REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LKY PROPERTY HOLDINGS, INC., represented by MR. WILBERT T. LEE
Petitioner,

-versus-

HON. KIM HENARES in her capacity as COMMISSIONER OF INTERNAL REVENUE, and ESMERALDA TABULE, in her capacity as Revenue Regional Director of Revenue Region No. 10, Legazpi City,
Respondents.

CTA CASE NO. 9066

Members:

BAUTISTA, *Chairperson*;
FABON-VICTORINO, and
RINGPIS LIBAN, JJ.

Promulgated:

APR 19 2018 9:42 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On December 14, 2017, the Court rendered a Decision, disposing the case in the following fashion:

> **WHEREFORE**, the Petition for Review dated May 14, 2015 filed by LKY Property Holdings, Inc., is hereby **GRANTED**. Accordingly, the Formal Letter of Demand dated December 3, 2014, finding petitioner liable for deficiency capital gains tax (CGT) and documentary stamp tax (DST) for taxable year 2007 in the total amount of P12,462,256.53, inclusive of surcharge and interest, is **CANCELLED** for being a void assessment. Consequently, the Warrant of Distraint and/or Levy issued in relation thereto is likewise void and hereby ordered **CANCELLED**.

SO ORDERED.[1]

In their Motion for Reconsideration dated January 18, 2018,[2] respondents insist compliance with Section 228 of the NIRC, as amended, RR No. 12-99, and settled jurisprudence. They assert that the FLD with Details of Discrepancies coupled with FAN No. 067-07-004-201-934-000 was duly served to petitioner via registered mail per Registry Receipt No. 15-161.[3] Further, plain from the FLD/FAN that petitioner's CGT and DST liabilities amount to ₱6,262,780.62 and ₱1,575,257.73 respectively. In addition, it is legally permissible to effect modifications on the tax due and increments thereon based on actual date of payment in view of petitioner's uncertainty in meeting its tax obligation. For respondents, the subject assessments are complete in all respects, hence, valid and legally binding against petitioner.

Anent the merits of the subject assessment, respondents submit that the sale of hotel facility of Mayon International Hotel, Inc. (MIHI) to petitioner gave rise to deficiency CGT and DST. Relying on BIR Ruling No. 308-14, they point out that as a rule, the CGT and DST due on the sale transaction are imposed upon the vendor unless there is a proviso in the contract that it is for the account of the vendee. As the vendee, petitioner obliged itself to shoulder the 6% CGT and DST as encapsulated in the Deed of Absolute Sale dated May 21, 2007 granting them unbridled authority to levy the foregoing taxes against it. On account thereof, petitioner must pay the subject assessment together with increments amounting to ₱12,462,256.53.

For its part, petitioner retorts that respondents' deficiency CGT and DST assessment is void for lack of legal and factual bases as required under Section 228 of the NIRC, as amended. It agrees with the finding of the Court saying that it committed no reversible error in cancelling the subject assessment.

The instant Motion is bereft of merit.

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[1] Docket, p. 546.
[2] Ibid., pp. 549-559.
[3] Exhibit R-9, pp. 325-326, BIR Record.

After a careful examination of the record and meticulous evaluation of the arguments proffered by respondents in the instant Motion, the Court finds no sufficient reason to disturb the impugned Decision of December 14, 2017. To repeat, respondents' failure to: 1) serve the FAN to petitioner; and 2) state in the FLD the definite amount of tax due inevitably leads to one result – respondents' assessment is a patent nullity and consequently ineffectual against petitioner.

Besides, even assuming *ex gratia argumenti* that there was indeed valid service of FAN; and that the FLD contains a definite amount of tax due, the same shall not cure the invalidity of the subject assessment for Revenue Officer (RO) D'Joanna M. Diamante is without legal authority to investigate/examine petitioner for possible tax liabilities.

Sections 6(A)[4] and 13[5] of the NIRC, as amended are explicit and unequivocal, thus, they only require application. Both mandate, *inter alia,* that a valid LOA originating from the CIR or the Revenue Regional Director is a condition *sine qua non* for a RO to legally conduct a verification/audit of a taxpayer for potential deficiency taxes. Conversely, the absence of such authority renders the assessment or examination void.[6]

It is not refuted that the authority of RO Diamante to examine or audit petitioner's books of account and other accounting record for possible deficiency tax liability is only

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[4] 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, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>: *Provided*, *however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. (underscoring supplied)

[5] 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, <u>a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, 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. (underscoring supplied)

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

anchored on a mere Memorandum of Assignment (MOA) and 1st Indorsement dated October 15, 2014 and October 20, 2014 respectively, both issued by Revenue District Officer Cesar R. Balangatan.[7] Equally unrefuted is the fact that the record is devoid of any indication that a valid LOA was issued by respondent CIR himself or the Revenue Regional Director granting authority to RO Diamante to continue with the validation/audit of petitioner's books of account or other accounting record. It is therefore safe to conclude that the examination/verification piloted by RO Diamante leading to the issuance of the subject assessment was not legally authorized by respondent CIR or his authorized representative. Being a product of an illegal examination/audit, the subject assessment is a complete nullity and without legal consequence, effectively warranting its cancellation and withdrawal.

In conclusion, a valid LOA as a prerequisite to a valid assessment is essential 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.[8]

WHEREFORE, respondents' Motion for Reconsideration dated January 18, 2018 is **DENIED**. The Decision dated December 14, 2017 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[7] Exhibit R-1, BIR Record, pp. 167-170.
[8] See *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice