REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SHIP TO SHORE MEDICAL ASSIST, INC., *Petitioner,*	**CTA Case No. 10550** Members:
-versus-	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 06 2024 1:00 p.m.

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DECISION

MANAHAN, J.:

Before the Court is a *Petition for Review* filed on June 7, 2021[1] praying that the assessment for taxable year (TY) 2016 which imposed deficiency tax liabilities in the total amount of ₱23,235,191.43 upon petitioner Ship to Shore Medical Assist, Inc. be withdrawn and cancelled.[2]

THE FACTS

Petitioner Ship to Shore Medical Assist, Inc. ("Ship to Shore") is a corporation duly organized and existing under the laws of the Republic of the Philippines.[3] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification No. 008-415-513-00000,[4] with BIR Certificate of Registration No. 9RC0001018877E dated May 31, 2017 and registered address at Unit D, 17/F Trafalgar Plaza, 105 H.V. Dela Costa St., Salcedo Village, Makati City.[5] Respondent is the duly appointed Commissioner of Internal Revenue (CIR).[6]

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[1] Docket – Vol. I, pp. 7 to 29.
[2] Prayer, *Petition for Review*, Docket – Vol. I, p. 28.
[3] *Joint Stipulation of Facts and Issues (JSFI)*, Docket – Vol. I, p. 472, par. 1.
[4] Exhibit "P-3," Docket – Vol. I, p. 142.
[5] Exhibit "P-4," Docket – Vol. I, p. 143.
[6] *JSFI*, Docket – Vol. I, p. 472, par. 2.

On September 13, 2017 Ship to Shore received a *Letter of Authority (LOA)* from the BIR Revenue District Office No. 50 of South Makati, Metro Manila, authorizing Revenue Officer (RO) Alona Marie Alegre, RO Carlos Rivero, and Group Supervisor (GS) Imelda Alcantara to examine its books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2016 to December 31, 2016.[7]

On the same date, Ship to Shore received the *Checklist of Requirements* dated August 30, 2017 in connection with said examination.[8] In compliance therewith, it submitted the requested documents in a letter dated September 22, 2017.[9]

The BIR then issued a *First Notice for Presentation of Records* on October 12, 2017,[10] followed by a *Second & Final Notice for Presentation of Records* on November 21, 2017,[11] requesting the submission of complete documents. These notices were received by Ship to Shore on October 23, 2017[12] and December 15, 2017,[13] respectively. Ship to Shore submitted the additional documents requested by the BIR on January 3, 2018.[14]

On March 15, 2018, Ship to Shore filed with the Securities and Exchange Commission (SEC) its *General Information Sheet* (*GIS*) for the year 2018, stating that its principal and business address is at Ground and Third Floors No. 222 Gil Puyat Avenue, Pio Del Pilar, Makati City ("Gil Puyat Avenue address").[15]

The BIR issued an undated *Notice of Informal Conference* with *Details of Discrepancies,* which was received by Ship to Shore on May 24, 2018.[16] Thereafter, the BIR issued the *Preliminary Assessment Notice* (*PAN*) *Part I* dated December 4,

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[7] Exhibit "P-5," Docket – Vol. I, p. 37.
[8] Exhibit "P-6," Docket – Vol. I, p. 38.
[9] Exhibit "P-7," Docket – Vol. I, p. 40.
[10] Exhibit "P-8," Docket – Vol. I, p.149; Exhibit "R-8," BIR Records, p. 4.
[11] Exhibit "P-9," Docket – Vol. I, p.150; Exhibit "R-9," BIR Records, p. 5.
[12] Exhibit "R-8-C," BIR Records, p. 4.
[13] Exhibit "R-9-B," BIR Records, p. 5.
[14] Exhibit "P-10," Docket – Vol. I, p. 151.
[15] Exhibit "P-22," Docket – Vol. I, p. 174.
[16] Exhibit "R-10-B," BIR Records, p. 566.

2019[17] and *PAN Part II* dated December 21, 2019,[18] with *Details of Discrepancy,*[19] assessing Ship to Shore of deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), and improperly accumulated earnings tax (IAET) allegedly due for TY 2016.

On January 14, 2020, the BIR issued against Ship to Shore a *Formal Letter of Demand (FLD) Part I*[20] with *Details of Discrepancies*[21] and *Assessment Notices.*[22] The BIR allegedly sent the same to Ship to Shore's registered address at Unit D, 17/F Trafalgar Plaza, 105 H.V. Dela Costa St., Salcedo Village, Makati City ("Trafalgar Plaza address") through private courier (LBC).[23] Details of the assessment are as follows:

Assessment No.	Kind of tax	Basic Tax Due	Interests	Total
IT - eLA50480-16-19-344	Income tax	P 8,349,234.81	P 3,314,074.36	P 11,663,309.17
VT - eLA50480-16-19-344	VAT	4,315,462.67	1,902,114.07	6,217,576.74
WC - eLA50480-16-19-344	WTC	107,448.77	66,176.66	173,625.43
IE - eLA50480-16-19-344	IAET	3,631,053.51	1,756,534.57	5,387,588.08
MC - eLA50480-16-19-344	Compromise penalty	50,000.00		50,000.00
				P 23,492,099.42

Subsequently, the Bank of the Philippine Islands (BPI) Alfaro Branch, through its Assistant Business Manager Marie Therese S. Carino, sent a letter dated February 15, 2021 addressed to Ship to Shore informing it of the *Notice of Garnishment* issued by the BIR.[24] The letter was sent via registered mail to the Trafalgar Plaza address but was returned to sender on April 20, 2021.[25] Ship to Shore allegedly received

[17] Exhibit "P-20," Docket – Vol. I, pp. 168 to 169; Exhibits "R-3" and "R-3-D," BIR Records, pp. 618 to 619.

[18] Exhibit "P-20," Docket – Vol. I, p. 170; Exhibits "R-3-A" and "R-3-D," BIR Records, p. 617.

[19] Exhibit "P-21," Docket – Vol. I, pp. 171 to 173.

[20] Exhibit "R-7," BIR Records, pp. 628 to 629. *See Resolution* dated May 18, 2023, Docket – Vol. II, pp. 678-679. "While Exhibit "R-7" is offered as "Formal Letter of Demand (Part I and Part II), both numbered FLD-RR8A-RDO50-eLA201500050480-TY2016-344 issued on 14 January 2020," the Formal Letter of Demand (Part II) is actually dated 14 February 2020".

[21] Exhibit "R-7-C," BIR Records, pp. 623-626.

[22] Exhibits "R-6," "R-6-A," "R-6-B," "R-6-C," and "R-6-D", BIR Records, pp. 630 to 634.

[23] Exhibit "R-7-E," BIR Records, p. 635.

[24] Exhibit "P-2," Docket – Vol. I, p. 34.

[25] Exhibit "P-33," Docket – Vol. II, p. 587.

a scanned copy[26] thereof on May 10, 2021,[27] after its attempts to transfer funds from its BPI Alfaro Branch corporate account were disapproved.[28] Another letter with the same content but dated June 7, 2021 and bearing the Gil Puyat Avenue address was purportedly sent by BPI Alfaro Branch.[29]

On June 7, 2021, Ship to Shore filed the present *Petition for Review [With Extremely Urgent Omnibus Motion to: 1. Suspend Collection of Taxes; 2. Lift Warrant of Distraint and/or Levy; & 3. Lift Warrant of Garnishment]*. The case was initially raffled to the Third Division of the Court.

The CIR filed his *Answer (Re: Petition for Review dated 07 June 2021)* on October 4, 2021,[30] and transmitted the BIR Records of the case consisting of one (1) folder with six hundred fifty-nine (659) pages on October 21, 2021.[31]

In a *Resolution* dated November 8, 2021, the Court granted Ship to Shore's *Extremely Urgent Omnibus Motion*, subject to the posting of cash or surety bond in the amount of ₱16,403,199.76.[32] The surety bond submitted to the Court on November 26, 2021 was approved in a *Resolution* dated December 17, 2021.[33]

Pre-trial of the case proceeded on November 17, 2021.[34] Ship to Shore filed its *Pre-Trial Brief* on November 15, 2021,[35] while the CIR filed his *Pre-Trial Brief* on November 16, 2021.[36]

On December 17, 2021, Ship to Shore filed with the Court a *Request for Issuance of Subpoena Duces Tecum and Ad Testificandum* to require Marie Therese S. Carino, the Assistant Business Manager of BPI Alfaro Branch, or the latter's official representative, to appear and testify before the Court and to bring the original copy of the *Notice of Garnishment* dated

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[26] Transcript of Stenographic Notes (TSN) dated June 29, 2021, p. 8.
[27] *Petition for Review*, Docket – Vol. I, p. 8.
[28] *Petition for Review*, Docket – Vol. I, p. 11.
[29] Exhibit "P-32," Docket – Vol. II, p. 586; TSN dated March 24, 2022, p. 43.
[30] Docket – Vol. I, pp. 209 to 234.
[31] *Compliance*, Docket – Vol. I, pp. 308 to 309.
[32] Docket – Vol. I, pp. 312 to 329.
[33] Docket – Vol. I, pp. 462 to 465.
[34] Docket – Vol. I, pp. 410 to 413.
[35] Docket – Vol. I, pp. 332 to 353.
[36] Docket – Vol. I, pp. 389 to 406.

February 15, 2021 [BIR RR8A-WG-2021-02-27-15 /ELA50480-16-19-344 ET AL].[37]

On the same date, the parties filed their *Joint Stipulation of Facts and Issues (JSFI)*.[38] The same was approved on January 5, 2022.[39] The Court also issued the *Subpoena Duces Tecum and Ad Testificandum*.[40]

The Pre-Trial Order was issued on March 3, 2022,[41] then trial commenced. The parties presented their respective documentary and testimonial evidence.

Ship to Shore presented the following witnesses: 1.) Christine Mae S. Entrina,[42] its Accounting Supervisor; 2.) Glennda E. Canlas,[43] its Chairman and Treasurer; 3.) Aurora S. De Jesus,[44] its Administrative Manager; and 4.) Zyra Mae Oswa,[45] Branch Manager of BPI Alfaro Branch.

Ship to Shore filed its *Formal Offer of Evidence* on April 4, 2022,[46] with *Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated 04 April 2022)* filed by the CIR on April 19, 2022.[47] The Court admitted Ship to Shore's exhibits except Exhibit "P-2" for failure to submit the duly marked exhibit.[48] Ship to Shore filed a *Motion for Partial Reconsideration [To The Resolution dated 13 June 2022]* seeking the admission of Exhibit "P-2." The Court granted the same in a *Resolution* dated July 19, 2022.[49]

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[37] Docket – Vol. I, pp. 466 to 470.
[38] Docket – Vol. I, pp. 472 to 498.
[39] *Resolution* dated January 5, 2022, Docket – Vol. II, p. 501.
[40] Docket – Vol. II, p. 499.
[41] Docket – Vol. II, pp. 527 to 537.
[42] Exhibits "P-25" and "P-25-1," Docket – Vol. I, pp. 77 to 86; Minutes of the hearing held on, and *Order*, dated June 29, 2021, Docket – Vol. I, pp. 106 to 108; Exhibits "P-31" and "P-31-a," Docket – Vol. I, pp. 355 to 356; Minutes of the hearing held on, and *Order*, dated March 24, 2022, Docket – Vol. II, pp. 544 to 546.
[43] Exhibits "P-23-suspension" and "P-23-1-suspension," Docket – Vol. I, pp. 87 to 93; Minutes of the hearing held on, and *Order*, dated June 29, 2021, Docket – Vol. I, pp. 106 to 108.
[44] Exhibits "P-24-suspension" and "P-24-1-suspension," Docket – Vol. I, pp. 94 to 99; Minutes of the hearing held on, and *Order*, dated June 29, 2021, Docket – Vol. I, pp. 106 to 108.
[45] Minutes of the hearing held on, and *Order*, dated March 24, 2022, Docket – Vol. II, pp. 544 to 546.
[46] Docket – Vol. II, pp. 547 to 562.
[47] Docket – Vol. II, pp. 589 to 598.
[48] *Resolution* dated June 13, 2022, Docket – Vol. II, pp. 602 to 603.
[49] Docket – Vol. II, pp. 620 to 621.

Meanwhile, the case was transferred to the Second Division of the Court,[50] pursuant to Court of Tax Appeals (CTA) Administrative Circular No. 01-2022 reorganizing the Second and Third Divisions of the Court.

The CIR presented as witnesses RO Alona Marie Alegre-Sison[51] and RO Carlos Rivero.[52] The Court received the CIR's *Formal Offer of Evidence* on April 3, 2023,[53] with *Comment /Objection [To Respondent's Formal Offer of Evidence]* filed by Ship to Shore on April 19, 2023.[54] The Court admitted all of the CIR's offered exhibits.[55]

The case was again transferred to the Third Division of the Court,[56] pursuant to CTA Administrative Circular No. 01-2023 reorganizing the Divisions of the Court.

The Court received both parties' memoranda on June 29, 2023[57] and June 30, 2023.[58] Thus, the case was submitted for decision on July 5, 2023.

THE ISSUES

The issues for resolution of the Court in this case, as stipulated by the parties, are the following:

I. **Whether petitioner is liable for deficiency income tax, value-added tax, withholding tax for compensation, and improperly accumulated earnings tax for TY 2016 in the aggregate amount of ₱23,442,099.42 as per Final Assessment Notice (FAN)/FLD (₱23,235,191.43 per PAN) inclusive of interest and increments, that were**

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[50] *Order* dated June 28, 2022, Docket – Vol. II, p. 604.
[51] Exhibits "R-11" and "R-11-A," Docket – Vol. I, pp. 271 to 281; Minutes of the hearing held on, and *Order*, dated November 10, 2022, Docket – Vol. II, pp. 648 to 649.
[52] Exhibits "R-12" and "R-12-A," Docket – Vol. I, pp. 282 to 301; Minutes of the hearing held on, and *Order*, dated March 2, 2023, Docket – Vol. II, pp. 650 to 651.
[53] Docket – Vol. II, pp. 652 to 665.
[54] Docket – Vol. II, pp. 668 to 674.
[55] *Resolution* dated May 18, 2023, Docket – Vol. II, pp. 678 to 679.
[56] *Notice* dated May 29, 2023, Docket – Vol. II, p. 680.
[57] *Memorandum [For the Petitioner]*, Docket – Vol. II, pp. 681 to 712.
[58] *Memorandum (For the Respondent)*, Docket – Vol. II, pp. 713 to 738.

issued by respondent pursuant to Letter of Authority AUDM 35/014200/2017 (SN: eLA2015000504 80).

II. **Whether the deficiency tax assessments, Warrant of Distraint and/or Levy (WDL), and Warrant of Garnishment (WOG) issued by respondent against petitioner for TY 2016 are void and/ or invalid.**

III. **Whether respondent's right to assess petitioner for deficiency taxes for TY 2016 has already prescribed.**

IV. **Whether this Honorable Court has jurisdiction over the instant case.**[59]

Petitioner's arguments

Petitioner argues that the assessment for TY 2016 violates its right to due process as it was not duly served with a copy of the FLD and FAN. Such being the case, the consequent WOG is void.

Petitioner also contends that the right of respondent CIR to assess has already prescribed. According to petitioner, it filed its returns for TY 2016 on April 11, 2017 for income taxes and on January 25, 2017 for VAT. Hence, the three (3)-year prescriptive period to assess said taxes was only until April 15, 2020 for income taxes and January 25, 2020 for VAT.

Respondent's counter-arguments

Respondent submits that the Court lacks jurisdiction over the present *Petition for Review* as the assessment has become final, executory, and unappealable, for failure of the petitioner to timely file a protest to the FLD and FAN.

[59] Issues, *JSFI*, Docket – Vol. I, pp. 473 to 474.

According to respondent, both the FLD and FAN were mailed to petitioner at the Trafalgar Plaza address and were received by petitioner on January 17, 2020, through "SG Carillo," as evidenced by the LBC's Official Receipt and Certification. Respondent maintains that it cannot be faulted in sending its notices to the said address as petitioner failed to notify the BIR of its change of address pursuant to Section 236 of the 1997 National Internal Revenue Code (NIRC), as amended, and Revenue Regulations (RR) No. 12-1985.

Respondent also avers that even assuming that the *Notice of Garnishment* can be considered as falling under "other matters" arising under the NIRC over which the Court exercises jurisdiction, petitioner's belated filing of the *Petition for Review* should warrant its outright dismissal. Applying Section 11 of Republic Act (RA) No. 1125,[60] as amended by RA No. 9282,[61] petitioner only had thirty (30) days from its initial receipt of the *Notice of Garnishment* on February 15, 2021, or until March 17, 2021, within which to file the *Petition for Review*. Since petitioner filed the same only on May 28, 2021 [*sic*], the Court no longer has authority to take cognizance of the case.

THE COURT'S RULING

We find for the petitioner.

I. The Court has jurisdiction over the present case.

Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, is quoted hereunder for ready reference:

> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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60 AN ACT CREATING THE COURT OF TAX APPEALS.

61 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> (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 or other laws administered by the Bureau of Internal Revenue;*[62]

Said provision grants this Court jurisdiction not only over cases involving disputed assessments and refunds of internal revenue taxes but also over "other matters" arising under the NIRC and other laws administered by the BIR. Among those which have been considered as falling under "other matters" are: the prescription of the BIR's right to collect taxes,[63] the waiver of the statute of limitations,[64] the validity of a collection letter issued by the BIR,[65] and the validity of a WDL or other remedies for tax collection.[66]

Meanwhile, Section 11 of the same law provides for the period within which an appeal to this Court may be made:

> 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.

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[62] *Emphasis supplied.*
[63] *Commissioner of Internal Revenue v. Hambretch & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010 [Per J. Leonardo de Castro, First Division].
[64] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004 [Per J. Ynares-Santiago, First Division].
[65] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].
[66] *Commissioner of Internal Revenue v. Manila Medical Services*, Inc., G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division].

Earlier jurisprudence treated the WDL as the constructive and final denial of the taxpayer's protest on the assessment, which would trigger the running of the thirty (30)-day period to elevate the case to the CTA.[67] However, the recent case of *Mannasoft Technology Corporation v. Commissioner of Internal Revenue* ("*Mannasoft*") expressly recognized that the issuance of a WDL does not necessarily preclude the CIR from still making a final decision on the disputed assessment.[68] Thus, receipt of a WDL may give rise to a different cause of action cognizable by this Court under its "other matters" jurisdiction. Consequently, any party adversely affected by it may appeal with this Court within thirty (30) days from its receipt.

In the present case, however, there are conflicting claims as to the date of receipt by petitioner of the subject *WOG*. Petitioner claims that it only received a *Notice of Garnishment* from the bank on May 10, 2021. Counting thirty (30) days therefrom, it had until June 9, 2021 to judicially appeal the garnishment; therefore, the present *Petition for Review* was timely filed on June 7, 2021. On the other hand, respondent contends that the thirty (30)-day period should be reckoned from the date of the *Notice of Garnishment*, which is February 15, 2021.

At the outset, Section 208 of the NIRC requires that the WOG be served upon the taxpayer:

> **SEC. 208. *Procedure for Distraint and Garnishment.*** - ...
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> ...
>
> Bank accounts shall be garnished by serving a warrant of garnishment *upon the taxpayer* <u>and</u> *upon the president, manager, treasurer or other responsible officer of the bank.* Upon receipt of the warrant of garnishment, the bank shall turn over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government.

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[67] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202. July 10, 2023 [Per J. Dimaampao, Third Division].
[68] G.R. No. 244202. July 10, 2023, citing *Light Rail Transit Authority* v. *Bureau of Internal Revenue*, G.R. No. 231238, June 20, 2022 [Per J. Leonen, Second Division].

However, the records of this case are bereft of evidence that the proper procedure for garnishment was observed. Moreover, aside from mere allegation that petitioner received the *Notice of Garnishment* dated February 15, 2021 on even date, respondent did not offer any evidence to support such claim.

On its part, petitioner presented the testimony of Zyra Mae Oswa, Branch Manager of BPI Alfaro Branch, to prove that it was only through the *Notice of Garnishment* that petitioner was first informed that the CIR ordered the garnishment of its bank account. During cross-examination, Oswa testified that the bank sent the *Notice of Garnishment* through registered mail to petitioner on February 23, 2021, not February 15, 2021, and that it was returned to sender on April 20, 2021 due to "company moved out."[69] In connection therewith, petitioner offered in evidence the registry return card which was admitted by the Court.[70] On redirect examination, Oswa further testified that the bank sent the *Notice of Garnishment* again through registered mail to petitioner on June 7, 2021, after the latter submitted a request form for change of address on May 17, 2021. Petitioner offered in evidence the *Notice of Garnishment* dated June 7, 2021 which was likewise admitted by the Court.[71]

Notably, the foregoing evidence still do not directly establish the actual date of receipt by petitioner of the *Notice of Garnishment*. All it establishes is that petitioner *did not receive* the *Notice of Garnishment* dated February 15, 2021. Nonetheless, with respect to the *Notice of Garnishment* dated June 7, 2021, petitioner was able to establish the fact of its mailing by preponderance of evidence. Rule 131, Section 3 of the Rules of Court is applicable:

> **Section 3. *Disputable presumptions*.** — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
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> ...

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[69] TSN dated March 24, 2022, p. 41.
[70] Exhibit "P-33," Docket – Vol. I – p. 587.
[71] Exhibit "P-32," Docket – Vol. I – p. 586.

(v) That a letter duly directed and mailed was received in the regular course of the mail;

The estimated turnaround time for registered mail to be delivered is seven (7) working days.[72] Even assuming that petitioner received the second *Notice of Garnishment* on the earliest possible date, *i.e.* the same day it was mailed, petitioner would have had thirty (30) days from June 7, 2021, or until July 7, 2021, within which to file its judicial appeal. As the present *Petition for Review* was filed on June 7, 2021, the Court properly acquired jurisdiction to entertain the case.

II. The assessment notices are void for failure to comply with due process requirements.

Section 228 of the NIRC categorically requires that when the CIR or his or her duly authorized representative finds that proper taxes should be assessed, he or she shall first *notify the taxpayer* of such findings. This requirement is part and parcel of due process, since an assessment contains not only a computation of tax liabilities but also a demand for payment within a prescribed period—signaling the time when the interests and penalties begin to accrue against the taxpayer and enabling the latter to determine appropriate remedies.[73] Thus, due process demands that the assessment notice be served on and received by the taxpayer.[74]

Respondent CIR maintains in this case that it served the *Assessment Notices* and FLD by private courier. However, petitioner denies receipt of the same.

Pertinently, RR No. 18-2013[75] outline the modes of service of the PAN, FLD/FAN, and Final Decision on Disputed Assessment (FDDA):

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[72] Philippine Postal Corporation, *Post Office Delivery Lead Time.* https://phlpost.gov.ph/postal-office-delivery-lead-time. Accessed on April 4, 2023.

[73] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].

[74] *Commissioner of Internal Revenue v. Dominador Menguito,* G.R. No. 167560, September 17, 2008 [Per J. Austria-Martinez, Third Division].

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

> **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:
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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.
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> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
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> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
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> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.
>
> If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.
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> x x x
>
> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no

> registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.
>
> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer.

RR No. 18-2013 introduced substantial amendments to the due process requirements in the service of a deficiency tax assessment under RR No. 12-99. Whereas the latter simply directed that the assessment notice "shall be sent to the taxpayer *only by registered mail or by personal delivery*,"[76] RR No. 18-2013 contains more details on the different modes of service, which now include substituted service, service by mail through a reputable professional courier service, and service by ordinary mail if a reputable professional courier service is unavailable in the locality of the addressee.

It may be observed that RR No. 18-2013 also removed the express provision requiring that the "designation and authority to act for and in behalf of the taxpayer" be indicated if receipt of the assessment notice is made by a person other than the

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[76] RR No. 12-99, Sec. 3.1.4. *Emphasis supplied.*

taxpayer itself. Nonetheless, the importance of establishing the designation and authority of the recipient, as highlighted in the *Mannasoft* case,[77] remains true and applicable:

> 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.

In relation therewith, Revenue Memorandum Order (RMO) No. 40-2019 requires the Chief of the Assessment Division or the Head of the Reviewing Office of the BIR to "maintain a record of all assessment notices that were issued with the following details: ... 12.6 Mode of Service; ... 12.8 Name of Taxpayer/Person who received the assessment notice; 12.9 *Position/designation/relationship to the taxpayer, if not personally served to the taxpayer named in the assessment notice.*"

In this case, although the records establish that the assessment notices were mailed via LBC and that they were received by a certain "SG Carillo," no evidence was adduced by respondent to prove that SG Carillo was authorized to receive assessment notices on behalf of petitioner. Respondent's mere presentation of the official receipt issued by LBC with the notation "Released to authorized rep. SG Carillo 1/17/20" does not suffice to show that he satisfied the due process mandate under Section 228 of the NIRC that he shall notify *the taxpayer* of his findings.

While it is true that under RR No. 18-2013, the official receipt issued by the professional courier company containing identifiable details of the transaction constitute sufficient proof of mailing, this remains a disputable presumption subject to controversion. A direct denial of receipt shifts the burden upon

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[77] G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

the party favored by the presumption to prove that the mailed matter was indeed received by the addressee.[78]

Respondent therefore should have authenticated the notation appearing on the official receipt. However, not only did he fail to do so; as a matter of fact, he expressly admitted that the recipient is not an authorized representative of petitioner. The cross-examination of respondent's witness, RO Carlos Rivero, evinces as follows:

> Q: So it is clear from the foregoing that the LOA the checklist the first, second and final notice the NIC, the PAN were personally delivered and served to the authorized representative of petitioner, is that correct?
>
> A: Yes.
>
> Q: But the Final Assessment Notice (FAN) was served only through courier, is that correct?
>
> A: As per records of the office, yes.
>
> Q: And you sent the FAN through LBC and not personal service because you know for a fact that petitioner has already transferred its office address from Trafalgar to Maria Cornelia Building, is that correct?
>
> A: No, I am not aware that they have already transferred.
>
> Q: So when did you serve the FAN through courier if you recall, Mr. Witness.
>
> A: I cannot remember when the office sent the FAN **because I only based it on the records**.
>
> Q: And who received the FAN, Mr. Witness?
>
> A: I am not aware because I was not the one who served. It was served by the office.
>
> Q: But as per your records, it was received by one SG Carillo, do you confirm that?

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[78] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018 [Per J. Peralta, Second Division].

> A: Yes.
>
> Q: And SG means what, Mr. Witness?
>
> A: Security guard.
>
> Q: So do you mean that the FAN was served to the security guard who is not an authorized representative of petitioner, is that correct?
>
> A: Well, as per records, **it was received by the security guard**.
>
> Q: Is the security guard an authorized representative of petitioner?
>
> A: Well, no, but can I explain?
>
> Q: Just a yes or no.
>
> A: **No, they are not the authorized representative**.
>
> Q: And yet it did not bother you that the who [*sic*] received the FAN is a mere security guard who was not even the representative of petitioner you are dealing with for this LOA?
>
> A: Sir, I was not the one who served.[79]

This defect in due process cannot be cured by petitioner's alleged failure to notify the BIR of its change of address, pursuant to Section 236 of the NIRC and Section 11 of RR No. 12-85.[80] Said provisions respectively state:

> **SEC. 236. *Registration Requirements.***
>
> ...
>
> **(D) *Transfer of Registration.*** - In case a registered person decides to transfer the place of business or head office or branches, it shall be the person's duty to update the registration status by merely filing, either electronically or manually, an application for registration information update in the form prescribed

[79] TSN dated March 2, 2023, pp. 12-14. *Emphasis supplied.*
[80] Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue.

> therefor: Provided, however, That if the transferring registered person is subject of an audit investigation, the Revenue District Office which initiated the audit investigation shall continue the same.
>
> ...
>
> **Sec. 11.** *Change of Address.* — In case of change of address, the taxpayer must give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and *in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appear in is tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.*

In the first place, the rules presuppose that the subject communication was *validly* served at the taxpayer's former address. In order that such communication be "considered valid and binding for purposes of the period within which to reply," it is not enough that the taxpayer was simply amiss in its duty to give written notice of change of address. Non-compliance with an administrative matter cannot validate a void assessment. More importantly, in balancing the scales between the State's power to tax and a citizen's right to due process, the scales must tilt in favor of the latter, for the citizen's right is amply protected by the Bill of Rights under our Constitution.[81]

An assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the NIRC and relevant regulations is void and produces no effect. As respondent failed to properly serve the FAN/FLD, it necessarily follows that the assessments are void. Consequently, the resulting WOG is likewise void and without effect.

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[81] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].

ACCORDINGLY, the present *Petition for Review* is **GRANTED**. The FLD/FAN dated January 14, 2020 assessing petitioner of deficiency income tax, VAT, WTC, IAET, and compromise penalty, all for TY 2016, in the aggregate amount of ₱23,492,099.42 is **CANCELLED** and **SET ASIDE**. The CIR, his representatives or agents, or any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject assessments.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Presiding 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.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's *Attestation*, it is hereby certified that the conclusions in the above *Decision* were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

am