REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2057** (CTA Case No. 8961)
	Present:
- **versus** -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
SECURITIES TRANSFER SERVICES, INC., Respondent.	Promulgated: SEP 03 2020 3:05pm

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DECISION

BACORRO-VILLENA, J.:

In a Decision[1] dated 08 January 2019, the Second Division of this Court cancelled the tax deficiency assessment made by herein petitioner Commissioner of Internal Revenue (**petitioner/CIR**) against respondent Securities Transfer Services, Inc. (**respondent/STSI**) in the amount of ₱3,987,930.20. Petitioner's

[1] Division Docket, Volume V, pp. 2194-2213.

Motion for Reconsideration[2] (**MR**) was also denied on 05 April 2019 for lack of merit.[3]

Disagreeing with the Second Division's actions, petitioner filed this instant Petition for Review under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).[4]

The antecedent facts follow.

In May 2010, respondent received Letter of Authority (**LOA**) No. 116-2010-00000087, dated 14 May 2010[5] (***first LOA***), authorizing Revenue Officers (**ROs**) Daniella Gabaon (**RO Gabaon**), Julieta Tubilla (**RO Tubilla**), Maribel Serafica (**RO Serafica**), Olivia Sison (**RO Sison**), Walter Batoon (**RO Batoon**) and Reynoso Bravo (**RO Bravo**) and Group Supervisor (**GS**) Erlinda Ulgado (**GS Ulgado**), of the Large Taxpayers Regular Audit Division 1 (**LTS-RAD 1**) of the Bureau of Internal Revenue (**BIR**), to examine its books of account and other accounting records for all internal revenue taxes for 01 January 2009 to 31 December 2009.

After several notices to respondent for it to present the documents required, Edralin M. Silario (**Silario**), the OIC – Chief of LTS-RAD 1 issued Memorandum of Assignment (**MOA**) No. LOA-116-2011-427[6] (***first MOA***) referring the continuation of respondent's audit and investigation under the first LOA. The second LOA was issued to RO Rogelio Gonzales (**RO Gonzales**) and GS Marivic Bautista (**GS Bautista**). Still later, the BIR issued a final notice to respondent to present the required documents.

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2 Id., pp. 2214-2223.

3 See Resolution, id., pp. 2251-2253.

4 **SEC. 3.** *Who may appeal; period to file petition.*

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

5 Exhibits "P-26" and "R-1", BIR Records, p. 4.

6 Exhibit "R-5", id., p. 392.

In May 2012, the BIR, through Silario, issued a letter[7] to respondent informing the latter about the change of ROs who will handle its audit investigation for taxable year (TY) 2009, particularly, RO Gonzales under the supervision of his new GS Olivia F. Aviles (**GS Aviles**). Respondent's Head of Operations, Victor S. Alvior (**Alvior**) subsequently executed several waivers of the statute of limitations to extend the prescriptive period of assessment for taxes due for TY 2009.[8]

In February 2013, the BIR, through Cesar D. Escalada (**Escalada**), Chief of LTS-RAD 1, issued MOA No. LOA-116-2013-0227[9] (***second MOA***) referring respondent's audit investigation to RO Felina B. Guimbao (**RO Guimbao**) and GS Aviles.

In July 2013, respondent received a Notice of Informal Conference[10] (**NIC**) requesting its appearance before the BIR for it to present its side of the case. In June 2014, respondent received a Preliminary Assessment Notice (**PAN**) with Details of Discrepancies.[11] There, respondent was apprised of its tax deficiencies (on income tax, value-added tax [**VAT**], withholding tax on compensation [**WTC**], improperly accumulated earnings tax [**IAET**] and documentary stamp tax [**DST**] for TY 2009) with compromise penalties, surcharges and interests, in the aggregate amount of ₱5,865,907.46.

7 Exhibit "R-7", p. 417.

8

Waiver	Extended Date of Prescription	Date of Execution	Date of Acknowledgment	BIR Signatory
First Waiver	September 30, 2012	June 21, 2012	June 21, 2012	OIC-Assistant Commissioner
Second Waiver	March 30, 2013	July 11, 2012	July 11, 2012	OIC-Assistant Commissioner
Third Waiver	September 30, 2013	January 3, 2013	January 3, 2013	OIC-Assistant Commissioner
Fourth Waiver	March 31, 2014	July 19, 2013	July 19, 2013	OIC-Assistant Commissioner
Fifth Waiver	June 30, 2014	September 13, 2013	September 13, 2013	OIC-Assistant Commissioner
Sixth Waiver	September 30, 2014	December 20, 2013	December 23, 2013	OIC-Assistant Commissioner
Seventh Waiver	December 31, 2014	March 14, 2014	March 14, 2014	OIC-Assistant Commissioner

9 Exhibit "R-12", BIR Records, p. 461.

10 Exhibit "R-14", id., p. 492.

11 Exhibit "P-34", Division Docket, Volume II, pp. 733-746.

Despite respondent's Reply to the PAN, the BIR sent a Formal Letter of Demand (**FLD**) with Details of Discrepancies and Assessment Notices.[12] Respondent filed its Protest[13] thereafter but the Final Decision on Deficiency Assessment[14] (**FDDA**) was nevertheless issued against it. Hence, respondent filed its prior Petition for Review[15] before this Court on 23 December 2014 while petitioner filed his Answer[16] thereto on 30 March 2015.

In the Answer, herein petitioner argued that: (1) the period to assess respondent has not prescribed; (2) the assessment has factual and legal bases; and, (3) respondent failed to substantiate the discount for disallowed income payment, unaccounted income, unsupported creditable withholding tax, the disallowed deduction for the charitable contribution made, and the undeclared income from unaccounted income payments.

Subsequently, respondent filed an Omnibus Motion[17] which included, among others, a prayer for an earlier determination of the issue of prescription; and if later on, the Court finds that the period for petitioner to assess it had not prescribed, to continue to a full-blown trial and rule in favor of the invalidity of the assessment.

After the parties presented their respective witnesses and other documentary evidence, the Court, in a Resolution dated 16 January 2017[18], partially granted petitioner's Omnibus Motion. It held that petitioner's right to assess respondent of deficiency VAT (for the first quarter of 2009) as well as deficiency Expanded Withholding Tax (**EWT**) (for the months of January to May 2009) had prescribed. Respondent filed an MR but to no avail.[19]

As for the main case, respondent presented its witnesses: (1) Jason S. Jimenez (**Jimenez**), respondent's Senior Corporate Accountant; and, (2) Jennifer C. Tobias (**Tobias**), respondent's Accounting Clerk.

12 Exhibit "P-36", id., pp. 843-858.
13 Exhibit "P-37", id., pp. 859-903.
14 Exhibit "R-28", BIR Records, p. 833.
15 Division Docket, Volume I, pp. 14-49.
16 Id., pp. 260-266.
17 Id., pp. 297-301.
18 Id., Volume III, pp. 1210-1224.
19 See Resolution dated 04 April 2017, id, pp. 1249-1254.

In his Judicial Affidavit[20], Jimenez testified that: (1) he is connected to First Philippine Holding, Corp. (**FPH**) of which respondent is a subsidiary; (2) he is a Senior Corporate Accountant of FPH and he participated or supervised the audit or accounting teams of its subsidiaries, including respondent; (3) the BIR issued the first LOA and respondent complied with all pertinent records requested; and, (4) respondent subsequently received the PAN, FLD, and FDDA after respondent submitted its Protest to the FLD. Petitioner opted not conduct any cross examination.[21]

On the other hand, Tobias testified through her Judicial Affidavit[22], among others, that: (1) as Accounting Clerk of respondent since January 1997, she is in charge of maintaining respondent's books of accounts and responsible for the computation of various taxes; (2) the alleged discrepancies as indicated in the assessments are erroneous and lack factual and legal basis; (3) respondent belatedly received the Notice of Inclusion as Top 20,000 Private Corporations; (4) in relation to VAT, the difference noted is a result of timing difference between the recording of revenues and recognition of VAT; and, (5) there are no excess charitable contributions as respondent did not exceed the cap on its deductibility. Jimenez also identified various tax returns, sales invoices, official receipts and certifications. Petitioner also did not conduct any cross examination.[23]

Respondent's formal offer of evidence (**FOE**) followed. The Court admitted its evidence with tender of excluded evidence (on those exhibits previously disallowed).[24]

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20 Exhibit "P-55", id., pp. 1272-1278.

