REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2047** *(CTA Case No. 9168)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
TRAVELLERS INTERNATIONAL HOTEL GROUP, INC. *Respondent.*	Promulgated: JUL 17 2020 3:24 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] seeking the nullification of the Decision promulgated on 8 November 2018 and the Resolution, dated 2 April 2019, by the First Division ("Court in Division"), and to render a new judgment ordering respondent to pay the aggregate amount of ₱2,706,880,978.75 for deficiency Income Tax ("IT"), including compromise penalty for taxable year 2010, as well as 25% and 50% Surcharge, 20% Deficiency and Delinquency Interests pursuant to ***Sections 248 and 249 of the National Internal Revenue Code of 1997*** (hereinafter referred to as the "***Tax Code***"), and 12% interest until full payment pursuant to ***Section 249 of the Tax Reform for Acceleration and Inclusion ("TRAIN") Law*** effective 01 January 2018 as implemented by ***Revenue Regulations ("RR") No. 21-2018.***[3]

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[1] See Petition for Review; *Rollo,* pp. 6-66, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.
[3] See Prayer in the Petition for Review; *Rollo,* p. 32.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed assessments, cancel, and abate tax liabilities pursuant to the provisions of the Tax Code, and other tax laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Meanwhile, respondent Travellers International Hotel Group, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 10/F Newport Entertainment & Commercial Centre, Newport Boulevard, Newport Cybertourism Economic Zone, Pasay City. It is authorized by the Philippine Amusement and Gaming Corporation ("PAGCOR") to establish and operate casinos within the latter's regulatory and licensing authority under ***Presidential Decree ("PD") No. 1869***, as amended, otherwise known as the PAGCOR Charter.

The Facts

On 5 December 2011, Letter of Authority ("LOA") No. LOA-125-2011-00000160 was issued by OIC-Assistant Commissioner, Large Taxpayer Service, Alfredo V. Misajon, authorizing the examination of the books of accounts and other accounting records of respondent for taxable year 2010. The said LOA was received by the respondent on the same date.[4]

Subsequently, on 21 February 2014, the respondent received a Preliminary Assessment Notice ("PAN"), dated 13 February 2014, assessing it for deficiency IT, Value-Added Tax ("VAT"), Expanded Withholding Tax ("EWT"), Withholding Tax on Compensation ("WTC"), Documentary Stamp Tax ("DST"), and Final Tax in the total amount of ₱3,003,089,473.59, inclusive of interests and penalties.[5]

On 28 February 2014, respondent paid the amount of ₱13,521,657.75, representing a portion of the IT assessment and the entire assessment for VAT, EWT, WTC, DST, and Final Tax, inclusive of penalties and interests.[6]

Thereafter, the respondent filed a Letter to the petitioner, dated 10 March 2014, informing him that it had already paid part of the assessment. In the same Letter, respondent also protested the remaining deficiency taxes in the PAN (*i.e.* remaining deficiency IT relating to disallowed salaries and allowances expense, disallowed expenses for income payments not subjected

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4 See The Facts in the Decision; *Rollo,* p. 41.
5 *Ibid.*
6 *Id.*, p. 42.

to EWT and gaming revenues) and requested that the same be cancelled for lack of factual and legal basis.[7]

On 31 March 2014, the Formal Assessment Notice ("FAN") with attached Details of Discrepancies and the Assessment Notice No. IT-125-LA-00000160 were issued by the petitioner and were duly received by the respondent. In the FAN, petitioner assessed respondent in the amount of ₱2,378,338,721.62 representing deficiency IT arising from its gaming revenues.[8]

On 30 April 2014, the respondent filed its Protest to the FAN.[9]

On 17 September 2014, the respondent received the Final Decision on Disputed Assessment ("FDDA"), dated 12 September 2014, denying the Protest of the respondent and upholding the FAN.[10]

Thereafter, respondent filed a Request for Reconsideration of the FDDA on 16 October 2014, followed by a Supplemental Request for Reconsideration on 13 April 2014.[11]

