REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ROBERT CHRISTOPHER M. CARMONA, doing business under the name SAGA CASTING AND PRODUCTIONS, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA CASE NO. 8484** *Members:* **DEL ROSARIO**, PJ, **UY**, *and* **MINDARO-GRULLA**, JJ. Promulgated: MAY 2 8 2015 ; 11:34 a.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondent's **"MOTION FOR RECONSIDERATION (Re: Decision promulgated 20 January 2015)"** filed on February 2, 2015.

In her motion for reconsideration, respondent argues that the three (3) -year prescriptive period to assess is not without exemptions. Respondent alleges that petitioner failed to declare his correct sales in his Income and Value-Added Tax (VAT) returns in the amount of P68,747,335.27 or equivalent to 400.72% undeclared sales. This discrepancy manifests an evident substantial under declaration resulting in the falsity or fraudulent of the Income and VAT returns with an intent to evade the payment of tax.

Upon perusal of the records of this case, the Court notes that the issue on the fraudulent/falsity of petitioner's Income Tax and VAT returns causing the applicability of the ten (10)-year period to assess was only raised for the first in the present Motion for Reconsideration. Respondent never alleged this issue in its Preliminary Assessment Notice (PAN), Final

Assessment Notice (FAN), Answer to the Petition for Review or in her Memorandum.

Considering that the allegation of fraud or falsity in the return is a mere after thought of respondent in trying to justify the issuance of the assessment beyond the three (3)-year prescriptive period to assess and there is nothing in the PAN and FAN which would warrant the application of the exceptions provided under Section 222 of the National Internal Revenue Code (NIRC) of 1997, as amended, respondent's allegation of fraud or falsity in the return is bereft of merit.

Furthermore, a perusal of the records shows that respondent was only able to show through certification from third parties the amount of P1,500,353.95 and P3,829,157.96 as under-declaration of sales on Income and VAT returns, respectively, or equivalent to 8.92% and 26.42% undeclared sales, as follows:

BIR Exhibit No.	BIR Records page	Name of Taxpayer	Gross Purchases
15 & 20	75 & 22	Jollibee Foods Corporation	₱ 13,888,764.70
16	50	Stores Specialists, Inc.	505,500.00
17	49	Bank of the Philippine Islands	1,606,000.00
18	44	Makati Shangri-La Hotel	142,500.00
19	41	Asia Society Philippine Foundation, Inc.	13,775.51
21	20	Ayala Land	663,850.00
22	19	Sofitel Philippine Plaza Manila	1,500,000.00
		TOTAL SALES	**₱ 18,320,390.21**

	Income	VAT
Total Sales supported by certification/letters	18,320,390.21	18,320,390.21
Less: Sales per Income Tax/VAT Return filed	16,820,036.26	14,491,232.25
Under-Declaration of Sales on Income Tax/Sales per VAT	1,500,353.95	3,829,157.96
Percentage	8.92%	26.42%

The amount of P18,320,390.21, however, is not even conclusive considering that the Bureau of Internal Revenue (BIR) did not provide any proof such as a certified true copy of receipts/invoices, alphalist or BIR returns in addition to the certifications issued by third parties. At the very least, the BIR should have provided and offered in evidence a printed copy of its system-generated Reconciliation of Listings for EnForcement (RELIEF) or Tax Reconciliation System (TRS).

Indubitably, respondent failed to prove that there was a substantial under declaration in petitioner's sales for taxable year 2007, prompting the applicability of the ten (10)-year prescriptive period.

Moreover, assuming *arguendo* that the ten (10)-year period to assess is applicable, the BIR still has no authority to assess petitioner considering that the Letter of Authority (LOA) dated September 25, 2009 was served only on October 26, 2009 or on the thirty first (31^{st}) day from its date of issue. Records further show that the said LOA was not revalidated as required by Revenue Administrative Memorandum Order No. 1-00, which categorically states that a LOA must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated.

WHEREFORE, premises considered, the "Motion for Reconsideration (Re: Decision promulgated 20 January 2015)" is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ON LEAVE

ERLINDA P. UY
Associate Justice

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