21 TSN dated 24 May 2017, p. 5.

22 Exhibit "P-423", Division Docket, Volume III, pp. 1396-1437.

23 See Order dated 16 August 2017, id., Volume IV, p. 1990.

24

Exhibit "P-14-B"	Monthly Alphalist of Payees
Exhibit "P-15-B"	Monthly Alphalist of Payees
Exhibit "P-16-B"	Monthly Alphalist of Payees
Exhibit "P-17-B"	Monthly Alphalist of Payees
Exhibit "P-18-B"	Monthly Alphalist of Payees
Exhibit "P-19-B"	Monthly Alphalist of Payees
Exhibit "P-20-B"	Monthly Alphalist of Payees
Exhibit "P-21-B"	Monthly Alphalist of Payees
Exhibit "P-22-B"	Monthly Alphalist of Payees
Exhibit "P-23-B"	Monthly Alphalist of Payees
Exhibit "P-24-B"	Monthly Alphalist of Payees
Exhibit "P-25-B"	Monthly Alphalist of Payees

Petitioner did not adduce additional evidence (aside from those made during the hearing on respondent's Omnibus Motion). He did not also file his Memorandum hence the case was submitted without the same.

Exhibit "P-57"	Charge Invoice No. 0986 dated 18 March 2009 from Pulp Global Direct Philippines Inc.
Exhibit "P-58"	Statement of Account Charge Invoice No. 677 dated 03 December 2008 by Pulp Global Direct Philippines Inc.
Exhibit "P-59"	03 December 2008 Final Report by Pulp Global Direct Philippines Inc.
Exhibit "P-60"	Charge Invoice No. 0799 dated 18 December 2008 from Pulp Global Direct Philippines Inc.
Exhibit "P-61"	Statement of Account Charge Invoice No. 799 dated 18 December 2008 by Pulp Global Direct Philippines Inc.
Exhibit "P-62"	15 December 2008 Final Report by Pulp Global Direct Philippines Inc.
Exhibit "P-67"	Job Order No. 4699 by The Bill Sender Corporation dated 27 November 2008
Exhibit "P-68"	11 November 2008 Final Report by The Bill Sender Corporation
Exhibit "P-69"	Certification by The Bill Sender Corporation signed by Melanie N. Dungca and received by STSI on 28 January 2009.
Exhibit "P-75"	Sales Invoice No. 2092 dated 04 December 2008 from Dcs3Xpress Incorporated
Exhibit "P-78"	Statement of Account No. 004582 by Direct Express Corporation dated 18 November 2008
Exhibit "P-80"	15 October 2008 Final Report by Direct Express Corporation
Exhibit "P-81"	Certification by Direct Express Corporation signed by Ms. Lolita S.J. Dela Cruz with regard to the total volume of 7,134 picked up last 15 October 2008 and started its delivery last 17 October 2008.
Exhibit "P-105"	Sales Invoice No. 0858 dated 25 June 2009 from Excellpointe Business Corporation
Exhibit "P-294"	Invoice No. 3719 from The Varied Services Incorporated
Exhibit "P-295"	Sales Invoice No. 07575 from The Varied Services Incorporated
Exhibit "P-296"	Voucher Payable No. APV-09-05-000059 dated 01/30/09 issued by STSI.
Exhibit "P-299"	Annual Maintenance Contract dated 02 May 2009 of Virex Enterprises.
Exhibit "P-301"	A breakdown of Income Payments Not Subject to EWT made by STSI.
Exhibit "P-301-a"	Table entitled "Additions to PPE" in breakdown of Income Payments Not Subjected to EWT made by STSI.
Exhibit "P-301-b"	Table entitled "Professional Fees (General Professional Partnerships)" in breakdown of Income Payments Not Subjected to EWT made by STSI.
Exhibit "P-302"	Official Receipt No. 0972 by Unison Computer Systems, Inc.
Exhibit "P-303"	Voucher Payable No. APV-09-01-000063 dated 30 January 2009 by STSI
Exhibit "P-304"	Official Receipt No. 0622 by Unison Computer Systems, Inc.
Exhibit "P-305"	Voucher Payable No. APV-09-01-000064 dated 30 January 2009 by STSI.
Exhibit "P-312"	Table breakdown entitled Unaccounted Income – 2307 > SLS.
Exhibit "P-315"	Official Receipt No. 72480 dated 30 January 2009 issued by STSI.
Exhibit "P-320"	Official Receipt No. 72561 dated 06 February 2009 issued by STSI.
Exhibit "P-322"	Official Receipt No. 72592 dated 10 February 2009 issued by STSI.
Exhibit "P-327"	Notice of Inclusion.
Exhibit "P-373"	Official Receipt No. 72479 dated 30 January 2009 issued by STSI.
Exhibit "P-377"	Official Receipt No. 72492 dated 30 January 2009 issued by STSI.
Exhibit "P-380"	Official Receipt No. 72543 dated 05 February 2009 issued by STSI.
Exhibit "P-382"	Official Receipt No. 72524 dated 03 February 2009 issued by STSI.
Exhibit "P-393"	Official Receipt No. 72591 dated 10 February 2009 issued by STSI.
Exhibit "P-399"	Official Receipt No. 72651 dated 13 February 2009 issued by STSI.

