REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

Y & R PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 9437

Members:
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:
AUG 3 1 2018
4:29 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This case involves an Amended Petition for Review filed by Y & R Philippines, Inc. praying for the refund of its garnished and collected bank deposit amounting to Php17,202,373.31, plus legal interest of six percent (6%) per annum from October 03, 2016, the actual date of collection of the garnished amount, the former allegedly representing its deficiency taxes inclusive of interest, surcharge and penalties for taxable year ("TY") 2007.[1]

The Facts

Petitioner Y & R Philippines, Inc. is a corporation duly organized and existing under Philippine laws, with principal office address at 9th Floor Marajo Tower 312, 26th St. cor. 4th Ave., Fort Bonifacio Global City, Taguig City. It is engaged in the conduct of a general advertising agency business, including the preparation and arrangement of advertisement, and the manufacture and construction of advertising devices and novelties.[2] Petitioner is a registered taxpayer with Certificate of Registration No. OCN 9RC0000272182.[3]

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[1] Docket, Pre-Trial Order, p. 539.
[2] *Id.,* Joint Stipulation of Facts and Issue (JSFI), Par. 1.1, p. 528.
[3] *Id.,* Exhibit "P-19-2", p. 153.

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return[4] for TY 2007 on May 08, 2008. Petitioner likewise filed its Quarterly Value-added Tax ("VAT") Returns for the four quarters of TY 2007 on April 25, 2007, July 25, 2007, October 25, 2007, and January 24, 2008, respectively.[5]

On August 08, 2008, Respondent, through Revenue Region No. 8, Revenue District Office ("RDO") No. 50 – South Makati, issued Letter of Authority ("LOA") No. 200700036680, authorizing revenue officers to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period January 01, 2007 to December 31, 2007.[6]

Petitioner paid the following deficiency taxes,[7] and such payment was confirmed by Respondent on September 26, 2011:[8]

KIND OF TAX	DATE PAID	AMOUNT
Income Tax	8/12/2011	Php4,943,778.75
Withholding Tax on Compensation	8/12/2011	2,101,193.85
Final Withholding Tax	8/12/2011	336,066.52
Fringe Benefit Tax	12/9/2010	7,713,052.5
TOTAL		**Php15,094,091.63**

On September 07, 2015, Respondent issued a Preliminary Collection Letter[9] (PCL) demanding payment from Petitioner the amount of Php17,202,373.31 for the alleged deficiency income tax, VAT, and compromise penalty, pursuant to Assessment/Demand No. F-050-LNTF-07-059.[10] Subsequently, a Final Notice Before Seizure (FNBS) was released on September 28, 2015 to collect the said amount.[11] Petitioner replied that it has already settled

[4] *Id.,* Exhibit "P-8", docket, pp. 279 to 280.
[5] *Id.,* Exhibits "P-9-1", "P-9-2", "P-9-3", and "P-9-4", pp. 284 to 285, 286 to 287, 288 to 289, and 290 to 291, respectively.
[6] *Id.,* Exhibit "P-11", p. 142.
[7] *Id.,* Exhibit "P-35", p. 497.
[8] *Id.,* Exhibit "P-2", p. 116.
[9] *Id.,* Exhibit "P-3", p. 117.
[10] *Id.,* JSFI, Par. 1.4, p. 529.
[11] *Id.,* Exhibit "P-4-1", p. 118.

all of its deficiency taxes for TY 2007 amounting to Php15,094,091.63 through a Letter dated October 19, 2015.[12]

On December 11, 2015, Respondent sent a Letter to Petitioner in relation to the latter's purported delinquent account amounting to Php17,202,373.31, representing deficiency taxes generated from Letter Notice ("LN") No. 050-RLF-07-00-00077 dated July 01, 2009 for TY 2007.[13] In reply, Petitioner sent a Letter dated December 22, 2015 received by Respondent on December 23, 2015, requesting for time to respond to Respondent's letter.[14]

Afterwards, Respondent sent another Letter dated March 08, 2016, which Petitioner received on March 22, 2016.[15]

On July 28, 2016, Respondent issued a Warrant of Distraint and/or Levy which was received by Petitioner on August 02, 2016, for the collection of the latter's deficiency taxes for TY 2007.[16]

Thereafter, Respondent issued Warrants of Garnishment to Hong Kong and Shanghai Banking Corporation Limited[17] ("HSBC") and Bank of the Philippine Islands[18] (BPI) dated August 16, 2016 and August 17, 2016, respectively, for the garnishment of Petitioner's deposit accounts.[19] HSBC then placed Petitioner's deposit account amounting to Php17,202,373.31 in a separate blocked account and informed the latter of such fact.[20]

As a result, Petitioner filed this Petition for Review[21] (with Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax) on August 23, 2016.[22]

In order to support its motion to suspend the collection of the subject deficiency taxes, Petitioner presented Mr. Ricky B. Gundran. Afterwards, Petitioner formally offered its documentary evidence in relation to the aforesaid motion.

While awaiting the Court's resolution on the motion to suspend the collection of taxes, HSBC informed Petitioner through a Letter dated October

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[12] *Id.,* Exhibit "P-16", p. 148.
[13] *Id.,* Exhibit "P-5-1", p. 120.
[14] *Id.,* Exhibit "P-17", pp. 149 to 150.
[15] *Id.,* Exhibit "P-6-1", pp. 122 to 123.
[16] *Id.,* Exhibit "P-1", p. 115.
[17] *Id.,* Exhibit "P-7", p. 157.
[18] *Id.,* Exhibit "P-22", p. 159.
[19] *Id.,* JSFI, Par. 1.5, p. 529.
[20] *Id.,* Exhibit "P-28", p. 487.
[21] *Id.,* pp. 10 to 35.
[22] *Id.,* JSFI, Par. 1.6, p. 529.

03, 2016 that it received from Respondent an Order for Delivery dated September 29, 2016.[23]

On October 07, 2016, Petitioner manifested that HSBC issued three (3) checks payable to Respondent based on the latter's Order for Delivery.[24]

Due to the foregoing supervening events, Petitioner filed an Amended Petition for Review[25] on October 21, 2016, praying for a refund in the amount of Php17,202,373.31, plus legal interest of six percent (6%) per annum from October 03, 2016.[26]

In the Answer[27] filed through registered mail on November 23, 2016 and received by the Court on December 09, 2016, Respondent interposed the following special and affirmative defenses:

> "1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;
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> 2. Investigation reveals that there is an under-declaration of local purchases in the amount of [Php]15,203,242.85. The discrepancy resulted from the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching – BOC & TRS Data Program as declared in Petitioner's returns.
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> 3. The right of the BIR to assess and collect has not yet prescribed.
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> 4. Assessment are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. (*Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109*);
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> 5. Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (*Commissioner vs. Algue, Inc. L-28896, 17 February 1988*). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he

[23] *Id.,* Exhibit "P-30", p. 489.
[24] *Id.,* Manifestation, pp. 319 to 327; JSFI, Par. 1.9, p. 530; Exhibits "P-33" to "P-33-4", p. 492.
[25] *Id.,* pp. 342 to 372.
[26] *Id.,* JSFI, Par. 1.13, p. 530.
[27] *Id.,* pp. 443 to 445.

> must give up to another – *Non videtur quisquam id capere quod ei necesse est alii restitutere.*"

On December 12, 2016, Petitioner submitted its Reply[28] to Respondent's Answer.

Respondent's Pre-Trial Brief[29] and Petitioner's Pre-Trial Brief[30] were filed on March 08, 2017 and on March 24, 2017, respectively.

On March 23, 2017, Petitioner manifested that for the trial on the merits of this case, it would adopt the Judicial Affidavits of Ricky B. Gundran dated August 23, 2016 and September 28, 2016, having presented said witness during the hearing on the motion for suspension of collection of the subject deficiency taxes.

The parties submitted their Joint Stipulation of Facts and Issues[31] on April 11, 2017. Subsequently, the Court issued a Pre-Trial Order[32] on May 04, 2017, and terminated the pre-trial.

Petitioner then presented again its sole witness, Mr. Ricky B. Gundran. Thereafter, Petitioner formally offered its documentary evidence, consisting of Exhibits "P-1" to "P-38", inclusive of submarkings. In the Resolution dated August 03, 2017, the Court admitted all of Petitioner's formally offered evidence, except for Exhibits "P-10", "P-12", "P-13", "P-18", "P-19-1", "P-20", "P-21", "P-29", "P-31", and "P-35-5".[33]

On the other hand, Respondent, through counsel, manifested that he would not be presenting any witness.[34]

On November 17, 2017, this case was declared submitted for decision after the Court considered Petitioner's Memorandum[35] filed on October 05, 2017 and Respondent's Memorandum[36] filed on November 03, 2017 *via* registered mail.[37]

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[28] *Id.,* pp. 448 to 462.
[29] *Id.,* pp. 471 to 473.
[30] *Id.,* pp. 499 to 518.
[31] *Id.,* pp. 528 to 536.
[32] *Id.,* pp. 539 to 546.
[33] *Id.,* Resolution dated August 03, 2017, pp. 596 to 597.
[34] *Id.,* Minutes of the Hearing dated September 05, 2017 and Order dated September 05, 2017, pp. 598 and 599, respectively.
[35] *Id.,* pp. 600 to 630.
[36] *Id.,* pp. 639 to 641.
[37] *Id.,* Resolution dated November 17, 2017, p. 644.

The Issues

The parties submitted the following issues[38] for this Court's resolution:

1. Whether or not Petitioner is entitled to a refund of the garnished amount of Php17,202,373.31, representing alleged deficiency income tax and VAT, inclusive of interest, surcharge, and other penalties, for TY 2007; and

2. Whether or not Petitioner is entitled to damages, equivalent to the legal interest of six percent (6%) on the garnished amount of Php17,202,373.31 from the actual date of collection on October 03, 2016 until the full refund thereof.

Discussion/Ruling

Petitioner contends that based on LOA No. 200700036680 dated August 08, 2008 issued by Revenue Region No. 8, RDO No. 50, Petitioner was assessed for deficiency taxes for TY 2007. Petitioner asserts that it already settled its deficiency taxes for TY 2007 on December 09, 2010 and on August 12, 2011, and that Respondent confirmed such payment on October 04, 2011. As such, Respondent, through a letter, allegedly considered Petitioner's tax case closed and terminated. Petitioner points out that since Respondent's letter was addressed to Petitioner's new office address, such fact was already known to Respondent.

Petitioner avers that it was assessed again for deficiency income tax, VAT, and compromise penalty via Preliminary Assessment Notice dated October 12, 2012 ("PAN") and Final Assessment Notice dated November 14, 2012 ("FAN"), which were issued based on an alleged Letter Notice. According to Petitioner, despite the fact that its Certificate of Registration, indicating its new address at 9th Floor Marajo Tower 312, 26th St. cor. 4th Ave., Fort Bonifacio Global City, was issued on February 24, 2010, the PAN and the FAN were sent to its old office. Petitioner posits that its registration update regarding the change of its address was completed and was known to Respondent long before the PAN and the FAN were supposedly issued. Considering that the PAN and the FAN were addressed to its old office, Petitioner allegedly never received the same.

Moreover, Petitioner claims that the PAN and the FAN were issued beyond the three-year prescriptive period.

On the other hand, Respondent alleges that a Letter Notice was issued to inform Petitioner of the discrepancy resulting from the Reconciliation of Listing

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[38] *Id.,* JSFI, p. 530.

for Enforcement ("RELIEF") and Third Party Matching – Bureau of Customs (TPM-BOC) Data Program and/or Tax Reconciliation System (TRS). According to Respondent, Petitioner failed to respond to the said Letter Notice, thus, a PAN was issued on October 12, 2012. Respondent claims that Petitioner did not protest the PAN. As such, Respondent issued the alleged FAN on November 14, 2012. Respondent insists that the FAN was received by Petitioner but the latter likewise failed to file a protest. Hence, the assessment became final, executory, and demandable.

According to Respondent, since the assessment has become final and executory, Petitioner is liable for deficiency income tax and VAT, inclusive of interest, surcharge, and other penalties for TY 2007. Therefore, no refund of the amount garnished by Respondent can be claimed by Petitioner.

Initially, Petitioner prayed for the suspension of the collection of its assessed deficiency tax in the amount of Php17,202,373.31 and the cancellation of the deficiency tax assessment. However, before the Court could resolve Petitioner's prayer to suspend the collection of taxes, Respondent collected Petitioner's garnished deposit accounts in HSBC amounting to Php17,202,373.31. Thus, an Amended Petition for Review was filed praying for the refund of the said amount.

Accordingly, in order to resolve Petitioner's claim for refund, it is imperative for this Court to determine whether the PAN and the FAN are void and whether Respondent's right to assess Petitioner for deficiency taxes had already prescribed.

The PAN and the FAN were not properly addressed to Petitioner; thus, Respondent failed to discharge the burden of proving that the same were actually received by Petitioner.

The requirement of informing the taxpayer of the assessment is mandatory in nature as provided in Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations (RR) No. 12-99, the pertinent portions of which are quoted hereunder for ready reference:

> "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

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."

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

xxx xxx xxx

3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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3.1.5 *Disputed Assessment.* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx

xxx xxx xxx

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation."

Section 228 of the NIRC of 1997, as amended, provides that taxpayers must be informed of the facts and the law upon which the assessment was made; otherwise, the assessment will be void. Furthermore, Section 3 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, clearly requires the receipt of the FAN by the taxpayer as part of due process in the issuance of assessments.

A careful perusal of the records shows that Respondent sent and addressed the PAN and the FAN to Petitioner's old address at 20th Floor Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Makati City.

In one of Respondent's letters sent to Petitioner, the former stated that the PAN and the FAN were sent through registered mail but were returned to sender for the reason "MOVED OUT". Also, that it was not sufficient for a taxpayer to file only an Application for Registration Information Update Form (BIR Form No. 1905), for the purpose of transferring and changing its registered address. Pertinent portions of the letter provide:[39]

"In the instant case, records reveal that the Preliminary Assessment Notice dated October 12, 2012 and Final Assessment Notice (FAN) dated November 14, 2012 were duly sent through

[39] *Id.,* Exhibit "P-6-1", p. 123.

> Registered Mail but were returned to sender (RTS) for the reason 'MOVED OUT'.
>
> Notwithstanding the many collection notices and for reasons only known to you, filed a letter reply only on October 5 and December 22, 2015 alleging among others that BIR sent the said notices to the previous address instead at the company's current address at Taguig City does not persuade.
>
> As correctly observed, the taxpayer requesting for transfer shall file the Application for Registration Information Update Form (1905) **<u>with the supporting documents duly received by the concerned Revenue District Office</u>** and not just the BIR Form-1905. Otherwise stated, the **<u>burden is upon the taxpayer to prove that it inform the Bureau that it changed its address</u>** and comply with the requirements for transfer."

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[40], the Supreme Court 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, thus:

> "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

[40] G.R. No. 157064, August 07, 2006.

> 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).'" (*Emphasis supplied*)

In this case, Petitioner's witness, Mr. Ricky B. Gundran, denied receiving the PAN and the FAN, *viz*:[41]

> "37. **Q: You mentioned, as well, that the assessment subject of this case is only an allegation of the BIR. What do you mean?**
>
> A: Y&R never received any Letter of Authority ('LOA'), Letter Notice ('LN'), Preliminary Assessment Notice ('PAN'), and Final Assessment Notice ('FAN') pertaining to the Php17,202,373.31 assessment. Neither did any BIR Revenue Officer contact Y&R to inform us of the investigation, or to ask for Y&R's position in relation to said LOA, LN, PAN or FAN."

With Mr. Gundran's denial of receipt of the PAN and the FAN, it is incumbent upon Respondent to prove by competent evidence that the said notices were indeed received by the addressee. However, Respondent did not present any evidence to prove the same, despite the chance to do so.

Further, the disputable presumption that a letter was received in the regular course of the mail does not apply in this case because the PAN and the FAN were sent to Petitioner's old registered address.

The Court finds that Respondent already had knowledge of Petitioner's new address at 9th Floor Marajo Tower 312 26th St. cor. 4th Ave., Fort Bonifacio Global City, Taguig City based on Respondent's Letter[42] dated September 26, 2011 and Certificate of Registration[43]. In the said certificate, it is indicated in the lower right portion the date "AUG 20, 2009". It is noteworthy that the PAN[44] dated October 12, 2012 and the FAN[45] dated November 14, 2012 were issued **later than** the above-mentioned documents.

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[41] Docket, Exhibit "P-36", p. 101.
[42] *Id.*, Exhibit "P-2", p. 116.
[43] *Id.*, Exhibit "P-19-2", p. 153.
[44] BIR records, pp. 19 to 21.
[45] BIR records, pp. 25 to 27.

Accordingly, the PAN and the FAN are considered not properly addressed to Petitioner in order to raise the disputable presumption that the mail matter was received in the regular course of the mail.

Considering that Respondent failed to discharge the burden of proving that the PAN and FAN were actually received by Petitioner or its duly authorized agent, the said assessments notices are deemed to have not been issued by Respondent.

The PAN and the FAN are void since they were issued pursuant only to Letter Notice No. 050-RLF-07-00-00077 and without any Letter of Authority for the further investigation of Petitioner's tax case.

In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[46], the Supreme Court ruled that after a Letter Notice has served its purpose, the revenue officer should secure a Letter of Authority before proceeding with the further examination and assessment of the taxpayer, to wit:

> "With the advances in information and communication technology, the Bureau of Internal Revenue (BIR) promulgated RMO No. 30-2003 to lay down the policies and guidelines once its then incipient centralized Data Warehouse (DW) becomes fully operational in conjunction with its Reconciliation of Listing for Enforcement System (RELIEF System). This system can detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third-party sources. Through the consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases of goods and services.
>
> xxx xxx xxx
>
> RMO No. 30-2003 was supplemented by RMO No. 42-2003, which laid down the ***'no-contact-audit approach'*** in the CIR's exercise of its power to authorize any examination of taxpayer and the assessment of the correct amount of tax. The *no-contact-audit approach* includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayers under the RELIEF System pursuant to RR No. 7-

[46] G.R. No. 222743, April 05, 2017.

95, as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of an LOA with the aid of a computerized/manual matching of taxpayers': documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.

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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<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**</u>

recommend the issuance of [LOA] to replace the LN. 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/ORD for the preparation of the corresponding LAs with the notation 'This LA cancels LN No. _________'

xxx xxx xxx

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.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. 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**. Unfortunately, this was not done in this case."

In this case, Respondent issued LOA No. 200700036680[47] on August 08, 2008 for the examination of Petitioner's books of accounts and other accounting records for TY 2007. Petitioner subsequently paid the amount of

[47] Docket, Exhibit "P-11", p. 142.

Php15,094,091.63 as deficiency taxes concluded in the audit of its returns; thus, its tax case was considered closed and terminated.[48] Afterwards, Respondent issued LN No. 050-RLF-07-00-00077[49] on July 01, 2009 for the discrepancy on Petitioner's declarations per VAT Returns and information/data provided by third-party sources based on a computerized matching involving the same TY 2007. Then, the PAN and the FAN were issued for deficiency taxes in the amount of Php17,202,373.31 without any LOA issued for the further examination of Petitioner's books of accounts and other accounting records for TY 2007.

Applying the *Medicard* case ruling to the instant case, Respondent should have secured another LOA after LN No. 050-RLF-07-00-00077 served its purpose before proceeding with the further examination and assessment of Petitioner's tax case for TY 2007. This, Respondent failed to do, and as a consequence thereof, the assessment is void.

Right of Respondent to assess Petitioner for deficiency taxes had prescribed.

Section 203 of the NIRC of 1997, as amended, states:

"SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Records show that Petitioner filed its tax returns as follows:

DATE THE TAX RETURNS WERE FILED	LAST DAY OF THE 3-YEAR PERIOD TO ISSUE AN ASSESSMENT	DATE THE FAN WAS ISSUED
May 8, 2008[50] (Annual Income Tax Return)	May 8, 2011	

[48] *Id.*, Exhibit "P-2", p. 116.
[49] BIR records, p. 13.
[50] Docket, Exhibit "P-8", pp. 279 to 280.

January 24, 2008[52] (4th Quarterly VAT Return)	January 25, 2011	November 14, 2012[51]
October 25, 2007[53] (3rd Quarterly VAT Return)	October 25, 2010	
July 25, 2007[54] (2nd Quarterly VAT Return)	July 25, 2010	
April 25, 2007[55] (1st Quarterly VAT Return)	April 25, 2010	

Based on the foregoing, it is clear that Respondent's right to assess Petitioner for deficiency income tax and VAT has already prescribed. Thus, the PAN and the FAN are also void for being issued beyond the three-year prescriptive period provided by law.

Since the Warrant of Distraint and/or Levy is void, Petitioner is entitled to a refund of the amount claimed.

A void assessment bears no valid fruit. The law imposes a substantive, not merely a formal requirement.[56] 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.[57] And since the PAN and the FAN are void, the Warrant of Distraint and/or Levy is likewise void.

As regards the claim for refund by Petitioner, the Supreme Court ruled in the case of *Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals*[58] that it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment be resolved jointly with a claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable, to wit:

> "Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits. If the deficiency assessment should subsequently be upheld, the Government will be forced to

[52] Docket, Exhibit "P-9-4", pp. 290 to 291.
[51] BIR records, pp. 25 to 27.
[53] *Id.,* Exhibit "P-9-3", pp. 288 to 289.
[54] *Id.,* Exhibit "P-9-2", pp. 286 to 287.
[55] *Id.,* Exhibit "P-9-1", pp. 284 to 285.
[56] Samar-I Electric Cooperative vs. Commissioner of Internal Revenue, G.R. No. 193100, December 10, 2014.
[57] *Commissioner of Internal Revenue vs. BSAF Coating + Inks Phils. Inc.,* G.R. No. 198677, November 26, 2014.
[58] G.R. No. 106611, July 21, 1994.

institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on and a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.

Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.

In fact, as the Court of Tax Appeals itself has heretofore conceded, it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them in one single case. It is important to note that in determining whether or not Petitioner is entitled to the refund of the amount paid, it would necessary to determine how much the Government is entitled to collect as taxes. This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute res judicata on both parties as to all the matters subject thereof or necessarily involved therein.

The Court cannot end this adjudication without observing that what caused the Government to lose its case in the tax court may hopefully be ascribed merely to the ennui or ineptitude of officialdom, and not to syndicated intent or corruption. The evidential *cul-de-sac* in which the Solicitor General found himself once again gives substance to the public perception and suspicion that it is another proverbial tip in the iceberg of venality in a government bureau which is pejoratively rated over the years. What is so distressing, aside from the financial losses to the Government, is the erosion of trust in a vital institution wherein the reputations of so many honest and dedicated workers are besmirched by the acts or omissions of a few. Hence, the liberal view we have here taken *pro hac vice,* which may give some degree of assurance that this Court will unhesitatingly react to any bane in the government service, with a replication of such response being likewise expected by the people from the executive authorities."

As earlier discussed, the PAN, the FAN, and the Warrant of Distraint and/or Levy are void; hence, Respondent has no right to collect the amount of Php17,202,373.31 from Petitioner's garnished deposit account with HSBC.

Respondent has erroneously/illegally collected the garnished amount. Accordingly, Petitioner's claim for refund is proper.

Petitioner is not entitled to six percent (6%) legal interest on the collected garnished amount.

The Court shall now proceed to discuss whether Petitioner is entitled to six percent (6%) legal interest on the collected garnished amount of Php17,202,373.31 from the actual date of collection on October 03, 2016 until its full refund.

Petitioner posits that the assessment and the collection made by Respondent were arbitrary. Petitioner also states that it was highly irregular and capricious for Respondent to issue warrants of garnishment against two of Petitioner's bank accounts for the same amount of Php17,202,373.31, considering that garnishments, in general, should cover only such amount as will satisfy any alleged deficiency taxes. According to Petitioner, interest is warranted where the collection is attended by arbitrariness, *i.e.*, without honest due consideration of Petitioner's legal position and in violation of its right to be informed of the collection efforts. Petitioner claims that it is just that it be compensated for the loss of its opportunity to use its own property. Allegedly, the interest would serve as compensation for the damage suffered and to be suffered by Petitioner for its inability to use its resources, while the same is allegedly tied up to the coffers of the government. Petitioner avers that where there is a finding that the government has never been entitled to the amount deprived of the taxpayers, justice dictates that due compensation should be granted for the prejudiced cost. Thus, Petitioner insists that it is entitled to the refund of the erroneously collected Php17,202,373.31 plus legal interest of six percent (6%) per annum from October 03, 2016.

In *Atlas Fertilizer Corporation v. Commissioner of Internal Revenue*[59], the Supreme court ruled that for payment of interest to accrue on the amount to be refunded to taxpayer, **it must either be authorized by law <u>or</u> the collection of the tax was attended by arbitrariness**, *viz*:

> "But the more important consideration is the well settled rule that in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to taxpayer, the Government cannot be required to pay

[59] G.R. Nos. L-26686 & L-26698, October 30, 1980.

> interest. Likewise, it is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness."

None of these two circumstances prevail in the case at bar.

The NIRC of 1997, as amended, does not hold Respondent liable for interest in case of taxes improperly collected.[60] In the absence of any provision of law providing for the same, this Court cannot order the payment of interest on taxes refunded.

Neither may Petitioner invoke arbitrariness on the part of Respondent. An action is not arbitrary when it is exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. On the contrary, arbitrariness presupposes inexcusable or obstinate disregard of legal provisions.[61]

Was there any legal provision violated, in the instant case, when Respondent collected the garnished amount during the pendency of the proceeding on the Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax? There was none.

As a rule, injunction is not available to restrain the collection of tax pursuant to Section 218 of the NIRC of 1997, as amended, which provides:

> "**SEC. 218.** *Injunction not Available to Restrain Collection of Tax.* - No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code."

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[60] **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* - no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[61] Philex Mining Corporation v. Commissioner of Internal Revenue and the Court of Appeals, G.R. No. 120324, April 21, 1999.

However, Section 11 of Republic Act ("R.A.") No. 1125[62], as amended by R.A. No. 9282[63], allows the suspension of collection of taxes if in the Court's opinion, the collection may jeopardize the interest of the government and/or the taxpayer, to wit:

> "**Section 11.** ***Who May Appeal; Mode of Appeal; Effect of Appeal.*** – xxx
>
> xxx xxx xxx
>
> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, **That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding <u>may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court</u>**."[64]

Thus, the general rule and the exception to the suspension of collection of taxes was incorporated in Rule 10 of the Revised Rules of the Court of Tax Appeals (RRCTA)[65] in this wise:

> **"RULE 10**
> **SUSPENSION OF COLLECTION OF TAX**
>
> **SEC. 1.** *No suspension of collection of tax, except as herein prescribed.* – No appeal taken to the Court shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of his tax liability as provided under existing laws, except as hereinafter prescribed. (n)

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[62] An Act Creating the Court of Tax Appeals, June 16, 1954.

[63] 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 of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30 2004.

[64] *Emphasis and underscoring supplied.*

[65] A.M. No. 05-11-07-CTA, November 22, 2005.

> **SEC. 2.** *Who may file.* – Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, may jeopardized the interest of the Government or the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability. (RCTA, Rule 12, sec. 1a)"

Pending resolution by this Court of Petitioner's Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax, Respondent is not precluded from collecting the said amount. Unlike in the case of *Banco De Oro, et. al. vs. Republic, et. al.*[66] where the Bureau of Treasury was held liable to pay legal interest of six percent (6%) per annum due to its obstinate refusal to release the final withholding tax collected to be deposited in escrow in utter disregard of the Supreme Court's Temporary Restraining Order, there is no such order yet from this Court which Respondent failed to obey.

In view of the foregoing, it is clear that there is no basis for the award of legal interest on the garnished and collected amount.

WHEREFORE, premises considered, the instant Amended Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND** the amount of **Php17,202,373.31** in favor of Petitioner representing the erroneously collected taxes.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

[66] *En Banc* Resolution, G.R. No. 198756, August 16, 2016.

ATTESTATION

I attest 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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting 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