REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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TANN PHILIPPINES, INC., Petitioner,	**CTA Case No. 9820**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** DEC 16 2021 1:36 p.m.

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DECISION

UY, J.:

Before this Court is the *Petition for Review*[1] filed on April 24, 2018 by petitioner Tann Philippines, Inc. against respondent Commissioner of Internal Revenue (CIR), praying that the Court render judgment finding petitioner not liable for any deficiency income tax, value-added tax and expanded withholding tax for taxable year (TY) 2010.

THE FACTS

As culled from the records of the case and as stipulated by the parties in their *Joint Stipulation of Facts and Issues* (JSFI)[2], the following are the facts of the case:

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with Tax Identification Number (TIN) 216-405-611-000[3]. It is registered with the Securities and Exchange

[1] Docket – Vol. 1, pp. 10 to 23.
[2] Docket – Vol. 1, pp. 237 to 246.
[3] Exhibit "P-3", Docket – Vol. 1, p. 367.

Commission with Registration No. A200203395[4]; and with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise with Certificate of Registration No. 02-016[5].

On the other hand, respondent is the head of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes; and has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, and other matters arising under the Tax Code or other laws or other laws or portions thereof administered by the BIR. Respondent may be served with summons and other court processes at the 5th Floor, BIR Building, Agham Road, Diliman, Quezon City.[6]

On October 4, 2011, respondent issued Letter of Authority (LOA) No. 122-2011-00000158 (SN: eLA201100003295)[7] authorizing Revenue Officers (RO) Teodoro Matibag, Celestino Mejia, Marilu Zeta, and Group Supervisor (GS) Edenny Lingan, to examine the books and other accounting records of petitioner for TY 2010.

Thereafter, petitioner executed various *Waivers of the Statute of Limitation under the National Internal Revenue Code.*[8].

On September 4, 2013, petitioner received a *Preliminary Assessment Notice*[9] (PAN), with attached Details of Discrepancies, assessing petitioner for deficiency taxes for TY 2010, detailed as follows:

Tax Type	Amount
Income Tax	₱ 14,281,306.32
Value Added Tax (VAT)	35,392,582.32
Final Withholding Tax on VAT	369,182.11
Expanded Withholding Tax (EWT)	8,774,348.55
Withholding Tax on Compensation	1,644,749.78
Final Withholding Tax	29,029,029.24
TOTAL	**₱89,491,198.32**

[4] Exhibit "P-2", Docket – Vol. 1, p. 366.
[5] Exhibit "P-4", Docket – Vol. 1, p. 368.
[6] JSFI, Summary of Admitted Facts, par. 1, Docket – Vol. 1, p. 238.
[7] Exhibit "R-4", BIR Records – Folder 1, p. 1-c.
[8] Exhibit "R10", BIR Records – Folder 2, pp. 1-2; Exhibit "R-13", BIR Records – Folder 2, pp. 34 to 35; Exhibit "R-14", BIR Records – Folder 2, pp. 283 to 284.
[9] Exhibit "R-12", BIR Records – Folder 2, pp. 27 to 32.

On September 19, 2013, petitioner filed its *Reply* to the PAN.[10]

On May 27, 2014, petitioner received a *Formal Assessment Notice* (FAN) dated May 26, 2014[11], with attached Details of Discrepancies and Assessment Notice Nos. IT-122-LA158-2010-14-0170[12], VT-122-LA158-2010-14-0171;[13] and WE-122-LA158-2010-14-0172[14], issued by Alfredo V. Misajon, OIC-Assistant Commissioner of the Large Taxpayers Service (LTS), assessing petitioner for deficiency income tax, VAT and EWT for TY 2010, detailed as follows: [15]

Tax Type	Amount
Income Tax	₱7,965,604.29
VAT	3,961,298.06
EWT	2,918,126.47
TOTAL	**₱14,845,028.82**

On June 26, 2014, petitioner filed its *Protest*[16] to the FAN, requesting for a reinvestigation and praying that the findings of tax deficiency be cancelled and withdrawn.

On July 26 2016, petitioner received the *Final Decision on Disputed Assessment*[17] (FDDA) dated July 21, 2016, with attached Details of Discrepancies and Assessment Notices Nos. IT-122-LA158-2010-16-080[18]; VT-122-LA158-2010-16-081[19]; and WE-122-LA158-2010-16-082[20], issued by Nestor S. Valeroso, Assistant Commissioner of the LTS, demanding the payment of deficiency taxes for TY 2010, amounting to ₱18,705,022.31, detailed as follows:

Tax Type	Amount
Income Tax	₱10,067,373.05
VAT	4,976,084.91
EWT	3,661,564.35
TOTAL	**₱18,705,022.31**

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[10] BIR Records – Folder 2, pp. 143 to 151.
[11] JSFI, Summary of Admitted Facts, par. 2, Docket – Vol. 1, p. 238.
[12] Exhibit "P-5-2", Docket – Vol. 1, p. 374.
[13] Exhibit "P-5-3", Docket – Vol. 1, p. 375.
[14] Exhibit "P-5-4", Docket – Vol. 1, p. 376.
[15] Exhibit "P-5", Docket – Vol. 1, pp. 369 to 373.
[16] Exhibit "P-6", Docket – Vol. 1, pp. 377 to 382.
[17] Exhibit "P-8", Docket – Vol. 1, pp. 398 to 400.
[18] Exhibit "P-8-2", Docket – Vol. 1, p. 403.
[19] Exhibit "P-8-3", Docket – Vol. 1, p. 404.
[20] Exhibit "P-8-4" Docket – Vol. 1, p. 405.

Thereafter, on August 25, 2016, petitioner appealed the FDDA to the CIR. [21]

On March 26, 2018, petitioner received the *Final Decision*[22] dated May 23, 2017, issued by the CIR, denying petitioner's Motion for Reconsideration filed on August 25, 2016 and demanding the immediate payment of petitioner's deficiency taxes for TY 2010, amounting to ₱18,705,022.31.

Aggrieved, petitioner filed the instant *Petition for Review*[23] on April 24, 2018.

Respondent filed his *Answer* on September 3, 2018,[24] interposing, among others, the following special and affirmative defenses: that petitioner is liable for deficiency taxes for TY 2010 and that the assessment issued against petitioner is valid and lawful. Respondent claims that the deficiency income tax assessment is based on the undeclared other income, undeclared sales and disallowed cost of sales and income payments not subjected to withholding tax. As regards the deficiency VAT, respondent contends that the VAT assessment based on the "Reconciliation of Listing for Enforcement" or RELIEF system is valid. Respondent likewise alleges that the deficiency EWT was assessed pursuant to Section 2.57.2 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 17-2003. Further, respondent claims that petitioner is liable for surcharge, interest and compromise penalties.

After the Pre-Trial Conference held on November 6, 2018[25], the parties submitted their *JSFI*[26] on December 6, 2018. Subsequently, the Court issued the *Pre-Trial Order*[27] on January 8, 2019.

During trial, petitioner presented as witnesses: (1) Rosseni de Leon[28], its Accounting and Corporate Affairs Manager; and (2) Neil U. Sison[29], the Court-commissioned Independent Certified Public Accountant (ICPA).

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[21] Exhibit "P-9", Docket – Vol. 1, pp. 406 to 407.
[22] Exhibit "P-1", Docket – Vol. I, p. 365.
[23] Docket, pp. 10 to 23.
[24] Docket - Vol. 1, pp. 99 to 112.
[25] Minutes of Hearing, Docket, p. 225; Order, Docket, pp. 227 to 229.
[26] JSFI, Docket – Vol. 1, pp. 237 to 246.
[27] Docket - Vol. 1, pp 250 to 259.
[28] Exhibit "P-12", Docket - Vol. 1, pp 130 to 142.
[29] Exhibits "P-13", Docket – Vol. 1, pp. 313 to 342.

Petitioner filed its *Formal Offer of Evidence*[30] on July 19, 2019.

On July 25, 2019, petitioner filed an *Urgent Omnibus Motion to A. Admit Supplemental ICPA Report; B. Set a Date for the Reception of the ICPA's Additional Testimony; and C. File Supplemental Formal Offer of Evidence*[31], with attached *Supplemental ICPA Report*[32], alleging that after due verification and review of voluminous additional official receipts and invoices, the ICPA has come up with a supplemental report which substantially lowers the amount of valid assessment made by respondent and revising the ICPA Report filed on February 26, 2019; and that petitioner was constrained to file the *Omnibus Motion* in order to present a true and complete picture of the status of its tax compliance and documentation for the year under assessment.

On August 5, 2019, respondent filed its *Comment (Re: Formal Offer of Evidence).*[33] Thereafter on August 27, 2019, respondent filed its *Opposition*[34] to petitioner's *Omnibus Motion*, stating that the ICPA's testimony was already deemed complete and terminated; that petitioner cannot be allowed to ask for the setting of another date to present additional testimony of the ICPA pursuant to the *One-Day Examination of Witness Rule;* and that the presentation of additional evidence will run counter against the rules of procedure; and praying that the Court deny petitioner's *Omnibus Motion*.

In the Resolution[35] dated September 26, 2019, the Court, in the interest of substantial justice, granted petitioner's *Urgent Omnibus Motion to A. Admit Supplemental ICPA Report; B. Set a Date for the Reception of the ICPA's Additional Testimony; and C. File Supplemental Formal Offer of Evidence.* In the same Resolution, the Court admitted the *Supplemental ICPA Report*; set the case for hearing for the recall of ICPA Neil S. Sison; and directed petitioner to file the *Supplemental Judicial Affidavit* and *Supplemental Formal of Evidence*.

On October 22, 2019, petitioner filed its *Supplemental Formal of Evidence.*[36]

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[30] Docket – Vol. 1, pp. 353 to 364.
[31] Docket – Vol. 1, pp. 430 to 432.
[32] Docket – Vol. 1, pp. 433 to 443.
[33] Docket – Vol. 1, pp. 447 to 448.
[34] Docket – Vol. 1, pp. 454 to 457.
[35] Docket – Vol. 1, pp. 468 to 470.
[36] Docket – Vol. 1, pp. 496 to 500.

On October 28, 2019, respondent filed his *Comment (on Petitioner's Formal Offer of Evidence and Supplemental Offer of Evidence)*[37]. In the Resolution[38] dated February 3, 2020, the Court admitted most of petitioner's exhibits but denied the others for not being found in the records.

On the other hand, respondent presented as his sole witness, RO Fatima P. Sarrosa[39].

Respondent filed his *Formal Offer of Evidence*[40] on Mach 9, 2020. On June 29, 2020, petitioner filed its *Comment/Opposition to Respondent's Formal Offer of Evidence.*[41]

Meanwhile, on March 3, 2020, petitioner filed a *Motion for Reconsideration of the Resolution dated February 3, 2020*[42], alleging that upon confirmation, the ICPA admitted that the defects in the exhibits which were denied admission were due to his inadvertence; and that the ICPA submitted a soft copy of the ICPA Report and the Supplemental ICPA Report, together with the denied exhibits, properly completed and scanned and forming part of the ICPA main and supplemental reports; and requesting that the said exhibits be admitted as forming part of the records of this case.

On June 16, 2020, respondent filed his *Comment (on Petitioner's Motion for Reconsideration)*[43], stating that he objects to the admission of the documents for failure of petitioner to furnish him with the ICPA Report and the Supplemental ICPA Report.

In the Resolution[44] dated October 8, 2020, the Court partially granted petitioner's *Motion for Reconsideration*, admitting some of the exhibits but denying the others for not being found in the records. In the same Resolution, the Court admitted all of respondent's exhibits and ordered both parties to file their respective memoranda.

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[37] Docket – Vol. 1, pp. 503 to 505.
[38] Docket – Vol. 1, pp. 510 to 515.
[39] Exhibit "R-22", Docket – Vol. 1, pp. 205 to 218.
[40] Docket – Vol. 2, pp. 528 to 536.
[41] Docket – Vol. 2, pp. 540 to 543.
[42] Docket – Vol. 2, pp. 521 to 524.
[43] Docket – Vol. 2, pp. 545 to 547.
[44] Docket – Vol. 2, pp. 554 to 560.

Respondent's *Memorandum*[45] was filed on November 19, 2020, while petitioner's *Memorandum*[46] was filed on December 21, 2020.

Thus, the instant case was submitted for Decision in the Resolution[47] dated January 12, 2021.

Hence, this Decision.

THE ISSUES

The parties stipulated the following sole issue[48] for this Court's resolution, *to wit*:

> "**STATEMENT OF ISSUE**
>
> Whether petitioner is liable to pay the assessed deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax for taxable year 2010 plus surcharge, interest and compromise penalties."

Petitioner's arguments:

Petitioner argues that the subject deficiency tax assessment for TY 2010 is null and void for having been arbitrarily made; and that it lacks factual and legal basis.

According to petitioner, the alleged undeclared "other" income pertains to cash discounts (purchases) and rebates and are properly treated as deduction from purchases as part of the computation of the cost of sales. Petitioner likewise contends that under the Philippine Accounting Standards 2 (PAS 2) or IAS 2 on Inventories, trade discounts, rebates and other similar items are deducted in determining the cost of purchase.

As regards the alleged undeclared sales to Philip Morris Philippines, these were supported by summary list of local sales previously submitted to the BIR; and that the Audit Information Tax Exemptions and Incentives Division (AITEID) data that was used as

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[45] Docket – Vol. 2, pp. 561 to 573.
[46] Docket – Vol. 2, pp. 581 to 597.
[47] Docket – Vol. 2, p. 600.
[48] *JSFI*, Docket – Vol. 1, p. 240.

basis in the subject assessment is highly questionable as it contains several erroneous entries.

In addition, petitioner maintains that respondent erred in disallowing the expenses related to the cost of production. Allegedly, the "rent, utility charges associated with building equipment and warehouses used in production" could be considered as allowable deduction under RR No. 11-2005.

With respect to the disallowed expenses for non-withholding of tax, these are not subject to withholding as the same pertain to reimbursements and importations from non-resident entity. According to petitioner, reimbursements are not income payment to the recipient; and the payments for importations from a non-resident are not subject to withholding.

Petitioner further takes exception to the finding of the ICPA that there is a valid assessment in the amount of ₱66,831.00 on the non-withholding on payment for services. Petitioner claims that this cannot be a valid assessment considering that the same arose only from the finding of the ICPA and not from the examination conducted by the revenue officers.

Respondent's counter-arguments:

Respondent counter-argues that the assessment is valid and lawful; and that the same has basis both in fact and in law.

According to petitioner, the items/issues comprising deficiency income tax assessments are based on undeclared other income, undeclared sales, disallowed cost of sales and income payments not subjected to withholding tax.

Contrary to petitioner's assertion, respondent contends that the sales to Philip Morris Inc. was determined to have been understated and is therefore subject to income tax and VAT.

Moreover, respondent maintains that there were income payments that were not subjected to withholding tax and are assessed pursuant to Section 2.57.2 of RR No. 2-98, as amended by RR No. 17-2003.

Respondent likewise posits that the petitioner is liable for surcharge, interest and compromise penalties.

Finally, respondent claims that the burden of proof is on the taxpayer contesting the validity or correctness of the assessment to prove not only that the CIR is wrong but that the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands.

THE COURT'S RULING

Based on the stipulated issues submitted by the parties in the instant case, it is apparent that the issue on the authority of the revenue officer who conducted and continued the audit and investigation of petitioner was not raised. Nevertheless, this Court finds it necessary to resolve and rule on the authority of the revenue officers considering its significant effect on the validity of the subject tax assessment.

This Court is empowered to rule on related issues necessary to achieve an orderly disposition of the case.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, reads as follows:

> "RULE 14
>
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. - *Rendition of judgment* - xxx
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."** *(Emphasis supplied.)*

Based on the said provision, this Court is not limited to resolve only the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case. Such power was confirmed and recognized by the Supreme

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Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[49], *viz*:

> "**On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. Rendition of judgment. - xxx
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA <u>even though the parties had not raised the same in their pleadings or memoranda.</u>** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis and underscoring supplied)*

From the foregoing jurisprudential pronouncement, the Supreme Court not only affirmed this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case; but also specifically stated that this Court may consider the question on the scope of the authority of the revenue officers named in the LOA. In effect therefore, this Court is likewise empowered to determine whether or not the revenue officer who conducted the audit and investigation of a taxpayer's books of accounts, is duly authorized to do so through an LOA.

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

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

The revenue officers were <u>not</u> duly authorized to conduct the audit investigation; hence, the resulting tax assessments are void.

Sections 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, lays down the power of the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, *to wit*:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, <u>**the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**</u>: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

Based on the foregoing, an authority emanating from petitioner or his duly authorized representative is required before an examination and an assessment may be made.

Relative thereto, Section 13 of the NIRC of 1997, as amended, provides that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to a 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, <u>pursuant to a Letter of Authority issued by the Revenue Regional</u>**

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> **Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied.)*

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

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[50] the Supreme Court elucidated on the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, *viz*:

> "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, **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

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

> shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x (Emphasis and underlining Ours)

Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underlining ours)

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Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required**

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> **to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**
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> xxx xxx xxx
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" *(Emphases and underscoring supplied; citations omitted.)*

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

In the instant case, records disclose that pursuant to LOA No. 122-2011-00000158 (SN: eLA201100003295) dated October 4, 2011[51] only RO Teodoro Matibag, Celestino Mejia, Marilu Zeta, and GS Edenny Lingan were authorized to examine the books and other accounting records of petitioner for taxable year 2010.

On March 5, 2013, *Memorandum of Assignment* (MOA) No. 122-REA-13-03-00059[52] was issued by Edralin M. Salario, OIC-Chief, Large Taxpayers (LT) Division - Makati, directing RO Jose R. Turbolencia and GS Oscar A. Sable to continue the audit investigation of petitioner for TY 2010. Notably, it was RO Turbolencia who recommended the issuance of the PAN[53], FAN[54] and FDDA[55].

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[51] Exhibit "R-4", BIR Records – Folder 1, p. 1-c.
[52] Exhibit "R-8", BIR Records – Folder 1, p. 536.
[53] *Memorandum* dated July 31, 2013, Exhibit "R-11", BIR Records – Folder 2, pp. 19 to 23.
[54] *Memorandum* dated May 9, 2014, BIR Records – Folder 2, pp. 294 to 299.
[55] *Memorandum* dated July 13, 2016, Exhibit "R-16", BIR Records – Folder 2, pp. 335 to 337.

Thereafter, on March 20, 2017, MOA No. LOA-116-2017-0128[56] was issued by Shirley A. Calapatia, Chief, Regular LT Audit Division 1, referring the case to RO Fatima P. Sarrosa and GS Marivic P. Bautista, for the continuation of the audit/investigation of petitioner for TY 2010. Pursuant to the said MOA, RO Sarrosa conducted an investigation of petitioner's books of accounts and other accounting records and recommended the denial of petitioner's *Motion for Reconsideration* and for collection of the subject taxes.[57] This was confirmed by RO Sarrosa in her Judicial Affidavit[58], *to wit*:

> "9Q: Why are you familiar with the case?
>
> 9A: The case was assigned to me by way of **Memorandum of Assignment with MOA No. LOA-116-2017-0128 dated 20 March 2017** for the continuation of the audit/investigation due to the referral of the case by the previous investigation officer that handled the case.
>
> xxx xxx xxx
>
> 11Q: I have with me a Memorandum of Assignment with MOA No. LOA-116-2017-0128 dated 20 March 2017, found in the BIR Records and marked as Exhibit "R-1" for the respondent, what relation does this document have to the Memorandum of Assignment that you mentioned?
>
> 11A: This is the **Memorandum of Assignment** that I mentioned found in the BIR Records which replaced the previous assigned revenue officer for the **continuation of the investigation of petitioner's tax liabilities for the calendar year ending 31 December 2010**.
>
> 12Q: After being assigned to evaluate petitioner's Motion for Reconsideration, what happened next, if any?
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> 12A: I evaluated the pertinent documents in the case docket that was assigned to me and reviewed all the reports and recommendation issued by the previous revenue officer. **On 23 May 2017 we**

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[56] Exhibit "R-1", BIR Records – Folder 2, p. 411.
[57] *Memorandum* dated May 23, 2017; Exhibit "R-20", BIR Records – Folder 2, pp. 413 to 418.
[58] Exhibit "R-22"

> **<u>recommended through a memorandum report the denial of petitioner's Motion</u>**. *(Emphasis and underscoring supplied)*

Evidently, the supposed authority of ROs Turbolencia and Sarrosa to conduct the audit investigation of petitioner for TY 2010 was merely based on a MOA and not an LOA. As a corollary, it bears noting that there is no showing that a new LOA was issued specifically authorizing the said ROs to continue the audit investigation of petitioner following the reassignment and transfer of the case.

The failure of respondent to issue a new LOA runs counter to Revenue Memorandum Order (RMO) No. 43-90 dated September 20, 1990, which lays down the guideline for the audit/investigation and issuance of LOA, pertinent portions of which states, *to wit*:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> xxx xxx xxx
>
> 5. **<u>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</u>**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." *(Emphases and underscoring supplied.)*

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

This was recently affirmed in the case of *Commissioner of Internal Revenue vs. Mcdonald's Philippines Realty Corp.*[59], where the Supreme Court ruled that a MOA or any equivalent document is

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[59] G.R. No. 242670, May 10, 2021.

not a proof of the existence of authority of the substitute or replacement revenue officer; and that the use of such document by an unauthorized revenue officer usurps the functions of the LOA. Further, the Supreme Court categorically pronounced that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation **without a separate or amended LOA** (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

In the present case, it is undisputed that no new or amended LOA was issued to ROs Turbolencia and Sarrosa to continue the audit investigation and that the only basis for their authority was the MOA. It is evident therefore that the said ROs were not duly authorized to conduct the audit investigation of petitioner for TY 2010. In the absence of such an authority, the assessment or examination is a nullity.[60]

Even assuming *arguendo* that a MOA may be considered as an LOA, the same is still insufficient to authorize the revenue officers to continue the audit investigation in this case.

Under RMO No. 29-07[61] dated September 26, 2007, the BIR officers who are authorized to issue and approve LOAs for the conduct of audit investigation of taxpayers under the Large Taxpayers Services are enumerated as follows:

> "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

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[60] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

[61] SUBJECT: *Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.*

> amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants</u>.**" (Emphasis and underscoring supplied.)

Based on the foregoing, the LOA shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants (HREA).

In the instant case, however, the MOAs addressed to ROs Turbolencia and Sarrosa for the continuation of the audit investigation of petitioner's taxes for TY 2010 were signed and issued not by the Assistant Commissioner/HREA, but by OIC-Chief of LT Division Edralin M. Salario and Chief of Regular LT Audit Division 1 Shirley A. Calapatia, respectively. Evidently, the subject MOAs were signed by BIR officers who are **<u>not</u>** authorized to issue an LOA. Hence, ROs Turbolencia and Sarrosa both have no authority to continue the audit investigation.

In sum, considering that the revenue officers were not duly authorized by a valid LOA, the subject tax assessments, which came about as a result of their examination of petitioner's books of accounts and accounting records for TY 2010, are void. *Apropos*, it is well-settled that a void assessment bears no valid fruit.[62]

With the foregoing, it becomes unnecessary to address the remaining arguments raised by the parties in this case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the FDDA and Assessment Notices Nos. IT-122-LA158-2010-16-080; VT-122-LA158-2010-16-081; and WE-122-LA158-2010-16-082, dated July 21, 2016, issued against petitioner for deficiency taxes for TY 2010 in the amount of ₱18,705,022.31, inclusive of increments, are **CANCELLED** and **SET ASIDE** for being null and void.

[62] *Commissioner of Internal Revenue vs. Azucena T. Reyes; Azucena T. Reyes vs. Commissioner of Internal Revenue,* G.R. Nos. 159694 & 163581, January 27, 2006.

Respondent is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes during the pendency of the instant case.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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

Third Division

TANN PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9820

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
DEC 16 2021
1:36 p.m.

x---x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the Decision which granted the Petition for Review filed by Tann Philippines, Inc. on the ground that the assessment notices are void. The subject assessment notices resulted from an unauthorized tax examination because 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) Jose R. Turbolencia (RO Turbolencia) and Group Supervisor (GS) Oscar A. Sable[1] and RO Fatima P. Sarrosa and GS Marivic P. Bautista[2] may be given the authority to continue the audit and examination of Tann Philippines, 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.

[1] Under MOA No. 122-REA-13-03-00059
[2] Under MOA No. LOA-116-2017-0128

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."[3]

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;
>
> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That

[3] *Emphasis and underscoring supplied.*

> 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.**"[4]

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."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[5], the Supreme Court had the occasion to expound on the elements of agency, to wit:

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[4] *Emphasis and underscoring supplied.*

[5] G.R. No. 188288, January 16, 2012.

> "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."[6]

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)"[7]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Teodoro Matibag, Celestino Mejia Marilu Zeta and GS Edenny Lingan who were originally named in the LOA may be revoked, transferred and reassigned to RO Turbolencia and RO Sarrosa for continuance of audit.

[6] *Emphasis supplied.*
[7] *Emphasis supplied.*

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,[8] 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."[9]

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.[10] The title of the contract does not necessarily determine its true nature.[11] 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.[12] 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.[13]

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8 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).*

9 Civil Code of the Philippines, Article 1869.

10 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.

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

12 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).

13 Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.

I am not unaware of Revenue Memorandum Order ("RMO") No. 43-90[14] 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.[15]

It is for the reasons above that, in my opinion, **RO Turbolencia and RO Sarrosa who conducted the examination of petitioner'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[16], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants</u>**."[17]

In the instant case however, the MOA No. 122-REA-13-03-00059[18] was signed by OIC-Chief, LT Division-Makati, Ms. Edralin M. Silario, while MOA No. LOA-116-2017-0128[19] was signed by Shirley A. Calapatia, Chief, Regular LT Audit Division 1. Therefore, RO Urbano and RO Sarrosa were without authority to continue the audit.

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[14] Issued September 20, 1990.

[15] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.

[16] Issued September 26, 2007.

[17] *Emphasis and underscoring supplied.*

[18] Exhibit "R-8."

[19] Exhibit "R-R-1."

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice