REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PRISCILA CRUZ and JOCELYN CRUZ DE LOS REYES (in substitution of the deceased JULIO S. CRUZ), Petitioners,	**CTA CASE NO. 8103**
	Members:
- versus -	**DEL ROSARIO,** *PJ, Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 19 2017 ; 2:00 pm

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RESOLUTION

***MINDARO-GRULLA, J.*:**

Before this Court are the following:

1. Respondent's **Motion for Partial Reconsideration**, filed through registered mail on September 21, 2016 and received by the Court on September 28, 2016, with petitioners' **Comment on and Opposition to the Respondent's Motion for Partial Reconsideration**, filed through registered mail on October 21, 2016, and received by the Court on November 4, 2016; and

2. Petitioners' **Motion for Partial Reconsideration**, filed through registered mail on September 28, 2016 and received by the Court on October 5, 2016, without respondent's

comment, as per Records Verification dated January 3, 2017.

In their respective motions, petitioners and respondent seek reconsideration of the Court's Decision promulgated on September 2, 2016 (assailed Decision), the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the deficiency income tax assessment issued by respondent against petitioner for taxable year 2004 is **AFFIRMED**, while the deficiency income tax assessments for taxable years 1992 to 2003 are **CANCELLED** and **SET ASIDE** for lack of valid LOA. Accordingly, petitioners are **ORDERED TO PAY FOURTEEN MILLION NINE HUNDRED FIFTY THREE THOUSAND EIGHTY-SEVEN PESOS AND FIFTY-THREE CENTAVOS (₱14,953,087.53)** representing basic deficiency income tax, inclusive of the 50% surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, computed as follows:

Basic deficiency income tax for taxable year 2004	₱ 9,968,725.02
Add: 50% surcharge	4,984,362.51
Total	**₱14,953,087.53**

In addition, petitioners are hereby **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty (20%) per annum on the basic deficiency income tax computed from April 15, 2005 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱14,953,087.53 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from April 12, 2010 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

In his motion, respondent submits that the Court erred in granting the Petition for Review, considering that the Letter of Authority (LOA) issued is valid pursuant to the RATE Program of the Bureau of Internal Revenue. Further, he contends that the LOA is not indispensable in the assessment of petitioners, as none of petitioners' financial books or records were examined, and that petitioners are estopped from attacking the validity of the LOA.

On the other hand, petitioners claim that the Court committed reversible errors in finding that due process was observed in the issuance of Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD) and assessment notices. Further, it argues that the facts and the law do not support the 2004 assessment, and that fraud was never alleged nor established with the quantum of evidence required by law.

The Court finds that most of the arguments raised by petitioners and respondent in their respective motions is a mere rehash of the arguments raised in their previous pleadings filed in this case, all of which have already been thoroughly and exhaustively passed upon, and comprehensively addressed by the Court in the assailed Decision.

As thoroughly discussed by the Court in the assailed Decision, it is well settled that the issuance of an LOA covering "unverified prior years" is a prohibited practice under Section C of Revenue Memorandum Order (RMO) No. 43-90 dated September 20, 1990. An LOA with "unverified prior year" does not confer any authority to audit the taxpayer's books outside the specific taxable year mentioned therein. When the revenue officers conducted an examination of petitioners' books for taxable years 1992 to 2003, it was done without authority. The "unverified prior years" cannot mean the inclusion of the said years because if it were the intention of respondent to audit the books of petitioners, the former should have issued separate LOAs for taxable years 1992 to 2003. Hence, for lack of valid LOA, the Assessment Notices issued for taxable years 1992 to 2003 are null and void.

Moreover, it is worthy to reiterate that due process was observed in the issuance of the PAN, FLD and Assessment Notice for taxable year 2004, to wit:

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"There is no dispute that petitioners received the PAN, the Formal Letter of Demand, and Assessment Notice No. ES-IT-2004-0806 for taxable year 2004. The fact of receipt was evidenced by its Letter Protest dated May 6, 2009 and Administrative Protest dated October 16, 2009.

Upon examination of the Formal Letter of Demand and the attached Assessment Notice No. ES-IT-2004-0806, petitioners were assessed for their alleged failure to report for income tax purposes, the sources of their cash investments in Manila East Holding Corporation ('MEHCOR' for brevity) and J.S. Cruz Construction and Development Inc. ('CRUZCON' for brevity), of which they are stockholders. Respondent cited Sections 29(a) and 32(A)(2) of the NIRC of 1997, as amended, as her legal basis.

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Contrary to petitioners' contention that they were not duly informed of the basis of the assessment, the records reveal that they were sufficiently informed of the legal and factual bases of the assessment as well as the nature of the tax allegedly unpaid.

Assessment notices need not be a full narration of the facts and laws on which the assessment is based. It is enough that petitioner be substantially informed of the law and the facts on which the assessment for a tax liability is made in any other written document presented to the taxpayer. Thus, so long as the parties are notified and were given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.

Petitioners' explanations in their protest letters evidently show that they had a full grasp of the basis of the assessment for deficiency income tax.

The Court emphasizes its previous rulings in several cases that 'a taxpayer's actual knowledge of the bases of the assessments, such that it or he was able to intelligently protest the assessments, is sufficient compliance with the requirement of Section 228 of the Tax Code that "the taxpayer shall be informed of the law and the facts on which the assessment is made."'

In the case of *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*[1], the Supreme Court affirmed the ruling of the CTA on due process and considered the exchange of correspondence between the taxpayer and the BIR as proof that the taxpayer was fully informed of the basis of assessment, to wit:

> 'Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in *Enron*. Petitioner's right to due process was thus violated.'

Clearly, petitioners were given due process as they were able to intelligently protest both the PAN and the FLD."

Furthermore, as held by the Court in the assailed Decision, petitioners failed to overcome the *prima facie* evidence of false/fraudulent return. Consequently, the prescriptive period to

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[1] G.R. No. 193100, December 10, 2014

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issue a tax assessment in such cases is within ten (10) days from the date of discovery of the falsity, fraud or omission, pursuant to Section 222(a) of the NIRC of 1997.

From the foregoing, finding no cogent reason to disturb the Court's findings in the assailed Decision, the Court denies both motions for reconsideration.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration and petitioners' Motion for Partial Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

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

(On Leave)
ERLINDA P. UY
Associate Justice

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PRISCILA CRUZ and JOCELYN CRUZ DE LOS REYES (in substitution of the deceased JULIO S. CRUZ),
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 8103

Members:

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

Promulgated:
APR 19 2017 2:00 pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying respondent's Motion for Partial Reconsideration and petitioners' Motion for Partial Reconsideration both for lack of merit.

I wish, however, to address respondent's argument that the invalidity of the subject letter of authority (LOA), which authorized the examination of petitioners' books of accounts and other accounting records for all internal revenue taxes for the period **from taxable years 2004 and unverified prior years**, could not have the effect of invalidating the assessment notices issued for the years 1992 to 2003. According to respondent, in obtaining the documents used in assessing petitioners for deficiency taxes, respondent did not actually make use of the LOA. Instead, respondent on his own secured the documents he needed to come up with the assessment. Citing ***Medicard vs. Commissioner of Internal Revenue***,[1] respondent avers that it is within the ambit of his power to issue an assessment other than by force of an LOA.

[1] CTA EB No. 1224, September 2, 2015.

In *Medicard*, the Court *En Banc* affirmed the ruling of the Court in Division that the absence of an LOA did not render the assessment against Medicard void as the issuance of the assessment was preceded by a Letter Notice (LN) informing Medicard of the discrepancies in its VAT and Income Tax Returns. **The issuance of the LN was a very vital factual antecedent that led both the Court *En Banc* and the Court in Division to rule that respondent may proceed with the investigation of Medicard even in the absence of an LOA**. Pertinent portion of the Court *En Banc*'s Decision reads:

> "In its drive to efficiently perform its functions, the BIR issued the then RMO 30-2003 and RMO 42-2003, respectively, prescribing guidelines for the use of a centralized Data Warehouse to detect tax leaks through non-traditional ways, pursuant to its 'no-contact-audit-approach' of examination and assessment. One of the features thereof is that an LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer.
>
> In relation thereto, RMC 40-2003, which amended RMC 30-2003, **provides that LNs issued against a taxpayer may be considered as a notice of audit or investigation in the absence of evident error or clear abuse of discretion**.
>
> By virtue of the foregoing RMOs and RMC, respondent, in the instant case, issued the LN and proceeded with the issuance of PAN without issuing LOA which, as petitioner asserts, renders the assessment void.
>
> However, a careful evaluation of the said RMOs and RMC, as applied in the instant case, reveals that the respondent or her representatives may proceed with the investigation of petitioner even without the issuance of LOA, for the following reasons:
>
> First, the issuance of LOA in this case is not indispensable. None of the financial books or records of petitioner was examined by the BIR which requires the issuance of LOA; **and**
>
> Second, **there is no evidence presented by petitioner to show that respondent issued the LN with evident error or clear abuse of discretion. What petitioner questions is the absence of LOA which, as earlier pointed, is not indispensable in light of the factual antecedents of this case**.
>
> It must be stressed that an LOA is issued to authorize a Revenue Officer to examine the taxpayer's books of account. Thus, when there is no examination of taxpayer's books of account, it necessarily follows that there is no need to issue an LOA with regard thereto.
>
> In the present case, respondent is under no obligation to issue an LOA to examine petitioner's books of account when there is no examination thereof. Thus, **the finding of discrepancies**

> **between petitioner's income tax returns and VAT returns leading to VAT deficiency assessment by matching petitioner's declarations therein, suffice to initiate the assessment process.**
>
> At any rate, a perusal of the records reveal that petitioner was given ample opportunity to respond to the subject LN issued by the BIR. It was likewise given ample opportunity to dispute the subject assessment. Hence, based from the reasons stated above, the mere absence of an LOA in this case does not invalidate the aforesaid assessment.
>
> In view thereof, We see no cogent reason to declare as invalid the subject assessment." (Boldfacing supplied)

In the case at bar, although respondent claims that he did not use the LOA in obtaining documents used in assessing petitioners for deficiency taxes, it is undeniable that **respondent initiated the assessment process against petitioners through the issuance of the LOA.** Interestingly, the issuance of an LOA covering audit of unverified prior years is prohibited and as a consequence thereof, the assessments for the unspecified taxable years are considered void. The most recent pronouncement of the Supreme Court on this issue in ***Commissioner of Internal Revenue vs. De La Salle University, Inc.***[2] is most enlightening, *viz.*:

> "DLSU objects to the CTA *En Banc*'s conclusion that the LOA is valid for taxable year 2003 and insists that the entire LOA should be voided for being contrary to RMO No. 43-90, which provides that if tax audit includes more than one taxable period, the other periods or years shall be specifically indicated in the LOA.
>
> A LOA is the authority given to the appropriate revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct internal revenue liabilities and for the purpose of collecting the correct amount of tax, in accordance with Section 5 of the Tax Code, which gives the CIR the power to obtain information, to summon/examine, and take testimony of persons. **The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.**
>
> Given the purposes of a LOA, is there basis to completely nullify the LOA issued to DLSU, and consequently, disregard the BIR and the CTA's findings of tax deficiency for taxable year 2003?
>
> We answer in the negative.
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> The relevant provision is Section C of RMO No. 43-90, the pertinent portion of which reads:

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[2] G.R. Nos. 196596, 198841 & 198941, November 9, 2016.

> 3. A Letter of Authority [LOA] should cover a taxable period not exceeding one taxable year. The practice of issuing [LOAs] covering audit of unverified prior years is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the [LOA].
>
> **What this provision clearly prohibits is the practice of issuing LOAs covering audit of unverified prior years**. RMO 43-90 does not say that a LOA which contains unverified prior years is void. It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified. The provision read as a whole requires that if a taxpayer is audited for more than one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs.
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> Read in this light, the requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority. Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random unverified years, which may include documents from as far back as ten years in cases of fraud audit.
>
> In the present case, the LOA issued to DLSU is for Fiscal Year Ending 2003 and Unverified Prior Years. **The LOA does not strictly comply with RMO 43-90 because it includes unverified prior years**. This does not mean, however, that the entire LOA is void.
>
> **As the CTA correctly held, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. DLSU was fully apprised that it was being audited for taxable year 2003**. Corollarily, the assessments for taxable years 2001 and 2002 are void for having been unspecified on separate LOAs as required under RMO No. 43-90." (Boldfacing supplied)

Considering that respondent initiated petitioners' audit by authority of an LOA, it was incumbent upon respondent to ensure that such LOA comply with the rules that respondent had set. Thus, applying the pronouncement in *De La Salle*, since the taxable period specified in the LOA issued against petitioners is 2004 only, the assessment for 2004 is valid while the assessments for 1992 to 2003 are void.

All told, I **VOTE** to **DENY** respondent's Motion for Partial Reconsideration and petitioners' Motion for Partial Reconsideration both for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice