REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

RED RIBBON BAKESHOP, INC., *Petitioner,*	**CTA CASE NO. 9121**
-versus-	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 07 2021 9:03 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review,[1] filed on 18 August 2015, pursuant to ***Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),***[2] asking the Court to cancel and withdraw the Revised Final Decision on Disputed Assessment ("FDDA"), dated 20 July 2015. The revised FDDA found petitioner liable for deficiency income tax and value-added tax ("VAT") in the aggregate amount of ₱172,233,647.89, inclusive of surcharge and interest, for calendar year ended 31 December 2009 ("TY 2009"). Likewise, petitioner prays for the Court to prevent respondent from collecting the said alleged deficiency taxes pending the final determination of the above-captioned case.

The Parties

Petitioner Red Ribbon Bakeshop, Inc., is a corporation duly organized and existing under Philippine laws with principal place of business at 84 E. Rodriguez Street, Libis, Quezon City, Philippines. It is primarily engaged in the business of manufacturing, importing, exporting, buying, selling or otherwise, undertaking in, at wholesale and retail such goods as pastry, bread,

[1] Petition for Review; Records, Vol. 1, pp. 10-51, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.

cakes, pies, biscuits, crackers, confectionary, and any other food products, among others.

Petitioner is registered with the Bureau of Internal Revenue ("BIR") Large Taxpayer ("LT") Assistance Division as a VAT taxpayer with Tax Identification No. ("TIN") 003-294-772-000.

Respondent Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the BIR who has the power to decide on disputed assessments, fees or other charges and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (hereinafter referred to as the "Tax Code") or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 24 September 2010, petitioner received Letter of Authority ("LOA") No. eLA201000015358/LOA-127-2010-00000063, dated 15 September 2010. The LOA authorized Revenue Officers ("RO") Zenaida Paz, Joel Aguila, Ma. Salud Maddela, Allan Maniego, Cletofel Parungao, Myrna Ramirez, and Group Supervisor ("GS") Glorializa Samoy of the LT Regular Audit Division 4 to examine petitioner's books of accounts and other accounting records for TY 2009.[3]

Subsequently, petitioner executed two (2) Waivers of the Statute of Limitations under the National Internal Revenue Code ("Waiver"). The Waivers were signed by petitioner's Finance Head, Mary Ellen P. Nuñez, and were accepted by the OIC-Assistant Commissioner of the BIR LT Services, Alfredo V. Misajon. The Waivers allegedly extended the period to assess petitioner, as follows:

Date Signed by Petitioner's Officer	Signatory of Petitioner	Date Signed by Respondent	Signatory of Respondent	Extended Period for Issuance of Assessment
12 April 2012[4]	Mary Ellen P. Nuñez	17 April 2012	Alfredo V. Misajon	31 December 2012

[3] Exhibit "P-3", Records Vol. 3, p. 1196; Exhibit "R-1", BIR Records, p. 1.
[4] Exhibit "R-6", BIR Records, p. 761A.

10 December 2012[5]	Finance Head	13 December 2012	OIC Assistant Commissioner LT Services	31 December 2013

Meanwhile, the Chief of the Regular LT Audit Division I, Mr. Cesar D. Escalada, issued Memorandum of Assignment ("MOA") No. LOA-116-2013-0453 on 25 February 2013. The MOA designated RO Rosario A. Arriola and GS Rolando M. Balbido to replace the originally assigned ROs and GS, and to continue petitioner's audit investigation.[6] Petitioner was informed of the said designation through a letter, dated 4 March 2013, which was received by petitioner on 7 March 2013.[7]

On 21 May 2013, petitioner received a Preliminary Assessment Notice ("PAN"), dated 20 May 2013, assessing it for alleged deficiency income tax, VAT, withholding tax on compensation ("WTC"), expanded withholding tax ("EWT"), fringe benefits tax ("FBT"), final tax, and documentary stamp tax ("DST") for TY 2009 in the amount of ₱614,881,526.61,[8] inclusive of interests and penalties.

Petitioner filed its Reply to the PAN on 5 June 2013.[9]

On 26 November 2013, petitioner received the Formal Letter of Demand ("FLD"), of even date, assessing it for alleged deficiency income tax, VAT, WTC, EWT, FBT, final tax, and DST for TY 2009 in the amount of ₱617,561,519.66,[10] inclusive of interests and penalties.

Thereafter, petitioner filed its Protest Letter and Request for Reinvestigation, dated 23 December 2013, on 26 December 2013.[11] It also filed a Supplemental Protest Letter, dated 24 February 2014, on even date.[12]

On 2 January 2014, the Chief of the BIR's Regular LT Audit Division 1, Mr. Cesar D. Escalada issued MOA No. 116-2014-0001 assigning GS Rolando M. Balbido and RO Rosario A. Arriola to study the Protest Letters filed by petitioner.[13]

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[5] Exhibit "P-4", Records Vol. 3, p. 1197; Exhibit "R-7", BIR Records, p. 936.
[6] Exhibit "R-2", BIR Records, p. 939.
[7] Exhibit "R-3", BIR Records, p. 940.
[8] Joint Stipulation of Facts and Issues, Records Vol. 1, pp. 408-418; Exhibit "P-5", Records Vol. 3, pp. 1198-1209; Exhibit "R-5", BIR Records, pp. 960-1017.
[9] Exhibit "P-6", Records Vol. 3, pp. 1210-1224; Exhibit "P-8", BIR Records, pp. 1018-1044.
[10] Joint Stipulation of Facts and Issues, Records Vol. 1, pp. 408-418; Exhibit "P-7", Records Vol. 3, pp. 1225-1294; Exhibit "R-10", BIR Records, pp. 1069-1138.
[11] Exhibit "P-8", Records Vol. 3, pp. 1295-1318.
[12] Exhibit "P-9", Records Vol. 3, pp. 1319-1324.
[13] Exhibit "R-11", BIR Records, p. 1166.

Petitioner received the FDDA, dated 20 May 2014, on 21 May 2014.[14] In the FDDA, respondent, through OIC-Assistant Commissioner of LT Service, Mr. Alfredo V. Misajon, partially granted petitioner's Protest Letters and assessed it for alleged deficiency taxes for TY 2009 in the aggregate amount of ₱310,708,028.10[15] broken down, as follows:

Tax Type	Amount of Deficiency Tax
Income Tax	₱ 243,691,431.29
VAT	49,316,338.96
WTC	7,229,315.13
EWT	5,997,280.70
FBT	118,145.94
DST	4,355,516.08
TOTAL	**₱ 310,708,028.10**

On 19 June 2014, petitioner filed its Request for Reconsideration of the FDDA of even date.[16] Likewise, petitioner partially paid its assessment for deficiency income tax, VAT, WTC, EWT, FBT, and DST in the aggregate amount of ₱13,482,774.07 broken down, as follows:

Tax Type	Amount of Deficiency Tax
Income Tax[17]	₱ 1,265,902.91
VAT[18]	4,188,563.81
WTC[19]	1,250,461.97
EWT[20]	6,634,486.92
FBT[21]	129,471.06
DST[22]	13,887.40
TOTAL	**₱ 13,482,774.07**

On 1 July 2014, the Chief of the BIR's Regular LT Audit Division 1, Mr. Cesar D. Escalada, issued MOA No. LOA-116-2014-0940 referring petitioner's Request for Reconsideration to GS Rolando M. Balbido and RO Rosario A. Arriola for their review.[23]

[14] Joint Stipulation of Facts and Issues, Records Vol. 1, pp. 408-418.
[15] Exhibit "P-10", Records Vol. 3, pp. 1325-1342; Exhibit "R-12", BIR Records, pp. 1531-1533.
[16] Exhibit "P-11", Records Vol. 3, pp. 1343-1354.
[17] Exhibits "P-13" to "P-13-a", Records Vol. 3, pp. 1388-1390.
[18] Exhibits "P-14" to "P-14-a", Records Vol. 3, pp. 1391-1393.
[19] Exhibits "P-15" to "P-15-a", Records Vol. 3, pp. 1394-1396.
[20] Exhibits "P-16" to "P-16-a", Records Vol. 3, pp. 1397-1398.
[21] Exhibits "P-17" to "P-17-a", Records Vol. 3, pp. 1399-1401.
[22] Exhibit "P-18", Records Vol. 3, pp. 1402-1403.
[23] Exhibit "R-13", BIR Records, p. 1552.

On 20 July 2015, petitioner received the revised FDDA of even date.[24] In the revised FDDA, respondent assessed petitioner for alleged deficiency income tax and VAT in the remaining aggregate amount of ₱172,233,647.89, inclusive of interests and penalties, broken down as follows:

Tax Type	Amount of Deficiency Tax
Income Tax	₱ 127,181,779.94
VAT	45,051,867.95
TOTAL	**₱ 172,233,647.89**

The assessment arose from petitioner's alleged undeclared purchases in the amount of ₱207,564,410.79 which was derived by the BIR from its reconciliation of petitioner's Summary List of Purchases ("SLP") vis-à-vis the Monthly Alphalist of Payees ("MAP") and the Reconciliation of Listings for Enforcement ("RELIEF"). The comparison allegedly showed that petitioner's purchases per MAP/RELIEF were higher as compared to its purchases declared in the SLP. Therefore, respondent argues that the difference should be subjected to both income tax and VAT.[25]

Aggrieved with the decision of respondent, petitioner filed the instant Petition for Review on 18 August 2015.[26]

Respondent filed his Answer on 26 October 2015, which was within the extended period granted by the Court.[27]

Thereafter, the parties filed their respective Pre-Trial Briefs on 10 March 2016.[28] On 15 March 2016, Pre-Trial Conference for the case ensued.[29] Afterwards, the parties submitted their Joint Stipulation of Facts and Issues on 4 April 2016.[30] On 17 May 2016, the Court issued the Pre-Trial Order, which marked the end of the Pre-Trial Conference.[31]

On 15 July 2016, petitioner filed a Motion (For Issuance of Subpoenas *Ad Testificandum* and *Duces Tecum*) (With Urgent Motion to Cancel Hearing), requesting the Court to issue subpoenas to its suppliers' representatives to compel them to testify and present relevant documents in

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[24] Joint Stipulation of Facts and Issues, Records Vol. 1, pp. 408-418; Exhibit "P-12", Records Vol. 3, pp. 1355-1387; Exhibit "R-15", BIR Records, pp. 1612-1615.
[25] *Id.*
[26] Petition for Review; Records Vol. 1, pp. 10-51, with annexes.
[27] Answer (Re: Petition for Review dated 18 August 2015), Records Vol. 1, pp. 65-72; Resolution; Records Vol. 1, pp. 74-75.
[28] Respondent's Pre-Trial Brief, Records Vol. 1, pp. 110-115; Petitioner's Pre-Trial Brief, Records Vol. 1, pp. 376-393.
[29] Minutes of the Hearing, Records Vol. 1, p. 394.
[30] Joint Stipulation of Facts and Issues, Records Vol. 1, pp. 408-418.
[31] Resolution, Records Vol. 1, pp. 421-429.

open court regarding the sales they made to petitioner for TY 2009.[32] The Court granted petitioner's Motion[33] and issued the corresponding subpoenas on 1 August 2016 and 19 October 2016.[34]

Thereafter, trial proceeded where petitioner presented the following witnesses:

1. Ms. Clarissa Hornilla-Guerra, petitioner's Tax Manager.[35]

2. Ms. Rita C. Uy, the Chief Accountant of Commonwealth Foods, Inc.[36]

3. Ms. Pennylaine A. Chua, the Head of the Accounting Department of Edison Electric Integrated, Inc.[37]

4. Ms. Elizabeth Maningo, the Credit and Collection Supervisor of Handyware Phils., Inc.[38]

5. Ms. Neysa Lorellie C. Manlapid, Finance and Accounting 2 Service Leader of Jollibee Worldwide PTE Ltd.[39]

Ms. Guerra's testimony focused on the factual circumstances surrounding the assessment issued against petitioner for TY 2009. She also testified on the protests filed by petitioner and the alleged defects of the said assessment, specifically, that the same was issued beyond the three-year prescriptive period and that it is not supported by any factual and/or legal basis.[40]

Meanwhile, the other witnesses, who are employees of petitioner's different suppliers, testified on the amount of purchases petitioner made to their respective companies during TY 2009.[41]

Thereafter, petitioner filed its Formal Offer of Evidence ("FOE") on 2 April 2018 within the extended period granted by the Court.[42]

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[32] Motion (For Issuance of Subpoenas *Ad Testificandum* and *Duces Tecum*) (With Urgent Motion to Cancel Hearing), Records Vol. 1, 449-456.
[33] Order, Records Vol. 1, 447-448.
[34] Subpoena Duces Tecum & Ad Testificandum, Records Vol. 1, pp. 457-459; Records Vol. 2, p. 539.
[35] Minutes of Hearing, Records Vol. 1, p. 461; Exhibit "P-27", Records Vol. 1, pp. 124-375.
[36] Minutes of Hearing, Records Vol. 1, p. 494; Exhibit "P-29", Records Vol. 1, pp. 468-493.
[37] Minutes of Hearing, Records Vol. 2, p. 537; Exhibit "P-30", Records Vol. 2, pp. 528-536.
[38] Minutes of Hearing, Records Vol. 2, p. 662; Exhibit "P-31", Records Vol. 2, pp. 584-619.
[39] Minutes of Hearing, Records Vol. 2, p. 744; Minutes of Hearing, Records Vol. 3, p. 1145; Exhibit "P-32", Records Vol. 2, pp. 677-743; Exhibit "P-32-b", Records Vol. 2-3, pp. 761-1144.
[40] Minutes of Hearing, Records Vol. 1, p. 461; Exhibit "P-27", Records Vol. 1, pp. 124-375.
[41] Exhibit "P-29", Records Vol. 1, pp. 468-493; Exhibit "P-30", Records Vol. 2, pp. 528-536; Exhibit "P-31", Records Vol. 2, pp. 623-619; Exhibit "P-32", Records Vol. 2, pp. 677-743; and Exhibit "P-32-b", Records Vol. 2-3, pp. 761-1144.
[42] Formal Offer of Evidence, Records Vol. 3-4, pp. 1161-1826; Resolution, Records Vol. 3, p. 1158.

However, before the Court could resolve the FOE, petitioner filed its Motion for Leave to Substitute Evidence Previously Offered (with Motion to Set Commissioner's Hearing) on 5 April 2018 and Motion to Set Commissioner's Hearing (with Motion to Defer Submission of Duly Marked Exhibits) on 2 July 2018.[43] In the said Motions, petitioner asked the Court to set a commissioner's hearing and to allow it to re-mark certain documentary evidence. The Court granted the Motions through its Resolutions, dated 6 June 2018 and 10 July 2018, respectively.[44]

On 22 August 2018, the Court issued a Resolution admitting petitioner's pieces of evidence except for Exhibit "P-29-b" for failure to submit the original document for comparison. The said exhibit pertains to a letter, dated 6 November 2015, sent by petitioner to Commonwealth Foods, Inc. asking the same to verify the amount of sales it made with petitioner during TY 2009.[45]

This prompted petitioner to file its Omnibus Motion with Manifestation and Clarification (I) For Partial Reconsideration (Re: Resolution dated 10 May 2018); and (II) To Set Commissioner's Hearing on 14 September 2018. In the said Omnibus Motion, petitioner asked the Court to set a commissioner's hearing for the marking of Exhibit "P-29-b", and to admit in evidence Exhibits "P-34" to "P-45-b" which pertain to specific pages of its SLS.[46] Petitioner explains that Exhibits "P-34" to "P-45-b", which were previously admitted by the Court, were not the documents it proposes to formally offer and, therefore, prayed that it be allowed to file a Supplemental FOE to clarify which exhibits it intends to offer in Court.

The Court granted petitioner's requests in a Resolution dated 18 December 2018.[47]

Petitioner filed its Supplemental FOE[48] on 4 February 2019. It manifested that it would not be offering into evidence Exhibit "P-29-b" for its failure to locate the original document. Likewise, it formally offered Exhibits "P-34" to "P-46" in evidence. The Court admitted the said exhibits on 11 March 2019.[49]

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[43] Motion for Leave to Substitute Evidence Previously Offered (with Motion to Set Commissioner's Hearing), Records Vol. 4, pp. 1827-1830; Motion to Set Commissioner's Hearing (with Motion to Defer Submission of Duly Marked Exhibits), Records Vol. 4, pp. 1851-1855.
[44] Resolution, Records Vol. 4, pp. 1841-1843; Resolution, Records Vol. 4, pp. 1857-1858.
[45] Resolution, Records Vol. 4, pp. 1927-1928.
[46] Omnibus Motion with Manifestation and Clarification (I) For Partial Reconsideration (Re: Resolution dated 10 May 2018), Records Vol. 4, pp 1932-1964.
[47] Resolution, Records Vol. 4, pp. 1977-1979.
[48] Supplemental Formal Offer of Evidence, Records Vol. 4, pp. 1984-2014.
[49] Resolution, Records Vol. 4, pp. 2016-2018.

Thereafter, respondent presented his lone witness, RO Rosario Arriola, who testified on the legality and veracity of the assessment issued against petitioner.[50] Respondent then filed his FOE on 29 August 2019.[51]

On 8 October 2019, the Court admitted respondent's exhibits, and ordered the parties to file their respective memoranda.[52] In compliance with the Court's Order, respondent filed his Memorandum on 7 November 2019.[53] Meanwhile, petitioner filed its Memorandum on 16 December 2019, which was within the extended period granted by the Court.[54]

With the filing of the parties' Memoranda, the Court promulgated a Resolution on 27 December 2019 submitting the case for decision.[55] Hence, this Decision.

The Issues[56]

The parties submitted the following issues for this Court's resolution:

> WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX AND VAT IN THE TOTAL AMOUNT OF ₱172,233,647.89 FOR TY 2009 BASED ON PETITIONER'S ALLEGED UNDECLARED PURCHASES.
>
> > A.1. WHETHER OR NOT THE ALLEGED UNDERDECLARATION OF PURCHASES AMOUNTING TO ₱207,564,410.79 GIVES RISE TO A VALID ASSESSMENT FOR DEFICIENCY INCOME TAX.
> >
> > A.2. WHETHER OR NOT THE ALLEGED UNDERDECLARATION OF PURCHASES AMOUNTING TO ₱207,564,410.79 GIVES RISE TO A VALID ASSESSMENT FOR DEFICIENCY VAT.
>
> WHETHER OR NOT THE ALLEGED DEFICIENCY INCOME TAX AND VAT ASSESSMENTS FOR TY 2009 HAVE ALREADY PRESCRIBED.

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[50] Minutes of Hearing, Records Vol. 4, p. 2020; Exhibit "R-16", Records Vol. 2, pp. 573-578.
[51] Formal Offer of Evidence, Records Vol. 4, pp. 2023-2027.
[52] Resolution, Records, Vol. 5, pp. 2037-2038.
[53] Memorandum, Records, Vol. 5, pp. 2039-2046.
[54] Memorandum, Records Vol. 5, pp. 2053-2087; Resolution, Records Vol. 5, p. 2052.
[55] Resolution; Records, Vol. 5, p. 2089.
[56] Joint Stipulation of Facts and Issues, Records Vol. 1, pp. 408-418.

Arguments of the Parties

Petitioner's Arguments[57]

Petitioner argues that the assessments issued by respondent are null and void for having been issued beyond the three (3)-year prescriptive period provided under Section 203 of the Tax Code.

Petitioner stresses that the Waivers it executed did not extend the period of assessment considering that the same are riddled with material defects and were executed contrary to the requirements provided under the Tax Code, Revenue Memorandum Order ("RMO") No. 20-90,[58] and Revenue Delegation Authority Order ("RDAO") No. 05-01.[59]

Likewise, petitioner contends that the assessment issued against it is void for lack of factual and legal bases. It explains that respondent failed to verify the correctness and accuracy of the tax base he used in coming up with the assessment. It also claims that respondent is erroneous in imposing VAT on its supposed under-declared purchases without showing proof that it had actual sales or income from its clients .

Lastly, petitioner insists that the imposition of compromise penalty against it is illegal and unauthorized since it did not agree nor give consent to its imposition.

Respondents' Counter-Arguments[60]

Respondent contradicts petitioner's argument that his assessment lacks factual and legal bases. He avers that the assessment was derived from the BIR's comparison of petitioner's SLP vs. MAP/RELIEF which is one of the audit methods prescribed by Revenue Regulations and the Tax Code.

Further, he counters petitioner's argument that his right to assess had already prescribed. He argues that the defects noted by petitioner in the Waivers, specifically, that the same failed to indicate the type and amount of tax being assessed, did not affect their validity since the said information were not yet determinable during the issuance of the Waivers.

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[57] Memorandum, Records Vol. 5, pp. 2053-2087
[58] Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, 4 April 1990.
[59] Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, 2 August 2001.
[60] Memorandum, Records, Vol. 5, pp. 2039-2046.

Finally, respondent argues that the Court should dismiss the instant Petition for petitioner's failure to overcome the presumption of correctness of the assessment issued against it.

The Ruling of the Court

After going through the arguments raised by the parties, this Court finds the instant Petition for Review meritorious.

The RO who conducted the audit investigation is not authorized through an LOA. Thus, the resulting assessment is void.

Section 6(A) of the Tax Code grants the respondent or his duly authorized representative the power to authorize the examination and assessment of a taxpayer, to wit:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -**
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax:** Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[61]

Corollary thereto is ***Section 13 of the Tax Code***, which requires all audit examinations and assessments by ROs to be accomplished pursuant to an LOA, to wit:

> "SEC. 13. Authority of a Revenue Offices. - 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.**"[62]

[61] Emphasis supplied.
[62] Emphasis supplied.

The aforementioned rule also applies in cases of re-assignment or transfer of a taxpayer's audit investigation to a new RO as provided under ***RMO No. 43-90***,[63] to wit:

> "C. Other policies for issuance of L/As [LOA].
>
> 1. **All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority**.
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As [LOA] which have already expired, shall require the issuance of a new L/A [LOA]**, with the corresponding notation thereto, including the previous L/A [LOA] number and date of issue of said L/As [LOA]
>
> xxx xxx xxx"[64]

In ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[65] the CTA *En Banc* expounded on the nature of an LOA. The Court explained that the LOA is in the nature of a contract of agency between the respondent or his authorized representative and the assigned RO and GS. The pertinent portion of the said case is hereby quoted, as follows:

> This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Cletofel Parungao, Myrna Ramirez, Ma. Salud Maddela, Zenaida Paz, Allan Maniego, Joel Aguila, and GS Glorializa Samoy who were originally named in the LOA may be revoked, transferred and reassigned to RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña 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, 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."
>
> *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. **The title of the contract does not necessarily determine its true nature.** In fact, this Court has, time and again, declared certain

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[63] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.
[64] Emphasis supplied.
[65] CTA EB No. 1880, 6 August 2019.

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. Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code."[66]

Therefore, it is clear from the foregoing that a document may be construed as a new LOA, provided that all the elements establishing a contract of agency between the CIR or his duly authorized representative and the new RO is present.

In this case, it is undisputed that an LOA was initially issued authorizing RO Zenaida Paz, Joel Aguila, Ma. Salud Maddela, Allan Maniego, Cletofel Parungao, Myrna Ramirez, and GS Glorializa Samoy to audit and assess petitioner for TY 2009.[67]

However, the aforementioned ROs and GS were not the examiners who conducted petitioner's audit investigation and assessment. Instead, it was done by RO Rosario A. Arriola and GS Rolando M. Balbido, as indicated in respondent's documentary exhibits, specifically, the Memoranda recommending the issuance of the PAN,[68] FAN,[69] and revised FDDA.[70]

This was likewise affirmed by petitioner's witness, RO Rosario A. Arriola in her judicial affidavit, as follows:

"Q5: Are you familiar with the tax account of petitioner RED RIBBON BAKESHOP, INC. for taxable year 2009?
A5: **Yes. This case was reassigned to me after the initial examiner was reassigned to another division.**

Q6: Who was the original revenue officers tasked to handle this audit?
A6: Based on the *Letter of Authority* dated September 15, 2010, the original revenue officers assigned to this case were RO Zenaida Paz, Joel Aguila, Ma. Salud Madella, Allan Maniego, Cletofel Parungao, Myrna Ramirez, and GS Gloria Samoy. **This case was then assigned to me via an *Assignment Slip* dated February 25, 2013.**

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[66] Emphasis supplied.
[67] Exhibit "P-3", Records Vol. 3, p. 1196; Exhibit "R-1", BIR Records, p. 1.
[68] Exhibit "P-4", BIR Records, pp. 958-953.
[69] Exhibit "R-9", BIR Records, pp. 1061-1067.
[70] Exhibit "R-14", BIR Records, pp. 1619-1624.

Q7: After this case was assigned to you, what did you do?
A7: **I initially sent petitioner a *letter dated March 4, 2013* informing them that I would be handling the tax audit of this case. Afterwards, I reviewed the findings of the previous examiner which was mostly based on the findings during the Informal Conference. After going over the records, and since petitioner was not able to present any documents to substantiate their claim, <u>I prepared the *memorandum for the issuance of the Preliminary Assessment Notice (PAN)* and subsequently on May 20, 2013, the *PAN* was issued against petitioner.</u>**

xxx xxx xxx

Q9: What happened next?
A9: Petitioner filed a *formal protest* dated June 5, 2013 to the PAN. After considering their protest, we lowered their tax liability such as their undeclared sales, their expanded withholding taxes.

<u>**Afterwards, I made the *memorandum for the issuance of the Final Assessment Notice (FAN)*. Subsequently the *Formal Letter of Demand (FLD)* dated Nov. 26, 2013 with the attach assessment notices, were issued to petitioner.**</u>

Q10: What happened after the issuance of the Formal Letter of Demand?
A10: Petitioner then formally protested the FLD via letter dated 23 December 2013 which was received by the BIR on 26 December 2013.

Because of petitioner's protest, another *Memorandum of Assignment* was given to me dated January 2, 2014 for the reinvestigation of petitioner's protest letter.

<u>**Petitioner submitted additional documents. After considering the same, we issued the Final Demand on Disputed Assessment (FDDA) dated May 20, 2014.**</u>

Q11: What happened after the issuance of the FDDA?
A11: After the issuance of the FDDA, petitioner filed another letter dated June 19, 2014 which was also received on the same date by the BIR. In this letter, petitioner was asking for a reconsideration of their tax liability. **Another *Memorandum of Assignment* dated 1 July 2014 was issued to me to handle petitioner's letter of reconsideration.**

On June 2, 2015, petitioner paid Income Tax, VAT, Withholding Tax on Compensation, Expanded Withholding Tax, Fringe Benefit Tax, Documentary Stamp Tax, but petitioner failed to pay some of the items in the Income Tax and VAT.

<u>**We then issued a *memorandum for the issuance of the revised FDDA* on 20 July 2015. Subsequently, the *revised FDDA* dated 20 July 2015 was afterwards issued**</u>."[71]

and during her testimony in open court,[72] to wit:

[71] Emphasis supplied.
[72] TSN dated 22 August 2019.

"Atty. Dilag:
Q: So, you were the one who caused the issuance of the assessment notices, correct?

Ms. Arriola
A: **From PAN to revised FDDA**.

Atty. Dilag:
Q: Final question, you mentioned in your testimony in your Judicial Affidavit that your basis for handling this case or your authority comes from an assignment slip. Can you please show the assignment slip on your records?

xxx xxx xxx

Q: **Ms. Witness, this document captioned as Memorandum of Assignment, is this the assignment slip you mentioned in your Judicial Affidavit?**

Ms. Arriola
A: **Yes, sir**.

"Atty. Dilag:
Q: **Can you further confirm if you have any other authorization coming from the respondent as to your authority to conduct the audit?**

Ms. Arriola
A: I sent a letter to the taxpayer dated March 4, 2013.

"Atty. Dilag:
Q: **But you do not have a letter of authority?**

Ms. Arriola
A: **No, sir.**

Respondent insists that RO Rosario A. Arriola and GS Rolando M. Balbido were authorized to conduct petitioner's audit investigation and assessment. He explains that the authority of both ROs emanated from MOA Nos. LOA-116-2013-0453,[73] 116-2014-0001,[74] and LOA-116-2014-0940.[75]

Unfortunately, the Court is not convinced.

As discussed, a document, such as the MOA may be treated as an equivalent of a new LOA, provided that it is compliant with the essential elements of a LOA and that it was issued by the respondent or his authorized representative who is either the Revenue Regional Director, or in cases of taxpayers falling under the Large Taxpayers Division, the Assistant

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[73] Exhibit "R-3", BIR Records, p. 940.
[74] Exhibit "R-11", BIR Records, p. 1166.
[75] Exhibit "R-13", BIR Records, p. 1552.

Commissioner/Head Revenue Executive Assistants, as provided under ***RMO No. 29-07***,[76] 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 Assistant Commissioner/Head Revenue Executive Assistants.**"[77]

Applying the foregoing in the case at bar, all three (3) MOAs were only signed by Mr. Cesar D. Escalada who is the Chief of the BIR's Regular LT Audit Division 1. Clearly, he is neither the CIR, Revenue Regional Director, nor an Assistant Commissioner/Head Revenue Executive Assistant, and therefore, is not one of the authorized representatives of the respondent to issue an LOA.

Hence, GS Rolando M. Balbido and RO Rosario A. Arriola both have no authority to continue petitioner's audit, consistent with our ruling in ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[78] to wit:

> "**In the instant case, the Memorandum of Assignment was only signed by Cesar D. Escalada, Chief, Regular LT Audit Division 1. Therefore, RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña were without authority to continue the audit.**"[79]

Considering that GS Rolando M. Balbido and RO Rosario A. Arriola had no authority to conduct petitioner's audit, the resulting assessment is void as found by the Supreme Court in the case of ***Commissioner of Internal Revenue v. Sony Philippines, Inc.***,[80] 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.**"[81]

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[76] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Services, 26 September 2007.
[77] Emphasis supplied.
[78] CTA EB No. 1880, 6 August 2019.
[79] Emphasis supplied.
[80] G.R. No. 178697, 17 November 2010.
[81] Emphasis supplied.

Having found the assessment void, the Court will no longer discuss the other issues raised in the present petition.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Revised Final Decision on Disputed Assessment dated 20 July 2015, assessing petitioner for deficiency income tax, and value-added tax in the aggregate amount of ₱172,233,647.89 for taxable year 2009 is **CANCELLED** and **SET ASIDE.** Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

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 Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice