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)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	Promulgated: SEP 20 2016 11:15 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision of this Court En Banc is a Petition for Review seeking the reversal and setting aside of the Decision[1] dated December 10, 2014 rendered by the Second Division of this Court and its Resolution[2] dated March 25, 2015 in the case entitled *"Dakay Construction and Development Corporation vs. Commissioner of Internal Revenue"* docketed as CTA Case No. 8265.

Dakay Construction and Development Corporation (Dakay) assailed the Decision and the Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated December 10, 2014:

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[1] Penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Juanito C. Castaneda and Associate Justice Amelia Cotangco-Manalastas, Docket pp.66-102
[2] Id.,pp. 59-64

WHEREFORE, premises considered, the assessments issued by the respondent against petitioner for taxable year 2007 covering deficiency income tax in the amount of P16,179,240.81 and compromise penalties in the amount of P11,500.00 are hereby **CANCELLED AND/OR WITHDRAWN.** However, the deficiency VAT and DST assessments for taxable year 2007 are hereby **AFFIRMED** but with some modifications. Accordingly, petitioner is ORDERED TO PAY respondent the amount of TWELVE MILLION ONE HUNDRED EIGHT THOUSAND ONE HUNDRED TWENTY SIX PESOS AND 75/100 (P12,108,126.75) representing deficiency VAT and DST for taxable year 2007, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

	Basic Tax	**25% Surcharge**	**Total**
Deficiency VAT	P9,640,501.40	P2,410,125.35	P12,050,626.75
Deficiency DST	46,000.00	11,500.00	57,500.00
Total	**P9,686,501.40**	**2,421,625.35**	**P12,108,126.75**

In addition, petitioner is **ORDERED to PAY:**

a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT and DST computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax Type	**Basic Tax**	**Deficiency Interest computed from**
Deficiency VAT	P9,640,501.40	April 25, 2008
Deficiency DST	46,000.00	January 5, 2008

b) Delinquency interest at the rate of 20% per annum on the total amount of P12,108,126.75 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from January 15, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Resolution dated March 25, 2015:

> **WHEREFORE**, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, petitioner's **Motion for Partial Reconsideration (On Decision Promulgated on 10 December 2014)** filed on December 22, 2014, is hereby **DENIED** for lack of merit.

The facts quoted from the Decision[3] of the Second Division are undisputed, as follows:

> Petitioner Dakay Construction and Development Corporation is a Filipino domestic corporation, duly organized and existing under and by virtue of Philippine laws with principal office address at Woolbright Drive, Sudlon, Lahug, Cebu City, Philippines.
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue who is vested with authority to administer and enforce national internal revenue laws. Her office is located at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Philippines.
>
> On November 24, 2008, petitioner received a Letter of Authority[4] from Jose N. Tan, Regional Director Revenue Region No. 13, Cebu City, dated October 22, 2008, informing petitioner that RO Violeto Meso and GS Aldine Paulo of Regional District Office No. 81 of Cebu City North, are authorized to examine its books of accounts and other accounting records for all internal revenue taxes for the calendar year (CY) 2007.
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> After investigation, a Formal Letter of Demand (FLD)[5] and Assessment Notices[6] were issued by the Regional Director Jose N. Tan on

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[3] Supra note 1.
[4] Exhibit "B-1", Division Docket, p. 362.
[5] Exhibit "G", Division Docket, pp. 363-366.
[6] Exhibits "G-2" and "G-3", Division Docket, pp. 368-369.

December 29, 2010, assessing petitioner of deficiency taxes in the total amount of P37,620,843.86, inclusive of statutory increments.

On January 28, 2011, petitioner filed its Protest Letter[7] assailing the assessment contained in the FLD.

Thereafter, a letter[8] was issued by Regional Director Jose N. Tan, which was allegedly received by petitioner on March 9, 2011, requesting for the immediate payment of the deficiency tax assessed. The letter further states that if petitioner disagrees, it may appeal the said final decision with the Court of Tax Appeals within thirty (30) days from date of receipt thereof, otherwise, petitioner's deficiency tax assessments shall become final, executory, and demandable.

