**REPUBLIC OF THE PHILIPPINES**
***Court of Tax Appeals***
**QUEZON CITY**

***En Banc***

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| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA *EB* NO. 2052** *(CTA Case No. 9273)* |
| | Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY,** |
| *-versus-* | **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| | Promulgated: |
| **ENJAY HOTELS, INC.,** *Respondent.* | SEP 16 2020 3:07 p.m. |

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# DECISION

***MODESTO-SAN PEDRO, J.:***

## The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] asking the Court *En Banc* to reverse and set aside the Decision, dated 24 January 2019, as well as the Resolution, dated 5 April 2019, rendered by the Special Second Division ("Court in Division") of the Court of Tax Appeals ("CTA").

Petitioner also prays for the Court *En Banc* to render a new Decision ordering respondent to pay deficiency Income Tax ("IT"), Value-Added Tax ("VAT"), Expanded Withholding Tax ("EWT"), Final Withholding VAT ("FWVAT"), and Documentary Stamp Tax ("DST"), inclusive of surcharge, interests, and compromise penalty for taxable year 2009 ("TY 2009") in the total amount of ₱37,283,707.53, plus 25% surcharge and 20% deficiency and delinquency interest for late payment until fully paid pursuant to Sections 248 and 249 of the 1997 National Internal Revenue Code, as amended by the

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[1] See Petition for Review, *Rollo,* pp. 6-64, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.

TRAIN Law, (hereinafter referred to as the "Tax Code") and Revenue Regulation No. 21-2018 ("RR No. 21-08").

## The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed assessments and cancel and abate tax liabilities pursuant to the provisions of the Tax Code and other tax laws, rules, and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Enjay Hotels, Inc., is a domestic corporation duly organized and existing under Philippine laws, with office address at 19th Floor Tower One & Exchange Plaza, Ayala Avenue, Makati City. It is also registered with the BIR as a corporation engaged in the hotel business.

## The Facts

On 24 May 2010, respondent received Letter of Authority ("LOA") No. 126-2010-00000037, dated 14 May 2010, issued by then CIR Joel L. Tan-Torres, covering the audit investigation of all its internal revenue taxes for TY 2009. The revenue officers authorized to conduct the audit pursuant to the LOA were Revenue Officers Gerald Alan Quebral, Belinda Balagtas, Wenceslao Jr Concepcion, Cecille Uy, and Group Supervisor Noemi Castro.[3]

Thereafter, respondent executed several Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (hereinafter referred to as "Waivers") on 25 October 2012, 25 February 2013, 12 September 2013, and 22 May 2014.[4]

On 19 March 2013 and 12 July 2013, respectively, Officer-in-Charge ("OIC") Chief Regular Large Taxpayers Audit Division 3 ("LTAD 3"), Antonio Jonathan G. Jaminola, issued Memorandum of Assignment ("MOA") Nos. 126-RE-2013-0066 and 126-OT-7-13-59, reassigning the audit investigation of respondent to Revenue Officer Ofelia P. Gratuito and Group Supervisor Guia T. Bobis for TY 2009 in view of the transfer of Revenue Officer Belinda Balagtas to LTAD Makati.[5]

On 11 June 2014, respondent received a Preliminary Assessment Notice ("PAN") on even date together with Details of Discrepancies.[6]

[3] See Decision, *Rollo*, pp. 36-56.
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

This was followed by a Formal Letter of Demand ("FLD") with attached Final Assessment Notice ("FAN") from then CIR Kim S. Jacinto-Henares, received by respondent on 10 September 2014, assessing it for deficiency IT, VAT, EWT, FWVAT, Fringe Benefit Tax, and DST, inclusive of surcharge, interests, and compromise penalty for TY 2009.[7]

On 10 October 2014, respondent sent a Protest Letter to the BIR formally protesting the FLD.[8]

Subsequently, on 9 December 2014, respondent filed a Submission Letter, of even date, submitting additional documents in support of its Protest Letter.[9]

On 25 January 2016, respondent received a Final Decision on Disputed Assessment ("FDDA") denying its Protest Letter and finding it liable for deficiency taxes in the amount of ₱37,283,707.53,[10] broken down as follows:

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|---|---|
| Deficiency IT | ₱ 15,051,026.51 |
| Add: Interest (4/16/2010 to 1/31/2016) | 17,438,119.31 |
| Compromise Penalty | 50,000.00 |
| Total Amount Due | ₱ 32,539,145.82 |
| | |
| Deficiency VAT | ₱ 1,054,812.59 |
| Add: Interest (1/26/2010 to 1/31/2016) | 1,269,150.51 |
| Compromise Penalty | 25,000.00 |
| Total Amount Due | ₱ 2,348,963.10 |
| | |
| Deficiency EWT | ₱ 690,686.06 |
| Add: Interest (1/16/2010 to 1/31/2016) | 834,832.24 |
| Compromise Penalty | 20,000.00 |
| Total Amount Due | ₱ 1,545,518.30 |
| | |
| Deficiency FWVAT | ₱ 74,904.22 |
| Add: Interest (1/26/2010 to 1/31/2016) | 90,536.73 |
| 25% Surcharge | 18,726.06 |
| Compromise Penalty | 12,000.00 |
| Total Amount Due | ₱ 196,167.01 |

[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*

| | | |
|---|---|---|
| Deficiency DST | ₱ | 222,188.00 |
| Add: Interest (1/11/2010 to 1/31/2016) | | 285,178.30 |
| 25% Surcharge | | 55,547.00 |
| Compromise Penalty | | 16,000.00 |
| Total Amount Due | ₱ | 578,913.30 |
| | | |
| Compromise Penalty | ₱ | 75,000.00 |
| | | |
| **Total Amount of Taxes Due** | **₱** | **37,283,707.53** |

Aggrieved, respondent filed the original Petition for Review with the Court in Division on 24 February 2016.[11]

On 24 January 2019, the Court in Division promulgated the assailed Decision[12] cancelling and setting aside the FDDA, as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated January 25, 2016 assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax, final withholding VAT and documentary stamp tax, plus surcharge, interest and compromise penalty, for the taxable year 2009, in the aggregate amount of ₱37,283,707.53 is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"

In the said Decision, the Court in Division found that the revenue officers who recommended the issuance of the PAN, FLD, and FAN, namely Revenue Officer Ofelia P. Gratuito and Group Supervisor Guia T. Bobis (collectively referred to as "Revenue Officers") were not authorized by an LOA and consequently ruled the resulting deficiency tax assessments as void.[13]

Undaunted, petitioner filed his Motion for Reconsideration on 12 February 2019. The same was subsequently denied by the Court in Division through the assailed Resolution dated 5 April 2019.[14] The assailed Resolution was received by the petitioner on 15 April 2019.

On 29 April 2019, petitioner filed a Motion for Extension of Time to File Petition for Review.[15] The Court *En Banc* granted the Motion and gave

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[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] See Resolution, *Rollo*, pp. 57-64.
[15] See Motion for Extension of Time to File Petition for Review, *Rollo*, pp. 1-4.

petitioner a non-extendible period of fifteen (15) days from 30 April 2019, or until 15 May 2019, to file his Petition for Review.[16]

Petitioner filed the instant Petition for Review on 15 May 2019.[17]

Thereafter, on 31 May 2019, the Court *En Banc* issued a Resolution ordering respondent to file its Comment within ten (10) days from receipt of the same.[18]

Respondent filed a Motion for Extension of Time to File Comment to the Petition for Review on 21 June 2019, asking the Court *En Banc* an additional period of 20 days from 21 June 2019 or until 11 July 2019 to file its Comment.[19] The Court *En Banc* granted the said Motion on 24 June 2019.[20]

Subsequently, respondent filed its Comment on 10 July 2019.[21]

On 29 July 2019, the Court *En Banc* referred the case for mediation pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[22]

On 10 September 2019, the parties, through the Philippine Mediation Center Unit of the CTA, filed their No Agreement to Mediate dated 10 September 2019.[23]

Considering the decision of the parties not to mediate, the Court *En Banc* issued a Resolution, dated 2 October 2019, submitting the case for resolution.[24] Hence, this Decision.

## **The Issues**

The petitioner raises the following issues for the Court *En Banc's* consideration, to wit:

> THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ASSESSMENTS ARE VOID BECAUSE THE REVENUE OFFICERS WHO CONDUCTED THE AUDIT OF RESPONDENT'S BOOKS OF ACCOUNTS

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[16] See Minute Resolution, *Rollo*, p. 5.
[17] See Petition for Review, *Rollo*, pp. 6-64, with annexes.
[18] See Resolution, *Rollo*, pp. 66-67.
[19] See Motion for Extension of Time to File Comment to the Petition for Review, *Rollo*, pp. 68-70.
[20] See Minute Resolution, *Rollo*, p. 71.
[21] See Comment, *Rollo*, pp. 72-78.
[22] See Resolution, *Rollo*, pp. 80-81.
[23] See No Agreement to Mediate, *Rollo*, pp. 82-83.
[24] See Resolution, *Rollo*, pp. 89-85.

WERE ALLEGEDLY NOT AUTHORIZED THROUGH AN LOA.

THE HONORABLE COURT IN DIVISION ERRED IN APPLYING THE RULINGS OF THE HONORABLE SUPREME COURT IN THE CASES OF MEDICARD VS. CIR AND CIR VS. SONY PHILIPPINES SINCE THE RULINGS ARE NOT APPLICABLE TO THE INSTANT CASE; AND

THE HONORABLE COURT IN DIVISION ERRED IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR BY RESPONDENT. PETITIONER'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED. [25]

## Arguments of the Parties

### Petitioner's Arguments[26]

Petitioner argues that the Court in Division erred in cancelling the assessments on the ground that the Revenue Officers who conducted the audit investigation of the respondent were not authorized pursuant to an LOA.

Petitioner explains that the Revenue Officers were, in fact, duly authorized pursuant to two MOAs, which, under ***Revenue Memorandum Order ("RMO") No. 8-2006***,[27] are valid issuances in case of reassignment of an audit investigation where the original revenue officers assigned to conduct the audit resigned, retired, or was transferred to another revenue region. He contends that the MOAs derive their authority from the original LOA and that, as such, it follows that the Revenue Officers' authority is also derived from the said LOA.

Petitioner posits that the issuance of a MOA instead of an LOA in cases of reassignment of audit is consistent with the pronouncement in ***RMO No. 8-2006***[28] which limits the issuance of an LOA to one per taxable year (hereinafter referred to as "one LOA per year rule").

Further, petitioner explains that there is no requirement in law that revenue officers must be identified in the LOA. He argues that the LOA is issued only to inform the taxpayer that an audit of his person has been authorized by the CIR and not to give authority to a revenue officer. He alleges that once the LOA is served, any duly authorized revenue officer may conduct

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[25] See Petition for Review, *Rollo*, pp. 6-29.
[26] *Ibid.*
[27] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), 01 February 2006.
[28] *Ibid.*

the audit. The authority to conduct the audit may either be in the LOA or in another document issued by the CIR or his duly authorized representative.

Likewise, petitioner argues that the Court in Division erred in citing the cases of ***Commissioner of Internal Revenue v. Sony Philippines, Inc. (hereinafter referred to as "Sony Case")***[29] and ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue (hereinafter referred to as "Medicard Case")***[30] as bases for the assailed Decision. He maintains that the said cases are not applicable to the instant case. He explains that in the ***Sony Case*** the issue was the validity of an assessment issued for unverified prior years, while in the ***Medicard Case*** the issue was whether the VAT assessment based on a Letter Notice is valid.

