REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1870** (CTA Case No. 9372)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** JJ.
BISAZZA PHILIPPINES, INC., Respondent.	***Promulgated:*** SEP 02 2019 11:03 a.m.

x---x

DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on June 27, 2018 by the Commissioner of Internal Revenue, petitioner, against Bisazza Philippines, Inc., respondent, praying for the reversal and setting aside of the Decision dated March 7, 2018[2] and the Resolution dated May 21, 2018[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9372, entitled *"Bisazza Philippines, Inc., Petitioner, versus Commissioner of*

[1] EB Docket, pp. 7 to 24.
[2] Penned by Associate Justice Catherine T. Manahan, and concurred by Associate Justice Juanito C. Castañeda, Jr. (*with separate concurring opinion*) and Associate Justice Caesar A. Casanova, EB Docket, pp. 27 to 48.
[3] EB Docket, pp. 49 to 51.

Internal Revenue", Respondent, the dispositive portions of which, respectively read as follows:

Decision dated March 7, 2018:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Assessment Notices dated January 7, 2011 for deficiency income tax, VAT, EWT, FBT and compromise penalty for taxable year 2007, and the Preliminary Collection Letter dated May 4, 2016 are **CANCELLED** and **WITHDRAWN.**
>
> **SO ORDERED**."

Resolution dated May 21, 2018:

> "**WHEREFORE**, respondent's *Motion for Reconsideration Re: Decision dated 7 March 2018* filed on March 23, 2018 is **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

Petitioner is the government entity who issued the assailed *Preliminary Collection Letter, Preliminary and Final Assessment Notices.*

On the other hand, respondent is a domestic corporation with TIN No. 209-893-137-000, and is engaged in the business of manufacturing and processing all kinds of tiles, which shall be sold at wholesale.

On December 17, 2008, respondent received a *Letter of Authority* (LOA) from Revenue District Office No. (RDO) 54-Trece Martirez City, Cavite, authorizing Revenue Officer (RO) Lloyd B. Patinglag and Group Supervisor (GS) Nena Joyce W. Geston to examine the books of account and other accounting records for all internal revenue taxes for the period from January 1 to December 31, 2007.

Thereafter, on September 20, 2010, it received a *Notice of Informal Conference.*

On December 28, 2010, respondent received a copy of the *Preliminary Assessment Notice* (PAN) dated December 15, 2010, assessing a total deficiency tax of ₱14,936,256.76. It then filed its *Reply* to the said PAN on January 10, 2011.

On January 18, 2011, respondent received the *Assessment Notices/Formal Letter of Demand* (FAN/FLD) dated January 7, 2011. The FAN/FLD contained the following assessments for calendar year 2007:

I. INCOME TAX		
Taxable Net Income per Return		₱
Add: Discrepancy in Salaries & Wages		
Salaries & Wages per Alphalist	₱ 8,781,009.00	
Salaries & Wages per Financial Statements	5,618,730.95	₱ 3,162,278.05
Disallowed Inventory Write-off		3,138,576.00
Disallowed Bad Debts pursuant to RR 25-02		201,013.00
Taxable Net Income per Audit		**₱ 6,501,867.05**
Tax due (35%)		₱ 2,275,653.47
Less: Income Tax Payment		-
Still Due		₱2,275,653.47
Add: Interest (4/16/2008-12/31/2010)	₱ 1,233,217.14	
Compromise	25,000.00	1,258,217.14
TOTAL AMOUNT DUE		**₱ 3,533,870.61**

II. VALUE-ADDED TAX		
Sales per Financial Statements		₱ 77,276,915.00
Sales per VAT Return		22,194,753.98
Discrepancy		₱ 55,082,161.02
VAT Due (12%)		6,609,859.32
Add: Interest (1/26/2008-12/31/2010)	₱ 3,875,369.58	
Compromise	25,000.00	3,900,369.58
TOTAL AMOUNT DUE		**₱ 10,510,228.90**

III. EXPANDED WITHHOLDING TAX			
Expenses subject to EWT	Tax Base	Rate	
Advertising	₱5,067,621.00	2%	₱ 101,352.42
Transportation and Travel	1,538,269.00	2%	30,765.38
Rental	3,847,713.33	5%	192,385.67
Commission	547,359.00	10%	54,735.90
Security Services	516,761.00	2%	10,335.22
Repair & Maintenance	428,315.00	2%	8,566.30
Professional Fees	207,229.00	10%	20,722.90
Raw Materials (as top 10,000)	54,803,804.00	1%	548,038.04
Office Supplies (as top 10,000)	217,252.00	1%	2,172.52
Fuel and oil (as top 10,000)	440,781.00	1%	4,407.81
Communication (as top 10,000)	994,278.00	2%	19,885.56
Direct Labor (Contractual)	3,521,127.00	2%	70,422.54
Expanded Withholding Tax Due			₱1,063,790.26
Less: Payments			484,519.79
Still Due			₱579,270.47
Add: Interest (1/16/2008-12/31/2010)		₱ 342,801.15	
Compromise		20,000.00	362,801.15
TOTAL AMOUNT DUE			**₱942,071.62**

ро

IV. FRINGE BENEFITS TAX		
Fringe Benefits per ITR		₱ 291,765.00
Fringe Benefits per FBT Return		240,000.00
Discrepancy (Not subjected to FBT)		₱ 51,765.00
Grossed Up Monetary Value (/68%)		76,125.00
Fringe Benefits Tax Due (x32%)		₱ 24,360.00
Add: Interest (1/16/2008-12/31/2010)	₱ 14,415.78	
Compromise	6,500.00	20,915.78
TOTAL AMOUNT DUE		**₱ 45,275.78**

V. COMPROMISE PENALTY	
Failure to file Inventory List	₱1,000.00
Failure to file Monthly Alphalist of Payees (MAP)	12,000.00
Failure to supply necessary information on returns (1601-E December)	1,000.00
TOTAL AMOUNT DUE	**₱ 14,000.00**

On February 17, 2011, respondent filed its *Protest/Request for Reconsideration* to the FAN/FLD. Petitioner likewise received respondent's *Supplemental Protest/Request for Reconsideration* to the FAN/FLD on April 15, 2011.

Subsequently, on May 18, 2016, respondent received a copy of the *Preliminary Collection Letter* (PCL) dated May 4, 2016, requiring it to pay its deficiency taxes in the total amount of ₱15,045,446.91.

Thus, respondent filed its *Petition for Review* before the Court in Division on June 16, 2016, entitled *"Bisazza Philippines, Inc., Petitioner, versus Commissioner of Internal Revenue", Respondent,* and docketed as CTA Case No. 9372.

After several extensions of time, petitioner filed his *Answer* in CTA Case No. 9372 on October 3, 2016, interposing special and affirmative defenses, among others, the following: (1) that the court has no jurisdiction over the *Petition for Review*; (2) that the assessment has become final, executory and demandable by operation of law; (3) that the assessments were validly issued pursuant to a valid LOA; (4) that the issuance of the FLD dated January 7, 2011 did not disregard respondent's right to due process; and (5) that the assessment issued has bases in facts and law and that the same is valid and lawful.

On October 13, 2016, respondent filed its *Reply*[4] in CTA Case No. 9372 alleging among others, the following: the Court in Division

---

[4] Division Docket – Vol. I (CTA Case No. 9372), pp. 312-320

m

has jurisdiction over the Petition, and petitioner utterly disregarded respondent's right to due process; and, the principle of estoppel does not apply and the assessments made are illegal.

After the pre-trial conference held on November 10, 2016[5], the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on December 27, 2016[6], which was approved in the Court in Division's *Pre Trial Order* dated January 17, 2017.[7]

Respondent presented its sole witness, Ric Vincent G. Atienza, on March 13, 2017. It then filed its *Formal Offer of Evidence* on March 24, 2017, with petitioner's *Comment Re:* [Respondent]*'s Formal Offer of Evidence* filed on April 3, 2017. The Court in Division resolved respondent's *Formal Offer of Evidence* in the Resolution dated June 2, 2017[8], with several exhibits being denied.

This prompted respondent's filing of *Tender of Excluded Evidence* on July 10, 2017[9], which was noted in the Court in Division's Resolution dated July 17, 2017[10].

For his part, petitioner presented the following witnesses on June 28, 2017: (a) Morris G. Bihis, (b) Melissa Carla R. Baes, and (c) Richard E. Linatok. Subsequently, petitioner filed his *Formal Offer of Evidence* on July 10, 2017, with respondent's *Comment and/or Opposition to* [Petitioner]*'s Formal Offer of Evidence dated 07 July 2017* filed on July 17, 2017. On August 4, 2017, the Court in Division resolved petitioner's *Formal Offer of Evidence* and admitted all of the offered exhibits[11].

On October 9, 2017, the parties filed their respective *Memoranda*. Hence, on October 12, 2017, the Court in Division issued a Resolution submitting CTA Case No. 9372 for decision.

---

[5] Minutes of Pre-trial Conference and Order dated November 28, 2017, Division Docket – Vol. II (CTA Case No. 9372), pp. 618 and 619, respectively
[6] JSFI, Division Docket – Vol. II (CTA Case No. 9372), pp. 683-702
[7] Pre-Trial Order dated January 17, 2017, Division Docket – Vol. II (CTA Case No. 9372), pp. 711-722
[8] Division Docket – Vol. II (CTA Case No. 9372), pp. 994-995.
[9] Division Docket – Vol. II (CTA Case No. 9372), pp. 1005-1009
[10] Division Docket – Vol. II (CTA Case No. 9372), p. 1018
[11] Division Docket – Vol. II (CTA Case No. 9372), pp. 1021-1022

On March 7, 2018, the Court in Division rendered its assailed Decision[12] granting the *Petition for Review* in CTA Case No. 9372. The Court *a quo* ordered the cancellation and withdrawal of the *Assessment Notices* dated January 7, 2011 for deficiency income tax, VAT, EWT, FBT and compromise penalty, for taxable year 2007 and the PCL dated May 4, 2016.

On March 23, 2018, petitioner filed a *Motion for Reconsideration Re: Decision dated 7 March 2018,*[13] while respondent filed a *Comment and/or Opposition (Re: Motion for Reconsideration Dated 22 March 2018)* on April 13, 2018.[14]

In the assailed Resolution promulgated on May 21, 2018,[15] the Court in Division denied petitioner's *Motion for Reconsideration Re: Decision dated 7 March 2018* for lack of merit.

On June 11, 2018, petitioner filed a *Motion for Extension of Time to File Petition for Review,*[16] praying for an additional period of fifteen (15) days from June 12, 2018, or until June 27, 2018, within which to file his *Petition for Review*. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from June 12, 2018 or until June 27, 2018, within which to file his *Petition for Review.*[17]

Petitioner then filed the instant *Petition for Review* before the Court *En Banc* on June 27, 2018.[18]

In the Resolution dated July 30, 2018,[19] respondent was directed to file its comment on the instant *Petition for Review* within ten (10) days from receipt thereof. On August 13, 2018, respondent filed its *Comment and/or Opposition (Re: Petition for Review dated 26 June 2018).*[20]

---

[12] EB Docket, pp. 27 to 40; Division Docket – Vol. III (CTA Case No. 9372), pp. 1143 to 1156.
[13] Division Docket – Vol. III (CTA Case No. 9372), pp. 1165 to 1178.
[14] Division Docket – Vol. III (CTA Case No. 9372), pp. 1183 to 1197.
[15] EB Docket, pp. 49 to 51; Division Docket – Vol. III (CTA Case No. 9372), pp. 1200 to 1202.
[16] EB Docket, pp. 1 to 4.
[17] Minute Resolution dated June 14, 2018, EB Docket, p. 6.
[18] EB Docket, pp. 7 to 24.
[19] EB Docket, pp. 56 to 57.
[20] EB Docket, pp. 58 to 76.

In the Resolution dated October 18, 2018, the instant case was deemed submitted for decision.[21] Hence, this Decision.

THE ISSUES

Petitioner invokes the following grounds in the instant Petition for Review, to wit:

"I.

THE ASSESSMENT IS CONSIDERED FINAL FOR FAILURE OF RESPONDENT TO SUBMIT DOCUMENTS IN SUPPORT OF ITS PROTEST.

II.

THE REVENUE OFFICERS ASSIGNED TO CONTINUE THE AUDIT WERE DULY AUTHORIZED PURSUANT TO THE LETTER OF AUTHORITY."[22]

Culled from the foregoing grounds, these are the issues submitted for the resolution of the Court *En Banc:*

1) Whether or not the assessment is considered final for failure of respondent to submit documents in support of its protest;

2) Whether or not the revenue officers assigned to continue the audit were duly authorized pursuant to the letter of authority.

Petitioner's arguments:

Petitioner argues that the subject assessment has become final, executory and demandable for failure respondent to submit the supporting documents within the sixty-day period from the filing of its protest. Thus, the Court allegedly has no jurisdiction over the case.

Moreover, petitioner submits that the ROs assigned to continue the audit were duly authorized pursuant to the LOA. According to petitioner, the written authority of the ROs to conduct audit may be

---

[21] EB Docket, pp. 79 to 80.
[22] EB Docket, p. 9.

stated in the LOA itself or any other document executed for such purpose by petitioner or his duly authorized representative. In this case, the authority of RO Morris Bihis and RO Melissa Carla Baez to continue the audit was allegedly derived from the *Letter* and *Memorandum of Assignment* (MOA).

Hence, there is allegedly no requirement in the law that ROs must be identified in the LOA to have authority.

It is also petitioner's view that the case, *Commissioner of Internal Revenue vs Sony Philippines Inc.*[23] ("*Sony* case") cannot be applied in the instant case since the issue in said case is completely different from the issue in this case.

Finally, petitioner asserts that the assessment issued against respondent is valid and lawful. According to petitioner, assessments are presumed correct and made in good faith and that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that petitioner is wrong but that the taxpayer is right.

Respondent's counter-arguments:

Respondent counter - argues that the Court has jurisdiction over the instant petition. Allegedly, its receipt of the PCL on May 18, 2016 is deemed the final decision on the disputed assessment which was properly appealed to the Court in Division on June 16, 2016.

As regards to the authority of the ROs, respondent claims that the ROs were not named in the new LOA and thus, they were not duly authorized to conduct the audit.

Granting *arguendo* that the ROs were duly authorized pursuant to the LOA, still, petitioner's right to collect the subject deficiency assessments for taxable year 2007 has allegedly prescribed.

THE COURT *EN BANC'S* RULING

The *Petition for Review* is bereft of merit.

---

[23] GR. No. 178697, November 17, 2010.

MD

Respondent did not fail to submit supporting documents within the sixty (60)-day period. Thus, the subject assessments did not become final, executory and demandable.

Petitioner argues that the assessment became final, executory and demandable, when respondent failed to submit relevant documents in support of its protest within the sixty (60)-day period provided under Section 228 of the Tax Code.

We are not convinced.

Section 228 of the NIRC of 1997, as amended, lays down the guidelines in the protest of tax assessments, *to wit*:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall**

m

> **have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*.

Based on the foregoing, the taxpayer has thirty (30) days from receipt of the assessment within which to file its administrative protest; and all relevant supporting documents shall have been submitted, within sixty (60) days from filing of the protest. Otherwise, the assessment shall become final.

Moreover, in *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*,[24] the Supreme Court rejected petitioner's view that the assessment has become final and unappealable for failure of the taxpayer to submit relevant supporting documents, *thus*:

> "Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.
>
> **We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because <u>when respondent submitted its protest, respondent attached the GIS and Balance Sheet</u>.**
> xxx xxx xxx
>
> **The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax**

---
[24] G.R. No. 172045-46, June 16, 2009.

> **assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted.** Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, the determination of the type of documents needed to support the protest rests solely on the taxpayer; and the BIR cannot demand what type of supporting documents should be submitted. More importantly, on the basis thereof, the High Court recognized that *"attaching"* supporting documents to the protest constitutes, in effect, the *"submission"* of the same as of the filing of the said protest.

A perusal of the *Protest/Request for Reconsideration* filed on February 17, 2011[25] shows that respondent attached supporting documents thereto.[26] Thus, it also cannot be said that respondent failed to submit relevant supporting documents that would render the subject tax assessments final. Consequently, the Court in Division had jurisdiction over the case *a quo*.

In addition, the subject tax assessments could not have attained finality considering that the same is void because the ROs who conducted the audit investigation were not duly authorized through an LOA.

The revenue officers were not duly authorized to conduct the audit investigation, hence, the resulting tax assessments are void.

In the assailed Decision, the Court in Division ruled that the ROs who were assigned to continue the audit and examination of respondent's books were not named in the LOA, and that no new LOA was issued following the subsequent reassignment and transfer of the case. Accordingly, the Court *a quo* held that the subject

---

[25] Exhibit "P-14", Division Docket – Vol. II, (CTA Case No. 9372), pp. 832 to 847; BIR Records, pp. 447 to 462.
[26] Division Docket – Vol. II, (CTA Case No. 9372), pp. 848 to 858; BIR Records, p. 447-A.

ml

assessment should be cancelled for lack of authority of the ROs to conduct the tax investigation.

Petitioner, however, argues that the examination conducted by the reassigned ROs is valid and binding; and that there is no requirement in the law that ROs must be identified in the LOA to have authority. According to petitioner, the issuance of a new LOA is not necessary and that the letter and MOA issued to the ROs already gave them the authority to continue the audit investigation.

We disagree with petitioner.

Section 6(A) of the NIRC of 1997 lays down the power of petitioner or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, 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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

Based on the foregoing, an authority emanating from petitioner or his duly authorized representative is required before an examination and an assessment may be made.

Relative thereto, Section 13 of the NIRC of 1997 provides that the authority of a RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to a LOA, to wit:

> "SEC. 13. *Authority of a Revenue Officer.* Subject to the rules and regulations to be prescribed by the

ho

> Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director,</u> 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 and underscoring supplied.)*

Evidently, a grant of authority, through an LOA, must be issued assigning an RO to perform tax assessment functions, in order that such officer may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[27] the Supreme Court elucidated on the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "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</u>**

---

[27] G.R. No. 222743, April 5, 2017.

> **<u>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.
>
> x x x x (Emphasis and underlining Ours)

Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, 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 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.**

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[28] the Court said that:

> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underlining ours)

xxx xxx xxx

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the

[28] 649 Phil. 519 (2010).

M

> financial books or records being physically 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.**
>
> 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. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void</u>.**" *(Emphases and underscoring supplied)*

Based on the foregoing, ROs must be authorized, through an LOA, in order that said officers may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

In the instant case, records disclose that pursuant to LOA No. 2008-00011590 dated December 9, 2008[29] only RO Lloyd B. Patinglag and GS Nena Joyce W. Geston were authorized to examine the books and other accounting records of respondent for taxable year 2007.

On May 19, 2009, a *Memorandum letter* was issued by Revenue District Officer (RDO) Rodolfo G. Mindanao, Jr.,[30] directing RO Morris G. Bihis to continue the audit investigation of respondent for taxable year 2007. Notably, it was RO Morris G. Bihis who

---

[29] Exhibit "P-2", Division Docket – Vol. II, (CTA Case No. 9372), p. 756.
[30] Exhibit "R-1", BIR Records, p. 39.

recommended the issuance of the PAN and the FLD through *Memorandum* dated October 29, 2010[31].

Thereafter, on July 27, 2011, a *MOA* was issued by RDO Carmelita B. Estolas, referring the case to RO Melissa Carla Baez and GS Ruth Agustin,[32] for continuation of the audit/investigation of respondent for taxable year 2007.

It is evident that the supposed authority of ROs Morris Bihis and Melissa Carla Baez to conduct the audit investigation of respondent for taxable year 2007 was not granted through the issuance of an LOA. As a corollary, it bears noting that there is no showing that a new LOA was issued specifically authorizing the said ROs to continue the audit investigation of respondent following the reassignment and transfer of the case.

The Memorandum letter and the MOA are not sufficient to grant ROs the authority to conduct the audit investigation.

The Court cannot subscribe to petitioner's view that the *Memorandum letter* and the *MOA* are sufficient to authorize the ROs to conduct the examination of respondent's books.

It must be noted that the failure of petitioner or his duly authorized representative to issue a new LOA runs counter to Revenue Memorandum Order (RMO) No. 43-90 dated September 20, 1990,[33] which lays down the guidelines for the audit/investigation and issuance of LOA (*hereinbelow referred to as L/A*), pertinent portions of which state:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> xxx xxx xxx

---

[31] Exhibit "R-5", BIR Records, pp. 361 to 363.
[32] Exhibit "R-8", BIR Records, p. 568.
[33] *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.*

M

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 a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." *(Emphases and underscoring supplied.)*

It is explicit from the foregoing that all audit investigations must be conducted by a duly designated RO authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to a Letter of Authority or LOA. In case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA be issued with the corresponding notation thereto.

In the present case, no new LOA was issued, and the only basis for the ROs' authority was the *Memorandum letter* dated May 19, 2009 and the *MOA* dated July 27, 2011.

Accordingly, the Court sustains the findings of the Court in Division that the said ROs were not duly authorized to conduct the audit investigation.

RMO No. 36-2000 and RMO No. 8-2006 may not be used as legal bases to dispense with the issuance of a new LOA.

As regards, petitioner's reliance on RMO No. 36-2000 dated July 26, 2000[34], and RMO No. 8-2006, the same is untenable.

Pertinent provisions of RMO No. 36-2000 are as follows:

"II. COVERAGE

1. **The Office Audit Program shall cover the audit of tax returns of individual and corporate taxpayers, estates and trusts within the Region covering taxable years 1997, 1998 and 1999**, xxx."

---

[34] SUBJECT: Prescribing an Office Audit Program in the Assessment Division of Revenue Regional Offices.

/M

xxx xxx xxx

III. *AUDIT POLICIES AND GUIDELINES*

xxx xxx xxx

4. The policy on the simultaneous investigation of all tax liabilities of the taxpayer for the same taxable year shall be followed. **One LA[35] be issued for each taxable year under audit to include all internal revenue tax liabilities of the taxpayer.** Accordingly, the LA shall state the specific year under audit and the indication of 'unverified prior years' or similar statement in the LA shall not be allowed." *(Emphasis and underscoring supplied)*

It is clear from the foregoing, that RMO No. 36-2000, which requires that one LOA must be issued for each taxable year, applies only for taxable years 1997, 1998 and 1999. Considering that the year under consideration is 2007,[36] RMO No. 36-2000 cannot be applied to the instant case.

As regards to petitioner's reliance on RMO No. 8-2006 dated February 1, 2006[37], the pertinent portions thereof read as follows:

"IV. GUIDELINES

To ensure uniformity in the handling of LAs, the following guidelines are given:

xxx xxx xxx

F. **On Disposition of Dockets**

xxx xxx xxx

2. In case the report of investigation submitted for review was returned to the investigating office for compliance with additional requirements and the original investigating Revenue Office (RO) and/or the Group

---

[35] That is, "Letter of Authority".

[36] Exhibit "P-2", Division Docket – Vol. II, (CTA Case No. 9372), p. 756.

[37] SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

Supervisor (GS) has been transferred, resigned or retired:

a. where the RO has resigned/retired or transferred but not the GS, the case shall be reassigned to another RO under the supervision of the same GS

b. where the GS has resigned / retired or transferred but not the RO, the case shall be continued by the same RO

c. where the GS has resigned/retired or transferred and the RO has also been transferred to another RDO but within the same RR, the case shall be remanded to the same RO, thru the previous RDO, by the AD. Updating of the status of the case shall be made by the same RO through authorized access given to the previous RDO

d. where the RO has resigned/retired or transferred to another RR but the GS is still assigned within the same RR, the case shall be remanded to the same GS, thru the previous RDO, by the AD. Updating of the status of the case shall be made by the same GS based on authorized access given by the previous RDO

e. where both the RO and the GS have resigned/retired or transferred to another RR, the case shall be reassigned to another RO under the supervision of another GS within the same RDO

In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS." *(Emphasis and underscoring supplied.)*

m

It is evident from the foregoing that Section IV, F(2) of RMO No. 8-2006 merely provides the procedure for the disposition of the docket of a case in the event of a reassignment of the concerned BIR personnel, through the issuance of a memorandum to that effect to the concerned taxpayer and the concerned RO and/or GS. Notably, the last paragraph pertaining to the issuance of a "memorandum to that effect" falls under the subheading "On Disposition of Dockets". Hence, the scope of the issuance of a memorandum should be taken to pertain only to the "disposition of dockets" of a reassigned or transferred case to another RO.

Definitely, it cannot be taken to mean that the issuance of a memorandum is tantamount to an LOA which thereby grants authority to the new RO to continue the audit/investigation of taxpayers.

Correspondingly, Section IV, F(2) of RMO No. 8-2006 could not have amended or repealed the requirement under the aforequoted provision of RMO No. 43-90 for the issuance of a new LOA in case of reassignment/transfer of cases to another RO.

In effect, Section IV, F(2) of RMO No. 8-2006 cannot be validly invoked by petitioner to dispense with the issuance of the new LOA for ROs Morris G. Bihis and Melissa Carla Baez to conduct the audit investigation of respondent for taxable year 2007.

But even granting that the earlier quoted provisions of RMO Nos. 36-2000 and 8-2006 are to the effect that in case of reassignment/ transfer of a case to another RO, the issuance of an LOA can be dispensed with, the same is of no moment.

This is simply because it would run counter to the aforequoted Section 6(A) of the NIRC of 1997, which is the substantive law on the matter; and the corresponding judicial pronouncement of the Supreme Court in the *Medicard* case, which became part of the legal of the Philippines.[38] As such, the said provisions of RMO Nos. 36-2000 and 8-2006 cannot be considered as valid,[39] and must not be adhered to, as it is not legally binding. A mere administrative

---

[38] Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. (Article 8, Civil Code of the Philippines)

[39] Administrative or executive acts, orders or regulations shall be valid only when they are not contrary to the laws or the Constitution. [Article 7 *(last paragraph)*, Civil Code of the Philippines]

issuance cannot amend the law; the former cannot purport to do any more than implement the latter.[40]

Relative thereto, it must be emphasized that the CIR, through the Issuance of Revenue Memorandum Circular (RMC) No. 75-2018[41], recognized the ruling in the *Medicard* case, in this wise:

> "The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, <u>through an LOA</u>. The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
>
> xxx xxx xxx
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." *(Emphasis and underscoring supplied)*

Thus, We see no reason not to apply the said ruling in the *Medicard* case to the instant case.

The* Sony Philippines *case is applicable in the instant case.

We likewise disagree with petitioner's contention that the *Sony Philippines* case has no relevance to the instant case and that the doctrine of *stare decisis* cannot set in on the ground that the set of facts between these two cases differ.

---

[40] *Secretary of Finance Cesar V. Purisima, et al. vs. Philippine Tobacco Institute, Inc.*, G.R. No. 210251,

[41] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

For ease of reference, We quote the pertinent ruling in the *Sony Philippines* case, to wit:

> "**Based on Section 13 of the Tax Code, a Letter of Authority or 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.** The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> > 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 <u>may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from **authorizing the examination of any taxpayer.** x x x (Emphases supplied)
>
> **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.**" *(Emphases supplied)*

A more careful reading of the foregoing would reveal that the High Court has specifically interpreted Sections 13 and 6(A) of the NIRC of 1997, in this wise: (1) an LOA is the authority given to the appropriate RO assigned to perform assessment functions, and it empowers or enables said RO to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax; (2) there must be a grant of such authority before any RO can conduct an examination or assessment; and (3) in

M

the absence of such authority, the assessment or examination is a nullity.

It must be remembered that judicial decisions (such the *Sony Philippines* case) applying the laws [such as Sections 13 and 6(A) of the NIRC of 1997] or the Constitution shall form part of the legal system of the Philippines.[42] These decisions, although in themselves not laws, constitute evidence of what the laws mean. The application or interpretation placed by the Supreme Court upon a law is part of the law as of the date of the enactment of the said law since the High Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.[43] In other words, judicial decisions of the Supreme Court assume the same authority as the statute itself.[44] This means that the above-stated interpretation of the High Court of Sections 13 and 6(A) of the NIRC of 1997 formed part of the said provisions as of the date of the law's enactment.

To reiterate, in this case, We find that the ROs, who continued the audit/investigation of respondent for taxable year 2007, were **not authorized**, **through an LOA**, to conduct the same. Thus, considering that the provisions of law, which deal with the issuance of an LOA before an RO may conduct an audit of the taxpayer's records, are Sections 13 and 6(A) of the NIRC of 1997—the very provisions of law We quoted and applied to the instant case, the above-enumerated interpretations on the said provisions (as enunciated in the *Sony Philippines* case) are therefore applicable, and must perforce be applied, to the present case as well.

Relative thereto, it must be emphasized that it is the duty of this Court to obey the said decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[45] As eloquently declared by Justice J.B.L. Reyes, *"There is only one Supreme Court from whose decisions all other courts should take their bearings."*[46]

---

[42] Article 8, Civil Code of the Philippines (Republic Act No. 386).
[43] *Floresca, et al. vs. Philex Mining Corporation, et al.*, G.R. No. L-30642, April 30, 1985.
[44] *Id.*
[45] *Manila Electric Company vs. Philippine Consumers Foundation, Inc., et al.*, G.R. No. 101783, January 23, 2002.
[46] *Id.*

ᴹᴼ

In sum, considering that RO Morris G. Bihis and RO Melissa Carla Baez were not duly authorized through an LOA, the subject tax assessments and the PCL, which came about as a result of their examination of respondent's books of accounts and accounting records for taxable year 2007, are void. To stress, a void assessment bears no valid fruit.[47]

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated March 7, 2018 and Resolution dated May 21, 2018, both rendered by the Court in Division in CTA Case No. 9372 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

---

[47] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

(With Separate Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,	**CTA EB NO. 1870** (CTA Case No. 9372)
Petitioner,	Present:
	Del Rosario, P.J., Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, JJ.
-versus-	
BISAZZA PHILIPPINES, INC., *Respondent.*	SEP 02 2019 11:03 a.m.

x---x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue.

In addition, I submit that the **Formal Letter of Demand (FLD) and Assessment Notices (FAN), all dated January 7, 2011, subject of the present controversy, are null and void for having been issued in violation of petitioner's right to due process.**

Pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 3.1.2 of Revenue Regulations (RR) No. 12-99, a taxpayer shall be required to respond to the Preliminary Assessment Notice (PAN) within fifteen (15) days from receipt thereof. Upon the lapse of the 15-day period, the taxpayer is considered in default and the Bureau of Internal Revenue (BIR) shall issue a formal letter of demand and assessment notice.

In the case at bar, petitioner **received a copy of the Preliminary Assessment Notice (PAN) dated December 15, 2010 on <u>December 28, 2010</u>**. Petitioner, therefore, had **fifteen (15) days** or until **<u>January 12, 2011</u>** within which to file a reply or protest against the PAN.

Interestingly, **the BIR prepared the FLD and FAN on January 7, 2011**. Evidently, the BIR did not wait for petitioner to reply to the PAN or within the fifteen (15)-day period provided in RR No. 12-99 before issuing the FLD and FAN.

The right of the taxpayer to respond to the PAN is an important part of the due process. In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment.

The Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. On this point, the eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[1] *and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[2] relative to the utmost importance of observing due process in issuing deficiency tax assessments is edifying, *viz.*:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void**. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and **always with regard to the basic tenets of due process**.
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue**

---

[1] G.R. Nos. 201398-99, October 3, 2018.
[2] G.R. Nos. 201418-19, October 3, 2018.

> **to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.** Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> x x x
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.** (Citations omitted; additional boldfacing supplied)

In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,*[3] the Supreme Court categorically ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz.*:

> "In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **<u>While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued</u>**. Xxx." (Boldfacing and underscoring supplied)

It is worthy to note that, in the past, the Court of Tax Appeals (CTA) has declared void any assessment that fails to comply with the due process requirement.[4] In the recent case of *Roca Security and Investigation Agency, Inc. vs. Commissioner of Internal Revenue*,[5] the Court *En Banc*, through the *Honorable Associate Justice Esperanza R. Fabon-Victorino*, elucidated on the importance of observing the fifteen (15)-day period within which a taxpayer may respond to the PAN before the BIR may issue the FAN and the consequence of the latter's failure to comply therewith, *viz.*:

> "Thus, a taxpayer has fifteen (15) days from receipt of the PAN to respond or file a protest thereto. It is only upon the lapse of this 15-day period, with or without a response/protest from the taxpayer, that the CIR or his legally authorized representative may issue the FLD or final assessment notice.

---

[3] G.R. No. 172598, December 21, 2007.
[4] *A Brown Co., Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6357, June 7, 2004; *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6980, October 4, 2010; *Yumex Philippines Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8331, 28 November 2013; Commissioner of Internal Revenue vs. Linde Philippines, Inc., CTA EB No. 1515, March 7, 2018.
[5] CTA EB No. 1523, March 7, 2018, penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr. Lovell R. Bautista, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan; Associate Justice Erlinda P. Uy was on leave.

xxx

Record however reveals that respondent issued the FLD with assessment notices 6 days before the 15-day period to file protest expired, or on April 12, 2013. Evidently, the FLD was prematurely issued in violation of petitioner's right to due process.

xxx

It cannot also be denied that with the premature issuance of the FLD on April 12, 2013, **any argument or evidence adduced by petitioner in support of its protest against the PAN was pointless, if not moot, for at that time, respondent was already dead-set or bent on upholding the assessment as contained in the PAN. This indubitably constitutes denial of due process as petitioner was not given the opportunity to dispute and present evidence against the PAN, before the final assessment was issued.** (Boldfacing supplied)

Although petitioner received the FLD and FAN on January 18, 2011, after it filed its protest to the PAN on January 10, 2011, **the fatal infirmity that attended their issuance prior to the lapse of the period to respond to the PAN is not cured thereby**. In view of the palpable violation of petitioner's right to procedural due process, the FLD and FAN - - being fatally infirm - - should be considered void.

All told, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

BISAZZA PHILIPPINES, INC.,
Respondent.

CTA EB NO. 1870
(CTA Case No. 9372)

Present:

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

Promulgated:

SEP 02 2019
11:03 a.m.

x---x

SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Erlinda P. Uy in denying the Petition for Review filed by the Commissioner of Internal Revenue and thus, affirming the Decision of the Second Division of this Court in CTA Case No. 9372.

Based on the records, Revenue Officer Lloyd B. Patinglag (RO Patinglag) and Group Supervisor Nena Joyce W. Geston (GS Geston) were originally authorized to conduct the audit investigation of petitioner's books of accounts and other accounting records for taxable year 2007 under Letter of Authority (LOA) No. 2008-00011590 dated December 9, 2008 issued by Regional Director Jaime B. Santiago of Revenue Region No. 9.

On May 21, 2009, Revenue District Officer Rodolfo G. Mindanao, Jr. (RDO Mindanao) of Revenue District Office No. 054-B issued a letter informing petitioner that in view of the newly created Revenue District Office which has the investigative jurisdiction over the case, the authority to examine petitioner's all internal revenue taxes for taxable year 2007 is reassigned to Revenue Officer Morris G. Bihis (RO Bihis) under the supervision of GS Geston.

On July 27, 2011, a Memorandum of Assignment was issued by Revenue District Officer Carmelita B. Estolas (RDO Estolas) of Revenue District Office No. 054-B addressed to Revenue Officer Melissa Carla Baez (RO Baez) and Group Supervisor Ruth Agustin (GS Agustin) referring to them the audit/verification of petitioner's all internal revenue taxes for taxable year 2007 pursuant to LOA No. 2008-00011590 for the continuation of such audit investigation to replace the previously assigned Revenue Officers who resigned, retired or transferred to another revenue district.

The records likewise do not show that a Letter of Authority was issued in favor of ROs Bihis and/or Baez as well as GS Geston and/or Agustin.

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.

> 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:
>
> (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
>
> (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 Letters of Authority. 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 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

[1] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

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 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. 2008-00011590 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 2007. As it appears, RO Bihis and GS Geston conducted the audit examination on the basis of the letter issued by RDO Mindanao reassigning to them the conduct of examination of petitioner's books of accounts and other accounting records for taxable year 2007 while RO Baez and GS Agustin continued such audit examination based on a Memorandum of Assignment issued to them by RDO Estolas.

Guided by the foregoing disquisition, I submit that the letter issued by RDO Mindanao as well as the Memorandum of Assignment issued by RDO Estolas cannot validly grant RO Bihis, GS Geston, RO Baez and GS Agustin the authority to conduct the audit examination pursuant to LOA No. 2008-00011590. As Revenue District Officers, RDO Mindanao and RDO Estolas are 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

---

[2] Revenue Administrative Order No. 001-12 dated April 2, 2012.

[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."

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.

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

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

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1870** *(CTA Case No. 9372)*
- versus -	*Present:* DEL ROSARIO, *P.J.*, CASTAÑEDA JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, *and* MODESTO-SAN PEDRO, *JJ.*
BISAZZA PHILIPPINES, INC., *Respondent.*	Promulgated: SEP 02 2019 11:03 a.m.

x---x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleague, Associate Justice Erlinda P. Uy, I concur with the dispositive portion of the *ponencia* in denying the Petition for Review filed by the petitioner, Commissioner of Internal Revenue (CIR), for the reasons discussed below.

As pointed out in the Concurring Opinion of Presiding Justice Roman G. Del Rosario, it appears that respondent Bisazza Philippines, Inc. (Bisazza) had until January 12, 2011 to file a reply or protest against the PAN. However, records show that the BIR prepared the FLD and FAN on January 7, 2011, effectively depriving Bisazza of due process. Even on this sole ground, the Petition should be denied.

However, the *ponencia* also denied the Petition on the basis of lack of authority of the examining Revenue Officer (RO), for want of a Letter of Authority (LOA), despite the existence of a Memorandum Letter reassigning the case to RO Morris G. Bihis and, subsequently, RO Melissa Carla Baez and GS Ruth Agustin for the continuation of the audit/investigation of Bisazza for taxable year (TY) 2007.

I am of the firm belief that notwithstanding the absence of a new LOA issued in their favor, ROs Bihis and Baez may be given the authority to continue the audit and examination of Bisazza'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 Lloyd B. Patinglag 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 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 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 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:

---

[1] *Emphasis and underscoring supplied.*

(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

(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

[2] *Emphasis and underscoring supplied.*

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 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]

---

[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 RO Patinglag who was originally named in the LOA may be revoked, transferred and reassigned to ROs Bihis and Baez, 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 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

---

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 Mendozo-Roy and Spouses Dominodor Lozado and Martina Mendoza-Lozada*, G.R. No. 173211, October 11, 2012 citing *Spouses Villaceron v. De Guzmon*, G.R. No. 169055, February 22, 2012; *Ramos v. Heirs of Honorio Romos, Sr.*, G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; *Heirs of Policronio M. Ureto, Sr. vs. Heirs 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 Appeols*, 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 os Commissioner of the Bureou 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).

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 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, ROs Bihis and Baez who conducted the examination of Bisazza'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 Revenue District Officer (RDO) Rodolfo G. Mindanao, Jr., and, subsequently, RDO Carmelita B. Estolas. Therefore, ROs Bihis and Baez were without authority to continue the audit.

From all the foregoing, I vote to **DENY** the Petition for Review filed by Bisazza.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

---

[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.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

BISAZZA PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 1870
(CTA Case No. 9372)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 02 2019 11:03 a.m.

x- x

SEPARATE CONCURRING OPINION

MANAHAN, J.:

I concur with the denial of the Petition for Review filed by the Commissioner of Internal Revenue, however, for different reasons.

The majority ruled that the continuation of audit by a revenue officer (RO) other than the officer named in a previous Letter of Authority (LOA) requires the issuance of a new LOA to the new RO in cases of reassignment, retirement, or transfer of the previous RO. This lack of authority rendered the subject assessments void.

I disagree.

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

In the instant case, LOA No. 2008-00011590[1] dated December 9, 2008 was issued by Regional Director Jaime B. Santiago of Revenue Region No. 9. It is undisputed that the Regional Director is one of the authorized officials to sign an LOA.

On May 19, 2009, a Memorandum was issued directing RO Morris G. Bihis to continue the audit/examination, signed by Revenue District Officer (RDO) Rodolfo G. Mindanao, Jr.

On July 27, 2011, through a Memorandum of Assignment signed by RDO Carmelita B. Estolas, the continuation of audit/verification was referred to RO Melissa Carla Baez.

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

The processes internal to an administrative agency are numerous and complex at best, oftentimes depending on the availability of the signatories and the back and forth communications of examiners and taxpayers in the process of investigation/examination. Thus, I reiterate the Honorable Justice Juanito C. Castañeda, Jr.'s disquisition, as follows:

> A duly issued LOA, valid in all respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and

---

[1] Docket, CTA Case No. 9372, Vol II, Exhibit "P-2", p. 756.

> objectives. As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.

The majority also cited Revenue Memorandum Circular (RMC) No. 75-2018[2], where the Bureau of Internal Revenue (BIR) recognized that "[a]ny tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void'." This is undisputed. An assessment issued without an LOA is void. However, it is my position that in the cases involving a validly issued LOA, and later continued through a MOA, there is in fact, an LOA. These cases do not involve assessments "without an LOA".

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

However, despite this position that the LOA and MOA validly authorized the ROs assigned to this case, I vote to deny the Petition for Review on the ground of prescription of the CIR's right to collect on the assessment, as discussed in the assailed Decision dated March 7, 2018 in CTA Case No. 9372.

All told, I CONCUR in the result.

CATHERINE T. MANAHAN
Associate Justice

---

[2] The Mandatory Statutory Requirement and Function of a Letter of Authority, September 5, 2018.