REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

APEX 5678 ROCKWELL INC., *Petitioner,*	**CTA Case No. 10673**
	Members:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 19 2025 3:42 p.m.

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D E C I S I O N

MANAHAN, *J.*:

This is a Petition for Review posted by petitioner on September 28, 2021 and received by the Court on November 10, 2021, praying that a judgment be rendered cancelling and setting aside respondent's assessment issued to petitioner for its alleged deficiency income tax, value-added tax (VAT), and documentary stamp tax (DST), for taxable year (TY) 2017, in the total amount of ₱17,062,580.97.[1]

THE PARTIES

Petitioner Apex 5678 Rockwell Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with registered and known address at 6F Rockwell Business Center Tower 1 Ortigas Avenue, Ugong 1604 City of Pasig, National Capital Region (NCR) Second District, Philippines.[2]

Respondent is the Commissioner of Internal Revenue (CIR), duly appointed to perform the duties of his office,

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[1] Summary of the Case, Pre-Trial Order dated January 4, 203, Docket – Vol. III, p. 1346.
[2] Par. 1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, p. 1258.

including *inter alia*, the power to decide disputed assessments subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended, and Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

THE FACTS

On April 15, 2018, petitioner filed its 2017 Annual Income Tax Return. [4]

On September 5, 2018, respondent personally served at petitioner's registered address the Letter of Authority (LOA) No. LOA-043-2018-00000599 / eLA201600003118 dated September 3, 2018, authorizing Revenue Officer (RO) Troy Dela Cruz and Group Supervisor Patricia Ranchez of Revenue District No. 043 – Pasig, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including DST and other taxes (miscellaneous tax), for the period covering January 1, 2017 to December 2017.[5]

Thereafter, on July 10, 2019, respondent personally served at petitioner's registered address, the Notice for Informal Conference (NIC) with Details of Discrepancies of even date.[6]

On January 8, 2021, respondent personally served at petitioner's registered address the Preliminary Assessment Notice (PAN) with Details of Discrepancies of even date,[7] finding due from petitioner deficiency income tax, VAT, and DST, for TY 2017, in the aggregate amount of ₱16,934,236.21, detailed as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income Tax	₱ 5,122,831.72	-	₱ 1,682,534.43	₱ 6,805,366.15
VAT	7,435,911.28	-	2,637,813.13	10,073,724.41
DST	34,224.00	₱ 8,556.00	12,365.65	55,145.65
Total	**₱12,592,967.00**	**₱8,556.00**	**₱4,332,713.21**	**₱16,934,236.21**

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[3] Par. 2, JSFI, Docket – Vol. III, p. 1258.
[4] Par. 4, JSFI, Docket – Vol. III, p. 1258.
[5] Exhibit "P-4", Docket – Vol. I, p. 43; Exhibit "R-1", BIR Records, p. 1; Pars. 5 and 6, JSFI, Docket – Vol. III, p. 1258.
[6] Exhibit "P-5", Docket – Vol. I, pp. 45 to 49; Exhibit "R-3", BIR Records, pp. 156 to 160; Pars. 5 and 6, JSFI, Docket – Vol. III, p. 1258.
[7] Exhibit "P-6", Docket – Vol. I, pp. 50 to 55; Exhibit "R-4", BIR Records, pp. 223 to 227.

Petitioner, through counsel, filed with Revenue Region No. 7B - East NCR its Reply to the PAN (dated January 22, 2021) on January 25,[8] 2021.[9]

The Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices (FAN) No. 043-2020-B140-17, all dated January 27, 2021, were then issued to petitioner,[10] finding the latter liable for deficiency income tax, VAT, and DST, for TY 2017, in the aggregate amount of ₱17,062,580.97, detailed as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income Tax	₱ 5,122,831.72	-	₱ 1,734,745.21	₱ 6,857,576.93
VAT	7,435,911.28	-	2,713,598.31	10,149,509.59
DST	34,224.00	₱ 8,556.00	12,714.45	55,494.45
Total	**₱12,592,967.00**	**₱8,556.00**	**₱4,461,057.97**	**₱17,062,580.97**

On August 26, 2021, respondent personally served upon petitioner Warrant of Distraint and/or Levy (WDL) No. RR7B-WDL-2021-07-26-0092 of even date.[11]

Petitioner filed via electronic mail (e-mail) its Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Urgent Motion to Quash the Warrant of Distraint and/or Levy on September 27, 2021,[12] while the hard copy thereof was posted on September 28, 2021.[13] The case was initially raffled to this Court's former Third Division.

Finding that the subject Petition for Review is not compliant with the requirements set forth under Sections 4, 5, and 6, Rule 7 of A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure, this Court, in the Resolution dated December 4, 2021,[14] gave petitioner a period of five (5) days to comply with the same. In compliance thereto, petitioner posted the Amended Petition for Review with Application for Temporary Restraining Order

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[8] The Reply to the PAN is dated January 22, 2021 and filed on January 25, 2021, Exhibit "P-7", Docket – Vol. I, pp. 56 to 132.
[9] Par. 7, JSFI, Docket – Vol. III, p. 1259; Exhibit "P-7", Docket – Vol. I, pp. 56 to 132.
[10] Exhibit "R-5", BIR Records, pp. 420 to 413.
[11] Par. 8, JSFI, Docket – Vol. III, p. 1259; Par. 13, *Amended Petition for Review*, vis-à-vis Par. 2, *Answer*, Docket – Vol. I, p. 337 and Docket – Vol. II, p. 854, respectively.
[12] Annex A, petitioner's *Manifestation* posted on September 28, 2021, Docket – Vol. I, pp. 11 and 7 to 10, respectively.
[13] Docket – Vol. I, pp. 14 to 40.
[14] Docket – Vol. I, pp. 171 to 174.

and/or Writ of Preliminary Injunction and Urgent Motion to Quash the Warrant of Distraint and/or Levy, together with the Verification and Certification Against Forum Shopping, Secretary's Certificate, and Resolution of the Board of Directors of Apex Rwl, Inc. on December 20, 2021.[15]

In the Resolution dated February 23, 2022,[16] the Court, finding petitioner's Amended Petition for Review and the aforementioned submissions compliant with the requirements set forth under Sections 4, 5, and 6, Rule 7 of A.M. No. 19-10-20-SC, admitted the same.

Petitioner's Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Urgent Motion to Quash the Warrant of Distraint and/or Levy, which was treated by the Court as a Motion for Suspension of Collection of Taxes under Rule 10 of the Revised Rules of the Court of Tax Appeals (RRCTA),[17] was set for hearing on March 10, 2022,[18] April 19, 2022,[19] and May 11, 2022.[20] Relative thereto, petitioner presented the testimonies of the following individuals, namely: (1) Mr. Rodolfo Pamo,[21] its Tax Officer; (2) Atty. Nancy B. Martinez-Arce,[22] its Assistant Corporate Secretary; and (3) Mr. Joshua Datchille Varron,[23] its Finance Manager for General & Tax Accounting.

Meanwhile, respondent failed to file comment on petitioner's Application for Temporary Restraining Order

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[15] Docket – Vol. I, pp. 331 to 361.
[16] Docket – Vol. II, pp. 493 to 495.
[17] Minutes of the hearing held on, and Order dated, March 10, 2022, Docket – Vol. II, pp. 809 to 811.
[18] Resolution dated February 23, 2022, Docket – Vol. II, pp. 493 to 495.
[19] Minutes of the hearing held on, and Order dated, March 10, 2022, Docket – Vol. II, pp. 809 to 811.
[20] Minutes of hearing held on, and Order dated, April 19, 2022, Docket – Vol. II, pp. 846 to [848].
[21] Exhibit "P-12", Docket – Vol. I, pp. 322 to 328 (only provisionally marked but original found in Docket – Vol. I, pp. 481 to 487); Exhibit "P-13-Motion" (but marked as Exhibit "P-13", Refer to Resolution dated August 17, 2022, Docket – Vol. III, pp. 1249 to 1252), Docket – Vol. II, pp. 607 to 616; Minutes of the hearing held on, and Order dated, March 10, 2022, Docket – Vol. II, pp. 809 to 811.
[22] Exhibit "P-11" (but marked as Exhibit "P-17", Refer to Resolution dated August 17, 2022, Docket – Vol. III, pp. 1249 to 1252), Docket – Vol. I, pp. 472 to 480; Exhibit "P-16-Motion" (but marked as Exhibit "P-18-Motion", Refer to Resolution dated August 17, 2022, Docket – Vol. III, pp. 1249 to 1252), Docket – Vol. II, pp. 825 to 829; Minutes of hearing held on, and Order dated, April 19, 2022, Docket – Vol. II, pp. 846 to [848].
[23] Exhibit "P-17-Motion" (but marked Exhibit "P-16-Suspension", Refer to Resolution dated August 17, 2022, Docket – Vol. III, pp. 1249 to 1252), Docket – Vol. II, pp. 709 to 716; Minutes of hearing held on, and Order dated, May 11, 2022, Docket – Vol. II, pp. 860 to [862].

and/or Writ of Preliminary Injunction and Urgent Motion to Quash the Warrant of Distraint and/or Levy.[24]

Petitioner's Formal Offer of Evidence was filed on May 25, 2022.[25] Respondent, however, failed to file his comment thereon.[26] In the Resolution dated August 17, 2022,[27] the Court admitted all of petitioner's offered exhibits.

In the Resolution dated November 28, 2022,[28] the Court granted petitioner's Motion to Suspend Collection of Taxes and ordered petitioner to post a cash or surety bond equivalent to the basic tax due. Finding petitioner's Compliance with Manifestation filed on December 19, 2022[29] to be in order, the Court, in the Resolution dated January 5, 2023,[30] noted the same and admitted the attached supporting documents, and deemed petitioner to have fully complied with the Resolution dated November 28, 2022.

On May 4, 2022, respondent filed his Answer.[31]

On May 19, 2022, petitioner filed a Motion to Admit Attached Reply,[32] with attached Reply.[33] However, in the Resolution dated June 6, 2022,[34] the Court denied petitioner's Motion.

The case was then transferred to this Court's Second Division pursuant to the Order dated June 30, 2022.[35]

Respondent submitted the BIR Records of the present case on October 5, 2022, consisting of 598 pages in one (1) folder.[36]

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[24] Records Verification dated November 10, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1281.
[25] Docket – Vol. II, pp. 875 to 888.
[26] Records Verification dated July 29, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 895.
[27] Docket – Vol. III, pp. 1249 to 1252.
[28] Docket – Vol. III, pp. 1285 to 1292.
[29] Docket – Vol. III, pp. 1293 to 1295.
[30] Docket – Vol. III, pp. 1355 to 1356.
[31] Docket – Vol. II, pp. 854 to 857.
[32] Docket – Vol. II, pp. 863 to 865.
[33] Docket – Vol. II, pp. 866 to 873.
[34] Docket – Vol. II, pp. 892 to 893.
[35] Docket – Vol. II, p. 894.
[36] Transmittal Letter dated October 5, 2022, Docket – Vol. III, p. 1272.

The Pre-Trial Conference was set and held on August 17, 2022.[37] Prior thereto, petitioner's Pre-Trial Brief was filed on August 11, 2022,[38] while respondent's Pre-Trial Brief was submitted on August 16, 2022.[39]

On September 16, 2022, the parties submitted their Joint Stipulation of Facts and Issues,[40] which was admitted and approved by the Court in the Resolution dated September 28, 2022,[41] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 4, 2023 was then issued.[42]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner again offered the testimonies of the following individuals, namely: (1) Atty. Nancy B. Martinez-Arce,[43] its Assistant Corporate Secretary; and (2) Mr. Rodolfo Pamo,[44] its Tax Officer.

Petitioner's Formal Offer of Evidence was filed on February 10, 2023.[45] Respondent, however, failed to file comment thereon.[46] In the Resolution dated March 20, 2023,[47] the Court admitted petitioner's offered exhibits, except: (1) Exhibits "P-2", "P-7-1", "P-7-2", "P-7-3", "P-7-4", "P-7-5", "P-7-6", "P-7-7", "P-7-8", "P-7-9", "P-7-10", "P-7-11", "P-7-12", "P-7-13", "P-7-14", "P-7-15", "P-7-16", "P-7-17", "P-7-18", "P-7-19", "P-7-20", "P-7-25", "P-7-26", "P-7-27", "P-7-28", "P-7-29", "P-7-30", "P-7-31", "P-7-32", "P-7-33", "P-7-34", "P-7-35", "P-7-36", "P-7-37", "P-7-38", "P-7-39", "P-7-40", "P-7-41", and "P-9-Motion", for failure to

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[37] Minutes of hearing held on, and Order dated, May 11, 2022, Docket – Vol. II, pp. 860 to [862]; Minutes of hearing held on, and Order dated, August 17, 2022, Docket – Vol. III, pp. 1255 to 1257.
[38] Docket – Vol. III, pp. 899 to 915.
[39] Docket – Vol. III, pp. 1244 to 1247.
[40] Docket – Vol. III, pp. 1258 to 1261.
[41] Docket – Vol. III, p. 1264.
[42] Docket – Vol. III, pp. 1346 to 1353.
[43] Exhibit "P-11" (but actually marked as Exhibit "P-17", Refer to Resolution dated March 20, 2023, Docket – Vol. IV, pp. 1499 to 1501), Docket – Vol. I, pp. 472 to 480; Minutes of the hearing held on, and Order dated, January 26, 2023, Docket – Vol. III, pp. 1357 to 1359.
[44] Exhibit "P-12", Docket – Vol. I, pp. 322 to 328 (only provisionally marked but original found in Docket – Vol. I, pp. 481 to 487, Refer to Resolution dated March 20, 2023, Docket – Vol. IV, pp. 1499 to 1501); Minutes of the hearing held on, and Order dated, January 26, 2023, Docket – Vol. III, pp. 1357 to 1359.
[45] Docket – Vol. IV, pp. 1360 to 1373.
[46] Records Verification dated March 3, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. IV, p. 1495.
[47] Docket – Vol. IV, pp. 1499 to 1501.

present the originals for comparison; and (2) Exhibit "P-8", for failure to have the exhibit identified.

For his part, respondent offered the testimony of RO Troy Dela Cruz.[48]

Respondent's Formal Offer of Evidence was posted on May 5, 2023,[49] while petitioner's Comments/Objections (Re: Respondent's Formal Offer of Evidence dated 05 May 2023) were submitted on May 29, 2023.[50] In the Resolution dated July 14, 2023,[51] the Court admitted all of respondent's offered exhibits.

In the meantime, the case was transferred to this Court's Third Division pursuant to the Notice of Resolution dated May 29, 2023.[52]

Petitioner's Memorandum was filed on February 22, 2024.[53] Respondent, however, failed to file his memorandum.[54]

The present case was deemed submitted for decision on March 22, 2024.[55]

THE ISSUES

As stipulated by the parties, the issues for this Court's resolution are as follows:

> "1. Whether or not Petitioner is liable for alleged deficiency taxes for taxable year 2017: (a) Income Tax in the total amount of PhP6,857,576.93; (b) Value Added Tax in the total amount of PhP10,149,509.59; and (c) Documentary Stamp Tax in the total amount of PhP55,494.45; and

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[48] Exhibit "R-6", Docket – Vol. III, pp. 1267 to 1271; Minutes of hearing held on, and Order, dated April 27, 2023, Docket – Vol. IV, pp. 1502 to 1504.
[49] Docket – Vol. IV, pp. 1505 to 1508.
[50] Docket – Vol. IV, pp. 1518 to 1525.
[51] Docket – Vol. IV, pp. 1557 to 1558.
[52] Docket – Vol. IV, p. 1527.
[53] Docket – Vol. IV, pp. 1564 to 1586.
[54] Records Verification Report dated March 18, 2024 issued by the Judicial Records Division of this Court, Docket – Vol. IV, p. 1648.
[55] Minute Resolution dated March 22, 2024, Docket – Vol. IV, p. 1649.

2. Whether or not the alleged deficiency tax assessment against Petitioner for TY 2017 has prescribed."[56]

Petitioner's arguments:

Petitioner asserts that it never received a copy of the FLD and that respondent allegedly admitted that a copy thereof sent via registered mail was claimed to have been returned to sender. Petitioner stresses that all other BIR official notices before the FLD were personally served to its registered office address and that it never moved out of its registered office address nor did it apply for a change of registered address with the office of respondent.

Petitioner invokes the well-settled rule that a mailed letter is presumed to have been received by the addressee in the ordinary course of mail but a direct denial of receipt by the recipient shifts the burden upon the party favored by the presumption to prove that indeed such mail has been received by the recipient. Petitioner then argues that in the absence of the FLD and its valid service, the subject deficiency assessment cannot be considered as final, executory and demandable. Due process requires respondent or his duly authorized representative to send a notice of assessment to the taxpayer to give the latter the opportunity to file a protest. Not having fulfilled such a requirement, the assessment is deemed void and the ensuing tax collection via the issuance of a WDL is likewise void.

Finally, petitioner claims that the right of respondent to assess deficiency taxes for taxable year 2017 has prescribed pursuant to Section 203 of the 1997 NIRC, as amended.

Respondent's counter-arguments:

Respondent contends that there is no violation of petitioner's right to due process. According to respondent, the FLD/FAN was served to the registered address of the petitioner at the 5th and 6th Floor, Ortigas Avenue, Rockwell Business Center Tower 1, Ugong, 1604 City of Pasig, as evidenced by Registry Receipt RC 294710188 ZZ attached to the BIR Records.

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[56] Issues to be Tried, JSFI, Docket – Vol. III, p. 1259.

Respondent argues that service by registered mail is allowed under Revenue Regulations (RR) No. 12-99, as amended by RR Nos. 18-2013 and 7-2018.

THE RULING OF THE COURT

The present Petition for Review is meritorious.

Respondent failed to prove petitioner's receipt of the FLD/FAN thereby depriving the latter of its right to due process.

Petitioner avers that it never received the alleged FLD covering the questioned deficiency taxes for TY 2017. In view of its categorical denial of due receipt of the FLD, the burden was shifted to respondent to prove that the mailed FLD was indeed received by it or by its authorized representative. Petitioner argues that mere presentation of a Registry Receipt is insufficient to prove a taxpayer's receipt of the FAN/FLD. According to petitioner, other than the registry receipt, not an ounce of evidence was presented by respondent to prove that the FLD was received by petitioner.

On the other hand, respondent claims that the FLD/FAN was served to the registered address of the petitioner as evidenced by Registry Receipt RC 294710188 ZZ attached to the BIR Records.

On this matter, the Court agrees with petitioner.

Section 228 of the 1997 NIRC, as amended, mandates the following, *viz.*:

> "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**: xxx
>
> 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.

xxx xxx xxx." *(Emphases supplied)*

Based on the foregoing provision, part of the due process requirements in the issuance of tax assessments is that the concerned taxpayer be informed in writing of the law and the facts upon which the assessment was made, and that the same taxpayer be given the opportunity to respond and contest the said assessment. The above law is implemented under Section 3.1.4 of RR No. 12-99,[57] as amended by RR Nos. 18-2013[58] and 7-2018,[59] which requires that a FLD/FAN be issued to a taxpayer, to wit:

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

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.4[60] *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is**

[57] 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

[58] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

[59] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[60] As renumbered pursuant to Section 2 of RR No. 7-2018.

> **based; otherwise, the assessment shall be void** (see illustration in ANNEX 'B' hereof)." *(Emphasis supplied)*

According to respondent, the FLD/FAN was served to petitioner through registered mail, which is allowed under RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018.

Relative thereto, Section 3.1.7 of the same RR reads, in part, as follows:

> 3.1.7[61] *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:
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> (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.**
>
> xxx xxx xxx
>
> (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.
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> **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**

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[61] As renumbered pursuant to Section 2 of RR No. 7-2018.

