REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

WELLINGTON INVESTMENT & MANUFACTURING CORPORATION,
Respondent.

CTA *EB* NO. 1773
(CTA Case No. 8726)

Present:

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

Promulgated: APR 11 2019 1:30 pm

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review,[1] filed by the Commissioner of Internal Revenue (CIR), pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal and setting aside of the Decision and Resolution, dated September 14, 2017 and January 10, 2018, respectively, of the Court's First Division (Court in Division). The assailed Decision partially cancelled the assessments against Wellington Investment & Manufacturing Corporation for taxable year 2008.

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[1] *Rollo*, CTA EB No. 1773, pp. 7-17.
[2] Rule 8. Procedure in Civil Cases
Section 3. Who may appeal; period to file petition.
xxx xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

The Facts

The Court in Division recited the facts, as follows:

[Respondent] Wellington Investment and Manufacturing is a corporation duly organized and existing under and by virtue of the laws of the Philippines. Its office address is located at WFM Compound, Shaw Blvd., Bo. Pineda, Pasig City.

[Petitioner] 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 (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Quezon City.

On September 5, 2011, [Wellington] received a copy of the Preliminary Assessment Notice (PAN) dated August 31, 2011 signed by Mr. Alfredo V. Misajon – OIC Assistant Commissioner of the Large Taxpayers Service, charging [Wellington] with deficiency taxes for the taxable year ending December 31, 2008, as follows:

Income Tax	P 6,510,552.29
Value-Added Tax	2,325,076.26
Withholding Tax on Compensation	3,124,697.50
Final Withholding Tax	18,516,940.72
Expanded Withholding Tax	255,231.58
Fringe Benefits Tax	1,408,407.44
Improperly Accumulated Earnings Tax	2,891,090.03
Compromise Penalty	25,000.00
TOTAL DEFICIENCY TAXES	**P 35,059,193.72**

On October 4, 2011, [Wellington] filed a letter-protest against the PAN dated August 31, 2011, which was duly stamped received by the BIR LT Regular Audit Division on October 4, 2011. In its letter-protest, [Wellington] set forth the factual and legal bases of its protest and attached to the said letter-protest supporting documents.

On November 16, 2011, [Wellington] received [the CIR]'s Formal Letter of Demand dated November 4, 2011 with attached Details of Discrepancies and Audit Results/Assessment Notices.

In the Formal Letter of Demand, [the CIR] assessed [Wellington] for alleged deficiency taxes for the taxable year ending December 31, 2008, as follows:

CLASS OF TAX	ASSESSMENT NO.	ALLEGED DEFICIENCY TAX
Income Tax	LTRAD I-LOA-116-2008-IT-000009	P 6,656,152.57
Value Added Tax	LTRAD I-LOA-116-2008-VT-000009	2,375,179.01
Withholding Tax - Compensation	LTRAD I-LOA-116-2008-WC-000005	3,182,532.43
Final Withholding Tax	LTRAD I-LOA-116-2008-WF-000004	18,863,282.24
Withholding Tax – Expanded	LTRAD I-LOA-116-2008-WE-000007	261,851.76
Fringe Benefits Tax	LTRAD I-LOA-116-2008-WR-000002	1,434,411.37
Improperly Accumulated Earnings Tax	LTRAD I-LOA-116-2008-OTH-INC-000010	3,028,995.71
Compromise Penalty	LTRAD I-LOA-116-2008-MC-000002	25,000.00

On November 25, 2011, [Wellington] filed is letter-protest dated November 22, 2011 to the Final Letter of Demand, duly stamped on even date by the BIR LT Regular Audit Division I. Thereafter; on August 30, 2012, [Wellington] filed a Supplemental Protest.

On October 8, 2013, [Wellington] received the copy of the Final Decision on Disputed Assessment (FDDA) with attached Details of Discrepancies, finding [Wellington] liable for the following alleged tax deficiencies:

CLASS OF TAX	ASSESSMENT NO.	ALLEGED DEFICIENCY TAX
Income Tax	IT-116-LOA-33724-08-13-149	P 7,839,508.03
Value Added Tax	VT-116-LOA-33724-08-13-150	2,799,230.57
Withholding Tax - Compensation	WC-116-LOA-33724-08-13-151	3,846,248.94
Withholding Tax – Expanded	WE-116-LOA-33724-08-13-152	312,602.06
Fringe Benefits Tax	FBT-116-LOA-33724-08-13-153	1,732,833.72
Improperly Accumulated Earnings Tax	IAET-116-LOA-33724-08-13-154	3,662,799.62
Compromise Penalty	CP-116-LOA-33724-08-13-155	25,000.00
TOTAL		**P20,218,222.93**

Hence, on November 7, 2013, [Wellington] filed the instant Petition for Review.[3]

The case proceeded to trial, after which the Court in Division rendered the assailed Decision, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by [the CIR] against [Wellington] for taxable year 2008 covering deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefits tax and improperly accumulated earnings tax are **AFFIRMED but with modifications**. Accordingly, [Wellington] is **ORDERED TO PAY** [the CIR] the amount of **FOUR MILLION SEVEN HUNDRED FORTY-SEVEN THOUSAND TWO HUNDRED SEVEN PESOS AND 68/100 (P4,747,207.68)** representing basic deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefits tax and improperly accumulated earnings tax, increment for late remittance of EWT on management bonus to directors not considered as employees and the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Interest	Surcharge	Total
Income Tax	P 411,765.45		P 102,941.36	P 514,706.81
Value-Added Tax	898,017.64		224,504.41	1,122,522.05
Withholding Tax on Compensation	445,140.28		111,285.07	556,425.35
Expanded Withholding Tax	119,554.07		29,888.52	149,442.59
Fringe Benefits Tax	234,075.64		58,518.91	292,594.55
Improperly Accumulated Earnings Tax	1,653,545.28		413,386.32	2,066,931.60
Subtotal	**P3,762,098.36**		**P940,524.59**	**P4,702,622.95**
Increment for late remittance of EWT on management bonus to directors not considered as employees		P 35,667.78	P 8,916.95	P 44,584.73
Subtotal		**P 35,667.78**	**P 8,916.95**	**P 44,584.73**
Total	**P3,762,098.36**	**P 35,667.78**	**P 949,441.54**	**P4,747,207.68**

> In addition, [Wellington] is **ORDERED TO PAY**:
>
> (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax,

[3] Docket, CTA Case No. 8726, Vol. III, Decision dated September 14, 2017, pp. 1833-1836.

> value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefits tax and improperly accumulated earnings tax computed from the following dates until full payment thereof pursuant to Section 249(B) of the NIRC, as amended:
>
> xxx xxx xxx
>
> (b) Delinquency interest at the rate of 20% per annum on the total amount of P4,747,207.68 and on the deficiency interest which have accrued as afore-stated in (a) computed from October 31, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> **SO ORDERED.**[4]

The CIR's Motion for Reconsideration was denied in the Court in Division's Resolution, dated January 10, 2018, as follows:

> **WHEREFORE**, premises considered, [the CIR]'s **Motion for Partial Reconsideration Re: Decision promulgated on September 14, 2017** is **DENIED** for lack of merit. Meanwhile, [Wellington]'s **Manifestation on Satisfaction of Judgment** is **NOTED**.
>
> **SO ORDERED.**[5]

On February 14, 2018, the CIR filed the instant Petition for Review with the Court *En Banc*. After notice,[6] Wellington filed its Respondent's Comment (To Petitioner's Petition for Review)[7] on March 22, 2018.

The Court *En* Banc ordered the submission of memoranda, which Wellington complied on May 25, 2018.[8] On the other hand, the CIR manifested that he is adopting the arguments raised in his Petition for Review.[9]

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[4] Docket, CTA Case No. 8726, Vol. III, Decision dated September 14, 2017, pp. 1933-1935.
[5] Docket, CTA Case No. 8726, Vol. III, p. 2031.
[6] *Rollo*, pp. 143-144.
[7] *Rollo*, pp. 145-156.
[8] *Rollo*, Respondent's Memorandum, pp. 167-190.
[9] *Rollo*, Manifestation filed on May 23, 2018, pp. 163-165.

Thus, on June 14, 2018, the case was deemed submitted for decision.[10]

Issue

Petitioner did not make an assignment of errors. However, based on the discussion in his Petition for Review, the CIR disagrees with the findings of the Court in Division with respect to the assessments for income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), and fringe benefit tax (FBT).

The CIR's arguments

The CIR states that tax assessments are entitled to the presumption of correctness and that the same are made in good faith. It is further stated that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment.

With respect to the assessment, the CIR disagrees with the findings of the Court in Division, as follows:

1. The Court erred in cancelling the items: Unreported Revenue, Amortization of Interest, and Miscellaneous under deficiency income tax, considering that a comparison between the summary of Creditable Withholding Tax at Source (2307) from selected company customers and schedules of sales (SLS) showed unreported sales/revenue of P5,006,149.40.

2. The Court erred in reducing the unreported sales/ revenue to P4,361,149.40.

3. The Court erred in cancelling the assessment pertaining to director's compensation, retirement benefits of Wellington's employees.

4. The Court erred in cancelling the assessment for EWT on rentals and partially upholding the assessment for quarterly input tax attributable to VAT-exempt transactions.

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[10] *Rollo*, pp. 192-193.

5. The Court erred in reducing the assessment under the items relating to transportation allowance and representation expenses and cancelling the assessment pertaining to "Repairs and Maintenance."

Wellington's counter-arguments

Wellington states that a cursory reading of the subject Petition for Review readily shows that the same does not raise any new issues; that all matters raised by the CIR were already raised in the Answer and Motion for Reconsideration which were already thoroughly discussed and taken into consideration by the Court in Division. Thus, Wellington argues that the subject Petition for Review should be denied outright.

Ruling of the Court

The petition lacks merit.

The Petition for Review was timely filed.

On January 10, 2018, the Court in Division issued the assailed Resolution denying the CIR's Motion for Partial Reconsideration RE: Decision promulgated on September 14, 2017. The CIR received the said resolution on January 15, 2018.

Pursuant to Rule 4, Section 2(a)(2)[11], in relation to Rule 8, Section 3(b) of the RRCTA, the CIR had fifteen (15) days from January 15, 2018, or until January 30, 2018, within which to file his petition for review.

On January 30, 2018, the CIR filed a Motion for Extension of Time to File Petition for Review,[12] praying for an additional fifteen (15) days from January 30, 2018, or until

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[11] Rule 4 Jurisdiction of the Court

Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; xxx

[12] *Rollo*, pp. 1-5.

February 14, 2018, within which to file his petition for review. The said extension was granted on February 1, 2018.[13]

On February 14, 2018, the CIR timely filed the instant petition.

The CIR's arguments are a mere rehash of the arguments previously raised and resolved by the Court in Division.

A perusal of the arguments raised in the subject Petition for Review reveal that the same are verbatim reiterations of the CIR's Motion for Reconsideration filed before the Court in Division. Said arguments raise no new issues or factual matters which compel this Court *En Banc* to reverse nor modify the assailed Decision and Resolution. Thus, the Petition for Review is denied.

The assessments are void due to lack of a valid Letter of Authority issued to the revenue officer who continued the audit.

The Court in Division partially granted Wellington's Petition for Review by reducing the assessments for deficiency tax liability. However, upon review of the records of the case, the Court *En Banc* finds sufficient ground to fully grant Wellington's Petition for Review, docketed as CTA Case No. 8762, on the ground that the assessments against it are void for lack of a valid authority.

In the instant case, Wellington did not raise the issue of lack of authority of the revenue officers to conduct the audit. However, in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[14] the Supreme Court affirmed that the CTA can resolve an issue not raised by the parties in their pleadings or memoranda, to wit:

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[13] *Rollo*, Minute Resolution, p. 6.
[14] G.R. No. 183408, July 12, 2017.

On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 4 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 x x
>
> 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 scope of authority of 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.

The instant case involves assessments for deficiency taxes for calendar year 2008. In determining the validity of such assessments, a review of the revenue officers' authority to conduct the audit which resulted to the assessments is intrinsically related to the issue of the validity of the assessments.

The BIR Records show that Letter of Authority (LOA) No. 2008-00033724,[15] dated July 1, 2009, was issued authorizing Revenue Officers (ROs) Allan Maniego, Joel Aguila, Jose Ma. Hernandez, Myrna Ramirez and Cleotefel Parungao to examine Wellington's books of accounts and other accounting records for taxable year 2008, under the supervision of Group Supervisor Glorializa Samoy.

However, the CIR presented RO Reynoso C. Bravo and RO Carolyn V. Mendoza as witnesses to prove the tax liability[16] of Wellington for taxable year 2008. Clearly, the LOA issued for taxable year 2008 does not include the names of RO Bravo or

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[15] BIR Records, Folder 1, p. 755.
[16] Docket, CTA Case No. 8726, Vol. III, CIR's Formal Offer of Evidence, pp. 1736-1737.

RO Mendoza as one of the revenue officers authorized to conduct the audit and examination.

Section 6 of the NIRC provides:

> 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.

In relation, Section 13 of the NIRC also states:

> 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.

Pursuant to this, *Revenue Memorandum Order (RMO) No. 43-90*[17] specifically requires the issuance of a new LOA in cases of reassignment or transfer to another revenue officer. It provides:

> Any reassignment/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. (*Underscoring ours*)

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[17] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.

Unfortunately, the BIR failed to comply with the issuance of a new LOA despite the reassignment of the investigation to new ROs.

In his Judicial Affidavit,[18] RO Reynoso C. Bravo stated:

> Q9: Why are you familiar with the tax account of petitioner Wellington?
>
> A9: I am familiar with the tax account of the taxpayer because it was assigned to our group for the conduct of examination and investigation of Wellington's books of accounts and other accounting records for taxable year 2008.[19]

The CIR's other witness, RO Carolyn V. Mendoza, also testified by way of her Judicial Affidavit,[20] as follows:

> Q7: Are you familiar with the tax account of petitioner Wellington Investment and Manufacturing Corporation ("Wellington"), for taxable year 2008?
>
> A7: Yes. I am familiar with the tax account of Wellington because it was reassigned to me for the continuation of audit investigation.
>
> Q8: What is your authority to investigate their account?
>
> A8: A Memorandum of Assignment dated February 28, 2013 was issued to me for the continuation of the conduct of the examination and investigation of the books of accounts and other accounting records of Wellington Investment and Manufacturing Corporation ("Wellington") for all internal revenue taxes for the period January 1, 2008 to December 31, 2008.[21]

From the foregoing testimonies and from the evidence presented by the CIR, no new LOA was issued to RO Bravo or RO Mendoza in relation to the investigation of Wellington's tax liability for taxable year 2008. Thus, the investigations conducted by RO Bravo and RO Mendoza were without the requisite authority.

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[18] Docket, Vol. I, Exhibit "R-16", pp. 457-461.
[19] Docket, Vol. I, p. 458.
[20] Docket, Vol. I, Exhibit "R-17", pp. 508-511.
[21] Docket, Vol. I, p. 509.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[22] the Supreme Court discussed the importance of an LOA, and even declared the subject assessment void for lack of authority, as follows:

> The absence of an LOA violated MEDICARD's right to due process
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> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. xxx
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> xxx xxx xxx
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> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.
>
> xxx xxx xxx
>
> In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. xxx

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

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 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. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)
>
> xxx xxx xxx
>
> xxx 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. Xxx
>
> xxx xxx xxx
>
> xxx In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is `given by the statute.
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.

To reiterate, the LOA is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit, it is an express grant of authority.[23] Thus, absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation *per RMO No. 43-90*, there is no authority to conduct the investigation/audit.[24]

In the instant case, the investigation and audit of Wellington's books of account for taxable year 2008 was transferred to RO Bravo and subsequently to RO Mendoza. However, no new LOAs were issued, hence, the said investigation and corresponding assessments are void.

WHEREFORE, the instant Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit.

However, as discussed above, the Decision dated September 14, 2017 and Resolution dated January 10, 2018 in CTA Case No. 8726 are **AFFIRMED WITH MODIFICATION**. Accordingly, the assessments issued against Wellington Investment and Manufacturing Corporation for taxable year 2008 covering deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefits tax and improperly accumulated earnings tax are **CANCELLED** for being void due to lack of the requisite authority.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[23] *Nikken Philippines, Inc. v CIR*, CTA EB No. 1569, June 7, 2018.
[24] *Id.*

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

ERLINDA P. UY
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

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, *Petitioner,*	**CTA EB NO. 1773** (CTA Case No. 8726)
	Present:
	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
- versus –	
WELLINGTON INVESTMENT & MANUFACTURING CORPORATION, *Respondent.*	Promulgated: APR 11 2019 1:30 pm

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my esteemed colleague, Associate Justice Catherine T. Manahan in holding the assessments issued against respondent for taxable year 2008 as void for lack of requisite authority on the part of the revenue officers who actually conducted the audit investigation of respondent's books of accounts and other accounting records for taxable year 2008.

Based on the records, Revenue Officers (RO) Allan Maniego, Joel Aguila, Jose Ma. Hernandez, Myrna Ramirez and Cleotefel Parungao under Group Supervisor (GS) Gloria Liza Samoy were originally authorized to conduct the audit investigation of respondent's books of accounts and other accounting records for taxable year 2008 under Letter of Authority (LOA) No. 2008-00033724 dated July 1, 2009.[1] However, it also appears on the records that the audit examination was actually conducted by revenue officers other than those named under the said LOA.

It was also revealed through evidence duly presented that the purported authority of RO Carolyn V. Mendoza to conduct the audit examination of respondent's books of account and other accounting records for taxable year 2008 was derived from Memorandum of Assignment (MOA) No. LOA-116-2013-0492 dated February 28, 2013[2] issued by Mr. Cesar D. Escalada, Chief of Regular Large Taxpayers Audit Division 1. The said MOA states that it was issued for the continuation of the audit investigation to replace previously-assigned RO Reynaldo Bravo under MOA No. OTH-116-2011-903 dated November 28, 2011. While RO Reynaldo Bravo testified in his Judicial Affidavit[3] that the audit examination of respondent's books of account and other accounting records for taxable year 2008 was assigned to their group, MOA No. OTH-116-2011-903 dated November 28, 2011 issued to him as expressly stated in MOA No. LOA-116-2013-0492 dated February 28, 2013 was not presented as evidence.

The records likewise do not show that a Letter of Authority was issued in favor of RO Mendoza and/or RO Bravo.

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. ge

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[1] BIR Records, Folder I, p. 755.
[2] Exhibit "R-13".
[3] Exhibit "R-16".

> 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." ℛ

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.[4]

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

[4] *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.[5] 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.[6]

In my view, MOA No. LOA-116-2013-0492 dated February 28, 2013 issued by Mr. Cesar D. Escalada, Chief of Regular Large Taxpayers Audit Division 1 cannot validly grant RO Mendoza the power to conduct the examination of respondent's books of account and other accounting records for taxable year 2008 pursuant to LOA No. 2008-00033724 dated July 1, 2009. In his capacity as Chief of Regular Large Taxpayers Audit Division 1, Mr. Cesar D. Escalada is bereft of any power to authorize the 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. On the other hand, it cannot be determined whether MOA No. OTH-116-2011-903 dated November 28, 2011 validly re-assigned the conduct of audit to RO Bravo or that the said MOA validly modify or amend LOA No. 2008-00033724 dated July 1, 2009. Given that the said MOA was not presented as evidence, there is no way to determine who actually issued the same.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[7] 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

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[5] Revenue Administrative Order No. 001-12 dated April 2, 2012.
[6] *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.
[7] 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,

- versus -

WELLINGTON INVESTMENT & MANUFACTURING CORPORATION,
Respondent.

CTA EB NO. 1773
(CTA Case No. 8726)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, ***and***
MANAHAN, *JJ.*

Promulgated:

APR 1 1 2019 1:30 pm

x- -x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleague, Associate Justice Manahan, I concur with the dispositive portion of the *ponencia* which affirmed with modification the assailed Decision and Resolution in CTA Case No. 8726 and cancelled the assessments issued against Wellington Investment and Manufacturing Corporation (Wellington) for taxable year 2008 covering deficiency income tax, VAT, WTC, EWT, FBT and improperly accumulated earnings tax for being void due to the lack of the requisite authority, but for the reasons to be discussed below.

I believe that both the *Sony*[1] and the *Medicard*[2] case are not on all fours with the case at bar. In *Sony*, the primordial issue was not the lack of an LOA but the agents exceeding the authority given. Where the "LOA 19734 covered the period 1997 and unverified prior years", the CIR acting through its revenue officers went beyond the scope of their authority because they included records from January to March 1998 in coming up with their assessment. The Supreme Court then concluded that "the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA."

The *Medicard* case, on the other hand, involved a total absence of an LOA which the Court concluded could not be supplanted by a mere Letter Notice as it violated Medicard's right to due process.

The above-captioned *Wellington* case differs from *Sony* and *Medicard* in that an LOA exists in *Wellington* and the assessment was limited to examining books of account or accounting records within the period indicated in the LOA. The main issue raised in the *ponencia* goes to the authority of the actual RO that continued the assessment and concluded the same. This was given by way of a Referral Memorandum upon the reassignment of the RO named in the LOA. I submit that this could validly be done under the NIRC of 1997, as amended, (NIRC) and the laws on agency under the Civil Code.

I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in their favor, RO Reynaldo Bravo and, subsequently, RO Carolyn V. Mendoza may be given the authority to continue the audit and examination of Wellington's'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 ROs Allan Maniego, Joel Aguila, Jose Ma. Hernandez, Myrna Ramirez and Cleotefel Parungao under Group Suprevisor Gloria Liza Samoy who were the originally named ROs in the LOA. I submit that this could be validly done under the National Internal Revenue Code of 1997 ("1997 NIRC") and the laws on agency under the Civil Code.

The power of the Commissioner of Internal Revenue ("CIR") to conduct assessments is granted to him by virtue of Section 6 of the 1997 NIRC:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –

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[1] *Commissioner of Internal Revenue v. Sony Philippines*, Inc., G.R. No. 178697, November 17, 2010.
[2] *Medicard Philippines, Inc. v. Comm
issioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

> (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."[3]

Section 7 of the 1997 NIRC likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz:*

> "SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation 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."

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[3] *Emphasis and underscoring supplied.*

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.**"[4]

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[5], 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."[6]

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4 *Emphasis and underscoring supplied.*

5 G.R. No. 188288, January 16, 2012.

6 *Emphasis supplied.*

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)"[7]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to the ROs who were originally named in the LOA may be revoked, transferred and reassigned to RO Bravo, and subsequently, RO Mendoza 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[8], 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."[9]

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

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7 *Emphasis supplied.*

8 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).*

9 Civil Code of the Philippines, Article 1869.

the parties.[10] The title of the contract does not necessarily determine its true nature.[11] 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.[12] 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.[13]

I am not unaware of Revenue Memorandum Order No. 43-90[14] 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.[15]

It is for the reasons above that, in my opinion, RO Bravo, and subsequently, RO Mendoza who conducted the examination of Wellington's records may be deemed authorized to do so without need for a new LOA, only if said letter or notice was signed by the Revenue Regional Director. In the instant case however, said letter was only signed by the Chief of the Regular Large Taxpayers Audit Division 1, Mr. Cesar D. Escalada, whose post is equivalent to a Revenue District Officer and not a Revenue Regional Director. Therefore, ROs Bravo and Mendoza were without authority to continue the audit.

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10 *Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada*, G.R. No. 173211, October 11, 2012 *citing Spouses Villaceran v. De Guzman*, G.R. No. 169055, February 22, 2012; *Ramos v. Heirs of Honorio Ramos, Sr.*, G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; *Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta*, G.R. Nos. 165748 & 165930, September 14, 2011 *citing Lopez v. Lopez*, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

11 *Adelfa Properties, Inc. v. Court of Appeals*, G.R. No. 111238, January 25, 1995.

12 *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent*, G.R. No. 215427, December 10, 2014, *citing Lopez v. The Civil Service Commission*, 273 Phil. 147, 152 (1991).

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

14 Issued September 20, 1990.

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

From all the foregoing, I vote to **DENY** the Petition for Review filed by Wellington for lack of merit.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice