REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

NIKKEN PHILIPPINES, INC., *Petitioner,*	**CTA *EB* NO. 1569** (CTA Case No. 8714)
-versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 07 2018 4:21 p.m.

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DECISION

BAUTISTA, J.:

The Case

Submitted for decision to the Court *En Banc* under *Section 4(b)*[1], *Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended ("RRCTA")*, is a Petition for Review[2] of the Decision[3] dated June 23,

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[1] SEC. 4. *Where to appeal; mode of appeal. –*

xxx xxx xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal.

[2] *Rollo, CTA EB No. 1569, Petition for Review ("PFR"),* pp. 7-332, with annexes.

[3] *Records, CTA Case No. 8714, Vol. 5, Assailed Decision,* pp. 1921-1942; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda and Caesar A. Casanova concurring.

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2016 ("Assailed Decision"), and the Resolution[4] dated November 28, 2016 ("Assailed Resolution"), rendered by the Court of Tax Appeals ("CTA") Second Division ("Court in Division") in CTA Case No. 8714, praying for the Court *En Banc* to: *(1)* declare void and without any effect the assessment for deficiency income tax in the amount of Php7,923,087.64 for lack of factual and legal basis; *(2)* declare that the right of respondent to assess petitioner for expanded withholding tax ("EWT") for the periods January to May 2006 has prescribed; *(3)* declare void and without any effect the assessment for deficiency EWT in the amount of Php2,162,315.10 for lack of factual and legal basis; and *(4)* cancel and withdraw the Final Decision on Disputed Assessment ("FDDA") dated September 21, 2012 and its corresponding Formal Assessment Notice.[5]

The Parties[6]

Petitioner Nikken Philippines, Inc. is a domestic corporation organized and existing under Philippine laws, with principal office at JMT Corporate Condominium, Suite 10B, ADB Avenue, Ortigas Center, 1603 Pasig City. It is engaged in the business of buying, selling, distributing, and marketing at wholesale, various kinds of health support products and accessories, including entering into contracts for acquisition and sale, which includes importation and exportation, of these products.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), who is responsible for the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected with such taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

As stated in the Assailed Decision, the factual antecedents of the case are as follows:

> Petitioner filed its Annual Income Tax Return (ITR) for taxable year 2006 on March 27, 2007.

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[4] *Records, Vol. 5, Assailed Resolution,* pp. 2002-2014.
[5] *Rollo, PFR, Prayer,* pp. 41-42.
[6] *Records, Vol. 5, Assailed Decision, Facts,* pp. 1921-1922.

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Subsequently, petitioner received a Notice of Informal Conference on June 10, 2009, informing petitioner that a report of the investigation of its internal revenue tax liabilities for taxable year 2006 was submitted for consideration.

Petitioner then executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code in connection with the re-investigation of its tax liabilities (extending the period of assessment until September 30, 20 10), which became effective on June 29, 2009.

Respondent issued the Preliminary Assessment Notice (PAN) on August 2, 2010, which petitioner received on August 11, 2010.

Consequently, petitioner filed its position paper in response to the PAN on August 26, 2010.

Thereafter, respondent issued the Formal Letter of Demand (FLD) with the Final Assessment Notice (FAN) on September 6, 2010, which was received by petitioner on September 16, 2010. Petitioner was assessed for alleged deficiency income tax, value-added tax (VAT), and EWT, computed as follows:

xxx xxx xxx

Petitioner protested the FLD on October 18, 2010.

Subsequently, respondent informed petitioner, through a letter dated March 1, 2012, that a report of the reinvestigation had been submitted and the Computations of Deficiency Taxes per Re-investigation were attached to the said letter, which petitioner received on March 7, 2012.

In the Final Decision on Disputed Assessment (FDDA) dated September 21, 2012, which petitioner received on September 3, 2013, respondent still found petitioner liable for deficiency income tax and EWT, computed as follows:

xxx xxx xxx

As a result, petitioner filed the present Petition for Review before this Court on October 2, 2013.

In the Answer filed on December 20, 2013, respondent raised the following special and affirmative defenses:

xxx xxx xxx[7]

On June 23, 2016, the Court in Division promulgated the Assailed Decision, the dispositive portion thereof reads as follows:

> **WHEREFORE,** premises considered, the assessments issued by respondent against petitioner for taxable year 2006 involving deficiency income tax and expanded withholding tax are **AFFIRMED** but **WITH MODIFICATIONS.** Accordingly, petitioner is **ORDERED TO PAY** the amount of **[Php]10,085,402.74,** representing deficiency income tax and EWT, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total
Income Tax	[Php] 6,338,470.11	[Php] 1,584,617.53	[Php] 7,923,087.64
Expanded Withholding Tax	1,729,852.08	432,463.02	2,162,315.10
Total	**[Php] 8,068,322.19**	**[Php] 2,017,080.55**	**[Php] 10,085,402.74**

> In addition, petitioner is hereby **ORDERED TO PAY:**
>
> a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax and EWT computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Interest to run from
Income Tax	April 15, 2007
Expanded withholding tax	January 13, 2007

> b) Delinquency interest at the rate of 20% per annum on the total amount of [Php]10,085,402.74 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 30, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> **SO ORDERED.**[8]

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[7] *Records, Assailed Decision, Facts,* pp. 1922-1926.
[8] *Id., Dispositive Portion,* p. 1941-1942; emphases retained.

On July 8, 2016, petitioner filed by registered mail a Motion for Reconsideration[9], without any comment from respondent despite notice *per* Records Verification Report[10] dated September 2, 2016.

On November 28, 2016, the Court in Division promulgated the Assailed Resolution[11], with the following dispositive portion:

> **WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**[12]

On December 20, 2016, petitioner filed a Motion for Extension of Time to File Petition for Review[13], which was granted by the Court *En Banc* in a Minute Resolution[14] dated December 22, 2016.

On January 5, 2017, petitioner filed the instant Petition for Review[15] with the Court *En Banc.*

On March 28, 2017, the Court *En Banc* issued a Resolution[16] requiring respondent to file his comment, not a motion to dismiss; to which respondent failed to comply *per* Records Verification Report[17] dated May 22, 2017. Thereafter, the Court *En Banc* issued a Resolution[18] submitting the case for decision on July 4, 2017; hence this Decision.

The Issues[19]

> WHETHER THE ASSESSMENT FOR DEFICIENCY TAXES ISSUED BY RESPONDENT IS VOID FOR LACK OF FACTUAL AND LEGAL BASIS;

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[9] *Records, Vol. 5, Motion for Reconsideration,* pp. 1972-1998.
[10] *Id., Records Verification Report,* p. 2000.
[11] *Id., Assailed Resolution,* pp. 2002-2014.
[12] *Id., Dispositive Portion,* p. 2014; emphases retained.
[13] *Rollo, Motion for Extension of Time to File Petition for Review,* pp. 1-5.
[14] *Id., Minute Resolution,* p. 6-4.
[15] *Id., PFR,* pp. 7-332, with annexes.
[16] *Id., Resolution,* pp. 334-335.
[17] *Id., Records Verification Report,* p. 336.
[18] *Id., Resolution,* pp. 338-339.
[19] *Rollo, PFR, Issues,* pp. 13-14.

WHETHER RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR DEFICIENCY EWT FOR THE PERIOD JANUARY TO MAY 2006 HAS ALREADY PRESCRIBED, THUS, EFFECTIVELY BARRING RESPONDENT FROM ENFORCING THE DEFICIENCY TAX ASSESSMENT FOR THE CITED PERIOD; AND

WHETHER RESPONDENT GRAVELY ERRED IN FINDING DISCREPANCIES IN PETITIONER'S INCOME PAYMENTS WHICH WERE PURPORTEDLY NOT VALIDLY SUBJECTED TO EWT.

Petitioner's Arguments[20]

Petitioner argues that the constitutional principle of due process guarantees that no person shall be deprived of his/her/its property without being given the opportunity to be notified and heard. According to petitioner, *Section 3.1.9 of Revenue Regulation ("RR") No. 12-99* states that the letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice are void. According to petitioner, the FDDA issued by respondent failed to adhere to the clear mandate of the law for it merely provided a breakdown of the computation for the alleged tax deficiencies without indicating the facts and the law it relied upon for the determination of petitioner's supposed deficiencies; and that by failing to specify the source and legally justify the figures relied upon in the determination of petitioner's tax deficiencies, respondent has unjustly prevented petitioner from being fully apprised of the bases for its tax liabilities.

Petitioner avers that respondent has three (3) years from the last day prescribed by law for the filing of the return or three (3) years from its actual filing, where it was filed beyond the period prescribed, to assess deficiency taxes; and that it is the date of filing of the appropriate return which determines when the period of limitation on assessment and collection should commence. Petitioner maintains that each monthly return is considered as a complete return by itself, it becomes quite evident that the three (3)-year prescriptive period for deficiency EWT commenced to run on a monthly basis; and that the benefit of the period of limitations on assessment and collection of

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[20] *Rollo, PFR, Discussion,* pp. 14-41.

taxes may be waived pursuant to *Section 222(b) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*. According to petitioner, it executed a waiver of the statute of limitations on June 16, 2009, which was accepted by the CIR only on July 29, 2009, thus, the waiver only became effective as of such date and cannot be made to apply for the months of January to May 2006. Petitioner points out that none of respondent's witnesses has been able to give any testimony or evidence that repudiates its claim of prescription.

Petitioner asseverates that the details of discrepancies laid out in the FDDA is tainted with serious errors, which if not clarified and addressed, will most likely unduly prejudice petitioner.

The Ruling of the Court En Banc

At the outset, it must be stated that the issues and the arguments raised by petitioner are the exact duplicate or a word for word reiteration of the issues and arguments it raised before the Court in Division, which were already considered, passed upon, and exhaustively discussed in the Assailed Decision and the Assailed Resolution.

However, there is one thing that stands out upon a perusal of the pieces of evidence on record, and that is the absence of a Letter of Authority that was offered into evidence. It must be emphasized that while the issue on want of authority of the revenue officers to conduct the audit investigation was never raised at any stage of the proceedings before the Court in Division, nor in the present petition, the Court *En Banc* is not precluded of its jurisdiction to rule on the same. In the case, *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[21], the Supreme Court held in this wise:

> From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms "other matters" under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.

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[21] G.R. No. 183408, July 12, 2017.

> <u>On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.</u>
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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> > SECTION 1. *Rendition of judgment.* - x x x
> >
> > In deciding the case, the Court <u>may not limit itself to the issues stipulated by the parties</u> 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, <u>the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda</u>, The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter.[22]

Applying the foregoing in the case at bar, respondent offered Memorandum Referral No. 043-AS-10-20-2008-504[23] dated October 20, 2008 addressed to Revenue Officer Bryan Francis Lim ("RO Lim") and Group Supervisor Nicasio Lumagui, Jr., "for re-assignment and continuance of audit pursuant to RTAO No. 88-2008 dated 4-8-2008 issued to Revenue Officer Delfin Sunga." The Memorandum Referral was signed by the Revenue District Officer.

Respondent's witness, RO Lim testified *via* Judicial Affidavit[24] that he was authorized to examine petitioner's books of accounts and other accounting records for taxable year 2006 pursuant to a Memorandum of Assignment dated October 20, 2008.

Section 13 of the 1997 NIRC provides the authority of a Revenue Officer ("RO"), to wit:

> Section 13. Authority of a Revenue Officer. - <u>Subject to the rules and regulations</u> to be prescribed by the Secretary of

[22] Underscoring ours.
[23] *Records, Vol. 4, Exhibit "R-1," Memorandum Referral,* p. 1810.
[24] *Id., Exhibit "R-11," Judicial Affidavit of Mr. Bryan Francis G. Lim,* pp. 1801-1809.

> 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]

Revenue Memorandum Order ("RMO") No. 43-90[26] provides as follows:

> 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, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.[27]

Basic is the rule in statutory construction that the use of the word *"shall"* connotes a mandatory order. Its use in a statute denotes an imperative obligation and is inconsistent with the idea of discretion. Where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed.[28] Hence, the use of the word *"shall"* in *RMO No. 43-90* can only mean that the issuance of a new LOA is mandatory in cases of reassignment.

Clearly, before an assessment can be conducted, the RO conducting the same must first be authorized to do so, pursuant to an LOA issue by the Revenue Regional Director. In case of re-assignment or transfer of cases to another RO, a new LOA with a corresponding notation thereto must be issued.

This was explained by the Supreme Court in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[29], wherein it held that:

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[25] Underscoring ours.
[26] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, Dated September 20, 1990.
[27] Underscoring ours.
[28] *Bataan Governor Enrique T. Garcia, Jr. v. Hon. Eduardo R. Ermita, et al.*, G.R. No. 168730, September 1, 2005, 469 SCRA 10.
[29] G.R. No. 178697, November 17, 2010, 635 SCRA 234.

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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 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. x x x

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.[30]

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[31], the Supreme Court emphasized that the absence of an LOA violated a taxpayer's right to due process; accordingly, the assessment thereon was declared void, *viz.:*

> 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

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[30] Underscoring ours.
[31] G.R. No. 222743, April 5, 2017.

> 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
>
> ... [I]t 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.
>
> 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. 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. Moreover, even if the Memorandum of Referral will be taken into consideration, it will still not be valid since it was signed not by the Revenue Regional Director but by the Revenue District Officer, in contravention of the provisions of the law. Thus, RO Lim acted without authority when he conducted the audit of petitioner, hence, the assessment is null and void. Accordingly, a void assessment bears no valid fruit.[32]

Finding that the assessment is void for having been conducted without authority, the Court finds it no longer necessary to discuss the other issues raised.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated September 21, 2012 and the corresponding Final Assessment Notice are **CANCELLED and WITHDRAWN.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

Juanito C. Castañeda, Jr.
(Please see Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(I join JCC's Concurring Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
(Please see Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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32 *Commissioner of Internal Revenue v. Azucena T. Reyes, Azucena T. Reyes v. Commissioner of Internal Revenue,* G.R. Nos. 159694 and 163581, respectively, January 27, 2006, 480 SCRA 382.

CATHERINE T. MANAHAN
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

NIKKEN PHILIPPINES, INC., Petitioner,	**CTA EB No. 1569** (CTA Case No. 8714)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.,*** **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** ***and*** **MANAHAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 07 2018 4:21p.m.

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CONCURRING OPINION

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

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Lovell R. Bautista, in granting the Petition for Review filed by petitioner Nikken Philippines, Inc. thereby cancelling the Final Decision on Disputed Assessment ("FDDA") and the corresponding Final Assessment Notice ("FAN") issued against petitioner for being void *ab initio*, upon a finding that the FAN was issued by respondent Commissioner of Internal Revenue (CIR) without a valid Letter of Authority ("LOA").

While petitioner failed to raise the issue of lack of a valid LOA, the Court *En Banc* is not precluded from considering this issue as its absence renders an assessment intrinsically void.[1] A void assessment bears no fruit,[2] and estoppel cannot operate to give an effect to an assessment which is *void ab initio*.

As enunciated in the *ponencia*, the authority of **Revenue Officer ("RO") Bryan Francis Lim** and **Group Supervisor ("GS") Nicasio Lumagui Jr.**, to audit petitioner emanated from **Memorandum dated October 20, 2008 with Referral No. 043-AS-10-20-2008-504.**[3] **No LOA was offered in evidence** that would show RO Lim and GS Lumagui, Jr.'s authority to examine the books of accounts and other accounting records of petitioner or to continue any investigation against petitioner.

The authority of RO Lim and GS Lumagui, Jr. to examine petitioner's books and records was through a mere Referral Memorandum. Yet, the continuation of audit of petitioner's books and records by any RO and GS necessitates not just a mere referral memorandum but a new LOA, pursuant to Revenue Memorandum Order (RMO) No. 43-90.

Worse, the Referral Memorandum issued to RO Lim and GS Lumagui, Jr. was signed by a Revenue District Officer (RDO) which is contrary to the clear mandate of Section 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, that the LOA must be issued, at the very least, by a Revenue Regional Director.[4] The NIRC of 1997, as amended, does not confer upon the RDO an authority to issue an LOA, nor authorized the Revenue Regional Director to further delegate the authority to an RDO.

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[1] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017; *Medicard Philippines Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017; *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,* G.R. No. 178697, November 17, 2010.

[2] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

[3] Exhibit "R-1", CTA Docket, p. 1810.

[4] "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." (Boldfacing and underscoring supplied)

To recognize as valid the act of the RDO by applying the laws on contracts and agency is not supported by jurisprudence. The law on contracts and agency cannot substitute *nay* supersede the provision of the NIRC (a special law which governs, among others, the conduct of the audit and examination of taxpayers to determine the payment of correct amount of internal revenue taxes) which categorically requires the issuance of an LOA by the Revenue Regional Director before an audit and examination of a taxpayer's books and accounting records may be conducted. It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. **The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.**[5]

In fine, the examination of petitioner's records by RO Lim and GS Lumagui, Jr., having been made without the required authority, makes the disputed assessment a nullity.

All told, I **CONCUR** with the *ponencia.*

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] *Commissioner of Internal Revenue vs. Julieta Ariete*, G.R. No. 164152, January 21, 2010

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NIKKEN PHILIPPINES, INC.,
Petitioner,

- *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1569
(CTA Case No. 8714)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

JUN 07 2018 4:21 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lovell R. Bautista in reversing and setting aside the Decision dated June 23, 2016 as well as the Resolution dated November 28, 2016 of the Second Division of this Court and in holding that respondent Commissioner of Internal Revenue's Final Decision on Disputed Assessment dated September 21, 2012 and the corresponding Final Assessment Notices as void for lack of requisite authority on the part of the revenue officers who actually conducted the audit investigation of petitioner's books of accounts and other accounting records for taxable year 2006.

A review of the records revealed that the purported authority of Revenue Officer Bryan Francis Lim (RO Lim) and Group Supervisor Nicasio Lumagui, Jr. (GS Lumagui) to conduct the audit investigation of petitioner's books of accounts and other accounting records for taxable year 2006 was derived from the Memorandum of Assignment dated October 20, 2008 issued by Revenue District Officer Rey Asterio L. Tambis (RDO Tambis) of BIR Revenue District Office No. 43 – Pasig City.[1] The said Memorandum of Assignment referred to RO Lim and GS Lumagui the 2006 case docket of petitioner for re-assignment and continuance of audit investigation of petitioner's case.

The records do not show that a Letter of Authority was issued in favor of RO Lim and GS Lumagui.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of

[1] Exhibit "R-1", Division Docket, Vol. IV, p. 1810.

taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:
>
> x x x x x x x x x
>
> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

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

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign Letters of Authority. It may be noted that a Revenue District Officer is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
>
> x x x x x x x x x

> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself**." *(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.[2]

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 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.[3] 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

[2] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[3] Revenue Administrative Order No. 001-12 dated April 2, 2012.

may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[4]

In the present case, RO Lim and GS Lumagui conducted the audit examination on the basis of a mere Memorandum of Assignment issued by RDO Tambis re-assigning to them the conduct of audit investigation of petitioner's books of accounts and other accounting records for taxable year 2006.

In my view, the Memorandum of Assignment issued by RDO Tambis cannot validly grant RO Lim and GS Lumagui the authority to conduct an audit examination of petitioner's books of accounts and other accounting records for taxable year 2006. As a Revenue District Officer, RDO Tambis is bereft of any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power. While it is true that under Section 11 of the 1997 NIRC,[5] a Revenue District Officer has the duty "to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with", it does not follow that it may exercise functions which the law has expressly granted to other tax officials such as the CIR and the Revenue Regional Director.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[6] 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 **GRANT** the present Petition for Review.

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[4] *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.

[5] Section 11 of the 1997 NIRC states:

> "SEC. 11. *Duties of Revenue District Officers and Other Internal Revenue Officers.* — It shall be the duty of every Revenue District Officer or other internal revenue officers and employees to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with, and to aid in the prevention, detection and punishment of frauds or delinquencies in connection therewith.
>
> It shall be the duty of every Revenue District Officer to examine the efficiency of all officers and employees of the Bureau of Internal Revenue under his supervision, and to report in writing to the Commissioner, through the Regional Director, any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts and any evidence sustaining each case."

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

JUANITO C. CASTANEDA, JR.
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

NIKKEN PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1569
(CTA Case No. 8714)

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

Promulgated:
JUN 07 2018 4:24 p.m.

x---x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Bautista, which granted the Petition for Review and declared the Final Decision on Disputed Assessment dated September 21, 2012 and the corresponding Formal Assessment Notice cancelled and withdrawn. However, my concurrence is based on different reasons which I shall discuss below.

A review of the records reveals that the Memorandum of Reassignment dated October 20, 2008 with Referral No. 043-AS-10-20-2008-504[1] is defective and did not work to validly delegate the authority to Revenue Officer (RO) Bryan Francis Lim and Group Supervisor (GS) Nicasio Lumagui, Jr. to audit petitioner.

[1] Exhibit "R-1", CTA Docket, p. 1810.

That being said, I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in their favor, RO Lim and GS Lumagui, Jr. may be given the authority to continue the audit and examination of petitioner's books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, by the Revenue Regional Director, upon the reassignment of RO Delfin C. Sunga who was the originally named RO in the LOA. I submit that this could be validly done under the National Internal Revenue Code of 1997 ("1997 NIRC") and the laws on agency under the Civil Code.

The power of the 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.** –
>
> (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."[2]

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;

[2] *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
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the 1997 NIRC:

> "SEC. 10. **Revenue Regional Director.** – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
>
> xxx
>
> (c) **<u>Issue Letters of authority for the examination of taxpayers</u> within the region;**
>
> xxx
>
> (h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[3]

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."

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[3] *Emphasis and underscoring supplied.*

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[4], 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."[5]

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)"[6]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to RO Sunga who was originally named in the LOA may be revoked, transferred and reassigned to RO Lim, for continuance of audit.

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4 G.R. No. 188288, January 16, 2012.
5 *Emphasis supplied.*
6 *Emphasis supplied.*

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[7], 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."[8]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[9] The title of the contract does not necessarily determine its true nature.[10] 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.[11] 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

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7 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)*.

8 Civil Code of the Philippines, Article 1869.

9 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.

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

11 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).

laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[12]

I am not unaware of Revenue Memorandum Order No. 43-90[13] 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.[14]

It is for the reasons above that, in my opinion, RO Lim and GS Lumagui, Jr., who conducted the examination of petitioner'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 Revenue District Officer Rey Asterio L. Tambis. Therefore, RO Lim & GS Lumagui, Jr. were without authority to continue the audit.

Given the foregoing, the Final Decision on Disputed Assessment (FDDA), Formal Letter of Demand (FLD), and Final Assessment Notice (FAN) issued against petitioner are all void for having been issued without the proper authority.

I vote to **GRANT** the Petition for Review, **REVERSE** the assailed Decision and Resolution of the Court in Division, and **CANCEL** and **SET ASIDE** the FDDA, FLD, and FAN issued by respondent against petitioner.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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