REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

THE ARISTOCRAT FRANCHISE CORPORATION, *Petitioner,*	**CTA *EB* NO. 1575** (CTA Case No. 8731)
-versus-	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 21 2018 4:05 p.m.

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DECISION

BAUTISTA, J.:

The Case

This Petition[1] filed under *Section 3(b)*[2], *Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[3] seeks the Court *En Banc* to

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[1] *Rollo, CTA EB No. 1575, Petition,* pp. 4-58, with annexes.

[2] SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(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.

[3] *A.M. No. 05-11-07-CTA,* November 22, 2005.

reconsider the Decision[4] dated July 28, 2016 rendered by the Second Division of the Court of Tax Appeals ("CTA") ("Court in Division"), and issue a new one in favor of petitioner *(1)* declaring respondent's Letter of Denial of petitioner's Offer of Compromise of its income tax ("IT") liability for taxable year ("TY") 2006 as void, invalid, and/or devoid of factual or legal basis; *(2)* confirming the validity of the compromise payment of Php2,741,634.77 representing forty percent (40%) of the basic IT deficiency of petitioner; and *(3)* cancelling the deficiency tax assessments of respondent against petitioner for TY 2006.[5]

The Parties[6]

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at 432 San Andres St., Malate, Manila.

Respondent is the head of the Bureau of Internal Revenue ("BIR") vested 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 National Internal Revenue Code*[7], *as amended ("1997 NIRC")*, and other tax laws, rules, and regulations, He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

As stated in the Decision[8] promulgated on July 28, 2016, the factual antecedents of this case are as follows:

> On April 16, 2007, petitioner filed its Annual Income Tax Return (["]ITR["]) for [TY] 2006.
>
> On July 20, 2007, Letter of Authority (["]LOA["]) No. 2001-00061306 was issued, authorizing Revenue Officer

[4] *Records, CTA Case No. 8731, Vol. 2, Decision,* pp. 441-471; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas concurring.
[5] *Rollo, Petition, Prayer,* p. 15.
[6] *Records, Vol. 2, Decision, The Facts,* p. 443.
[7] *Republic Act No. 8424,* January 1, 1998.
[8] *Records, Vol. 2, Decision, The Facts,* pp. 443-451.

[("RO")] Romel Morente and Group Supervisor [("GS")] Mario Natividad to examine the books of accounts and other accounting records of petitioner for [TY] 2006. It was duly received by petitioner on August 9, 2007. Thereafter, a Notice of Informal Conference [("NIC")] was served to petitioner.

As a result of the audit investigation, a Preliminary Assessment Notice (["]PAN["]) for deficiency [IT] for [TY] 2006, amounting to Ten Million Nine Hundred Fifty-Nine Thousand Three Hundred Seventy-Two and 03/100 ([Php]10,959,372.03), including increments, was issued on March 24, 2010 and received by petitioner on April 5, 2010.

On April 13, 2010, respondent, through the Office of the Regional Director of Revenue Region No. 6 - Manila [("RR No. 6")], received a letter dated April 12, 2010 from petitioner, through its Certified Public Accountant (["]CPA["]), Joaquin P. Tolentino, acknowledging receipt of and protesting the PAN.

Thereafter, Final Assessment Notice (["]FAN["]) No. 33-06-IT-0024, Formal Letter of Demand (["]FLD["]), and Details of Discrepancies, all dated April 14, 2010, were issued against petitioner, demanding payment of the amount of Eleven Million Sixteen Thousand Five Hundred Thirty-Five Pesos and 09/100 ([Php]11,016,535.09), including increments.

In a letter dated April 19, 2010, petitioner protested the FAN and acknowledged the receipt of the FLD and the FAN on April 16, 2010.

On February 11, 2011, petitioner received a Final Notice Before Seizure (["]FNBS["]) dated February 10, 2011 from respondent, through Revenue District Officer (["]RDO["]) Josephine Virtuico [("RDO Virtuico")], seeking to collect the alleged final and executory deficiency assessments of the 2006 [IT] liabilities of petitioner in the amount of [Php]11,016,535.09, inclusive of surcharge, interest and penalties.

Thereafter, a Warrant of Distraint and/or Levy [("WDL")] dated March 1, 2011 was issued against petitioner.

On March 14, 2011, respondent received petitioner's letter dated March 11, 2011, applying for a compromise settlement of its liability, representing ten percent (10%) of the basic tax assessment. Then, on March 31, 2011, petitioner filed an offer of compromise, which was denied by RDO Virtucio in her letter received by petitioner on June 29, 2011.

On July 26, 2011, petitioner again filed an offer of compromise in the amount of [Php]2,741,634.00, representing forty percent (40%) of the basic deficiency [IT]. Thereafter, on October 26, 2011, petitioner paid respondent [Php]2,741,634.00, representing the offer of compromise.

On April 22, 2013, petitioner's application or offer of compromise settlement of its 2006 tax liability on the ground of doubtful validity was disapproved by the National Evaluation Board *via* Notice of Denial. Petitioner received the Notice of Denial on July 12, 2013.

A request for reconsideration was filed by petitioner, through its counsel, Atty. Maria Elena C. Ramiro, on July 24, 2013.

On October 16, 2013, petitioner received a letter dated September 20, 2013 from the Regional Director of BIR Manila, informing it that the denial of its application for compromise settlement was affirmed by respondent.

Accordingly, petitioner filed [a] Petition for Review before th[e] Court [in Division] on November 15, 2013.

In his Answer filed on December 20, 2013, respondent interposed the following special and affirmative defenses:

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As directed by the Court [in Division], petitioner filed its Memorandum on October 26, 2015; while respondent filed his Memorandum on November 9, 2015. Consequently, the case was declared submitted for decision on November 26, 2015.

The dispositive portion[9] of the Decision reads as follows:

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit. The assessment issued by respondent against petitioner covering deficiency [IT] for [TY] 2006 is **AFFIRMED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of

[9] *Records, Vol. 2, Decision, Dispositive Portion,* pp. 469-470.

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> **EIGHT MILLION FIVE HUNDRED SIXTY-SEVEN THOUSAND SIX HUNDRED FIVE PESOS AND 54/100 ([Php]8,567,605.54)** representing basic deficiency [IT] and the twenty-five percent (25%) surcharge imposed under *Section 248(A)(3) of the 1997 NIRC,* computed as follows:
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> | | |
> |---|---|
> | Basic Deficiency [IT] | [Php] 6,854,084,43 |
> | Add: 25% Surcharge | 1,713,521.11 |
> | **Total Amount Due** | **[Php] 8,567,605.54** |
>
> In addition, petitioner is **ORDERED TO PAY**:
>
> (a) Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency [IT] computed from April 15, 2007 until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC;* and
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> (b) Delinquency interest at the rate of 20% *per annum* *(1)* on the total amount of [Php]8,567,605.54, representing basic deficiency [IT] and 25% surcharge; and *(2)* on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 21, 2011 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC.*
>
> Accordingly, the amount of [Php]2,741,633.77 already paid by petitioner on October 26, 2011 shall be deducted from the total amount due.
>
> **SO ORDERED.**[10]

Not satisfied with the Decision, petitioner filed its Motion for Reconsideration[11] *via* registered mail on August 15, 2016 and received by the Court on August 24, 2016, to which respondent filed his Comment/Opposition to Motion for Reconsideration[12] on September 15, 2015.

On December 13, 2016, the Court in Division resolved[13] petitioner's Motion for Reconsideration in the following manner:

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

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[10] Emphases retained, italics supplied.
[11] *Records, Vol. 2, Motion for Reconsideration,* pp. 472-482.
[12] *Id., Comment/Opposition to Motion for Reconsideration,* pp. 485-488.
[13] *Id., Resolution, Dispositive Portion,* p. 496.

SO ORDERED.[14]

After being granted an extension,[15] petitioner raised the instant case to the Court *En Banc* when it filed a Petition[16] on January 17, 2017, to which respondent filed his Comment to Petition for Review[17] on May 22, 2017 *via* registered mail and received by the Court on May 30, 2017.

On June 20, 2017, the Court *En Banc* promulgated a Resolution[18] submitting the case for decision; hence, this Decision.

The Issues[19]

WHETHER THE COURT IN DIVISION ERRED WHEN IT RULED THAT THE DISPUTED ASSESSMENT IS NOT A JEOPARDY ASSESSMENT, ARBITRARY, AND LACKING IN LEGAL OR FACTUAL BASIS; AND

WHETHER THE COURT IN DIVISION ERRED WHEN IT FOUND THAT PETITIONER WAS NOT DENIED OF DUE PROCESS.

Petitioner's Arguments[20]

Petitioner asserts that its offer of compromise based on doubtful validity of assessment is valid because the disputed assessment is a jeopardy assessment, is a naked assessment, is arbitrary in nature, and is lacking in legal and factual basis. Petitioner avers that the assessment was made without the benefit of a complete or partial audit when the FAN was issued on April 14, 2010 or a day after its protest to the PAN was received by the BIR on April 13, 2010; that the assessment was made by mere inferences and not on the basis of facts; and that had respondent conducted a thorough audit based on the supporting documents it submitted in the course of its

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[14] Emphases retained.
[15] *Rollo, Motion for Extension of Time to File Petition for Review,* pp. 1-2; *Rollo, Minute Resolution,* p. 3.
[16] *Rollo, Petition,* pp. 4-58, with annexes.
[17] *Id., Comment to Petition for Review ("Comment"),* pp. 72-76.
[18] *Id., Resolution,* pp. 78-79.
[19] *Id., Petition, Assignment of Errors,* p. 8.
[20] *Id., Petition, Arguments/Discussion,* pp. 8-14.

protest, respondent would have concluded that the deficiency IT was baseless. Petitioner continues that respondent's lone witness' inability to state and explain the factual and legal bases of the disputed assessment he prepared is enough reason to dispute, if not overturn, the presumption of correctness of the assessment.

Petitioner further alleges that it was denied of due process, not on the non-receipt of the notice of assessments, but rather, for failure of the BIR to show, in detail, in the PAN the facts and the law, rules and regulations, or jurisprudence on which the assessment was based. Petitioner posits that *Revenue Regulations ("RR") No. 18-2013*[21] amending *Section 3 of RR No. 12-1999*[22] is not applicable in its case because the assessment was issued in 2010, and *RR No. 18-2013* cannot be applied retroactively.

Respondent's Counter-Arguments[23]

Respondent counters that the grounds relied upon by petitioner are mere rehashes or reiterations of the previous issues and arguments already squarely and intelligently passed upon by the Court in Division.

Respondent asserts that the Court in Division correctly found that petitioner was not deprived of due process, since it was able to receive the PAN and the FAN and that it was even able to contest them by filing a protest within the period provided by law. He adds that tax assessments are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise. The petitioner, according to respondent, miserably failed to overcome this presumption.

Respondent continues that petitioner's Petition is primarily anchored on its claim of denial of its offer of compromise for its tax deficiency for TY 2006; and that, therefore, any question on the correctness of an assessment is a mere after-thought when petitioner received the Decision of the Court in Division.

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[21] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.
[22] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.
[23] *Rollo, Comment*, pp. 72-74.

The Ruling of the Court En Banc

In the Decision[24] of the Court in Division, it found that it has jurisdiction over the present case pursuant to *Section 7(a)(1) of RA No. 1125*[25], as amended, and *Section 3(a)(1) of Rule 4 of the RRCTA* since the allegations contained in the Petition for Review are considered as matters arising under the *1997 NIRC* and other laws being administered by the BIR.

The Court in Division continues that the validity of the waiver executed by petitioner on April 12, 2010 is immaterial because nonetheless, the FAN was issued on April 14, 2010, which is within the three (3)-year prescriptive period to assess under *Section 203 of the 1997 NIRC.*

Anent the issue on whether petitioner was deprived of its right to procedural due process when respondent issued the FAN barely two (2) days after it filed its protest to the PAN, the Court in Division ruled that there is nothing in the provisions of *Section 228 of the 1997 NIRC* and *RR No. 12-1999* that would support petitioner's contention. The Court in Division observed that since petitioner was able to receive the PAN and the FAN, and that it was even able to contest the same by filing a protest letter within the period provided, there is no doubt that petitioner was given due process.

Anent the denial of petitioner's Offer of Compromise, the Court in Division observed that the assessment cannot be considered as a jeopardy assessment because it was a result of the audit investigations conducted pursuant to LOA No. 2001-00061306. Since the assessment is not a jeopardy assessment, the Court in Division ruled that petitioner's case does not fall within the criteria set by *RR No. 30-2002*[26], which allows compromise settlement of deficiency tax liabilities; and, accordingly, it cannot be said that said denial has no factual or legal basis. Further, the Court in Division notes that a compromise is mutual and consensual in nature, and the approval thereof is subject to respondent's judgment and discretion.

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[24] *Records, Vol. 2, Decision,* pp. 452-468.
[25] An Act Creating the Court of Tax Appeals, as amended.
[26] Revenue Regulations Implementing Sections 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001, December 16, 2002.

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The Court in Division went on to say that the Petition for Review essentially assails the denial of petitioner's compromise offer and whether or not the assessment was issued within the prescriptive period; and not the correctness of the assessment. Notably, the Court in Division found that petitioner did not present any evidence to overcome the presumption of correctness of respondent's assessment. Accordingly, the Court in Division upheld the assessment.

In the assailed Resolution[27], the Court in Division reiterated that petitioner was not deprived of due process; and that the assessment issued against it is not a jeopardy assessment. Anent petitioner's assertion that *RR No. 18-2013* cannot be applied retroactively, the Court in Division explained that the provisions used in the Decision are provisions that were not substantially changed from the provisions contained in *RR No. 12-1999*. Hence, even if the Court in Division will apply the counterpart provisions in *RR No. 12-1999*, the same conclusions will be arrived at.

Having summarized the Court in Division's Decision and Resolution, the Court *En Banc* will now resolve petitioner's Petition, and finds merit therein.

At the onset, it must be emphasized that while the issue on want of authority of ROs to conduct the audit investigation was not raised by petitioner in the proceedings before the Court in Division, nor in the present Petition, the Court *En Banc* is not precluded of its jurisdiction to rule on the same, following the latest pronouncement of the Supreme Court on this matter in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[28], *viz.*:

> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under *Section 1, Rule 14 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:

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[27] *Records, Vol. 2, Resolution*, pp. 492-496.
[28] G.R. No. 183408, July 12, 2017.

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> SECTION 1. *Rendition of judgment.* — x x x
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> 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.
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> 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 the scope of authority of the 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.

Besides, the authority of ROs to conduct the audit investigation goes into the validity of an assessment. Else stated, an assessment arising from the conduct of audit and examination of a taxpayer's books of accounts and other accounting records by an RO who is not duly authorized to do so is a complete nullity. A void assessment bears no valid fruit.[29]

In the instant case, records reveal that RO Quintos, the RO who conducted the audit investigation of petitioner's books of accounts and other accounting records for TY 2006,[30] was not named in LOA No. 00061306. At this point, reference is made to the parties' Joint Stipulation of Facts and Issues[31], par. 1.4 thereof reads as follows:

> 1.4 On 20 July 2007, a [LOA] No. 2001-00061306 was issued, <u>authorizing [RO] Romel Morente and [GS] Mario Natividad</u> to examine the books of accounts and other accounting records of [] petitioner for [TY] 2006. xxx[32]

RO Quintos' authority can be traced only from a Letter[33] dated October 3, 2007 issued by Mr. Isidro T. Casals, Jr., which reads:

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[29] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. Azucena T. Reyes, Azucena T. Reyes v. Commissioner of Internal Revenue*, G.R. Nos. 159694 and 163581, respectively, January 27, 2006, 480 SCRA 382.

[30] *Records, Vol.1, Exhibit "P-8," Notice of Informal Conference*, pp. 174-177; *Records, Vol. 1, Exhibit "P-10," Preliminary Assessment Notice*, pp. 179-181; *Records, Vol. 1, Exhibit "P-17," Letter dated April 21, 2014*, p. 197.

[31] *Records, Vol. 1, Joint Stipulation of Facts and Issues, Stipulations/Admitted Facts, par. 1.4*, p. 105.

[32] Underscoring ours.

[33] *Records, Vol. 1, Exhibit "P-5," Letter dated October 3, 2007*, p. 170.

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Sir/Madam:

In view of the recent transfer of [RO] ROMEL MORENTE, the authority to examine All Internal Revenue Taxes for [TY] **2006** is re-assigned to [RO] **GIL C. QUINTOS** and [GS] **MAURA LAUCHENGCO**. They are provided with the necessary Identification Cards which shall be presented to you upon request.

xxx xxx xxx

Very truly yours,
(signature)
ISIDRO T. CASALS, JR.
Revenue District Officer[34]

The authority of an RO to conduct an audit examination or investigation finds its basis under *Section 13 of the 1997 NIRC,* to wit:

SEC. 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[35]

In case of re-assignment, *Revenue Memorandum Order ("RMO") No. 43-1990*[36] provides for the following policy guidelines:

C. Other policies for issuance of L/As.

1. All audit/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

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[34] Emphases retained.
[35] Underscoring ours.
[36] 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.

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> xxx xxx xxx
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> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/A.
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> xxx xxx xxx[37]

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 *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[38], the Supreme Court emphasized that the absence of an LOA violated a taxpayer's right to due process; accordingly, the assessment thereon was declared void, *viz.*:

> 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. xxx.
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> xxx xxx xxx
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> ... [I]t is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, 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 at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly

[37] Underscoring ours.
[38] G.R. No. 222743, April 5, 2017.

> authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.
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> xxx xxx xxx.
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.[39]

Thus, absent a new LOA specifically designating RO Quintos to conduct the audit and examination of petitioner's books of accounts and accounting records for TY 2006, RO Quintos acted without authority when he conducted the audit investigation of petitioner's books. Accordingly, the assessment arising therefrom is a nullity.

Finding that the assessment for deficiency IT against petitioner for TY 2006 is void for lack of authority to conduct the same, the Court *En Banc* will no longer belabor the issues raised in the present Petition.

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The Decision dated July 28, 2016 and the Resolution dated December 13, 2016, both rendered by the Second Division of the Court of Tax Appeals in CTA Case No. 8731, are **REVERSED AND SET ASIDE**. Accordingly, the assessment for deficiency Income Tax for taxable year 2006 is hereby **CANCELLED AND WITHDRAWN**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[39] Underscoring ours.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE ARISTOCRAT FRANCHISE CORPORATION,
Petitioner,

- *versus* –

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1575
(CTA Case No. 8731)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

MAR 21 2018 4:05 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lovell R. Bautista in reversing and setting aside the Decision of the Second Division of this Court dated July 28, 2016 and holding that respondent Commissioner of Internal Revenue's assessment for deficiency income tax for taxable year 2006 as void for lack of requisite authority on the part of the revenue officers who actually conducted the audit investigation of petitioner's books of accounts and other accounting records for taxable year 2006.

A review of the records revealed that Revenue Officer Romel Morente (RO Morente) and Group Supervisor Mario Natividad (GS Natividad) were originally authorized to conduct the audit investigation of petitioner's books of accounts and other accounting records for taxable year 2006 under Letter of Authority (LOA) No. 2001-00061306 dated July 20, 2007 issued by Regional Director Alfredo Y. Misajon of Revenue Region No. 6.

On October 3, 2007, Revenue District Officer Isidro T. Casals, Jr. (RDO Casals) of Revenue District Office No. 33 issued a letter informing petitioner that in view of the transfer of RO Morente, the authority to examine all internal revenue taxes of petitioner for taxable year 2006 is re-assigned to Revenue Officer Gil Quintos (RO Quintos) and Group Supervisor Maura Lauchengco (GS Lauchengco) who shall be provided with the necessary identification cards to be presented upon petitioner's request.

The records do not show that a new or replacement LOA was issued in favor of RO Quintos and GS Lauchengco.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "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;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (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." *(Emphasis supplied)* ✓

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "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**:
>
> x x x x x x x x x
>
> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "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."

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that a Revenue District Officer is not included therein. The relevant portion of the said issuance reads:

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

x x x x x x x x x

> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority** **<u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, it is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[1]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. Be that as it may, I believe that the same would not necessarily negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the 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 just 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.[2] As such, they do not grant any vested right to any taxpayer over

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[1] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[2] Revenue Administrative Order No. 001-12 dated April 2, 2012.

any particular work procedure, which procedure is internal to the BIR and may change from time to time as the 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.[3]

In the present case, there is no question that LOA No. 2001-00061306 was duly issued by the Regional Director. However, the revenue officers named therein were different from those who actually examined petitioner's books of accounts and other accounting records for taxable year 2006. As it appears, RO Quintos and GS Lauchengco conducted the audit examination on the basis of the letter issued by RDO Casals reassigning to them the conduct of examination of petitioner's books of accounts and other accounting records for taxable year 2006.

In my view, the letter issued by RDO Casals cannot validly grant RO Quintos and GS Lauchengco the authority to conduct an audit examination pursuant to LOA No. 2001-00061306. As a Revenue District Officer, RDO Casals is bereft of any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power. While it is true that under Section 11 of the 1997 NIRC,[4] a Revenue District Officer has the duty "to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with", it does not follow that it may exercise functions which the law has expressly granted to other tax officials such as the CIR and the Revenue Regional Director.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[5] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

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[3] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.

[4] Section 11 of the 1997 NIRC states:

> "SEC. 11. *Duties of Revenue District Officers and Other Internal Revenue Officers.* — It shall be the duty of every Revenue District Officer or other internal revenue officers and employees to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with, and to aid in the prevention, detection and punishment of frauds or delinquencies in connection therewith.
>
> It shall be the duty of every Revenue District Officer to examine the efficiency of all officers and employees of the Bureau of Internal Revenue under his supervision, and to report in writing to the Commissioner, through the Regional Director, any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts and any evidence sustaining each case."

[5] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

In view of the foregoing, I vote to **GRANT** the present Petition for Review.

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE ARISTOCRAT FRANCHISE CORPORATION, Petitioner,	**CTA EB NO. 1575** (CTA Case No. 8731)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 21 2018 4:05 p.m.

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SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in granting the Petition for Review filed by The Aristocrat Franchise Corporation ("Petitioner") for lack of authority of the examining Revenue Officer ("RO"). However, I dissent with the *ponencia's* reason to do so.

I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in his favor, RO Gil C. Quintos may be given the authority to continue the audit and examination of Petitioner's books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, by the Revenue Regional Director, upon the reassignment of RO Romel Morente who was the originally named RO in the LOA. I submit that this could be validly done under the National Internal Revenue Code of 1997 ("1997 NIRC") 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 1997 NIRC:

> "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</u> <u>Commissioner</u> <u>or</u> <u>his</u> <u>duly</u> <u>authorized</u> <u>representative</u> <u>may</u> <u>authorize</u> <u>the</u> <u>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 1997 NIRC 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;
>
> (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

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[1] *Emphasis and underscoring supplied.*

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 1997 NIRC:

"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."

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,**

2 *Emphasis and underscoring supplied.*
3 G.R. No. 188288, January 16, 2012.

> **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 Revenue Regional Director ("RRD"), his agent.

Now, may the RRD, the CIR's agent, appoint a sub-agent, in this case, the RO 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 Morente who was originally named in the LOA may be revoked, transferred and reassigned to RO Quintos, 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 1997 NIRC[6], which requires that assessment be done by ROs pursuant to

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[4] *Emphasis supplied.*

[5] *Emphasis supplied.*

[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).*

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 RO. 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 1997 NIRC, 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 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 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

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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).

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

12 Issued September 20, 1990.

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 Quintos who conducted the examination of Petitioner's records may be deemed authorized to do so without need for a new LOA, only if said letter or notice was signed by the Revenue Regional Director. In the instant case however, said letter was only signed by the Revenue District Officer Isidro T. Casals, Jr. Therefore, RO Quintos was without authority to continue the audit.

From all the foregoing, I vote for the **GRANT** of the Petition for Review filed by Petitioner.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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