REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

DIAGEO PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10452

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ*

Promulgated:
JUN 19 2025
4:20 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review with Urgent Motion to Suspend Collection of Tax ("Petition"),[1] filed on January 15, 2021, under *Section 7(1) of Republic Act ("RA") No. 1125,*[2] *as amended by R.A. No. 9282,*[3] praying the court to issue a judgment declaring the Warrant of Distraint and/or Levy ("WDL") No. 121-2020-11,[4] dated December 7, 2020, issued by respondent through Manuel V. Mapoy, OIC-Assistant Commissioner, void.

In the said WDL, respondent directed the Large Taxpayers Collection Enforcement Division ("LTCED") to distrain the goods, chattels, or effects, and other personal property of petitioner and to levy upon the latter's real property and interest in/or rights to real property, in relation to an alleged failure or refusal to pay respondent's assessment in the total amount of Php7,665,972.88, covering three various periods from 2016 to 2018.

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1 See Petition for Review, Records, Docket, pp. 7-125, with annexes.
2 An Act Creating the Court of Tax Appeals, June 16, 1954.
3 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes; March 30, 2004.
4 Exhibit "P-7", Docket, p. 472.

The Parties

Diageo Philippines, Inc. ("Diageo" or "petitioner") is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 17th Floor, Ore Central, 9th Ave., cor. 31st St., Taguig City.[5] It is engaged in the business of importing, exporting, manufacturing, marketing, distributing, buying, and selling of beverages and liquors.[6]

Respondent Commissioner of Internal Revenue ("CIR" or "respondent") is vested under the *1997 National Internal Revenue Code, as amended* ("*Tax Code*"), with the authority to carry out all functions, duties and responsibilities of the Bureau of Internal Revenue ("BIR"), including inter alia, the power to issue WDLs. He may be served with summons and other court processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.[7]

The Facts

The present controversy springs from the Preliminary Notices ("PN") issued by respondent on December 14, 2018, and received by petitioner on June 24, 2019, detailed below:

a. PN-18-01249, for penalties amounting to Php5,402,220.50, in relation to the alleged late payment of petitioner's Annual Income Tax for the fiscal period ending June 30, 2016;[8]

b. PN-18-01250, for penalties amounting to Php243,890.41, in relation to the alleged late payment of petitioner's Quarterly Income Tax for the period ending September 30, 2017;[9] and

c. PN-18-01248, for penalties amounting to Php2,019,861.97, in relation to the alleged late payment of petitioner's Quarterly Value-Added Tax ("VAT") for the period ending September 30, 2018.[10]

In response to the above PNs, petitioner submitted to respondent three separate explanation letters, all dated July 3, 2019, on July 4, 2019.[11] According to petitioner, it did not receive any response from respondent regarding this matter.

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[5] See Petition for Review, Parties par. 1, Docket, p. 8.
[6] See Petition for Review, Statement of Relevant Facts, par. 7, Docket, p. 9.
[7] See Amended Joint Stipulation of Facts and Issues, Summary of Admitted Facts, pars. 1 & 2, *id.*, p. 393.
[8] Exhibit "P-1", Docket, p. 169.
[9] Exhibit "P-2", *id.*, p. 170.
[10] Exhibit "P-3", *id.*, p. 171.
[11] Exhibits "P-1-A", "P-2-A", and "P-3-A", *id.*, pp. 172-205

On December 1, 2020, petitioner's tax manager, Anne Carlos, received an email[12] from Revenue Officer Jejomar Cedeño ("RO Cedeño), inquiring about reaching petitioner's office in relation to the alleged tax liabilities of petitioner from 2016 to 2018. In the same email, RO Cedeño mentioned Assessment Nos. QA-20-000172, QA-20-000173 and QA-20-000174, with no other accompanying information.

On December 4, 2020, Carlos responded and informed RO Cedeño that petitioner's office remained closed since March 2020 and all employees had been working from home.[13] She also gave the latter the email addresses where official communications may be sent.

On December 9, 2020, RO Cedeño sent an email[14] to petitioner's official email address, requesting the settlement of tax liabilities amounting to Php7,665,972.88 with the following details:

Assessment No.	Tax Type	Period Covered	Basic	Surcharge	Interest	Comp. Penalty	Amount Paid	Balance
QA-20-000172	VT	09/30/18	0.00	1,959,554.18	10,307.79	50,000	0.00	2,019,861.97
QA-20-000173	IT	06/30/16	0.00	5,352,220.50	0.00	50,000	0.00	5,402,220.50
QA-20-000174	T	09/30/17	0.00	251,848.36	8,831.94	40,000	56,789.89	243,890.41
TOTAL			0.00	7,563,623.04	19,139.73	140,000	56,789.89	7,665,972.88

RO Cedeño also stated in the same email that the BIR "*will send scanned copies of the above assessments upon request.*"

According to petitioner, on December 17, 2020, it then received the subject WDL,[15] issued by the BIR on December 7, 2020, alleging delinquent tax liabilities amounting to Php7,565,972.88 plus Php100,000.00 compromise penalties, or the same total of Php7,665,972.88.

Petitioner claims that the WDL was served to the lobby receptionist of Ore Central, the building where petitioner's office is situated, and the same was turned over to one of petitioner's employees on December 17, 2020.[16]

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12 Exhibit "P-4", *id.*, pp. 206-207
13 Exhibit "P-5", *id.*, p. 206.
14 Exhibit "P-6", *id.*, p. 209.
15 *Supra* note 4.
16 See Judicial Affidavit of Anne Carlos, Exhibit "P-8", Question and Answer No. 30, Docket, p. 74.

Meanwhile, respondent insists that prior to the issuance of the WDL, Assessment Notice Nos. QA-20-000172,[17] QA-20-000173,[18] QA-20-000174[19] (collectively referred hereinafter as "assessment notices"), all dated March 16, 2020 , were served twice to petitioner, but were returned and tagged as "RTS-No one to receive" and "RTS-No one to receive- Work from home."[20] A WDL was then issued upon endorsement of the docket to the LTCED. RO Cedeño testified that he personally served the WDL to petitioner at Ore Central.[21]

Aggrieved, petitioner filed the instant Petition on January 15, 2021.

On March 10, 2021, the hearing for petitioner's Urgent Motion to Suspend Collection of Tax was conducted.[22] The same was granted by the Court through a Resolution dated July 28, 2021, the dispositive portion of which states:

> **WHEREFORE**, the instant Urgent Motion to Suspend Collection of Tax is hereby **GRANTED.**
>
> Accordingly, the Court hereby **LIFTS** and **DECLARES** as **NULL AND VOID** the **Warrant of Distraint and/or Levy No. 121-2020-110**, dated 7 December 2020, seeking to collect alleged deficiency taxes in the amount of Seven Million Six Hundred Sixty Five Thousand Nine Hundred Seventy Two and 88/100 Pesos (Php7,665,972.88).
>
> For the reasons stated above, the bond requirement is hereby **DISPENSED WITH**.
>
> This Court further **ORDERS** respondent and any of his officers and/or employees to **CEASE and DESIST** from committing any or all acts to collect the alleged deficiency taxes in the total amount of Seven Million Six Hundred Sixty Five Thousand Nine Hundred Seventy Two and 88/100 Pesos (Php7,665,972.88)
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> **SO ORDERED.**

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17 Exhibit "R-6", BIR Records, p. 5.
18 Exhibit "R-7", BIR Records, p. 10.
19 Exhibit "R-8", BIR Records, p. 15.
20 See Judicial Affidavit of Revenue Officer Aljon De Chavez, Question and Answer Nos. 25-29, Docket, pp. 365-366.
21 See Judicial Affidavit of Revenue Officer Jejomar Cedeño, Question and Answer Nos. 10-13, *id.*, pp. 387-388.
22 See Minutes of Hearing dated March 10, 2021, *id.*, p. 141.

Meanwhile, respondent belatedly posted his Answer[23] on February 2, 2022. The same was received on March 2, 2022, and admitted by the Court on March 23, 2022,[24] pursuant to respondent's filing of Motion to Admit Attached Answer.[25]

Thereafter, upon Motion for Clarification[26] filed by petitioner on May 10, 2022, the Court clarified during the hearing held on September 22, 2022,[27] that the findings in the Resolution dated July 28, 2021 are preliminary in nature and meant only for the purpose of determining whether or not a bond should be issued in this case, pursuant to the case of *Spouses Pacquiao vs. Commissioner of Internal Revenue*.[28]

On October 21, 2022, petitioner filed its Pre-Trial Brief.[29] Respondent's Pre-Trial Brief,[30] on the other hand, was filed on November 11, 2022.

Pre-Trial Conference ensued on January 26, 2023.[31]

On February 6, 2023, as directed by this Court during the Pre-Trial Conference, the parties submitted an Amended Joint Stipulation of Facts and Issues.[32]

On February 22, 2023, the Court issued its Pre-Trial Order.[33]

To support its case, petitioner presented Marygrace Cebu as its witness, in replacement of Carlos who, according to petitioner, is already based abroad and is no longer connected with Diageo. Cebu testified through a judicial affidavit dated June 22, 2023,[34] and appeared before the Court on July 4, 2023.[35]

On the other hand, respondent presented as witness RO Aljon R. De Chavez and RO Cedeño who submitted their respective judicial affidavits on January 18, 2023[36] and January 25, 2023.[37] RO Chavez and RO Cedeño

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23 Docket, pp. 287-297.
24 Resolution dated March 23, 2022, *id.*, pp. 301-302.
25 Docket,, pp. 274-277.
26 *Id.*, pp. 303-307.
27 See Minutes of Hearing dated September 22, 2022, *id.*, p. 315, see also Order dated, September 22, 2022, *id.*, pp. 316-217.
28 G.R. No. 213394, April 6, 2016.
29 Docket, pp. 318-330.
30 *Id.*, pp. 349-353.
31 See Minutes of Hearing dated January 26, 2023, *id.*, p. 376.
32 Amended Joint Stipulation of Facts and Issues (Amending Joint Stipulation of Facts and Issues dated November 7, 2022), *id.*, pp. 393-402.
33 Docket, pp. 407-412.
34 Exhibit "P-9", *id.*, pp. 478-488.
35 See Minutes of Hearing dated July 4, 2023, *id.*, pp. 531.
36 Exhibit "R-12", *id.*, pp. 361-369.
37 Exhibit "R-15", *id.*, pp. 386-390.

appeared before the Court on October 3, 2023[38] and February 1, 2024,[39] respectively.

On July 13, 2023, petitioner filed its Formal Offer of Evidence.[40] Upon noting respondent's Comment[41] filed on July 26, 2023, all exhibits were admitted by the Court in the Resolution dated September 29, 2023.[42]

Meanwhile, respondent formally offered evidence on February 14, 2024,[43] to which petitioner filed its Comment[44] on February 26, 2024. The Court thereafter issued Resolution dated April 23, 2024,[45] admitting respondent's exhibits.

Petitioner submitted its Memorandum[46] on May 31, 2024. On the other hand, respondent manifested[47] on June 7, 2024 that he is adopting the arguments he raised in his Answer dated May 14, 2021,[48] on account of the fact that he has already fully discussed all his arguments in his said Answer.

In a Resolution dated June 19, 2024, the case was submitted for decision.

The Issue

The lone issue submitted by the parties is:

> WHETHER PETITIONER IS LIABLE TO PAY ASSESSED DEFICIENCY VALUE-ADDED TAX, INCOME TAX AND COMPROMISE PENALTY IN THE AGGREGATE AMOUNT OF PHP7,665,972.88.[49]

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[38] See Minutes of Hearing dated October 3, 2023, *id.,* p. 562.
[39] See Minutes of Hearing dated February 1, 2024, *id.,* p. 564.
[40] Docket, *id.,* pp. 534-546.
[41] *Id.,* pp. 549-550.
[42] *Id.,* p. 555.
[43] Respondent's Formal Offer of Evidence, *id.,* pp. 567-572.
[44] Docket, pp. 574-580.
[45] *Id.,* p. 584.
[46] *Id.,* pp. 585-604.
[47] See Manifestation dated June 6, 2024, *id.,* p. 606.
[48] *Supra* note 23.
[49] See Pre-Trial Order, dated February 2, 2023, Docket, p. 408.

Arguments of the Parties

Petitioner's Arguments[50]

Petitioner argues that the collection proceedings are void since petitioner did not receive any assessment notice prior to the issuance of the WDL. According to petitioner, the PNs neither contain a demand for payment nor clearly state the factual and legal basis for an assessment. Moreover, the email dated December 9, 2020 expressly stated that the BIR shall send scanned copies of the assessments upon request. Such statement, petitioner posits, reasonably shows that no assessment notices had ever been served or provided to petitioner at that time. Moreover, petitioner highlights that the service by registered mail of the assessment notices violates Revenue *Regulations ("RR") No. 12-99,*[51] as amended by *RR No. 18-2013.*[52]

Further, petitioner advances that the alleged assessments are void for being issued in violation of its right to due process. Reiterating that it never received the assessment notices prior to the WDL, petitioner emphasizes that it was not informed of the factual and legal bases for the assessments, and that the tax allegedly due cannot be deemed as delinquent. Thus, according to petitioner, there can be no basis for the institution of collection remedies.

Finally, petitioner highlights that the WDL was not properly served. Specifically, petitioner emphasizes that based on evidence on record and the testimony of RO Cedeño, the WDL was only served on the lobby receptionist of Ore Central who is not an authorized representative of petitioner. Hence, petitioner submits that the collection proceedings initiated by respondent have no leg to stand on and are laden with defects.

Respondents' Counter-Arguments[53]

On the other hand, respondent maintains that the instant petition must fail because the jurisdiction of the Court is limited to the collection procedure itself and bars any test on the validity of the assessment. He advances that to allow such actions to determine the validity of assessments would only produce dire consequences.

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[50] See Memorandum for the Petitioner, V. Arguments & VI. Discussions, *id.*, pp. 588-601.

[51] Subject: Implementing the Provisions of The National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.

[52] Subject: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, issued on 28 November 2013.

[53] See Answer, Special and Affirmative Defenses, *id.*, pp. 287-295.

Respondent also argues that petitioner was afforded due process in the assessment of taxes, as the subject assessment was allegedly issued in accordance with law, rules and regulations, having the presumption of correctness and regularity. He likewise emphasizes that tax assessments are presumed valid and petitioner has the duty to prove the impropriety of the assessment, if there is any. Thus, according to petitioner due to petitioner's failure to satisfactorily overcome the said presumption, the assessment must necessarily be upheld.

Lastly, respondent posits that the assessment has already become final, executory and demandable. Thus, as the assessment has become delinquent, the WDL has been validly issued thereafter.

The Ruling of the Court

The Court has jurisdiction over the instant Petition.

In his Answer, respondent argues that the assessment against petitioner has already become final, executory and demandable due to the latter's failure to file a protest against the assessment; thus, the Court lacks jurisdiction over the instant Petition. For such purpose, respondent relied on several jurisprudence[54] and a case[55] ruled upon by this Court sitting *En Banc* which upheld the finality of the assessment, thus, limiting the dispute to the collection procedure, while retaining the validity of the assessment.

Petitioner, on the other hand, categorically denies that it received the assessment notices. It alleges that the 30-day period to appeal must be reckoned from the date of receipt of the WDL, pursuant to the CTA's power to review "other matters" arising under the Tax Code.

We find merit on petitioner's argument.

First, on the issue on whether the receipt of the WDL can be properly considered as the reckoning point of the 30-day period within which to file an appeal before the Court, We find guidance from *Section 7 (a)(1)*, in relation to *Section 11 of RA No. 1125, as amended by RA No. 9282.* It is provided therein that the appellate jurisdiction of the CTA is not limited to the cases involving decisions related to matters of assessments and refunds. The law also provides the Court's appellate jurisdiction over any case that could arise from the Tax Code, as amended, or any other related laws that the BIR

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[54] Republic of the Philippines vs. Victoriano Medrano, Sr., G.R. No. L-15477, October 22, 1960; Commissioner of Internal Revenue vs. Jose Concepcion, as Ancillary Administrator of the Estate of Mary H. Mitchel-Roberts, G.R. No. L-23912, March 15, 1968; Rafael Morales vs. Collector of Internal Revenue, G.R. No. L-16759, August 31, 1966.

[55] CTA EB Case No. 672 (CTA Case No. 7709), February 2, 2012.

administers. In addition, an aggrieved party by such action must appeal the same to the Court, within 30 days from receipt thereof. These provisions respectively read:

> 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;
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> . . . .
>
> ***SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue,*** the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA ***within thirty (30) days from the receipt of the decision or ruling*** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. . . ."
> (Emphasis and italics supplied)

Based on the foregoing and as found by the Supreme Court in the case of *Philippine Journalist, Inc., vs. Commissioner of Internal Revenue,*[56] the CTA has jurisdiction not just on decisions of the CIR but also on other matters arising from the Tax Code, thus:

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. *The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue.* The wording of the provision is clear and simple. *It gives the CTA the **jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid*** and to rule if the Waiver of Statute of Limitations was validly effected.

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[56] G.R. No. 162852, December 16, 2004

> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court.
> (Emphasis and italics supplied; citations omitted.)

A similar conclusion was reached in the case of *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*,[57] citing *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division*.[58] The CIR argued therein that the reliance on the WDL as the basis of the taxpayer's petition for review was misplaced since the FDDA should be the basis of the action in the CTA. However, the Supreme Court ruled that due to the clear and simple wording of the above-cited *Section 7 of the Tax Code, amended*, the CTA is given the jurisdiction to determine the validity of the WDL which is considered an "other matter" arising out of the Tax Code.

In the case at hand, petitioner received a copy of the WDL on December 17, 2020. Counting 30 days therefrom, petitioner had until January 16, 2021 to file an appeal. Hence, the instant Petition filed on January 15, 2021 is hereby deemed seasonably filed.

Secondly, on the issue on whether the Court can rule on the validity of the assessment, and not be limited to the dispute on the propriety of collection procedure, We rule on the affirmative.

To recall, respondent cited jurisprudence[59] and case[60] decided by the Court *En Banc* limiting the dispute to the collection procedure, while retaining the validity of the assessment.

We find respondent's reliance on these rulings misplaced.

In the cases cited by respondent, the assessments had attained finality due to taxpayer's failure to (1) file a valid protest; and/or (2) file a petition for review before the Court.

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57 G.R. No. 255473, February 13, 2023.
58 G.R. No. 258947, March 29, 2022.
59 *Supra* note 54.
60 *Supra* note 55.

Here, We find that no valid assessment was issued to petitioner. Thus, as the taxpayer cannot be expected to file a valid protest and avail the proper administrative remedies, the assessment cannot be deemed to have attained finality.

Petitioner categorically and directly denies receipt of the assessment notices issued by respondent. Accordingly, pursuant to a well-settled rule in jurisprudence, it becomes incumbent upon respondent to prove by competent evidence that such notice was indeed received by the taxpayer.

This rule has been elucidated by the Supreme Court in the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities Inc.) vs Commissioner of Internal Revenue,*[61] as cited in *Commissioner of Internal Revenue v. Metro Star Superama, Inc. ("Metro Star case"),*[62] to wit:

> Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:
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> > **"The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed.** Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil. 269)."
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> .... **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts.** This Court does not put much credence to the self serving documentations made

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[61] G.R. No. 157064, August 7, 2006.
[62] G.R. No. 185371, December 8, 2010.

by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." (Nava vs. CIR, 13 SCRA 104, January 30, 1965).

. . . .

The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. (Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR, CTA Case 4885, August 22, 1996).
(Emphasis included.)

Moreover, the modes of services of notices are provided under *Section 3.1.6 of RR No. 18-2013* which states:

> ***3.1.6 Modes of Service.*** — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served ***through personal service*** by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) ***Substituted service*** can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) ***Service by mail*** is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."

In the case at hand, petitioner was informed about the assessment notices through the RO Cedeño's email dated December 9, 2020.[63] Such email cannot be deemed as valid service of assessment notice as it is clearly not among the modes of service prescribed under *RR No. 18-2013* cited above.

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[63] *Supra* note 14.

Moreover, the email itself clearly states that copies of the assessment shall be sent to petitioner upon request. We hereby agree with petitioner that it can only be reasonably inferred that subject assessment notices were not attached to the same email.

Further, RO Cedeño even admitted during the cross-examination on February 1, 2024, that he does not recall sending the assessments to petitioner:

> ATTY. LIMJOCO:
> Let me refer you to the email you sent to Ms. Anne Carlos last December 9, 2020. You mentioned here, "we will send scanned copies of the above assessment upon request". Is my reading correct?
>
> RO CEDEÑO:
> Yes.
>
> ATTY. LIMJOCO:
> Was the petitioner provided with scanned copies of the assessment?
>
> RO CEDEÑO:
> I cannot recall it.[64]

Respondent, on the other hand, presented registry receipts[65] together with the assessment notices to show that such notices were in fact sent to petitioner on two different occasions (*i.e,* July 27, 2020 and December 18, 2020) but were nevertheless returned and tagged as "RTS-No one to receive" and "RTS-No one to receive – Work from home."

We, however, agree with petitioner that such service by registered mail was done in violation *RR 18-2013* which prescribes that service by mail may only be availed if it can be shown that personal service is not practicable.

Here, respondent did not provide any reason why personal service was not practicable. Rather, it appears to the Court that it resorted to service through registered mail at the first instance; hence, a clear failure to comply with the procedures for properly effecting a valid service.

Therefore, having duly established that the assessment notices were not received, petitioner cannot reasonably be expected to file a protest thereto. Accordingly, there is no merit on respondent's position that the assessment attained its finality due to being unprotested.

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64 Transcript of Stenographic Notes ("TSN"), February 1, 2024, p. 9.
65 Exhibits "R-9" and "R-10", BIR Records, pp. 34-35; 41-42.

At this juncture, it must be recalled that petitioner primarily assails the validity of the subject WDL. And as will be thoroughly discussed later, the propriety of the BIR's issuance of such WDL rests on the existence of a valid assessment.

Thus, due to the fact that the assessments have yet to become final and petitioner was not given the opportunity to impugn the validity of the assessment at the administrative level, it may therefore properly seek relief from this Court by invoking such defense of an invalid assessment to support its argument that the WDL was improperly issued. Again, while an appeal against a WDL cannot be used to assail an assessment that has already become final and executory, the same cannot be said of assessments which the taxpayer was never even given an opportunity to question. Respondent cannot prevent a taxpayer from filing an administrative protest and then use such absence to undermine the taxpayer's right to a judicial protest. He cannot use procedural technicalities to protect his own violations of the rules.

Inevitably, the Court hereby finds that the jurisdiction over the present Petition cannot be limited to assailing the collection efforts of the BIR through the issuance of the WDL, but instead can extend to the review of the alleged void assessment.

The subject assessment notices are void due to respondent's failure to properly serve the same to petitioner.

To recall, the issue at hand involves the enforcement of collection of surcharge, interest, and penalties for the alleged late payment of income tax and VAT in various periods from 2016 to 2018.

Unlike regular assessments which arise from the BIR's review of a taxpayer's books and other tax documents, the assessed liabilities herein resulted from failure to pay tax declared taxes per e-filed tax returns, on time. For such cases, due process requirement is governed by *Revenue Memorandum Order ("RMO") No. 04-2009*[66] which states:

> Based on existing EFPS rules and regulations, EFPS taxpayers are mandated to use the e-file and e-payment facility of the Bureau in the filing of their tax returns and payment of the taxes due thereon.
>
> Date culled from the ITS-Returns Processing System (RPS), however, reveals that a growing number of e-filed tax returns by these taxpayers have not been accompanied with the corresponding e-payment for

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[66] Subject: Directive to Intensify Collection of Taxes Not Paid by EFPS Taxpayers Due on the E-filed Tax Returns, dated January 9, 2009.

> the taxes due per the e-filed tax returns. Since these delinquent taxes constitute part of the accounts receivable of the Bureau, it is therefore necessary that enforcement measures be employed in order to collect the taxes due at the earliest possible time.
>
> In view thereof, all Revenue District Offices, LTDOs, LTS Offices are hereby directed to immediately review and check if the necessary payments have been made on the e-filed tax returns by all EFPS taxpayers. *After validation that no payments were actually made either manually or through the e-payment facility, you are **to issue and serve immediately the corresponding Collection Notices** to enforce the collection of the basic taxes due thereon including the penalties imposed for the failure to pay the amount of tax due as appearing on the tax returns.* In the imposition of surcharge for late payment, the 50% rate shall be applied to those EFPS taxpayers whose periodically e-filed tax returns have consistently not been covered by any tax payment.
>
> Should these EFPS taxpayers fail to pay the total delinquent taxes due within the period prescribed in the Notice/s sent, you are hereby likewise directed to ***fully utilize the summary remedies provided for under Sections 205, 206, and 207 of the 1997 National Internal Revenue Code, as amended, such as the issuance and service of the Warrant of Distraint/Levy and/or Garnishment*** to be signed and approved by the concerned BIR Official based on existing Revenue Delegation Authority Orders (RDAOs).
> (Emphasis and italics supplied)

Gleaning from the foregoing rules, a Collection Notice is required to be issued once it was determined that no payments were actually made on the e-filed tax returns of EFPS taxpayers. Such notice shall be used to enforce collection of the taxes liabilities, including penalties imposed for failure to pay the amount of due. If the taxpayer fails to pay the delinquent taxes sought to be collected, the BIR may utilize the collection remedies prescribed under the Tax Code, such as the issuance and service of WDL and/or garnishment.

Here, assessment notices[67] were issued by the BIR. Copies of the same were duly submitted as respondent's evidence, forming part of the BIR records elevated to the Court.

We find that the assessment notices are akin to the Collection Notice contemplated under *RMO No. 4-2009.*

However, as discussed in the previous subsection, respondent failed to dispense the burden of proving that the assessment notices were duly served to and received by petitioner due to the following: (1) sending of notice through email is not one of the prescribed modes of service of assessment notices; (2) the email dated December 9, 2020 clearly states that copies of the assessment notices will only be provided upon request; (3) RO Cedeño

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[67] *Supra* notes 17-19.

testified during cross-examination that he cannot recall whether petitioner was indeed provided with such scanned copies; and (4) respondent failed to provide reasons why personal service was not practicable, thus, invalidating the sending of notices through registered mail.

Moreover, the PNs[68] received by petitioner on June 24, 2019 cannot qualify as a valid substitute for the Collection Notice required by the rules.

A perusal of the PNs reveals that they are merely notifications from the BIR stating that: (1) the returns filed by petitioner cannot be processed due to late payment; and (2) the tax payment or credit shown in the returns will not be credited to petitioner's account until an explanation, information or correction is provided by petitioner. Thus, the PNs essentially fail to demand payment of the alleged outstanding tax liabilities.

In view of the foregoing, the Court hereby inevitably finds a violation of petitioner's due process rights. Following the pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*,[69] such denial of due process renders an assessment void. In ruling as such, the High Court found guidance from *Commissioner of Internal Revenue vs. Dominador Menguito*[70] and the *Metro Star case* and held as follows:

> ...[T]he Court holds that insofar as the proper service of the formal letter of demand and assessment notice is part of the due process requirement in the issuance of a deficiency tax assessment under Sec. 3 of RR No. 12-99, the absence of such service renders nugatory any assessment made by the tax authorities.
>
> In line with Metro Star, the Court similarly rules that the word "shall" in subsection 3.1.4 of RR No. 12-99 likewise describes the mandatory nature of the service of the formal letter of demand and assessment notice. ***In view of the ruling therein that the persuasiveness of the right to due process reaches both substantial and procedural rights, and that the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process, the Court declares that the CIR's failure to prove that the FLD-DDAN was properly served on SEGI by registered mail renders void the deficiency assessment issued by the CIR.***
>
> It bears emphasis that despite the inevitability and indispensability of taxation, it is required in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure; otherwise, the taxpayer has a right to complain and the courts will then come to its succor. For all the awesome power of the tax collector, it may still be stopped in its tracks if the taxpayer can demonstrate that the law has not been observed.

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[68] *Supra* notes 8-10.
[69] G.R. No. 223767, April 24, 2023.
[70] G.R. No. 167560, September 17, 2008.

(Emphasis and italics supplied.)

Considering the foregoing, the lack of proper service invalidates the subject assessment notices.

The WDL is void for having been issued pursuant to an invalid assessment, and for not having been properly served.

Settled is the rule that void assessments bear no valid fruit. Correspondingly, the government is barred from collecting any tax liabilities based on such void assessments. Thus, any WDL issued on the basis thereof must necessarily be deemed invalid.

In *Commissioner of Internal Revenue vs. Pilipins Shell Petroleum Corporation*,[71] the Supreme Court emphasized that an assessment is essential for the issuance of a warrant of distraint, to wit:

> Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, **including summary processes,** with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. **The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.**
>
> In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the collection of the amounts so assessed. 'An assessment is not an action or proceeding for the collection of taxes. . . It is **a step preliminary**, but essential to warrant distraint, if still feasible, and, also, to establish a cause for judicial action.' The BIR may summarily enforce collection only when it has accorded the taxpayer **administrative due process**, which vitally includes the issuance of a valid assessment. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.
>
> In *Commissioner of Internal Revenue v. Reyes (Reyes Case)*, the petitioner issued an assessment notice and a demand letter for alleged deficiency estate tax against the taxpayer estate. The assessment notice and demand letter simply notified the taxpayer estate of petitioner's findings, without stating the factual and legal bases for said assessment. *The Court, absent a valid assessment, refused to accord validity and effect to petitioner's collection efforts — which involved, among other things, the*

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[71] G.R. Nos. 197945 & 204119, July 9, 2018.

> *successive issuances of a collection letter, a final notice before seizure, and a warrant of distraint and/or levy against the taxpayer estate. . .*
> (Emphasis in the original; italics supplied)

Similarly, in *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*,[72] the Supreme Court explained that the issuance of WDL without valid notice of assessment is violative of a taxpayer's right to due process, *viz*:

> It might not also be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. ***To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.*** In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.
> (Emphasis and italics supplied)

It is thus clear from the foregoing that tax collection must be preceded by a valid assessment to allow taxpayer to raise protest and/or provide evidence for defenses, if any, against the alleged liabilities.

As such, based on the Court's finding that the subject assessment notices are void, the resulting WDL must likewise necessarily be deemed invalid and cannot be executed.

Furthermore, the Court notes that there was no proper service of the WDL upon petitioner.

In his judicial affidavit, RO Cedeño narrated that he served the WDL at petitioner's address at Ore Central, 9th Ave. cor. 31st St., Bonifacio Global City, Fort Bonifacio, Taguig City.[73] There was no mention therein as to who received the said WDL, on behalf of petitioner.

Petitioner asserts that the WDL was in fact received by the lobby receptionist Ore Central, and that the same WDL was merely turned over to petitioner on December 17, 2020. [74]

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72 G.R. No. 198677, November 26, 2014.

73 See Judicial Affidavit of Revenue Officer Jejomar Cedeño, Question and Answer No. 13, Docket, p. 388.

74 *Supra* note 16.

Even RO Cedeño admitted to the service to the lobby receptionist, at the hearing dated February 1, 2024:

> ATTY. LIMJOCO:
> Good morning, Mr. Witness, in your Judicial Affidavit, you mentioned in your Answer to Question 10 that a warrant of distraint and/or levy *[sic]*. Is that correct?
>
> RO CEDEÑO:
> Yes, Attorney.
>
> ATTY. LIMJOCO:
> And in your Answer to Question 13, you mentioned that you served this Warrant to petitioner at 4 *[sic]* Central 9th Avenue cor. 13th Street, Bonifacio Global City. Is this correct?
>
> RO CEDEÑO:
> Yes, Attorney.
>
> ATTY. LIMJOCO:
> And you also identified a Memorandum dated December 15, 2020 which you issued containing the status report of the collection of the petitioner's tax liability, is that correct?
>
> RO CEDEÑO:
> Yes, Attorney.
>
> ATTY. LIMJOCO:
> In this Memorandum, you mentioned "I left the riginal copy of the WDL in the care of lobby receptionist, Ms. MJ Athena Escala which she accepted." Is my reading correct?
>
> RO CEDEÑO:
> Yes, Attorney.
>
> ATTY. LIMJOCO:
> So, the Warrant was left with the lobby receptionist. Is the lobby receptionist and *[sic]* employee of the petitioner?
>
> RO CEDEÑO:
> No.
>
> ATTY. LIMJOCO:
> Is the lobby receptionist an authorized representative of the petitioner?
>
> RO CEDEÑO:
> No.

ATTY. LIMJOCO:
So you were aware of the fact that the lobby receptionist is not an authorized representative of the petitioner yet you left a copy of the original warrant in her care. Is this correct?

RO CEDEÑO:
Yes.[75]

Moreover, at the same hearing, RO Cedeño admitted that the service of the WDL to the lobby receptionist was the only attempt to serve the WDL upon petitioner, to wit:

ATTY. LIMJOCO:
Ok. Let me proceed to my next question. You mentioned in the same Memorandum that you personally served the warrant by constructive service. Is this correct?

RO CEDEÑO:
Yes.

ATTY. LIMJOCO:
So, I am *[sic]* correct to say, Mr. Witness that the service of the warrant in *[sic]* the building receptionist was your first attempt to serve the warrant?

RO CEDEÑO:
We attempted inside the office of taxpayer but we were denied access to … (interrupted)

ATTY. LIMJOCO:
My question is answerable by a yes or no. Was this your first attempt to serve the warrant?

RO CEDEÑO:
Yes.

ATTY. LIMJOCO:
In fact, this was your only attempt to serve the warrant?

RO CEDEÑO:
Yes.

ATTY. LIMJOCO:
So, am I correct to say that you did not attempt to serve the warrant on any other person or authorized representative of the petitioner?

RO CEDEÑO:
Yes.[76]

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75 TSN, dated February 1, 2024, pp. 6-7.
76 *Id.,* p. 7-8.

Thus, based on the evidence on records and the testimony of respondent's own witness, there was *no valid personal service* upon petitioner.

Similarly, the Court also finds that there is *no valid substituted service* of WDL. A perusal of the back portion of the WDL indicates that the warrant was "served constructively because the taxpayer or his representative refused to acknowledge the service of the warrant, or was not in the premises." Two (2) signatures appear thereon – Gina Contreras and Beatriz Hermoso – both of which do not indicate the respective position or capacity upon which the "Service of Warrant" portion of the WDL was signed.

Based on *RR No. 18-2013*, as previously cited, substituted service can be resorted to when the taxpayer is not present at its registered or known address. If no person is found in such address, the revenue officer concerned shall (i) bring a barangay official and two disinterested witnesses to the address so that they may personally observe and attest to such absence; (ii) give the notice to said barangay official; (iii) indicate such facts in the bottom portion of the notice, as well as the names, official position and signature of the witnesses.

In this case, there was no indication or allegation that a barangay official was brought to Ore Central to personally observe the absence of petitioner or its duly authorized representative. Also, the notice was not given to a barangay official but to the lobby receptionist. Finally, there is no indication in the bottom portion of the notice that Contreras and Hermoso were signing as "witnesses" for the service of warrant, and that they in fact observed the absence of the taxpayer in the premises of its registered address.

In sum, considering that the WDL springs from an invalid assessment, and that the same was improperly served upon petitioner, such WDL must necessarily be declared void and cannot be validly enforced against petitioner.

At this juncture, the Court reiterates and emphasizes the rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[77]

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[77] Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc., G.R. No. 198677, November 26, 2014, citing Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

ACCORDINGLY, the foregoing premises considered, the instant Petition for Review, filed on January 15, 2021, by petitioner Diageo Philippines, Inc. is hereby **GRANTED**. For being void, the Assessment Notice Nos. QA-20-000172, QA-20-000173 and QA-20-000174, all dated March 16, 2020 assessing petitioner for surcharge, interest and compromise penalties for the alleged late payment of income tax and VAT in 2016, 2017 and 2018, in the aggregate amount of Php7,665,972.88, as well as the WDL No. 121-2020-11 dated December 7, 2020, directed against petitioner, are **CANCELLED** and **SET ASIDE**.

Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting or taking further action on the subject alleged tax liabilities against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice