REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1857 (CTA CASE No. 8659)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY,
-versus-	FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and
FEATI UNIVERSITY, INC., *Respondent.*	MODESTO-SAN PEDRO, *JJ*
	Promulgated: AUG 27 2019 11:03 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 26, 2019, is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision, in the case entitled *Feati University, Inc. vs. the Commissioner of Internal Revenue,* docketed as CTA Case No. 8659, dated

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

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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December 5, 2017,[2] and the Resolution dated May 2, 2018,[3] both rendered by the Former Third Division of this Court, the dispositive portions of which read as follows:

CTA Case No. 8659:
Decision dated December 5, 2017:

"**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED.** Accordingly, the assessment against petitioner for deficiency VAT, deficiency EWT, and deficiency DST for fiscal year 2007 is **CANCELLED.**

SO ORDERED."

CTA Case No. 8659:
Resolution dated May 2, 2018:

"**WHEREFORE**, finding no cogent reason to reverse the ruling in the assailed Decision, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

The facts of the case, as recited by the former Third Division in its Decision, read as follows:

"Petitioner FEATI University, Inc. is an educational institution duly organized and existing in accordance with the laws of the Republic of the Philippines, with address at ADM Main Building, Helios cor. Palanca Sts. Quiapo, Manila, Philippines.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto

[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by former Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, *En Banc* Docket, pp. 23-41.
[3] *Ibid.*, pp. 18-21.

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or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 20, 2007, the BIR issued Letter of Authority (LOA) No. 00013705 dated November 20, 2007, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from June 1, 2006 to May 31, 2007.

On June 27, 2010, petitioner received from the BIR-Revenue District Office (RDO) No. 32 a Notice of Informal Conference dated May 31, 2010, relative to its proposed findings on petitioner's alleged deficiency taxes for fiscal year 2007. The notice states at after the audit/ review conducted by the examiners, petitioner was found to be liable for deficiency VAT, EWT, and DST in the total amount of ₱19,375,507.33.

On June 10, 2011, petitioner received a Preliminary Assessment Notice (PAN) dated June 7, 2011 for deficiency VAT, EWT and DST amounting to ₱21,305,147.00.

Subsequently, on December 14, 2011, petitioner received a Final Notice Before Seizure (FNBS) dated December 8, 2011, demanding payment of deficiency VAT, EWT, and DST for fiscal year 2007 in the total amount of ₱21,969,502.22.

Petitioner filed on December 23, 2011 a letter-reply dated December 22, 2011 to the FNBS, to which the BIR-RDO No. 32 replied, noting that the Final Assessment Notice (FAN) together with the Formal Letter of Demand (FLD) was issued by the Assessment Division on June 29, 2011 through registered mail and was received by a certain Mr. Rommel Abella, a property custodian.

On March 9, 2012, petitioner requested the re-evaluation of the deficiency tax assessment in light of the alleged improper service of the FAN.

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Respondent sent a letter dated October 8, 2012 and received by petitioner on October 12, 2012, responding to the request for re-evaluation and noting that the assessment has been forwarded to the Regional Director for proper evaluation and approval of request. Also, it reiterated the demand for payment of the alleged delinquent taxes.

On October 22, 2012, petitioner requested the reconsideration of the October 8, 2012 letter of BIR-RDO No. 32. Petitioner likewise submitted another letter to the BIR-RDO No. 32 on January 9, 2013, inviting its attention to petitioner's request for the revisiting of the legal and factual bases of the assessments against petitioner.

However, on May 3, 2013, respondent, through Revenue Officer (RO) Wilfredo A. Alday, served a Warrant of Distraint and/ or Levy dated April 30, 2013, seeking to enforce the collection of petitioner's alleged deficiency VAT, EWT, and DST.

On May 27, 2013, petitioner filed a letter with the BIR-Revenue Region No. 6, where it objected to the issuance of the Warrant of Distraint and/or Levy and informed the latter that it is considering the same as respondent's final decision on its protest letter.

Hence, petitioner filed the instant Petition for Review (With Urgent Motion to Quash Warrant of Distraint and/or Levy and/or to Suspend Collection of Taxes) with this Court on May 31, 2013.

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The parties submitted the following issues for the Court's disposition:

1. Whether or not the authority of the respondent to issue the VAT, EWT and DST Assessments has already prescribed;

2. Whether or not the waiver dated April 28, 2011 was executed by petitioner in accordance with existing laws, regulations and jurisprudence;

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3. Whether or not there is a legal or factual basis for the deficiency VAT, EWT and DST assessments rendered pursuant to LOA dated November 20, 2007;

4. Whether or not the deficiency tax assessment on VAT, EWT and DST in the amounts of ₱20,705,243.02, ₱926,860.56 and ₱337,398.64, inclusive of increments under Assessment Notices with Nos. 32-FY 53107-VT-1688, 32-FY053107-WE-1589 and 32-FY053107-DS-1690, respectively, all dated June 29, 2011, issued by respondent against the petitioner for the fiscal year ending May 31, 2007 had become final, executory and demandable; and

5. Whether or not petitioner is liable for the assessed VAT, EWT and DST in the amounts of ₱20,705,243.02, ₱926,860.56 and ₱337,398.64, respectively, inclusive of increments for fiscal year ending May 31, 2007." (Citations omitted.)

The former Third Division ruled in favor of Feati University, Inc. (FEATI) and held that the CIR failed to prove that the FAN was indeed received by the latter.

The CIR's Motion for Reconsideration was denied for lack of merit, hence, this Petition was filed.

In his Petition for Review, the CIR mainly reiterates his argument before the Court in Division that he has sufficiently proven service of FAN to FEATI by presenting the registry return card received by one Mr. Rommel Abella, FEATI's property custodian, and the judicial affidavits of Revenue Officer Paz Arcilla and Administrative Assistant Armando Macatangay, who testified that the assessment notices were sent to FEATI's registered address through registered mail.

After carefully examining the records of the case, this Court has no reason to deviate from the findings in the

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assailed Decision, and concludes that the CIR has failed to prove service of FAN to FEATI.

On the matter of service of a tax assessment, The ruling of the Supreme Court in *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,*[4] is instructive, *viz*:

> "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). x x x
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> x x x. **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.** x x x." (Bold in the original; Underlining supplied.)

While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[5] The

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[4] G.R. No. 150764, August 7, 2006
[5] *Republic vs. Court of Appeals*, G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 355.

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denial of receipt of FAN shifted the burden of proving by the CIR, not just the actual service of FAN but such service was made to the taxpayer itself or its authorized representative.

In the case of *People of the Philippines v. Joseph Typingco*,[6] this Court ruled:

> "In this regard, the Court in Division made the following observation to which the Court *En Banc* agrees, thus:
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> > 'It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. . . .
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> > Jurisprudence likewise dictates that <u>for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee</u>. <u>In fact, the registry return receipt itself provides that '[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it</u>.' Also, it is a rule that <u>receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters</u>.
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> > Again, the prosecution failed to demonstrate that the registry receipt had been actually served upon the accused or upon his duly authorized agent. <u>The bare testimony of Teresita Maglunog, the BIR</u>

[6] CTA EB Criminal Case No. 021 (CTA Criminal Case No. O-114), September 27, 2013.

> document locator and the registry receipt are utterly insufficient to prove that the assessment notices and demand letters were received by the accused. Such failure of the prosecution is a fatal blow to its case.'" (Underlining Supplied.)

Since FEATI denied receipt of FAN, it is essential for the CIR to prove the fact of mailing through the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed, not just by any person on behalf of FEATI, but by FEATI's authorized representative.

In the present case, FEATI denies receiving the assessment notice, and the CIR was unable to present substantial evidence that such notice was, indeed, received by FEATI or its authorized representatives. It is not enough that the registry return card was presented by the CIR to prove proper service of FAN. Such should have been signed by FEATI's authorized representative. A perusal of the records shows that the registry return card[7] was signed by Mr. Rommel Abella, who is not authorized by FEATI to receive the mail matter on its behalf. Even the testimony[8] of Mr. Gabriel Intengan, FEATI's Vice-President and Chief Operations Officer from 2003 to 2012, as well as the General Information Sheet for year 2011[9] of FEATI only prove that Mr. Rommel Abella is not authorized by FEATI to receive the mail matter on its behalf.

Neither did the Judicial Affidavits of Reveue Officer Paz Arcilla[10] and Administrative Assistant Armando Macatangay[11] prove valid service of FAN since the testimonies only state that the FAN was transmitted by BIR for mailing to FEATI but failed to prove receipt of the assessment by FEATI's authorized representative.

In the light of the foregoing events, the improper service of FAN leads to the conclusion that no valid

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[7] Exhibit "R-10," *Division Docket*, Vol. I, p. 428.
[8] Supplemental Judicial Affidavit, *Division Docket*, vol. II, pp. 1263-1270.
[9] Exhibit "P-39", *Division Docket*, Vol. II, pp. 1271-1281.
[10] Judicial Affidavit, *Division Docket*, Vol. II, pp. 1023-1028.
[11] Exhibits "R-11" and "R-11a," Judicial Affidavit, *Division Docket,* Vol. I, pp. 419-428.

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assessment was issued. Consequently, the government's right to issue a Warrant of Distraint and/or Levy (WDL) has no basis to stand on. Suffice it to say that there can be no final, executory and demandable assessment where there is no showing that the subject FAN was properly and duly served upon the taxpayer concerned,[12] the WDL therefore, is based on erroneous or void determination.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated December 5, 2017 and May 2, 2018, respectively, are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[12] *People of the Philippines v. Joseph Typingco*, CTA EB Criminal Case No. 021 (CTA Criminal Case No. O-114), September 27, 2013.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1857** *(CTA Case No. 8659)*
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
FEATI UNIVERSITY, INC., *Respondent.*	Promulgated: AUG 27 2019 11:03 a.m.

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CONCURRING OPINION

DEL ROSARIO, PJ:

I wish to stress that the Memorandum of Assignment with Referral No. 32-RD-LA-0041 dated May 27, 2009[1] signed by the Revenue District Officer of Revenue District Office (RDO) No. 32, Manila, authorizing Revenue Officer (RO) Andres S. Bisares and Group Supervisor (GS) Jessica O. Bernales to continue the audit or investigation of respondent could not be accorded the same legal effect as a Letter of Authority (LOA).

The National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **Commissioner of Internal Revenue (CIR) or from his duly**

[1] Exhibit "R-12", p. 221, BIR Records.

authorized representatives before an examination of a taxpayer may be made.[2] Section 6 thereof provides:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. - (A) Examination of Returns and Determination of Tax Due - After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. xxx" *(Boldfacing and underscoring supplied)*

A Bureau of Internal Revenue (BIR) officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

> "SEC. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Boldfacing and underscoring supplied)*

Revenue Memorandum Order (RMO) No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.
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> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.**" *(Boldfacing and underscoring supplied)*

RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, **requires the issuance of a new LOA**:

[2] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

"C. Other policies for issuance of L/As.

1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority.**

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5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." *(Boldfacing supplied)*

The *"authorized representative"* contemplated under Section 6 of the NIRC of 1997, as amended, who may issue an LOA is, at the very least, no other than a **Revenue Regional Director** pursuant to Section 13 thereof.

The power to issue an LOA may not be delegated by the CIR or the Revenue Regional Director to any other officer - - much less to a Revenue District Officer. On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation*[3] is instructive, *viz.*:

"We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. **Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility.**

Xxx, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:

> **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another.**

Xxx." *(Citations omitted; Boldfacing supplied)*

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[3] G.R. No. 156208, September 26, 2006.

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.,*[4] the Supreme Court categorically held that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Revenue Regional Director and emphasized that the Referral Memorandum issued by the Revenue District Officer directing another RO to continue with the examination of Composite Materials, Inc.'s (CMI) records is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.*:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, **the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
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> Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum** issued by a Revenue District Officer **directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**." *(Boldfacing and underscoring supplied)*

In the present case, while the Memorandum of Assignment cannot be treated as an LOA as precisely, any re-assignment of cases requires the issuance of a new LOA, its fatal infirmity is further highlighted by the fact that it was **signed and issued by the Revenue District Officer only** and not by the Revenue Regional Director.

All told, I VOTE to: (i) DENY the Petition for Review filed by the Commissioner of Internal Revenue; and, (ii) CANCEL and SET ASIDE the Final Assessment Notice and Formal Letter of Demand dated June 29, 2011 as well as the Warrant of Distraint and/or Levy dated April 30, 2013.

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] G.R. No. 238352, September 12, 2018.