REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SPLASH CORPORATION, *Petitioner,*	**CTA Case No. 8483**
	Members:
- versus -	**Del Rosario**, *P.J.*, Chairperson, **Uy**, *and* **Mindaro-Grulla**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 18 2017 11:05 a.m.

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AMENDED DECISION

***DEL ROSARIO, P.J.*:**

For resolution are the following:

1. Petitioner's **Motion for Partial Reconsideration** filed on April 25, 2017, without respondent's comment as per Records Verification dated June 29, 2017; and

2. Respondent's **Motion for Partial Reconsideration (re: Decision promulgated on 06 April 2017)** filed on April 25, 2017, with petitioner's **Comment/Opposition (to Respondent's Motion for Partial Reconsideration dated April 24, 2017)** filed on June 23, 2017.

Both Motions assail the Decision promulgated on April 6, 2017 ("Assailed Decision"). The dispositive portion thereof states:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The Final Assessment Notice dated August 18, 2011, assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax and compromise penalty is MODIFIED so as to reflect the basic deficiency income tax assessment amounting to ₱105,580,605.01, basic value added-tax

assessment amounting to ₱7,872,021.91 and basic deficiency expanded withholding tax amounting to ₱413,950.00.

Accordingly, petitioner is hereby ORDERED to pay respondent the REDUCED AMOUNT of ONE HUNDRED FORTY-TWO MILLION THREE HUNDRED THIRTY-THREE THOUSAND TWO HUNDRED TWENTY-ONE PESOS AND 15/100 (₱142,333,221.15), inclusive of 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Income Tax	₱105,580,605.01	₱26,395,151.25	₱131,975,756.26
Value Added Tax	7,872,021.91	1,968,005.48	9,840,027.39
Expanded Withholding Tax	413,950.00	103,487.50	517,437.50
Total	₱113,866,576.92	₱28,466,644.23	₱142,333,221.15

In addition, petitioner is ORDERED to pay:

a. Deficiency interest at the rate of 20% per annum on the basic deficiency income tax of ₱105,580,605.01 computed from April 15, 2009 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b. Delinquency interest at the rate of 20 per annum on the total amount due of ₱142,333,221.15 representing deficiency income tax, deficiency VAT and deficiency EWT, inclusive of the 25% surcharge, computed from October 31, 2011 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended; and,

c. Delinquency interest at the rate of 20% per annum on the 20% deficiency interest which have accrued as afore-stated in (a) computed from October 31, 2011 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Petitioner's Motion for Partial Reconsideration

In its Motion for Partial Reconsideration, petitioner prays that the Court reverse and set aside the Assailed Decision and promulgate a new one cancelling the Final Assessment Notice issued by respondent on September 7, 2011, based on the following grounds:

1. Petitioner is not liable for income tax on income derived from the sale of technologies in accordance with Section 6 of the Inventors and Invention Incentives Act of the Philippines (Republic Act No. 7459);

2. The Bureau of Internal Revenue (BIR) itself has recognized through several general interpretative rulings as well as specific rulings it issued that the benefits under Section 6 apply to income from the sale of inventions and technologies, even if commercialization is done through a corporation;

3. The assessment is void for having been carried out without a valid letter of authority (LOA);

4. The decisions in Commissioner of Internal Revenue vs. Splash Corporation, CTA EB No. 330, May 5, 2008 and Commissioner of Internal Revenue vs. Splash Corporation, G.R. No. 183160, August 4, 2004 are stare decisis;

5. The waivers did not validly extend the prescriptive period, the same being executed in violation of Revenue Memorandum Order (RMO) No. 20-90 and thus are void; and,

6. Since the instant case involves a difficult interpretation of the law, deficiency and delinquency interest should not be imposed.[1]

Respondent's Motion for Partial Reconsideration

In moving for the reconsideration of the assailed Decision, respondent contends in his Motion for Partial Reconsideration that:

1. Petitioner is liable for deficiency income tax and value-added tax (VAT) due to under-declared sales amounting to ₱56,587,354.52;

2. Petitioner's minimum corporate income tax (MCIT) and its income tax credits carried over to the succeeding period amounting to ₱21,491,889.88 should have been deducted from petitioner's income tax credits in arriving at petitioner's deficiency tax liabilities for the taxable year 2008;

3. Petitioner is liable for deficiency expanded withholding tax (EWT) at the rate of 5% on its payment of display allowances amounting to ₱43,959,957.66; and,

4. Petitioner is liable for compromise penalties amounting to ₱75,000.00 and ₱125,000.00.[2]

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[1] Docket, Vol. V, pp.3205-3207.
[2] Docket, Vol V, pp.3254-3255.

In its Comment/Opposition, petitioner counters that the foregoing arguments relied upon by respondent are the same issues and arguments passed upon by the Court in the Assailed Decision. In the absence of any new and compelling reasons that warrant the nullification and reversal of the Court's findings, petitioner submits that the respondent's Motion for Partial Reconsideration must be denied.

In addition, petitioner reiterates that the tax assessment issued by respondent against petitioner has already prescribed considering that the three (3) waivers it executed are invalid for failure to strictly comply with the requirements of RMO No. 20-90. Petitioner invokes the ruling in *Commissioner of Internal Revenue vs. Philippine Daily Inquirer*[3] that a taxpayer is not estopped from questioning the validity of waivers and that the Bureau of Internal Revenue (BIR) cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 which were issued by the BIR itself.

THE COURT'S RULING

The Court notes that both Motions rely upon the same arguments passed upon by the Court in the Assailed Decision, except petitioner's last argument that deficiency and delinquency interest should not be imposed since the instant case involves a difficult interpretation of the law.

Ordinarily, when the arguments and issues advanced in a party's motion for reconsideration are mere rehash and repetition of arguments previously raised, which have been sufficiently considered and addressed by the court in the assailed decision, there is no need to discuss the same arguments again when the Court resolves the motion for reconsideration. A motion for reconsideration which does not specify the findings and conclusions of the Court that are allegedly contrary to law or not supported by evidence, or which fails to substantiate the alleged error of the Court, or which merely alleges that the decision in question was contrary to law, may be denied for being *pro forma*.[4]

[3] G.R. No. 213943, March 22, 2017.
[4] *Teodulo M. Coquilla vs. The Hon. Commission on Elections*, G.R. No. 151914, July 31, 2002.

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On the other hand, where the circumstances of a case do not show an intent on the part of the movant to merely delay the proceedings, and the motion reveals a bona fide effort to present additional matters or to reiterate the previous arguments in a different light, the courts should be slow to declare the motion for reconsideration outright as pro forma.[5]

As aforementioned, the bulk of the parties' respective arguments are mere rehash of their previous arguments which have been passed upon by the Court in the assailed Decision. With respect to petitioner's argument that the assessment issued against it is void for having been carried out without a valid LOA, the Court notes that, although this issue has been resolved in the assailed Decision, its findings and conclusions thereon must be re-visited in light of the pronouncement of the Supreme Court in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue***[6] specifically on the matter of the authority of the revenue officers who conducted the audit and examination of the taxpayer's books of accounts and other accounting records.

Interestingly, the decision in *Medicard,*[7] *supra,* was rendered on April 5, 2017 or one day before the assailed Decision subject of the present controversy was rendered.

In *Medicard*, the Supreme Court declared as void the disputed assessment for lack of an LOA authorizing the revenue officers to examine the taxpayer's books of account and other accounting records, **albeit the issue was only brought up during trial**, *viz.*:

> ***"The absence of an LOA violated MEDICARD's right to due process***
>
> **An 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. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:

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[5] *Marina Properties Corporation vs. Court of Appeals / H.L. Carlos Construction, Inc. vs. Court of Appeals*, G.R. Nos. 125447 & 125475, August 14, 1998.
[6] G.R. No. 222743, April 5, 2017.
[7] Promulgated by the Supreme Court on April 26, 2017.

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Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**.

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In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. xxx xxx xxx.

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:

> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>.** (Emphasis and underscoring ours)

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xxx xxx xxx. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute**.

That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the</u>

> **case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" *(Citations omitted; boldfacing and underscoring supplied)*

Unless and until modified by the Supreme Court *En Banc*, the more recent pronouncement in *Medicard* should be applied in determining the validity of assessments issued against taxpayers *sans* any LOA, albeit the issue on the absence thereof is belatedly raised by the taxpayer. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiceable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[8]

Similar to *Medicard*, the issue of lack of authority of the examining revenue officers was first raised only during the cross-examination of respondent's witness, Group Supervisor Nicasio R. Lumagui, Jr. on October 6, 2015,[9] and subsequently amplified in petitioner's Memorandum dated June 20, 2016[10]. Neither the Petition for Review nor petitioner's protest against the assessment questioned the authority of the revenue officers to conduct the audit and examination. Evidence actually reveals that petitioner recognized the authority of the revenue examiners. Truth to tell, after the Revalidation Notice dated February 11, 2010[11] and Final Notice dated June 10, 2010[12] were sent to petitioner and received by Eric D. Santos on March 25, 2010 and June 10, 2010, respectively, to inform petitioner of the authority of Revenue Officers (ROs) Miriam N. Jalandoni, Francisco Ramos and Ali Hassan M. Lucman Jr. under Group Supervisor Nicasio H. Lumagui Jr. to continue the examination of petitioner, petitioner did not question the authority of the revenue officers to conduct examination of its books of accounts.

After re-assessment of the case and taking into consideration the fairly recent pronouncement of the Supreme Court in *Medicard*, the

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[8] *Development Bank of the Philippines v. NLRC*, March 1, 1995, 242 SCRA 59; *Albert v. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948 cited in the Concurring Opinion of Sandoval-Gutierrez, J., *Raul L. Lambino v. The Commission on Elections*, G.R. No. 174153, October 25, 2006.
[9] CTA Case No. 8483, Transcript of Stenographic Notes, Vol. II, October 6, 2015, pp. 12-20.
[10] Docket, Vol. V, pp.3060-3115, 3064-3074.
[11] BIR Records, p. 80.
[12] Exhibit "6"; BIR Records, p. 391.

Court holds that petitioner's failure to raise the issue of lack of authority of the examining revenue officers in the administrative level as well as in its Petition for Review does not preclude petitioner from subsequently insisting that the assessment is intrinsically void for want of a valid LOA.

The National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **CIR or from his duly authorized representatives** before an examination of a taxpayer may be made.[13] Section 6 of the NIRC provides:

> "**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" *(Boldfacing supplied)*

A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

> "SEC. 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." *(Boldfacing and underscoring supplied)*

RMO No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.

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[13] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

> 1. All L/As for cases selected and listed pursuant to RMO No. 36-90 to be audited in the revenue regions shall be prepared and signed by the Regional Director (RD).
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> 2. The Regional Director shall prepare and sign the L/As for returns recommended by the RDO for assignment to the ROs, indicating therein the name and address of the taxpayer, the name of the RO(s) to whom the L/A is assigned, the taxable period and kind of tax; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.
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> 3. The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the procedures in the preceding paragraph, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue.
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> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but <u>only upon prior authorization by the Commissioner himself</u>**." *(Boldfacing supplied)*

RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, **requires the issuance of a new LOA**:

> "C. Other policies for issuance of L/As.
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> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
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> xxx xxx xxx
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> 5. **<u>Any re-assignment/transfer of cases to another RO(s)</u>**, and revalidation of L/As which have already expired, **<u>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)*

Simply put, the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. In the language of *CIR vs. Sony Philippines, Inc.*[14] *(Sony),* its absence makes the assessment or examination a nullity, *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

[14] G.R. No. 178697, November 17, 2010.

> 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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> xxx xxx xxx
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> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**." *(Boldfacing and underscoring supplied)*

Here, the relevant incidents/documents relative to the issuance of the disputed assessment (*i.e.* Final Assessment Notice dated August 18, 2011) altogether present absence of valid authority for the ROs to conduct an examination or assessment of petitioner, *viz.*:

1. **LOA No. 200800007401** dated **<u>June 4, 2009</u>** was issued by Zenaida G. Garcia, OIC-ACIR, Large Taxpayers Service of the BIR to petitioner, which the latter received on June 8, 2009.[15] It authorized **ROs Larah Vito, Rosario Arriola, Ma. Catalina Benedicto and Jesus Reyes** of the Large Taxpayers Audit and Investigation Division II to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008.[16] ROs named in an LOA are only allowed 120 days to conduct the audit of a taxpayer and submit the required report of investigation.[17] Instead of issuing a new LOA to effect the reassignment of the case to other ROs, the original LOA was simply revalidated nine (9) months or 270 days from its issuance. Thus, stamped on the lower left side of LOA No. 200800007401 is a note stating the following: ***"Revalidated on 01 MAR 2010 due to**: xxx **reassignment to Revenue Officers"***, signed by Zenaida G. Garcia, OIC-ACIR, Large Taxpayers Service.[18]

2. Worse, prior to the "revalidation" of the LOA, a mere **Memorandum** dated **<u>January 18, 2010</u>** was issued already by A. Jonathan G. Jaminola, OIC Chief, LT Excise Audit II of the BIR, directing **Group Supervisor Nicasio H. Lumagui, Jr. and ROs M. Jalandoni/F. Ramos A.H. Lucman, Jr.** to <u>continue</u> the investigation against petitioner covering year 2008 under LOA No. 200800007401.[19]

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[15] Exhibit "1"; BIR Records, p. 1093.
[16] *Id.*
[17] Revenue Memorandum Order No. 30-00 dated June 23, 2000.
[18] *Id.*
[19] Exhibit "2"; BIR Records, p. 73.

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3. Again, even prior to the actual revalidation of the LOA on March 1, 2010, **a Revalidation Notice**[20] dated February 11, 2010 was issued by Zenaida G. Garcia, OIC-Assistant Commissioner of Large Taxpayer Service, Excise and LTDO of the BIR, which was received by petitioner's representative, Eric D. Santos, on March 25, 2010, stating that LOA No. 7401 has been revalidated *(albeit the revalidation date was left blank)* to replace the previously assigned ROs, and informing petitioner about the authority of **ROs Miriam N. Jalandoni, Francisco Ramos and Ali Hassan M. Lucman Jr. under Group Supervisor Nicasio H. Lumagui, Jr.** to continue the examination of petitioner's books, and all other accounting records and related documents.[21] As aforestated, no new LOA was issued in favor of aforementioned ROs.

4. **Final Notice**[22] dated June 10, 2010, signed by A. Jonathan G. Jaminola, OIC Chief, LT Excise Audit II of the BIR was received by petitioner's representative, Eric D. Santos, on June 10, 2010, informing petitioner that the investigation of its books of accounts and other accounting records for routine verification for internal revenue tax purposes covering taxable year 2008 pursuant to LOA No. 7401 had been reassigned to **ROs Miriam N. Jalandoni, Ali Hassan Lucman, Jr. and Francisco Ramos IV to be supervised by Group Supervisor Nicasio H. Lumagui, Jr.** and the intended visit of said ROs to petitioner's office on June 24, 2010 for petitioner to present books of accounts and other related accounting records.[23]

5. In a letter dated June 24, 2010, Eric D. Santos, Manager of Financial Accounting of petitioner, submitted photocopies of the following additional documents: Year End Trial Balance for year 2008; Percentage Tax Return; Inventory List for year 2008; and General Information Sheet for the year 2008.[24]

6. Notice for Informal Conference[25] was issued by Assistant Commissioner of Large Taxpayers Service Zenaida G. Garcia to petitioner stating that pursuant to LOA No. 200800007401 dated June 4, 2009 and Referral No. 2010-01-18-00030 deficiency taxes were found and have been submitted

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[20] BIR Records, p. 80.
[21] *Id.*
[22] Exhiibit "6"; BIR Records, p. 391.
[23] *Id.*
[24] BIR Records, p. 498.
[25] Exhibit "9"; BIR Records, p. 760.

for evaluation; and requesting petitioner for an informal conference.

7. Memorandum dated May 16, 2011 was submitted by **ROs Miriam N. Jalandoni and Ali Hassan M. Lucman, Jr.** and **noted by Group Supervisor Nicasio H. Lumagui, Jr.** and OIC Chief, LTEAD, A. Jonathan G. Jaminola on the conduct of their investigation of petitioner's books of accounts and accounting records for year 2008 pursuant to LOA No. 200800007401 whereby they recommended the issuance of a Preliminary Assessment Notice (PAN) against petitioner.[26]

8. A PAN[27] was issued against petitioner on May 16, 2011 by Zenaida G. Garcia, ACIR-Large Taxpayer Service in line with the BIR's investigation for the year 2008 under LOA No. 200800007401.

9. Memorandum[28] dated August 18, 2011 was submitted by **ROs Miriam N. Jalandoni and Ali Hassan M. Lucman, Jr.,** and **noted by Group Supervisor Nicasio H. Lumagui, Jr.** and OIC Chief, LTEAD A. Jonathan G. Jaminola recommending the issuance of a Final Assessment Notice (FAN) against petitioner. The said Memorandum was approved by Alfredo V. Misajon, OIC-ACIR, Large Taxpayer Service.

10. The FAN[29] was issued against petitioner on August 18, 2011 signed by OIC-ACIR Alfredo V. Misajon, which petitioner received on September 7, 2011.

From the afore-listed events/documents, it is apparent that *(i)* **ROs Larah Vito, Rosario Arriola, Ma. Catalina Benedicto and Jesus Reyes** of the Large Taxpayers Audit and Investigation Division II were authorized by the BIR to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008 under ***<u>LOA No.200800007401</u>*** dated June 4, 2009; *(ii)* the continuation of the investigation was later transferred to **Group Supervisor Nicasio H. Lumagui, Jr. and ROs M. Jalandoni/F. Ramos A.H. Lucman, Jr.** merely pursuant to a **<u>Memorandum dated January 18, 2010</u>**; and *(iii)* ultimately, it was **ROs Miriam N. Jalandoni and Ali Hassan M. Lucman, Jr., as noted by Group Supervisor Nicasio H. Lumagui, Jr.,** who made the recommendation to issue the PAN and FAN against petitioner.

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[26] Exhibit "10"; BIR Records, pp. 934-932.
[27] Exhibit "12"; BIR Records, pp. 945-947.
[28] Exhibit "14"; BIR Records, pp. 986-987.
[29] Exhibit "15"; BIR Records, pp. 1006-1007.

The re-validation of LOA No. 200800007401 as stamped on the lower left side of such LOA, and the January 18, 2010 Memorandum issued by A. Jonathan G. Jaminola, OIC, Chief-LT Excise Audit II of the BIR, did not cure the intrinsic legal infirmity that attended the examination of petitioner's books of accounts and other accounting records. To reiterate, **a new LOA** issued by respondent or his duly authorized representative is indispensable for ROs Miriam N. Jalandoni and Ali Hassan M. Lucman, Jr., and Group Supervisor Nicasio H. Lumagui, Jr. to continue the audit and examination of petitioner.

In fine, the examination of petitioner's records by ROs Miriam N. Jalandoni and Ali Hassan M. Lucman, Jr., and Group Supervisor Nicasio H. Lumagui, Jr., having been made without the required authority as contained in an LOA, makes the disputed assessment a nullity.

Considering that the assessment issued against petitioner is intrinsically void, the Court finds no reason to consider and discuss the remaining issues raised by the parties in their respective motions, for it is well-settled that a void assessment bears no fruit.[30]

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration** is **GRANTED** while respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit. The Decision dated April 6, 2017 is **REVERSED** and **SET ASIDE**.

The Final Assessment Notice dated August 18, 2011 issued against petitioner Splash Corporation, assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax and compromise penalty in the aggregate amount of Two Hundred Fifty-Six Million Nine Hundred Forty-Six Thousand Fifty-Eight Pesos and 68/100 (₱256,946,058.68) for taxable year 2008, is hereby declared **VOID, CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[30] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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