On 15 September 2015, respondent received from petitioner a letter, dated 26 August 2015 (hereinafter referred to as "Final Decision"), sustaining the FDDA and holding it liable for deficiency IT in the amount of ₱2,706,880,978.75, including the accrued interest and penalties.[12]

Aggrieved, the respondent filed the original Petition for Review with the Court in Division on 15 October 2015.[13]

On 8 November 2018, the Court in Division promulgated the assailed Decision[14] cancelling and setting aside the Final Decision dated 26 August 2015 and the FDDA dated 12 September 2014, as follows:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED.** Accordingly, the Letter (Final Decision) dated August 26, 2015 holding petitioner liable for deficiency income tax in the total amount of ₱2,706,880,978.75 for taxable year 2010, the Final Decision on Disputed Assessment dated September 12, 2014, and the Assessment Notice No. IT-125-LA-00000160-10-14-0112 are hereby **DECLARED VOID, CANCELLED** and **WITHDRAWN.**
>
> **SO ORDERED.**"

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7 *Ibid.*
8 *Id.*, pp. 42-43.
9 *Id.*, p. 43.
10 *Ibid.*
11 *Id.*, p. 44.
12 *Ibid.*
13 *Id.*, p. 45.
14 *Id.*, p. 60.

In the assailed Decision, the Court in Division found that the revenue officers who conducted respondent's audit were not authorized by a valid LOA and consequently ruled the resulting assessment as void.

Further, the Court in Division found that respondent, as a licensee of PAGCOR, is exempt from IT on its gaming operations.

Subsequently, on 27 November 2018, the petitioner filed his Motion for Reconsideration (Re: Decision dated 08 November 2018). Meanwhile, the respondent filed its Comment/Opposition (Re: Motion for Reconsideration dated November 27, 2018) on 7 January 2019.[15]

On 2 April 2019, the Court in Division issued the assailed Resolution[16] denying petitioner's Motion for Reconsideration for lack of merit.

On 16 April 2019, petitioner filed a Motion for Extension of Time to File Petition for Review.[17] The Court *En Banc* granted the Motion and gave petitioner a non-extendible period of fifteen (15) days from 20 April 2019, or until 5 May 2019, to file his Petition for Review.[18]

Considering that 5 May 2019 fell on a Sunday, petitioner filed his Petition for Review with the Court *En Banc* on 6 May 2019.[19] Respondent, on the other hand, filed its Comment (Re: Petition for Review dated May 2, 2019) on 21 June 2019.[20]

On 5 July 2019, the Court *En Banc* referred the case for mediation pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[21]

Subsequently, on 6 August 2019, the parties filed their No Agreement to Mediate, dated 29 July 2019, stating that they have decided not to have their case mediated by the Philippine Mediation Center Unit-Court of Tax Appeals.[22]

Considering the decision of the parties not to mediate, the Court *En Banc* issued a Resolution, dated 18 September 2019, submitting the case for resolution.[23] Hence, this Decision.

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[15] *Id.*, p. 62-66.
[16] *Id.*, p. 66.
[17] *Rollo*, pp. 1-4.
[18] See Minute Resolution; *Rollo*, p. 5.
[19] *Rollo*, pp. 6-66, with annexes.
[20] *Id.*, pp. 70-87.
[21] *Id.*, pp. 89-90.
[22] *Id.*, pp. 91-93.
[23] *Id.*, pp. 95-96.

<u>The Issues</u>[24]

THE HONORABLE COURT IN DIVISION ERRED IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR BY RESPONDENT. RESPONDENT'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED.

THE HONORABLE COURT IN DIVISION ERRED WHEN IT CANCELLED THE ASSESSMENT ISSUED AGAINST RESPONDENT SOLELY ON THE GROUND THAT THERE WAS NO NEW LOA AFTER THE AUDIT WAS REASSIGNED TO ANOTHER REVENUE OFFICER.

THE HONORABLE COURT IN DIVISION ERRED WHEN IT RULED THAT PETITIONER, BEING A LICENSEE OF PAGCOR IS EXEMPT FROM INCOME TAX ON ITS GAMING OPERATIONS.

<u>Arguments of the Parties</u>

<u>Petitioner's Arguments</u>[25]

Petitioner argues that the issue on the revenue officers' authority to conduct the audit was never raised by the respondent in its original Petition for Review. Therefore, by resolving the said issue, the Court in Division denied him of his due process since he was not given the opportunity to be heard on the issue.

Petitioner maintains that although he is aware of ***Section 1, Rule 14 of the RRCTA*** which allows the CTA to resolve issues not raised by the parties in their pleadings, he argues that the said provision only allows the resolution of issues related to the ones raised by the parties in the case.

Further, petitioner insists that the Court in Division erred in cancelling the assessment on the ground that there was no new LOA issued effecting the reassignment of respondent's audit to another revenue officer. Citing ***Revenue Memorandum Order ("RMO") No. 8-2006,***[26] petitioner posits that the issuance of a memorandum is sufficient in order to validly reassign an existing audit to another revenue officer. He explains that this is consistent with the mandate of ***RMO No. 36-2000***[27] which limits the issuance of an LOA to one per taxable year.

[24] See Grounds in the Petition for Review; *Rollo*, pp. 7-8.
[25] See Petition for Review; *Rollo*, pp. 8-32.
[26] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), 01 February 2006.
[27] Prescribing an Office Audit Program in the Assessment Division of Revenue Regional Offices, 26 July 2000.

Finally, petitioner contradicts the Court in Division's ruling that respondent is exempt from IT on its gaming operations. He explains that the tax exemption under ***Section 13(2)(b) of P.D. 1869***[28] is only granted to PAGCOR, as operator of the casino, and extends only to entities which provide necessary services to PAGCOR in relation to its gaming operations, and does not include the respondent as a PAGCOR licensee.

Respondent's Counter-Arguments[29]

Respondent counters that the Court of Tax Appeals ("CTA") is empowered to resolve issues not raised by the parties in their pleadings or memoranda, citing the case of ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***[30] and ***San Miguel Foods, Inc. v. Commissioner of Internal Revenue***.[31] However, assuming that the contention of petitioner is correct, respondent points out that the issue pertaining to the authority of the revenue officers is intertwined with the main issue it raised in this case.

Respondent also belies the contention of the petitioner that a new LOA is not required in cases of reassignment of audit to a new revenue officer. It cited ***Composite Materials, Inc. v. Commissioner of Internal Revenue***[32] where this Court ruled that the issuance of a new LOA is necessary in the reassignment of audit. As for the one LOA per year rule cited by petitioner, respondent contends that the said rule prohibits not the issuance of the LOA for the same taxable year, but the conduct of audit of a taxpayer more than once in a taxable year.

Lastly, respondent insists that it is exempt from IT on its gaming revenues, citing the case of ***PAGCOR v. BIR***.[33]

The Ruling of the Court

After reviewing the records and considering the arguments of both parties, the Court *En Banc* finds no reason to disturb the assailed Decision and Resolution of the Court in Division.

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[28] Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR), 11 July 1983.
[29] See Comment; *Rollo*, pp. 70-93.
[30] G.R. No. 183408, 12 July 2017.
[31] CTA Case No. 9046, 12 February 2018.
[32] CTA E.B. Case No. 1314, 15 August 2017.
[33] G.R. Nos. 215427, 10 December 2014

The Court in Division can rule on issues not raised by the respondent in its original Petition for Review.

Petitioner insists that the Court in Division was erroneous in resolving an issue not raised by the respondent in its original Petition for Review. Petitioner cites the cases of ***Philippine Charter Insurance Corporation v. Philippine National Construction Corporation,***[34] ***Romago Electric v. Court of Appeals,***[35] and ***Republic Telecommunications Holdings, Inc., v. Santiago***[36] to support his contention.

His argument is without merit.

Section 1, Rule 14 of the RRCTA is clear that the CTA is empowered to resolve issues, even when not raised by the parties, in order to achieve an orderly disposition of the case, to wit:

> SECTION 1. Rendition of judgment. - x xx
>
> **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.**[37]

The said rule was affirmed by the Supreme Court in ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*** (hereinafter referred to as "***Lancaster***"),[38] to wit:

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> SECTION 1. Rendition of judgment. - x xx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the**

[34] G.R. No. 185066, 2 October 2009.
[35] G.R. No. 125947, 8 June 2000.
[36] G.R. No. 140338, 7 August 2007.
[37] Emphasis supplied.
[38] G.R. No. 183408, 12 July 2017.

> **same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter.[39]

Hence, based on the foregoing law and jurisprudence, it is clear that the CTA can validly consider, in its decision, the authority of the revenue officers to conduct the audit and assessment of a taxpayer although the issue was not raised by the parties in their pleadings.

The Court cannot ascribe to the cases cited by the petitioner considering the clear import of ***Lancaster*** and their inapplicability to the present Petition, especially since the same are not tax cases.

Neither is petitioner's contention that the issue pertaining to the authority of the revenue officers is not related to the issues raised by the respondent in its original petition rendering ***Section 1, Rule 14 of RRCTA*** inapplicable correct.

In the case of ***Commissioner of Internal Revenue v. Orient Overseas Container Line, LTD. Represented by OOCL (Philippines), Inc.***,[40] the Court *En Banc* ruled that the issue pertaining to the authority of the revenue officer in an audit investigation is intrinsically related to the issue of the validity of the assessment and, consequently, to the liability of the taxpayer, to wit:

> "A review of the RO's authority to conduct the audit which resulted in the assessments is intrinsically related to the issue of the validity of the assessments."

Applying the foregoing in the case at bar, we find that the issue as to the revenue officers' authority to conduct the audit is related to the issues raised by the respondent in its original Petition for Review, specifically whether it is liable to pay deficiency IT.

It should be noted that in resolving the issue of respondent's tax liability, the Court is with authority not only to rule on the correctness of the assessment but also its validity. This is in line with the long-standing doctrine that "a void assessment bears no valid fruit."

Lastly, we do not agree with the petitioner's argument that he was not accorded due process when the Court in Division resolved the issue on the revenue officers' authority. Petitioner is reminded that due process is satisfied when a party is given the opportunity to be heard and to present his evidence as ruled in the case of ***Milwaukee Industries Corporation v. CTA***,[41] to wit:

> "Accordingly, Milwaukee's right to due process was not transgressed. The Court has consistently reminded litigants that due process is simply an opportunity to be heard. The requirement of due process is satisfactorily met as long as the parties are given the opportunity to present

[39] Emphasis supplied.
[40] CTA EB Case No. 1956, 22 August 2019.
[41] G.R. No. 173815, 24 November 2010.

> their side. In the case at bar, Milwaukee was precisely given the right and the opportunity to present its side. It was able to present its evidence-in-chief and had its opportunity to present rebuttal evidence."

Based on the records of the case, the petitioner was given ample opportunity to present his evidence and witnesses. Furthermore, judgment in the case was rendered only after a full-blown trial. Hence, the allegation of the petitioner has no leg to stand on.

Given these reasons, the Court *En Banc* finds the Court in Division to have the necessary authority to resolve the issue pertaining to the revenue officers' authority to conduct the audit of respondent although the same was not raised in the original Petition for Review.

The RO does not have the pre-requisite authority to conduct respondent's audit, hence the assessment is void.

Records disclose that the audit of the respondent was initially assigned to Revenue Officer Malik Dimakuta and Group Supervisor Oscar Sable by virtue of LOA No. 125-2011-00000160.

Subsequently, the audit of the respondent was reassigned to Revenue Officer Larah N. Vito ("RO Vito") and Group Supervisor Ma. Amable Tan ("GS Tan") pursuant to Memorandum of Assignment ("MOA") No. LN-125-2013-23 which was signed by Edwin T. Guzman, OIC-Chief, Regular LT Audit Division ("LTS-RLTAD") II.

Finding that RO Vito and GS Tan were not authorized to conduct respondent's audit and assessment pursuant to an LOA, the Court in Division cancelled petitioner's assessment and rendered the same void.

Petitioner now contends that an LOA is not necessary in cases of reassignment of audit to new revenue officers. He explains that a MOA issued by the head of the investigating office is sufficient, pursuant to ***RMO No. 8-2006***.

Petitioner also explains that a MOA subsequently issued derives its authority from the original LOA issued. Hence, the source of the revenue officers' authority to investigate is also the same LOA, and therefore, there is no need to issue a new one. He argues that there is no requirement in law that the revenue officers must be identified in the LOA to validly audit and assess the respondent.

Again, this Court finds the arguments of the petitioner incorrect.

Section 13 of the Tax Code is clear that the authority of a revenue officer to conduct the audit and assessment of a taxpayer should be pursuant to an 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.**"[42]

To reiterate, the LOA is the authority given by the CIR or his authorized representative to the revenue officer to conduct the audit or assessment of a taxpayer pursuant to ***Section 6(a) of the Tax Code***,[43] to wit:

> "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."[44]

For new officers not named in the original LOA to continue the audit, a new LOA must be issued in their name. This is clear from ***RMO No. 43-90***,[45] which provides:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/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.**"[46]

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[42] Emphasis supplied.
[43] Medicard Philippines, Inc., v. Commissioner of Internal Revenue, G.R. No. 222743, 5 April 2017.
[44] Emphasis supplied.
[45] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.
[46] Emphasis supplied.

It is of note that the Court *En Banc* in the case of ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***[47] had recognized that a written document which signifies the intention of the petitioner or his duly authorized representative to reassign a taxpayer's audit and assessment to a new revenue officer may be considered as a valid equivalent of an LOA, as follows:

> This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Cletofel Parungao, Myrna Ramirez, Ma. Salud Maddela, Zenaida Paz, Allan Maniego, Joel Aguila, and GS Glorializa Samoy who were originally named in the LOA may be revoked, transferred and reassigned to RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peiia 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, 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."
>
> *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 parries. **If the words of a contract appear to contravene the evident intention of the parries, 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 parries. The title of the contract does not necessarily determine its true nature. In fact, this Court has, rime 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. Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code."[48]

Hence, based on the aforementioned case, a document such as a MOA may be construed as an equivalent of a new LOA where the authority of a newly designated revenue officer emanates from, provided, that it contains all the elements necessary to establish a contract of agency between the CIR or

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[47] CTA EB No. 1880, 6 August 2019.
[48] Emphasis supplied.

his duly authorized representative and the new revenue officer. Included in these elements is the authority of the person issuing the MOA.

Section 10(C) of the Tax Code grants the Revenue Regional Director, as petitioner's authorized representative, the authority to issue LOAs, to wit:

> "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 xxx xxx
>
> **(c) Issue Letters of authority for the examination of taxpayers within the region;"**[49]

The position equivalent to a Revenue Regional Director for the Large Taxpayers Division, who is authorized to issue the LOA, is identified in ***RMO No. 29-07***[50] as the Assistant Commissioner/Head Revenue Executive Assistant, 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 Assistant Commissioner/Head Revenue Executive Assistants."**[51]

Coming now to the instant case, the MOA was only signed by Mr. Edwin T. Guzman, OIC-Chief of LTS-RLTAD II. He is neither the CIR, Revenue Regional Director, nor an Assistant Commissioner/Head Revenue Executive Assistant. Hence, RO Vito and GS Tan both have no authority to continue respondent's audit, which is in all fours with the Court *En Banc's* decision in ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[52] to wit:

> "In the instant case, the Memorandum of Assignment was only signed by Cesar D. Escalada, Chief, Regular LT Audit Division 1. Therefore, RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Pefia were without authority to continue the audit."

[49] Emphasis supplied.
[50] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service, 26 September 2007.
[51] Emphasis supplied.
[52] CTA EB No. 1880, 6 August 2019.

As for the argument of the petitioner that Mr. Edwin T. Guzman can sign the MOA, as head of the investigating office, pursuant to ***RMO No. 8-2006***,[53] the same is also devoid of merit.

The Court *En Banc* notes that the petitioner failed to cite any legal basis to prove his claim that the position of Mr. Edwin T. Guzman as Chief of LTS-RLTAD II is equivalent to head of the Large Taxpayers Division. In fact, in a subsequent issuance of the petitioner, specifically ***RMO No. 64-2016***,[54] only the Assistant Commissioner is identified as the Head of the Large Taxpayers Division.

Hence, based on the foregoing, we find that Mr. Edwin T. Guzman, OIC-Chief of LTS-RLTAD II has no authority to issue the MOA, consequently resulting to the assessment issued against the respondent being void.

As for the contention of the petitioner that the cases of ***Commissioner of Internal Revenue v. Sony Philippines Inc.***[55] and ***Medicard Philippines, Inc., v. Commissioner of Internal Revenue***[56] are not applicable to the instant Petition as the facts and issues in the said cases are different herein, the same must likewise fail.

It is true that in ***Commissioner of Internal Revenue v. Sony Philippines Inc.***,[57] the revenue officer went beyond its authority when it assessed the taxpayer beyond the period in the LOA, while in the ***Medicard Philippines, Inc., v. Commissioner of Internal Revenue***,[58] the assessment was based on a Letter of Notice. However, it is worthy to stress that the common denominator in the said cases is the requirement that the revenue officer must have an authority, in the form of an LOA, to conduct an audit/examination and that the absence thereof voids the assessment.

This Court also finds no merit in the argument of petitioner that the reissuance of an LOA in case of reassignment of audit and assessment of a taxpayer violates the one LOA per taxable year under ***RMO No. 36-2000***.[59]

A review of ***RMO 36-2000***[60] provides that it only covers taxable years 1997, 1998, and 1999 and excludes in its coverage the Large Taxpayers

[53] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), 01 February 2006.

[54] "Section III.4 If the taxpayer has been audited for the last two (2) years and has been selected for audit on the current or third (3rd) year, the RDO/LTD/LTAD shall encode right away the requested audit of the subject taxpayer in eLAMS/eTIS-CMS which shall be approved by the Regional Director/Assistant Commissioner who heads the investigating office. The Selection Code shall depend on the reason why the taxpayer has been selected."

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

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

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

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

[59] Prescribing an Office Audit Program in the Assessment Division of Revenue Regional Offices, 26 July 2000.

[60] *Ibid.*

Division to which the respondent is classified under. Hence, the said RMO is not applicable to the respondent.

Therefore, based on the abovementioned, we affirm the Court in Division's decision finding RO Vito and GS Tan without the pre-requisite authority to audit and assess the respondent, rendering the assessment void.

The Court in Division did not err in ruling that the respondent is exempt from IT on its gaming operations.

Petitioner insists that respondent is not exempt from its IT on its gaming operations. Petitioner cites ***Section 13(2)(b) of P.D. No. 1869***[61] stating that the exception granted under the said provision only inures to those entities which provide necessary services to PAGCOR in connection with its operations of the casinos and does not include mere licensees of PAGCOR's franchise.

Once more, the contention is without merit.

The issue raised by petitioner was already settled by the Supreme Court in the case of ***Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue***,[62] to wit:

> "Bearing in mind the parties involved and the similarities of the issues submitted in the present case, we are now presented with the prospect of finally resolving the confusion caused by the amendments introduced by RA No. 9337 to the NIRC of 1997, and the subsequent issuance of RMC No. 33-2013, **affecting the tax regime not only of PAGCOR but also its contractees and licensees under the existing laws and prevailing jurisprudence.**
>
> Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:
>
> xxx xxx xxx
>
> As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (i.e., Section 1 of R.A. No. 9337 which amended Section 27 (C) of the NIRC of 1997); thus, it is still in effect. **Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, <u>like PAGCOR,</u>**

[61] SEC. 13. Exemptions. — (2)(b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

[62] G.R. No. 212530, 10 August 2016.

> **its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.**
>
> We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.
>
> As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, **so it must be that all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.**
>
> xxx xxx xxx
>
> **Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax."**[63]

With ***Bloombery***, it can no longer be denied that PAGCOR's licensees and contractees, such as respondent, are exempt from IT on its gaming revenues.

All told, this Court finds no reason to disturb the findings of the Court in Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision promulgated on 8 November 2018 and the Resolution dated 2 April 2019 are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[63] Emphasis supplied.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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