**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***
*********

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**ROYAL CLASS TRADING AND TRANSPORT CORPORATION,**
Respondent.

**CTA EB No. 1832**
(CTA Case No. 8844)

***Present:***

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

***Promulgated:***

**JUL 29 2019**
4:10 p.m.

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# DECISION

**UY, J.:**

Before the Court *En Banc* is a *Petition for Review* filed on May 3, 2018 by the Commissioner of Internal Revenue, petitioner, against Royal Class Trading and Transport Corporation, respondent [1] praying for the reversal and setting aside of the Decision dated November 16, 2017[2] and Resolution dated March 28, 2018[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8844, entitled *"Royal Class Trading and Transport Corporation, Petitioner, vs. Commissioner of Internal Revenue and the Bureau of Internal*

[1] EB Docket, pp. 7 to 31.
[2] EB Docket, pp. 37 to 61; Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred by Associate Justice Ma. Belen M. Ringpis-Liban, while Associate Justice Lovell R. Bautista took no part.
[3] EB Docket, pp. 62 to 65; Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred by Associate Justice Lovell R. Bautista, while Associate Justice Ma. Belen M. Ringpis-Liban was on leave.

*Revenue, Respondents".* The dispositive portions thereof respectively read:

**<u>Decision dated November 16, 2017</u>:**

> "**WHEREFORE,** the instant Petition for Review filed by petitioner Royal Class Trading and Transport Corporation on July 4, 2014, is hereby **GRANTED**. Accordingly, the Final Decision of respondent Commissioner of Internal Revenue dated May 27, 2014, affirming the Formal Letter of Demand and Final Assessment Notice issued against petitioner, for alleged deficiency Income Tax and Value-added Tax plus compromise penalty in the total amount of ₱151,339,624.78 for the calendar year ending December 31, 2007, as well as all the Warrants of Distraints and/or Levy issued against petitioner on various dates resulting from the subject assessment, are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"

**<u>Resolution dated March 28, 2018</u>:**

> "**WHEREFORE**, the Motion for Reconsideration dated December 7, 2017 filed by respondent Commissioner of Internal Revenue is **DENIED**, for lack of merit. The assailed Decision dated November 16, 2017 is **AFFIRMED** *in toto.*
>
> **SO ORDERED.**"

## THE FACTS

Petitioner, Commissioner of Internal Revenue (or CIR), is the head of the Bureau of Internal Revenue (BIR), the government agency responsible with the assessment and collection of national internal revenue taxes. He has the power to decide or act on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR.

Respondent, Royal Class Trading and Transport Corporation (Royal Class for short) is a domestic corporation, engaged in the trading of petroleum products supplied by Pilipinas Shell Petroleum Corporation and Petron Corporation. Its gas station and office are located at Reina Mercedes, Isabela.

Royal Class filed its Annual Income Tax Return for calendar year (CY) 2007 on April 14, 2008, and its Quarterly Value-added Tax (VAT) Returns for the 1st, 2nd, 3rd, and 4th quarters of CY 2007 on April 20, 2007, July 20, 2007, October 22, 2007, and January 22, 2008, respectively.

On October 16, 2008, the CIR issued a *Letter of Authority* (LOA), authorizing Revenue Officer (RO) Ma. Elisa F. Batalla to examine respondent's books of accounts and other accounting records for the period January 1, 2007 to December 31, 2007.

Thereafter, on November 22, 2010, the CIR issued the *Preliminary Assessment Notice* (PAN), assessing Royal Class the amounts of ₱104,433,417.36 and ₱44,999,772.16, as deficiency income tax and value-added tax (VAT), respectively, inclusive of interests, and recommending a compromise penalty of ₱50,000.00. The PAN was served to Royal Class via registered mail which the latter received on December 3, 2010.

Subsequently, the CIR issued the *Final Assessment Notice* (FAN) and the *Formal Letter of Demand* (FLD), both dated December 22, 2010, against Royal Class assessing it for the following liabilities, inclusive of legal increments:

| Tax Type | Amount |
|---|---|
| Income tax | ₱ 105,810,621.81 |
| VAT | 45,479,002.97 |
| Compromise penalties | 50,000.00 |
| **Total** | **₱ 151,339,624.78** |

Both the said FAN and FLD were sent to Royal Class, and were received, through registered mail, on January 10, 2011. And on June 7, 2014, Royal Class received the assailed *Final Decision* dated May 27, 2014 issued by the CIR.

Royal Class filed a *Petition for Review* with the Court in Division on July 4, 2014 docketed as CTA Case No. 8844 entitled *"Royal*

*Class Trading and Transport Corporation, Petitioner, vs. Commissioner of Internal Revenue and the Bureau of Internal Revenue, Respondents".*

On November 3, 2014, the CIR filed an *Answer* in CTA Case No. 8844, challenging the jurisdiction of the Court in Division in said case, which allegedly deprived the Court *a quo* of the competence to entertain the same. The CIR explained that the assailed assessment has become final, executory and demandable because Royal Class, despite receipt of the FAN and FLD on January 10, 2011, failed to protest the assessment within the period prescribed under Section 228 of the NIRC, as amended, warranting the dismissal of the case. Considering that the LOA, PAN, FLD and FAN were all in order and issued in accordance with law, rules and jurisprudence, the finding of deficiency tax liabilities against Royal Class is proper in all aspects.

The Pre-Trial Conference held on January 29, 2015 in CTA Case No. 8844[4] was terminated with the issuance of a Pre-Trial Order on April 15, 2015.[5]

In support of its case, Royal Class presented the following witnesses, to wit: Jose Emmanuel P. Guillermo, Maria Theresa G. Ibarra, Jaime L. Nabua, Jovencio N. Daroya, Jr., and Arvin L. Celino.

For his part, the CIR presented ROs Elizabeth C. Soriano and Ma. Elisa F. Batalla, as witnesses.

After the filing of the CIR's *Memorandum* on October 21, 2016 and the *Memorandum* of Royal Class on October 25, 2016, CTA Case No. 8844 was deemed submitted for decision on November 15, 2016.

In the assailed Decision,[6] the Court in Division granted the *Petition for Review* in CTA Case No. 8844, thereby cancelling and setting aside the CIR's *Final Decision* dated May 27, 2014, which affirmed the FLD and FAN issued against Royal Class, for alleged deficiency income tax and VAT plus compromise penalty in the total

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[4] Minutes of Hearing on January 29, 2015, Division Docket (CTA Case No. 8844) – Vol. II, p. 748
[5] Pre-Trial Order dated April 15, 2015, Division Docket (CTA Case No. 8844) – Vol. II, pp. 852-861
[6] EB Docket, pp. 37 to 61; and Division Docket (CTA Case No. 8844) – Vol. III, pp. 1745 to 1769.

amount of ₱151,339,624.78 for CY ending December 31, 2007, as well as all Warrants of Distraint and/or Levy issued against Royal Class on various dates resulting from the subject assessment.

The CIR then filed a *Motion for Reconsideration* on December 7, 2017,[7] praying for the reversal of the Decision dated November 16, 2017. The Court in Division, however, denied said *Motion for Reconsideration* for lack of merit in the assailed Resolution dated March 28, 2018.[8]

On April 17, 2018, the CIR filed, before this Court *En Banc*, a *Motion for Extension of Time to File Petition for Review*,[9] praying for an extension of fifteen (15) days from April 19, 2018, or until May 4, 2018, within which to file his *Petition for Review*. The same was granted by Court *En Banc* and the CIR was given a final and non-extendible period of fifteen (15) days from April 19, 2018, or until May 4, 2018, within which to file the said *Petition for Review*.[10]

On May 3, 2018, the CIR filed the instant *Petition for Review*. Thus, in the Resolution dated May 31, 2018,[11] the Court *En Banc* ordered Royal Class to file its *Comment* to the instant *Petition for Review* within ten (10) days from receipt thereof. On June 13, 2018, Royal Class filed its *Comment* to the instant *Petition for Review*.[12]

In the Resolution dated July 11, 2018,[13] the Court *En Banc* gave due course to the instant *Petition for Review*, and required the parties to submit their respective memorandum. Royal Class filed his *Memorandum* on August 15, 2018;[14] while CIR filed its *Memorandum* on August 20, 2018.[15] On September 5, 2018, this case was deemed submitted for decision.[16]

Hence, this Decision.

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[7] Division Docket (CTA Case No. 8844) – Vol. III, pp. 1771 to 1780.
[8] EB Docket, pp. 62 to 65; and Division Docket (CTA Case No. 8844) – Vol. III, pp. 1790 to 1793.
[9] EB Docket, pp. 1 to 4.
[10] Minute Resolution dated April 18, 2018, EB Docket, p. 6.
[11] EB Docket, pp. 67 to 68.
[12] EB Docket, pp. 69 to 72.
[13] EB Docket, pp. 75 to 76.
[14] EB Docket, pp. 77 to 85.
[15] EB Docket, pp. 86 to 109.
[16] Resolution dated September 5, 2018, EB Docket, pp. 112 to 113.

## GROUNDS FOR THE PETITION

The Commissioner invokes several grounds in the instant *Petition for Review*, to wit:

> "I. With all due respect, the Honorable Court has no jurisdiction over the original petition filed by respondent.
>
> II. The Honorable Court Third Division erred in ruling that the assessments are void because the Revenue Officer who conducted the audit of respondent's books or accounts was allegedly not authorized (through a letter of authority).
>
> III. The Honorable Court Third Division erred in applying the ruling of the Honorable Supreme Court in the case of CIR vs. Sony Philippines. The ruling is not applicable to the instant case."[17]

***Petitioner's arguments:***

Petitioner CIR argues that respondent Royal Class failed to file its protest on the FLD and FAN within the time provided for by the NIRC of 1997; and that based on Section 228 of the said law, the taxpayer had thirty (30) days from receipt of the FLD/FAN within which to file its protest thereto. Since Royal Class admitted having received the FLD/FAN on January 10, 2011, it had the opportunity until February 9, 2011, within which to file a valid protest on the assessment. However, Royal Class allegedly failed to file said protest within such period.

While Royal Class alleges that a certain Jaime L. Nabua wrote the protest letter dated January 12, 2011 which was sent thru RO Rene C. Tangonan, no such protest letter was received by the CIR, and the same is not found in the BIR Records of the case.

As regards to the *Final Decision* dated May 27, 2014 issued by the CIR, the same is allegedly not a decision on a valid protest filed by Royal Class, but merely on the motion/petition filed on October 14, 2011 by its president, Jose Emmanuel Guillermo. And as such, the Court in Division cannot exercise appellate jurisdiction over the issue

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[17] *Petition for Review*, EB Docket, p. 10; and Petitioner's *Memorandum*, EB Docket, p. 89.

at hand. Allegedly, the assessments against Royal Class never became disputed, and thus, the Court in Division is left only with one power to exercise, that is, to dismiss the original petition.

Moreover, the CIR claims that the Court in Division erred in ruling that the RO who conducted the audit of the books of accounts of Royal Class was not authorized, because the Revenue Memorandum Order (RMO) No. 38-88 relied upon by the Court in Division does not grant the CIR a vested right over the internal work procedure in the BIR; and that any violation in the said RMO would only result in the administrative liability of the RO, but it would most certainly not affect the validity of the assessment against Royal Class.

In addition, the CIR contends that if this Court maintains the position that only those ROs indicated in the LOA would be authorized to continue the audit, collection of taxes would be jeopardized, because the BIR cannot issue another LOA within the same year, while the Court requires the issuance of the same. Thus, this is a no-win situation for the BIR, which is allegedly not in accordance with the lifeblood doctrine.

Finally, the CIR claims that the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[18] ("*Sony Philippines* case") is not applicable to the instant case, because the facts in the said case are not present in the latter.

***Respondent's counter-arguments:***

Respondent Royal Class counter-argues that the Court in Division was correct in holding that the assessment made by the BIR and CIR is a nullity on several grounds, to wit:

> a) The LOA dated October 16, 2008 and served to Royal Class on November 14, 2008 should have been finished on March 14, 2009 or 120 days from service of the LOA. But RO Ma. Elisa F. Batalla, for unjustifiable reasons, was not able to finish the audit, examination and assessment work within 120 days as she did not even bother to visit the nearby offices of Royal Class in Isabela nor text or call the key officers of Royal Class regarding their need for additional documents;

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[18] G.R. No. 178697, November 17, 2010.

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b) When the LOA was "revalidated" through a mere stamp and signature of OIC Regional Director Milabao and late after March 14, 2009, still the additional 120 days given to the RO or until July 14, 2009 was not enough again for RO Batalla to finish her job efficiently.

c) From July 14, 2009 to November 2009, which is the third 120 days again, no result of audit, examination and assessment was done by the BIR RDO and Regional Officers. At this stage, the BIR already has spent three hundred sixty (360) days since the LOA dated October 16, 2008, without any assessment. Thus, the BIR cannot argue that they can only issue one LOA per year because at this stage, a year has already passed.

d) That unknown to Royal Class, the LOA was re-assigned from RO Elisa Batalla to RO Rene Tangonan on February 11, 2010, or one year and three months since the LOA was served to respondent on November 14, 2008, just by a mere indorsement violating Revenue Memorandum Order 43-90.

Lastly, Royal Class submits that the Court in Division was correct in ruling that the subject deficiency tax assessments are clearly void for lack of authority of the examining RO and the discussion of the other issues raised becomes unnecessary.

## THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

***The Court in Division has jurisdiction over the Petition for Review filed by Royal Class Trading and Transport Corporation.***

Petitioner CIR claims that the Court in Division has no jurisdiction over the original petition filed by Royal Class with the Court in Division because the assailed decision was not a decision on a valid protest, and therefore, the Court in Division cannot exercise its appellate jurisdiction over the issue at hand. According to the CIR, the assessments against respondent Royal Class never became disputed; and thus, the Court in Division is left only with one power to exercise, that is, to dismiss the original petition.

We disagree.

Indeed, jurisdiction over the matter or nature of an action is fundamental for a court to act on a given controversy.[19] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action.[20] Hence, it becomes necessary to look into the jurisdiction conferred by law to the Court of Tax Appeals.

Section 7 of Republic Act (RA) No. 1125[21], as amended by RA No. 9282[22], defines the appellate jurisdiction of the CTA. The said provision, in part, reads:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees, or other charges, penalties in relation thereto, **or <u>other matters arising under the National Internal Revenue Code</u>** or other laws administered by the Bureau of Internal Revenue;
>
> xxx xxx xxx." *(Emphasis supplied)*

Based on the foregoing provision, the exclusive appellate jurisdiction of this Court pertains not only to petitioner's decisions, rulings, or inactions, involving disputed assessments and tax refunds, but also includes "***other matters***" arising under the NIRC.

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[19] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. 185666, February 4, 2015.

[20] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014 citing *Commissioner of Internal Revenue vs. Villa*, 130 Phil. 3, 4 (1968).

[21] AN ACT CREATING THE COURT OF TAX APPEALS.

[22] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHE PURPOSES.

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[23] the Supreme Court said:

> "...petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. xxx xxx xxx. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide 'other matters' related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over 'other matters,' it presupposes that the tax assessment has not become final and unappealable.
>
> **We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term 'other matters' referred to by the CIR in its argument can be found in number (1) of the aforementioned provision,** to wit:
>
> > Section 7. Jurisdiction. – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
> >
> > 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue.** (Emphasis supplied.)
>
> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term 'other matters' can be supported or even deduced. **What is rather clearly apparent, however, is that the term 'other matters' is limited only by the qualifying phrase that follows it.**

[23] G.R. No. 169225, November 17, 2010.

> **Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).**
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> xxx xxx xxx
>
> Furthermore, **the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over 'other matters' arising under the NIRC or other laws administered by the BIR as separate and independent of each other.** This runs counter to petitioner's theory that the latter is qualified by the status of the former, i.e., an 'other matter' must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment."

Based on the foregoing jurisprudential pronouncements, the jurisdiction of this Court over decisions of the CIR over disputed assessments are separate and independent from his decisions over "other matters" arising under the NIRC.

The Supreme Court had once held that the question of whether or not to impose a deficiency tax assessment comes within the purview of the words *"other matters arising under the National Internal Revenue Code."* [24] Thus, since Royal Class, in effect, questioned the imposition of the subject tax assessments in its *Petition for Review* in CTA Case No. 8844, the Court in Division has jurisdiction to entertain the same.

In any event, We do not subscribe to petitioner's contention that the subject tax assessments have attained finality, so as to deprive the Court in Division of jurisdiction over the appeal made by respondent. As will be shown momentarily, the said tax assessments are void, and thus, cannot become final.

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[24] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017, citing *Meralco Securities Corp. vs. Savellano*, 203 Phil. 173 (1982).

***RO Rene C. Tangonan, who continued the audit on the books of accounts and other accounting records of Royal Class for the period of January 1 to December 31, 2007, was not authorized through an LOA.***

In the assailed decision, the Court in Division observed that LOA No. 2000 00053080 dated October 16, 2008 specifically named RO Ma. Elisa F. Batalla of Revenue District Office (RDO) No. 15 of Ilagan, Isabela as the RO to conduct the audit on respondent's books of accounts and other accounting records for all taxes for the taxable year 2007. However, RO Batalla was unable to complete the audit as she was re-assigned to RDO No. 13 in Tuguegarao. The audit of petitioner's record was re-assigned to RO Rene C. Tangonan through the 3rd *Indorsement* Letter dated February 11, 2010. The Court in Division concluded that the continuation of the examination of respondent's tax records by RO Tangonan was not validly authorized through an LOA; and hence, the assessments for deficiency income tax and VAT are a nullity.

We agree with the Court in Division.

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 was highly emphasized by the Supreme Court in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* ("*Medicard* case"),[25] to wit:

> "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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[25] G.R. No. 222743, April 5, 2017.

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> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (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 examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x (Emphasis and underlining Ours)

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.*,[26] 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

[26] 649 Phil. 519 (2010).

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> given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underlining ours)

The foregoing jurisprudential pronouncements are clear that ROs must be authorized by an LOA in order for them to 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.

Relative thereto, Section 13 of the NIRC of 1997 provides as follows, 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 <u>may, pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, examine taxpayers within the jurisdiction of the district <u>in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due</u>** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied)*

Clearly, a Letter of Authority must be specifically issued in favor of a Revenue Officer in order that such officer can validly examine a taxpayer, and to perform tax assessment and collection functions.

Indeed, the records of the instant case show that it was RO Ma. Elisa F. Batalla who was specifically authorized to examine the books of account and other accounting records of respondent for all internal revenue taxes for taxable year 2007 under LOA No. 2000 00053080 dated October 16, 2008.[27] In the *3rd Indorsement* dated February 11, 2010 issued by Nerissa C. Agraam, the Revenue District Officer of RDO No. 15- Ilagan, Isabela, RO Rene C. Tangonan was directed to continue the investigation of respondent for 2007 previously assigned to RO Batalla.[28]

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[27] Exhibit "P-38", Division Docket (CTA Case No. 8844) – Vol. III, p. 1436; Exhibit "R-1", BIR Records, p. 70.

[28] Exhibit "P-43", Division Docket (CTA Case No. 8844) – Vol. III, p. 1451; Exhibit "R-10", BIR Records, p. 92.

RO Rene C. Tangonan, the person who recommended the issuance of a PAN against respondent,[29] was ***not*** named in LOA No. 2000 00053080. His supposed authority emanated only through the *3rd Indorsement* dated February 11, 2010 issued by Revenue District Officer Nerissa C. Agraam of RDO No. 15- Ilagan, Isabela pursuant to LOA No. 00087257 dated October 16, 2008. It is noteworthy that the *3rd Indorsement* Letter mentions a different LOA which was not offered nor found in the records of this case.

Furthermore, there is no mention in the records that a new LOA was issued specifically designating RO Tangonan to examine and audit the books of accounts and other accounting records of respondent for taxable year 2007, but only through the said indorsement letter. Petitioner's witness, RO Elizabeth C. Soriano, testified *via* Judicial Affidavit[30] that RO Tangonan was merely authorized to continue the examination of respondent's books of accounts and other accounting records through the said *3rd Indorsement* dated February 11, 2010, to wit:

> "40Q: After the indorsement made by the Chief of the Legal Division, what happened next, if any?
>
> 40A: Based on record, the whole tax docket was referred to Revenue Officer Rene C. Tangonan **through an indorsement dated February 11, 2010**.
>
> xxx xxx xxx
>
> 42Q: I have with me a document dated 11 February 2010 found in page 92 of the BIR Records and marked as Exhibit R-10 for the [petitioner], what relation does this document have to the indorsement that you mentioned earlier?
>
> 42A: This is the indorsement that I mentioned.
>
> 43Q: After the indorsement of the tax case to Revenue Officer Tangonan, what happened next, if any?
>
> 43A: Based on record, Revenue Officer Tangonan conducted the audit based on best evidence obtainable and on February 25, 2010 a Notice of Informal

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[29] Exhibit "R-12", BIR Records, p. 102.
[30] Exhibit "R-22", Division Docket (CTA Case No. 8844) – Vol. II, 695 to 707, at pp. 700 to 701.

Conference (NIC) was issued and personally served to petitioner."

Thus, RO Tangonan cannot be considered as validly authorized through an LOA to conduct an examination and audit of the same. To reiterate, RO Tangonan's supposed authority to examine and audit came about only through the said 3rd *Indorsement* dated February 11, 2010 and did not arose from, or was not made pursuant to, an LOA, as required by law and jurisprudence.

Moreover, the same 3rd *Indorsement* directing RO Tangonan to continue the examination is not proper in violation of RMO No. 43-1990,[31] which provides the guidelines for the audit/investigation and issuance of LOAs to audit, pertinent portions of which states, to wit:

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

**1. All audit/investigations, whether field audit 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)*

Pursuant thereto and consistent with the *Medicard* case, all audit investigations must be conducted by a **duly designated** RO authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA. In other words, in case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA shall be issued with the corresponding notation thereto.

In sum, in the absence of the issuance of a **new LOA** specifically naming RO Tangonan, to whom the case was reassigned, with the corresponding annotation per RMO No. 43-90, there was no valid authority to RO Tangonan to continue the investigation/audit.

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[31] SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuances of Letters of Authority to Audit.

Consequently, the subject tax assessments, which came about as a result of his examination of the books of accounts and accounting records of Royal Class for taxable year 2007, are void. It must be emphasized that a void assessment bears no valid fruit,[32] and thus, it cannot attain finality.

The CIR, nevertheless, further argues that Section 17 of the NIRC of 1997 provides the transfer or reshuffling of ROs, which means that, in natural occurrence of things, the RO indicated in the LOA need not be the one to complete the audit; that there will be instances where the ROs would either retire, be reassigned, be taken ill, or die, prior to the completion of the audit investigation; that an LOA is not an "authorization letter" of the ROs; and that there is no requirement in the law that ROs must be identified in the LOA to have authority.

We disagree with petitioner.

For easy reference, Section 17 of the NIRC of 1997 provides as follows:

> "SEC. 17. *Assignment of Internal Revenue Officers and Other Employees to Other Duties.* – The Commissioner may, subject to the provisions of Section 16 and the laws on civil service, as well as the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, assign or reassign internal revenue officers and employees of the Bureau of Internal Revenue, without change in their official rank and salary, to other or special duties connected with the enforcement or administration of the revenue laws as the exigencies of the service may require: *Provided*, That internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years: *Provided, further,* That assignment of internal revenue officers and employees of the Bureau to special duties shall not exceed one (1) year."

A careful reading of the foregoing provision reveals that the NIRC of 1997 grants petitioner the power to assign or re-assign internal ROs and employees, subject to certain limitations, one of which is that internal ROs assigned to perform assessment or

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

collection functions shall not remain in the same assignment for more than three (3) years. However, nothing in the said provision states that the required LOA can be dispensed with; neither does it provide an exemption to the legal requirement that a RO must be authorized, through an LOA, to perform his/her assessment or collection functions.

It must be emphasized that the issue here is not whether a RO can be re-assigned to another BIR office, without completing the audit being made on a taxpayer. Rather, the issue is whether or not the ROs who conducted the investigation of the taxpayer are authorized to do so, as required by law and jurisprudence.

This Court *En Banc* recognizes that there can be instances where a Revenue Officer, previously authorized through a Letter Of Authority, may not be able to complete the examination of the concerned taxpayer, by reason of retirement, reassignment, illness, or death, of the said RO. But what is not acceptable to this Court is petitioner's proposition that because of such instances, there can already be an excuse not to issue another LOA. As already intimated, the said proposition finds no basis in law and jurisprudence.

To be sure, despite the presence of any of the above-enumerated instances, petitioner or his duly authorized representative can still legally issue another LOA in favor of the ROs who are intended to replace the one(s) previously authorized. In other words, there is nothing in the law which prohibits the issuance of a subsequent LOA authorizing another RO, or new set of ROs, to continue the examination of books of accounts and other accounting records of the concerned taxpayer.

Respondent cannot validly argue that only one LOA per taxable year can be issued to a taxpayer, on the basis of RMO No. 36-2000[33].

It is true that under the said RMO No. 36-2000, the following provisions may be found, to wit:

"III. *AUDIT POLICIES AND GUIDELINES*

xxx xxx xxx

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[33] SUBJECT: Prescribing an Office Audit Program in the Assessment Division of Revenue Regional Offices.

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> 4. The policy on the simultaneous investigation of all tax liabilities of the taxpayer for the same taxable year shall be followed. **One LA[34] be issued for each taxable year under audit to include all internal revenue tax liabilities of the taxpayer.** Accordingly, the LA shall state the specific year under audit and the indication of 'unverified prior years' or similar statement in the LA shall not be allowed." *(Emphasis supplied)*

However, the same RMO is explicit as to its coverage, to wit:

> "II. COVERAGE
>
> 1. **The Office Audit Program shall cover the audit of tax returns of individual and corporate taxpayers, estates and trusts within the Region <u>covering taxable years 1997, 1998 and 1999</u>**, xxx." *(Emphasis supplied)*

Based on the foregoing provisions, RMO No. 36-2000 covers only taxable years 1997, 1998 and 1999.

Considering that the year under consideration is 2007,[35] RMO No. 36-2000 cannot be applied to the instant case.

In the same vein, We likewise disagree with petitioner's contention on the supposed applicability of RMO No. 44-2010, the pertinent portions of which read:

> "8. Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the LA even if the prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions."

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[34] That is, "Letter of Authority".
[35] Exhibit "P-3", Docket – Vol. III, pp. 1380 to 1381.

NO

As clearly worded, the rule against the revalidation of LOAs *"for failure of the revenue officials to complete the audit within the prescribed period"* shall begin only on June 1, 2010. In this case, it must be pointed out that there is no indication that what has occurred is a "revalidation of an LOA". And even if We assume that there was, such revalidation done prior to June 1, 2010. As already observed, the subject *3rd Indorsement* was issued on **February 11, 2010**. Thus, it is clear that the above-quoted provision of RMO No. 44-2010 is not applicable to the instant case.

But even granting that the earlier quoted provisions of RMO Nos. 36-2000 and 44-2010 explicitly cover the instant case, the same is of no moment. This is simply because it would run counter to the aforequoted Section 6(A) of the NIRC of 1997, and the corresponding pronouncement of the Supreme Court in the *Medicard* case, which became a part of the legal system of the Philippines.[36] As such, the said provisions of RMO Nos. 36-2000 and 44-2010 cannot be considered as valid,[37] and must not be adhered to, as it is not legally binding. A mere administrative issuance cannot amend the law; the former cannot purport to do any more than implement the latter.[38]

Furthermore, We cannot subscribe to petitioner's contention that an LOA is *not* an "authorization letter" of the ROs; and that there is no requirement in the law that ROs must be identified in the LOA to have authority.

The said contention is contrary to the definition given in the *Medicard* case in that "[a]*n LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions."* The High Court continued: an LOA *"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."* Thus, an LOA is, in fact, an authorization letter for the appropriate ROs assigned to perform assessment functions. It is so because the power to examine was

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[36] Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. (Article 8, Civil Code of the Philippines)

[37] Administrative or executive acts, orders or regulations shall be valid only when they are not contrary to the laws or the Constitution. [Article 7 *(last paragraph)*, Civil Code of the Philippines]

[38] *Secretary of Finance Cesar V. Purisima, et al. vs. Philippine Tobacco Institute, Inc.*, G.R. No. 210251, April 17, 2015.

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not statutorily given to the said ROs, and for the latter to exercise such power, authority must be given to them by petitioner or his duly authorized representative. Such being the case, it is perforce required that the ROs so authorized must be identified in the LOA. Without such authority to examine, the RO cannot perform assessment functions.

***The Court in Division did not err in applying the ruling of* Sony Philippines *case* to the instant case**

Anent petitioner's argument that the *Sony Philippines* case is not applicable to the instant case because the facts in the former are not present in the latter, the same cannot be given credence.

In the *Sony Philippines* case, the Supreme Court emphasized on the necessity of the LOA in the conduct of examination by any ROs, to wit:

> "**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.**" *(Emphases supplied)*

It is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine of *stare decisis* as amply explained in the case of *Amelia D. De Mesa, et. al. v. Pepsi Cola Products, Phils., Inc., et. al.,*[39] to wit:

> "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
>
> It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. **The doctrine of *stare decisis* is based on the principle that once a question of law has been**

[39] G.R. Nos. 153063-70, August 19, 2005.

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**examined and decided, it should be deemed settled and closed to further argument.**" *(Emphasis supplied)*

Thus, the doctrine in the *Sony Philippines* case takes precedence and must be applied to the instant case.

**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated November 16, 2017 and Resolution dated March 28, 2018, both rendered by the Court in Division in CTA Case No. 8844 are **AFFIRMED**.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

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

Juanito C. Castañeda, Jr.
*( With Separate Concurring Opinion )*
**JUANITO C. CASTAÑEDA, JR.**
*Associate Justice*

*(With due respect, I join Justice Castañeda's Separate Concurring Opinion )*
**ESPERANZA R. FABON-VICTORINO**
*Associate Justice*

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
*Associate Justice*

*( I concur with Justice Castañeda's Separate Concurring Opinion )*
**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

Catherine T. Manahan
*(With due respect, I concur with Justice Castañeda's Separate Concurring Opinion )*
**CATHERINE T. MANAHAN**
*Associate Justice*

*( took no part )*
**JEAN MARIE A. BACORRO-VILLENA**
*Associate Justice*

*( took no part )*
**MARIA ROWENA G. MODESTO-SAN PEDRO**
*Associate Justice*

## CERTIFICATION

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

**COMMISSIONER OF INTERNAL REVENUE,**

*Petitioner,*

-versus-

**ROYAL CLASS TRADING AND TRANSPORT CORPORATION,**
*Respondent.*

**CTA EB NO. 1832**
(CTA Case No. 8844)

Present:

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

**Promulgated:**
JUL 29 2019 4:10 p.m.

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**CONCURRING OPINION**

***DEL ROSARIO, P.J.:***

I wish to stress that the 3rd Indorsement Letter dated February 11, 2010, which re-assigned the audit of petitioner's record to Revenue Officer (RO) Rene C. Tangonan, signed by Revenue District Officer (RDO) Nerissa C. Agraam of Revenue District Office No. 15-Ilagan, Isabela, could not be accorded the same legal effect as a Letter of Authority (LOA).

The National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **Commissioner of Internal Revenue (CIR) or from his duly**

**authorized representatives** before an examination of a taxpayer may be made.[1] Section 6 thereof provides:

> "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. xxx" *(Boldfacing and underscoring supplied)*

**A Bureau of Internal Revenue (BIR) officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose.** Section 13 of the NIRC of 1997, as amended, 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." *(Boldfacing and underscoring supplied)*

The *"authorized representative"* contemplated under Section 6 of the NIRC of 1997, as amended, who may issue an LOA is no other than a **Revenue Regional Director** pursuant to Section 13 thereof.

The power to issue an LOA may not be delegated by the CIR or the Revenue Regional Director to any other officer - - much less to an RDO. On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation*[2] is instructive, *viz.*:

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive

[1] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[2] G.R. No. 156208, September 26, 2006.

> departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. **Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility**.
>
> Xxx, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:
>
> > **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another**.
>
> Xxx." *(Citations omitted; Boldfacing supplied)*

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.,*[3] the Supreme Court categorically held that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Revenue Regional Director and emphasized that the Referral Memorandum issued by the RDO directing another RO to continue with the examination of Composite Materials, Inc.'s (CMI) records is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.*:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, **the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> x x x
>
> Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum** issued by a Revenue District Officer **directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**." *(Boldfacing and underscoring supplied)*

[3] G.R. No. 238352, September 12, 2018.

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In the present case, while the 3rd Indorsement Letter 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 RDO only** and not by the Revenue Regional Director.

All told, I CONCUR with the *ponencia*.

**ROMAN G. DEL ROSARIO**
Presiding Justice

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

*EN BANC*

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

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-versus-

**Present:**
Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
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Ringpis-Liban, and
Manahan, *JJ.*

**ROYAL CLASS TRADING AND TRANSPORT CORPORATION,**
Respondent.

Promulgated:
JUL 29 2019 8:10 a.m.

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## SEPARATE CONCURRING OPINION

**CASTAÑEDA, JR., *J.*:**

With due respect to my esteemed colleagues, I agree with the result that the petition for review be denied.

Although this case emanates from a validly issued LOA No. 2000 00053080, which was subsequently revalidated,[1] the 3rd Indorsement issued by Revenue District Officer Nerissa C. Agraam of RDO No. 15-Ilagan, Isabela, which supposedly gave authority to the Revenue Officer (RO) who continued the investigation, was based on LOA No. 00087257.[2] In effect, the authority of RO to continue the investigation was not established, thus, I agree with the result denying the petition for review.

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

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[1] Exhibit "R-5", BIR Records, p. 70.
[2] Exhibit "R-10", BIR Records, p. 92.