REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

GOLDEN ARCHES REALTY CORPORATION,	**CTA CASE NO. 9400**
Petitioner,	Members:
-*versus*-	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUL 09 2020 9:56 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] filed on 28 July 2016, under ***Section 3(a)(1),***[2] ***Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),***[3] asking the Court to render judgment cancelling the Final Decision on Disputed Assessment ("FDDA"), dated 23 June 2016, issued by respondent.[4]

In the FDDA, petitioner was assessed for deficiency Income Tax ("IT"), Value-Added Tax ("VAT"), and compromise penalty for taxable year 2009, in the aggregate amount of ₱133,965,017.61, inclusive of interest.[5]

The Parties

Petitioner Golden Arches Realty Corporation, is a domestic corporation duly organized and existing under Philippine laws,[6] with principal office at

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1 See Petition for Review; Records, Vol. 1, pp. 10-47, with annexes.

2 "SECTION 3. Cases within the jurisdiction of the Court in Division. — The Court in Division shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx"

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

4 See Prayer in the Petition for Review; Records, Vol. 1, p. 42.

5 See Final Decision on Disputed Assessment; Records, Vol. 1 pp.418-422.

6 See Certificate of Filing of Amended Articles of Incorporation; Records, Vol. 4, p. 1982.

17th Floor, Citibank Center Building, Paseo de Roxas, Salcedo Village, Makati City.[7] It is primarily engaged in the business of acquiring land and other real properties, in developing and managing real estate so acquired, and in selling leasing or disposing such lands and buildings.[8]

Respondent Commissioner of Internal Revenue ("CIR") is vested under the law the authority to carry out all functions, duties, and responsibilities of the Bureau of Internal Revenue ("BIR").[9] He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

On 29 June 2001, petitioner entered into eight (8) Deeds of Absolute Sale ("DOAS') with Golden Arches Development Corporation ("GADC"), wherein GADC sold to petitioner the following parcels of land:

DOAS	Location	Title No.	Price
1	Bo. of Talaba, Bacoor, Cavite	T-279236	₱20,900,000.00[10]
		T-272267	
2	Pasig, Rizal	PT-104314	₱900,000.00[11]
3	Marikina	189168	₱5,850,000.00[12]
		189169	
		189170	
		189171	
		189172	
		189173	
		278557	
		278558	
4	Bo. Sto. Niño, Marikina	164846	₱82,000,000.00[13]
5	Baguio	T-50496	₱1,600,000.00[14]
6	Carmen, Pangasinan	52282	₱1,700,000.00[15]
		52283	
		52284	
7	San Fernando, Pampanga	282583-R	₱11,900,000.00[16]
8	San Roque, Tarlac	T-229274	₱1,700,000.00[17]

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7 See Amended Articles of Incorporation; Records, Vol. 4, pp. 1983-2001.
8 *Ibid.*
9 See Admitted Facts in the Pre-Trial Order; Records, Vol. 3, pp. 1141-1149.
10 See Deed of Absolute Sale; Records, Vol. 1, pp. 441-443.
11 *Id.*, pp. 449-451.
12 *Id.*, pp. 457-461.
13 *Id.*, pp. 467-469.
14 *Id.*, pp. 475-477.
15 *Id.*, pp. 483-485.
16 *Id.*, pp. 491-493.
17 *Id.*, pp. 499-501.

On 30 June 2001, petitioner and GADC executed the "First Addendum"[18] and "Second Addendum"[19] for each of the aforementioned DOAS. The First and Second Addenda clarified: (i) that each DOAS contemplates the sale and transfer of a parcel of land and excludes any and all improvements on the property; and (ii) that the payment of the purchase price by the petitioner shall be made at a date to be mutually agreed upon by petitioner and GADC and that the petitioner shall pay GADC monthly interest payment until the loan is fully settled by the petitioner.

On 24 May 2010, petitioner received Letter of Authority ("LOA") No. LOA-126-2010-00000080 dated 14 May 2010.[20] The LOA authorized Revenue Officers Alfred Manodon, Constante Reinante, Jr. and Group Supervisor Herminia Cercado of the Large Taxpayers Regular Audit Division 3 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period 1 January 2009 to 31 December 2009 (hereinafter referred to as "taxable year 2009").

Subsequently, petitioner executed three (3) Waivers of the Defense of Prescription under the Statute of Limitations ("Waiver"). The Waivers were signed by petitioner's Executive Vice President, Romeo B. Bachoco, and were accepted by BIR Large Taxpayers Services' OIC-Assistant Commissioner, Alfredo V. Misajon. The Waivers extended the period for the issuance of assessment, as follows:

<table>
<tr><th>Date Signed by Petitioner's Officer</th><th>Signatory of Petitioner</th><th>Date Signed by Respondent</th><th>Signatory of Respondent</th><th>Extended Period for Issuance of Assessment</th></tr>
<tr><td>11 September 2012[21]</td><td rowspan="3">Romeo B. Bachoco

Executive Vice President/ Chief Finance Officer</td><td>20 September 2012</td><td rowspan="3">Alfredo V. Misajon

OIC Assistant Commissioner Large Taxpayers Services</td><td>31 December 2012</td></tr>
<tr><td>7 December 2012[22]</td><td>11 December 2012</td><td>30 June 2013</td></tr>
<tr><td>4 February 2013[23]</td><td>8 February 2013</td><td>31 December 2013</td></tr>
</table>

Meanwhile, the BIR issued a Memorandum of Assignment, dated 25 March 2013,[24] which stated that respondent's audit investigation will be

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[18] See Addenda to the Deed of Absolute Sale (First Addendum); Records, Vol. 1, pp. 444-445, 452-453, 462-463, 470-471, 478-479, 486-487, 494-495, 502-503.
[19] See Addenda to the Deed of Absolute Sale (Second Addendum); Records, Vol. 1, pp. 446-448, 454-456, 464-466, 472-474, 480-482, 488-490, 496-498, 504-506.
[20] See Letter of Authority, Records Vol. 3, pp. 1193-1194.
[21] See Waiver of the Defense of Prescription under the Statute of Limitations; BIR Records, p. 302; Records, Vol. 1, p. 364
[22] *Id.*, p. 303; Records, Vol. 1, p. 365
[23] *Id.*, p. 304; Records, Vol. 1, p. 366.
[24] See Memorandum of Agreement; BIR Records, p. 307.

referred to and continued by Revenue Officer Zenaida T. Paz and Group Supervisor Merly D. Santiago.

On 26 November 2013, petitioner received an undated Preliminary Assessment Notice ("PAN"). The PAN found the petitioner liable for deficiency IT and VAT for taxable year 2009, in the aggregate amount of ₱102,888,848.77, inclusive of interest and penalties.[25]

Thereafter, the petitioner filed a Reply to the PAN, dated 9 December 2013, which was received by the respondent on 10 December 2013.[26]

On 13 December 2013, the petitioner received the Formal Letter of Demand ("FLD"), dated 13 December 2013, with attached Details of Discrepancies.[27] The FLD affirmed the findings of the BIR in the PAN.

In response to the FLD, the petitioner filed its Protest on 10 January 2014.[28]

On 30 June 2016, the petitioner received the Final Decision on Disputed Assessment ("FDDA") with Details of Discrepancies, dated 23 June 2016.[29] In the FDDA, respondent denied petitioner's Protest to the FLD, and assessed it for deficiency IT and VAT for taxable year 2009 in the total aggregate amount of ₱133,965,017.61, inclusive of interests and penalties, as follows:

I.	INCOME TAX		
	Taxable Income/(Loss) per ITR	₱	-201,156.00
	MCIT Paid	₱	403,449.00
	Adjustments to Taxable Income:		
	Disallowed Interest Expense	₱	20,120,528.00
	Unexplained Source of Cash-acquisition cost of properties		126,550,000.00
	Undeclared Sales-per recon of SLS/SAWT/RELIEF		17,508.43
	Adjusted Taxable Income	₱	146,688,036.43
	Tax Due (30%)	₱	44,006,410.93
	Add Interest from 4/16/2010 to 07/15/2016		55,008,013.66
	TOTAL AMOUNT DUE	₱	99,014,424.59

[25] See Preliminary Assessment Notice; BIR Records, pp. 355-358.
[26] See Reply to PAN; Records, Vol. 3, pp. 1196-1209.
[27] See Formal Letter of Demand with Details of Discrepancies; Records, Vol, 1, pp. 385-390.
[28] See Protest to FAN; Records, Vol. 1, pp. 391-427.
[29] See Final Decision on Disputed Assessment; Records, Vol. 1, pp. 418-422.

II.	VALUE-ADDED TAX			
	Taxable Gross Sales per VAT Returns		₱	21,170,372.34
	Add: Undeclared Sales-recon of SLS/SAWT/RLF			17,508.43
	Unexplained Source of Cash-acquisition cost of properties			126,550,000.00
	Adjusted Taxable Gross Sales		₱	147,737,880.77
	Output Tax		₱	17,728,545.69
	Less: Allowable Input Tax			
	Claimed Input Tax per VAT returns	₱ 1,284,172.97		
	Less: Disallowed Input Tax	1,313.66		1,282,859.31
	VAT Payable		₱	16,445,686.38
	Less VAT Paid			1,256,271.71
	Basic Tax Due		₱	15,189,414.67
	Add: Interest from 1/26/2010 to 07/15/2016			19,661,178.35
	TOTAL AMOUNT DUE		₱	34,850,593.02
III.	COMPROMISE PENALTY		₱	100,000.00

Aggrieved, the petitioner filed the instant Petition for Review on 28 July 2016.[30]

Meanwhile, on 19 October 2016, respondent filed his Motion to Admit Attached Answer[31] and Answer.[32] He explained that he was not able to file the said pleading within the prescribed period since he had to request and wait for the transfer of the BIR records from the BIR division. He prayed for the Court to admit his Answer.

In a Resolution, dated 26 November 2016, the Court granted respondent's Motion to Admit Attached Answer.[33]

Thereafter, the respondent filed his Pre-Trial Brief on 15 March 2017,[34] while the petitioner submitted its Pre-Trial Brief on 16 March 2017.[35]

Pre-trial commenced on 2 May 2017.[36] The parties were then given twenty (20) days or until 22 May 2017 to submit their Joint Stipulation of Facts and Issues ("JFSI").[37]

After numerous extensions granted, the Court, in a Resolution, dated 30 June 2017, denied the parties' third (3rd) Motion for Extension to file the

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[30] See Petition for Review; Records, Vol. 1, pp. 10-47, with annexes.
[31] See Motion to Admit Attached Answer; Records, Vol. 1, pp. 241-246.
[32] See Answer; Records, Vol. 1, pp. 247-257.
[33] See Resolution; Records; Vol. 1, pp. 274-277.
[34] See Respondent's Pre-Trial Brief; Records, Vol. 1, pp. 280-233.
[35] See Petitioner's Pre-Trial Brief; Records, Vol. 1, pp. 293-315.
[36] See Minutes of the Hearing; Records, Vol. 1, p. 1099.
[37] *Ibid.*

JSFI. The parties, thereafter, filed a Motion to Admit Attached Joint Stipulation of Facts and Issues with attached JSFI on 3 July 2017.[38] They explained that the delay in the filing of the JSFI was due to disagreements between the parties and conflicting schedules of the signatories of the JSFI. Giving consideration to the parties' explanation, the Court granted the Motion and admitted the JSFI in a Resolution dated 3 August 2017.[39] The Pre-Trial Order was issued on 15 August 2017.[40]

On 10 July 2017, the petitioner presented its witness Ms. Emanette Veronica K. Crisostomo.[41] After her testimony, the Court ordered the petitioner to file its Formal Offer of Evidence ("FOE") and the respondent to file his Comment or Opposition thereafter.[42]

On 31 July 2017, the petitioner filed its FOE with Motion to Set Commissioner's Hearing.[43] The Court, in a Resolution dated 7 September 2017, granted the Motion to Set Commissioner's Hearing, but held the resolution of the FOE in abeyance.[44]

Subsequently, the petitioner filed a Motion for Leave of Court to Present Supplemental Evidence (with Motion to Defer Resolution of Petitioner's Formal Offer of Evidence) on 6 October 2017.[45] In the said Motion, petitioner manifested that it cannot obtain the certified true copies of some of its provisionally-marked exhibits. However, it explained that it was able to secure original computer print-outs of its other provisionally-marked exhibits which include general ledgers and accounting records. In this regard, the petitioner asked the Court that it be allowed to present additional witnesses to identify the additional documents. The same was granted by the Court.[46]

On 23 April 2018, the Petitioner presented Ms. Cornelia M. Naguit, who testified and identified the original computer print-outs of the general ledgers and related accounting records, and Atty. Khersien Y. Bautista, who testified on the unavailability of the certified true copies of the DOAS despite exerting due diligence.[47] Thereafter, the Court ordered the petitioner to file its Supplemental Formal Offer of Evidence.[48]

Petitioner filed its Supplemental FOE on 8 May 2018.[49]

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38 See Motion to Admit Attached Joint Stipulation of Facts and Issues; Records, Vol. 3, pp. 1150-1164.
39 See Resolution; Records, Vol. 4, pp. 1703-1706.
40 See Pre-Trial Order; Records, Vol. 4, pp. 1708-1714.
41 See Minutes of the Hearing; Records, Vol. 3, p. 1165.
42 *Ibid.*
43 See Formal Offer of Evidence with Motion to Set Commissioner's Hearing; Records, Vol. 3, pp. 1173-1192.
44 See Resolution; Records, Vol. 4, pp. 1716-1717.
45 See Motion for Leave of Court to Present Supplemental Evidence (with Motion to Defer Resolution of Petitioner's Formal Offer of Evidence); Records, Vols. 4-5, pp. 1726-1854.
46 See Resolution; Records, Vol. 4, pp.1860-1862.
47 See Minutes of the Hearing; Records, Vol. 4, p. 1863.
48 *Ibid.*
49 See Supplemental Formal Offer of Evidence (With Submission and Motion to Set Commissioner's Hearing); Records, Vol. 4, pp. 1871-2035.

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On 5 July 2018, the Court issued a Resolution admitting petitioner's pieces of evidence.[50] Likewise, the Court set the date for the presentation of respondent's witness.[51]

Respondent presented his witness, Ms. Zenaida T. Paz, on 26 February 2019[52] and filed his FOE on 5 March 2019.[53]

On 9 May 2019, the Court admitted respondent's exhibits and ordered the parties to file their respective memoranda.[54]

Respondent filed his Memorandum on 15 July 2019,[55] while the petitioner submitted its Memorandum on 25 July 2019 by registered mail.[56]

With the filing of the parties' Memoranda, the Court promulgated a Resolution on 5 August 2019 submitting the case for Decision.[57] Hence, this Decision.

The Issues[58]

The parties submitted the following issues for this Court's resolution:

> WHETHER THE RESPONDENT'S ASSESSMENTS AGAINST PETITIONER FOR ALLEGED DEFICIENCY IT AND VAT FOR THE PERIOD 1 JANUARY 2009 TO 31 DECEMBER 2009 IN THE AGGREGATE AMOUNT OF ₱133,965,017.61 IS VALID; AND
>
> WHETHER RESPONDENT'S RIGHT TO ASSESS PETITIONER'S ALLEGED DEFICIENCY IT AND VAT FOR THE PERIOD 1 JANUARY 2009 TO 31 DECEMBER 2009 HAS ALREADY PRESCRIBED;

Arguments of the Parties

Petitioner's Arguments[59]

Petitioner argues that the assessment of the respondent is void since the FDDA was issued beyond the three (3) year prescriptive period under the Tax

[50] See Resolution; Records, Vol. 5, pp. 2038-2040.
[51] *Ibid.*
[52] See Minutes of the Hearing; Records, Vol. 5, p. 2059.
[53] See Formal Offer of Evidence; Records, Vol. 5, pp. 2064-2069.
[54] See Resolution; Records, Vol. 5, pp. 2076-2077.
[55] See Memorandum; Records, Vol. 5, pp. 2093-2104.
[56] *Id.*, pp. 2107-2156.
[57] See Resolution; Records, Vol. 5, p. 2158.
[58] See Stipulated Issues in the Pre-Trial Order; Records, Vol. 2, p. 380.
[59] See Memorandum; Records, Vol. 5, pp. 2107-2156.

Code. It belies the respondent's contention that it issued three (3) Waivers. Petitioner explains that the documents signed are actually requests for extension of time within which to present additional documents. It further argues that even assuming that the documents were Waivers, the same are defective and therefore did not extend the prescriptive period for assessment.

Likewise, petitioner raises that the revenue officers who conducted the audit are not the same revenue officers stated in the LOA, rendering the audit investigation void.

Further, it faults the respondent for assessing petitioner for deficiency taxes on transactions it entered into prior to taxable year 2009. Petitioner states that a significant part of respondent's IT and VAT assessment pertain to its sale of properties to GADC in 2001, which are outside the scope of the taxable year under investigation.

Finally, petitioner insists that the assessment is based on mere presumptions and is without basis. It points out that the assessment is only based on the respondent's reconciliation of the Summary List of Sales ("SLS"), Summary Alphalist of Withholding Tax Agents ("SAWT"), and Reconciliation of Listing for Enforcement ("RELIEF"), without relying on authentic records of the petitioner.

Respondent's Counter-Arguments[60]

On the part of the respondent, he insists that the assessment is valid. He opposes petitioner's contention that the Waivers are mere requests for extension to submit documents. He claims that the case of ***Commissioner of Internal Revenue vs. Next Mobile, Inc.***[61] is in all fours with the present case; hence, petitioner should be estopped from questioning the validity of the Waivers. He further argues that petitioner's act of signing the Waivers shows its acquiescence to waive the defense of prescription under the statute of limitations prescribed under Section 203 and 222 of the Tax Code.

Respondent also contradicts petitioner's argument that his assessment is based on mere presumption. He avers that an assessment based on reconciliation of SLS, SAWT, and RELIEF is valid. He explains that the RELIEF was precisely created by the BIR to support its third-party information program through cross-referencing of third party information, which is a type of audit investigation sanction by the Tax Code.

Further, respondent argues that he did not exceed his authority in the conduct of the audit investigation. He avers that even if petitioner's sale transaction between GADC happened in 2001, the same continued until 2009.

[60] *Id.*, pp. 2093-2104.
[61] G.R. No. 212825, 7 December 2015.

Respondent also argues that the petitioner should be held liable for compromise penalty considering that it failed to file the required returns and pay the required taxes under the Tax Code.

The Ruling of the Court

The revenue officers have no authority to conduct the audit investigation. Thus, the assessment is void.

The Court finds for the petitioner.

Section 6(A) of the Tax Code grants the respondent or his duly authorized representative the power to authorize the examination and assessment of a taxpayer, to wit:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -**
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, **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."[62]

Corollary thereto is ***Section 13 of the Tax Code***, which mandates all audit investigation to be made by a Revenue Officer designated in an LOA issued by the Revenue Regional Director, to wit:

> "SEC. 13. Authority of a Revenue Offices. - 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.**"[63]

The aforementioned rule also applies in cases of re-assignment or transfer of audit investigation cases to new revenue officers as provided under ***Revenue Memorandum Order ("RMO") No. 43-90***,[64] as follows:

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[62] Emphasis supplied.
[63] Emphasis supplied.
[64] Amendment of Revenue Memorandum Order No. 37-90 prescribing revised policy guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

"C. Other policies for issuance of L/As [LOA].

1. **All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.**

xxx xxx xxx

5. **<u>Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As [LOA] which have already expired, shall require the issuance of a new L/A [LOA]</u>**, with the corresponding notation thereto, including the previous L/A [LOA] number and date of issue of said L/As [LOA]

xxx xxx xxx"[65]

The rule on re-assignment/transfer of audit investigation was discussed by the CTA *En Banc* in the case of ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[66] where it recognized that a document which transfers an revenue officer's authority to examine and assess a taxpayer to another may be construed as an equivalent of a new LOA, to wit:

> This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Cletofel Parungao, Myrna Ramirez, Ma. Salud Maddela, Zenaida Paz, Allan Maniego, Joel Aguila, and GS Glorializa Samoy who were originally named in the LOA may be revoked, transferred and reassigned to RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De Ia Peiia for continuance of audit.
>
> **<u>Said document where such authority is transferred may be equivalent to an LOA</u>**. Several reasons support this. *First,* **the only directive under Section 13 of the NIRC of 1997, as amended, which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done in writing.** In fact, an "[a]gency may be oral, unless the law requires a specific form."
>
> *Second,* **<u>although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer.</u>** The primary consideration in determining the true nature of a contract is the intention of the parries. **<u>If the words of a contract appear to contravene the evident intention of the parries, the latter shall prevail.</u>** Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parries. The title of the contract does not necessarily determine its true nature. In fact, this Court has, rime and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.
>
> In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.

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[65] Emphasis supplied.
[66] CTA EB No. 1880, 6 August 2019.

> Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code."[67]

Therefore, a document may be construed as a new LOA, provided that all the elements establishing a contract of agency between the CIR or his duly authorized representative and the new revenue officer is present.

In this case, there is no dispute that an LOA[68] was issued to the petitioner, to wit:

> "LOA-126-2010-00000080
>
> LETTER OF AUTHORITY
>
> May 14, 2010
>
> GOLDEN ARCHES REALTY CORPORATION
> XXX
> XXX
> XXX
>
> SIR/MADAM/GENTLEMEN:
>
> The bearer(s) hereof, RO-ALFRED MANODON, CONSTANTE JR REINANTE/ GS – HERMINIA CERCADO of LT REGULAR AUDIT DIVISION 3 is/are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from January 1, 2009 to December 31, 2009 pursuant to REVENUE MEMORANDUM ORDER NO. 36-2010 (CONGLOMERATE AUDIT PROGRAM). The Revenue Officer(s) identified herein are provided with the necessary identification card(s) which shall be presented to you upon request.
>
> xxx xxx xxx"

However, during the course of the audit investigation, the revenue officers authorized under the LOA were replaced by Revenue Officer Zenaida T. Paz and Group Supervisor Merly D. Santiago by virtue of a Memorandum of Assignment dated 25 March 2013,[69] to wit:

> "No. 126-RE-2013-0141
> Date: March 25, 2013
>
> MEMORANDUM TO:
>
> | | | |
> |---|---|---|
> | Revenue Officer/s | : | Zenaida T. Paz |
> | Group Supervisor | : | Merly D. Santiago |
>
> Subject: GOLDEN ARCHES REALTY CORP.

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67 Emphasis supplied.
68 See Letter of Authority; Records, Vol. 3, p. 1193; BIR Records, p. 5.
69 See Memorandum of Assignment; BIR Records, p. 307.

Docket – AIRT - 2009
LOA LOA-126-2010-00 dated May 14, 2010

Referred to you is the subject case/docket for:

[x] Continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned/retured/transferred to another district office.

xxx xxx xxx

(signed)
ANTONIO JONATHAN G. JAMINOLA
OIC-Chief, Regular LT Audit Division 3"

Thereafter, it was Revenue Officer Zenaida T. Paz and Group Supervisor Merly D. Santiago who took over the audit investigation as indicated in the Memorandum Reports they submitted to the respondent, dated 30 October 2013, recommending for the issuance of the PAN,[70] undated report recommending for the issuance of the FLD,[71] and 10 June 2016 report recommending the issuance of the FDDA.[72]

As pointed out by the petitioner, no new LOA was issued giving authority to Revenue Officer Zenaida T. Paz and Group Supervisor Merly D. Santiago to conduct the audit investigation of the petitioner, except for a Memorandum of Assignment issued by Antonio Jonathan G. Jaminola, the OIC-Chief of the Regular LT Audit Division 3.

This was affirmed by Revenue Officer Zenaida T. Paz in her Judicial Affidavit,[73] to wit:

"Q5: Why are you familiar with this case?
A5: Because I was the person tasked to continue the audit examination and investigation of the tax assessment of Golden Arches Corporation (GARC, for short) for all revenue taxes for the period January 1, 2009 to December 31, 2009, or the taxable year 2009.

Q6: Under what authority are you exercising these functions?
A6: I was authorized under a Memorandum of Assignment (MOA) dated March 25, 2013. The said MOA was issued pursuant to Letter of Authority (LOA) No. 126-2010-00000080 dated May 14, 2010 and referred the case/docket to me and my Group Supervisor for the continuation of the audit investigation to replace the previously assigned Revenue Officers.

xxx xxx xxx"

Q9: Aside from the MOA and the LOA, what other documents did you receive for the continuation of the audit?

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[70] See Memorandum; BIR Records, pp. 348-345.
[71] *Id.*, pp. 360-359.
[72] *Id.*, pp. 552-548.
[73] See Judicial Affidavit of Zenaida T. Paz; Records, Vol. 5, pp. 2049-2058.

A9: I also received the docket of GARC for all internal revenue taxes for taxable year 2009. Contained therein, among others, were the tax returns filed by GARC, their financial statements waivers, etc."

and further reiterated in her cross-examination held in open court on 26 February 2019, to wit:

"ATTY. BAUTISTA
Q. Ms. Paz, in your answer to question no. 5, you are the Revenue Officer who conducted the audit in relation to the tax assessment of petitioner for taxable year 2009, correct?

MS. PAZ
A. Yes, Ma'am.

ATTY. BAUTISTA
Q. At what stage of the proceedings were you able to conduct the audit examination of petitioner?

MS. PAZ
A. This was referred to me for continuation of the audit.

ATTY. BAUTISTA
Q. At what stage were you able to enter the examination? What is the first thing that you did for the examination?

MS. PAZ
A. There was already a docket that was referred to me so it contained several returns filed by GARC and the audited financial statements, as well as the waiver and other documents were already there.

ATTY. BAUTISTA
Q. You mentioned that the case was referred to you, right?

MS. PAZ
A. Yes, Ma'am.

ATTY. BAUTISTA
Q. This was pursuant to a memorandum of assignment dated March 25, 2013, right?

MS. PAZ
A. Yes, Ma'am.

ATTY. BAUTISTA
Q. And a Letter of Authority was issued for this case, right?

MS. PAZ
A. No.

ATTY. BAUTISTA
Q. There was no Letter of Authority issued?

MS. PAZ
A. There was previously issued Letter of Authority but that was assigned to another Revenue Officer, there was a Revenue Travel Assignment wherein that previously assigned revenue officer was

q

transferred, so when I entered RTA free the docket of GARC was referred to me through a Memorandum of Assignment.

ATTY. BAUTISTA
Q. So, you confirm that in the Letter of Authority issued pertaining to a taxable year 2009, you are not named in this letter of authority?

MS. PAZ
A. No.

ATTY. BAUTISTA
Q. And as a result of your audit examination, you prepared several memorandum reports?

MS. PAZ
A. Yes, Ma'am.

ATTY. BAUTISTA
Q. Each memorandum report recommended the issuance of preliminary assessment notice, formal letter of demand and a final decision on disputed assessment?

MS. PAZ
A. Yes, Ma'am.

ATTY. BAUTISTA
Q. In the course of your audit, was there any other Letter of Authority issued pertaining to this assessment?

MS. PAZ
A. None, Ma'am.

ATTY. BAUTISTA
Q. The Letter of Authority, the audit covers the taxable year?

MS. PAZ
A. Taxable year 2009."[74]

As previously mentioned, a document, such as the Memorandum of Assignment may be treated as an equivalent of a new LOA provided that it is compliant with the essential elements of a LOA and was issued by the respondent or his authorized representative who is the Revenue Regional Director, or in cases of taxpayers falling under the Large Taxpayers Division, the Assistant Commissioner/Head Revenue Executive Assistants, as provided under ***RMO No. 29-07***,[75] to wit:

"II. AUDIT POLICIES AND GUIDELINES

1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the

[74] See Transcript of Stenographic Notes taken during the hearing dated 26 February 2019.

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

> selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants.**"[76]

Applying the foregoing in the case at bar, the Memorandum of Assignment was only signed by Antonio Jonathan G. Jaminola, OIC-Chief of the Regular LT Audit Division 3. He is neither the CIR, Revenue Regional Director, nor an Assistant Commissioner/Head Revenue Executive Assistant, and therefore, is not one of the authorized representatives of the respondent to issue an LOA.

Hence, Revenue Officer Zenaida T. Paz and Group Supervisor Merly D. Santiago have no authority to continue petitioner's audit, a situation which is in all fours with the case of ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.,***[77] to wit:

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

Considering that Revenue Officer Zenaida T. Paz and Group Supervisor Merly D. Santiago have no authority to conduct petitioner's audit, the resulting assessment is void, as ruled by the Supreme Court in the case of ***Commissioner of Internal Revenue v. Sony Philippines, Inc.,***[78] to wit:

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

Having found the assessment void, the Court will no longer discuss the other issues raised in the present petition.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated 23 June 2016, assessing petitioner for deficiency income tax, and value-added tax in the aggregate amount of ₱133,965,017.61 for taxable year 2009 is **CANCELLED** and **SET ASIDE.**

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[76] Emphasis supplied.
[77] CTA EB No. 1880, 6 August 2019.
[78] G.R. No. 178697, 17 November 2010.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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