REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SPARKLAND REALTY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES AND REGIONAL DIRECTOR JONAS DP. AMORA, REVENUE REGION NO. 7, QUEZON CITY,
Respondents.

CTA CASE NO. 8824

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

FEB 12 2018 ; 1:11 pm

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RESOLUTION

MINDARO-GRULLA, *J.*:

Before this Court is respondents' **Motion for Reconsideration**, filed on November 21, 2017, with petitioner's **Opposition (Re: Motion for Reconsideration dated 21 November 2017)**, filed on December 12, 2017.

Respondents seek reconsideration of the Court's Decision dated November 3, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices, all dated December 5, 2013, for deficiency income tax,

value-added tax, and compromise penalty for taxable year 2010 are **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In assailing the aforesaid Decision, respondents anchor their arguments on the following grounds:

1. The Court erred in ruling that respondents conducted an audit on petitioner without any authority and only based the audit on the Letter Notice No. 39-RLF-10-00-00427;

2. The Court erred in ruling that the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) are void; and

3. The Court erred in ruling that petitioner had no income for taxable year (TY) 2010.

According to the respondents, the issuance of the Letter Notice (LN) is for the purpose of informing petitioner that it incurred a discrepancy based on the result on the reconciliation of Listing for Enforcement and Third Party Matching. Respondents aver that no actual audit was yet conducted then. It is alleged that because of the failure of petitioner to submit documentary documents refuting the discrepancy, a Letter of Authority (LOA) dated February 16, 2013 was issued for the conduct of a full blown audit. Respondents point out that Post Reporting Notice was issued after the issuance of the LOA; thus, at the time the audit was conducted, the assigned revenue officer was already clothed with the authority to conduct an investigation. As such, respondents insist that the FLD and FAN are valid.

Also, respondents contend that petitioner earned income for TY 2010. Allegedly, petitioner is estopped from questioning the assessments made when it did not refute the discrepancy through submission of necessary documents.

On the other hand, petitioner counter-argues that there was yet no LOA issued before the LN No. 039-RLF-10-00-00427 was issued. Petitioner claims that Revenue Officer Diaz admitted that the

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only basis of the assessment is confined to the discrepancy stated in the LN No. 039-RLF-10-00-00427.

Petitioner likewise insists that it had no income for TY 2010. The evidence presented by petitioner have allegedly showed that petitioner had no income in the said year.

The Court finds respondents' arguments partially meritorious.

The court revisits the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[1], and considers the ruling of the Supreme Court that after an LN has serve its purpose, the revenue officer should have properly secured a letter of authority (LOA) before proceeding with the further examination and assessment of the petitioner, to wit:

> "With the advances in information and communication technology, the Bureau of Internal Revenue (BIR) promulgated RMO No. 30-2003 to lay down the policies and guidelines once its then incipient centralized Data Warehouse (DW) becomes fully operational in conjunction with its Reconciliation of Listing for Enforcement System (RELIEF System). This system can detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third-party sources. Through the consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases of Goods and services.
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> RMO No. 30-2003 was supplemented by RMO No. 42-2003, which laid down the ***'no-contact-audit approach'*** in the CIR's exercise of its power to authorize any examination of taxpayer arid the assessment of the correct amount of tax. The *no-contact-audit approach* includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases and Schedule of Importation submitted by VAT taxpayers under the

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

RELIEF System pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of an LOA with the aid of a computerized/manual matching of taxpayers' documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.

Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.

With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers' issued LNs by reconciling various revenue issuances which conflict with the NIRC. **Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of** LN discrepancies, **conversion of LNs to LOAs** and assessment and collection of deficiency taxes.

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<u>9. In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA] to replace the LN</u>. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex 'E' hereof) to the OACIR-LTS/ORD for the preparation of the corresponding LAs with the notation 'This LA cancels LN No. _________'

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The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not

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> contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. **Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner**. xxx."

In this case, the LOA-039-2013-00000173 was issued for further tax audit/investigation against petitioner after the issuance of LN No. 039-RLF-10-00-00427. Likewise, the LOA was issued before the FLD and FAN were issued.

Based on the foregoing, the Court partially reconsiders the assailed Decision and rules that the FLD and FAN are valid.

Notwithstanding, the Court still finds that petitioner had no income earned in TY 2010.

As already found by the Court, the evidence presented by petitioner overcomes the *prima facie* presumption of the correctness of the assessment. Thus, the Court reiterates the ruling in the assailed Decision, to wit:

> "xxx, petitioner managed to overcome the *prima facie* presumption that the assessment made by BIR is correct and that in preparing the same, the BIR personnel regularly performed their duties.
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> Petitioner presented the following: 1st, 2nd, and 3rd Quarterly Income Tax Returns for TY 2010, Annual Income Tax Return (AITR) for TY 2010, Contract of Lease, Addendum to the Contract of Lease, Certification issued by the Office of the City Building Official of Makati City, official receipts, Certification issued by MOREI, and Certificates of Creditable Tax Withheld At Source to prove that it had no income in TY 2010.
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> The Contract of Lease, Addendum to the Contract of Lease, Certification issued by the Office of the City

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Building Official of Makati City, and official receipts prove that petitioner's business operation did not start until January 2011. These pieces of evidence corroborate the testimonial evidence presented by petitioner, xxx.

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It must be pointed out that respondents did not cross-examine any of petitioner's witnesses to elicit important facts that may disprove petitioner's claim that it had no income for TY 2010."

WHEREFORE, premises considered, respondents' **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice