REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2278** (CTA Case No. 9710)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** and **REYES-FAJARDO,** *JJ.*
SUNNYPHIL INCORPORATED, Respondent.	***Promulgated:*** NOV 03 2021 1:50 p.m.

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DECISION

UY, *J.*:

This is a *Petition for Review*[1] filed on July 6, 2020 by petitioner, Commissioner of Internal Revenue, against respondent, Sunnyphil Incorporated, praying that the Court *En Banc* reverses and sets aside the Decision dated November 8, 2019[2] and the Resolution dated March 12, 2020[3], both rendered by the First Division of this Court (Court in Division) in CTA Case No. 9710, entitled *"Sunnyphil Incorporated, Petitioner, versus Commissioner of Internal Revenue,*

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[1] EB Docket, pp. 7 to 17.

[2] Penned by Presiding Justice Roman G. Del Rosario, and concurred by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Catherine T. Manahan, EB Docket, pp. 21 to 33.

[3] EB Docket, pp. 35 to 40.

Respondent", the dispositive portions of which, respectively read as follows:

<u>Decision dated November 8, 2019</u>:

"**WHEREFORE**, in light of the foregoing, the Petition for Review filed on November 6, 2017 by petitioner Sunnyphil Incorporated is hereby **GRANTED.** Accordingly, the Formal Assessment Notice, with the following Assessment Notices, all dated January 10, 2017, covering taxable year 2013, assessing petitioner Sunnyphil Incorporated for deficiency taxes, *viz*:

Income Tax	Assessment Notice No. IT-ELA35464-13-17-150	₱24,178,118.17
Withholding Tax on Compensation	Assessment Notice No. WC-ELA35464-13-17-150	₱13,076,008.48
Expanded Withholding Tax	Assessment Notice No. WE-ELA35464-13-17-150	₱790,704.53
Improperly Accumulated Earnings Tax	Assessment Notice No. IE-ELA35464-13-17-150	₱14,763,680.53
Documentary Stamp Tax	Assessment Notice No. DS-ELA35464-13-17-150	₱1,159,459.13
Compromise Penalty	Assessment Notice No. MC-ELA35464-13-17-150	₱80, 000.00

or in the aggregate amount of Fifty Four Million Forty Seven Thousand Nine Hundred Seventy Pesos and Eighty Four Centavos (₱54,047,970.84) are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED."

<u>Resolution dated March 12, 2020</u>:

"**WHEREFORE**, premises considered, respondent's "**Motion for Reconsideration"**, is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

The Bureau of Internal Revenue (BIR), through petitioner, Commissioner of Internal Revenue (CIR), is the agency of the government tasked with the enforcement of revenue laws and the collection of taxes and duties. Respondent is represented in this case by the Legal Division, Revenue Region No. 8, Makati City, with office address at the 2/F Legal Division, BIR Bldg., No. 313 Sen. Gil Puyat Avenue, Makati City.

On the other hand, respondent Sunnyphil Incorporated (or Sunnyphil) is a corporation duly organized and existing under Philippine laws and registered with the BIR under Certificate of Registration (COR) No. 9RC0000190247 with Tax Identification No. (TIN) 226-852-389-000. Sunnyphil's principal office is located at Lot 91, A. Bagsakan Road, FTI Complex, Western Bicutan, Taguig City.

THE FACTS

On January 7, 2016, Sunnyphil received a *Letter of Authority* (LOA) No. SN: eLA201200035464 dated December 4, 2015 authorizing Revenue Officer (RO) Mohaimin Abedin and Group Supervisor (GS) Ma. Teresa Reyes of Revenue District Office (RDO) No. 44 - Revenue Region No. 008 to examine its books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2013 to December 31, 2013.

Revenue District Officer Florante R. Aninag of RDO No. 44 issued a *Memorandum of Assignment* (MOA) No. 0442015LOA-00134 dated April 6, 2016 authorizing RO Olivia Palma (RO Palma) and GS Eulogina E. Lacson (GS Lacson) to continue the audit/investigation of Sunnyphil's books of accounts and other records for the taxable year 2013 and to replace the previously assigned RO and GS who were transferred to another RDO.

On April 13, 2016, Sunnyphil received a *Letter* dated April 8, 2016 from Revenue District Officer Aninag, stating that RO Palma and GS Lacson were assigned to continue the audit/investigation of all its internal revenue taxes for the period January 1, 2013 to December 31, 2013, pursuant to LOA No. 201200035464 dated December 4, 2015 and MOA 0442015LOA-00134 dated April 6, 2016.

On December 21, 2016, Sunnyphil received a *Preliminary Assessment Notice* (PAN) dated December 19, 2016, assessing it for alleged deficiency income tax, withholding tax on compensation (WTC), expanded withholding tax (EWT), improperly accumulated earnings tax (IAET), documentary stamp tax (DST) and compromise penalty, for taxable year 2013.

On January 13, 2017, Sunnyphil received Assessment Notices dated January 10, 2017 assessing it for deficiency taxes for taxable year 2013 in the aggregate amount of ₱54,047,970.84, with details as follows:

Income Tax	Assessment Notice No. IT-ELA35464-13-17-150	₱24,178,118.17
WTC	Assessment Notice No. WC-ELA35464-13-17-150	₱13,076,008.48
EWT	Assessment Notice No. WE-ELA35464-13-17-150	₱790,704.53
IAET	Assessment Notice No. IE-ELA35464-13-17-150	₱14,763,680.53
DST	Assessment Notice No. DS-ELA35464-13-17-150	₱1,159,459.13
Compromise Penalty	Assessment Notice No. MC-ELA35464-13-17-150	₱80,000.00
	TOTAL	₱54,047,970.84

On February 10, 2017, Sunnyphil filed a *Protest Letter* dated February 8, 2017 against the Assessment Notices dated January 10, 2017. Subsequently, Sunnyphil sent a *Letter* dated April 10, 2017 to RDO No. 44 submitting documents in support of its *Protest Letter* which was received by RO Palma on April 11, 2017.

Alleging the CIR's inaction on its protest, Sunnyphil filed a *Petition for Review* on November 6, 2017 before the Court in Division, entitled, *"Sunnyphil Incorporated, Petitioner, versus Commissioner of Internal Revenue, Respondent,"* and docketed as CTA Case No. 9710.

On January 19, 2018, the CIR filed his *Answer* in CTA Case No. 9710, alleging, among other the following special and affirmative defenses:

(i) reconciliation of salaries and wages and other benefits as per financial statements *vis-à-vis* the amount subjected to withholding tax per returns filed disclosed that there were salaries not subjected by Sunnyphil to withholding tax amounting to ₱36,366,762.59, hence, the amount was disallowed as deduction from gross income;

(ii) expenses amounting to ₱13,494,397.90 have been disallowed for Sunnyphil's failure to withhold the appropriate withholding tax due on its income payments;

(iii) Sunnyphil's creditable tax withheld claimed per Income Tax Return (ITR) amounting to ₱448,448.72 was disallowed for it was not supported by copies of Creditable Tax Withheld at Source (BIR Form 2307);

(iv) Sunnyphil is liable to pay the assessment for WTC since it failed to withhold/remit the corresponding withholding tax on Salaries and Wages previously disallowed from gross income;

(v) considering that Sunnyphil failed to withhold/remit the correct withholding tax due on income payments previously disallowed from gross income, it is liable to pay the deficiency EWT thereon;

(vi) Sunnyphil's retained earnings exceeded 100% of the paid-up capital of the corporation and permitted the same to accumulate beyond the reasonable needs of its business to avoid tax upon its shareholders, hence, it is liable to pay 10% IAET on its improperly accumulated earnings;

(vii) Sunnyphil failed to pay the DST of ₱1.00 on each ₱200.00, or fractional part thereof, on the related party transactions which are purported to be loans;

(viii) the ten-year prescriptive period to assess is applicable to IAET and DST liabilities of Sunnyphil pursuant to Section 222(a) of the Tax Code;

(ix) assessments are *prima facie* presumed correct and made in good faith and the taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed; and,

(x) taxes are the lifeblood of the government and as such, they should be collected without unnecessary hindrance.

After the Pre-Trial Conference held on February 15, 2018, the parties filed their *Joint Stipulation of Facts and Issues* on February 27, 2018, and the same was approved in the Pre-Trial Order dated March 7, 2018.

During trial, Sunnyphil presented both testimonial and documentary evidence. Sunnyphil presented as witnesses, (1) Gil C. Bermudez, the Court-commissioned Independent Certified Public Accountant (ICPA)[4]; and Rosalie Tanguanco, its Assistant Manager[5].

On August 20, 2018, Sunnyphil filed its *Formal Offer of Evidence*. On September 3, 2018, a *Records Verification Report*[6] was issued by the Judicial Records Division stating that the CIR failed to file his comment on Sunnyphil's *Formal Offer of Evidence*.

In the Resolution dated October 12, 2018, the Court in Division admitted Sunnyphil's exhibits except for Exhibits "P-8", "P-10-K-1", and "P-14", for failure to identify; Exhibits "P-13-1", "P-13-A-1", and "P-13-B-1", for failure to identify and present their originals for comparison; and Exhibit "P-21", for failure of the document formally offered to correspond with the document marked.

The CIR likewise presented testimonial and documentary evidence. The CIR presented RO Palma[7] as his sole witness.

On February 1, 2019, the CIR filed his *Formal Offer of Exhibits*. Thereafter, on February 7, 2019, Sunnyphil filed its *Comment*[8]. In the Resolution dated April 3, 2019, the Court in Division admitted all exhibits presented by the CIR; and directed both parties to file their respective memoranda within thirty (30) days from notice.

The CIR filed his *Memorandum* on May 10, 2019; while Sunnyphil filed its *Memorandum* on May 31, 2019. Hence, on June 11, 2019, the Court in Division issued a Resolution submitting CTA Case No. 9710 for decision.

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[4]Exhibits "P-31" and "P-31-A", Division Docket (CTA Case No. 9710) – Vol. I, pp. 468 to 475.
[5] Exhibits "P-32" and "P-32-A", Division Docket (CTA Case No. 9710) – Vol. I, pp. 476 to 487.
[6]Division Docket (CTA Case No. 9710) – Vol. I, p. 488.
[7] Exhibits "R-3" and "R-3-A"; Division Docket (CTA Case No. 9710) – Vol. I, pp. 496 to 501.
[8] Division Docket (CTA Case No. 9710) – Vol. II, pp. 527 to 528.

On November 8, 2019, the Court in Division rendered the assailed Decision[9] granting the *Petition for Review* in CTA Case No. 9710. The Court *a quo* ordered the cancellation of the *Formal Assessment Notice* dated January 10, 2017 assessing Sunnyphil for deficiency taxes for taxable year 2013.

On December 2, 2019, the CIR filed his *Motion for Reconsideration*[10]; while Sunnyphil filed its *Opposition/Comment*[11] on January 10, 2020.

In the assailed Resolution[12] promulgated on March 12, 2020, the Court in Division denied CIR's *Motion for Reconsideration* for lack of merit.

On June 22, 2020, the CIR filed a *Motion for Extension of Time to File Petition for Review*[13], before the Court *En Banc* praying for an extension of fifteen (15) days from June 23, 2020 or until July 8, 2020, within which to file his *Petition for Review*. The same was granted by the Court *En Banc* on July 7, 2020[14].

The CIR then filed the instant *Petition for Review*[15] before the Court *En Banc* on July 6, 2020 *via* registered mail, and received by the Court on July 15, 2020.

In the Resolution dated July 28, 2020,[16] Sunnyphil was directed to file its comment on the instant *Petition for Review* within ten (10) days from notice. On September 10, 2020, Sunnyphil filed its *Comment*.[17]

In the Resolution[18] dated September 22, 2020, the Court *En Banc* noted Sunnyphil's *Comment*; and referred the case for

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[9] EB Docket, pp. 21 to 33; Division Docket (CTA Case No. 9710) Vol. II, pp. 588 to 600.
[10] Division Docket (CTA Case No. 9710) - Vol. II, pp. 601 to 606.
[11] Division Docket (CTA Case No. 9710) - Vol. II, pp. 610 to 615.
[12] EB Docket, pp. 35 to 40; Division Docket (CTA Case No. 9710) Vol. II, pp. 619 to 624.
[13] EB Docket, pp. 1 to 4.
[14] Minute Resolution dated July 7, 2020, EB Docket, p. 6.
[15] EB Docket, pp. 7 to 18.
[16] EB Docket, pp. 53 to 54.
[17] EB Docket, pp. 55 to 59.
[18] EB Docket, pp. 61 to 62.

mediation in the Philippine Mediation Center Unit – Court of Tax Appeals (PMC-CTA) pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the CTA* approved by the Supreme Court on January 18, 2011.

On October 20, 2020, the Court *En Banc* received PMC-CTA Form 6 or *No Agreement to Mediate*[19] dated October 15, 2020, signed by Avigail B. Sanchez, Mediator Staff, stating that the parties have decided not to have their case mediated by the PMC-CTA.

On November 3, 2020, the instant case was submitted for decision.[20] Hence, this Decision.

THE ISSUES

The CIR raises the following issue for the resolution of the Court *En Banc:*

> "Whether the Honorable First Division of the CTA erred in denying herein petitioner's Motion for Reconsideration"[21]

In his *Motion for Reconsideration* filed with the Court in Division, petitioner prayed that the assailed Decision dated November 8, 2019 be reconsidered and set aside; that another decision be rendered denying the Petition for Review filed in CTA Case No. 9710; and that herein respondent be ordered to pay the deficiency income tax, EWT, WTC, IAET, DST and compromise penalty for taxable year 2013.

Thus, essentially, the issue for the Court *En Banc's* consideration is:

> " Whether or not the Court in Division erred in declaring that the subject assessment is void for lack of authority of the revenue officers to conduct the audit investigation of Sunnyphil's books of accounts and other accounting records for taxable year 2013. "

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[19] EB Docket, pp. 63.
[20] EB Docket, pp. 65 to 66.
[21] Issue, *Petition for Review*, EB Docket, p. 11.

The CIR's arguments:

The CIR argues that the revenue officers who conducted the audit and investigation of Sunnyphil were authorized; and that the subject assessment which was issued pursuant to said audit is valid.

It is the CIR's position that the ruling in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[22] ("Medicard case"), is not applicable to the instant case since the facts therein are not on all fours with the case at bar.

The CIR likewise claims that the audit performed by the revenue officers through a MOA was valid pursuant to the guidelines and procedures of Revenue Memorandum Order (RMO) No. 8-2006 and RMO No. 69-2010.

Allegedly, the LOA was validly issued in the instant case; and that the issuance of the MOA sufficiently cloaks the subsequent revenue officers with authority to continue the audit investigation. Thus, the issuance of a new LOA is not required.

The CIR further posits that the re-assignment of the audit investigation was made known to Sunnyphil through the issuance of a reassignment notice.

Sunnyphil's counter-arguments:

Sunnyphil counter-argues that the instant *Petition for Review* failed to present any justification to depart from the assailed Decision.

According to Sunnyphil, the CIR's reliance on RMO No. 8-2006 is inconsistent with the legislative mandate under Sections 6(A) and 13 of the National Internal Revenue Code of 1997 (NIRC), as amended. Allegedly, the rules and regulations promulgated by the BIR must not be contrary to the cited provision in the NIRC.

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

In addition, Sunnyphil maintains that the issuance of an LOA prior to the conduct of an audit examination is indispensable to the validity of an assessment.

Finally, Sunnyphil submits that it is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law.

THE COURT *EN BANC'S* RULING

After a thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, this Court finds no legal basis to reverse the assailed Decision and Resolution of the Court in Division.

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

In the assailed Decision, the Court in Division ruled that there was no LOA issued to the revenue officers who continued the audit of Sunnyphil's books of accounts and other accounting records for taxable year 2013. Accordingly, the Court *a quo* held that the subject assessment is void.

We sustain the Court in Division's ruling.

Section 6(A) of the 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, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

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

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

Evidently, a grant of authority, through an LOA, must be issued assigning a revenue officer 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.

MOA is not sufficient to grant the revenue officers the authority to conduct the audit investigation.

The CIR insists that the MOA is sufficient to authorize the revenue officers to continue the audit examination of Sunnyphil's books, as it is a mere continuation of the audit which was already authorized under the LOA.

We disagree.

The failure of the CIR or his duly authorized representative to issue a new LOA runs counter to RMO No. 43-90 dated September 20, 1990,[23] which lays down the guidelines for the audit/investigation and issuance of LOA, to wit:

> "C. Other policies for issuance of L/As.
>
> 1. **<u>All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority</u>.**
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A,** with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." *(Emphases and underscoring supplied.)*

Based on the foregoing, all audit investigations must be conducted by a duly designated RO authorized to perform audit and examination of a 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 be issued with the corresponding notation thereto.

In the present case, records disclose that pursuant to LOA No. SN: eLA201200035464 dated December 4, 2015[24] **<u>only</u>** RO Mohaimin Abedin and GS Ma. Teresa Reyes were authorized to examine the books and other accounting records of Sunnyphil for taxable year 2013.

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

[24] BIR Records, p. 727.

Thereafter, Revenue District Officer Aninag issued MOA No. 0442015LOA-00134[25] dated April 6, 2016 directing RO Palma and GS Lacson to continue the audit/investigation of Sunnyphil's books of accounts and other records for the taxable year 2013 and to replace the previously assigned RO and GS. Notably, it was RO Palma and GS Lacson who recommended the issuance of the PAN through *Memorandum* dated September 1, 2016[26].

Evidently, the supposed authority of RO Palma and GS Lacson to conduct the audit investigation of respondent for taxable year 2007 was on the basis of an MOA only. There is no showing that a new LOA was issued specifically authorizing RO Palma and GS Lacson to continue the audit investigation of respondent's books of accounts and other records for taxable year 2013, and to replace the previously assigned RO and GS who were transferred to another RDO.

Thus, there being no new LOA issued, RO Palma and GS Lacson were not duly authorized to continue the audit investigation of Sunnyphil for taxable year 2013.

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.

Section D (4) of RMO No. 43-90 enumerates the BIR officers who are authorized to sign and issue LOAs for the conduct of audit investigation of taxpayers, to wit:

> "D. Preparation and issuance of L/As.
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> xxx xxx xxx
>
> 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

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[25] Exhibits "R-1", and "R-1-a", BIR Records, p. 737.
[26] Exhibits "R-2", "R-2-a" and "R-2-b", BIR Records, pp. 885 to 886.

> by the Commissioner himself." (Emphasis *and underscoring supplied.*)

Based on the foregoing, the LOA shall be issued **only** by the following officers:

1. Regional Directors;
2. Deputy Commissioners;
3. CIR; and
4. Other officials authorized by the CIR for the exigencies of service.

In the instant case, however, the MOA addressed to RO Palma and GS Lacson was signed **not** by the Regional Director/Deputy Commissioner/Commissioner, but by Florante D. Aninag, a Revenue District Officer. There is likewise no showing that Aninag was specifically authorized by the CIR to issue and sign an LOA.

Correspondingly, the subject MOA is not sufficient to authorize RO Palma and GS Lacson to continue the audit investigation of Sunnyphil for taxable year 2013.

Administrative issuance cannot amend substantive law.

As regards the CIR's reliance on RMO No. 8-2006[27] dated February 1, 2006 and RMO No. 69-2010[28] dated August 11, 2010, the same deserves scant consideration.

It bears noting that the said issuances run counter to the afore-quoted provisions of Sections 6(A) and 13 of the NIRC of 1997, as amended, which is the substantive law on the matter. It is well settled that a mere administrative issuance cannot amend the law; the former cannot purport to do any more than implement the latter.[29] Further, it must be remembered that BIR circulars and rulings cannot

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[27] SUBJECT: *Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)*

[28] SUBJECT: *Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.*

[29] *Secretary of Finance Cesar V. Purisima, et al. vs. Philippine Tobacco Institute, Inc.*, G.R. No. 210251, April 17, 2017.

prevail over the clear and plain language of the Tax Code.[30] In this connection, Sections 6(A) and 13 of the NIRC of 1997, as amended, is clear that the authority of a revenue officer to conduct an audit investigation must be exercised pursuant to an LOA.

Thus, the provisions of RMO Nos. 8-2006 and 69-2010 relied upon by the CIR cannot prevail over the clear import of the Tax Code.

Medicard case is applicable in the case at bar.

Respondent is also of the view that the *Medicard* case is not applicable to the case at bar since the facts therein are not in all fours with the case at bar.

We disagree.

It must be remembered that in the *Medicard case,* the Supreme Court elucidated on the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

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

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[30] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. The Commissioner of Internal Revenue*, G.R. No. 130838, August 22, 2006.

> 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.)*

Relative thereto, it must be emphasized that the CIR himself, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018[31], recognizes the ruling in the *Medicard* case and states the consequences for ROs initiating tax assessments or performing assessment functions without an LOA, *to wit*:

> "The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the authorized representative, through an LOA. The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void**.'
>
> xxx xxx xxx
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." (*Emphasis and underscoring supplied.*)

Correspondingly, We see no reason not to apply the said ruling in the *Medicard case* to the instant case.

Further, it bears noting that in the recently issued Resolution in the case of *Commissioner of Internal Revenue vs. Opulent Landowners Inc.*[32], the Supreme Court emphasized that only revenue

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[31] SUBJECT: *The Mandatory Statutory Requirement and Function of a Letter of Authority.*
[32] G.R. No. 249883-84, January 27, 2020.

officers **actually named** under the LOA are authorized to examine the taxpayer. It also reiterated that any reassignment or transfer of cases shall require the issuance of a new LOA, otherwise, the resulting assessments are void.

In sum, considering that RO Palma and GS Lacson were not duly authorized through an LOA, the subject assessment notices, which came about as a result of their examination of Sunnyphil's books of accounts and accounting records for taxable year 2013, are void. To stress, a void assessment bears no valid fruit.[33]

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated November 8, 2019 and Resolution dated March 12, 2020, both rendered by the Court in Division in CTA Case No. 9710 are **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from enforcing the collection of deficiency taxes assessed against Sunnyphil Incorporated for taxable year 2013.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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

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

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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. 2278
(CTA CASE NO. 9710)

-versus-

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro, *and*
Reyes-Fajardo, *JJ.*

SUNNYPHIL INCORPORATED,
Respondent.

Promulgated:
NOV 03 2021 1:50 p.m.

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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) Olivia Palma (RO Palma) and Group Supervisor (GS) Eulogina E. Lacson may be given the authority to continue the audit and examination of respondent Sunnyphil Incorporated'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;

[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:
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> 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 Revenue Officer Mohaimin Abedin and Group Supervisor Ma. Teresa Reyes who were originally named in

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

the LOA may be revoked, transferred and reassigned to RO Olivia Palma and GS Eulogina E. Lacson for continuance of audit.

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

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

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

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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).

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 Olivia Palma and GS Eulogina E. Lacson 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 <u>Assistant Commissioner/Head Revenue Executive Assistants</u>.**"[15]

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

In the instant case however, the MOA No. 0442015LOA-00134[16] was only signed by Revenue District Officer Florante R. Aninag. Therefore, RO Olivia Palma and GS Eulogina E. Lacson 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
Associate Justice

[16] Exhibits "R-1 and "R-1-a".