REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10222

ROYAL PALM RESIDENCES CONDOMINIUM, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. WILMER B. DEKIT
ATTY. APRILYN T. POBAR
Bureau of Internal Revenue
Legal Division, Revenue Region No. 8B
2nd Floor, BIR Regional Office Building
No. 313 Sen. Gil Puyat Ave., Makati City

BELLO VALDEZ CALUYA & FERNANDEZ JGLAW
17th Floor, Robinsons Equitable Tower
4 ADB Avenue, corner P. Poveda Drive
Ortigas Center, Pasig City

GREETINGS:

You are hereby notified by these presents that on **March 27, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 1, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ROYAL PALM RESIDENCES CONDOMINIUM, INC.,
Petitioner,

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10222

Members:

DEL ROSARIO, *P.J., Chairperson*,
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:

MAR 2 7 2024; 10:00 AM

x- -x

DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on December 6, 2019 by petitioner Royal Palm Residences Condominium, Inc., praying that the Court cancel and declare null and void the Preliminary Assessment Notice No. P-LA-006713-44-2014, Formal Assessment Notice No. ELA36823-14-17, Final Notice Before Seizure No. FNBS-2018-07-000194, and the Warrant of Distraint and/or Levy No. RR8B-09-16-00061 issued by the Commissioner of Internal Revenue against petitioner for its alleged deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax, in the aggregate amount of Fifteen Million Four Hundred Thirty-Three Thousand Three Hundred Forty-Eight Pesos and 45/100 (₱15,433,348.45), inclusive of surcharges and interests, for taxable year 2014.

THE PARTIES

Petitioner Royal Palm Residences Condominium, Inc. is a corporation registered with the Bureau of Internal Revenue with

Taxpayer Identification Number 007-286-536-00000.[1] Petitioner has its principal office address at Acacia Avenue, Brgy. Ususan, Taguig City.[2]

Respondent Commissioner of Internal Revenue (CIR) is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with, among other powers and duties, the responsibility of collecting all national internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

THE FACTS

On May 18, 2016, petitioner, through Mr. Ronald Concillo, received from the BIR, through Revenue Region No. 8 – Makati City/Revenue District Office (RDO) No. 44 – Taguig – Pateros, Letter of Authority (LOA) No. AUDR03/006713/2016 SN: eLA201200036823 dated May 11, 2016 authorizing Revenue Officer (RO) Helen Liquido, under the supervision of Group Supervisor Joriz Saldajeno to examine/audit petitioner's internal revenue taxes for the period of January 1, 2014 to December 31, 2014.[4]

The BIR issued a Preliminary Assessment Notice (PAN) dated October 12, 2017 which was received by petitioner on October 18, 2017.[5]

On November 10, 2017, petitioner filed with the BIR a Letter-Reply to the PAN dated November 9, 2017.[6]

Considering that petitioner belatedly filed its Letter-Reply to the PAN, the BIR considered petitioner to be in default and issued the Assessment Notices, the Formal Assessment Notice, and Details of Discrepancies (collectively, the FAN), on December 13, 2017, assessing petitioner for alleged deficiency income tax, value-added

[1] Par. 1, Facts, Joint Stipulation of Facts and Issues (JSFI), *Docket*, Vol. II, p. 458.
[2] Par. 4, Petition for Review, *Docket*, Vol. I, p. 7; Admitted in respondent's Answer (With Special and Affirmative Defenses), *Docket*, Vol. I, p. 94.
[3] Par. 2, Facts, JSFI, *Docket*, Vol. II, pp. 458 to 459.
[4] Exhibits "P-5" and "R-1", *Docket*, Vol. I, pp. 328 and 212, respectively; Par. 3, Facts, JSFI, *Docket*, Vol. II, p. 459.
[5] Par. 4, Facts, JSFI, *Docket*, Vol. II, p. 459.
[6] Par. 5, Facts, JSFI, *Docket*, Vol. II, p. 459.

tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST), in the aggregate amount of ₱15,433,348.45, inclusive of surcharges and interests, for taxable year (TY) 2014 without considering petitioner's arguments in its Letter-Reply. Said FAN was allegedly received on December 21, 2017 by a "Ms. Danica Ramboyong" with the position of administrative staff.[7]

On June 29, 2018, petitioner received a Preliminary Collection Letter dated June 22, 2018 from the BIR, in relation to the FAN.[8]

On July 6, 2018, petitioner filed a Letter dated July 6, 2018 to Ms. Alicia SA. Gonzales, BIR Chief of Collection Division of Revenue Region No. 8, whereby petitioner submitted a receiving copy of the November 9, 2017 Letter-Reply as well as the documentation for the November 27, 2017 voluntary payment of deficiency EWT.[9]

On July 9, 2018, petitioner received a Final Notice Before Seizure dated July 4, 2018.[10]

On July 18, 2018, Mr. Joseph Carizo, petitioner's Property Manager, issued an Authorization Letter authorizing Ms. Ma. Carmela Agena to get a copy of the FAN. The same was provided by RO Adrian Anthony Liwanag of BIR Revenue Region No. 8 on the same day.[11]

On August 17, 2018, petitioner filed before the BIR, Revenue Region No. 8 a "Protest to Formal Assessment Notice dated 13 December 2017".[12]

On October 15, 2018, petitioner submitted relevant documents in support of its Protest before the BIR, Revenue Region No. 8.[13]

On November 6, 2019, petitioner received the Warrant of Distraint and/or Levy (WDL) of even date.[14]

---

[7] Par. 6, *id.*
[8] Par. 7, *id.*
[9] Exhibit "P-16", *Docket*, Vol. I, p. 369; Par. 8, Facts, JSFI, *Docket*, Vol. II, p. 460.
[10] Par. 9, *id.*
[11] Par. 10, *id.*
[12] Exhibit "P-18", *Docket*, Vol. II, pp. 678 to 696.
[13] Exhibit "P-19", *Docket*, Vol. II, pp. 697 to 704.

Aggrieved, petitioner filed the present Petition for Review on December 6, 2019 before the Court of Tax Appeals (CTA) Second Division.[15]

On February 20, 2020, respondent posted his Answer[16] *via* registered mail interposing the following special and affirmative defenses: *(i)* the Petition for Review states no cause of action; *(ii)* the Notice of Informal Conference (NIC) was not required during the period petitioner was under audit; *(iii)* the PAN was duly received by petitioner; *(iv)* petitioner was duly informed of the facts, law, rules and regulations on which the assessment was based; *(v)* the assessment of petitioner's books of accounts and other accounting records for TY 2014 was authorized by a duly issued LOA; *(vi)* the FAN was duly received by petitioner; *(vii)* the FAN has become final, executory, and demandable for petitioner's failure to protest the same; and, *(viii)* the issuance of the WDL to enforce a final, executory and demandable FAN is proper.

On October 7, 2020, respondent filed his Pre-Trial Brief;[17] while petitioner filed its Pre-Trial Brief on October 9, 2020.[18]

The Pre-Trial Conference was held on February 10, 2021.[19] The parties filed their Joint Stipulation of Facts and Issues on March 2, 2021.[20] The Pre-Trial Order[21] was issued on March 11, 2021.

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits, as contained in its Formal Offer of Evidence filed on July 15, 2022,[22] were admitted in the Resolution dated August 15, 2022.[23]

In turn, respondent presented his testimonial and documentary evidence. Respondent's formally offered exhibits, as contained in his

---

[14] Par. 11, Facts, JSFI, *Docket*, Vol. II, p. 460.
[15] *Docket*, Vol. I, pp. 6 to 33.
[16] *Docket*, Vol. I, pp. 94 to 105.
[17] *Docket*, Vol. I, pp. 194 to 199.
[18] *Docket*, Vol. I, pp. 425 to 440.
[19] Minutes of the Hearing dated February 10, 2021, *Docket*, Vol. II, p. 449; Order dated February 10, 2021, *Docket*, Vol. II, p. 450.
[20] *Docket*, Vol. II, pp. 458 to 461.
[21] *Docket*, Vol. II, pp. 471 to 476.
[22] *Docket*, Vol. II, pp. 591 to 601.
[23] *Docket*, Vol. II, pp. 722 to 724.

Formal Offer of Evidence posted on November 3, 2022,[24] were admitted in the Resolution dated January 5, 2023.[25] In the same Resolution, the Court directed both parties to submit their respective memoranda within thirty (30) days from notice.

On May 29, 2023, the case was transferred from the CTA Second Division to the CTA First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated May 23, 2023.[26]

After the posting of the Memorandum (For the Respondent)[27] *via* registered mail on June 29, 2023, and without petitioner's memorandum,[28] the case was submitted for decision on July 25, 2023.[29]

THE ISSUES[30]

Petitioner submits the following issues for the Court's resolution:

I. Whether the TY 2014 assessment is null and void for being arbitrary and devoid of procedural due process;

II. Whether the WDL issued by respondent is null and void for being arbitrary and devoid of procedural due process; and,

III. Whether petitioner is liable for deficiency income tax, VAT, EWT, and DST in the aggregate amount of ₱15,433,348.45.

---

[24] *Docket*, Vol. II, pp. 733 to 738.
[25] *Docket*, Vol. II, pp. 752 to 754.
[26] *Docket*, Vol. II, p. 805.
[27] *Docket*, Vol. II, pp. 807 to 816.
[28] Records Verification issued by the Judicial Records Division, *Docket*, Vol. II, p. 818.
[29] *Docket*, Vol. II, *unpaginated*.
[30] JSFI, *Docket*, Vol. II, p. 460.

THE PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner raises the following arguments in support of the present Petition for Review: *(i)* the FAN dated December 13, 2017 is null and void for respondent's failure to provide statement of facts, law, rules and regulations, and jurisprudence as its basis; *(ii)* the assessment is void for being issued by an unauthorized revenue officer and in violation of Revenue Memorandum Order (RMO) Nos. 43-90 and 37-94; *(iii)* the assessment is also void as the CIR failed to provide petitioner a summary of findings as basis for the Informal Conference, in violation of Revenue Regulation (RR) Nos. 12-85 and 12-99; *(iv)* contrary to respondent's insistence, an administrative assistant is not an authorized person under the law to receive the assessment notice; thus, the assessment is void for non-compliance with the requirements of due process; and, *(v)* the WDL is null and void for respondent's failure to comply with procedural requirements.

Respondent's arguments

Respondent puts forth the following counter-arguments: *(i)* the Petition for Review states no cause of action as the FAN was *prima facie* correct and made in good faith and that all presumptions are in favor of the correctness of a tax assessment; *(ii)* the NIC was not required during the period petitioner was under audit as RR No. 18-2013 deleted the provision in RR No. 12-99 which provides for the preparation of a NIC; *(iii)* the PAN was duly received by petitioner and its protest thereto was filed out of time; hence, making petitioner in default; *(iv)* petitioner was duly informed of the facts, law, rules and regulations on which the FAN was based; *(v)* the audit of petitioner's books of accounts and other accounting records for TY 2014 was authorized by a duly issued LOA and no revalidation of LOA was needed since the authorized RO was the one who actually conducted the audit; *(vi)* the FAN has been duly received by petitioner on December 21, 2017; *(vii)* due to petitioner's failure to file a protest to the FAN, the assessment has become final, executory, and demandable; and, *(viii)* the issuance of the WDL to enforce a final, executory and demandable FAN is proper.

THE COURT'S RULING

Timeliness of the filing of the Petition for Review

Before delving into the merits of the case, the Court shall first determine the timeliness of the filing of the Petition for Review.

Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides the jurisdiction of the CTA, as follows:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; xxx" *(Boldfacing supplied)*

Section 3 (a) (1), Rule 4 of the Revised Rules of the CTA also provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; xxx" *(Boldfacing supplied)*

In *Manila Medical Services, Inc. (Manila Doctors Hospital),*[31] the Supreme Court categorically held that the CTA has jurisdiction to determine the validity of a WDL under "other matters," as follows:

---

[31] G.R. No. 255473, February 13, 2023 citing *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022.

> "Contrary however to the CIR's argument, Section 7(a)(l) of Republic Act No. (**RA**) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also 'other matters' arising under the NIRC:
>
> xxx xxx xxx
>
> As explained by the *Court in Commissioner of Internal Revenue v. Court of Tax Appeals Second Division,* the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. <u>It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.</u>**" (*Boldfacing* and *underscoring* supplied)

Anent the period to appeal, the taxpayer is given thirty (30) days from receipt of the WDL to appeal to the CTA pursuant to Section 11 of RA No. 1125, as amended by RA No. 9282, to wit:

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

In the present case, records show that petitioner received the WDL on November 6, 2019.[32] Petitioner had thirty (30) days therefrom, or until December 6, 2019 within which to file its Petition for Review. The Petition for Review was timely filed on December 6, 2019.[33]

---

[32] *Supra* Note 14.
[33] *Supra* Note 15.

With regard to the merits of the case, the Court notes that both parties raise matters concerning the validity or invalidity of the FAN and consequently, the WDL issued against petitioner. The Court finds it imperative to first resolve the issue on whether there was proper service of the PAN and the FAN to petitioner.

Service of the PAN and FAN

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, lays down the procedure in the issuance of tax deficiency assessment, *viz.*:

> "**Section 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:
>
> 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.**" *(Boldfacing supplied)*

Respondent is mandated to comply with the due process requirements in the issuance and service of assessment notices as his failure to do so would be violative of petitioner's right to due process. Needless to state, such denial of due process shall render the assessment void.[34]

The Court shall now determine whether or not the PAN and FAN were properly served and duly received by petitioner. *Sans* proper service and due receipt thereof by petitioner, the subject assessment becomes void.

RR No. 12-99, as amended by RR No. 18-2013, implements Section 228 of the NIRC of 1997, as amended, which provides for the manner of serving assessment notices upon taxpayers, *to wit*:

---

[34] *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.,* G.R. No. 223767, April 24, 2023.

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

xxx xxx xxx

3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is <u>not practicable</u>, the notice shall be served by substituted service or by mail.

(ii) **Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances**:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

xxx xxx xxx

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

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

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

(iii) xxx

xxx xxx xxx"
(*Boldfacing* and *underscoring* supplied)

From the afore-quoted RR, service of assessment notices may be done through: *(i)* personal service; *(ii)* substituted service; or, *(iii)* mail. The primary mode of service of assessment notices is through personal service by delivering personally a copy of the notice to the party at the party's registered or known address or wherever the party may be found. When personal service is not practicable, assessment notices may be served by substituted service or by mail.

It should be noted, however, that with regard to substituted service, the same may only be resorted to when: *(1)* the party is not present at the registered or known address; *(2)* the party is found therein, but refuses to receive the notice; or, *(3)* no person is found in the party's registered or known address.

In the present case, respondent admitted that he resorted to substituted service of the subject PAN and FAN by leaving them with petitioner's alleged clerk or person having charge of petitioner's registered place of business due to the alleged unavailability of any of petitioner's responsible officer.

Binding effect of petitioner's judicial admission that it received the PAN

Petitioner insists that the PAN was not properly served upon it, as Mr. Concillo, the person to whom respondent left the PAN, was not duly authorized to receive the same on behalf of petitioner.

A reading of the parties' Joint Stipulation of Facts and Issues,[35] specifically paragraph 4 thereof, reveals, however, that petitioner admitted, without qualification, that it received the PAN, *viz.*:

> "4) The BIR issued a Preliminary Assessment Notice (PAN) dated October 12, 2017 **which was received by petitioner on October 18, 2017.**"

---

[35] *Supra* Note 5.

Section 4, Rule 129 of the Rules of Court states,

> "Section 4. *Judicial admissions.* — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."

"A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding."[36] *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*[37] classified a stipulated fact as a judicial admission, *viz.*:

> "**The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof.** The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. **The Court cannot lightly set aside a judicial admission** especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof." *(Boldfacing supplied)*

The stipulations made by the parties during the pre-trial conference becomes a judicially admitted fact as held in *Commissioner of Internal Revenue vs. Petron Corporation,*[38] *viz*:

> "**This stipulation of fact by the CIR amounts to an admission and, having been made by the parties in a stipulation of facts at pretrial, is treated as a judicial admission**. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The Court cannot lightly set it aside, especially when the opposing party relies upon it and accordingly dispenses with further proof of the fact already admitted. The exception provided in Rule 129, Section 4 is that an admission may be contradicted only by a showing that it was made through a palpable mistake, or that no such admission was made. In this case, however, exception to the rule does not exist."[39]

---

[36] *Spouses Binarao vs. Plus Builders, Inc.,* G.R. No. 154430, June 16, 2006.
[37] G.R. No. 157594, March 9, 2010.
[38] G.R. No. 185568, March 21, 2012.
[39] *Commissioner of Internal Revenue vs. Petron Corporation*, G.R. No. 185568, March 21, 2012.

Petitioner cannot evade the binding effect of its judicial admission that it received the PAN on October 18, 2017. A judicial admission conclusively binds the party making it such that it removes an admitted fact from the field of controversy as held in *Oscar Constantino, et. al. vs. Heirs of Pedro Constantino, Jr. represented by Asuncion Laquindanum,*[40] *viz.*:

> "**Judicial admissions are legally binding on the party making the admissions.** Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. In Bayas, *et. al.* v. Sandiganbayan, *et. al.*, this Court emphasized that:
>
>> **Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated. Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally, it must assume the consequences of the disadvantage.** (Highlighting ours)" (*Bold facings supplied and citations omitted*)

Considering that petitioner categorically admitted in paragraph 4 of the parties' Joint Stipulation of Facts and Issues[41] that it received the PAN on October 18, 2017, and in the absence of any evidence that petitioner made such admission through palpable mistake, it is conclusive and binding on petitioner.

Service of the FAN to an administrative assistant

Section 2 of RA No. 11232, otherwise known as the Revised Corporation Code of the Philippines, defines a corporation as "an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence." Relatedly, Sections 22 and 24 of RA No. 11232 provide that:

> "**SEC. 22. The Board of Directors or Trustees of a Corporation; Qualification and Term.** – Unless otherwise provided

[40] G.R. No. 181508, October 2, 2013 citing *Bayas, et al. vs. Sandiganbayan*, G.R. Nos. 143689-91, November 12, 2002 and *Alfelor vs. Halasan*, G.R. No. 165987, March 31, 2006.
[41] *Supra* Note 5.

m

in this Code, the **board of directors or trustees shall exercise the corporate powers, conduct all business, and control all properties of the corporation.**

xxx xxx xxx"

"**SEC. 24. Corporate Officers.** – Immediately after their election, the directors of a corporation must formally organize and elect: (a) a president, who must be a director; (b) a treasurer, who must be a resident; (c) a secretary, who must be a citizen and resident of the Philippines; and (d) such other officers as may be provided in the bylaws. xxx

The officers shall manage the corporation and perform such duties as may be provided in the bylaws and/or as resolved by the board of directors." (*Boldfacing* supplied)

While the board of directors generally exercise corporate powers, conduct all business, and control all properties of the corporation, the corporation, through its board of directors may validly delegate some of its functions and powers to corporate officers, committees or agents. The authority of such individuals to bind the corporation is generally derived from law, corporate by-laws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.[42]

In the present case, it is undisputed that the FAN was served on petitioner at its registered address[43] through Ms. Ramboyong, the person found therein. Ms. Ramboyong is neither a member of the board of directors nor a corporate officer of the corporation.

The question therefore is whether Ms. Ramboyong was duly authorized by the board of directors of petitioner to actually receive the FAN on its behalf.

To prove that Ms. Ramboyong was not authorized to receive the FAN on behalf of petitioner, petitioner presented Mr. Carizo as its witness who testified by way of his Judicial Affidavit[44] that: *(i)* he is the property manager of petitioner from 2017 until 2019; *(ii)* the authorized agents or representatives for receiving letters, mail, or

---

[42] *People's Aircargo and Warehousing Co. Inc. vs. Court of Appeals*, G.R. No. 117847, October 7, 1998.
[43] See Note 2.
[44] Exhibit "P-23", *Docket*, Vol. I, pp. 395 to 415.

correspondence are petitioner's duly-elected officers, its counsel, and the property manager; *(iii)* the FAN was received by a certain Danica Ramboyong, an administrative assistant/staff; *(iv)* Ms. Ramboyong was not authorized to receive any notice from the BIR; and, *(v)* Ms. Ramboyong is not an employee of petitioner but of Joblink Business Solutions Inc. (formerly Professional Cleaners and Manpower Services, Inc.) (JBSI).

Petitioner likewise offered in evidence the "**Service Agreement for Administrative and Messengerial Services**" dated September 19, 2016[45] entered into between petitioner and JBSI. Pursuant to said Service Agreement, JBSI shall supply administrative and messengerial manpower to petitioner, and Ms. Ramboyong, an Administrative Assistant, was assigned to perform the following functions:

"**SERVICE (AND WORK) SCHEDULE**

Administrative Assistant

1. Answers calls and receives complaints appropriately;
2. Handles reservations for function halls and for other amenities;
3. Prepares Summary Schedule of Reservations of Amenities;
4. Issues forms for necessary permits (working permit, gate pass, and others);
5. Monitors and updates Turn-Over and Move-In Unit(s)/Parking Slot(s);
6. Monitors/updates/prepares Purchase Requisition Slip (PRS);
7. Monitors the Inventory of Office Supplies and Official Receipts (OR);
8. Labels file folders and file documents accurately;
9. Prepares Petty Cash replenishment;
10. Prepares Reminder Letters checked by Administrative Officer and approved by Property Manager (PM);
11. Updates Directories/Manuals;
12. Monitors Emails of Condominium Corporation;
13. Informs delinquent Unit Owners of outstanding balances through telephone call and e-mails communication;
14. Receives payments from unit owners/tenants/others;
15. Issues Official Receipts;
16. Turns over un-deposited collections to Accounting Assistant and/or PM;
17. Receives billings from suppliers and contractors;
18. Review attached documents on Request for Payment (RFP) for completion;
19. Logs RFP to Expense Logbook;

[45] Exhibit "P-24-Rebuttal", *Docket*, Vol. II, pp. 769 to 779.

20. Forwards RFP to Property Manager then to Accounting Assistant;
21. Assists in the preparation of Condominium Corporation activities like Halloween, Christmas party, and others;
22. Assists in the preparation for the Monthly Board Meetings:
    - Calls Board Member to check availability;
    - Follows up minutes of previous meeting;
    - Confirms Schedules;
    - Prepares needed materials for meeting; and,
23. Performs other tasks as assigned by the Property Manager/Administrative Officer from time to time."[46]

On the other hand, to prove that the FAN was properly served to petitioner by substituted service, respondent presented the following: *(i)* the original of the FAN which indicates that it was received by Ms. Danica Ramboyong, Administrative Staff, on December 21, 2017 (Exhibit "R-4");[47] and, *(ii)* the Judicial Affidavit of RO Helen M. Liquido dated October 2, 2020 (Exhibit "R-10" and "R-10-A").[48]

During the presentation of respondent's witness, RO Liquido testified that she was the person who audited and served the FAN to petitioner. She also testified that the service of the FAN[49] was made through substituted service as no responsible officers of petitioner were allegedly present at that time. She further testified that the FAN was received by Ms. Ramboyong who represented to her that she can receive the notices on behalf of petitioner.

During her cross-examination, RO Liquido admitted that she failed to: *(i)* ascertain who are the responsible officers of petitioner imbued with authority to receive the FAN on its behalf; *(ii)* check the General Information Sheet of petitioner for that particular year; *(iii)* inquire whether Ms. Ramboyong is a "clerk" or "a person having charge" of petitioner's office, with authority to receive notices from BIR on behalf of petitioner. The pertinent portion of the Transcript of Stenographic Notes (TSN)[50] taken during her cross-examination on October 20, 2022 is reproduced hereunder:

"ATTY. CARONAN: Now also in your Judicial Affidavit there was made mentioned that a certain admin staff received the Final Assessment Notice and the Assessment Notice, is that correct?

---
[46] *Id.*, p. 777.
[47] BIR Records, pp. 226 to 234.
[48] *Docket*, Vol. I., pp. 201 to 211.
[49] *Id.*, p. 208.
[50] TSN, October 20, 2022, pp. 9 to 10.

M

RO LIQUIDO: Yes Sir.

ATTY. CARONAN: Now, during the said service itself, Mam, were you aware that said admin staff named Mam Danica Rambuyong [sic] was not actually an employee of the petitioner?

RO LIQUIDO: I've seen her ID and she was sitting at the admin table and she was entertaining to the unit owner before me.

ATTY. CARONAN: Yes, Mam, but there was no explicit questions [sic] as regards her being an actual employee of the petitioner, Royal Palm?

RO LIQUIDO: There was none because it was the instruction of the accountant to let Danica received the Final Assessment Notice.

ATTY. CARONAN: Now, you are also aware that the petitioner in this case is a corporation, right?

RO LIQUIDO: Yes Sir.

ATTY. CARONAN: And there [are] only certain individuals that are authorized to receive any service upon a corporation meaning the **treasurer, the corporate secretary, the general manager, president**?

RO LIQUIDO: Yes.

ATTY. CARONAN: Now, moving forward, did you check the General Information Sheet (GIS) for that particular year before you served the Assessment Notice and the Final Assessment Notice?

RO LIQUIDO: I did not.

ATTY. CARONAN: Now, in your Judicial Affidavit, Mam, there was also no mentioned [sic] that you looked for any of the authorized individual to receive the Final Assessment Notice and the Assessment Notices meaning the president, the general manager, the corporate secretary, treasurer, and so on, is this correct?

RO LIQUIDO: Yes." (*Boldfacing* supplied)

Upon a careful evaluation of the parties' respective evidence, the Court holds that the FAN was not properly served to petitioner as the person who received the same was not authorized to do so. The service of the FAN to Ms. Ramboyong cannot be considered as valid service to petitioner.

First, there is nothing in the Service Agreement that shows that an administrative assistant/staff, such as Ms. Ramboyong, is authorized to receive the FAN on behalf of petitioner. Neither does it show that Ms. Ramboyong is the person in charge of petitioner's office in the absence of the duly-elected officers, its counsel, or the property manager.

Second, RR No. 12-99, as amended by RR No. 18-2013, is clear on the procedure when to resort to substituted service and **to whom the FAN should be given**. Aside from her bare allegations, particularly on the instructions of petitioner's alleged accountant, RO Liquido merely assumed that Ms. Ramboyong was the person in charge of petitioner's office because she was sitting at the administrative table and that she was entertaining a unit owner.

Third, RO Liquido's testimony is without probative value in terms of the service of the FAN as her testimony in her Judicial Affidavit is inconsistent with her testimony during cross-examination. In her Judicial Affidavit, she avers that Ms. Ramboyong represented to her that she can receive the notices on behalf of petitioner; while during cross-examination, RO Liquido claims that she spoke with petitioner's accountant who allegedly said that Ms. Ramboyong has the authority to receive the FAN.

Fourth, the invalid substituted service could have been avoided if RO Liquido exercised prudence instead of simply assuming that a receptionist or administrative staff has the authority to receive the FAN. If there is any doubt as to the recipient's authority to receive the FAN, RO Liquido is not precluded from resorting to the next available mode of substituted service as provided under RR No. 12-99, as amended by RR No. 18-2013 *i.e.* "If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence."

In *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue,*[51] the Supreme Court emphasized the importance of **serving the assessment notice to the taxpayer itself or its duly authorized representative**, to wit:

---

[51] G.R. No. 244202, July 10, 2023.

ʃm

> "The wisdom for such a requirement is readily apparent — unless the recipient possesses a certain degree of authority or discretion, they would be unable to grasp the gravity of the service of an assessment notice and the potential financial impact it would have to the taxpayer they purport to serve and represent. This is especially true for juridical entity taxpayers who can only act through its officers and employees, and who would otherwise be prejudiced by such recipient's simple ignorance."

Taking all the foregoing into consideration, the Court finds that respondent failed to prove by preponderance of evidence the actual receipt of petitioner of the FAN. It must be emphasized that strict compliance with due process requirement is necessary for a valid tax assessment. Failure to prove compliance therewith is fatal as petitioner's right to due process was violated thereby.

The Supreme Court, on numerous occasions, has consistently held that the proper service of assessment notices and its receipt are an important part of the assessment process as it is the taxpayer's right to be informed in writing of the law and the facts on which the assessment is made. The absence of preliminary assessment notice or the formal assessment notice renders the whole assessment process nugatory and void.[52]

In fine, the infirmity of respondent's substituted service of the FAN to petitioner renders the assessment issued against petitioner null and void, and correspondingly, the WDL issued pursuant thereto a nullity.

Prescinding from the foregoing, there is no need for the Court to belabor the other issues raised by the parties.

WHEREFORE, in light of the foregoing, the Petition for Review is hereby **GRANTED**. Accordingly, the following are hereby **CANCELLED** and **WITHDRAWN**: *(i)* Preliminary Assessment Notice No. P-LA-006713-44-2014; *(ii)* Formal Assessment Notice No. ELA36823-14-17 with Details of Discrepancies and the Assessment Notices, all dated December 13, 2017; *(iii)* Final Notice Before

---

[52] *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue, ibid.; Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 150764, August 7, 2006.

Seizure No. FNBS-2018-07-000194 dated July 4, 2018; and, *(iv)* Warrant of Distraint and/or Levy No. RR8B-09-16-00061 dated November 6, 2019, all issued by the Commissioner of Internal Revenue assessing petitioner of deficiency income tax, value-added tax, expanded withholding tax, documentary stamp tax for taxable year 2014 in the total amount of Fifteen Million Four Hundred Thirty-Three Thousand Three Hundred Forty-Eight Pesos and 45/100 (₱15,433,348.45), inclusive of interest and surcharge.

Respondent Commissioner of Internal Revenue, his authorized representatives or any other person acting on his behalf are hereby **ENJOINED** from enforcing the collection of aforesaid taxes covered by the Formal Assessment Notice No. ELA36823-14-17, the Final Notice Before Seizure No. FNBS-2018-07-000194 dated July 4, 2018, and the Warrant of Distraint and/or Levy No. RR8B-09-16-00061 dated November 6, 2019.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
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.

ROMAN G. DEL ROSARIO
Presiding Justice