In its now assailed Decision of 08 January 2019, the Court, through the Second Division, granted respondent's Petition for Review. Essentially, it ruled in this wise:

> ...
>
> Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, logically speaking, it is only them who can effect any modification or amendment to a previously issued LOA, should the need therefor arises.
>
> Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officer shall require the issuance of a new LOA. Be that as it may, the Court is of the view that the same would not necessarily negate the authority of the CIR and his duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of just issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or re-assigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives. As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.
>
> **In the present case, the revenue officers named under LOA No. 116-2010-00000087 dated May 14, 2010 were different from those who actually examined petitioner's books of accounts and other accounting records for taxable year 2009. As it appears, RO Gonzales and GS Bautista conducted the audit on the basis of Memorandum of Assignment No. LOA-116-2011-427 issued by Ms. Edralin M. Silario, OIC-Chief of LTS-RAD 1 reassigning to them the conduct of examination of petitioner's books of accounts and other accounting records.**

On the other hand, RO Guimbao and GS Aviles continued the conduct of the audit on the basis of Memorandum of Assignment No. LOA-116-2013-0227 issued by Mr. Cesar D. Escalada, Chief of LTS-RAD 1.

Guided by the foregoing disquisition, this Court holds that the Memorandum of Assignment No. LOA-116-2011-427 issued by Ms. Edralin M. Silario, OIC-Chief of LTS-RAD 1 cannot validly grant RO Gonzales and GS Bautista the power to conduct the examination pursuant to LOA No. 116-2010-00000087 dated May 14, 2010. The same holds true with respect to Memorandum of Assignment No. LOA-116-2013-0227 issued by Mr. Cesar D. Escalada, Chief of LTS-RAD 1. The said document cannot clothe RO Guimbao and GS Aviles with the requisite authority to continue the audit of petitioner's books of accounts and other accounting records for taxable year 2009.

In their respective capacities as OIC-Chief and Chief of LTS-RAD 1, Ms. Edralin M. Silario and Mr. Cesar D. Escalada are both bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit/examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

Given the invalidity of the subject deficiency assessments, there is no need to discuss the other issues raised by the parties.

WHEREFORE, the present Petition for Review is **GRANTED**. Accordingly, the deficiency income tax, VAT, WTC, EWT, and DST for taxable year 2009 as found in respondent's FDDA dated December 2, 2014 in the total amount of Three Million Nine Hundred Eighty-Seven Thousand Nine Hundred Thirty Pesos and 20/100 (₱3,987,930.20) are **CANCELLED** and **SET ASIDE.**[25]

...

Petitioner filed an MR to the above ruling but it was denied, with the Court stating that –

[25] Emphasis supplied.

> ...
>
> After judicious review of the case records and the arguments raised by the parties, this Court resolves to deny respondent's *Motion for Reconsideration.* **This Court stands by its ruling that the Memoranda of Assignment issued by OIC-Chief and Chief of the BIR Large Taxpayers Regular Audit Division 1 cannot clothe the revenue officers who actually conducted the examination of petitioner's books of accounts and other accounting records for taxable year 2009 with the requisite authority to conduct the same.** This is due to the fact that the revenue officials who issued such Memoranda of Assignment have no power whatsoever to authorize examination of taxpayers for assessment purposes or to effect any modification or amendment to a previously issued LOA. Only the CIR or his duly authorized representatives have that power as mandated by Sections 6, 7, 10 and 13 of the National Internal Revenue Code of 1997, as amended. An OIC-Chief or even the Chief of LTS-RAD 1 are not considered as the CIR's duly authorized representatives.
>
> **WHEREFORE,** respondent's *Motion for Reconsideration Re: Decision dated 08 January 2019* is **DENIED** for lack of merit.[26]
>
> ...

In his bid to have the Second Division's actions set aside, petitioner appealed to the Court *En Banc*, ascribing the following errors to the Second Division –

> ...
>
> I.
>
> THE COURT A *QUO* ERRED IN APPLYING REVENUE MEMORANDUM ORDER 43-90 and REQUIRING ANOTHER LETTER OF AUTHORITY IN CASES OR REASSIGNMENT OF REVENUE OFFICERS.
>
> II.
>
> THE COURT A *QUO* OF THE HONORABLE COURT ERRED WHEN IT CANCELLED THE ASSESSMENT ISSUED AGAINST RESPONDENT SOLELY ON THE GROUND THAT THE MEMORANDUM OF ASSIGNMENT WAS SIGNED BY A DIVISION CHIEF.
>
> ...

[26] Emphasis supplied.

In support of the above assigned errors, petitioner insists that Revenue Memorandum Order (**RMO**) 43-90[27] is inapplicable to the present case. The RMO was promulgated seven (7) years prior to 11 December 1997 or the date of the enactment of the National Internal Revenue Code (**NIRC**) of 1997, as amended. He claimed that it is unfair to apply RMO 43-90 even after the NIRC had already taken effect. Instead, the Second Division should have applied RMO 8-2006.[28] There, it is stated that where both the RO and the GS have resigned, retired or transferred to another Revenue Region, the case shall be re-assigned to another RO under the supervision of another GS within the same Revenue District Office (**RDO**). In case of re-assignment, "a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS". Thus, the Head of the Investigating Officer is duly authorized to issue and sign the MOA, contrary to the Second Division's ruling. Moreover, Annex A of RMO 62-2010[29] expressly provides that the Head of the Investigating Office is authorized to sign MOAs. Silario and Escalada then validly issued the second and third MOA, respectively.

Petitioner contends further that RMO 8-2006 is more recent than RMO 43-90. Being implementing rules, the law should be passed before the implementing rule. In addition, since the RMO is merely an internal issuance, it does not grant any vested right to any taxpayer (as the Second Division also held).

In contrast, respondent highlights Section 13[30] of the NIRC of 1997, as amended, not only RMO 43-90, as the legal reason why the Second Division correctly ruled on the cancellation of petitioner's assessment. Concomitant thereto, the Supreme Court ruled in both

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27 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

28 Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System.

29 Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.

30 **Sec. 13.** *Authority of a Revenue Office[r].* — 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.

Commissioner of Internal Revenue v. Sony Philippines, Inc.[31] (**Sony**) and in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[32] (**Medicard**), that the absence of authority to conduct investigation or assessment renders the investigation and or assessment void. Since ROs Gonzales and Guimbao, GS Bautista and GS Aviles were not duly authorized to conduct audit or investigation, as they were not mentioned in the LOA, their audit or examination of respondent is invalid.

As regards RMO 8-2006, respondent argues that the issuance of MOAs is prohibited under RMO 12-2007.[33] It adds that MOAs are also not substitutes for LOAs. More importantly, under the law, it is petitioner or the Revenue Regional Director who must issue the LOA. A division chief is not included.

The Court *En Banc*'s ruling follows below.

With the parties contrasting arguments, the present impasse' centers on (1) whether there is a need to issue another LOA if the ROs in the first LOA are reassigned or are transferred; and, (2) whether the Division Chief's Memorandum of Assignment suffices to delegate the authority to audit or investigate.

After a careful review of the records of the case as well as the pertinent laws and administrative issuances, the Court *En Banc* finds no merit in the arguments forwarded by petitioner.

RMO 43-90, despite being issued more than seven (7) years prior to the effectivity of the NIRC of 1997, as amended, is still a valid rule. As respondent correctly pointed out, the Supreme Court has recently decided cases guided by RMO 43-90.

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31 G.R. No. 178697, 17 November 2010.

32 G.R. No. 222743, 05 April 2017.

33 *17. The **practice of issuing** mission order, correspondence letters, **referral memoranda** or any other similar orders for the purpose of audit examination and assessment of internal revenue taxes **is hereby <u>strictly</u> prohibited...***(Emphasis and underlining supplied)

In the recent case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[34] the Supreme Court used RMO 43-90 in resolving the issue on the validity of LOA, *viz:*

> ...
>
> Even though the date after the words "taxable year 1998 to" is unstated, it is not at all difficult to discern that the period of examination is the whole taxable year 1998. This means that the examination of Lancaster must cover the FY period from 1 April 1997 to 31 March 1998. It could not have contemplated a longer period. The examination for the full taxable year 1998 only is consistent with the guideline in Revenue Memorandum Order (RMO) No. 43-90, dated 20 September 1990, that the LOA shall cover a taxable period ***not exceeding one taxable year***. In other words, absent any other valid cause, the LOA issued in this case is valid in all respects.[35]
>
> ...

Also, in *Commissioner of Internal Revenue v. De La Salle University, Inc.*[36], the Supreme Court again looked into the provisions of RMO 43-90 in refusing to invalidate the assessment on the sole ground that the LOA subject thereof is for *Fiscal Year Ending 2003 and Unverified Prior Years*. The Supreme Court explained that:

> ...
>
> The relevant provision is Section C of RMO No. 43-90, the pertinent portion of which reads:
>
> > 3. A Letter of Authority [LOA] should cover a taxable period not exceeding one taxable year. The practice of issuing [LOAs] covering audit of unverified prior years is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the [LOA].
>
> What this provision clearly prohibits is the practice of issuing LOAs covering audit of *unverified prior years*. RMO 43-90 does not say that a LOA which contains unverified prior years is void. It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified. The provision read as a whole requires that if a taxpayer is audited for more than

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[34] G.R. No. 183408, 12 July 2017.
[35] Citations omitted and emphasis in the original text.
[36] G.R. No. 196596, 09 November 2016.

> one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs.
>
> ...
>
> In the present case, the LOA issued to DLSU is for *Fiscal Year Ending 2003 and Unverified Prior Years*. The LOA does not strictly comply with RMO 43-90 because it includes unverified prior years. This does not mean, however, that the entire LOA is void.
>
> ...

On the other hand, the Supreme Court in *Sony*[37], while arriving at a slightly different conclusion, nonetheless applied RMO 43-90 in disallowing the VAT assessment, to wit:

> ...
>
> As earlier stated, LOA 19734 covered "the period 1997 and unverified prior years." For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA.
>
> Upon review, the CTA-EB even added that the coverage of LOA 19734, particularly the phrase "and unverified prior years," violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, the pertinent portion of which reads:
>
> > 3. A Letter of Authority should cover **a taxable period not exceeding one taxable year**. The practice of issuing L/As covering audit of "unverified prior years is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A. [Emphasis supplied]
>
> On this point alone, the deficiency VAT assessment should have been disallowed...[38]
>
> ...

[37] Supra at note 31.
[38] Citation omitted and emphasis in the original text.

Moreover, the fact that RMO 43-90 was issued seven (7) years prior to the enactment of the NIRC of 1997, as amended, is of no moment (as the latter did not repeal the former). The repealing clause of the NIRC of 1997, as amended, reads as follows:

> ...
>
> **Section 291.** *In General.* - All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.
>
> ...

Unquestionably, such repealing clause is not an express repeal because it did not identify or designate the act or acts that are intended to be repealed. Therefore, the question that needs to be addressed is whether the NIRC of 1997, as amended, impliedly repealed RMO 43-90.

In, *Commissioner of Internal Revenue v. Semirara Mining Corporation*[39], the Supreme Court, citing *Mecano v. Commission on Audit*[40], reiterated how repeals by implication operate, to wit:

> ...
>
> There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict. The later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.
>
> **Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot be enforced without nullifying the other.**[41]
>
> ...

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[39] G.R. No. 202534, 08 December 2018.
[40] G.R. No. 103982, 11 December 1992.
[41] Emphasis supplied.

Applied to herein case, it is clear that there is no implied repeal of the provisions of RMO 43-90. Obviously, there exists no irreconcilable inconsistency between its provisions and that of the NIRC of 1997, as amended, such that they cannot be reconciled or harmonized without nullifying one of them. NIRC of 1997, as amended, does not deal with the particulars on the issuance of an LOA which RMO 43-90 supplies. Hence, it cannot be said that NIRC of 1997, as amended, impliedly repealed RMO 43-90. In fact, *to date*, RMO 43-90 is still a valid rule.

Incidentally, even if this Court were to deem RMO 43-90 to be without force and effect (as a result of subsequent passage of NIRC of 1997, as amended), the assessment will nevertheless be declared void. Section 13 of the said tax law reads:

> ...
>
> **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.
>
> ...

Under the said provision, an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of account and other accounting records because such right is statutorily conferred only upon petitioner or his duly authorized representatives.

In *Medicard*, the Supreme Court held that the examination of a taxpayer's books of accounts and other pertinent records could not be undertaken without authority (through the LOA) from the CIR himself or his duly authorized representative, 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:
>
> > **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, **<u>the Commissioner or his duly authorized representative</u> 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
>
> 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...[42]
>
> ...

The Supreme Court reiterated this mandate in *Commissioner of Internal Revenue v. Composite Materials, Inc.*[43] where it ruled that:

> ...
>
> **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**

42 Supra at note 32; Citation omitted, emphasis and underlining in the original text.
43 G.R. No. 238352, 12 September 2018.

> **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.**
>
> Here, the CTA en banc found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> 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.[44]
>
> ...

In the instant case, petitioner anchors the ROs' authority to conduct the audit on the first and second MOAs. However, as clearly enunciated in the aforementioned cases, the ROs may only examine taxpayers' records pursuant to an LOA issued by the Regional Director. From the foregoing alone, it is clear that the ROs who actually conducted the audit are not duly authorized, through an LOA, to examine respondent's books of account and other accounting records. Thus, the Court in Division correctly nullified the assessment due to the absence of authority of the ROs concerned, following *Sony* wherein the Supreme Court ruled:

> ...
>
> **Based on Section 13 of the Tax Code, a Letter of Authority or 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. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> ...
>
> **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

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44 Citations omitted and emphasis supplied.

> go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.**[45]
>
> ...

Additionally, in insisting that an MOA would suffice, petitioner cited RMO 8-2006, which reads in part that:

> ...
>
> 2. In case the report of investigation submitted for review was returned to the investigating office for compliance with additional requirements and the original investigating Revenue Office (RO) and/or the Group Supervisor (GS) has been transferred, resigned or retired:
>
>   a. where the RO has resigned/retired or transferred but not the GS, the case shall be reassigned to another RO under the supervision of the same GS
>
>   b. where the GS has resigned/retired or transferred but not the RO, the case shall be continued by the same RO
>
>   c. where the GS has resigned/retired or transferred and the RO has also been transferred to another RDO but within the same RR, the case shall be remanded to the same RO, thru the previous RDO, by the AD. Updating of the status of the case shall be made by the same RO through authorized access given to the previous RDO
>
>   d. where the RO has resigned/retired or transferred to another RR but the GS is still assigned within the same RR, the case shall be remanded to the same GS, thru the previous RDO, by the AD. Updating of the status of the case shall be made by the same GS based on authorized access given by the previous RDO
>
>   e. where both the RO and the GS have resigned/retired or transferred to another RR, the case shall be reassigned to another RO under the supervision of another GS within the same RDO
>
> In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS.
>
> ...

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45 Supra at note 31; Citation omitted and emphasis supplied.

A cursory reading of the said provision reveals that, in case of reassignment, the head of the investigating office shall issue a memorandum to that effect. However, the same does not provide that such memorandum would be a substitute for the LOA required by Section 13 of the NIRC of 1997, as amended; which, as discussed above, is the only document that vests the ROs concerned with the authority to conduct the audit.

Put differently, **while a memorandum may be issued by the head of the investigating office in cases of reassignment, the same is still not sufficient to properly confer authority upon the RO to examine a taxpayer's books of account and accounting records.** This conclusion is even more evident when RMO 8-2006 is read together with RMO 43-90, which states:

> ...
>
> All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> ...
>
> **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]
>
> ...

Based on the provisions of RMO 43-90, which, to this day, remains a good law, it is clear that a new LOA must be issued even if the authority to examine the books of account and other accounting records of the taxpayer is merely assigned to another RO. Thus, notwithstanding the issuance of an MOA, the reassignment would still require the issuance of a new LOA.

Aside from the fact that no LOA was issued in favor of the ROs who actually conducted the audit, the first and second MOAs were only signed by the OIC-Chief Regular LT Audit Division 1 and Chief, Regular LT Audit Division 1, respectively.

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[46] Emphasis supplied.

While petitioner insists that the MOAs are valid as the aforesaid officials are authorized to issue and sign MOAs under RMO 8-2006 as well as in Annex A of RMO 62-2010 (that makes the head of the investigating office as one of the valid signatories to said MOA), it remains true that the MOAs are not valid substitutes of the LOA. As stated in Sections 6(A)[47], 10(C)[48] and 13[49] of the NIRC of 1997, as amended, in relation to RMO 43-90,[50] only the Regional Directors, the Deputy Commissioners and the Commissioner are authorized to issue LOAs.

To reiterate, despite the supposed validity of the said MOA, the assessment done without the required LOA for RO Gonzales and GS Bautista (who initially examined respondent's books of account and other accounting records), and RO Guimbao and GS Aviles (who continued the conduct of the audit) remains a nullity. For conducting the audit without the proper authority, the Second Division correctly invalidated the subject assessment.

With the above disquisitions, this Court *En Banc* fails to find any cogent reason to disturb the assailed Decision dated 08 January 2019 and Resolution dated 05 April 2019.

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47 **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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
...

48 **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:
...
(c) Issue Letters of Authority for the examination of taxpayers within the region;
...

49 **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.

50 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

WHEREFORE, the foregoing considered, the Petition for Review filed by the Commissioner of Internal Revenue dated 03 May 2019 is **DENIED** for lack of merit. Accordingly, the Decision dated 08 January 2019 and Resolution dated 05 April 2019, respectively, of the Second Division in CTA Case No. 8961, entitled *Securities Transfer Services, Inc. v. Commissioner of Internal Revenue*, are **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

(Please see Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA 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,**	**CTA EB NO. 2057** **(CTA CASE NO. 8961)**
-versus-	**Present:** **Del Rosario,** *P.J.,* **Castañeda, Jr.,** **Uy,** **Ringpis-Liban,** **Manahan,** **Bacorro-Villena,** *and* **Modesto-San Pedro,** *JJ*
SECURITIES TRANSFER SERVICES, INC., **Respondent.**	**Promulgated:** **SEP 03 2020** 3:05pm

x---x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the Decision which denied the Petition for Review filed by the Commissioner of Internal Revenue (CIR) on the ground that the Revenue Officer (RO) and Group Supervisor (GS) named in the Memorandum of Assignment (MOA) were not validly authorized to conduct the investigation.

However, I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in their favor, Revenue Officer (RO) Felina B. Guimbao and Group Supervisor (GS) Olivia F. Aviles may be given the authority to continue the audit and examination of respondent Securities Transfer Services, 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 Commissioner or his duly authorized representative may authorize the examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[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;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

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[1] *Emphasis and underscoring supplied.*

> (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."

[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.

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 DaniellA Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Walter Batoon and Reynoso Bravo, and

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

GS Erlinda Ulgado, who were originally named in the first LOA, and RO Rogelio Gonzales and GS Marivic Bautista named in the second LOA may be revoked, transferred and reassigned to RO Guimbao and GS Aviles 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

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[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).

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.[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, **RO Guimbao and GS Aviles who conducted the examination of respondent'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 Assistant Commissioner/Head Revenue Executive Assistants**."[15]

N

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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.

In the instant case however, the MOA No. LOA-116-2013-0227[16] was only signed by Cesar D. Escalada, Chief of LTS-RAD 1. Therefore, RO Felina B. Guimbao and GS Olivia F. Aviles were without authority to continue the audit.

From all the foregoing, I vote that the Petition for Review be DENIED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[15] *Emphasis and underscoring supplied.*
[16] Exhibit "R-12", BIR Records, p. 461.