REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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REPUBLIC OF THE PHILIPPINES, Petitioner,	**CTA EB No. 2339** (CTA OC No. 023)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** JJ.
ROBIEGIE CORPORATION, Respondent.	***Promulgated:*** DEC 0 2 2021 4:27 P.M.

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DECISION

UY, J.:

In the instant *Petition for Review*[1] filed on October 9, 2020 by petitioner, Republic of the Philippines, against respondent, Robiegie Corporation, petitioner prays that the Decision dated June 8, 2020 and Resolution dated August 26, 2020, rendered by the Second Division of this Court, in CTA OC No. 023, entitled, *"Republic of the Philippines, Petitioner vs. Robiegie Corporation, Respondent,"* be reversed and set aside. The dispositive portions thereof respectively read as follows:

[1] EB Docket, pp. 5 to 32.

Decision dated June 8, 2020:

"**WHEREFORE,** the present *Complaint* is **DISMISSED.**

SO ORDERED."

Resolution dated August 26, 2020:

"**WHEREFORE,** premises considered, plaintiff's Motion for Reconsideration (Re: Decision dated June 08, 2020) is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the Republic of the Philippines, a political entity whom all citizens and persons deriving income within its territory have the obligation to pay taxes. The power of taxation is exercised by the petitioner through the Bureau of Internal Revenue (BIR). In turn, the BIR is represented by the Commissioner of Internal Revenue (CIR), who is empowered to perform the duties of said office including, among others, the power to assess and collect all national internal revenue taxes, fees and other charges, and to enforce all forfeitures, penalties, and fines connected therewith, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City. The CIR is represented in litigation proceedings by legal officers of the BIR in collaboration with the Office of the Solicitor General (OSG). He may be served with notices, summons and other documents through the BIR - Legal Division, Revenue Region No. 6, BIR-Manila, 5th Flr., BIR Building I, Solana St., Intramuros, Manila.

Pursuant to Section 7 of the NIRC of 1997, as amended, the CIR delegated his authority vested in him under the law to officials of the BIR, including Regional Directors, with regard to the institution of civil, administrative and criminal actions/cases for, among others, the recovery of taxes or the enforcement of fine, penalty or forfeiture under the NIRC of 1997, as amended. Thus, the Regional Director of Revenue Region No. 6-Manila is authorized to institute the present Complaint for the collection of the deficiency taxes as delegated by the CIR.

The BIR is divided into internal revenue districts in accordance with law and one such district is Revenue District Office (RDO) No. 31-Sta. Cruz, Manila, which is under the jurisdiction of the Regional Director of Revenue Region No. 6-Manila, wherein respondent Robiegie Corporation's business establishment is located. The address of RDO No. 31-Sta. Cruz, Manila, is at 5th Floor, BIR Building II, Solana St., Intramuros, Manila.

Respondent Robiegie Corporation is a corporation registered with the Securities and Exchange Commission and is engaged in the business of operating a drugstore with business address at No. 1614 Rizal Ave., Sta. Cruz, Manila, where it may be served with summons, notices and other processes of this Court. It is a duly registered taxpayer with the RDO No. 31, with assigned Tax Identification No. 004-574-210-000.

Letter of Authority (LOA) No. 00037842 dated July 27, 2009 was issued, authorizing Revenue Officer (RO) Jose Francisco David, Jr., under Group Supervisor (GS) Felix M. Roy, of the BIR, to examine the books of accounts and other accounting records of respondent Robiegie Corporation for taxable year 2008. Subsequently, the said LOA was re-assigned to RO Cecille D. Dy under GS Jessica O. Bernales, through Referral No. 031-0006-10 dated January 28, 2010, with notice to the subject taxpayer. The above-mentioned LOA, together with the First Notice for Presentation of Books of Accounts and other accounting records were served upon and duly received by respondent at the latter's business address, requiring the presentation of the taxpayer's books of accounts and other accounting records for taxable year 2008, for examination of the BIR.

On August 18, 2011, Regional Director Alfredo V. Misajon of Revenue Region No. 6-Manila, issued a Preliminary Assessment Notice (PAN), informing respondent of the BIR's findings in connection with investigation of respondent's internal revenue tax liabilities for taxable year 2008, pursuant to LOA No. 00037842 dated July 27, 2009, conducted by RO Cecille D. Dy.

Subsequently, OIC-Regional Director of Revenue Region No. 6-Manila, issued Formal Letter of Demand (FLD) and Final Assessment Notices (FANs), all dated September 19, 2011, assessing respondent deficiency income tax, VAT, and EWT, including interests and compromise penalties, for taxable year 2008, in the total amount of ₱10,804,991.21, computed as follows:

Income Tax	₱ 315,680.28
VAT	10,397,181.78
EWT	20,129.15
Compromise Penalty	72,000.00
Total	**₱ 10,804,991.21**

On March 2, 2012 and July 16, 2013, respectively, Warrants of Distraint and/or Levy were duly served upon respondent Robiegie Corporation, but no property could be located that may be levied upon the satisfaction of its tax liabilities.

Warrants of Garnishment were likewise issued, but respondent Robiegie Corporation has no existing bank deposits that could be garnished.

Thus, petitioner filed a *Complaint* before the Court in Division on June 23, 2017, while respondent filed its *Answer to Complaint* on December 13, 2017.

The Pre-Trial Conference was set on February 1, 2018. Respondent's Pre-Trial Brief was filed on January 16, 2018; while petitioner's Pre-Trial Brief was filed on January 30, 2018.

On February 19, 2018, the parties filed their Joint Stipulation of Facts and Issues (JSFI). In the Pre-Trial Order dated February 27, 2018, the pre-trial was deemed terminated.

During trial, petitioner presented the following witnesses: (1) Ma. Paz Arcilla, Revenue Officer IV-Chief, Billing Section at the Assessment Division, BIR-Manila; (2) Edna A. Ortalla, Chief, Assessment Section at the Assessment Division, BIR-Manila; and (3) Benhur Nacorda, BIR employee assigned at the Administrative Division of Revenue Region No. 6, BIR-Manila.

Petitioner filed its *Formal Offer of Evidence* on July 9, 2018.

On July 24, 2018, respondent filed a *Motion for Leave of Court to File Demurrer to the Evidence*. In the Resolution dated August 17, 2018, the Court in Division admitted all of petitioner's offered exhibits, and granted respondent's *Motion for Leave of Court to File Demurrer to the Evidence*.

On August 29, 2018, respondent filed its Demurrer to Evidence, which was denied in the Resolution dated October 9, 2018.

For his part , respondent presented the following witnesses: (1) Grace G. Sucksuphan, respondent's representative; and (2) Evelyn Nones, respondent's Accountant.

On January 25, 2019, respondent filed his *Formal Offer of Evidence*, while petitioner filed its *Comment to Formal Offer of Evidence* on February 4, 2019. In the Resolution dated March 7, 2019, the Court in Division admitted respondent's exhibits, except for Exhibits "D-2A", "D-2B", "D-2C", and "D-2D", for failure to present the originals for comparison.

The *Memorandum for the Defendant* and *Amended Memorandum for the Defendant* were filed on April 11, 2019, and April 15, 2019, respectively. Petitioner, however, failed to file its memorandum. In the Resolution dated April 30, 2019, CTA OC NO. 023 was considered submitted for decision.

In the assailed Decision[2] dated June 8, 2020, the Court in Division dismissed the *Complaint* on the ground that the revenue officers were not duly authorized by an LOA when they conducted the examination of respondent's books of accounts.

Petitioner filed its *Motion for Reconsideration [Re: Decision dated June 08, 2020]* on June 26, 2020, while respondent filed its *Comment/Opposition to the Motion for Reconsideration filed by the Plaintiff (Dated June 26, 2020)* on July 8, 2020.

In the assailed Resolution[3] dated August 26, 2020, the Court in Division denied the *Motion for Reconsideration* for lack of merit.

Undaunted, petitioner filed a *Motion for Extension of Time to File Petition for Review* on September 24, 2020.[4] In the Resolution[5] dated September 28, 2020, the subject Motion was granted and petitioner was given a final and non-extendible period of fifteen (15)

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[2] EB Docket, pp. 34 to 48.
[3] EB Docket, pp. 49 to 55.
[4] EB Docket, pp. 1 to 3.
[5] EB Docket, pp. 4.

days from September 24, 2020, or until October 9, 2020, within which to file its Petition for Review.

Thereafter, the CIR filed the instant *Petition for Review* on October 9, 2020.[6] In the Resolution[7] dated October 22, 2020, respondent was directed to file its Comment to the Petition for Review, within ten (10) days from notice. On October 21, 2020, respondent filed its *Comment/Opposition to the Petition for Review filed by the Petitioner/Plaintiff (Dated October 8, 2020).*[8]

On November 4, 2020, the instant case was referred to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.*[9]

Considering that the parties decided not to have their case mediated by the PMC-CTA, as per PMC-CTA Form 6[10] dated November 26, 2020, the Petition for Review was deemed submitted for Decision on December 11, 2020.[11]

ISSUES

The CIR raises the following grounds in support of the instant Petition, to wit:

> "I. THE HONORABLE CTA IN DIVISION ERRED IN RULING THAT THE ASSESSMENTS ARE VOID BECAUSE THE REVENUE OFFICER WHO CONDUCTED THE AUDIT OF RESPONDENT'S BOOKS OF ACCOUNTS WERE ALLEGEDLY NOT AUTHORIZED THROUGH A LETTER OF AUTHORITY (LOA).
>
> II. THE HONORABLE CTA IN DIVISION ERRED IN APPLYING THE RULING OF THE HONORABLE SUPREME COURT IN THE CASE OF CIR VS. SONY.

[6] EB Docket, pp. 5 to 32.
[7] EB Docket, pp. 57 to 58.
[8] EB Docket, pp. 59 to 64.
[9] EB Docket, pp. 66 to 67.
[10] EB Docket, p. 68.
[11] EB Docket, pp. 71 to 72.

THE RULING IS NOT APPLICABLE TO THE INSTANT CASE."[12]

Petitioner's arguments:

The CIR contends that the Court in Division erred in ruling that the assessments are void because the Revenue Officer (RO) who conducted the audit of respondent's books of accounts were allegedly not authorized through an LOA.

In addition, the CIR avers that the ruling in the *Sony*[13] case does not apply, as the LOA therein was considered void with regard to the audit of unverified prior years. In this case, however, the LOA is valid as it only covers one taxable year.

Finally, the CIR maintains that what the LOA authorizes is the conduct of audit of a taxpayer by the BIR's revenue officers. Hence, in the event that the revenue officers indicated therein can no longer perform the audit due to resignation, transfer, or death, such authority remains and the conduct of audit must be reassigned and assumed by another revenue officer.

Respondent's counter-arguments:

Respondent counters that 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 authority, the assessment or examination is a nullity.

According to the respondent, a revenue officer must be authorized through an LOA, in order for the said officer to validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR are void.

THE COURT *EN BANC*'S RULING

Petitioner maintains that the Court in Division erred in ruling that the assessments were void because the Revenue Officer who

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[12] EB Docket, pp. 7 to 8.
[13] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, 649 Phil. 519 (2010).

conducted the audit of respondent's books of accounts was not authorized through an LOA. According to petitioner, a Memorandum of Assignment is sufficient to confer authority upon the Revenue Officer in question.

Petitioner is mistaken.

The revenue officer who continued the audit of respondent's tax records was not validly authorized by an LOA thus the subject assessments are void.

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.[14]

Section 13 of the NIRC of 1997, as amended, 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, <u>pursuant to a Letter of Authority</u> issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district <u>in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due</u>** in the same manner that the said acts could have been performed by the Revenue Regional Director himself."

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

Pursuant to the foregoing provision, a Revenue Officer is mandated to be clothed with authority, through a valid LOA issued in his/her favor, before he/she can validly examine taxpayers and perform tax assessment and collection functions.

The significance of an LOA and the corresponding authority it confers upon the Revenue Officer, is further highlighted by RMO No. 43-90, which prescribes the revised policy guidelines for the audit/investigation and issuance of letters of authority to audit. Specifically, it requires that **all** audits/investigations should be conducted under a Letter of Authority, and requires the issuance of a **new LOA** in case of any reassignment or transfer of cases 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.
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> 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."

In this case, LOA No. 00037842 dated July 27, 2009, authorizes Revenue Officer Jose Francisco David, Jr.[15] (JF David) and Group Supervisor Felix M. Roy[16] (F. Roy) of RDO No. 31 Sta. Cruz, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2008 to December 31, 2008.

However, the subject LOA was subsequently re-assigned to Revenue Officer Cecille D. Dy[17] and Group Supervisor Jessica O. Bernales. Revenue Officer Dy continued the investigation of respondent's tax liabilities, whose work was thereafter reviewed by Revenue Officer John Paulo Leonardo.[18]

[15] Paragraph 6, *Joint Stipulation of Facts and Issues,* Docket, p. 143.
[16] *Id.*
[17] Preliminary Assessment Notice (PAN), Exhibit "P-16," Docket, pp. 132 to 135.
[18] *Id.*

A perusal of the records, however, show that Revenue Officer Dy was not validly authorized by a new LOA, when she exercised assessment functions. Rather, Revenue Officer Dy was merely authorized by Memorandum Referral No. 031-0006-10 dated January 28, 2010, which fact was confirmed by the petitioner in the *Joint Stipulation of Facts and Issues.*[19]

Considering that the Revenue Officer who acted on respondent's case was not properly clothed with the requisite LOA, the subject tax assessments, resulting from the investigation, audit, and recommendation of Revenue Officer Cecille D. Dy is void. For being void, the same bears no valid fruit.[20]

In any case, assuming *arguendo,* that Memorandum Referral No. 031-0006-10 is accepted by this Court as a valid substitute for an LOA, it would still be *insufficient* as basis to confer authority upon Revenue Officer Cecille D. Dy to perform assessment functions. A perusal of the subject Memorandum shows that it is signed by the *Revenue District Officer*, as the Head of the Revenue District Office/Investigating Office, which was conducting the audit of respondent.[21]

It is stressed, however, that the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax is statutorily conferred upon the *Commissioner* or his *duly authorized representatives.*[22] To be specific, the CIR is authorized to delegate the powers vested in him to any "*subordinate officials, with the rank equivalent to a division chief or higher.*"[23]

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[19] Paragraph 6, Docket, p. 143.
[20] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[21] Paragraph 16, Petition for Review, EB Docket, p. 12.
4[22] Section 6 (A), NIRC of 1997, as amended.

> **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.

[23] Section 7, NIRC of 1997, as amended.

> **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 xxx.

In the absence of such further delegation by the CIR, the Revenue Regional Director is the responsible official primarily designated by statute, to issue LOAs for the examination of taxpayers within the region.[24]

A review of pertinent BIR Issuances tends to show that only the following officials are authorized to sign an LOA, to wit:

1. Commissioner of Internal Revenue;[25]
2. Regional Directors;[26]
3. Deputy Commissioners;[27]
4. Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers);[28] and
5. Other officials that may be authorized by the Commissioner for the exigencies of service.[29]

As earlier stated, Memorandum Referral No. 031-0006-10 was signed by the **Revenue District Officer**, as the Head of the Revenue District Office/ Investigating Office.[30] A Revenue District Officer,

[24] Sections 10 (C) and 13 of the NIRC of 1997, as amended.

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.

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.

[25] RMO No. 69-2010 dated August 11, 2010; RMO No. 44-2010 dated May 12, 2010; RMO No. 30-00 dated August 17, 2000; and RMO No. 43-90 dated September 20, 1990.

[26] RMO No. 69-2010 dated August 11, 2010; RMO No. 62-2010 dated June 28, 2010; RMO No. 44-2010 dated May 12, 2010; RMO No. 24-00 dated July 24, 2000; RMO No. 36-99 dated February 9, 1999; and RMO No. 43-90 dated September 20, 1990.

[27] RMO No. 44-2010 dated May 12, 2010; RMO No. 43-90 dated September 20, 1990; RDAO No. 08-03 dated July 14-2003; RDAO No. 06-03 dated June 18, 2003; and RDAO No. 05-02 dated June 10, 2002.

[28] RMO No. 69-2010 dated August 11, 2010; RMO No. 44-2010 dated May 12, 2010; RMO No. 29-2007 dated September 6, 2007; and RDAO No. 07-07 dated August 13, 2007.

[29] *See:* RMO No. 43-90 dated September 20, 1990; RDAO No. 05-19 dated August 14, 2019; RDAO No. 01-19 dated May 23, 2019; and RDAO No. 001-08 dated July 17, 2008.

[30] Paragraph 16, Petition for Review, EB Docket, p. 12.

however, is *not* one of the officials authorized by law to sign an LOA, or confer authority upon a Revenue Officer to perform assessment functions. Hence, even if this Court would accept the CIR's proposition that Memorandum Referral No. 031-0006-10 be treated similarly as an LOA, the same would still be invalid as it was not signed by an official empowered by law to sign Letter/s of Authority and/or authorize the examination and audit of a taxpayer.

The foregoing conclusion finds support in the recent cases of *Commissioner of Internal Revenue vs. Travelers International Hotel Group, Inc.,*[31] and *Commissioner of Internal Revenue vs. Trinity Franchising and Management Corporation,*[32] wherein the Supreme Court upheld the ruling of the CTA *En Banc* that the assessment was invalid due to the revenue officers' lack of authority to continue the audit against the taxpayer. According to the High Court, it is settled 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.[33]

In the said cases, it was found that the document alleged to be the new LOA re-assigning the audit to another Revenue Officer was not signed by the CIR or his duly authorized representatives specified in the Tax Code and in prevailing BIR regulations. Consequently, the Revenue Officers were found to be without the appropriate authority to examine the taxpayer's books of accounts and tax records, making the resulting assessment void.

Administrative issuances cannot amend substantive law

Petitioner cites RMO Nos. 8-2006,[34] 62-2010,[35] and 69-2010,[36] as justification for the validity of a Memorandum of Assignment, in lieu of an LOA. According to petitioner, to rule otherwise would lead to a bizarre case wherein the Revenue Officers indicated in the LOA

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[31] G.R. No. 255487, May 3, 2021.
[32] G.R. No. 255094, April 26, 2021.
[33] *Id.*, citing *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.
[34] SUBJECT: *Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).*
[35] SUBJECT: *Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures*
[36] SUBJECT: *Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment*

would be compelled to complete their audit investigation, regardless of any unforeseen circumstances. Considering that there will be instances where the Revenue Officers would either retire, be reassigned, be taken ill, or die, prior to the completion of the audit investigation, the Memorandum of Assignment should be recognized for the continuation of the audit.

Moreover, petitioner avers that RMO No. 8-2006 states that only one (1) LOA per taxable year can be issued to a taxpayer. Thus, there is a need for the issuance of a Memorandum of Assignment to other Revenue Officers to continue the audit under the previously issued LOA.

Petitioner's arguments fail to persuade.

It bears noting that the said issuances run counter to the afore-quoted provisions of Sections 6(A) and 13 of the NIRC of 1997, as amended, which is the substantive law on the matter. It is well settled that a mere administrative issuance cannot amend the law; the former cannot purport to do any more than implement the latter.[37] Further, it must be remembered that BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code.[38] In this connection, Sections 6(A) and 13 of the NIRC of 1997, as amended, is clear that the authority of a revenue officer to conduct an audit investigation must be exercised pursuant to an LOA.

Thus, the provisions of RMO Nos. 8-2006, 62-2010 and 69-2010 relied upon by the CIR cannot prevail over the clear import of the Tax Code.

Section 17 of the NIRC of 1997 does not dispense with the requisite issuance of a Letter of Authority to authorize Revenue Officers to perform assessment functions.

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[37] *Secretary of Finance Cesar V. Purisima, et al. vs. Philippine Tobacco Institute, Inc.*, G.R. No. 210251, April 17, 2017.

[38] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. The Commissioner of Internal Revenue*, G.R. No. 130838, August 22, 2006.

Petitioner likewise argues that Section 17 of the NIRC of 1997, as amended, provides for the transfer or reshuffling of Revenue Officers, which allegedly means that, in the natural occurrence of things, the Revenue Officer indicated in the LOA need not be the one to complete the audit.

We disagree.

Section 17 of the NIRC of 1997 provides as follows:

> "**SEC. 17.** ***Assignment of Internal Revenue Officers and Other Employees to Other Duties***. — The Commissioner may, subject to the provisions of Section 16 and the laws on civil service, as well as the rules and regulations to be prescribed by the Secretary of Finance, upon the recommendation of the Commissioner, assign or reassign internal revenue officers and employees of the Bureau of Internal Revenue, without change in their official rank and salary, to other or special duties connected with the enforcement or administration of the revenue laws as the exigencies of the service may require: *Provided*, That internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years: *Provided, further*, That assignment of internal revenue officers and employees of the Bureau to special duties shall not exceed one (1) year."

Based on the foregoing provision, it is clear that the CIR is empowered to assign or reassign internal revenue officers and employees of the BIR, as the exigencies of the service may require. It is likewise apparent, however, that nothing in the subject provision would justify dispensing with the issuance of a valid LOA in favor of the Revenue Officer concerned. On the contrary, the relevant provision with regard to the issuance of an LOA is in fact Section 13 in relation to 6 (A) of the NIRC of 1997, and not Section 17 thereof.

To be clear, the main issue at hand involves the issuance of an LOA in favor of a Revenue Officer, to clothe him/her with authority to conduct audit and assessment functions, as required by law and jurisprudence. It should likewise be stressed that the statutory requirement of issuing a new LOA in no way prevents the CIR from validly assigning or re-assigning the Revenue Officers and employees of the BIR. It does not even require that audit must be completed before such employee can be transferred. Rather, what is simply required by the law is that in case of reassignment, a new LOA be issued to the Revenue Officer to whom the case is transferred to. To rule otherwise and dispense with the requirement of the issuance of an LOA runs counter to both law and jurisprudence.

The Sony Philippines[39] case is applicable in the instant case.

There is likewise no merit to petitioner's contention that the *Sony Philippines* case should not have been applied to this case on the ground that the set of facts between these two cases differ.

For easy reference, the pertinent portions of the *Sony Philippines* case are hereby quoted, to wit:

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> > **SEC. 6.** ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** —
> >
> > (A) Examination of Return and Determination of Tax Due. — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return

[39] G.R. No. 178697, November 17, 2010.

> shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> xxx xxx xxx
>
> 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."

A perusal of the foregoing pronouncements shows that in the *Sony Philippines* case, the Supreme Court interpreted Sections 6 (A) and 13 of the NIRC of 1997. To be precise, the foregoing case established the following: 1) According to Section 13 of the NIRC of 1997, an LOA is the authority given to the appropriate Revenue Officer assigned to perform assessment functions, which 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; 2) there must be a grant of authority before any Revenue Officer can conduct an examination or assessment; 3) the Revenue Officer so authorized must not go beyond the authority given; and 4) in the absence of such an authority, *i.e.,* LOA, the assessment or examination is in fact, a nullity.

Considering that judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines,[40] and judicial decisions of the Supreme Court assume the same authority as the statute itself,[41] the Court *a quo* did not err in applying the foregoing jurisprudential pronouncements.

Accordingly, with the foregoing disquisition, this Court finds no compelling reason to reverse nor modify the findings of the court *a quo* in the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated June 8, 2020 and the Resolution dated August 26,

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[40] Article 8, New Civil Code.
[41] *Perfecto S. Floresca, et al., vs. Philex Mining Corporation, et al.,* G.R. No. L-30642, April 30, 1985.

2020 rendered by the Second Division of this Court in CTA OC No. 023 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(On Leave)
LANEE S. CUI-DAVID
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

REPUBLIC OF THE PHILIPPINES,
Petitioner,

CTA EB NO. 2339
(CTA OC NO. 023)

-versus-

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro, *and*
Reyes-Fajardo,
Cui-David, *JJ.*

ROBIEGIE CORPORATION,
Respondent.

Promulgated:
DEC 0 2 2021 4:27pm

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CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the Decision which denied the Petition for Review filed by the Commissioner of Internal Revenue (CIR) on the ground that the revenue officer who continued the audit of respondent's tax records was not validly authorized, thus the assessment notices are void.

I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in their favor, Revenue Officer (RO) Cecille Dy and Group Supervisor (GS) Jessica O. Bernales may be given the authority to continue the audit and examination of respondent Robiegie Corporation's books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, issued by the Regional Director, Deputy Commissioner, Assistant Commissioner or any subordinate official, with the rank equivalent to a division chief or higher.

I submit that this could be validly done under the National Internal Revenue Code ("NIRC") of 1997, as amended 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 NIRC of 1997, as amended:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[1]

Section 7 of the NIRC of 1997, as amended, 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:
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> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

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[1] *Emphasis and underscoring supplied.*

> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
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> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

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 NIRC of 1997, as amended:

> "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:
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> xxx
>
> (c) **<u>Issue Letters of Authority for the examination of taxpayers</u> within the region;**
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> xxx
>
> (h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[2]

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

[2] *Emphasis and underscoring supplied.*

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[3], the Supreme Court had the occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[4]

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Regional Director, his agent.

May the Regional Director, the CIR's agent, appoint a sub-agent, in this case, the Revenue Officer 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:
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> (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.
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> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[5]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to Revenue Officer Jose Francisco David, Jr. and Group Supervisor Felix M. Roy who were originally named in

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[3] G.R. No. 188288, January 16, 2012.
[4] *Emphasis supplied.*
[5] *Emphasis supplied.*

the LOA may be revoked, transferred and reassigned to RO Dy and GS Bernales 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,[6] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[7]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new 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 the parties.[8] The title of the contract does not necessarily determine its true nature.[9] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the 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.[10] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus*

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

[7] Civil Code of the Philippines, Article 1869.

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

[9] Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

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

interpretandi modus, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[11]

I am not unaware of Revenue Memorandum Order ("RMO") No. 43-90[12] which states that "[a]ny re-assignment/transfer of cases to another RO(s)...shall require the issuance of a new L/A" However, I humbly stress and emphasize that an administrative issuance must conform, not contradict, the provisions of the enabling law. Any rule that is not consistent with the law is null and void.[13]

It is for the reasons above that, in my opinion, **RO Dy and GS Bernales who conducted the examination of respondent's records may be deemed authorized to do so without need for a new LOA, only if said letter or memorandum was signed by the Regional Directors, Deputy Commissioners, Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers), or any subordinate officials, with the rank equivalent to a division chief or higher.**

In the instant case, the Memorandum Referral No. 031-0006-10 dated January 28, 2010 was signed by the Revenue District Officer, as the head of the Revenue District Office/Investigating office, which conducted the audit of respondent. Therefore, RO Dy and GS Bernales were without authority to continue the audit.

From all the foregoing, I vote that the Petition for Review be DENIED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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11 Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.
12 Issued September 20, 1990.
13 Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.