Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

SPARKLAND REALTY, INC., Petitioner,	**CTA Case No. 8824** For: Assessment
	Members:
-versus-	**DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES & REGIONAL DIRECTOR JONAS DP. AMORA, REVENUE REGION NO. 7, QUEZON CITY, Respondents.	Promulgated: NOV 03 2017 1:35pm

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review filed by Sparkland Realty, Inc., pursuant to Section 7(a)(1)[1] of Republic Act (RA) No. 1125[2], as amended, as well as Section 3(a)(1)[3] of Rule 4 and Section 4(a)[4] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Sec. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

[2] Act Creating the Court of Tax Appeals.

[3] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[4] Sec. 4. *Where to appeal; mode of appeal.* –

The petition involves a judicial protest of the assessment issued against petitioner for alleged deficiency income tax and value-added tax (VAT) amounting to ₱3,517,017.57 and ₱1,437,081.29, respectively, with compromise penalty in the amount of ₱11,000.00 for taxable year (TY) 2010.[5]

Petitioner Sparkland Realty, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Unit 107, Cluster D, Golfhill Terraces, Manotoc Drive, Capitol Hills, Balara, Quezon City.[6]

Respondent Commissioner is the then Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked, among others, to collect national internal revenue taxes. Respondent Regional Director is the then Regional Director of Revenue Region No. 7, Quezon City, who issued the letter dated April 11, 2014 denying petitioner's protest. The office address of respondent Commissioner is located at the BIR National Office Building, Agham Road, Diliman, Quezon City; while respondent Regional Director's office address is at BIR Revenue Region No. 7, Quezon City.[7]

On November 29, 2011, respondents issued a Letter Notice No. 039-RLF-10-00-00427[8], informing petitioner that a computerized matching was conducted by respondents on the information/data provided by third-party sources against the declarations made by petitioner on its VAT returns, which disclosed a discrepancy. Then, a Follow-up Letter[9] was issued on January 19, 2012. Respondents subsequently issued a Letter of Authority (LOA) No. LOA-039-2013-00000173 on February 16, 2013, authorizing Revenue Officer Dirce Diaz and Group Supervisor Werlita Quimson to examine petitioner's

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(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

5 Statement of the Case, Pre-Trial Order, Docket, p. 303

6 Par. 2.1, Petition for Review, Docket, p. 7; Par. 5, Answer, Docket, p. 140

7 Par. 2.2, Petition for Review, Docket, pp. 7 to 8; Par. 5, Answer, Docket, p. 140

8 Exhibit "R-2", BIR records, p. 2

9 Exhibit "R-2-a", BIR records, p. 3

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books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2010 to December 31, 2010.[10]

Petitioner filed its Quarterly Income Tax Returns[11] for the 1st, 2nd, and 3rd quarters of TY 2010 and Annual Income Tax Return[12] (AITR) for TY 2010 on April 7, 2010, July 7, 2010, November 8, 2010, and April 15, 2011, respectively. Petitioner likewise filed its Monthly VAT Returns and Quarterly VAT Returns for TY 2010.[13]

A Contract of Lease was entered into by petitioner and Manila-Oslo Renewable Enterprise Inc. (MOREI) and was notarized on October 15, 2010.[14] The said contract was amended on January 31, 2011.[15]

Thereafter, a Post Reporting Notice[16] with Details of Discrepancies[17] and Preliminary Assessment Notice[18] (PAN) with Details of Discrepancies[19] were issued on May 27, 2013 and November 5, 2013, respectively, assessing petitioner for deficiency income tax, VAT, and compromise penalty.

On December 5, 2013, respondent issued a Formal Letter of Demand (FLD)[20] with Details of Discrepancies and Assessment Notices[21] (FANs), which petitioner received on February 19, 2014,[22] assessing the latter for deficiency income tax, VAT, and compromise penalty in the respective amounts of ₱3,517,017.57, ₱1,437,081.29, and ₱11,000.00, or in the aggregate amount of ₱4,965,098.86, to wit:

I. DEFICIENCY INCOME TAX		
Taxable income per Income Tax Return (ITR)		₱ -

[10] Exhibit "R-3", BIR records, p. 9
[11] Exhibits "P-4", "P-5", and "P-6", Docket, pp. 34, 35, and 36, respectively
[12] Exhibit "P-7", Docket, p. 37
[13] Exhibits "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", and "P-19", Docket, pp. 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 61, respectively
[14] Exhibit "P-22", Docket, pp. 64 to 69
[15] Exhibit "P-23", Docket, pp. 70 to 71
[16] Exhibit "R-4", BIR records, p. 52
[17] Exhibit "R-4-a", BIR records, p. 50
[18] Exhibit "R-8", BIR records, pp. 85 to 86
[19] Exhibit "R-8-a", BIR records, p. 80
[20] Exhibit "P-1-a", Docket, pp. 26 to 27; Exhibits "R-9" and "R-10", BIR records, pp. 88 to 89 and p. 90, respectively
[21] Exhibits "R-11", "R-12", and "R-13", BIR records, pp. 93, 92, and 91, respectively
[22] Exhibit "P-2", Docket, p. 29

Add: Adjustments per investigation		
Additional taxable income		5,755,263.00
Taxable income per investigation		₱ 5,755,263.00
Income tax due thereon		₱ 1,726,578.90
Less: Allowable tax credits/payments		-
Deficiency income tax		1,726,578.90
Add: 50% Surcharge	₱ 863,289.45	
20% Interest p.a. (04.16.11 to 12.20.13)	927,149.22	1,790,438.67
TOTAL AMOUNT DUE		3,517,017.57
II. DEFICIENCY VALUE ADDED TAX		
Taxable sales/revenue/receipts per VAT returns		₱ -
Add: Adjustments per investigation		
Additional taxable sales/revenues/receipts		5,755,263.00
Taxable sales/revenue/receipts per investigation		₱ 5,755,263.00
Output tax due thereon:		₱ 690,631.56
Less: Allowable tax credits/payments		
Creditable input tax	₱ 75,908.58	
Less: Input tax to be carried over to succeeding period	75,908.58	
Deficiency value-added tax		₱ 690,631.56
Add: 50% Surcharge	₱ 345,315.78	
20% Interest p.a. (01.26.11 to 12.20.13)	401,133.95	746,449.73
TOTAL AMOUNT DUE		₱ 1,437,081.29
III. COMPROMISE PENALTY		
Non-filing of quarterly income tax returns (BIR Form No. 1702Q)		₱ 3,000.00
Non-filing of Monthly VAT Return (BIR Form 2550M)		8,000.00
TOTAL AMOUNT DUE		₱ 11,000.00

As such, petitioner protested the said FLD on March 19, 2014.[23] However, despite the said protest, respondents issued a Letter dated April 11, 2014, stating that petitioner failed to file a protest on the assessment for TY 2010;[24] and requested the latter to pay the deficiency taxes or appeal the said decision to the Court of Tax Appeals.

Consequently, petitioner filed the instant Petition for Review before this Court on May 23, 2014[25].

In the Answer[26] filed on July 18, 2014, respondents admitted and denied specifically the following material allegations:

[23] Exhibit "P-2", Docket, pp. 29 to 32
[24] Exhibit "P-65", Docket, p. 129
[25] Docket, p. 6
[26] Docket, pp. 138 to 142

"1. Respondent ADMITS the material allegations in paragraph I, of the Petition for Review, as to the existence of the Formal letter of demand No. 39-B054-10, but SPECIFICALLY DENIES the filing of a Protest to said Letter of Demand, the claim that SRI has no income and the allegation that the assessment made was without basis, for lack of knowledge or information sufficient to form a belief as to the truth thereof, for being more opinions, conjectures, gratuitous assertions and conclusions bereft of merit in fact and in law;

2. Respondent ADMITS the material allegations in paragraph 1.1. of the Petition for Review, as to the existence of the Formal letter of demand No. 39-B054-10 dated November 21, 2013 but SPECIFICALLY DENIES the existence of an identical copy of said Letter of Demand dated December 5, 2013, for lack of knowledge or information sufficient to form a belief as to the truth thereof;

3. Respondent SPECIFICALLY DENIES the material allegations in paragraphs 1.2, 1.3, 3.1, 3.2, 3.3, 3.3.1, 3.3.2, 3.3.3, 3.3.4, 3.4. 3.5, 3.6, 3.7, 3.8, 3.9, 3.9.1, 3.9.2, 3.9.3, 3.9.4, 3.9.5, 3.9.6, 3.9.7, 3.9.8, 3.9.9, 3.11, 3.12, 3.13, 4.1, 4.2, 4.3, 4.4., 4.5, 4.6, 4.7, 4.8, 5.3, 5.4, 5.5 and 5.6 of the Petition for Review, as the details of discrepancies disclosed that as to the Deficiency Income tax, computerized matching conducted by the Bureau per Letter Notice (LN) No. 039-RLF-10-00-00427/eLa No. 2010-00024126 on the information/data provided by Withholding Agents/Payors and Payees/Income Recipients against the sales/revenues/receipts declared in its income tax return (ITR)/Financial Statements (FS) disclosed the discrepancy which is considered as undeclared sales/revenue/receipts, hence assessed the corresponding income tax pursuant to Sections 31 and 32 of the NIRC of 1997, as amended and Revenue Memorandum Order (RMO) No. 13-2012.

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4. Respondent SPECIFICALLY DENIES the material allegations in paragraphs 3.10, 3.10.1, 3.10.2, 3.10.3, 3.10.4, 3.10.5, 3.10.6, 3.10.7, 3.10.8, 3.10.9, 3.10.10, 3.10.11, 3.10.12, 3.10.13, 3.10.14, 3.10.15, 3.10.16, 3.10.17, 3.10.18, 3.10.19, 3.10.20, 3.10.21, 3.10.22, 3.10.23, 3.10.24, 3.10.25, of the Petition for Review, as the details of discrepancies disclosed that as to the Deficiency Value Added Tax, Computerized matching conducted by the Bureau per Letter Notice (LN) No. 039-RLF-10-00-00427/Ela No. 2010-00024126 on the information/data provided by Withholding Agents/Payors and Payees/Income Recipients against the sales/revenues/receipts declared in its value added tax (VAT) disclosed the discrepancy which is considered as undeclared sales/revenue/receipts, hence, assessed the corresponding valued added tax pursuant to Sections. 116 and 118 of the NIRC of 1997, as amended and Revenue Memorandum Order (RMO) No. 13-2012.

The Assessment of Petitioner's 2010 deficiency Income Tax in the amount of ₱3,517,017.57 and Value Added Tax in the amount of ₱1,437,081.29 were issued in accordance with the applicable laws and regulations. The factual and legal bases of the assessments are contained in the Formal Letter of Demand (FLD). The Petitioner alleged in its Petition that it received the FLD on February 19, 2014, however, it failed to submit the pertinent documents to support its protest within sixty (60) days from the date of filing of its letter of protest, hence, the assessment have already become final, executory and demandable. Consequently, this Honorable Court can no longer exercise jurisdiction over the Petitioner's Petition for Review;

5. Respondent ADMITS the material allegations in paragraph 1.4, 2.1 and 2.2 of the Petition for Review;

6. Respondent SPECIFICALLY DENIES the material allegations in paragraph IV of the Petition for Review, for

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being mere opinions, conjectures, gratuitous assertions and conclusions bereft of merit in fact and in law;

7. Respondent SPECIFICALLY DENIES the material allegations in paragraphs V, 5.1 and 5.8 of the Petition for Review for lack of knowledge and information sufficient to form a belief as to the truth thereof, for being mere opinions, conjectures, gratuitous assertions and conclusions bereft of merit in fact and in law;

8. Respondent ADMITS the existence of the 'Cash Basis' and 'Accrual Basis' accounting methods and the definitions thereof, but SPECIFICALLY DENIES the applicability for lack of knowledge and information sufficient to form a belief as to the truth thereof, for being mere opinions, conjectures, gratuitous assertions and conclusions bereft of merit in fact and in law;

9. Respondent SPECIFICALLY DENIES the material allegations in paragraphs 5.9 AND 5.11 of the Petition for Review for being mere opinions, conjectures, gratuitous assertions and conclusions bereft of merit in fact and in law;

10. Finally, well settled is the rule that tax assessments by examiners are presumed correct and made in good faith. It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

11. In COMMISSIONER OF INTERNAL REVENUE VS. BANK OF THE PHILIPPINE ISLANDS, GR. NO. 134062 dated April 17, 2007, the Honorable Supreme Court said, to wit:

> *'Tax Assessment by tax examiners are presumed correct and made in good faith. The*

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> *taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by the bureau of internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favour of the correctness of tax assessment*."

Respondents' Pre-Trial Brief was filed on October 2, 2014[27]; while petitioner's Pre-Trial Brief was submitted on October 3, 2014[28].

The parties submitted their Joint Stipulations of Facts and Issues[29] on March 31, 2015, which the Court approved on April 7, 2015.[30] On even date, the pre-trial was terminated. Consequently, the Court issued a Pre-Trial Order[31] on April 28, 2015.

Petitioner presented Mr. Franclem Allauigan, Ms. Adelaida Cucharo, and Mr. Edward M. De Leon as its witnesses. Thereafter, petitioner formally offered its documentary evidence as well as its testimonial evidence. The Court admitted petitioner's submitted exhibits, except for Exhibits "P-1", "P-3", "P-25", "P-27", and "P-38".[32]

The admitted documentary exhibits offered by the petitioner are as follows:

Exhibits:	Description:
P-2	Protest of the Formal Letter of Demand dated 21 November 2013 filed on 19 March 2014
P-4	Form 1702Q, Quarterly Income Tax Return for 1st Quarter of 2010, stamped received on 7 April 2010
P-5	Form 1702Q, Quarterly Income Tax Return for 2nd Quarter of 2010, stamped received on 7 July 2010
P-6	Form 1702Q, Quarterly Income Tax Return for 3rd Quarter of 2010, stamped received on 8 November 2010
P-7	Annual Income Tax Return for 2010, stamped received on 15 April 2011

[27] Docket, p. 147
[28] Docket, p. 187
[29] Docket, pp. 244 to 249
[30] Resolution, Docket, p. 251
[31] Docket, pp. 303 to 315
[32] Resolution dated December 18, 2015, Docket, pp. 374 to 377

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P-8	Form 2550M, Monthly Value Added Tax Declaration for January 2010, stamped received on 8 February 2010
P-9	Form 2550M, Monthly Value Added Tax Declaration for February 2010, stamped received on 8 March 2010
P-10	Form 2550Q, Quarterly Value Added Tax Return for 1st Quarter of 2010, stamped received on 7 April 2010
P-11	Form 2550M, Monthly Value Added Tax Declaration for April 2010, stamped received on 11 May 2010
P-12	Form 2550M, Monthly Value Added Tax Declaration for May 2010, stamped received on 8 June 2010
P-13	Form 2550Q, Quarterly Value Added Tax Declaration for 2nd Quarter of 2010, stamped received on 7 July 2010
P-14	Form 2550M, Monthly Value Added Tax Declaration for July 2010, stamped received on 8 August 2010
P-15	Form 2550M, Monthly Value Added Tax Declaration for August 2010, stamped received on 13 September 2010
P-16	Form 2550Q, Quarterly Value Added Tax Return for 3rd Quarter of 2010, stamped received on 7 October 2010
P-17	Form 2550M, Monthly Value Added Tax Declaration for November 2010, stamped received on 11 December 2010
P-19	Form 2550Q, Quarterly Value Added Tax Return for 4th Quarter of 2010, stamped received on 19 January 2011
P-20	Certification dated 26 February 2014 of the Office of the City Building Official
P-21	Certified true copy of the Certificate of Occupancy dated 24 November 2010
P-22	Contract of Lease dated 15 October 2010 between the petitioner SRI and Manila-Oslo Renewable Enterprise, Inc (MOREI)
P-23	Addendum to the Contract of Lease dated 31 January 2011 between petitioner SRI and MOREI
P-24	Official Receipt No. 0003 dated 25 January 2011
P-26	Official Receipt No. 0004 dated 28 December 2011
P-28	Certificate of Creditable Tax Withheld at Source, BIR Form 2307 for January 2011 issued by MOREI
P-29	Certificate of Creditable Tax Withheld at Source, BIR Form 2307 for December 2011 issued by MOREI
P-30	Form 1702Q, Quarterly Income Tax Return for 1st Quarter of 2011, stamped received on 22 May 2011
P-31	Form 1702Q, Quarterly Income Tax Return for 2nd Quarter of 2011, stamped received on 11 August 2011
P-32	Form 1702Q, Quarterly Income Tax Return for 3rd Quarter of 2011, stamped received on 18 November 2011
P-33	Form 1702, Annual Income Tax Return for 2011, stamped received on 16 April 2012
P-34	Form 1702Q, Quarterly Income Tax Return for 1st Quarter of 2012, stamped received on 18 May 2012
P-35	Form 1702Q, Quarterly Income Tax Return for 2nd Quarter of 2012, stamped and received on 18 August 2012

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P-36	Form 1702Q, Quarterly Income Tax Return for 3rd Quarter of 2012, stamped and received on 23 November 2012
P-37	Form 1702, Annual Income Tax Return for 2012, stamped received on 10 April 2013
P-39	Amended Form 1702, Quarterly Income Tax Return for 1st Quarter of 2013, stamped received on 28 February 2014
P-40	Form 2550M, Monthly Value Added Tax Declaration for January 2011, stamped received on 11 February 2011
P-41	Form 2550M, Monthly Value Added Tax Declaration for February 2011, stamped received on 11 March 2011
P-42	Form 2550Q, Quarterly Value Added Tax Declaration of 1st Quarter of 2011, stamped received on 20 April 2011
P-43	Form 2550M, Monthly Value Added Tax Declaration for April 2011, stamped received on 9 May 2011
P-44	Form 2550M, Monthly Value Added Tax Declaration for May 2011, stamped received on 14 June 2011
P-45	Form 2550Q, Quarterly Value Added Tax Declaration of 2nd Quarter of 2011, stamped received on 22 July 2011
P-46	Form 2550M, Monthly Value Added Tax Declaration for July 2011, stamped received on 11 August 2011
P-47	Form 2550M, Monthly Value Added Tax Declaration for August 2011, stamped received on 16 September 2011
P-48	Form 2550Q, Quarterly Value Added Tax Declaration for 3rd Quarter of 2011, stamped received on 19 October 2011
P-49	Form 2550M, Monthly Value Added Tax Declaration for October 2011, stamped received on 17 November 2011
P-50	Form 2550M, Monthly Value Added Tax Declaration for November 2011, stamped received on 19 December 2011
P-51	Form 2550Q, Quarterly Value Added Tax Declaration for 4th Quarter of 2011, stamped received on 24 January 2012
P-52	Form 2550M, Monthly Value Added Tax Declaration for January 2012, stamped received on 8 February 2012
P-53	Form 2550M, Monthly Value Added Tax Declaration for February 2012, stamped received on 12 March 2012
P-54	Form 2550Q, Quarterly Value Added Tax Declaration for 1st Quarter of 2012, stamped received on 17 April 2012
P-55	Form 2550M, Monthly Value Added Tax Declaration for April 2012, stamped received on 10 May 2012
P-56	Form 2550M, Monthly Value Added Tax Declaration for May 2012, stamped received on 11 June 2012
P-57	Form 2550Q, Quarterly Value Added Tax Declaration for 2nd Quarter of 2012, stamped received on 19 July 2012
P-58	Form 2550M, Monthly Value Added Tax Declaration for July 2012, stamped received on 14 August 2012
P-59	Form 2550M, Monthly Value Added Tax Declaration for August 2012, stamped received on 13 September 2012

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P-60	Form 2550Q, Quarterly Value Added Tax Declaration for 3rd Quarter of 2012, stamped received on 16 October 2012
P-61	Form 2550M, Monthly Value Added Tax Declaration for October 2012, stamped received on 18 November 2012
P-62	Form 2550M, Monthly Value Added Tax Declaration for November 2012, stamped received on 13 December 2012
P-63	Form 2550Q, Quarterly Value Added Tax Declaration for 4th Quarter of 2012, stamped and received on 22 January 2013
P-64	Form 2550M, Monthly Value Added Tax Declaration for January 2013, stamped and received on 22 February 2013
P-65	BIR Letter dated 11 April 2014
P-66	MORE Certification dated 8 May 2014
P-67	Secretary's Certificate dated 13 May 2014
P-68	Judicial Affidavit of Franclem Allauiagan filed on 3 October 2014
P-69	Judicial Affidavit of Adelaida Cucharo filed on 3 October 2014
P-70	Judicial Affidavit of Edward M. de Leon filed on 7 November 2014

On the other hand, respondents presented Revenue Officers Dirce M. Diaz and Owen Villanueva as their witnesses. Subsequently, respondents formally offered their documentary and testimonial evidence, which the Court admitted except for Exhibit "R-2".[33]

Respondent's admitted documentary exhibits are as follows:

Exhibits:	Description:
R-1	Whole Docket of Sparkland Realty Inc. for taxable year 2010
R-3	Letter of Authority No. LOA-039-2013-00000173
R-4	Notice of Informal Conference/Post Reporting Notice
R-4-a	Details of Discrepancy/Assessment
R-5	Memorandum (Report on the result of investigation)
R-6	Revenue Officer's Audit Report on Income Tax
R-7	Revenue Officer's Audit Report on Value Added Tax
R-8	Preliminary Assessment Notice
R-8-a	Details of Discrepancies
R-8-b	Page 2 – Details of Discrepancies
R-9	Formal Letter of Demand
R-10	Page 2 - Formal Letter of Demand
R-11	Assessment Notice on Income Tax
R-12	Assessment Notice on Value-Added Tax

[33] Resolution dated October 3, 2016, Docket, pp. 425 to 426

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R-13	Assessment Notice on Compromise Penalty
R-14	Judicial Affidavit of Revenue Officer Dirce Diaz
R-14a	Signature of Revenue Officer Dirce Diaz
R-15	Judicial Affidavit of Revenue Officer Owen Villanueva
R-15a	Signature of Revenue Officer Owen Villanueva

On November 16, 2016, this case was deemed submitted for decision after the filing of respondent's Memorandum[34] on October 26, 2016 and of petitioner's Memorandum[35] on November 7, 2016.[36]

The parties submitted the following issue for this Court's consideration:

> "Whether or not petitioner is liable to pay deficiency income tax in the amount of ₱3,517,017.57, VAT in the amount of ₱1,437,081.29, and compromise penalty in the amount of ₱11,000.00 for the year 2010."[37]

Respondents contend that petitioner failed to protest the assessment; thus, it is considered an undisputed assessment. Respondents further claim that this Court has no jurisdiction.

Respondents' argument is bereft of merit.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx

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[34] Docket, pp. 427 to 434
[35] Docket, pp. 435 to 459
[36] Resolution, Docket, p. 461
[37] Issue, Pre-Trial Order, Docket, p. 304

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The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

On March 19, 2014[38], petitioner protested the FLD and the FAN and submitted supporting documents in support thereof, with stamp receipt of respondents, although respondents' Letter[39] dated April 11, 2014 states that petitioner failed to do so.

Applying the afore-quoted provision to the instant case, petitioner had thirty (30) days from receipt of the FAN, which was February 19, 2014, or until March 21, 2014 within which to protest the

[38] Exhibit "P-2", Docket, p. 29
[39] Exhibit "P-65", Docket, p. 129

said FAN. Since petitioner filed the Protest Letter on March 19, 2014, the same was timely filed.

Also, respondents' Letter dated April 11, 2014 is deemed a final decision of respondents.

The Commissioner of Internal Revenue as well as his duly authorized representative must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment. Words must be carefully chosen in order to avoid any confusion that could adversely affect the rights and interest of the taxpayer.[40]

The Court considers the said letter as the final decision since it gave petitioner an option either to pay the deficiency taxes or appeal such decision, to wit:

> "In view thereof, your tax liability per Assessment Notice/Formal Letter of Demand No. **39-B054-10 dated December 5, 2013** is final, executory and demandable. Please pay immediately with the authorized agent bank in which you are enrolled and submit to this office the proof/s of payment or you may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of this decision, otherwise, we will forward the case to the Collection Division this region for enforcement of collection."

Accordingly, petitioner had thirty days from April 23, 2014[41] or until May 23, 2014 within which to appeal respondents' decision to this Court. Since the Petition for Review was filed on May 23, 2014, it is considered seasonably filed.

Apparently, this Court has jurisdiction over the case.

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[40] *Allied Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 175097, February 5, 2010

[41] Par. 1.3, Petition for Review, Docket, p. 7

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The Court shall now determine whether petitioner is liable to pay deficiency income tax in the amount of ₱3,517,017.57, VAT in the amount of ₱1,437,081.29, and compromise penalty in the amount of ₱11,000.00 for TY 2010.

Respondent assessed petitioner for deficiency income tax and VAT based on the discrepancy between the sales/revenues/receipts declared in the latter's income tax returns and VAT returns, and the information/data provided by withholding agents/payors and payees/income recipients that was generated through the RELIEF system.

On the other hand, petitioner claims that it is not liable for any deficiency taxes for TY 2010 because it has no income or VATable transaction for the said year. Petitioner further asserts that the PAN and the FANs were void for failure to state the facts on which the assessment was made and that there was no credible basis for the finding of additional taxable income.

A careful evaluation of the records shows that respondents conducted a computerized matching of the information/data provided by withholding agents/payors and payees/income recipients and petitioner's sales/revenues/receipts declared in its income tax returns and VAT returns before a Letter of Authority was issued.

In the recent case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[42], the Supreme Court held that the examination of the taxpayer without an LOA violated the taxpayer's right to due process, to wit:

> "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

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

his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) **Examination of Return and Determination of Tax Due.** - After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> 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.
>
> x x x x (Emphasis and underlining ours)

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.

In the case of *Commissioner of Internal Revenue v. 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. **In the absence of such an authority, the assessment or examination is a nullity.** (Emphasis and underlining ours)

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. xxx" *(Emphasis supplied)*

The High Court has further ruled in the afore-mentioned case that the LOA cannot be dispensed with even if the financial books or records of the taxpayer have not been examined, *viz*:

"xxx, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination."

It is worthy to emphasize that respondents issued the Letter Notice No. 039-RLF-10-00-00427 on November 29, 2011, while the Letter of Authority No. LOA-039-2013-00000173 was issued on February 16, 2013.

Records reveal that after the Letter Notice No. 039-RLF-10-00-00427 was issued by respondent Commissioner and without any Letter of Authority issued, Revenue Officer Dirce Diaz continued auditing petitioner's tax liability based on the said Letter Notice, to wit:

"9. Q: Did you serve the Letter Notice? When?
A: Yes, on December 1, 2011.

10. Q: Did the taxpayer respond to the Letter Notice?
A: No, the taxpayer did not respond.

11. Q: What happened next?
A: Since the taxpayer did not respond to the Letter Notice, a follow up letter was sent.

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14. Q: I am showing to you this Memorandum marked as Exhibit 'R-2-b' what relation does this document have with what you mentioned?
A: That is the Memorandum I submitted for the issuance of Letter of Authority.

15. Q: I am showing to you this Letter of Authority marked as Exhibit 'R-3' what relation does this document have with what you mentioned earlier?

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A: It is the Letter of Authority authorizing me to conduct tax audit of the Petitioner for taxable year 2010."[43]

Also, Revenue Officer Diaz testified that the basis of the assessment is confined to the discrepancies stated in the Letter Notice, *viz*:

"JUSTICE DEL ROSARIO:
Ms. Witness, just to clarify some points in your Judicial Affidavit. You have actually identified two (2) vital documents, the letter notice and a Letter of Authority. What is the difference between the two?

MS. DIAZ:
A. The letter notice contains the matching data, data arrived at by matching information between a third party and a taxpayer.

JUSTICE DEL ROSARIO:
You actually call it as the easy phase assessment? It is based on letter notice?

MS. DIAZ:
A. Information, yes.

JUSTICE DEL ROSARIO:
So, it is the matching discrepancies coming from third party information?

MS. DIAZ:
A. Yes.

JUSTICE DEL ROSARIO:
How about the letter of authority?

MS. DIAZ:
A. The Letter of Authority that is the document authorizing us to conduct the actual audit.

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[43] Exhibit "R-14", Docket, p. 157

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JUSTICE DEL ROSARIO:
Is it correct to say that even without the Letter of Authority, you could issue an assessment based on the letter notice?

MS. DIAZ:
A. Recently, we were not allowed to make an assessment without a letter notice based on the, without Letter of Authority if our assessment should come from letter notice.

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JUSTICE DEL ROSARIO:
More than ten years, so, in this particular case, there is the letter notice, but at the end of the day, after the issuance of the Letter of Authority, the basis of the information or the assessment actually was confined also to the discrepancies stated in the letter notice?

MS. DIAZ:
A. Yes."[44]

Clearly, Revenue Officer Diaz had already conducted an audit on petitioner without any authority, and only based the audit on the Letter Notice No. 039-RLF-10-00-00427.

It appears that the issuance of the Letter of Authority was just an afterthought to cure the lack of authority of the revenue officer conducting the audit on petitioner's tax liability.

Consequently, the FLD and the FAN are void.

Even for argument's sake that the FLD and the FAN are valid, petitioner managed to overcome the *prima facie* presumption that the assessment made by the BIR is correct and that in preparing the same, the BIR personnel regularly performed their duties.

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[44] Transcript of Stenographic Notes (TSN) dated January 26, 2016, pp. 27 to 29

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Petitioner presented the following: 1st, 2nd, and 3rd Quarterly Income Tax Returns[45] for TY 2010, Annual Income Tax Return[46] for TY 2010, Contract of Lease[47], Addendum to the Contract of Lease[48], Certification issued by the Office of the City Building Official of Makati City[49], official receipts[50], Certification issued by MOREI[51], and Certificates of Creditable Tax Withheld At Source[52] to prove that it had no income in TY 2010.

Income tax is assessed on income received from property, activity or service that produces the income because the Tax Code stands as an indifferent neutral party on the matter of where income comes from. The three elements in the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax. Any business purpose as to why or how the income was earned by the taxpayer is not a requirement.[53] As such, the imposition or assessment of income tax is made only when there was an income, and such income was received or realized by the taxpayer.

The Contract of Lease[54], the Addendum to the Contract of Lease[55], the Certification issued by the Office of the City Building Official of Makati City[56], and the official receipts[57] prove that petitioner's business operation did not start until January 2011. These pieces of evidence corroborate the testimonial evidence presented by petitioner, to wit:

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[45] Exhibits "P-4", "P-5", and "P-6", Docket, pp. 34, 35, and 36, respectively
[46] Exhibit "P-7", Docket, p. 37
[47] Exhibit "P-22", Docket, pp. 64 to 69
[48] Exhibit "P-23", Docket, pp. 70 to 71
[49] Exhibit "P-20", Docket, p. 62
[50] Exhibits "P-24" and "P-26", Docket, pp. 72 and 74, respectively
[51] Exhibit "P-66", Docket, p. 130
[52] Exhibits "P-28" to "P-29", Docket, pp. 76 to 77
[53] *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999
[54] Exhibit "P-22", Docket, pp. 64 to 69
[55] Exhibit "P-23", Docket, pp. 70 to 71
[56] Exhibit "P-20", Docket, p. 62
[57] Exhibits "P-24" and "P-26", Docket, pp. 72 and 74, respectively

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"9). You mentioned that SRI did not have any income for the year 2010. Was the BIR informed of this fact and were the appropriate returns filed with the BIR on time?

A. Yes mam, our Income Tax Returns and Value Added Tax Declaration for the year 2010 show that we have no operations. These Income Tax Returns have been timely filed with the BIR and forms part of the records of the corporation. xxx.

xxx xxx xxx

10). You mentioned that the only source of income of SRI is the lease of its only property in Makati City. To whom was the property first leased and when did the lease commence?

A. It was leased to Manila-Oslo Renewable Enterprise, Inc. ('MOREI'). The contract of lease was signed on 15 October 2010 for a term of two (2) years which was supposed to commence on December 1, 2010 or such date that the leased premises is ready for occupancy. However, petitioner SRI was unable to completely finish the residential house in time for the original projected commencement date. So an addendum to the contract of lease was executed by the parties to adjust the commencement date to 14 January 2011 and shall be effective until 13 January 2013.

xxx xxx xxx

12). So was any of the rental income from the Contract of lease with lessee MOREI received in year 2010?

A. No rental income from the Contract of Lease with MOREI was received in year 2010.

xxx xxx xxx

19). You mentioned that there is a difference in the accounting method used by SRI and MOREI. What is this difference that you are referring to?

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A. SRI uses the accrual method of accounting while lessee MOREI appears to be using cash basis method when the lessee claimed input taxes when the checks for the rentals were prepared even though there was no actual payment of rentals yet.

20). What do you mean by the accrual method that you are using?

A. In accrual method, the income is recognized when earned regardless of when cash is received and expense is recognized when incurred regardless of when paid.

21). How about the cash basis method of accounting used by the lessee MOREI?

A. In cash basis method, the income is recognized when received regardless of when earned, and expense is recognized when the check payment was prepared regardless of when incurred or actually paid.

22). So, how did the difference in the accounting method result in an erroneous finding of tax deficiency?

A. The difference in accounting method created a 'timing difference' in the recording of the transaction which could be a source of erroneous finding of tax deficiency.

23). What do you mean by 'timing difference'?

A. In this case, lessee MOREI recorded the total amount of checks dated December 9, 2010 and December 14, 2011, representing the total rentals for the entire two year of lease as expense as early as December 2010, the time they prepared the checks for SRI, even if rental expenses are actually incurred on a monthly basis as per the contract of lease and the checks were delivered to SRI only on 2011. On the other hand, since petitioner SRI uses accrual basis method of accounting, the rental income from MOREI was reported as the rentals accrued which is on a monthly basis. Thus, the timing difference refers to the difference in time when lessee MOREI reported its rental expense and when lessor SRI reported its rental income."[58]

The foregoing testimony was corroborated by the testimony of Mr. Edward M. De Leon, the Senior Manager for Tax and Compliance of MOREI, to wit:

"4. In connection with the lease of the Makati property, are you aware that your company issued a certification in connection with the audit of BIR of Sparkland Realty Inc. for taxable year 2010?

A. Yes mam. Our company issued the Certification dated 8 May 2014. I was the one who issued the signed the said certification.

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8. Did you review your records? What are your findings?

A. Upon our review and inspection of our records, we confirmed that the only rental payments we made to Sparkland was for the monthly rentals of the Makati property for the period corresponding to January 2011 to January 2013. We did not make any rental payment to Sparkland for the year 2010. Confusion may have been due to the timing difference in reporting. We reported the rental payments as prepaid rent upon the preparation of the check. Sparkland may have reported the same when they received the payment or when they became due by virtue of the contract.

9. What was the reason for this timing difference?

A. The timing difference was due to the technical limitations of our old accounting system in processing advance payments and issuing postdated checks. Our old accounting system is only capable of recognizing the input VAT upon preparation of check regardless of when the same was released to the payee, when encashed or when it was actually due. In

[58] Exhibit "P-69", Judicial Affidavit of Adelaida Cucharo, Docket, pp. 198 to 199

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> the case of the rental payment for Sparkland for the period of January 2011 to January 2013, we prepared the postdated checks for the advance payments of the two year rentals in December 2010 although the rentals were actually paid and the post-dated checks were received and encashed only on the succeeding years of 2011 onwards."[59]

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

In sum, petitioner has sufficiently proven that it had no income for taxable year 2010.

As regards the compromise penalty, petitioner's 1st, 2nd, and 3rd Quarterly Income Tax Returns[60] for TY 2010 and Monthly VAT Returns[61] for TY 2010 disprove the non-submission and non-filing of Quarterly Income Tax Returns and Monthly VAT Returns as stated in the assessment for compromise penalty.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices, all dated December 5, 2013, for deficiency income tax, value-added tax, and compromise penalty for taxable year 2010 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

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59 Exhibit "P-70", Docket, pp. 226 to 227

60 Exhibits "P-4", "P-5", and "P-6", Docket, pp. 34, 35, and 36, respectively

61 Exhibits "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", and "P-19", Docket, pp. 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 61, respectively

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SPARKLAND REALTY, INC.,
Petitioner,

- versus -

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

CTA Case No. 8824

Members:

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

Promulgated:

NOV 03 2017 ; 1:35 pm

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CONCURRING OPINION

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

I concur in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, which grants the Petition for Review filed by Sparkland Realty, Inc. (SRI) but ***solely*** on the ground that SRI is not liable for deficiency income tax, value-added tax (VAT) and compromise penalty (for non-filing of income tax and VAT returns) for the taxable year 2010.

I submit that the Formal Letters of Demand and Assessment Notices (FAN), all dated December 5, 2013, are not intrinsically void as the same were issued pursuant to a valid Letter of Authority (LOA). The **Letter Notice dated November 29, 2011 was converted into an LOA** after SRI allegedly failed to take positive actions to refute the validity of the Bureau of Internal Revenue's (BIR) findings therein. The step taken by the BIR in converting the Letter Notice into an LOA is consistent with the pronouncement of the Supreme Court in ***Medicard Philippines, Inc. vs. Commissioner of Internal Revenue***,[1] *viz.*:

> ***"The absence of an LOA violated MEDICARD's right to due process***
>
> xxx xxx xxx
>
> Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.
>
> With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers'· issued LNs by reconciling various revenue issuances which conflict with the NIRC. **Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes.**
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> > **IV. POLICIES AND GUIDELINES**
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> > **<u>8. In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN</u>**, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.
> >
> > **<u>9. In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA) to replace the LN</u>**. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex "E" hereof) to the OACIR-LTS I ORD for the preparation of the corresponding LAs with the notation "This LA cancels LN_________ No. "
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> > **V. PROCEDURES**
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> > x x x x
> >
> > > B. At the Regional Office/Large Taxpayers Service
> > > x x x x

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

7. Evaluate the Summary List of LNs for Conversion to LAs submitted by the RDO x x x prior to approval.

8. Upon approval of the above list, prepare/accomplish and sign the corresponding LAs.

x x x x

10. Transmit the approved/signed LAs, together with the duly accomplished/approved Summary List of LNs for conversion to LAs, to the concerned investigating offices for the encoding of the required information x x x and for service to the concerned taxpayers.

x x x x

C. At the RDO x x x

x x x x

11. If the LN discrepancies remained unresolved within One Hundred and Twenty (120) days from issuance thereof, prepare a summary list of said LN s for conversion to LAs x x x.

x x x x

16. **Effect the service of the above LAs to the concerned taxpayers.**

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. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

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

Xxx xxx xxx. Simply put, LN is entirely different and serves a different purpose than an LOA. **Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunarely, this was not done in this case.**

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Xxx xxx xxx. (Additional boldfacing supplied)

As borne by the records, after the conversion of the Letter Notice into an LOA, the BIR requested SRI to present its books of accounts and other accounting records for audit and examination. After said audit and examination, the BIR issued a Post Reporting Notice, followed by a Preliminary Assessment Notice (PAN), and then by the FLD and FAN. Since the BIR followed the required procedure in the issuance of an assessment, **as an LOA was issued prior to the issuance of a PAN and FAN against SRI, I submit that the FLD and FAN issued against SRI are not void.**

The foregoing notwithstanding, since SRI's substantive arguments in support of the cancellation of the FLD and FAN are meritorious, I submit that the FLD and FAN must perforce be cancelled and set aside.

Records prove that SRI did not generate any income or gross receipts for the taxable year 2010. SRI's rental income from the lease of its property to Manila-Oslo Renewable Enterprise, Inc. (MOREI) started to accrue only on January 14, 2011 as per the Contract of Lease dated October 15, 2010, as amended by the Addendum to the Contract of Lease dated January 31, 2011. Thus, in the absence of any taxable income or receipts on the part of SRI for the calendar year 2010, I submit that there is no basis to assess SRI for deficiency income tax and VAT for the said year.

Anent the assessment for compromise penalty of P11,000.00 for SRI's alleged failure to file its quarterly income tax returns and monthly VAT returns, I concur with the *ponencia* that the same must likewise be cancelled as SRI was able to sufficiently establish that it filed its quarterly income tax returns and monthly VAT returns for the taxable year 2010.

All told, I VOTE to: (i) GRANT the Petition for Review filed Sparkland Realty, Inc.; and, (ii) CANCEL and SET ASIDE the Formal Letters of Demand and Assessment Notices (FAN), all dated December 5, 2013, assessing Sparkland Realty, Inc. for deficiency income tax, VAT and compromise penalty for the taxable year 2010.

ROMAN G. DEL ROSARIO
Presiding Justice