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

***En Banc***

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| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA *EB* NO. 2010** *(CTA Case No. 9190)* |
| *-versus-* | Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **TRINITY FRANCHISING AND MANAGEMENT CORPORATION,** *Respondent.* | Promulgated: JUL 14 2020 3:06 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[2] of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[3] seeking the nullification of the Decision promulgated on 2 October 2018 and the Resolution, dated 15 January 2019, by the Special Second Division ("Court in Division"), and to render a new judgment ordering respondent to pay the amount of ₱54,370,082.80 for deficiency Income Tax ("IT"), Documentary Stamp Tax ("DST"), Value-Added Tax ("VAT"), and Expanded Withholding Tax

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[1] See Petition for Review; *Rollo,* pp. 7-53, with annexes.

[2] "SECTION 3. *Who May Appeal; Period to File Petition.* —
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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

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

("EWT") for taxable year 2010 plus surcharge and delinquency and deficiency interests.[4]

Further, petitioner prays that respondent's claim for the issuance of tax credit certificate in the amount of ₱33,279,062.22 less the amount of deficiency DST, VAT, and EWT be denied for lack of merit.[5]

## *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, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (hereinafter referred to as the "Tax Code") or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

Meanwhile, respondent Trinity Franchising and Management Corporation is a domestic corporation duly organized and existing under Philippine laws, with principal office at No. 7, Mercury Avenue, Bagumbayan, Quezon City.[7]

## *The Facts*

On 12 July 2011, petitioner issued Letter of Authority ("LOA") No. LOA-125-2011-00000024, authorizing Revenue Officer Julius Rex Bungabong ("RO Bungabong") and Group Supervisor Fe Caling ("GS Caling") to examine respondent's books of accounts and other accounting records for IT for taxable year 2010, pursuant to Revenue Memorandum Order ("RMO") No. 62-2010.[8]

Thereafter, on 29 September 2011, petitioner issued another LOA No. 125-2011-00000073, authorizing RO Bungabong and GS Caling to examine respondent's books of accounts and other accounting records for all internal revenue taxes except for IT for taxable year 2010 pursuant to RMO No. 62-2010.[9]

On 22 March 2013, the BIR issued Memorandum of Assignment Nos. LOA-125-2013-142 and LOA-125-2013-143 authorizing Revenue Officer

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4 See Prayer in the Petition for Review; *Rollo*, pp. 18-19.
5 See The Facts in the Decision; *Rollo*, pp. 18-19.
6 *Id.*, p. 27.
7 *Ibid.*
8 *Ibid.*
9 *Ibid.*

Luzviminda A. Pedrosa ("RO Pedrosa") and GS Caling to continue the audit examination of respondent for taxable year 2010.[10]

Subsequently, on 29 August 2014, petitioner issued a Preliminary Assessment Notice ("PAN") with Details of Discrepancy and found respondent liable for deficiency IT, DST, VAT and EWT.[11]

On 14 November 2014, respondent received the Formal Letter of Demand and Final Assessment Notices ("FLD-FAN") with attached Details of Discrepancies, all dated 12 November 2014, assessing it for deficiency IT, DST, VAT, and EWT for taxable year 2010. Respondent filed its protest letter against the FLD-FAN on 15 December 2014.[12]

On 16 October 2015, respondent received a copy of the FDDA, dated 15 October 2015, assessing it for deficiency IT, DST, VAT, and EWT in the aggregate amount of ₱54,370,082.80 for taxable year 2010.[13]

Aggrieved, respondent filed a Petition for Review before the Court in Division on 13 November 2015 and raised the following issues:

> a. Whether or not respondent is liable to pay for deficiency IT, DST, VAT, and EWT, inclusive of increments, in the aggregate amount of ₱54,370,082.80 for taxable year 2010 as well as deficiency and delinquency interests as provided in Sections 248 and 249 of the Tax Code;
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> b. Whether or not petitioner's right to assess respondent for deficiency IT, VAT, and EWT for taxable year 2010 and/or portions thereof has allegedly prescribed;
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> c. Whether or not respondent is entitled to the issuance of a tax credit certificate in the amount of ₱33,279,062.22 allegedly representing excess and unused expanded creditable withholding tax for taxable year 2010; and
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> d. Assuming that the alleged income tax due per investigation is correct, whether or not respondent's alleged excess income tax credits from prior years in the amount of ₱44,103,744.25 can be offset against the alleged income tax due against respondent for the taxable year 2010.[14]

On 2 October 2018, the Court in Division promulgated the assailed Decision[15] cancelling and setting aside the FDDA, dated 15 October 2015, as follows:

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[10] *Ibid.*
[11] *Id.*, p. 28.
[12] *Ibid.*
[13] *Ibid.*
[14] *Id.*, pp. 30-31.
[15] *Id., pp. 38.*

> "**WHEREFORE,** premises considered, the Petition for Review is **GRANTED.** Accordingly, the Final Decision on Disputed Assessment dated October 15, 2015, assessing petitioner for deficiency income tax, documentary stamp tax, value-added tax, and expanded withholding tax in the aggregate amount of ₱54,370,082.80 for taxable year 2010 is **CANCELLED** and **SET ASIDE.**"

Thereafter, on 17 October 2018, the petitioner filed his Motion for Reconsideration Re: Decision dated 2 October 2018.[16] In the said Motion, petitioner contended that the Court in Division erred in addressing an issue which was not raised by the parties in violation of his basic right to fair play and due process.

He further argued that RO Pedrosa, the one who continued the audit examination, was duly authorized to conduct the audit, and therefore, the assessment issued against the respondent was also valid and lawful.

On 15 January 2019, the Court in Division issued the assailed Resolution[17] denying petitioner's Motion for Reconsideration for lack of merit. The dispositive portion is hereby quoted, to wit:

> "**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration Re: Decision dated 2 October 2018**, is **DENIED** for lack of merit."

On 6 February 2019, petitioner filed a Motion for Extension of Time to File Petition for Review,[18] which was granted by the Court *En Banc.*[19]

On 22 February 2019, petitioner filed the instant Petition for Review,[20] to which respondent submitted its Comment (to Petitioner's Petition for Review dated 21 February 2019) on 15 April 2019.[21]

On 7 May 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]

Subsequently, on 6 June 2019, the parties filed their No Agreement to Mediate, dated 4 June 2019, stating that they have decided not to have their case mediated by the Philippine Mediation Center Unit-Court of Tax Appeals.[23]

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[16] Docket, pp. 830-846.
[17] *Rollo*, pp. 40-44.
[18] *Id*, pp. 1-5.
[19] See Minute Resolution; *Rollo*, p. 6.
[20] *Rollo*, pp. 7-53, with annexes.
[21] *Id.*, pp. 57-74.
[22] *Id.*, pp. 76-77.
[23] *Id.*, pp. 78-82

Considering the decision of the parties not to mediate, the Court *En Banc* issued a Resolution, dated 18 June 2019, directing the parties to file their respective memoranda.[24]

On 23 July 2019, the petitioner filed a Manifestation stating that he is adopting the arguments he raised in his Petition for Review as his Memorandum.[25] Meanwhile, the respondent filed its Memorandum on 30 July 2019.[26]

On 22 August 2019, the Court *En Banc* promulgated a Resolution submitting the case for decision.[27] Hence, this Decision.

## *The Issues*[28]

THE HONORABLE COURT IN DIVISION ERRED IN ADDRESSING AN ISSUE WHICH WAS NOT RAISED BY RESPONDENT IN ITS ORIGINAL PETITION FOR REVIEW NOR BY THE PARTIES DURING TRIAL;

ASSUMING AN ISSUE NOT RAISED BY THE PARTIES DURING TRIAL MAY BE RESOLVED AS THE MAIN ISSUE, THE HONORABLE COURT ERRED WHEN IT CANCELLED THE ASSESSMENT ISSUED AGAINST RESPONDENT SOLELY ON THE GROUND THAT THE MEMORANDUM OF ASSIGNMENT WAS SIGNED BY A DIVISION CHIEF;

THE HONORABLE CTA EN BANC RECENTLY ADJUDICATED THIS SAME ISSUE IN FAVOR OF PETITIONER IN A SIMILAR CASE; AND

THE HONORABLE COURT SHOULD NOT SANCTION THE WRONG APPLICATION OF THE SACRED PRINCIPLE OF STARE DECISIS.

## *Arguments of the Parties*

### *Petitioner's Arguments*[29]

Petitioner argues that the lack of authority of the revenue officers to conduct the audit was never raised by the respondent in its original Petition for Review, and therefore, by resolving the said issue, the Court in Division

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[24] *Id.*, pp. 84-85.
[25] *Id.*, pp. 86-88.
[26] *Id.*, pp. 90-126.
[27] *Id.*, pp. 127-128.
[28] See Grounds in the Petition for Review; *Rollo*, pp. 8-9.
[29] See Petition for Review; *Rollo*, pp. 7-74.

denied him of his procedural and substantive due process since he was neither heard nor given the opportunity to be heard on the issue.

Petitioner maintains that the Court in Division's reliance on ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***[30] (hereinafter referred to as "Lancaster Case") citing Section 1, Rule 14 of the RRCTA is misplaced. He argues that the said provision only allows the Court to resolve the main issue under the proper perspective by including issues related to the same, and does not include, resolving as a main issue, a matter not raised by the parties in their pleadings.

Assuming, however, that an issue not raised in the pleadings can be resolved by the Courts, the petitioner insists that the OIC-Chief of LTS-RLTAD II has the authority to issue and sign the Memorandum of Assignment ("MOA") considering that he is the Head of the Investigating Office as provided under ***Revenue Memorandum Order ("RMO") No. 62-2010.*** To support his allegation, petitioner cited the CTA *En Banc* case of ***Oriental Assurance Corporation v. CIR.***[31]

Lastly, petitioner argues that the Court in Division's reliance on ***Commissioner of Internal Revenue v. Sony Philippines, Inc.***[32] (hereinafter referred to as "Sony Case") is misplaced. He opines that the facts in the Sony Case are not in all fours with the case at bar. Unlike in the Sony Case, the LOA in this case is valid and covers only one taxable year. Further, he mentions that the issue herein is the validity of the reassignment of respondent's audit and not the number of taxable years covered by the LOA.

***Respondent's Counter-Arguments***[33]

Respondent alleges that the instant Petition for Review raises no new issue and should be denied outright. Respondent maintains that petitioner's arguments are identical to the ones he raised in his Motion for Reconsideration which were already categorically denied by the Court in Division in its assailed Resolution and Decision.

Respondent also insists that the Court in Division has already considered and correctly found that RO Pedrosa has no authority to conduct the audit. It belies petitioner's argument that the issue resolved by the Court in Division is not among the issues it raised in its original Petition for Review. Respondent explains that it specifically prayed that a judgment be rendered declaring the Assessment invalid which subsumes the issue of RO Pedrosa's authority to conduct its audit.

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[30] G.R. No. 183408, 12 July 2017.
[31] CTA E.B. No. 1482 and 1487, 21 June 2018
[32] G.R. No. 178697, 17 November 2010.
[33] See Memorandum; *Rollo*, pp. 90-126.

Further, respondent argues that the MOA alone, without a new LOA, does not grant RO Pedrosa the authority to conduct its audit examination which is consistent with the CTA case of ***Commissioner of Internal Revenue v. Wellington Investment & Manufacturing Corporation.***[34]

Lastly, it alleges that the applicable jurisprudence in this case is not the Sony Case but ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***[35] which ruled on the irregularity of the audit examination conducted by the revenue officers who were not named in the LOA.

***The Ruling of the Court***

**The Court in Division did not err in ruling on the issue of the authority of the revenue officer**

The contention of the petitioner is without merit.

To reiterate, the CTA is not bound to only resolve issues raised by the parties. As ruled in the ***Lancaster Case***,[36] the CTA is authorized under Section 1, Rule 14 of the RRCTA to rule on related issues necessary to achieve an orderly disposition of the case, to wit:

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
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> > 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.
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> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."[37]

Petitioner argues that the Lancaster Case is not applicable to the instant Petition since the issue pertaining to the revenue officer's lack of authority to

[34] CTA E.B. Case No. 1773, 11 April 2019.
[35] G.R. No. 222743, 5 April 2017.
[36] G.R. No. 183408, 12 July 2017.
[37] Emphasis supplied.

conduct respondent's audit is not related to the issues raised by the parties in their respective pleadings. The petitioner is mistaken.

In the case of ***Commissioner of Internal Revenue v. Orient Overseas Container Line, LTD. Represented by OOCL (Philippines), Inc.***,[38] the Court *En Banc* ruled that a review of the revenue officer's authority to conduct an audit is intrinsically related to the issue of the validity of the assessment and consequently to the liability of the taxpayer, 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."

Applying the foregoing in the case at bar, we find that the issue as to the revenue officer's authority to conduct the audit is related to the issues raised by the respondent, specifically whether it is liable to pay deficiency IT, DST, VAT, and EWT.

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 its validity. This is in line with the long standing doctrine that "a void assessment bears no valid fruit".

Hence, we find the Court in Division to have the necessary authority to resolve the issue pertaining to the revenue officer's authority to conduct the audit of respondent even though the parties did not raise it in their pleadings or memoranda.

**The revenue officer does not have the pre-requisite authority to conduct respondent's audit, hence the assessment is void.**

The facts are undisputed that RO Pedrosa, who performed respondent's audit, is not authorized by an LOA to conduct the examination of its books of accounts and accounting records for taxable year 2010.

However, petitioner insists that RO Pedrosa's authority emanated from the MOAs, dated 22 March 2013, issued by Mr. Edwin T. Guzman, OIC-Chief of LTS-RLTAD II.

Hence, the issue now for the Court *En Banc's* resolution is whether the MOAs are sufficient to grant RO Pedrosa authority to audit respondent.

***Section 6(A) of the Tax Code*** grants the CIR or his duly authorized representative the power to authorize the examination and assessment of a taxpayer. The pertinent provision is quoted to wit:

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

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -**
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax:** Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[39]

In ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[40] the Supreme Court defined an LOA as the authority given by the CIR or his duly authorized representative to examine or assess a taxpayer, to wit:

> "**An LOA is the autbority 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."[41]

Meanwhile, in the case of ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[42] this Court recognized that a document which transfers a revenue officer's authority to examine and assess a taxpayer to another may be construed as an equivalent of a new 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 Ia Peiia for continuance of audit.
>
> **Said document where such authority is transferred may be equivalent to an LOA**. Several reasons support this. *First,* **the only directive under Section 13 of the NIRC of 1997, as amended, which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done in writing.** In fact, an "[a]gency may be oral, unless the law requires a specific form."
>
> *Second,* **although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer.** The primary consideration in determining the true nature of a contract is the intention of the parties. **If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail.** Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of

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[39] Emphasis supplied.
[40] G.R. No. 222743, 5 April 2017.
[41] Emphasis supplied.
[42] CTA EB No. 1880, 6 August 2019.

> the parties. The title of the contract does not necessarily determine its true nature. In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.
>
> In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner. 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."[43]

Hence, based on the aforementioned case, a document such as a MOA may be construed as a new LOA where the authority of a newly designated revenue officer may emanate from, 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.

As mentioned previously, an LOA can be issued either by the CIR or his authorized representative. ***Section 10 (C) of the Tax Code*** identifies the CIR's authorized representative as the Revenue Regional Director, 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
>
> (c) **Issue Letters of authority for the examination of taxpayers within the region;**"[44]

The position equivalent to a Revenue Regional Director for the Large Taxpayer's Services who is authorized to issue the LOA is identified in ***RMO No. 29-07***[45] as the Assistant Commissioner/Head Revenue Executive Assistants, 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

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[43] Emphasis supplied.

[44] Emphasis supplied.

[45] Revenue Memorandum Order No. 29-07- Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Services dated 26 September 2007.

> 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 <u>Assistant Commissioner/Head Revenue Executive Assistants</u>.**"[46]

In the case at bar, the MOA was only signed by Mr. Edwin T. Guzman, OIC-Chief of LTS-RLTAD II. He is neither the CIR, Revenue Regional Director, nor an Assistant Commissioner/Head Revenue Executive Assistant. Hence, RO Pedrosa has no authority to continue respondent's audit, which is in all fours with our decision in ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[47] 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."

Petitioner's reliance upon ***RMO No. 62-2010*** and ***Oriental Assurance Corporation v. CIR*** is misplaced. Nowhere in the said RMO and the case was it mentioned that the OIC-Chief of LTS-RLTAD II is one of the authorized representatives of the CIR when it comes to the issuance of an LOA.

Hence, based on the foregoing, we find that Mr. Edwin T. Guzman, OIC-Chief of LTS-RLTAD II has no authority to issue the MOA consequently resulting to the assessment issued against the respondent as being void.

As for the contention of the petitioner that the Sony Case is inapplicable to the present petition, we disagree with the petitioner.

The ***Sony Case***[48] discussed the importance of the authority given to revenue officers in the conduct of their audit examination and assessment which this Court is bound not to ignore. The relevant provision is hereby quoted, to wit:

> "Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity."

In view of the foregoing, this Court finds no reason to disturb the findings of the Court in Division.

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[46] Emphasis supplied.
[47] CTA EB No. 1880, 6 August 2019.
[48] G.R. No. 178697, 17 November 2010.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision promulgated on 2 October 2018 and the Resolution dated 15 January 2019 are hereby **AFFIRMED**.

**SO ORDERED.**

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

***WE CONCUR:***

(with Dissenting Opinion)
**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**ERLINDA P. UY**
Associate Justice

(With due respect, I join PJ's Dissenting Opinion)
**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

Catherine T. Manahan
(with Concurring Opinion)
**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

## C E R T I F I C A T I O N

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

**ROMAN G. DEL ROSARIO**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
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## DISSENTING OPINION

***DEL ROSARIO, P.J.:***

With due respect, I am constrained to withhold my assent on the *ponencia* which denies the Petition for Review and affirms the assailed Decision and Resolution of the Court in Division. The *ponencia in esse* declares that the assessments subject of the case are null and void as the examination of respondent's books of accounts was made by revenue officers *sans* a valid LOA.

I submit that the assessments issued against respondent are valid as the authority of **Group Supervisor Fe Caling** to examine respondent's books of accounts and other accounting records for the year 2010 emanated from Letter of Authority (LOA) No. 125-2011-00000073 dated September 29, 2011, issued by Alfredo D. Misajon, OIC-Assistant Commissioner, Large Taxpayer Service.[1]

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[1] Exhibit "R-2", BIR Records, p. 1.

While a Memorandum of Assignment dated March 22, 2013,[2] issued by Edwin T. Guzman, OIC-Chief, RLTAD2, assigned Revenue Officer Luzviminda A. Pedrosa to continue the audit/investigation of respondent, thereby replacing Revenue Officer Julius Rex Bungabong who was also named in the aforesaid LOA, **records show that Group Supervisor Caling continued to exercise her authority to conduct the examination of respondent.**

Truth to tell, Group Supervisor Caling, together with Revenue Officer Pedrosa, recommended the issuance of Preliminary Assessment Notice,[3] and later on, the issuance of the Formal Letter of Demand and Final Assessment Notices,[4] against respondent. Group Supervisor Caling participated in the actual audit and examination of respondent, and not merely in the review of the result thereof.

Considering that Group Supervisor Caling was imbued with authority to audit respondent, pursuant to a validly issued LOA, I submit that the Formal Letter of Demand and Final Assessment Notices, dated November 12, 2014, are not null and void. Hence, the case should be remanded to the Court in Division for the proper determination of the merits of the assessments and the amount of respondent's deficiency tax liabilities for the year 2010.

All told, I VOTE to: (i) GRANT the present Petition for Review; (ii) REVERSE and SET ASIDE the October 2, 2018 Decision and January 15, 2019 Resolution of the Court in Division; and, (iii) REMAND the case to the Court in Division to determine the merits of the assessments as contained in the Formal Letter of Demand and Final Assessment Notices, dated November 12, 2014, and consequently, the amount of Trinity Franchising and Management Corporation's deficiency internal revenue tax liabilities for the year 2010.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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[2] Exhibit "R-9", BIR Records, p. 35.
[3] Exhibit "P-62", BIR Records, p. 302.
[4] Exhibit "R-16", BIR Records, p. 339.

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## CONCURRING OPINION

**MANAHAN, *J.:***

I concur with the denial of the Petition for Review on the ground of lack of authority of the revenue officers who conducted the investigation and assessment of respondent.

However, I am of the view that it is the lack of a new Letter of Authority (LOA) assigning the continuation of the investigation of the respondent which renders the assessments null and void. Regardless of which BIR officer or official signed the Memorandum of Assignment (MOA) or Referral Memorandum, the same does not validly clothe a revenue officer with the proper authority to conduct an examination/assessment of a taxpayer pursuant to Section 13 of the National Internal Revenue Code of 1997, as amended.

This is in consonance with *Commissioner of Internal Revenue v. Composite Materials, Inc.*,[1] which states:

> As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA en banc found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> However, the Court agrees with the CTA en banc that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority. To be sure, Revenue Memorandum Order No. 43-90 which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA.

Similar to the abovequoted case, no new LOA was issued to authorize the group supervisor and revenue officers to continue the examination and assessment of the taxpayer herein.

Thus, I vote to deny the petition for review and affirm the cancellation of the assessments.

**CATHERINE T. MANAHAN**
Associate Justice

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