp. 503-513
[6] Division Docket (CTA Case No. 8956) – Vol. II, pp. 566-577
[7] Division Docket (CTA Case No. 8956) – Vol. II, pp. 611-614

In the Resolution dated September 22, 2016[8], the Court in Division considered CTA Case No. 8956 submitted for decision.

In the assailed Decision,[9] OLI's *Petition for Review* was partially granted. The Court in Division upheld the assessment against OLI for taxable year 2009 covering deficiency income tax, VAT, DST and IAET, but in the reduced amount of ₱15,372,714.26, inclusive of the 25% surcharge. OLI was likewise ordered to pay deficiency and delinquency interests.

The CIR filed its *Motion for Partial Reconsideration (Re: Decision Promulgated on 19 September 2017)*,[10] and OLI filed its *Motion for Partial Reconsideration (of the Decision promulgated on September 19, 2017)*,[11] both on October 5, 2017.

OLI filed its *Comment (To the Respondent's Motion for Partial Reconsideration)* on October 27, 2017,[12] while the CIR filed its *Opposition (re: Petitioner's Motion for Partial Reconsideration)* on November 3, 2017.[13]

In the assailed Resolution dated February 14, 2018,[14] the Court in Division denied both OLI's *Motion for Partial Reconsideration* and the CIR's *Motion for Partial Reconsideration,* for lack of merit.

Thus, on March 6, 2018, OLI filed before the Court *En Banc* a *Motion for Extension of Time to File Verified Petition for Review (Pursuant to Rule 8, Sec. 3(b) of the Revised Rules of the Court of Tax Appeals)*,[15] praying for an additional period of ten (10) days from March 7, 2018, or until March 17, 2018 to file his *Verified Petition.* The Court *En Banc* granted OLI a final and non-extendible period of ten (10) days from March 7, 2018 or until March 17, 2018, within which to file its *Petition for Review.*[16]

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[8] Division Docket (CTA Case No. 8956) – Vol. II, p. 688
[9] EB Docket (CTA EB No. 1802), pp. 38 to 84; EB Docket (CTA EB No. 1803), pp. 28 to 74; and Division Docket – Vol. II (CTA Case No. 8956), pp. 690 to 736.
[10] Division Docket – Vol. II (CTA Case No. 8956), pp. 739 to 751.
[11] Division Docket – Vol. II (CTA Case No. 8956), pp. 753 to 780.
[12] Division Docket – Vol. II (CTA Case No. 8956), pp. 793 to 803.
[13] Division Docket – Vol. II (CTA Case No. 8956), pp. 804 to 810.
[14] EB Docket (CTA EB No. 1802), pp. 86 to 106; EB Docket (CTA EB No. 1803), pp. 75 to 95; and Division Docket – Vol. II (CTA Case No. 8956), pp. 816 to 836.
[15] EB Docket (CTA EB No. 1802), pp. 1 to 3.
[16] Minute Resolution dated March 6, 2018, EB Docket (CTA EB No. 1802), p. 4.

Likewise, on March 6, 2018, the CIR filed a *Motion for Extension of Time to File Petition for Review,*[17] praying for an extension of fifteen (15) days from March 6, 2018, or until March 21, 2018 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 March 6, 2012 or until March 21, 2018, within which to file his *Petition for Review.*[18]

On March 16, 2018, OLI filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1802;[19] while on March 21, 2018, the CIR filed his *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1803.[20]

Considering that the instant cases are appeals from the Decision dated September 19, 2017 and Resolution dated February 14, 2018, rendered by the Court in Division in CTA Case No. 8956, CTA EB No. 1803 was consolidated with CTA EB No. 1802 on March 22, 2018.[21]

In the Resolution dated April 18, 2018,[22] the Court *En Banc* ordered CIR in CTA EB No. 1802, and OLI in CTA EB No. 1803, to file their respective *Comments* to the said *Petition for Review.*

On May 17, 2018, OLI filed its *Comment (on Commissioner of Internal Revenue's Petition for Review).*[23] The CIR, however, failed to file his *Comment.*[24] Thereafter, the instant consolidated cases were submitted for decision in the Resolution dated June 28, 2018.[25]

Hence, this Decision.

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[17] EB Docket (CTA EB No. 1803), pp. 1 to 4.
[18] Minute Resolution dated March 6, 2018, EB Docket (CTA EB No. 1803), p. 6.
[19] EB Docket (CTA EB No. 1802), pp. 5 to 35.
[20] EB Docket (CTA EB No. 1803), pp. 7 to 22.
[21] Minute Resolution dated March 22, 2018, EB Docket (CTA EB No. 1802), p. 107.
[22] EB Docket (CTA EB No. 1802), pp. 109 to 110.
[23] EB Docket (CTA EB No. 1802), pp. 111 to 122.
[24] Records Verification dated May 21, 2018 issued by the Judicial Records Division of this Court, EB Docket (CTA EB No. 1802), p. 123.
[25] EB Docket (CTA EB No. 1802), pp. 125 to 126.

ISSUE AND ASSIGNMENT OF ERRORS

In **CTA EB No. 1802**, OLI raises the following issue, to wit:

> "Whether the [OLI] is liable to pay the deficiency Income Tax, Value-Added Tax, Documentary Stamp Tax and Improperly Accumulated Earnings Tax, inclusive of surcharge and interests for Taxable year 2009, as sustained in the assailed Decision and Resolution."[26]

In **CTA EB No. 1803**, the CIR raises the following errors supposedly committed by the Court in Division, *to wit*:

"GROUNDS FOR THE PETITION

I.

THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT [OLI] IS NOT LIABLE FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2009 DUE TO:

a. Undeclared Income from Discrepancy in the sales to Garcia, Rodrigo in the amount of P108,000.00;
b. Undeclared Income Discrepancy in the sales to Rivera, Roy in the amount of P82,210.00; and
c. Undeclared Income Discrepancy in the sales to Uy, Mady in the amount of P213,375.00.

II.

THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT [OLI] IS NOT LIABLE FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2009 DUE FROM COLLECTION OF OTHER RECEIVABLES-TENANTS IN THE ENTIRE AMOUNT OF ₱7,164,425.73.

III.

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[26] *Petition for Review*, EB Docket (CTA EB No. 1802), p. 10.

THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT [OLI] IS NOT LIABLE FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2009 DUE FROM UNACCOUNTED DISBURSEMENTS (SAWT of Meralco) IN THE AMOUNT OF ₱4,587,870.68.

IV.

THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT [OLI] IS NOT LIABLE FOR DEFICIENCY VALUE-ADDED TAX FOR TAXABLE YEAR 2009 DUE FROM COLLECTION OF OTHER RECEIVABLE-TENANTS IN THE AMOUNT OF ₱7,164,425.73.

V.

THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT [OLI] IS LIABLE FOR THE TAXABLE YEAR 2009 DUE FROM UNDECLARED INCOME BUT ONLY IN THE REDUCED AMOUNT OF ₱778,061.49 INSTEAD OF ₱1,181,646.49.

VI.

THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT [OLI] IS NOT LIABLE FOR DEFICIENCY VALUE-ADDED TAX FOR THE TAXABLE YEAR 2009 DUE FROM UNDECLARED INCOME FROM MERALCO IN THE AMOUNT OF ₱4,587,870.68.

VII.

THE HONORABLE COURT SECOND DIVISION ERRED IN RULING THAT [OLI] IS NOT LIABLE [FOR] COMPROMISE PENALTY IN THE AMOUNT OF ₱50,000.00."[27]

OLI's arguments:

OLI argues that the Court in Division erred in ruling that it is liable for deficiency income tax, VAT, DST and IAET, as well as surcharges and interests.

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[27] *Petition for Review*, EB Docket (CTA EB No. 1803), pp. 9 to 11.

Allegedly, the deficiency tax assessment arising from the alleged undeclared income from the Reconciliation of Listing (RELIEF) System has no basis in fact and law, and thus, must be cancelled. To allow the CIR to proceed with an assessment based on unverified information is allegedly nothing short of validating an otherwise "naked assessment" or an assessment based on mere presumptions.

Moreover, the RELIEF System is allegedly just a "tool" and that it is the consolidation and matching of information with other externally sourced data which will detect underdeclaration of revenues/ overdeclaration of cost and expenses, thus resulting to greater tax potential. OLI likewise contends that there was no mention in any of the regulations that the RELIEF system can be the basis of deficiency tax assessment.

As regards the undeclared income due from collection of *"Other Receivables-Tenants"*, OLI claims that the said amount represents payment by OPI's lessees for their electricity consumption, water consumption, common utility service area fees (CUSA), and other charges. Allegedly, the amount received is not considered as a flow of wealth or gain that is properly the subject of income tax, rather the amount, being a mere reimbursement, refers only to return of income.

OLI further submits and requests that the Court *En Banc*, sustain and adopt the analysis provided by the ICPA. Allegedly, the table analysis conducted by the CIR in coming up with the subject tax assessment could not serve as sufficient factual or legal basis for the imposition of the deficiency VAT.

OLI also claims that the CIR failed to properly compute the deficiency VAT assessment. According to OLI, deficiency VAT assessment must be computed on a quarterly basis and not on an annual basis. Hence, in view of the improper computation of the alleged deficiency VAT, it necessarily follows that the entire deficiency VAT assessment has no legal basis and must be declared void.

As to the deficiency DST, OLI requests that the Court *En Banc* considers the findings of the ICPA.

On the other hand, for the deficiency IAET, OLI argues that the reasonable needs of the business plays a much greater importance in determining the validity of the appropriation of its retained earnings. OLI claims that the appropriations of fund, taken together with the planning documents, prove that the accumulation was not just an afterthought, but was indeed a legitimate business judgment in order to expand its business.

OLI likewise asserts that the reasonable needs of a business can be best determined by looking into the intent, purpose, financial liquidity and stability of the business and not the immediate disposition of its excess profits.

In addition, OLI submits that the IAET liability for net retained earnings as of end of 2009 does not accrue until 2011, hence, the same is allegedly not proper subject of 2009 tax assessment; and that the computation of IAET must not include retained earnings from prior years.

As for the imposition of surcharges and interest, OLI submits that to the extent of the basic deficiency tax that will be cancelled by the Court *En Banc*, the corresponding accessory penalties of deficiency and delinquency interests and surcharges should likewise be cancelled.

OLI particularly pleads that the Court *En Banc* cancels the deficiency and delinquent interest and surcharge on the deficiency DST assessed against intercompany advances considering that the basis of the deficiency DST assessment on intercompany advances was only made certain when the Supreme Court promulgated the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[28]. According to OLI, at the time when it entered into intercompany advances, the same are not taxable because they do not qualify as loan agreements as ruled by the CIR in various BIR rulings.

The CIR's arguments:

The CIR argues that the Court in Division erred in ruling that OLI is not liable for deficiency income tax due from undeclared

[28] G.R. Nos. 163653 & 167689, July 19, 2011.

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income due to discrepancy in sales. Allegedly, the undeclared income was arrived at by comparing the purchases of OLI from third parties thru RELIEF system, Tax Reconciliation System, Summary Alphalist of Creditable Withholding Tax vis-à-vis the declaration made per Summary List of Sales.

Further, contrary to the ruling of the Court in Division, the receivables under *"Collection of Other Receivables-Tenants"* were actually income received by OLI from tenants which were not reported as income. It was likewise noted by the CIR that OLI claimed deductions for these charges. According to the CIR, by claiming these expenses as deductions, OLI enjoyed the benefit of a lowered taxable income and still received payments from its lessees to cover such expenses.

The CIR claims that based on the date extracted from the Conglomerate Masterfile thru the use of Computerized Accounting Audit Tools and Technique System, the income payment to MERALCO was not reported/accounted both in OLI's income tax return and financial statements. Likewise, it was noted that OLI still claimed deductions for electricity, which allegedly runs counter to the claim of OLI that such expenditure is not under its account and that OLI enjoyed the benefit of a reduced income tax as a result of the claimed deduction and at the same time still received payments from its lessees.

Moreover, the CIR points out that OLI should be held liable for the corresponding deficiency VAT resulting from the underdeclaration of income as discussed above.

With respect to the compromise penalty, the CIR argues that the imposition of the said penalty was pursuant to Revenue Memorandum Order (RMO) No. 19-2007; that compromise penalty is not only for settlement of criminal liability but also for certain violations of the National Internal Revenue Code (NIRC); and that pursuant to the Filinvest case, the Supreme Court affirmed the imposition of surcharge, interest and even compromise penalty.

THE COURT *EN BANC*'S RULING

Before looking into the issues raised in the instant consolidated *Petitions for Review*, the Court *En Banc* finds it necessary to resolve a related and vital issue to achieve an orderly disposition of these cases, to wit:

> "Whether or not the revenue officer(s) who examined OLI was authorized by the CIR or his duly authorized representative, through an LOA."

While the foregoing issue was not stipulated by the parties, the inclusion and resolution thereof is sanctioned under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, which read 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.

In this regard, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[29] held as follows:

> "**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:

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

> 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 <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)*

Indeed, it is imperative that this Court first resolve the issue on the authority of the revenue officer/s to conduct an audit investigation to achieve an orderly disposition of the case.

The revenue officers were not duly authorized to conduct the audit investigation on OLI, and to recommend the assessment of any deficiency taxes due against the latter.

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.

Relative thereto, Section 13 of the NIRC of 1997 provides that the authority of a revenue officer (RO) to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to a Letter of Authority (LOA), to wit:

> "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 and underscoring supplied.)*

Evidently, a grant of authority, through an LOA, must be issued assigning a Revenue Officer or Officers, to perform tax assessment functions, in order that such officer may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[30] 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:

> "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**

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[30] G.R. No. 222743, April 5, 2017.

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> **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.**
>
> 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. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**." *(Emphases and underscoring supplied)*

Based on the foregoing, ROs must be authorized through a Letter of Authority or LOA, in order that said officer/s may validly examine the books of accounts and other accounting records of a taxpayer. In the absence thereof, the tax assessments issued by the BIR against such taxpayer shall be void.

In the instant case, records disclose that pursuant to LOA No. 124-2010-00000061 dated May 14, 2010,[31] only ROs Roque Doloiras, Denver Gomez, Lizette Mallari, Evangeline Casipe and Group Supervisor (GS) Lanie Luna, were authorized to examine the books of accounts and other accounting records of OLI for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.

Notably, ROs Melinda M. Rugayan, Rumualdo I. Plocios, Lilia G. Pascual, Lolita G. Sabado, and GS Samuel C. Reyes, who recommended the issuance of Notice of Informal Conference[32], Preliminary Assessment Notice[33], Formal Letter of Demand/Final

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[31] Exhibit "R-3", BIR Records, p. 1.
[32] *Memorandum* dated September 9, 2013, Exhibit "R-11", BIR Records, pp. 614 to 621.
[33] *Memorandum* dated December 12, 2013, Exhibit "R-13", BIR Records, pp. 643 to 644.

Assessment Notice[34] and Final Decision on Disputed Assessment[35], were not named in the said LOA No. 124-2010-00000061. Their supposed authority to conduct the audit investigation of OPI was based solely on *Memorandum of Assignment* (MOA) No. ELTAD II-2013-LOA-0045 dated February 20, 2013[36] signed by Linda Grace Sagun, the OIC-Chief of Excise LT Audit Division II. This was confirmed by RO Melinda M. Rugayan in her Judicial Affidavit[37], to wit:

> "8Q: Why are you familiar with the case?
>
> 8A: I am familiar with the case because I was tasked to continue the audit of petitioner for taxable year 2009 after the original Revenue Officers assigned to the case were transferred to another office.
>
> 9Q: **You mentioned that you were tasked to continue the audit of petitioner for taxable year 2009, what is the authority to conduct the audit examination of petitioner**?
>
> 9A: **<u>I was authorized under Memorandum of Assignment dated 20 February 2013</u>**"[38] *(Emphasis and underscoring supplied)*

Likewise, in the letter dated February 28, 2013[39] also signed by Linda Grace Sagun, OLI was informed that said ROs and GS were authorized to continue the conduct of the examination/ investigation of OLI's books of accounts and other accounting records pursuant to MOA No. ELTAD II-2013-LOA-0045 relative to LOA No. 124-2011-00000061.

It bears noting, however, that the record is bereft of any evidence showing that a new LOA was issued specifically authorizing the said ROs and GS to conduct the audit investigation.

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[34] *Memorandum* dated March 26, 2014, Exhibit "R-15", BIR Records, pp. 830 to 838.
[35] *Memorandum* dated September 16, 2014, Exhibit "R-18", BIR Records, pp. 903 to 904.
[36] Exhibit "R-1", BIR Records, p. 458.
[37] Exhibit "R-20", Division Docket (CTA Case No. 8956), pp. 256 to 266.
[38] *Id.*, p. 257.
[39] Exhibit "R-2", BIR Records, pp. 457.

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:

> "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**.
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s),** and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." *(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 a Letter of Authority. 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 the present case, no new Letter of Authority was issued, and the only basis for the revenue officers' authority was the above-mentioned MOA.

Considering that the above-named ROs and GS were not duly authorized by a new LOA, the subject tax assessments, which came about as a result of their examination of OLI's books of accounts and accounting records for taxable year 2009, are void. It must be emphasized that a void assessment bears no valid fruit.[40]

With the foregoing ruling, it becomes unnecessary to address the issues raised by the CIR and OPI in their respective *Petition for Review*.

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

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 1802 filed by OLI is **GRANTED**; while the *Petition for Review* in CTA EB No. 1803 filed by the CIR is **DENIED** for lack of merit.

Accordingly, the Decision dated September 19, 2017 and the Resolution dated February 14, 2018, both rendered by the Court in Division in CTA Case No. 8956, are **REVERSED** and **SET ASIDE**. The deficiency tax assessments issued against OLI for taxable year 2009 are **CANCELLED** and **SET ASIDE** for being null and void.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(With Concurring and Dissenting Opinion)
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

(I join the Concurring and Dissenting Opinion of Justice Castañeda)
CATHERINE T. MANAHAN
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

OPULENT LANDOWNERS, INC.,
Petitioner,

CTA EB NO. 1802
(CTA Case No. 8956)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1803
(CTA Case No. 8956)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

-versus

OPULENT LANDOWNERS, INC.,
Respondent.

Promulgated:
JUL 05 2019
11:37a.m.

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* that the Petition for Review in CTA EB No. 1802 must be granted and that the Petition for Review in CTA EB No. 1803 must be denied.

I, however, wish to stress that a Memorandum of Assignment (MOA) signed by the OIC-Chief of the Excise LT Audit Division could not be accorded the same legal effect as a Letter of Authority (LOA).

Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **CIR or from his duly authorized representatives** before an examination of a taxpayer may be made. The *"authorized representative"* contemplated by law who may issue an LOA is no other than a **Revenue Regional Director** pursuant to Section 13 of the NIRC of 1997, as amended. The power to issue an LOA may not be delegated by the CIR or the Revenue Regional Director to any other officer.[1]

For taxpayers under the Large Taxpayers Service, Revenue Memorandum Order (RMO) No. 29-07 enumerates the BIR Officials who have the authority to issue and approve LOAs for the conduct of the audit, *viz.*:

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

In the present case, while the MOA cannot be treated as an LOA as precisely, any re-assignment of cases requires the issuance of a new LOA, its fatal infirmity is further highlighted by the fact that it was **signed and issued by the OIC-Chief of Excise LT Division and not by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayer Service**.

There is nothing in the body of RMO No. 069-10 which explicitly gives authority to the Chief of the Excise LT Division to sign the MOA.

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[1] The pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation, G.R. No.* 156208, September 26, 2006, is analogously applied in this case.

While Annex "A" of RMO No. 069-10 states that the MOA shall be signed by the Head, Investigating Office, the same cannot be reasonably construed to refer to the Chief of the Excise LT Division but to the Assistant Commissioner who heads the Large Taxpayers Service - - the Office to which the Excise LT Division belongs.

All told, I VOTE to: (i) **GRANT** the Petition for Review in CTA EB No. 1802; and, (ii) **DENY** the Petition for Review in CTA EB No. 1803.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OPULENT LANDOWNERS, INC., Petitioner,	**CTA EB No. 1802 (CTA Case No. 8956)**
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

x---x

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1803 (CTA Case No. 8956)**
-versus-	**Present:** Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
OPULENT LANDOWNERS, INC., Respondent.	Promulgated: JUL 05 2019 11:37a.m.

x---x

CONCURRING AND DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

With due respect to my esteemed colleagues, I concur with the denial of the Petition for Review filed by the Commissioner of Internal Revenue. On the other hand, I dissent with the opinion of the majority in the abovecaptioned consolidated cases that the deficiency tax assessments issued against Opulent Landowners, Inc. (OLI) for taxable year 2009 are void, thus, cancelled, on the ground that no new Letter of Authority was issued and the only basis for the revenue officers' authority was Memorandum of Assignment (MOA) No. ELTAD II-2013-LOA-0045 dated February 20, 2013[1] signed by Linda Grace Sagun, the OIC-Chief of Excise LT Audit Division.

Pertinent to this case is Revenue Memorandum Order No. 069-10,[2]

> "August 11, 2010
>
> REVENUE MEMORANDUM ORDER NO. 069-10
>
> SUBJECT : Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment
>
> TO : All Internal Revenue Officers, Officials and Others Concerned
>
> xxx xxx xxx
>
> III. Policies and Guidelines
>
> xxx xxx xxx
>
> **8. Manual serially-numbered MOA shall be issued for the following cases:**
>
> **8.1 Reassignment for the continuation of the audit/investigation of a case to another RO due to resignation/retirement/transfer of the original RO;**
>
> xxx xxx xxx
>
> IV. Repealing Clause
> All revenue issuances or portions thereof, which are inconsistent herewith, are hereby repealed accordingly."

Also, pertinent is the Annex A of Revenue Memorandum Order No. 062-10[3] which reads, as follows: gc

[1] Exhibit "R-1," BIR Records, p. 458.
[2] Signed by KIM S. JACINTO-HENARES, Commissioner of Internal Revenue.
[3] Signed by JOEL L. TAN-TORRES, Commissioner of Internal Revenue.

ANNEX A

(Investigating Office)
Memorandum of Assignment

No. __________
Date: _________

MEMORANDUM TO:
Revenue Officer/s : ____________________
Group Supervisor : ____________________

Subject: Audit/Verification of the _____________ Tax Liabilities/Claim for _________ Tax Credit/Refund for Taxable Year/Period _________ of ____________ (Taxpayer) with TIN ____________ Pursuant to ___________ (LA No./eLA No./TVN No.) dated __________

Referred to you is the subject case/docket for:

[ ] Continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office.

xxx xxx xxx

The docket with the report of the case shall be submitted to the undersigned within the time frame prescribed under existing revenue issuances.

For your information and strict compliance.

____
Name of Authorized Revenue Official/
Head, Investigating Office

Received by: Date Received:

__________________ __________________
Revenue Officer/s

__________________ __________________
Group Supervisor"

Based on the foregoing, MOA is allowed. In this case, a perusal of the MOA ("R-1") shows that it was for "Continuation of the audit/investigation to replace previously assigned Revenue Officer Roque Doloiras who was transferred to another division/Office pursuant to RTAO No.5-2013 dated Jan.4, 2013." The signatory of the MOA in this case was signed by Linda

Grace Sagun, the OIC-Chief of Excise LT Audit Division, the head of the investigating office, thus, authorized.

We emphasize that this case emanates from a validly issued LOA.[4] The ROs who continued the investigation were specifically named in the Memorandum of Assignment. Moreover, OLI was informed of the change in Revenue Examiners.[5] OLI was also informed of the change in the Office who will be handling the audit examination for taxable year 2009.[6] Based on the foregoing, the ROs were authorized to conduct the investigation, thus, the assessments issued were valid.

In view of the foregoing discussions, I vote to deny the petitions for review and to **AFFIRM** the Decision and Resolution dated September 19, 2017 and February 14, 2018, respectively of the CTA Second Division in CTA Case No. 8956.

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

[4] Exhibit "P-4", Division Docket Vol.1, p.359; Exhibit "R-3", BIR Records, p. 1.
[5] Exhibit "R-2", BIR Records, p. 457.
[6] Exhibit "R-4", BIR Records, p. 2.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OPULENT LANDOWNERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1802
(CTA Case No. 8956)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

OPULENT LANDOWNERS, INC.,
Respondent.

CTA EB NO. 1803
(CTA Case No. 8956)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
JUL 05 2019 11:37a.m.

x---x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in granting the Petition for Review filed by Opulent Landowners, Inc. for lack of authority of the examining Revenue Officers ("ROs"), for a separate reason.

I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in their favor, Melinda M. Rugayan, Rumualdo I.

Plocios, Lilia G. Pacual, and Lolita G. Sabado may be given the authority to continue the audit and examination of Opulent Landowners, 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</u> <u>Commissioner</u> <u>or</u> <u>his</u> <u>duly</u> <u>authorized</u> <u>representative</u> <u>may</u> <u>authorize</u> <u>the</u> <u>examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[1]

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

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

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[1] *Emphasis and underscoring supplied.*

> (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]

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

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[2] *Emphasis and underscoring supplied.*

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

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

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

Now, may the Regional Director, the CIR's agent, appoint a sub-agent, in this case, the Revenue Officer named in the LOA? Article 1892 of the Civil Code says that he can. The said provision states:

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[5]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Roque Doloiras, Denver Gomez, Lizette Mallari and Evangeline Casipe who were originally named in the

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

LOA may be revoked, transferred and reassigned to ROs Rugayan, Plocios, Pascual and Sabado, for continuance of audit.

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[6] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[7]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[8] The title of the contract does not necessarily determine its true nature.[9] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[10] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any 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

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

7 Civil Code of the Philippines, Article 1869.

8 Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

9 Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

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

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, ROs Rugayan, Plocios, Pascual and Sabado who conducted the examination of Opulent Landowners, 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.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants</u>.**"[15]

In the instant case however, said memorandum[16] was only signed by OIC-Chief of Excise LT Audit Division II Linda Grace Sagun.

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[11] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.
[12] Issued September 20, 1990.
[13] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.
[14] Issued September 26, 2007.
[15] *Emphasis and underscoring supplied.*
[16] Exhibit "R-1", BIR Records, p. 458.

Therefore, ROs Rugayan, Plocios, Pascual and Sabado were without authority to continue the audit.

From all the foregoing, I vote for the **GRANT** of the Petition for Review filed by Opulent Landowners, Inc.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice