REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DAKAY CONSTRUCTION AND DEVELOPMENT CORPORATION, *Petitioner,*	CTA EB No. 1294 (CTA CASE No. 8265)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA,
-versus-	UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	MANAHAN, *JJ.* Promulgated: APR 03 2017 11:35 a.m.

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R E S O L U T I O N

MINDARO-GRULLA, J.:

Submitted for resolution of this Court *En Banc* is the Commissioner of Internal Revenue's Motion for Reconsideration seeking for the reversal of the Decision[1] promulgated on September 20, 2016, the dispositive portion of which reads as follows:

Decision dated September 20, 2016:

> "**WHEREFORE**, the petition is **GRANTED**. The Decision of the Second Division of this Court in CTA Case No. 8265 dated December 10, 2014, and its Resolution dated March 25, 2015, are **REVERSED AND SET ASIDE**. The assessments for VAT Deficiency and Documentary Stamp tax

[1] En Banc Docket, pp. 58-78.

for taxable year 2007 are hereby **CANCELLED AND/OR WITHDRAWN**.

SO ORDERED."

The CIR, in her (now, his) motion, assails the Decision on the ground that the Letter of Authority remains valid and binding by virtue of its revalidation, thus, making the VAT and DST assessments valid as well.

Likewise, the CIR maintains his position that the law has granted him vast authority over examination of any taxpayer and assessment of the correct tax amount or liability.

The Court is not persuaded and finds no merit in the Motion for Reconsideration.

A perusal of the Motion for Reconsideration shows that the grounds raised therein are mere reiterations of the CIR's arguments, which have already been comprehensively discussed and passed upon by this Court in the assailed Decision.

While we agree that taxes are the lifeblood of the country, and the key to the survival of a developing economy, there is an accompanying responsibility by the Bureau of Internal Revenue (BIR) to develop and ensure a system for correct and regular tax collection.

One system to implement the correct and regular collection of taxes is the assessment/audit program of the BIR. This audit program being conducted by the various revenue district offices and regional offices of the BIR is said to not only increase enforcement of revenue regulations but also to improve voluntary tax compliance and collect the correct amount of taxes from taxpayers.

Any audit of the books of any taxpayer is composed of different stages which may be generally summarized as follows: starting with the issuance of the written authorization – i.e. Letter of Authority (LA), Letter Notice (LN), Tax Verification Notice (TVN) or , now known as the Electronic Letter of Authority (eLA)[2]- **empowering the BIR**

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[2] Revenue Memorandum Circular No. 38-13 (RMC No. 38-13), May 2, 2013.

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personnel to conduct the audit (Emphasis supplied), to the actual audit of the books of account, the informal conference between the taxpayer and the BIR, and then the issuance of the Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN) and the Final Decision on Disputed Assessment (FDDA).

In the assailed Decision, the significance of the Letter of Authority (LOA) is expressly mandated by Section 13 of the 1997 National Internal Revenue Code ("NIRC"), to reiterate:

> "xxx 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)

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Relevant thereto, in the case of *CIR vs. Sony Philippines, Inc.*[3], the Supreme Court also ruled in this wise:

> "xxx 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. (Emphasis ours)
>
> As earlier stated, LOA 19734 covered 'the period 1997 and unverified prior years.' For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by

[3] Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17,2010.

the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if the CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA."

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In the case *of University of Santo Tomas Hospital, Inc., vs. Commissioner of Internal Revenue*[4], this Court has similarly ruled that the LOA became null and void when the Revenue Officer was already transferred to the jurisdiction of the Large Taxpayers Service. To wit;

"In the present case, **LA 2001 00052716 did not have any force and effect having been issued when petitioner was already transferred to the jurisdiction of the LTS. Thus, when the Region proceeded with its assessment it did so without the necessary authority.** Furthermore, Revenue Memorandum Order ("RMO") No. 43- 90 provides:

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'C. Other policies for issuance of L/As.

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

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

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[4] University of Santo Tomas Hospital, Inc., vs. Commissioner of Internal Revenue CTA Case No. 8292, March 2, 2015.

> Applying RMO No. 43-90 to the instant case, **the assessment conducted by the Region was unauthorized, because there was no valid LA covering it** xxx." (Emphases supplied)

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Under the premises, the Court En Banc sees no reason why the same pronouncements above should not be applied in the case at bar. Whether the crux of the issue pertains to the taxable period covered, the jurisdiction of the examining revenue officers, or the period when the LOA was actually served to the subject taxpayer, what is common under these circumstances is that the examination conducted did not arise from a valid, and/or existing LOA that will empower and authorize the revenue officers to proceed with the audit.

In the same vein, we acknowledge that the very provision of the NIRC of 1997 that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer. Section 6 of the 1997 NIRC provides as follows:

> 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 **<u>may authorize the examination of any taxpayer and the assessment of the correct amount of tax:</u>** *Provided, however,* That failure to file a return shall not prevent the Commissioner from **<u>authorizing the examination of any taxpayer.</u>** [Emphases supplied]

As an administrative agency, the power to implement and interpret a law which the CIR has been entrusted to enforce has the force of law and is entitled to respect. However, let the CIR be reminded as well that such rules and regulations partake of the nature of the statute and are

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just as binding as if they had been written in the statute itself[5]. Hence, such authority, no matter how vast, do not automatically give them vested discretion or right on how such rules and regulations should be implemented. Both substantive and procedural due process must still be observed.

RMO No. 43-90, RAMO Nos. 1-00[6], and 2-95 clearly mandate that an audit **should** be conducted under an LOA and that it **must be served on the subject taxpayer within thirty (30) days from date of issue lest the authority becomes null and void**. The terms "should", and "must" are couched in a way that clearly impose a duty that is imperative and mandatory in nature. A deviation from these obviously renders the result of the audit and examination defective.

Even assuming that petitioner is liable to VAT and DST for the taxable year 2007, still the deficiency assessments will not prosper. The revenue officers acted without authority in arriving at the deficiency VAT and DST assessments. Thus, the same should be considered without force and effect. Note that the validity of the assessment becomes invalidated when the procedural standards were done clearly in violation of the law.

As there had been an irregularity in the issuance or service thereof, the said LOA should have been revalidated in accordance with the BIR's own revenue issuances. To rely and insist that the LOA was revalidated on July 24, 2009 as per revalidation notice dated June 30, 2009, or eight months after receipt by petitioner of the subject LOA, would suffice to revive the authority of its revenue officers is misplaced. It bears emphasis that **revalidation of the LOA presupposes that there is already an existing and ongoing investigation that is covered by a valid and existing LOA**.

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[5] Guro Party List , et. al., vs. Hon. Cesar Purisima, et al., G.R. No. 166715, August 14, 2008.
[6] Revenue Audit Memorandum Order (RAMO) 1-00

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2.3 **A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise it becomes null and void, unless revalidated**. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on " on the face of the copy of the Letter of Authority issued

Given the circumstances at bar, there is nothing to be revalidated considering that LOA No. 2007-00047426 dated October 22, 2008 was void from the beginning and has no force and effect for having been served upon the petitioner on November 24, 2008 or three days beyond the prescribed 30-day period. [It is noteworthy that a void assessment bears no valid fruit[7].] Moreover, basic is the rule that a void act cannot be validated or ratified[8].

Lastly, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing[9]. Following the foregoing principle, respondent should not be allowed to benefit from the principle, respondent should not be allowed to benefit from the flaws of its own irregularities and successfully insist on the validity of the LOA in order to evade its responsibility to efficiently and effectively perform its duties.

In view of the foregoing, this Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, the Commissioner of Internal Revenue's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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[7]Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. No. 159694; Azucena T. Reyes v. Commissioner of Internal Revenue, G.R. No. 163581, January 27, 2006.
[8] Spouses Reyes, et al., v. Court of Appeals and the Republic of the Philippines, G.R. No. 94524, September 10, 1998
[9] Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.), G.R. No. 212825, December 7, 2015.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice