REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

LOYOLA PLANS CONSOLIDATED, INC.,
Respondent.

CTA *EB* NO. 2324
(CTA Case No. 9216)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
NOV 11 2021 2:45 pm

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) posted on July 24, 2020 and received by this Court on September 4, 2020, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], which prays for the cancellation and setting aside of the *Decision* dated December 3, 2019[3] (Assailed Decision) and the *Resolution* dated June 29, 2020[4] (Assailed Resolution) promulgated by the Second Division of the Court of Tax Appeals (CTA) in CTA Case No. 9216 entitled "*Loyola Plans Consolidated, Inc. vs.*

[1] *Rollo*, CTA EB No. 2247, pp. 1-16.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp.19-33.
[4] *Id.*, pp. 34-38.

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Commissioner of Internal Revenue", and the rendition instead of a new judgment dismissing respondent's petition for review and upholding the Formal Letter of Demand (FLD) dated February 6, 2015.

The Facts

Petitioner is the duly appointed CIR vested with authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. He may be served pleadings and other processes of this Court at his office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

Respondent Loyola Plans Consolidated, Inc. (LPCI), on the other hand, is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Loyola Plans Building, 849 A. Arnaiz Avenue, Legaspi Village, Makati City. It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Large Taxpayers (LT) Service Excise District Office-Makati.[6]

Respondent is engaged in the business of selling and providing pre-need fixed value education, life and pension plans, and is duly registered with the Insurance Commission, as shown by its Certificate of Registration and License to Act as Pre-Need Company dated 10 March 2010.[7]

In 2010 and 2011, respondent filed with the BIR its Amended Income Tax Return (ITR) as well as the Quarterly VAT Returns, Monthly Expanded Withholding Tax Returns, and Documentary Stamp Tax Returns for the calendar year (CY) 2010.[8]

On September 28, 2011, Letter of Authority (LOA) No. LOA-122-2011-00000061 (SN: eLA201000033173), signed by Alfredo Misajon, OIC-Assistant Commissioner, Large Taxpayers Service (LTS), was issued to respondent. The said

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[5] *Rollo*, Decision dated December 3, 2019, p. 20.
[6] *Id.*
[7] *Id.*
[8] *Id.*, pp. 20-21.

LOA authorized Revenue Officers (ROs) Josa Gomez (Gomez), Ofelia Yumang (Yumang) and Group Supervisor (GS) Marilyn San Diego (San Diego) of LT District Office-Makati to examine respondent's books for all internal revenue taxes for the period 01 January 2010 to 31 December 2010.[9]

On March 4, 2013 and prior to the issuance of the assessment, Memorandum of Assignment (MOA) No. 122-REA-13-03-00110, addressed to RO Sarah A. Urbano (RO Urbano) and GS Annabelle DG. Bennett, was issued for the continuation of the audit investigation and to replace the previously assigned RO Gomez (who was transferred to Regular LTAD I). The OIC-Chief, LT Division-Makati, Ms. Edralin M. Silario (Silario), signed the MOA.[10]

During the course of the audit investigation, respondent successively executed three (3) Waivers of the Defense of Prescription under the Statute of Limitations of the 1997 National Internal Revenue Code (NIRC), as amended.[11]

On November 21, 2014, respondent received a copy of the Preliminary Assessment Notice (PAN) with attached Details of Discrepancies for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), documentary stamp tax (DST) and improperly accumulated earnings tax (IAET) for CY 2010, in the aggregate amount ₱286,531,891.67.[12]

On December 2, 2014, respondent filed a letter with the LTS of the BIR to contest the preliminary findings contained in the PAN.[13]

On February 6, 2015, respondent received a copy of the FLD with attached Details of Discrepancies and Audit Results/Assessment Notices. In the FLD, respondent ordered petitioner to pay a total of ₱292,114,856.15 as deficiency IT, VAT, EWT, DST and IAET for CY 2010.[14]

On March 9, 2015, respondent filed its Protest against the FLD and requested the cancellation and withdrawal of the

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[9] *Rollo*, Decision dated December 3, 2019, p. 21.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*, p. 22.
[14] *Id.*

assessment against it. On May 8, 2015, petitioner submitted the relevant documents supporting its protest.[15]

Petitioner, however, failed to act on respondent's protest within the time allowed. Hence, on December 4, 2015, respondent filed a Petition for Review before the Court in Division and prayed for the cancellation and withdrawal of the assessment for deficiency IT, VAT, EWT, DST and IAET for CY 2010.[16]

After trial the Court in Division rendered the Assailed Decision where the dispositive portion reads as follow:

> "**WHEREFORE**, the instant Amended Petition for Review is **GRANTED**. Accordingly, the assessment against petitioner Loyola Plans Consolidated, Inc. for deficiency income tax, value-added tax, expanded withholding tax, documentary stamp tax, and improperly accumulated earnings tax for the calendar year 2010, in the aggregate amount of ₱292,114,856.15, are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

Petitioner moved for the reconsideration of the Assailed Decision but was denied anew under the Assailed Resolution where the dispositive portion reads:

> "**WHEREFORE**, the foregoing premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit. Accordingly, the Court's Decision dated 03 December 2019 is hereby **AFFIRMED**.
>
> **SO ORDERED**."

Hence, the instant Petition for Review was filed by petitioner CIR on July 24, 2020.

On October 1, 2020, respondent was directed by this Court to file its comment on the instant petition.[17]

On October 19, 2020, respondent filed its Comment (Re: CIR's Petition for Review dated July 24, 2020)[18].

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[15] *Rollo*, Decision dated December 3, 2019, p. 22.
[16] *Id.*
[17] *Rollo*, Resolution dated October 1, 2020, pp. 45-46.

On November 3, 2020, this Court referred the instant case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation proceedings pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[19]

On November 25, 2020, the PMC-CTA informed this Court that the parties decided not to have their case mediated by the PMC-CTA.[20] Hence, the instant petition was submitted for decision on December 18, 2020.[21]

The Issue

The sole issue to be resolved in the instant petition is:

> Whether the alleged assessment for deficiency IT, VAT, EWT, DST and IAET for CY 2010 is valid.

Arguments of Petitioner[22]

Petitioner CIR argues that the ROs assigned to continue the audit investigation of respondent's books for internal revenue taxes for CY 2010 were duly authorized.

Petitioner further argues that the three (3) waivers executed by the respondent's representatives are valid and extended the period of assessment, and that the principle of *in pari delicto* in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (Formerly Nextel Communications Phils., Inc.)*[23] applies.

Argument of Respondent[24]

On the other hand, respondent LPCI counter-argues that the ROs conducting the audit and subsequent reinvestigation were not authorized to examine its books of accounts.

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[18] *Rollo*, pp. 47-66.
[19] *Id.*, Resolution dated November 3, 2020, pp. 69-70.
[20] *Id.*, No Agreement to Mediate, p. 71.
[21] *Id.*, Resolution dated December 18, 2020, pp. 73-74.
[22] *Rollo*, Petition for Review, pp. 5-15.
[23] G.R. No. 212825, December 07, 2015.
[24] *Id.*, Comment (Re: CIR's Petition for Review dated July 24, 2020), pp. 49-66.

Respondent also argues that the three (3) waivers executed by its representative did not extend the period of assessment.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b) of the RRCTA provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
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> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the Assailed *Resolution* dated June 29, 2020. The latter was allegedly received by petitioner CIR on July 9, 2020. In accordance with the abovementioned provisions of the RRCTA, petitioner CIR had until July 24, 2020 within which to file its petition. Thus, the filing of the instant Petition for Review on July 24, 2020 was filed on time.

Now, as to the substantive issues raised by petitioner, the Court finds that the petition lacks merit.

The issuance of a MOA in lieu of an LOA clothes no validity to the ensuing audit investigation and resulting assessment notices.

The factual antecedents of the case reveal that the tax examination conducted by petitioner on respondent's books of account was preceded by the issuance of LOA No. LOA-122-2011-00000061 (SN: eLA201000033173). Said LOA had authorized ROs Gomez, Yumang and GS San Diego of LT District Office-Makati to examine respondent's books for all internal revenue taxes for the period 01 January 2010 to 31 December 2010.

However, prior to the issuance of the assessment, MOA No. 122-REA-13-03-00110 was issued to RO Urbano and GS Bennett for the continuation of the audit investigation and to replace the previously assigned RO Gomez. Ms. Silario, the OIC-Chief of LT Division-Makati, signed said MOA.

Sections 6(A) and 13 of the 1997 NIRC, as amended, provide:

> **SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** -
>
> (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u> 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.
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> xxx xxx xxx
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> **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, <u>a Revenue Officer assigned to perform assessment functions</u> in any district may, <u>pursuant to a Letter of Authority</u> issued by the Revenue Regional Director, <u>examine taxpayers</u> 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. (*Underscore ours*)

As stated in the Assailed Decision, the deficiency tax assessment arising therefrom is a nullity as held in *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[25], to wit:

> 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**. (*Emphasis supplied*)

In fact, the Supreme Court in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[26] emphasized the vital significance of issuing an LOA for the validity of an assessment:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
> > 'SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
> >
> > (A) Examination of Return and Determination of Tax Due.- After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** 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.'
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> Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative</u>**, **<u>through an LOA</u>**, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive

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[25] G.R. No. 178697, November 17, 2010.
[26] G.R. No. 222743, April 5, 2017.

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> at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**
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> 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 physicially 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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> x x x
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> **That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>**" *(Emphases and underlining supplied)*

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.*[27], the issuance of an MOA for the continuation of the tax examination by another set of ROs will not cure the lack of authority by the latter ROs in the absence of an LOA, to wit:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* ruling that in the absence of a LOA, the assessment or examination is a nullity.
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> xxx xxx xxx
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> Moreover, the Court agrees with the CTA en banc that **Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure,

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[27] G.R. No. 238352, September 12, 2018.

> Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**" (*Emphasis supplied*)

Thus, the subsequent notices resulting from such audit investigation were null and void as result of an unauthorized tax examination.

Considering that the notices were considered null and void, this Court will no longer discuss the other issues raised by petitioner.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the *Decision* dated December 3, 2019[28] and the *Resolution* dated June 29, 2020[29] are hereby **AFFIRMED.**

Petitioner, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from collecting the deficiency IT, VAT, EWT, DST and IAET for CY 2010 against respondent.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[28] *Supra,* Note 3.
[29] *Supra,* Note 4.

Erlinda

ERLINDA P. UY
Associate Justice

Ma. Belen

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
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
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Reyes-Fajardo, *JJ.*

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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 assessment notices are void. The subject assessment notices resulted from an unauthorized tax examination because the Revenue Officer (RO) and Group Supervisor (GS) named in the Memorandum of Assignment (MOA) were not validly authorized to conduct the investigation.

However, I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in their favor, Revenue Officer (RO) Sarah A. Urbano (RO Urbano) and Group Supervisor (GS) Annabelle DG. Bennett may be given the authority to continue the audit and examination of respondent Loyola Plans Consolidated, Inc.'s books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, issued by the Assistant

Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.

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

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

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

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

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

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1 *Emphasis and underscoring supplied.*

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

[2] *Emphasis and underscoring supplied.*

some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[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]

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

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to Revenue Officers Josa Gomez and Ofelia Yumang and Group Supervisor Marilyn nSan Diego who were originally named in the LOA may be revoked, transferred and reassigned to RO Urbano and GS Bennett 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

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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).

statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[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 Urbano and GS Bennett 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.

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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.

2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants."[15]

In the instant case however, the MOA No. 122-REA-13-03-00110[16] was only signed by OIC-Chief, LT Division-Makati, Ms. Edralin M. Silario. Therefore, RO Urbano and GS Bennett were without authority to continue the audit.

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

Ma. Belen R L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[15] *Emphasis and underscoring supplied.*
[16] Exhibit "R-1."