> **professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**
>
> xxx xxx xxx." *(Emphases supplied)*

Based on the foregoing provisions, one of the modes of service of the FLD and FAN is by service through registered mail and the same must be made by sending the said notices "with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered." Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction. Furthermore, it is required that the "[t]he server shall accomplish the bottom portion of the notice" and "shall also make a written report under oath before a Notary Public or any person authorized to administer oath[s] under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person...who received the same and such other relevant information."

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[62] the Supreme Court (SC) ruled as follows:

> **"If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee**. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. **It has been settled 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, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.**
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative.** And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. **The Court does not put much credence to the self-serving documentations made**

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[62] G.R. No. 202695, February 29, 2016.

> **by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved**. Mere notations made without the taxpayer's intervention, notice of control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue officers." *(Emphases supplied)*

Based on the foregoing, it is clear that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof by the addressee shifts the burden to the sender.

In addition, to prove the fact of mailing, respondent must present the Registry Receipt issued by the Bureau of Posts or the Registry Return card which would have been signed by the taxpayer or its authorized representative. In the absence of the said documents, a Certification issued by the said Bureau of Posts, and any other pertinent document executed with its intervention, must be presented to establish the fact of mailing.

Considering that petitioner directly denies receipt of the subject FLD/FAN,[63] the burden was shifted to respondent to prove that the same was indeed received by petitioner or by its authorized representative.

To prove that the FLD/FAN was issued and served to petitioner, through registered mail, respondent offered the following documents,[64] to wit:

Exhibit No.	Description	Purpose
"R-5"[65]	FLD/FAN dated January [27], 202[1][66]	• To prove that the assessment made against Petitioner is valid and with factual and legal bases.

[63] Exhibit "P-11" [marked as Exhibit "P-17"] (Q&A Nos. 30 to 31), Docket – Vol. I, p. 477; Exhibit "P-12" (Q&A Nos. 21 to 23), Docket – Vol. I, p. 326.
[64] *Respondent's Formal Offer of Evidence*, Docket – Vol. IV, pp. 1505 to 1508 at p. 1506.
[65] BIR Records, pp. 420 to 413.
[66] The FLD/FAN is offered as "dated January 13, 2020" but is actually dated January 27, 2021, Refer to Resolution dated July 14, 2023, Docket – Vol. IV, pp .1557 to 1558.

		• To prove that due process was accorded to Petitioner.
"R-5-A"[67]	Registry Receipt No. RC 294710188ZZ	To prove that the FLD/FAN was duly served to Petitioner.

Relative to the foregoing documents, RO Troy Dela Cruz testified in his Judicial Affidavit,[68] as follows:

> "(10) Q: What happened next, if any?
>
> A: The Formal Letter of Demand and Assessment Notices (FLD/FAN) dated January 27, 2021 was issued and was served through registered mail to the Petitioner with Registry Receipt No. RC 294710188ZZ.
>
> (11) Q: I am showing to you FLD/FAN dated January 27, 2021 and Registry Receipt No. RC294710188ZZ. What is the relation of these documents to what you have just mentioned?
>
> A: These are the same documents I mentioned."

It can, thus, be inferred from the foregoing that the only evidence adduced by respondent in proving the fact of mailing is the corresponding Registry Receipt supposedly issued by the Postmaster for the FLD/FAN.

Unfortunately, the said evidence hardly suffice to prove that the said notices were indeed served on, and received by, petitioner or by any of its authorized representative/s, pursuant to the above-mentioned rules. The said Registry Receipt merely proved the fact of mailing,[69] and nothing more. In other words, the fact of receipt by petitioner or its authorized representative is not indicative in the said Registry Receipt.

In *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*,[70] the SC ruled as follows:

> "As ruled by the CTA *En Banc*, the **CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the**

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[67] BIR Records, p. 420.
[68] Exhibit "R-6" (Q&A Nos. 10 to 11), Docket – Vol. III, p. 1270.
[69] Refer to *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc., Supra.*
[70] G.R. No. 240729, August 24, 2020.

> **registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives.** It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent." *(Emphases supplied)*

Following the foregoing SC ruling, the mere presentation of registry receipts is not sufficient to prove receipt of the BIR notices. It is also required that the said registry receipts must be signed by the concerned taxpayer's duly authorized representative, and that the signatures are identified and authenticated.

It is noteworthy that no signature whatsoever appears on the subject Registry Receipt. Correspondingly, the fact of service on, and receipt by, petitioner of the subject FLD/FAN was never established by respondent.

Moreover, a closer examination of the same Registry Receipt reveals that these documents are not accompanied by an "instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered", and that the same documents do not contain any identifiable details of the transaction, as required under the afore-quoted Section 3.1.7 of RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018. There is no showing that anent the subject FLD/FAN, a written report under oath was made, setting forth the manner, place and date of service, the name of the person who received the same, and such other relevant information, as likewise mandated under the same Section 3.1.7. Such being the case, it is apparent that respondent neglected to show compliance with the requirements under the BIR's own rules and regulations, and thus, has failed to prove that petitioner actually received the said notices.

Furthermore, the registry return card which would bear petitioner's signature or that of its authorized representative was not offered as evidence. This was confirmed by respondent's witness, RO Troy Dela Cruz, who also clarified that he was not the one who actually mailed the FLD/FAN and has no personal knowledge as to the service of the FLD/FAN, to wit:[71]

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[71] Transcript of Stenographic Notes dated April 27, 2023, pp. 13 to 16.

"ATTY. HILAO:
Q. Lastly, you were the one that allegedly sent the petitioner this formal letter of demand and assessment notice. Am I correct here that you only presented here a registry receipt?

RO DELA CRUZ:
A. Yes, Your Honor.

ATTY. HILAO:
Q. Is there proof of return?

RO DELA CRUZ:
A. The registry receipt came from the Assessment Division.

ATTY. HILAO:
Q. This was not done by you?

RO DELA CRUZ:
A. Not by me.

ATTY. HILAO:
Q. Am I correct to say that you don't have any evidence attached or identified in this Judicial Affidavit to prove that the same was received by the petitioner?

RO DELA CRUZ:
A. Just a copy of the receipt.

ATTY. HILAO:
Q. But just to confirm, there is no proof stated here that the formal letter of demand and assessment notices was received by the petitioner?

RO DELA CRUZ:
A. I have to check the docket.

ATTY. HILAO:
Q. You only mentioned here, the last question, is the registry receipt number that you have marked as Exhibit R-5 and R-5-A so that's for the registry receipt, that's the only proof that you have?

RO DELA CRUZ:
A. Yes, Your Honor.

ATTY. HILAO:
Q. There's no registry return card?

RO DELA CRUZ:
A. Can I check?

JUSTICE BACORRO-VILLENA:
Atty. Usita, if there is a registry return receipt, you would have mentioned that in the Judicial Affidavit, right?

ATTY. USITA:
Yes, Your Honor.

JUSTICE BACORRO-VILLENA:
But anyway, Mr. Witness, do you recall having seen or encountered the RRR, registry return receipt?

RO DELA CRUZ:
A. When the docket was presented.

JUSTICE BACORRO-VILLENA:
Yes, do you recall?

RO DELA CRUZ:
A. Yes, Your Honor.

JUSTICE BACORRO-VILLENA:
That there was one?

RO DELA CRUZ:
A. Yes, Your Honors.

JUSTICE BACORRO-VILLENA:
What about the return card?

RO DELA CRUZ:
A. **No, I haven't.**

JUSTICE BACORRO-VILLENA:
That's the question, the return card.

ATTY. HILAO:
Yes, Your Honor.

JUSTICE BACORRO-VILLENA:
So you have not seen the return card?

RO DELA CRUZ:
A. **Yes, Your Honor.**

ATTY. HILAO:
Q. **As you said, you're not the person who personally caused this mailing, am I correct**?

RO DELA CRUZ:
A. **Yes, Your Honor.**

ATTY. HILAO:
Q. **And you did not identify any return card or it did not identify here the person who is the representative of the petitioner who received the same**?

RO DELA CRUZ:
A. **Yes, Your Honor.**

ATTY. HILAO:
Q. **So you have no proof that the said document, the formal letter of demand and assessment notice was validly served to the petitioner?**

RO DELA CRUZ:
A. **Yes, from my point because the docket was from the Assessment Division**." *(Emphases supplied)*

From all the foregoing, respondent's documentary and testimonial evidence are insufficient to prove that said notices were indeed served on and received by petitioner or any of its authorized representative.

Thus, the glaring fact remains that nowhere can it be seen from respondent's evidence that there was actual service and receipt of the subject FLD/FAN since the registry return card was not presented. Neither did respondent offer any other form of evidence (*i.e.*, at the very least, certification from the Bureau of Posts or other pertinent document executed with its intervention) to prove that the FLD/FAN was served to, or received by petitioner. On this score alone, there is clear indication of respondent's violation of petitioner's right to due process.

Apropos, an assessment contains not only a computation of tax liabilities, but also a demand for payment within the prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine remedies thereon, due process requires that it must be served on and received by the taxpayer.[72]

In view of respondent's failure to prove that the FLD/FAN was properly and duly served upon or received by petitioner, the assessments made against petitioner for deficiency income tax, VAT, and DST, for TY 2017, are void, for failure to accord petitioner due process in the issuance thereof. Accordingly, there being no final and valid assessment to begin with, petitioner cannot be considered a delinquent taxpayer.

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[72] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*, G.R. No. 128315, June 29, 1999.

Because the FLD and Assessment Notices were not properly served to petitioner, the assailed assessment is void.

To reiterate, Section 228 of the 1997 NIRC, as amended, requires that a taxpayer be informed of the assessment against it. If this requirement is not met, the assessment is void.

That a lack of notice is enough to void an assessment is based on taxpayer's right to due process. Any given taxpayer with an assessment issued against it must be afforded the opportunity to present its case and protest said assessment, otherwise, the tax assessments are null and void, pursuant to the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.,*[73] to wit:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void**. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity." *(Emphasis supplied)*

As discussed, there was improper service of the subject FLD/FAN to petitioner, and thus, the same is not binding on the latter. Consequently, in view of the violation of petitioner's right to due process provided in the above-quoted Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018, the FLD with Details of Discrepancies and FAN, all dated January 27, 2021, are considered void. Being void, the subject deficiency tax

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[73] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

assessments then bear no valid fruit,[74] and respondent's WDL dated August 26, 2021 must not be given any effect.

The WDL, being based on void assessments, is likewise void.

In its Memorandum, petitioner insists that there being no valid assessment, the subject WDL issued against it is void.

The Court agrees.

Settled is the rule that a void assessment bears no valid fruit. Correspondingly, the government is barred from collecting any tax liabilities based on such void assessment. As such, when an assessment is void, any WDL based upon it is also void and cannot be executed. As explained by the High Court in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,*[75] *viz.*:

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

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[74] Refer to *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et seq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

[75] G.R. Nos. 197945 and 204119-20, July 9, 2018.

This is especially true when a taxpayer's right to be informed of an assessment against it and present its case is violated. Thus, the failure on the BIR's part to properly inform a taxpayer of an assessment made against it completely bars said bureau from collecting the assessed taxes.

It must be emphasized that tax collection must be preceded by a valid assessment to allow the taxpayer to protest the assessment, present its case and adduce supporting evidence.[76] Considering that the FLD with Details of Discrepancies and FAN, all dated January 27, 2021, are void, the said WDL dated August 26, 2021 cannot be said to have been preceded by valid assessments, and thus, cannot be validly enforced against petitioner.

In fine, it is an elementary 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]

Finding the subject tax assessments invalid, it becomes unnecessary for this Court to address the other issues and matters raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present Amended Petition for Review is **GRANTED**. For being void, the **FLD with Details of Discrepancies and FAN**, all dated January 27, 2021, assessing petitioner for deficiency income tax, VAT and DST in the aggregate amount of ₱17,062,580.97, inclusive of surcharge and interest, for TY 2017, **as well as the WDL dated August 26, 2021, directed against petitioner, are CANCELLED** and **SET ASIDE**.

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[76] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[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, respondent is **ENJOINED** and **PROHIBITED** from collecting or taking further action on the subject deficiency taxes against petitioner for TY 2017.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

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's Division.

Catherine T. Manahan
CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Associate Justice