REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

TOLEDO HOLDINGS CORPORATION,	**CTA CASE NO. 9375**
Petitioner,	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	OCT 15 2019 1:54 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review filed on June 24, 2016, pursuant to *Section 7(a)(1)*[1] *of Republic Act ("RA") No. 1125,*[2] as amended by *RA No. 9282*[3] and *RA No. 9503*[4] and *Section 3(a)(1)*[5]*, Rule IV of the Revised Rules of the Court of Tax Appeals ("RRCTA"),* seeking for the Court to render judgment canceling and setting aside the Final Decision on Disputed Assessment (FDDA) issued by respondent.[6] The FDDA found petitioner liable to pay deficiency Donor's Tax, penalties, and interest for the taxable year 2011 in

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[1] "Sec. 7. Jurisdiction. - *The* Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."

[2] An Act Creating the Court of Tax Appeals.

[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[4] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] "SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx"

[6] See Prayer in the Petition for Review; Records, Vol. 1, p. 38.

the total amount of **FORTY SEVEN MILLION SIX HUNDRED FORTY FIVE THOUSAND SIX HUNDRED FORTY FOUR AND 13/100 PESOS (PHP47,645,644.13).**[7]

The Parties

Petitioner, Toledo Holdings Corporation, is a domestic corporation duly organized and existing under Philippine law,[8] with principal office at GT Tower International, 6813 Ayala Avenue corner H.V. dela Costa Street, Makati City[9].

Respondent, Commissioner of Internal Revenue (CIR), is the chief of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith.[10]

The Facts

Petitioner was registered with the BIR on August 29, 1996 with OCN 8RC0000020347 and Taxpayer's Identification Number 004-840-609-000.[11] It was established primarily:

> "to engage in the business of [a] holding company, to purchase, acquire, own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, to receive, collect, hold, and dispose of the interest, dividends, rent, and income arising from such property, and to possess and exercise in effect thereof, all rights, powers, and privileges of ownership. Provided it shall not act as broker/dealers of securities."[12]

Petitioner was the owner of certain parcels of land located in Brgy. Ingore, La Paz, Iloilo City, covered by Transfer Certificates of Title (TCT) Nos. 095-2010000219, 095-2010000171, and 095-2010000213 issued by the Registry of Deeds for Iloilo City, with a total land area of 277,681 square meters.[13]

On February 25, 2010, petitioner entered into a Land Lease Agreement, with Panay Energy Development Corporation (PEDC) over the

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[7] See Prayer in the Petition for Review; Records, Vol. 1, p. 38.
[8] See Certificate of Filing of Amended Articles of Incorporation; Records, Vol. 1, p. 446.
[9] See Certificate of Amendment of the Articles of Incorporation; Records, Vol. 1, p. 456.
[10] See Admitted Facts in the Pre-Trial Order; Records, Vol. 1, pp. 379-380.
[11] See BIR Certificate of Registration; Records, Vol. 1, p. 460.
[12] See Primary Purpose in the Amended Articles of Incorporation; Records, Vol. 1, p. 448.
[13] See the 2nd Whereas Clause of the Land Lease Agreement; Records, Vol. 1, p. 496.

aforementioned parcels of land.[14] Subsequently, the parties agreed that PEDC has the option to purchase the properties for the price of One Hundred Fifty One Million Seven Hundred Thousand Pesos (Php151,700,000.00).[15]

On March 26, 2001, PEDC decided to exercise its option to purchase, and the parties executed a Deed of Absolute Sale.[16]

Meanwhile, respondent issued Letter of Authority (LOA) No. LOA-211-2012-00000268 SN: eLA201100045404[17] on October 16, 2012. The LOA authorized Revenue Officer (RO)s Malik Dimakuta and Gerardo Soliman, and Group Supervisior (GS) Oscar Sable of the Large Taxpayers Regular Audit Division 2, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2011 to December 31, 2011, pursuant to *Section 6(A) of the National Internal Revenue Code of 1997, as amended (1997 NIRC)*. The LOA was received by petitioner's authorized representative on November 15, 2012.

On April 4, 2013, a Memorandum of Assignment (MOA) was issued referring the case to RO Luzviminda A. Pedrosa and GS Fe F. Caling for the "[c]ontinuation of the audit/investigation to replace the previously assigned ROs who resigned/retired/transferred to another district office."[18] The BIR then issued a letter to petitioner, on April 16, 2013, informing the latter that the above-named RO and GS were assigned to the case.[19]

On several dates, petitioner, through its authorized signatory, executed the following Waivers of the Statute of Limitation Under the NIRC:

EXHIBIT	DATE OF EXECUTION	LAST DAY	DATE OF ACCEPTANCE BY BIR
P-6[20]	July 4, 2014	March 31, 2015	July 16, 2014
P-7[21]	January 30, 2015	December 31, 2015	February 6, 2015
P-8[22]	July 30, 2015	June 30, 2016	August 5, 2015

On May 4, 2015, a Preliminary Assessment Notice (PAN)[23] was issued by respondent, finding petitioner liable for Income Tax, Value-Added Tax, Documentary Stamp Tax, and Donor's Tax.[24] Petitioner received a copy of

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[14] See Land Lease Agreement; Records, Vol. 1, pp. 496-502.
[15] See 3rd Whereas Clause in the Deed of Absolute Sale; Records, Vol. 1, p. 493.
[16] Records, Vol. 1, pp. 493-495.
[17] Records, Vol. 1, p. 461.
[18] Records, Vol. 1, p. 462.
[19] Records, Vol. 1, p. 463.
[20] Records, Vol. 1, p. 464.
[21] Records, Vol. 1, p. 465.
[22] Records, Vol. 1, p. 466.
[23] Parts I and II.
[24] Records, Vol. 1, pp. 467-474.

the PAN on May 4, 2015.[25] Petitioner responded to the PAN through a letter dated May 18, 2015, received by the BIR on May 19, 2015.[26]

Thereafter, the CIR issued a Formal Letter of Demand (FLD) and a Final Assessment Notice (FAN) on February 17, 2016. These were received by petitioner on February 17, 2016.[27] In the FAN, petitioner was given until February 29, 2016 to pay, while in the FLD, the other taxes were dropped but petitioner was still held liable for Donor's Tax, computed as follows:

PARTICULAR	AMOUNT			
I. DONOR'S TAX				
Fair Market Value of Property			₱	221,080,020.00
Less: Selling Price				151,700,000.00
Value of Property Deemed Donation			₱	69,380,020.00
Tax Rate				0.30
Donor's Tax Due			₱	**20,814,006.00**
Add: Penalties				
Surcharge	₱	5,203,501.50		
Interest - Apr. 26, 2011 to February 29, 2016		20,186,734.59		
Compromise		50,000.00		25,440,236.09
Total Deficiency Donor's Tax			₱	**46,254,242.09**

In response, petitioner filed its protest on March 16, 2016.[28]

On May 24, 2016, the then CIR herself issued the assailed FDDA, finding no legal basis to cancel or reduce the assessment.[29] This was received by petitioner's representative on May 25, 2016.

Hence, petitioner was left with no recourse but to seek redress from the Court on June 24, 2016, through the present Petition for Review.[30]

After being granted several extensions,[31] respondent filed his Answer[32] to the Petition for Review on November 3, 2016 via registered mail.

Respondent's Pre-Trial Brief was filed on February 13, 2017[33]; while petitioner submitted its Pre-Trial Brief on March 17, 2017[34].

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[25] Records, Vol. 1, pp. 467-474.
[26] Records, Vol. 1, pp. 475-478.
[27] Records, Vol. 1, pp. 479-483.
[28] Records, Vol. 1, pp. 484-492.
[29] Records, Vol. 1, pp. 161-163.
[30] Records, Vol. 1, pp. 10-41, exclusive of annexes.
[31] Records, Vol. 1, pp. 178, 185-186, 202-204, 206-207.
[32] Records, Vol. 1, pp. 191-200.
[33] Records, Vol. 1, pp. 210-212.
[34] Records, Vol. 1, pp. 347-357.

Pre-Trial commenced on March 21, 2017[35] and the parties' Joint Stipulation of Facts and Issues[36] was filed with the Court on April 17, 2017. Thereafter, a Pre-Trial Order[37] was issued on April 27, 2017.

On November 9, 2017, petitioner filed its Formal Offer of Evidence[38], which was resolved by the Court in its Resolution dated April 3, 2018[39]. Exhibits P-1 to P-18 and P-18-a were all admitted by the Court, with a notation as to some inconsistencies.

On April 25, 2018, petitioner submitted its Motion for Reconsideration[40] regarding the inconsistencies found by the Court, which was noted and granted in a Resolution dated September 5, 2018[41].

Respondent submitted his Formal Offer of Evidence on December 5, 2018[42], which the Court resolved on February 21, 2019[43]. The Court denied Exhibits R-1 to R-16, and admitted Exhibits R-17 and R-17-a, but scheduled a Commissioner's Hearing to give respondent an opportunity to have his exhibits marked.

On March 21, 2019, counsel for respondent presented Exhibits R-1 to R-16 for marking.[44] Accordingly, the Court admitted the marked exhibits on April 15, 2019, with some notations, and gave the parties a period of thirty (30) days from receipt thereof to file their respective Memoranda.[45]

Consequently, petitioner and respondent submitted their Memoranda on June 21, 2019[46] and June 28, 2019[47], respectively.

With the filing of the parties' Memoranda, the Court promulgated a Resolution on July 22, 2019, submitting the case for Decision;[48] hence, this Decision.

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[35] Records, Vol. 1, pp. 358-360.
[36] Records, Vol. 1, pp. 372-377.
[37] Records, Vol. 1, pp. 379-384.
[38] Records, Vol. 1, pp. 434-445.
[39] Records, Vol. 2, pp. 590-591.
[40] Records, Vol. 2, pp. 592-595.
[41] Records, Vol. 2, pp. 600-601.
[42] Records, Vol. 2, pp. 605-611.
[43] Records, Vol. 2, pp. 619-621.
[44] Records, Vol. 2, pp. 622-623.
[45] See Resolution; Records, Vol. 2, pp. 625-626.
[46] See petitioner's Memorandum; Records, Vol. 2, pp. 638-675.
[47] See respondent's Memorandum; Records, Vol. 2, pp. 677-687.
[48] Records, Vol. 2, p. 689.

The Issues[49]

WHETHER THE ASSESSMENT IS VOID FOR LACK OF AUTHORITY OF THE RO TO CONDUCT THE EXAMINATION;

WHETHER PETITIONER'S TRANSFER OF PROPERTY TO PEDC IS A BONA FIDE SALE AND DOES NOT AMOUNT TO A DONATION;

WHETHER THE DEFICIENCY DONOR'S TAX ASSESSMENTS LACK FACTUAL AND LEGAL BASIS;

WHETHER THE PERIOD TO ASSESS PETITIONER'S INTERNAL REVENUE TAXES FOR THE TAXABLE YEAR 2011 HAS ALREADY PRESCRIBED;

WHETHER PETITIONER IS LIABLE FOR THE ALLEGED DONOR'S TAX DUE FOR TAXABLE YEAR 2011;

WHETHER PETITIONER IS ESTOPPED FROM ATTACKING THE VALIDITY OF THE ASSESSMENT IN VIEW OF ITS PAYMENT OF SOME OF THE DEFICIENCY TAXES BEING ASSESSED; AND

WHETHER PETITIONER MAY RAISE PROCEDURAL FLAWS FOR THE FIRST TIME ON APPEAL.

Arguments of the Parties

Petitioner's Arguments[50]

Petitioner avers that the Court has jurisdiction to take cognizance of the instant Petition for Review; that the assessment is void for lack of authority of the RO to conduct the examination; that petitioner's transfer of the property is a bona fide sale and does not amount to a donation; that the deficiency Donor's Tax assessments lack factual and legal basis; that the period to assess petitioner's internal revenue taxes for taxable year 2011 has prescribed and the waivers did not validly extend the period to assess; and that it is not liable for alleged Donor's Tax.

[49] See Stipulated Issues in the Pre-Trial Order; Records, Vol. 2, p. 380.
[50] See Discussion in petitioner's Memorandum; Records, Vol. 2, pp. 646-672. 𝒬

Respondent's Counter-Arguments[51]

Respondent insists that petitioner is estopped from attacking the validity of the assessment; that no error or illegality can be ascribed to the assessment; and that the assessment issued against petitioner is valid and lawful.

The Ruling of the Court

RO Pedrosa had no authority to conduct the examination of petitioner's case; hence, the assessment is a nullity.

We first delve into the first and sixth issues, which can be simplified into whether the RO has authority to examine petitioner's books of account and other accounting records for the purpose of issuing an assessment and whether petitioner can still question such lack of authority.

Petitioner points to *Section 6(A) and 13 of the 1997 NIRC*, which state that the CIR or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, and that an RO may examine taxpayers pursuant to an LOA. It likewise cited the case of *Sony Philippines v. Commissioner of Internal Revenue*, wherein it was ruled that there must be a grant of authority before any RO can conduct an examination or assessment; and that in the absence of such an authority, the assessment or examination is a nullity.

It avers that while ROs Dimakuta and Soliman, and GS Sable were authorized under the LOA to conduct the examination, it was RO Pedrosa and GS Caling who did so. Therefore, no LOA was issued to the latter to continue the investigation of petitioner's books. It posits that the Notice for Continuance of Audit/Investigation cannot be a source of authority for RO Pedrosa and GS Caling. Citing *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, it claims that in the absence of an LOA authorizing the ROs, the tax assessment issued is void.

Further, petitioner stresses that during cross-examination, it was shown that only one LOA was issued and the only source of RO Pedrosa's authority was the MOA, which is not a valid substitute for an LOA.

[51] See Discussion in respondent's Memorandum; Records, Vol. 2, pp. 679-684.

On his part, respondent counters that petitioner is estopped from attacking the validity of the assessment; that petitioner never raised the issue of authority despite being given several instances to do so through its reply or protest; that its partial payment on some items of the assessment affirms the validity of the assessment; and that tax assessments are entitled to the presumption of correctness and of having been made in good faith.

The Court finds merit in petitioner's arguments.

Pertinent to the issue is *Section 13 of the 1997 NIRC,* which provides as follows:

> "Section 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."[52]

Here, the pertinent LOA, dated October 16, 2012, would show that ROs Dimakuta and Soliman, and GS Sable were originally assigned to the case, *viz:*

> "SN: eLA201100045404
>
> LOA-211-2012-00000268
>
> LETTER OF AUTHORITY
>
> October 16, 2012
>
> TOLEDO HOLDINGS CORPORATION
> XXX
> XXX
> XXX
>
> SIR / MADAM / GENTLEMEN:
>
> The bearer(s) hereof, RO – MALIK DIMAKUTA, GERARDO SOLIMAN / GS OSCAR SABLE of the LARGE TAXPAYERS REGULAR AUDIT DIVISION 2 is/are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from January 1, 2011 to December 31, 2011 pursuant to SEC. 6(A) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED. The Revenue Officer(s) identified herein are

[52] Underscoring ours.

provided with the necessary identification card(s) which shall be presented to you upon request.

It is requested that all required documents, books and records be provided to the Revenue Officer(s) in order to expedite the examination.

You will be duly informed of the results of the examination upon approval of the report submitted by the aforementioned Revenue Officer(s).

Very truly yours,

(SGD.)
KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE"

Less than six months after, or on April 4, 2013, an MOA was issued, addressed to RO Pedrosa and GS Caling, to wit:

"Memorandum of Assignment

No. LOA-125-2013-202
Date: April 4, 2013

MEMORANDUM TO
Revenue Officer/s : LUZVIMINDA A. PEDROSA
Group Supervisor : FE F. CALING

Subject: TOLEDO HOLDINGS CORPORATION

Referred to you is the subject case/docket for:

[x] Continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office.

xxx xxx xxx

[x] Others (specify) Audit of all Internal Revenue Taxes for Taxable Year 2011 pursuant to LOA-211-2012-00000268 dated 10/16/2012

The docket with the report of the case shall be submitted to the undersigned within the time frame prescribed under existing revenue issuances.

For your information and strict compliance.

[SGD.]
EDWIN T. GUZMAN
OIC-Chief RLTAD 2"

It cannot be denied that no new LOA was issued in favor of RO Pedrosa in the BIR Records. In fact, in the direct examination of RO Pedrosa, she testified that her authority stems only from the MOA, *viz.*:

"10Q Why are you familiar with the case?
10A I [was] the one who conducted the audit/investigation of petitioner for the taxable year 2011 which was originally assigned to [RO] Dimakuta.

11Q You mentioned that you continued the audit/investigation of petitioner for taxable year 2011, what is your authority to conduct the investigation of petitioner?
11A I was authorized under [MOA] No. TVN-125-2013-202 dated 4 April 2013 to continue the audit/investigation of petitioner's accounting records for taxable year 2011 issued pursuant to [LOA] No. LOA-211-2012-00000268 dated 16 October 2012."[53]

During cross-examination, RO Pedrosa further admitted that there is only one LOA issued, which does not bear her name:

"ATTY. AVILA
Q Madam Witness, was your name mentioned in the said Letter of Authority?
MS. PEDROSA
A No.

ATTY. AVILA
Q In relation to this case, there was only one [LOA] issued, am I correct?
MS. PEDROSA
A Yes."[54]

The question now, then, is whether this MOA is sufficient to cloth RO Pedrosa with authority to continue with the investigation as therein stated.

RMC No. 43-90[55] provides the answer and it reads, as follows:

> "<u>Any reassignment/transfer of cases to another RO(s),</u> and revalidation of L/As which have already expired, <u>shall require the issuance of a new L/A</u>, with the corresponding notation thereto, including the previous L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As."[56]

Time and time again, it has been repeatedly declared by the Supreme Court itself that where the law speaks in clear and categorical language, there

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[53] See Judicial Affidavit of Revenue Officer Luzviminda A. Pedrosa; Records, Vol. 2, p. 575.
[54] Transcript of Stenographic Notes dated November 20, 2018, pp. 6-7.
[55] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, Dated September 20, 1990.
[56] Underscoring ours.

is no room for interpretation, only application.[57] The use of the word "shall" connotes a mandatory character; it is a word of command and must be given a compulsory, imperative, or mandatory meaning.[58] Therefore, use of the word "shall" in *RMC No. 43-90* can only mean that the issuance of a new LOA in cases of reassignment is mandatory and required.

Clearly, then, an LOA should have been issued to RO Pedrosa.

Also instructive is the *BIR's General Audit Procedures and Documentation*[59] *("BIR's GAPD")* which states, to wit:

> "5. How often can a Letter of Authority be revalidated? A Letter of Authority is revalidated through the issuance of a new LA. However, a Letter of Authority can be revalidated—
>
> Only once, for LAs issued in the Revenue Regional Offices or the Revenue District Offices; or
>
> Twice, in the case of LAs issued by the National Office.
>
> Any suspended LA(s) must be attached to the new LA issued (RMO 38-88)."[60]

With no new LOA issued, RO Pedrosa had no authority to continue the examination of petitioner's records.

That the lack of authority renders the assessment or examination void was stressed by the Supreme Court, in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[61], where it ruled in this wise:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. [62]

All told, for want of the necessary issuance of a new LOA specifically designating RO Pedrosa to conduct the audit and examination of petitioner's books of accounts and accounting records for taxable year 2011, RO Pedrosa

[57] *Rey Nathaniel C. Ifurung v. Hon. Conchita C. Carpio Morales Jardeleza, et. al.*, G.R. No. 232131, April 24, 2018, citing *Umali v. The Judicial and Bar Council*, G.R. No. 228628, 25 July 2017.
[58] *UCPB General Insurance Company, Inc. v. Hughes Electronics Corporation*, G.R. No. 190385, November 16, 2016, citing *Cipriano Enriquez, et. al. v. Maximo Enriquez, et. al.*, G.R. NO. 139303: August 25, 2005.
[59] BIR's General Audit Procedures and Documentation, https://www.bir.gov.ph/index.php/taxpayer-bill-of-rights.html, last accessed November 2, 2017.
[60] Underscoring ours.
[61] G.R. No. 222743, April 5, 2017, citing *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[62] Underscoring ours.

acted without authority when she conducted the audit of petitioner's books. Consequently, the assessment is a nullity, and petitioner cannot be held liable for the Donor's Tax found due in the FDDA.

Petitioner is not estopped from questioning the authority of RO Pedrosa.

Respondent's argument that petitioner is estopped from attacking the validity of the assessment is in vain.

Under *Section 2(a), Rule 131 of the Rules of Court*, estoppel rests on the rule that:

> "Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."

The elements of estoppel are: *(1)* the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; *(2)* the other in fact relies, and relies reasonably or justifiably, upon that communication; *(3)* the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *(4)* the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[63]

Respondent failed to establish the elements of estoppel. He did not present any evidence to show that petitioner had knowledge, notice, or suspicion that RO Pedrosa had no authority to examine or investigate. There is also no indication that petitioner communicated such fact to respondent in a misleading way, either by words, conduct, or silence.

More importantly, under *3.1.5*[64] *of RR No. 12-99, as amended*, taxpayers are allowed to pay the uncontested issues in the assessment, while

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[63] *Philippine Bank of Communications v. Court of Appeals, et. al.*, G.R. No. 109803, April 20, 1998.

[64] "3.1.5 Disputed Assessment. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. <u>If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues</u>, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/ or interest. <u>No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues.</u> The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

protesting the issues it does not agree with. In fact, before a taxpayer can successfully file a protest, payment must first be made on the uncontested items. Therefore, the mere fact that petitioner paid a portion of the assessment should not be considered an admission of the validity of the assessment itself, especially if payment of the uncontested portions is needed for the protest to continue.

Finding that the assessment is void for having been conducted without authority, the Court finds it no longer necessary to discuss the other issues raised.

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. The Final Decision on Disputed Assessment and the assessment issued by respondent against petitioner for taxable year 2011 covering deficiency Donor's Tax in the total amount of **FORTY SEVEN MILLION SIX HUNDRED FORTY FIVE THOUSAND SIX HUNDRED FORTY FOUR AND 13/100 PESOS (PHP47,645,644.13)** is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto."

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

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

TOLEDO HOLDINGS CORPORATION, *Petitioner,*

CTA CASE NO. 9375

-versus-

Members:

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

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Promulgated:

OCT 15 2019
1:54 p.m.

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SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the Decision which granted the Petition for Review thereby cancelling the Final Decision on Disputed Assessment (FDDA) and assessment notices issued by respondent against petitioner 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, RO Luzviminda A. Pedrosa and GS Fe F. Caling may be given the authority to continue the audit and examination of Toledo Holdings Corporation's books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, issued by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.

I submit that this could be validly done under the National Internal Revenue Code ("NIRC") of 1997, as amended and the laws on agency under the Civil Code.

The power of the Commissioner of Internal Revenue ("CIR") to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[1]

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz:*

> "SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

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[1] *Emphasis and underscoring supplied.*

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

"SEC. 10. **Revenue Regional Director.** – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:

xxx

(c) **<u>Issue Letters of Authority for the examination of taxpayers</u> within the region;**

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[2]

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

[2] *Emphasis and underscoring supplied.*

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[3], the Supreme Court had the occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[4]

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Regional Director, his agent.

May the Regional Director, the CIR's agent, appoint a sub-agent, in this case, the Revenue Officer named in the LOA? Article 1892 of the Civil Code says that he can. The said provision states:

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[5]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Malik Dimakuta and Gerardo Soliman and GS Oscar Sable, who were originally named in the LOA

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

may be revoked, transferred and reassigned to RO Pedrosa and GS Caling 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 Pedrosa and GS Caling who conducted the examination of Toledo Holdings Corporation'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</u> <u>Commissioner/Head</u> <u>Revenue</u> <u>Executive</u> <u>Assistants</u>**."[15]

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

[12] Issued September 20, 1990.

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

[14] Issued September 26, 2007.

[15] *Emphasis and underscoring supplied.*

In the instant case however, the MOA No. LOA-125-2013-202[16] was only signed by Mr. Edwin T. Guzman, OIC- Chief RLTAD. Therefore, RO Luzviminda A. Pedrosa and GS Fe F. Caling were without authority to continue the audit.

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[16] Exhibit "R-1", page 8, BIR Record.