Accordingly, petitioner filed the instant Petition for Review[9] on April 8, 2011.

For her part, respondent filed her Answer[10] on June 16, 2011, interposing the following defenses:

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<u>Respondent's Letter of Authority (LOA) is valid and binding</u>

Petitioner argued that the issuance of respondent's Letter of Authority (LOA) as basis of respondent to audit petitioner's accounting records and the subsequent assessments covering the period CY 2007 issued on October 22, 2008 is void and without force and effect on the ground that petitioner received said LOA beyond 30 days from date thereof. It likewise argued that the respondent's revenue officers

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[7] Exhibit "H", Division Docket, pp. 375-378.
[8] Exhibit "J", Division Docket, p. 379.
[9] Docket, pp. 7-58.
[10] Division Docket, pp. 94-102.

have no valid authority to conduct the examination and the subsequent assessments. Respondent begs to disagree.

It must be noted that nowhere is it mentioned in said LOA or other internal revenue issuances or audit programs and policies that the failure of revenue examiners to serve the LOA to taxpayers within 30 days from date hereof, will give rise to taxpayer immunity from audit for that particular period. The said requirement is merely directory and is intended to enhance efficiency while at the same time ensure quality of audit. It does not estop the right of the government to issue assessment notices for deficiency taxes within the period/s set by law. Therefore, at any time within the regular three year prescriptive period for issuing assessment notices under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, the Commissioner of Internal Revenue or her duly authorized representatives may issue an order revalidating Letters of Authority.

Further, petitioner is estopped from questioning the validity of said LOA due to petitioner's failure to invoke its right to object or refuse to receive the alleged void LOA at the time it was served by the revenue officers. As a matter of fact, petitioner voluntarily submitted its books of accounts and accounting records for audit of respondent's revenue officers in order to comply with respondent's LOA. Likewise, petitioner did not cite the invalidity of the issuance of the LOA in its protest letter dated January 25, 2011. Hence, respondent's revenue officers have the authority to audit petitioner's books of accounts and accounting records for the taxable year 2007.

Respondent's right to assess petitioner's deficiency internal revenue tax assessments has not prescribed.

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b.) Deficiency Value-Added Tax

The right of the respondent to assess petitioner for deficiency Value Added Tax (VAT) for the taxable year 2007 has not prescribed because it falls under Section 222(a) of the 1997 Tax Code, thus;

'SEC.22 *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-*

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without the assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of the civil or criminal action for the collection thereof.

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The abovementioned provision finds application to the present case because respondent discovered that petitioner made a false return and failed to file a return to cover number of transaction with intent to evade taxes returns *(sic)* based on the result of the investigations made by the respondent's revenue officers on the books of accounts and pertinent records and documents submitted by petitioner.

In the case at bar, although petitioner filed its monthly and quarterly VAT returns as mandated by law, it failed to declare thereto cash collections subject to VAT of P40,926,892.32 and unexplained sources of cash subject to VAT of P12,344,184.85.

Petitioner also declared a creditable VAT withheld in the total amount of P1,378,747.07 which were disallowed due to 'out-of-period claimed' and unsupported creditable VAT withheld, and it did not declare the right application of standard input tax of seven percent (7%) of the selling/gross receipts attributable to government sales pursuant to Q & A No. 31 of Revenue Memorandum Circular No. 62-05 in the total amount of P10,243,4380.90 *(sic)*. These facts show that the VAT returns filed by petitioner can be considered as a false return, it is immaterial if petitioner intentionally omitted to declare items to be subject to VAT or not.

Considering that the petitioner's return is false, the applicable prescriptive period would be ten years from the discovery of the falsity. In the case at bar, the latest quarterly returns filed was on January 25, 2008, while the FAN was issued on December 29, 2009, such period being within the ten year period it follows that the assessment had not yet prescribed.

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c.) Deficiency Documentary Stamp Tax (DST)

Based on the audit findings of respondent's revenue officers that petitioner had an increase in the Capital Stock for the year 2006 as per audited Balance Sheet attached to its Annual Income Tax Return amounting to P9,200,000.00, and no DST payments were posted in the BIR-Integrated Tax System on said increase in capital stock, it is reasonable to deduce that petitioner evidently failed to file DST Returns in violation of Section 175 of the NIRC of 1997, as amended. Hence, for **failure to file DST return, the corresponding taxes may be assessed at any time within ten (10) years after the discovery of such omission** pursuant to Section 222 of the 1997 Tax Code.

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After trial on the merits, this Court's Second Division rendered the assailed Decision. Unsatisfied, petitioner filed a Motion for Partial Reconsideration[11], which was denied in a Resolution dated March 25, 2015.

Hence, this petition was filed.

Petitioner submits the following grounds in support of the Petition for Review:

(1) Whether or not the alleged deficiency VAT assessments for the first, second, and third quarters of taxable year 2007 have prescribed; and

(2) Whether or not LOA No. 2007-0047426 and its resulting deficiency VAT and DST assessments for taxable year 2007 are null and void.

The Court En Banc shall rule first on the validity of the audit and examination of petitioner's alleged tax liabilities in order to determine the merit of the instant petition.

Petitioner claims that the above rulings compel the recall and cancellation of the first, second, and third quarters of taxable year 2007. It is undisputed that the LOA was belatedly served on the petitioner, thus, it is the latter's position that the VAT assessments are a nullity.

Under Section 6(A) of the Tax Code[12], the Commissioner of Internal Revenue (CIR) is granted the authority to examine and to make an assessment to determine the correct amount of tax due from a taxpayer.

Corollary thereto, Section 13 of the NIRC provides as follows:

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[11] Division Docket, pp. 667-684.

[12] **Section 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforecement.** -

> (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.

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> 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** (Emphasis supplied) due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

In so far as tax assessments are concerned, it bears emphasis that an audit and examination of books to be lawful, must be based on a valid Letter of Authority (LOA).

A Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables the revenue officer to examine the books of accounts and other accounting records, in order to determine the correct tax liabilities of a particular taxpayer.

In sum, before any revenue officer can conduct an examination or assessment, there must be grant of authority. Further, the revenue officer so authorized must not go beyond the authority given. Otherwise, a deficiency assessment issued without a valid authority is a nullity.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[13], the Supreme Court emphasized as follows:

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> "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**

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

> **of such an authority, the assessment or examination is a nullity"**. (Emphasis supplied)
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Notably, an audit and examination should be in accordance with the procedures prescribed by law. Procedural standards must also be observed in issuing the LOA to ensure that such authority is not arbitrarily exercised. There is a need to establish constraints on the authority of the revenue officers acting under delegated authority from the CIR. As part of due process, the purpose of the LOA is not only to give the subject taxpayer notice on the coverage of the tax investigation, but also to prevent the examiner from claiming blanket authority to conduct the audit and investigation.

Revenue Memorandum Order (RMO) No. 43-90 mandates as follows:

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> C. Other policies for issuance of L/As.
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> 1. All **audits/ investigations,** whether field audit or office audit**, <u>should</u> be conducted under a Letter of Authority**.
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Accordingly, Revenue Audit Memorandum Order (RAMO) 1-00 provides as follows:

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> 2.3 A Letter of Authority **<u>must</u> 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.

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Furthermore, the General Audit Procedures and Documentation[14] of the Bureau of Internal Revenue explicitly state:

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4.) When must a Letter of Authority be served?

A Letter of Authority **<u>must</u> be served to the concerned Taxpayer within thirty (30) days from its date of issuance, otherwise, it <u>shall</u> become null and void**. The Taxpayer shall then have the right to refuse the service of this LA, unless the LA is revalidated.

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Likewise, evidence on record also reveals that LOA 2007-00047426 contained a statement as follows:

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"This Letter of Authority becomes void if it contains erasures, or if not served to the taxpayer within 30 days from date hereof, or if dry seal of BIR office is not present".

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The LOA should be properly served on the subject taxpayer. The RMOs clearly mandate that the LOA **<u>must be served on the subject taxpayer within thirty (30) days</u>** from date of issue lest the authority becomes null and void. The RMOs even state that a simple erasure on an LOA already renders it null and void[15], more so if it is improperly or belatedly served.

The Supreme Court, in several pronouncements, has already ruled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation[16]. Words used in the law must

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[14] BIR General Audit Procedures and Documentation http://www.bir.gov.ph/index.php/taxpayer-bill-of-rights.html
[15] BIR Revenue Memorandum Order 28-83.
[16] Commissioner of Internal Revenue vs. Julieta Arete, G.R. No. 164152, January 21, 2010.

be given its ordinary meaning, unless a contrary intent is manifest from the law itself. 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[17].

A perusal of the afore-cited revenue memorandum orders and regulations would show that the statements use the terms "must", "shall", and "should", thus, applying the principle in statutory construction, they are couched in terms that impose a duty which is imperative and mandatory in nature.

Considering that these guidelines for the examination of returns and issuance of letters of authority to audit are mandatory, a deviation from these obviously renders the result of the audit and examination defective.

The LOA no longer has any force or effect having been served on the petitioner beyond the prescribed 30-day period. The assessment conducted by the Revenue Officers was already unauthorized, because there was no valid LOA covering it. Clearly, the deficiency VAT and DST assessments of herein petitioner for the taxable year 2007, were done without the necessary authority.

The Court in Division, in citing the case of *Commissioner of Internal Revenue vs. Azucena T. Reyes*[18], held that the LOA was for the ***"sheer purpose of investigation and was not even the requisite notice under the law".***

With all due respect to the Court in Division, a consideration of the cited case in its entirety would show that the issue being actually resolved was the validity of the formal assessment notice given to the taxpayer, whether due process was observed in **informing the taxpayer in writing of the law and the facts on which the assessment was made**. It is undisputed that the audit and examination was made under a valid LOA. The case did not categorically mention that an LOA may be dispensed with as

[17] SMI-ED Philippines Technology, Inc., vs. Commissioner of Internal Revenue, G.R. No. 175410 , November 12, 2014.
[18] Commissioner of Internal Revenue vs. Azucena T. Reyes, G.R No. 159694, January 27, 2006.

a requirement to commence the conduct of an audit or investigation of the taxpayers books and accounting records.

While we agree with the Court in Division that an LOA may be revalidated by just simply stamping the words "Revalidated on ___________" on the face of the copy of the Letter of Authority issued, the Court En Banc cannot, however, agree with the position that a revalidation of an expired LOA will revive its validity as well as the authority of the Revenue Officers for the purpose of commencing and conducting an audit of the petitioner's books and accounting records. If that were the case, the afore-cited RMOs and the BIR itself would not have expressly imposed that non service within the prescribed period makes the LOA null and void.

Reiterating Revenue Memorandum Circular (RMC) 023-09 dated April 16, 2009 which provides the manner of accomplishing revalidation of LOAs, to wit;

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> **"I. Revalidation of LAs**
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> The **revalidation of LA shall give rise to the extension of the period within which the Revenue Officer assigned to the case shall submit the report of investigation** (Emphasis supplied) to higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the tax case, **said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances**. (Emphasis supplied) Failure on the part of the RO to request for revalidation of the LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on which the reglementary period within which an assessment may be validly issued. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO if the Regional Director, upon recommendation

of the Revenue District Officer, deems it necessary.

A careful scrutiny of RMC 023-09 presupposes that there is already an existing and ongoing investigation that is covered by a valid letter of authority.

Generally, the revenue officer so authorized is only allowed one hundred (120) days to conduct the audit and submit the required report of investigation. If in case the audit cannot be completed within said period, the revenue officer may request for a revalidation of the valid LOA supported by a progress report on the case and a justification for the revalidation. If justified, an extended 120 days is given to the revenue officer to complete the investigation. Otherwise, he is no longer allowed to continue with the audit unless a waiver is signed by the subject taxpayer.

From the foregoing, there is a presumption that the purpose why RMC 023-09 was issued is distinct from the purposes for which RMOs 43-90 and 1-00 were issued.

RMC 023-09 aims for a more effective and efficient investigation and seeks to encourage revenue officers to be vigilant and non-lackadaisical in conducting an audit. On the other hand, the purpose for which RMOs 43-90 and 1-00 were issued is to empower the revenue officer to commence an audit examination of the subject taxpayer.

In the case at bar, the crux of the issue is whether there was a valid LOA to begin with that would grant authority to respondent CIR's revenue officers to commence and conduct an examination of petitioner's books and accounting records.

Given the circumstances, it is without a doubt that LOA No. 2007-00047426 dated October 22, 2008 was already null and void when it was served upon the petitioner on November 24, 2008 or three days beyond the prescribed 30 day period. Thus, there is nothing to be revalidated. The LOA is considered as a mere scrap of paper from which the revenue officers cannot derive nor acquire any right notwithstanding the submission of the books of accounting by herein petitioner.

It is a basic rule under the law that a void act cannot be validated or ratified[19]. Let it be stressed that an illegal act confers no rights, creates no duties and, in the eyes of the law, it is as if the same had never existed[20].

The Court En Banc is also not persuaded on the insistence of respondent CIR that petitioner's voluntary submission to the audit examination constitutes estoppel. A taxpayer cannot validly refuse to be subjected to an examination. Therefore, the willingness of the petitioner to present and actively participate in the audit examination does not cure the invalid act.

It is the responsibility of taxpayers to comply with the requests of the BIR to produce their books of accounts and/or other records and documents in the course of a tax investigation and/or access to records requests. A refusal to produce the requested documents and records will be dealt with in accordance with these guidelines. But, that is a matter different from the issues raised herein.

While it is true that it does not make a taxpayer immune to the conduct of the investigation, it also does not make the CIR, through its revenue officers superior over rules and regulations that are required by law to be complied with. If an issuance and service of an LOA was merely a discretionary option on the part of government, then every taxpayer would be at its mercy. The result would not only be incongruous but also irrational and even unjust. The Court En Banc cannot countenance assessments that appear to have been arbitrarily or capriciously arrived at.

Although taxes are the lifeblood of the government, their assessment and collection should be made in accordance with law, rules and regulations as any arbitrariness will defeat the very purpose of the government itself. This Court cannot condone errant or enterprising tax officials, as they are expected to be vigilant and law-abiding as well.

In the case of *Commissioner of Internal Revenue vs. Algue, Inc.*,[21] the Supreme Court ruled in this wise:

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[19] Spouses Federico L. Reyes and Maxima Dela Paz, et al., vs. Court of Appeals and the Republic of the Philippines, G.R No. 94524, September 10, 1998.
[20] Ismael A. Mathay Jr. v. Victor C. Macalincag, et al., G.R. No. 97618, December16,1993.
[21] Commissioner of Internal Revenue vs. Algue, Inc., G.R. No. L-28896 February 17, 1988.

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> "But even if we concede the inevitability and indispensability of taxation, **it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** (Emphasis supplied) If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed."

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Thus, having proceeded from a void LOA, the Assessment Notice Nos. 81-vt-13-2007-2010-12-759 and 81-ds-13-2007-2010-12-760 dated December 29, 2010 are void.

Finding that the assessments are void for having been issued without the necessary authority required, the Court En Banc finds it no longer necessary to discuss the other issue raised herein.

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

SO ORDERED.

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

WE CONCUR:

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

"I vote to affirm 2nd Division as manner of revalidation merely internal to BIR & Reyes Case mentions that internal procedures do not affect validity of assessment."

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

"I maintain my decision."

CAESAR A. CASANOVA
Associate Justice

"I join Justice Castañeda's opinion."

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

DAKAY CONSTRUCTION AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1294
(CTA Case No. 8265)

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

Promulgated:
SEP 20 2016 11:15 a.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in granting the Petition for Review and in reversing the assailed Decision and Resolution of the Court in Division, which thereby cancels the assessments of the Bureau of Internal Revenue (BIR) against petitioner for deficiency Value-added Tax (VAT) and Documentary Stamp Tax (DST) for taxable year 2007.

I share the view that a Letter of Authority (LOA) which has not been served or presented to the taxpayer within thirty (30) days from its date of issue becomes null and void. Thus, any audit or examination that has been conducted by a revenue officer, pursuant to a null and void LOA, is unauthorized and consequently, any assessment issued after said audit is likewise invalid.

Indeed, taxes are the lifeblood of the government and their prompt and certain availability is an imperious need.[1] Nonetheless, the government's power to tax has its limit inspite of all its plenitude.[2] Even the inevitability and indispensability of taxation, it is a requirement that it be exercised reasonably and in accordance with the prescribed procedure.[3]

In the assessment of tax, the National Internal Revenue Code of 1997 (NIRC), as amended and certain revenue issuances prescribe procedures for the conduct of the audit and assessment function of the BIR. These procedures include the service of a valid LOA to the taxpayer as provided under Sec. 13 of the 1997 NIRC, as amended, viz.:

> "SECTION 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."

The necessity of having a valid LOA prior to the conduct of an examination of the taxpayer's books and other accounting records is clearly indicated in the aforequoted provisions of the NIRC of 1997, as amended. Its absence will make the assessment or examination of the BIR a nullity as pronounced in *CIR vs. Sony Philippines, Inc.*[4] *(Sony), viz*:

> "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.

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[1] Commissioner of Internal Revenue vs. Manila Bankers' Life Insurance Corporation, G.R. No. 169103, March 16, 2011.
[2] Commissioner of Internal Revenue, vs. Metro Star Superama, Inc. G.R. No. 185371, December 8, 2010.
[3] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 2, 2014.
[4] G.R. No. 178697, November 17, 2010.

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> 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....xxx
>
> 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**." *(Boldfacing supplied)*

It must be stressed that the predecessor of the NIRC of 1997, as amended, *i.e., the 1977 NIRC (Presidential Decree No. 1185)* did not provide a similar provision categorically requiring the issuance of LOA to the taxpayer. Nonetheless, the then CIR promulgated Revenue Memorandum Order (RMO) No. 43-90 providing policy guidelines for examination of returns and issuance of LOA. Pertinent portions of RMO 43-90 provides:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
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> xxx xxx xxx
>
> 5. Any re-assignment/transfer of cases to another RO(s), and **<u>revalidation of L/As which have already expired, shall require the issuance of a new L/A</u>, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**. *(Boldfacing supplied)*

The CIR later came up with Revenue Audit Memorandum Order (RAMO) No. 2-95,[5] dated October 18, 1995, containing the Updated Handbook on Audit Procedures and Techniques. Pertinent parts of which provides:

[5] SUBJECT: Updated Handbook on Audit Procedures and Techniques

"VIII. Preliminary Approach To Examination

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C. Contact With Taxpayer

a. Arranging for an appointment.

A telephone or a personal call by the revenue officer should be made to the taxpayer and not to his representative.

b. Serving of Letter of Authority

b.1. On the first opportunity of the revenue officer to have personal contact with the taxpayer, he should present the Letter of Authority together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the revenue officer assigned to the case and no one else. He should have the proper identification card and should be in proper attire.

b.2. A Letter of Authority (LA) authorizes or empowers a designated revenue officer (RO) to examine, verify and scrutinize a taxpayer's books and records in relation to internal revenue tax liabilities for a particular period.

b.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** and the taxpayer has all the right to refuse its service if presented beyond the 30-day period. **Revalidation is done by serving a new Letter of Authority**." *(Boldfacing & underscoring supplied)*

Thus, while it is only in the NIRC of 1997, as amended, where a provision regarding the issuance of LOA has been specifically stated, nevertheless, the revenue issuances prior thereto with respect to issuance and revalidation of LOA, *among others*, had long been put in place. The specific provision in the NIRC of 1997, as amended, with regard to the requirement for the issuance of LOA as a condition for the conduct of tax audit and examination confirms the validity of such requirement even prior to its enactment under the principle of legislative approval of administrative interpretation by reenactment.[6]

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[6] The ruling in Kepco Philippines Corporation, G.R. No. 179961, January 31, 2011 relating to the concept of legislative approval of administrative interpretation by reenactment is applicable by analogy. In that case, it was held that R.R. 7-95 is merely a precautionary measure to ensure the effective implementation of the Tax Code and the provision of Section 4.108-1 of R.R. 7-95 was incorporated in Section 113 (B)(2)(c) of R.A. No. 9337, which states that "if the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or

In view of its incorporation in the NIRC of 1997, as amended, the manner by which LOA will be issued and revalidated will necessarily be governed by no less than the existing revenue issuances already in place.

Here, the examination of the books of accounts and other accounting records of petitioner by the BIR through Revenue Officer Violeto Meso and Group Supervisor Aldine Paulo for all internal revenue taxes for the period covering calendar year 2007 was covered by LOA 2007 00047426 dated **October 22, 2008**.[7] Petitioner received the said LOA on **November 24, 2008**.[8] The LOA was subsequently revalidated on July 24, 2009 per Revalidation Notice dated June 30, 2009 to extend the 120-day audit period, as the investigation was still on-going.[9]

Undeniably, the LOA was served on petitioner beyond the thirty (30) period from its date of issue; hence, the same becomes void following RAMO No. 2-95 and RMO No. 43-90. The said expired LOA should have been revalidated by the BIR in accordance with its own revenue issuances *that is by issuing and serving a new LOA with the corresponding notation thereto, including the previous LOA number and date of issue of said LOA instead of just proceeding to issue the expired LOA.* The Revalidation Notice stating that the LOA has been revalidated on July 24, 2009 does not cure the infirmities in the issuance of the LOA and the BIR's conduct of examination prior to the said revalidation.

Based on the foregoing, and applying the pronouncement in *Sony*, the tax audit and examination conducted by the Revenue Officer pursuant to an invalid LOA as well as the assessment issued as a consequence thereof are null and void.

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printed prominently on the invoice or receipt." This accordingly confirms the validity of the imprinting requirement on VAT invoices or official receipts even prior to the enactment of R.A. No. 9337 under the principle of legislative approval of administrative interpretation by reenactment.

[7] Par. 5 of the Petition for Review before the Court in Division, CTA Division Docket, pp. 2-3 with reference to Annex C of the Petition, CTA Division Docket, p. 15; and admitted by the CIR per par. 3 of the Answer, CTA Division Docket, p. 95.

[8] Exhibit "B-2", CTA Division Docket, p. 362; admitted into evidence in a Resolution dated January 29, 2013, CTA Division Docket, p. 457.

[9] Par. 6 of the Petition for Review before the Court in Division, CTA Division Docket, p. 3 with reference to Annex D of the Petitiont, CTA Division Docket, p. 16; and admitted by the CIR per par. 3 of the Answer, CTA Division Docket, p. 95.

All told, I vote to **GRANT** the Petition for Review and to **REVERSE AND SET ASIDE** the assailed Decision and Resolution of the Court in Division in CTA Case No. 8265. Accordingly, the disputed deficiency assessments for Value-Added Tax and Documentary Stamp Tax against petitioner for taxable year 2007 should be **CANCELLED** for being void.

ROMAN G. DEL ROSARIO
Presiding Justice