REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB CASE NO. 1956 (CTA CASE NO. 9179)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
ORIENT OVERSEAS CONTAINER LINE, LTD. Represented by OOCL (Philippines), INC., *Respondent.*	Promulgated: AUG 22 2019 4:16 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on April 4, 2019, is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision, in the case entitled *Orient Overseas Container Line Ltd. Represented by OOCL (Philippines), Inc. vs. the Commissioner of Internal Revenue,*

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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docketed as CTA Case No. 9179, dated August 2, 2018,[2] and the Resolution dated October 4, 2018,[3] both rendered by the Former Second Division of this Court, the dispositive portions of which read as follows:

> CTA Case No. 9179:
> Decision dated August 2, 2018:
>
> "**WHEREFORE,** the present Petition for Review is **GRANTED**. Accordingly, the deficiency income tax, percentage tax, expanded withholding tax, and compromise penalties as found in respondent's Final Decision on Disputed Assessment dated August 20, 2015 in the aggregate amount of One Hundred Five Million Seven Hundred Forty Thousand One Hundred Seven Pesos and 18/100 (₱105,740,107.18) are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"
>
> CTA Case No. 9179:
> Decision dated October 4, 2018:
>
> "**WHEREFORE,** respondent's *Motion for Reconsideration (Re: Decision promulgated 2 August 2018)* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The facts of the case, as recited by the former Second Division in its Decision, read as follows:

> "Petitioner Orient Overseas Container Line Ltd. (OOCL) is a foreign corporation organized and existing under the laws of Hong Kong and duly registered with the Bureau of Internal Revenue with Taxpayer Identification No. 000-349-946-000. OOCL is doing business in the Philippines through its local agent,

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[2] Penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by former Associate Justice Cesar A. Casanova and Associate Justice Catherine T. Manahan, *En Banc* Docket, pp. 24-39.
[3] *Ibid.*, pp. 40-43.

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OOCL (Philippines), Inc. (OPI), a corporation organized and existing under Philippine laws, with principal office address located at 11th Floor, Two E-com Center, Tower B Bayshore Ave., Mall of Asia (MOA) Complex, Pasay City. OPI is registered with the Bureau of Internal Revenue with Taxpayer Identification No. 000-198-092-000.

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the 1997 NIRC and other tax laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 2, 2011, petitioner received Letter of Authority (LOA) No. 125-2011-00000150 dated October 10, 2011 authorizing Revenue Officer Belen Sevilla (RO Sevilla) under Group Supervisor Oscar Sable (GS Sable) of Large Taxpayers Regular Audit Division 2 to examine its books of account and other accounting records for all internal revenue taxes for the period from July 1, 2009 to June 30, 2010.

On November 9, 2011, the BIR sent to petitioner the First Notice for the Presentation of Books of Accounts and Other Accounting Records in connection with LOA No. 125-2011-00000150 dated October 10, 2011.

On January 10, 2012, petitioner received a Second and Final Notice for the Presentation of Books of Accounts and Other Accounting Records dated January 5, 2012.

On April 3, 2013, Mr. Edwin T. Guzman, OIC-Chief of BIR Large Taxpayers Service Regular Large Taxpayers Audit Division II (LTSRLTAD II) issued Memorandum of Assignment No. LOA-125-2013-183 referring the continuation of the audit/investigation of petitioner under LOA No. 125-2011-00000150 dated

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October 10, 2011 to Revenue Officer Agnes I. Sison (RO Sison) under Group Supervisor Edenny S. Lingan (GS Lingan).

On June 25, 2013, petitioner received a Final Notice for Presentation of Books of Accounts and Other Accounting Records dated June 20, 2013 from LTS-RLTAD II.

On February 1, 2013, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.

On September 10, 2013, petitioner received a Notice of Informal Conference requesting it to appear for an informal conference to enable it to present its side of the case.

In a letter dated October 2, 2013, petitioner disputed the findings attached to the Notice of Informal Conference issued by LTS-RLTAD II.

On October 22, 2013, petitioner received from LTS-RLTAD II a Preliminary Assessment Notice (PAN) with Details of Discrepancies, which informed petitioner that after investigation, the BIR found the following deficiency Income Tax, Percentage Tax, Expanded Withholding Tax, and Compromise Penalty for fiscal year ending on June 30, 2010: xxx

Petitioner filed its written reply and opposition to the PAN on November 6, 2013.

On November 21, 2013, petitioner received the Formal Assessment Notice, four Assessment Notices (Form 0401s), and Details of Discrepancies dated November 20, 2013, (FAN) which covered the following assessments: xxx

Petitioner filed its protest against the FAN on December 19, 2013.

> On September 17, 2014, petitioner received the Final Decision on Disputed Assessment (FDDA) of the BIR xxx
>
> On October 1, 2015, petitioner received the FDDA dated August 20, 2015.
>
> On November 2, 2015, petitioner filed its Petition for Review with this Court.
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> On November 16, 2015, petitioner filed a Supplement to the Petition for Review and the same was admitted by this Court in its Resolution dated January 6, 2016." (Citations omitted.)

The Court in Division found that the assessments issued by the CIR against Orient Overseas Container Line Ltd. (OOCLL) to be intrinsically void since there was no authority on the part of RO Sison, who conducted the examination of OOCLL's books of accounts and other accounting records. While the lack of authority of RO Sison to conduct the audit was not specifically raised as an issue, the Court in Division ruled upon such. Citing Revenue Memorandum Order (RMO) No. 43-90[4] that identifies those officials who are authorized to issue and sign LOA, the Court in Division noted that the Chief of LTS-RLTAD II is not included therein and only the CIR or his duly authorized representatives who can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes may issue a new LOA in case of reassignments for investigation and audit.

The Court in Division further explained that the RO named under LOA No. 125-2011-00000150[5] was different from that who actually examined OOCLL's books of accounts and other accounting records and the Memorandum of Assignment (MOA) No. LOA-125-2013-183[6] issued by Mr. Edwin T. Guzman, OIC-Chief of LTS-RLTAD II cannot validly

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[4] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.
[5] Exhibit "R-2", BIR Records, p. 5.
[6] Exhibit "R-5", BIR Records, p. 8.

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grant RO Sison and GS Lingan the authority to conduct the examination. The Court in Division concluded that in his capacity as OIC-Chief of LTS-RLTAD II, Mr. Edwin T. Guzman is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because only the CIR or his duly authorized representatives are granted such power.

The CIR's Motion for Reconsideration was denied for lack of merit, hence, this Petition was filed.

In his Petition for Review, the CIR mainly reiterates his argument before the Court in Division that the Court should have not dealt with an issue not raised before it as it was a violation of due process and that it erred in cancelling the assessment on the sole ground that OIC-Chief of LTS-RLTAD II Mr. Edwin T. Guzman was allegedly not authorized by the CIR to sign or issue MOA No. LOA-125-2013-183; that since such authority to reassign comes from the original LOA No. 125-2011-00000150, the MOA need not be signed only by the CIR or his authorized representatives. Lastly, it invoked RMO 8-2006 and argued that the head of Investigating Office, who is OIC-Chief of LTS-RLTAD II Mr. Edwin T. Guzman in this case, is duly authorized to issue and sign MOAs.

After carefully examining the records of the case, this Court has no reason to deviate from the findings in the assailed Decision, and concludes that the assessments are void for lack of a valid LOA issued to the RO who continued the audit.

To reiterate, although OCCLL did not raise the issue of lack of authority of the RO to conduct the audit, in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[7] the Supreme Court affirmed that this Court can resolve an issue not raised by the parties in their pleadings or memoranda, to wit:

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

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> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> Under Section 1, Rule 4 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. Rendition of judgment. –
> >
> > x x x
> >
> > 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 scope of authority of revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." (Italics in the original; Underlining supplied.)

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

The BIR Records show that LOA No. 125-2011-00000150 was issued, authorizing RO Sevilla under GS Sable to examine OCCLL's books of accounts and other accounting records for the period from July 1, 2009 to June 30, 2010. However, records show that Mr. Edwin T. Guzman, OIC-Chief of LTSRLTAD II issued MOA No. LOA-125-2013-183 referring the continuation of the audit/investigation to RO Sison under GS Lingan.

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Section 6 of the National Internal Revenue Code (NIRC) of 1997 provides:

> "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: xxx" (Underlining supplied.)

In relation, Section 13 of the NIRC also states:

> "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." (Underlining supplied.)

Pursuant to this, RMO No. 43-90 identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

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

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> Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself." (Underlining supplied.)

RMO No. 43-90 is explicit that the continuation of audit by a RO other than the officer named in a previous LOA requires the issuance of a new LOA in cases of reassignment or transfer to another RO. Thus:

> "Any reassignment/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." (Underscoring supplied.)

Clearly, in all tax assessments, the audit investigation must be conducted by a duly designated RO tasked to perform audit and examination of taxpayers' books, pursuant to an LOA issued by the Regional Director. In case of re-assignment or transfer of cases to another RO, a new LOA with a corresponding notation thereto must be issued.

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.,*[8] the Supreme Court, citing *Medicard Philippines Inc. vs. Commissioner of Internal Revenue,*[9] categorically held that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Regional Director and emphasized that the Referral Memorandum issued by the RDO directing another RO to continue with the examination of the taxpayer records is not equivalent to an LOA nor does it cure the RO's lack of authority. Thus, the MOA herein cannot be treated as an LOA as precisely, any re-assignment of cases requires the issuance of a new LOA and its void character is further emphasized by the fact that it was not signed by the Regional Director pursuant to Section 13 of the NIRC.

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[8] G.R. No. 238352, September 12, 2018.
[9] G.R. No. 222743, April 5, 2017.

Clearly in this case, the CIR failed to comply with the issuance of a new LOA, despite the reassignment of the investigation to a new RO. No new LOA was issued to RO Sison in relation to the investigation of OCCLL's tax liability. Thus, the investigation conducted by RO Sison was without the requisite authority.

In *Medicard,* the Supreme Court emphasized the importance of an LOA and the authority of ROs who conducted the audit and examination of the taxpayer. It went on further to declare as void the subject disputed assessment for lack of an LOA authorizing the ROs to examine the taxpayer's books of account and other accounting records.

Absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation *per* RMO No. 43-90, there is no authority to conduct the investigation or audit.[10]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated August 2, 2018 and October 4, 2018, respectively, are hereby **AFFIRMED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

[10] *Nikken Philippines, Inc. vs. CIR,* CTA EB No. 1569, June 7, 2018.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(with Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ORIENT OVERSEAS CONTAINER LINE LTD. Represented by OOCL (Philippines), INC.,
Respondent.

CTA EB NO. 1956
(CTA Case No. 9179)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:

AUG 2 2 2019 4:16 p.m.

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SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the Decision which denied the Petition for Review 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 Agnes I. Sison and GS Edenny S. Lingan may be given the authority to continue the audit and examination of Orient Overseas Container Line, Ltd.'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."

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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.

Now, 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 RO Belen Sevilla and GS Oscar

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

Sable, who were originally named in the LOA may be revoked, transferred and reassigned to RO Sison and GS Lingan 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 Sison and GS Lingan who conducted the examination of Orient Overseas Container Line, Ltd.'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]

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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-125-2013-183 was only signed by Mr. Edwin T. Guzman, OIC- Chief of BIR Large Taxpayers Service Regular Large Taxpayers Audit Division II (LTSRLTAD II). Therefore, RO Agnes I. Sison and GS Edenny S. Lingan were without authority to continue the audit.

From all the foregoing, I vote for the **DENIAL** of the Petition for Review filed by the Commissioner of Internal Revenue.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1956** (CTA Case No. 9179)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
ORIENT OVERSEAS CONTAINER LINE, LTD. Represented by OOCL (PHILIPPINES), INC., *Respondent.*	Promulgated: AUG 22 2019 4:16 p.m.

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DISSENTING OPINION

MANAHAN, J.:

The majority ruled that Revenue Memorandum Order (RMO) No. 43-90 is explicit that the continuation of audit by a revenue officer (RO) other than the officer named in a previous Letter of Authority (LOA) requires the issuance of a new LOA in cases of reassignment or transfer to another RO. This lack of authority rendered the subject assessments void.

I disagree.

I am aware that I have previously concurred in the Decision dated August 2, 2018 by the Second Division in CTA Case No. 9179. Said Decision, and the related Resolution dated October 4, 2018, are the subject of appeal before the Court *En Banc* in this CTA EB No. 1956. In the said Decision, I concurred that the assessments against respondent were void due to the lack of authority of the ROs who conducted the investigation.

However, after reviewing the facts and circumstances of the case, I am constrained to reverse my position and vote that a Memorandum of Assignment (MOA), arising from a validly issued LOA, sufficiently cloaks the subsequent ROs with authority.

In the instant case, LOA No. 125-2011-00000150[1] dated October 10, 2011 was issued authorizing RO Belen Sevilla and Group Supervisor (GS) Oscar Sable to examine respondent's books of accounts and other accounting records for the period July 1, 2009 to June 30, 2010. The LOA was signed by Alfredo M. Misajon, OIC Assistant Commissioner, Large Taxpayer Service (OIC ACIR-LTS).

The ACIR-LTS is authorized to sign LOAs pursuant to Revenue Delegation Authority Order No. 07-07,[2] dated August 13, 2007, as follows:

> xxx the authority of the Commissioner to approve and sign the herein enumerated documents, accountable forms, notices, reports and permits and other documents processed by the LTS, including LTDOs, which were delineated under RDAO No. 4-2007, is likewise hereby <u>delegated to the Assistant Commissioner, LTS</u> or to the concerned Head Revenue Executive Assistant, in the absence of the former, as follows:
>
> 1. <u>Letter of Authority (LA)</u>/Audit Notices(AN)/Mission Orders (MO);
>
> xxx *(Underscoring supplied)*

The authority of the ACIR-LTS to sign LOAs was carried over to the signing of electronic LOAs, under Revenue Memorandum Order No. 044-2010,[3] dated May 12, 2010, as follows:

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[1] CTA Case No. 9179, BIR Records, Exhibit "R-2", p. 5.
[2] Amending Item I(A) of Revenue Delegation Authority Order (RDAO) No. 4-2007, Relative to the Delegation of Authority to Approve and Sign Various Accountable Forms, Notices, Permits, Reports, and Other Documents Processed by the Large Taxpayers Service (LTS), Including the Large Taxpayers District Offices (LTDOs)
[3] Electronic Issuance of Letters of Authority

1. The electronic LA (Annex "A" hereof) shall bear the name, designation and electronic signature of the approving BIR official, as follows:

Investigating Office	*Approving Official*
• Revenue District Office	Regional Director
• <u>LTS and its Divisions</u>	<u>Assistant Commissioner (ACIR)-LTS</u>
• ES and its Divisions	Deputy Commissioner-Legal and Inspection Group (DCIR-LIG)
• Task Forces and Special Teams	Commissioner of Internal Revenue, or any other authorized Bureau official

The authority of the ACIR-LTS was likewise reiterated in RMO Nos. 062-2010[4] and 069-2010,[5] dated June 28, 2010 and August 11, 2010, respectively.

Based on the foregoing, there is no doubt that the LOA in this case was validly issued.

Under RMO 069-2010, a manual serially-numbered MOA shall be issued for "[r]eassignment for the continuation of the audit/investigation of a case to another RO due to resignation/retirement/transfer of the original RO." Note, that under this RMO, there is no requirement for the issuance of a new LOA for reassignment or transfer of cases.

On April 3, 2013, MOA No. LOA-125-2013-183 was issued referring the continuation of the audit/investigation under LOA No. 125-2011-00000150 to RO Agnes I. Sison and GS Edenny S. Lingan. This MOA was signed by Mr. Edwin T. Guzman, OIC-Chief, LTS-Regular Large Taxpayers Audit Division II (LTS-RLTAD II). The reason indicated in the MOA is "to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office."

While RMO 069-2010 did not specify the signatories for the MOA, RMO 062-2010 contained a sample MOA as Annex "A", which indicated therein the signatories as "*Authorized Revenue Official/Head, Investigating Office*". This is a clear

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[4] Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.

[5] Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.

indication that the MOA may validly be signed by the OIC-Chief of LTS-RLTAD II, who is the head of the investigating office – LTS-RLTAD II. Thus, I hold that the MOA validly assigned the new ROs, with the authority flowing from the previously issued LOA.

In analyzing the technicalities surrounding the validity of an LOA and MOA, they must be perceived in the light of their purpose and practicality and not merely as rigid rule that have to be observed regardless of the surrounding circumstances.

The processes internal to an administrative agency are numerous and complex at best, oftentimes depending on the availability of the signatories and the back and forth communications of examiners and taxpayers in the process of investigation/examination. Thus, I reiterate the discussion in the assailed Decision in CTA Case No. 9179, as follows:

> A duly issued LOA, valid in all respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives. As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[6]

Finally, I reiterate that the case of *CIR v. Medicard* involved an assessment from a mere Letter Notice, without the issuance of a LOA, while the case of *CIR v. Sony Philippines, Inc.* involved a LOA which covered more than one taxable year. These factual circumstances render these cases inapplicable to the instant case.

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[6] *Rollo*, Division Decision dated August 2, 2018, pp. 36-37.

Thus, I vote that the Commissioner of Internal Revenue's Petition for Review be GRANTED and to REMAND the case to the Division for the complete determination of respondent's deficiency tax liabilities.

CATHERINE T. MANAHAN
Associate Justice