Lastly, petitioner contends that the issue on the authority of the Revenue Officers to conduct respondent's audit investigation was never raised in the original Petition for Review and, therefore, by ruling over the issue, he alleges that he was denied of his procedural and substantive due process as he was neither heard nor given the opportunity to be heard on the particular issue. He explains that the pronouncement in ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc. (hereinafter referred to as "Lancaster Case")***[31] did not intend for the court to resolve as a main issue a matter not derived from the pleadings, consistent with the Rules of Court and RRCTA.

## Respondent's Counter-Arguments[32]

Respondent counters that ***RMO No. 8-2006***[33] does not do away with the specific requirement that a revenue officer should be named in the LOA. Also, it posits that the one LOA per year rule was put out of context by the petitioner. It explains that the rationale behind the guideline is not to strictly prohibit the issuance of more than one LOA per year but to restrict the issuance of duplicate LOAs. It contends that there is nothing in the Tax Code which prohibits the issuance of another LOA to supersede a previously-issued LOA in the event of transfer or incapacity of a revenue officer named in the previously issued LOA.

Also, respondent contradicts petitioner's assertion that the ***Sony Case*** and ***Medicard Case*** are not applicable in this case. It alleges that all three cases have common threads which are: (a) the requirement for a grant of authority before any revenue officer can conduct an examination or assessment, and (b) the nullity of the assessment or examination in the absence of such an authority.

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[29] G.R. No. 178697, 17 November 2010.
[30] G.R. No. 222743, 5 April 2017.
[31] G.R. No. 183408, 12 July 2017.
[32] See Comment; *Rollo*, pp. 72-78.
[33] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), 01 February 2006.

Finally, respondent argues that the issue it raised in the original Petition for Review which is "whether it is liable for deficiency tax assessments issued by the petitioner for TY 2009" necessary includes the issue pertaining to the validity of the assessments and authority of the Revenue Officers to conduct its audit investigation. Therefore, it concludes that the Court in Division correctly ruled on the said issues.

## The Ruling of the Court

After reviewing the records and considering the arguments of both parties, the Court *En Banc* finds no reason to disturb the assailed Decision and Resolution of the Court in Division. To put our Decision in proper context, the Court *En Banc* will first resolve the third issue raised by the petitioner.

**The Court in Division correctly ruled on the issue pertaining to the authority of the Revenue Officers to conduct respondent's audit investigation.**

Petitioner insists that the Court in Division was erroneous in resolving an issue not raised by the respondent in its original Petition for Review. Petitioner cites the cases of ***Philippine Charter Insurance Corporation v. Philippine National Construction Corporation***,[34] ***Romago Electric Co., Inc. v. Court of Appeals***,[35] and ***Republic Telecommunications Holdings, Inc., v. Santiago***[36] to support his contention.

It is easy to see that his argument is without merit.

***Section 1, Rule 14 of the RRCTA*** is clear that the CTA is empowered to resolve issues not raised by the parties in their pleadings in order to achieve an orderly disposition of the case, to wit:

> "SECTION 1. Rendition of judgment. - x xx
>
> **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."**[37]

The said rule was affirmed by the Supreme Court in the ***Lancaster Case***, to wit:

[34] G.R. No. 185066, 2 October 2009.
[35] G.R. No. 125947, 8 June 2000.
[36] G.R. No. 140338, 7 August 2007.
[37] Emphasis supplied.

> "**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:
>
> SECTION 1. Rendition of judgment. - x xx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on 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.[38]

Hence, based on the foregoing law and jurisprudence, it is clear that the Court in Division can validly consider, in its Decision, issues that were not raised by any of the parties, including the authority of the Revenue Officers to conduct the audit investigation.

The Court cannot ascribe to the cases cited by the petitioner, considering the clear import of the ***Lancaster Case***, and their inapplicability to the present Petition since none of them are tax cases.

Likewise, the Court *En Banc* finds no merit to petitioner's contention that the issue pertaining to the authority of the Revenue Officers is not intrinsically related to the issue raised by the respondent in its original Petition as provided under ***Section 1, Rule 14 of the RRCTA***.

In fact, the issue is not novel and had already been resolved by the Court *En Banc* in the case of ***Commissioner of Internal Revenue v. Orient Overseas Container Line, Ltd. Represented by OOCL (Philippines), Inc.,***[39] where this Court ruled that the issue pertaining to the revenue officer's authority is intrinsically related to the validity of the assessment, to wit:

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

[38] Emphasis supplied.
[39] CTA EB Case No. 1956, 22 August 2019.

Hence, based on the foregoing case, the Court *En Banc* finds that the issue in relation to the Revenue Officers' authority to conduct the audit is intrinsically related to the issue raised by the respondent in its original Petition for Review, specifically the issue pertaining to its alleged liability to pay the deficiency tax on the basis of the assessments issued against it.

It should be noted that in resolving the issue of respondent's tax liability, the Court is entailed not only to rule on the correctness of the assessment but also as to its validity. This is in line with the long standing doctrine that "a void assessment bears no valid fruit."

Lastly, we do not agree with petitioner's argument that he was not accorded due process when the Court in Division resolved the issue on the Revenue Officers' authority. Petitioner is reminded that due process is satisfied when a party is given the opportunity to be heard and to present his evidence as ruled in the case of ***Milwaukee Industries Corporation v. CTA,***[40] to wit:

> "Accordingly, Milwaukee's right to due process was not transgressed. **<u>The Court has consistently reminded litigants that due process is simply an opportunity to be heard. The requirement of due process is satisfactorily met as long as the parties are given the opportunity to present their side. In the case at bar, Milwaukee was precisely given the right and the opportunity to present its side. It was able to present its evidence-in-chief and had its opportunity to present rebuttal evidence.</u>**"[41]

Based on the records of the case, the petitioner was given ample opportunity to present his evidence and witnesses. Furthermore, judgment in the case was rendered only after the conclusion of a full-blown trial. Hence, the allegation of the petitioner has no leg to stand on.

Given these reasons, the Court *En Banc* finds that the Court in Division did not err in resolving the issue pertaining to the authority of the Revenue Officers to conduct the audit of respondent although the same was not raised in the original Petition for Review.

**<u>The Revenue Officers do not have the pre-requisite authority to conduct respondent's audit, hence the assessments are void.</u>**

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[40] G.R. No. 173815, 24 November 2010.

[41] Emphasis supplied.

Going back to the first issue raised by the petitioner, it alleges that the MOA is sufficient to grant the Revenue Officers authority to continue the audit of respondent. He explains that there is no law which requires the name of the revenue officer who will conduct the audit investigation of a particular taxpayer be specified in the LOA. Further, he insists that the LOA is not an instrument granting authority to the examiners to conduct the audit but a mere issuance to inform the taxpayer that its books of accounts will be the subject of an audit investigation.

Petitioner asserts that once the LOA is served to the taxpayer, any duly authorized revenue officer may then conduct the audit, which he alleges to be the clear import of ***Section 13 of the Tax Code*** which uses the word "pursuant" rather than because of such LOA.

The Court *En Banc* finds the contention of the petitioner erroneous.

***Section 6(a) of the Tax Code*** grants the CIR or his duly authorized representative the power to authorize any revenue officer to conduct the audit investigation and assessment of a taxpayer, to wit:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, **<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."[42]

In the ***Sony Case***[43], the Supreme Court identified the LOA as the authority given by the CIR or his duly authorized representative to a revenue officer to conduct the audit investigation and assessment of a taxpayer, to wit:

> Based on Section 13 of the Tax Code, **<u>a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.</u> 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.**
>
> xxx xxx xxx

[42] Emphasis supplied.
[43] G.R. No. 178697, 17 November 2010.

> **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.[44]

The Supreme Court, in making the pronouncement, interpreted and relied on ***Section 13 of the Tax Code***, which provides:

> "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."**[45]

In the instant Petition, the petitioner insists that the LOA is not the authority granted to the revenue officer to audit a particular taxpayer because the provision made use of the word "pursuant," rather than "because of," and that it is only an issuance to inform the taxpayer that he will be subjected to an audit investigation.

Unfortunately, the Court *En Banc* does not find sense in the argument of the petitioner.

The plain meaning of the word "pursuant" is "in accordance with" a particular thing which can either be a rule or law.[46] To the Court *En Banc*'s mind, the import of ***Section 13 of the Tax Code*** is to require the revenue officer to conduct the audit investigation of a taxpayer within the limits of authority granted to him by the CIR or his duly authorized representative. This authority clearly pertains to the LOA.

To put the matter further into context, in ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.,***[47] the Court *En Banc* described the LOA as a document synonymous to a Contract of Agency, to wit:

> "**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**."

[44] Emphasis supplied.
[45] Emphasis supplied.
[46] Oxford Learner's Dictionary, https://www.oxfordlearnersdictionaries.com/us/definition/english/pursuant?q=pursuant, (last accessed 5 August 2020).
[47] CTA EB No. 1880, 6 August 2019.

> **<u>In an LOA, the CIR is the principal — as he is the one mandated by the law to make assessments — and the Regional Director, his agent.</u>** On the other hand, the Regional Director may appoint a sub-agent."[48]

Similar to a Contract of Agency, a LOA is the instrument which establishes the relationship between the CIR or his duly authorized representative and the revenue officer. Simply stated, this is the document where the authority, as well as the scope of said authority, is granted to the revenue officer.

Considering this, it also follows that the LOA itself is the best and only proof that the revenue officer may show to the taxpayer his authority to audit and assess the same. Hence, it is but natural that the revenue officers also use the LOA to inform the taxpayer that an audit of his person has been authorized by the CIR, as alleged by the petitioner.

As to the contention of the petitioner that the LOA need not indicate the names of the revenue officers duly designated to conduct the audit investigation and assessment of a taxpayer, the Court *En Banc* also finds the same wrong.

Since a LOA is synonymous to a Contract of Agency, the LOA should specifically indicate the name of the revenue officer who will conduct the audit and assessment of the taxpayer. Absent the same, the designation will be rendered futile.

Further, this issue has already been addressed by the Supreme Court in ***CIR v. Opulent Landowners, Inc.***,[49] to wit:

> "xxx **a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers.** It is axiomatic that **<u>only the revenue officers actually named under the LOA are authorized to examine the taxpayer.</u>** This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90, which provides that any re-assignment/transfer of cases to another revenue officer(s), and revalidation of a LOA which had already expired, shall require the issuance of a new LOA. **<u>In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.</u>**"[50]

In the aforementioned case, the Supreme Court specifically ruled that only the revenue officer named in the LOA has the requisite authority to audit and assess a taxpayer. It also added that an assessment made by an unauthorized revenue officer is, for all intents and purposes, considered void.

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[48] Emphasis supplied.
[49] G.R. Nos. 249883-84, 27 January 2020.
[50] Emphasis supplied.

As for the argument of the petitioner that the issuance of another LOA effecting the reassignment of the audit to Revenue Officer Ofelia P. Gratuito and Group Supervisor Guia T. Bobis violates the one LOA per rule under ***RMO No. 8-2006***, [51] the Court *En Banc*, likewise, finds the same without merit.

As pointed out by the respondent, the one LOA per rule under ***RMO No. 8-2006***[52] is put out of context by the petitioner. The entire section of the provision pertaining to the said rule is reproduced below:

> D. On Duplication of LAs[53] Issued
>
> 1. **Only one (1) LA shall be issued to the same taxpayer, for the same tax type and period**, except where an LA was issued for a specific tax type only and subsequently, another LA was issued to the same taxpayer by the same or another office covering the investigation of all internal revenue taxes (AIRT) for the same taxable period. The LA issued for AIRT purposes shall be allowed provided the coverage shall be limited to AIRT except for the specific tax type and said coverage shall be clearly stated on the face of the LA.
>
> 2. **In case two or more LAs are issued to the same taxpayer for the same tax type and for the same period, the power to decide which LA shall prevail shall be under the exclusive jurisdiction of the Commissioner (CIR). The LA prevailed upon shall be considered cancelled.** The concerned LTAID I and II/LTDO/RDO/NID/SID/TF shall indicate under Status Code "Cancelled" and select the appropriate Action Code "LA Cancelled by Order of the CIR". Under the Remarks column, indicate "Cancelled by LA No. ___ issued by (name office).
>
> 3. Where an LA had been previously issued for which deficiency taxes thereon had been paid or assessed as reflected in the docket and corresponding report of investigation, no new LA shall be issued for the same taxpayer covering the same tax type and taxable period, except in fraud cases. Any payment of deficiency tax or any amount assessed on the first audit case shall be credited against assessment in the subsequent fraud case if the findings/discrepancies in the fraud investigation disclose the same findings or issues included in the first audit case.

Based on the aforementioned, what ***RMO No. 8-2006***[54] seeks to avoid is a situation where two (2) existing LOAs are issued to one taxpayer, for the same tax type, and with period that subsist at the same time. The situation is not the same in the instant case. Here, the applicable provision in this case is the second paragraph, where the issuance of the new LOA authorizing Revenue Officer Ofelia P. Gratuito and Group Supervisor Guia T. Bobis

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[51] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), 01 February 2006.
[52] *Ibid.*
[53] Pertains to LOA.
[54] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), 01 February 2006.

supersedes the LOA initially issued. Hence, the aforementioned rule is not, in any way, violated.

Furthermore, contrary to the claim of the petitioner, ***RMO No. 43-90***[55] even requires the issuance of a new LOA in cases when an audit investigation is re-assigned or transferred to another revenue officer, to wit:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As 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.**"[56]

As for the contention of the petitioner that the MOA is sufficient to grant authority to Revenue Officer Ofelia P. Gratuito and Group Supervisor Guia T. Bobis to conduct the audit investigation and assessment of respondent, the Court *En Banc* finds no merit to the said argument.

As mentioned earlier, the Tax Code is clear that the LOA is the only authority given by the CIR or his authorized representative to the revenue officer to conduct the audit or assessment of a taxpayer. Hence, any change in the terms of the LOA including the revenue officer designated to conduct the audit necessitates the issuance of a new LOA.

It is of note that the Court *En Banc*, in the case of ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[57] had recognized that a written document which signifies the intention of the CIR or his duly authorized representative to reassign a taxpayer's audit and assessment to a new revenue officer may be considered as an equivalent of an LOA, to wit:

> This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Cletofel Parungao, Myrna Ramirez, Ma. Salud Maddela, Zenaida Paz, Allan Maniego, Joel Aguila, and GS Glorializa Samoy who were originally named in the LOA may be revoked, transferred and reassigned to RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña for continuance of audit.
>
> **Said document where such authority is transferred may be equivalent to an LOA**. Several reasons support this. *First,* **the only**

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

> **directive under Section 13 of the NIRC of 1997, as amended, which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done in writing.** In fact, an "[a]gency may be oral, unless the law requires a specific form."
>
> *Second*, **<u>although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer.</u>** The primary consideration in determining the true nature of a contract is the intention of the parries. **<u>If the words of a contract appear to contravene the evident intention of the parries, the latter shall prevail.</u>** Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parries. The title of the contract does not necessarily determine its true nature. In fact, this Court has, rime and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.
>
> In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner. 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."[58]

Hence, based on the aforementioned case, a document such as a MOA may be construed as an equivalent of a new LOA, provided that it contains all the elements necessary to establish a Contract of Agency between the CIR or his duly authorized representative and the new revenue officer. Included in these elements is the authority of the person issuing the MOA.

***Section 10(C) of the Tax Code*** grants the Revenue Regional Director, as petitioner's authorized representative, the authority to issue LOAs, to wit:

> "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 xxx xxx
>
> **<u>(c) Issue Letters of authority for the examination of taxpayers within the region;"</u>**[59]

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[58] Emphasis supplied.
[59] Emphasis supplied.

The position equivalent to a Revenue Regional Director for the Large Taxpayers Division, who is authorized to issue the LOA, is identified in ***RMO No. 29-07***[60] as the Assistant Commissioner/Head Revenue Executive Assistant, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> **2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants.**"[61]

Based on the records of this case, it is clear that the audit investigation of the respondent was initially assigned to Revenue Officers Gerald Alan Quebral, Belinda Balagtas, Wenceslao Jr Concepcion, Cecille Uy, and Group Supervisor Noemi Castro by virtue of LOA No. 126-2010-00000037.

Subsequently, the audit investigation was reassigned to Revenue Officer Ofelia P. Gratuito and Group Supervisor Guia T. Bobis pursuant to Memorandum of Assignment ("MOA") Nos. 126-RE-2013-0066 and 126-OT-7-13-59 which were signed by Antonio Jonathan G. Jaminola, OIC-Chief, Regular LTAD 3.

As such, it was Revenue Officer Ofelia P. Gratuito and Group Supervisor Guia T. Bobis who conducted the audit investigation of the respondent and who accordingly recommended the issuance of the PAN, FLD, and FAN against respondent for alleged deficiency taxes for TY 2009.

To reiterate, in order for the MOA to be considered as an equivalent of an LOA, it must be signed by the CIR or his duly authorized representative. However, in this case, it is clear from the aforementioned facts that the MOAs were only signed by Mr. Antonio Jonathan G. Jaminola, OIC-Chief, Regular LTAD 3, who is not the CIR, a Revenue Regional Director, or an Assistant Commissioner/Head Revenue Executive Assistant.

Therefore, on this account, both Revenue Officer Ofelia P. Gratuito and Group Supervisor Guia T. Bobis had no authority to continue respondent's

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60 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service, 26 September 2007.
61 Emphasis supplied.

audit which is in all fours with the Court *En Banc's* Decision in ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[62] to wit:

> "**In the instant case, the Memorandum of Assignment was only signed by Cesar D. Escalada, Chief, Regular LT Audit Division 1. Therefore, RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña were without authority to continue the audit**."[63]

Considering all the foregoing, the Court *En Banc* rules that the assessments issued against the respondent are void.

**The Sony Case and Medicard Case are both applicable to the instant Petition.**

Finally, the Court *En Banc* finds no merit to the argument raised by the petitioner that the ***Sony Case*** and the ***Medicard Case*** are not applicable to the instant Petition.

While it is true that the issue in the ***Sony Case*** mainly involves the validity of an assessment issued for unverified prior years and that the ***Medicard Case*** involves the issue of the validity of an assessment based on a Letter Notice, the said cases still discussed the issues pertaining to the importance of the authority granted to revenue officers pursuant to the conduct of their audit examination and assessment of a taxpayer, and the effect of an audit and assessment being done by an unauthorized revenue officer, which this Court is bound not to ignore.

Furthermore, it is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine of stare decisis as amply explained in the case of ***Amelia D. De Mesa, et al. v. Pepsi Cola Products, Phils., Inc., et al.,***[64] to wit:

> "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
>
> It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. **The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument**."[65]

[62] CTA EB No. 1880, 6 August 2019.
[63] Emphasis supplied.
[64] G.R. No. 153063-70, 19 August 2005.
[65] Emphasis supplied.

Thus, the Court in Division was not erroneous in applying the said cases in the assailed Decision and Resolution.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision promulgated on 24 January 2019 and the Resolution dated 5 April 2019 are hereby **AFFIRMED**.

**SO ORDERED.**

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

***WE CONCUR:***

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**ERLINDA P. UY**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
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