REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DAKAY CONSTRUCTION AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8265

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
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RESOLUTION

CASANOVA, *J.*:

This resolves petitioner's **Motion for Partial Reconsideration (On Decision Promulgated on 10 December 2014)**, filed on December 22, 2014, with respondent's **Comment and/or Opposition to Motion for Partial Reconsideration**, filed through registered mail on February 3, 2015. The dispositive portion of the assailed Decision promulgated on December 10, 2014 reads:

> "**WHEREFORE**, premises considered, the assessments issued by respondent against petitioner for taxable year 2007 covering deficiency income tax in the amount of ₱16,179,240.81 and compromise penalties in the amount of ₱11,500.00 are hereby **CANCELLED AND/OR WITHDRAWN**. However, the deficiency VAT and deficiency 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 & 75/100 (₱12,108,126.75)** 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	₱ 9,640,501.40	₱ 2,410,125.35	₱ 12,050,626.75
Deficiency DST	46,000.00	11,500.00	57,500.00
Total	**₱9,686,501.40**	**₱ 2,421,625.35**	**₱ 12,108,126.75**

In addition, petitioner is hereby **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	₱ 9,640,501.40	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 ₱12,108,126.75 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."

Petitioner assails the aforesaid Decision and alleges that respondent failed to serve the Letter of Authority (LOA) within thirty (30) days from the LOA's date of issuance, as mandated by Revenue Audit Memorandum Order (RAMO) No. 1-00. According to petitioner, the LOA was served only on November 24, 2008, or thirty-three (33) days after the issuance of the void LOA on October 22, 2008. Thus, petitioner concludes that the belated service of the LOA is clearly violative of the rule established by RAMO No. 1-00, which provides that the LOA must be served or presented to the taxpayer within thirty (30) days from its date of issue; otherwise, the LOA is null and void.

Furthermore, petitioner avers that the belated issuance of the respondent of a "Notice of Revalidation" does not cure the void LOA as it is well-settled that a void act cannot be revalidated or ratified.

Petitioner also points out that respondent issued Revalidation Notice No. 13-81-09-0698 on June 30, 2009, or almost seven (7) months after respondent's service of the void LOA to petitioner. Petitioner, likewise, mentions that the said Revalidation Notice only permitted the stamping of the words, "REVALIDATED ON: 24 JULY 2009" on the void LOA and that petitioner's copy of the void LOA allegedly had no stamp of the words "REVALIDATED ON: 24 JULY 2009".

In addition, petitioner insists that the deficiency VAT assessments for the first, second and third quarters of the taxable year 2007 had prescribed.

Petitioner, therefore, prays for the Court to partially reconsider the assailed Decision, and cancel and/or withdraw the deficiency VAT and deficiency DST assessments for taxable year 2007, the payment of deficiency interest thereon, and the delinquency interest.

Respondent opposes arguing that there was no mention in the said LOA or other internal revenue issuance or audit programs and policies that failure of revenue examiners to serve the LOA to taxpayers within thirty (30) days from the date thereof will give rise to taxpayer immunity from audit for that particular period. Respondent further argues that the said requirement is merely directory and is intended to enhance efficiency while at the same time ensure quality of audit. It allegedly does not estop the right of the government to issue assessment notices for deficiency taxes within period/s set by law.

As to the contention of petitioner that the assessment on VAT for the first, second, and third quarters were issued beyond the prescriptive period, respondent reiterates her assertions in her

Answer that petitioner's return is false and that the applicable prescriptive period is ten years from the discovery of falsity.

Also, respondent stresses the ruling in the assailed Decision that the deficiency VAT assessment is deemed to have been made on the unprescribed period for the taxable year 2007 considering that the bases for the deficiency VAT assessment are the entries in petitioner's Financial Statements and Alphalists of Payees pertaining to the whole taxable year of 2007.

We DENY petitioner's Motion for lack of merit.

A scrutiny of the foregoing allegations shows that they had been substantially considered and addressed in the assailed Decision. In fact, the arguments in petitioner's *Motion for Partial Reconsideration* were the same as the averments interposed by petitioner in its Memorandum filed on December 20, 2013.

In any event, We shall reiterate the ruling of the Court on the issued LOA, to wit:

> While it is true that the LOA in this case was served beyond the 30-day period provided in the RAMO, records of the case, however, show that the LOA was subsequently revalidated as can be seen on the face of the copy of respondent's LOA with stamp "REVALIDATED ON: JULY 24, 2009." Clearly, the LOA issued on October 22, 2008 is not null and void in view of its revalidation on July 24, 2009.
>
> As to petitioner's allegation that respondent failed to comply with the manner of accomplishing a revalidation, the Court finds it relevant Revenue Memorandum Circular No. 023-09 dated April 16, 2009 which provides:
>
> > **"I. Revalidation of LAs**
> >
> > The revalidation of LA shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case

> shall submit the report of investigation to higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending 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. **Failure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on 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 the recommendation of the Revenue District Officer, deems it necessary."

Despite the late service of LOA, it was subsequently revalidated. Even assuming, there was failure to request for revalidation of LOA or the period to revalidate has expired, it will neither affect the validity of LOA nor the rules on the period within which an assessment may be issued. There was substantial compliance considering that the service of LOA was only three (3) days late from the time of its issuance. "Moreover, the Letter of Authority xxx was for the sheer purpose of investigation and was not even the requisite notice under the law[1]."

Meanwhile, the assessment for deficiency VAT has not prescribed. Since the bases used for deficiency VAT assessment were entries taken from petitioner's Financial Statements which pertained to the whole taxable year of 2007, the item cannot be attributed to a particular quarter. Considering that petitioner failed to present evidence to overcome the presumption of regularity in the performance of the respondent's duties, the deficiency VAT assessment was deemed to have been made on the unprescribed period of 2007.

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[1] *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. No. 159694 and 163581, January 27, 2006.

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.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice