REPUBLIC OF THE PHILIPPINES
COURT OF TEAX APPEALS
QUEZON CITY

SECOND DIVISION

DRUGMAKER'S BIOTECH RESEARCH LABORATORIES, INC. (as the named taxpayer, merged with and absorbed by Drugmakers Laboratories, Inc.) Petitioner,	**CTA CASE NO. 9635** Members: **CASTAÑEDA, JR.**, *Chairperson* **BACORRO-VILLENA**, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE Respondent.	Promulgated: OCT 15 2021 10:50 a.m.

x- x

DECISION

CASTAÑEDA, JR., J:

The *Petition for Review* filed on July 28, 2017 prays that the issuances made by respondent Commissioner of Internal Revenue, assessing petitioner of its alleged deficiency income tax and value added tax (VAT) in the total amount of ₱26,712,499.01 be annulled, cancelled and declared void.[1]

THE PARTIES

Petitioner Drugmaker's Biotech Research Laboratories, Inc. is a domestic corporation organized under Philippine laws, with business address at E&E Industrial Complex, Narra Road, Brgy. San Antonio, *jc*

[1] Summary of the Case, Pre-Trial Order dated August 14, 2018, Docket – Vol. III, p. 791.

San Pedro, Laguna.[2] Drugmakers Biotech Research Laboratories, Inc. and Biotech Research Laboratories, Inc. was merged with and into petitioner, with the latter as the surviving corporation, pursuant to the *Plan of Merger* dated June 1, 2005.[3] The said *Plan of Merger* was duly approved by the Securities and Exchange Commission (SEC) on March 29, 2007.[4]

Respondent is the duly appointed Commissioner of Internal Revenue vested under appropriate laws with the authority to carry out functions, duties, and responsibilities of his Office, including *inter alia*, the authority to collect all national internal revenue taxes. He also has the power to decide disputed assessments, refunds on internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code. He may be served summons, pleadings and other processes at his office at the Bureau of Internal Revenue (BIR) National Office, Agham Road, Diliman, Quezon City.[5]

THE FACTS

On January 4, 2012, respondent issued the *Letter Notice* (LN) No. 057-RLF-07-00-00047,[6] informing petitioner that a computerized matching conducted by the BIR on information/data provided by third party sources against petitioner's declarations per VAT returns disclosed discrepancies for the calendar year ended 2008.

Thereafter, the BIR, through its LN Task Force Head, Elenita B. Quimosing, issued to petitioner a *Notice for Informal Conference* (NIC) dated May 10, 2012.[7]

Respondent, through Deputy Commissioner Nelson M. Aspe, then issued the *Preliminary Assessment Notice* (PAN) dated February 19, 2013, with attached *Details of Discrepancies*,[8] informing petitioner that there has been found from the latter deficiency income tax, VAT, and compromise penalty, for calendar year 2008.

[2] Exhibit "P-2", Docket – Vol. I, pp. 260 to 272.
[3] Exhibits "P-3" and "P-4", Docket – Vol. I, pp. 273 to 338.
[4] Exhibits "P-5" and "P-5-a", Docket – Vol. I, pp. 339 to 343.
[5] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts* (JSF), Docket – Vol. III, p. 768.
[6] Exhibit "R-12", BIR Records, p. 5.
[7] Exhibit "R-4", BIR Records, p. 11.
[8] Exhibit "R-5", BIR Records, pp. 12 to 14.

On June 28, 2017, a *Warrant of Distraint and/or Levy* (WDL) addressed to the Head of the Arrears Management Section of the Collection Division of respondent's Revenue Region No. 9 in San Pablo City, Laguna, was served on petitioner.[9]

On July 28, 2017, petitioner filed the instant *Petition for Review with Motion to Quash the Warrant of Distraint and/or Levy.*[10]

Thereafter, petitioner filed on August 4, 2017, an *Urgent Omnibus Motion To: A. Hold in Abeyance the Execution of the Warrant of Distraint and/or Levy dated June 27, 2017 and Suspend Collection of Taxes; and B. Set Hearing Dates for Petitioner's Witnesses on the Motion to Quash Warrant of Distraint and/or Levy dated July 27, 2017.*[11] Respondent then filed on August 25, 2017, an *Opposition (Re: Motion to Quash the Warrant of Distraint and/or Levy).*[12]

In the meantime, on August 23, 2017, the hearing on petitioner's *Motion to Quash the Warrant of Distraint and/or Levy* was held,[13] wherein petitioner presented documentary and testimonial evidence. For its testimonial evidence, petitioner presented Ms. Dayrelle S. Servidad,[14] its Accounting Division Head.

Respondent filed his *Answer* on August 31, 2017,[15] interposing certain defenses, to wit: (1) petitioner was duly informed of the law and facts on which respondent based his assessment and subsequently issued a WDL; (2) he can issue a valid assessment for petitioner's unpaid income tax and VAT for taxable year 2008; (3) respondent's assessment for deficiency income tax and VAT both for the year 2008 has not prescribed; (4) the Court has no jurisdiction over the instant Petition since the assessment has already become final, executory and demandable; (5) all presumption are in favor of the correctness of tax assessments, and the good faith of tax assessors and the validity of their acts are presumed; and (6) failure to present proof of error in the assessment will justify judicial affirmation of said assessment. *gr*

---

[9] Par. 2, Stipulation of Facts, JSF, Docket – Vol. III, p. 769; Exhibit "P-13", Docket – Vol. I, p. 368.
[10] Docket – Vol. I, pp. 10 to 29.
[11] Docket – Vol. I, pp. 85 to 91.
[12] Docket – Vol. 1, pp. 206 to 215.
[13] Minutes of the hearing held on, and Order dated, August 23, 2017, Docket – Vol. I, pp. 203 to 205.
[14] Exhibit "P-14", Docket – Vol. 1, pp. 104 to 121.
[15] Docket – Vol. I, pp. 224 to 240.

On September 4, 2017, respondent transmitted the *BIR Records* for the instant case.[16]

Petitioner filed its *Formal Offer of Evidence* on September 4, 2017.[17] Subsequently, on September 14, 2017, petitioner filed another *Formal Offer of Evidence*.[18] Respondent then filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on September 18, 2017.[19]

Petitioner then posted its *Reply* on September 25, 2017.[20]

In the Resolution dated January 9, 2018,[21] the Court held that that petitioner's second FOE superseded the one received by the Court; admitted petitioner's exhibits in support of its *Motion to Quash the Warrant of Distraint and/or Levy*; and submitted the said *Motion to Quash* for resolution.

Thereafter, in the Resolution dated May 25, 2018,[22] the Court: (1) denied petitioner's *Motion to Quash the Warrant of Distraint and/or Levy*; (2) granted the *Urgent Omnibus Motion to: A. Hold in Abeyance the Execution of the Warrant of Distraint and/or Levy dated June 27, 2017 and Suspend Collection of Taxes*; and (3) suspended the collection of taxes, subject to the depositing of a cash bond or posting of a surety bond in the amount of ₱26,687,499.01, within ten (10) days from receipt of the said Resolution.

The Pre-trial Conference of this case was set and held on June 21, 2018.[23]

On June 7, 2018, the *Respondent's Pre-trial Brief* was filed;[24] while petitioner posted its *Pre-trial Brief* on June 14, 2018.[25]

Petitioner failed to comply with the Resolution dated May 25, 2018 (re: Deposit Cash Bond or Post a Surety Bond) in the instant

---

[16] *Compliance* dated August 31, 2017, Docket – Vol. I, pp. 242 to 243.
[17] Docket – Vol. I, pp. 246 to 254.
[18] Docket – Vol. II, pp. 391 to 400.
[19] Docket – Vol. II, pp. 535 to 536.
[20] Docket – Vol. II, pp. 562 to 577.
[21] Docket – Vol. II, pp. 582 to 584.
[22] Docket – Vol. II, pp. 586 to 592.
[23] *Notice of Pre-Trial Conference* dated May 28, 2018, Docket – Vol. II, pp. 593 to 594; Minutes of the hearing held on, and Order dated June 21, 2018, Docket – Vol. III, pp. 753 to 754.
[24] Docket – Vol. II, pp. 595 to 598.
[25] Docket – Vol. II, pp. 600 to 613.

case.[26] On July 11, 2018, petitioner filed a *Motion for Extension of Time to Post Surety Bond*.[27]

Subsequently, the parties filed their *Joint Motion to Admit Joint Stipulation of Facts* on July 12, 2018.[28] On even date, petitioner filed a *Manifestation on Proposed Issues in accordance with the Joint Motion dated July 12, 2018*,[29] while respondent also submitted his *Manifestation*.[30] In the Resolution dated July 30, 2018,[31] the Court (1) granted petitioner's *Motion for Extension of Time to Post Surety Bond* and gave petitioner a period of twenty days from July 11, 2018 or until July 31, 2018 within which to post the required bond; (2) granted, in the interest of justice, the parties' *Joint Motion to Admit Joint Stipulation of Facts* and admitted the *Joint Stipulation of Facts*[32]; and (3) noted petitioner's *Manifestation on Proposed Issued in accordance with the Joint Motion dated July 12, 2018* and respondent's *Manifestation*.

On July 31, 2018, petitioner filed again a *Motion for Extension of Time to Post Surety Bond*.[33] In the Resolution dated August 10, 2018,[34] the Court granted the said *Motion for Extension* and gave petitioner a period of twenty (20) days form July 31, 2018 or until August 20, 2018, within which to post the required surety bond.

Subsequently, this Court issued the Pre-Trial Order dated August 14, 2018,[35] deeming the termination of the pre-trial.

On August 20, 2018, petitioner filed anew *Motion for Extension of Time to Post Surety Bond*.[36] On even date, petitioner filed a *Manifestation (adopting Formal Offer of Evidence dated September 14, 2017)*.[37] Thereafter, on August 22, 2018, respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)*.[38] *ge*

---

[26] Records Verification dated June 21, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 749.
[27] Docket – Vol. III, pp. 761 to 764.
[28] Docket – Vol. III, pp. 765 to 767.
[29] Docket – Vol. III, pp. 774 to 776.
[30] Docket – Vol. III, pp. 777 to 779.
[31] Docket – Vol. III, pp. 781 to 783.
[32] Docket – Vol. III, pp. 768 to 773.
[33] Docket – Vol. III, pp. 785 to 788.
[34] Docket – Vol. III, pp. 789 to 790.
[35] Docket – Vol. II, pp. 791 to 795.
[36] Docket – Vol. III, pp. 797 to 800.
[37] Docket – Vol. III, pp. 801 to 803.
[38] Docket – Vol. III, pp. 946 to 948.

In the Resolution dated September 3, 2018,[39] the Court admitted petitioner's Exhibits for the resolution of the main merits of the case, and granted petitioner's *Motion for Extension of Time to Post Surety Bond*, giving petitioner a period of twenty (20) days form August 20, 2018 or until September 9, 2018 within which to post the required bond.

However, petitioner filed, again, *Motions for Extension of Time to Post Surety Bond* on September 7, 2018,[40] and September 28, 2018.[41] In the Resolution dated October 4, 2018,[42] the Court granted the *Motion for Extension* filed on September 7, 2018, and granted petitioner an additional twenty (20) days or until September 29, 2018 to post the required bond. Thereafter, in the Resolution dated October 18, 2018,[43] the Court, in the broader interest of substantial justice, granted petitioner's sixth *Motion for Extension of Time to Post Surety Bond*, filed on September 28, 2018, with final warning to petitioner that no further extension will be granted, and gave petitioner a final and non-extendible period of thirty (30) days from September 29, 2018 or until October 29, 2018, within which to post the required surety bond; otherwise, the Resolution dated May 25, 2018 will be lifted and set aside.

On October 29, 2018, petitioner filed a *Manifestation and Motion*,[44] praying that the requirement of the Court in its Order/Resolution dated May 25, 2018, to deposit a cash bond or to post a surety bond, be dispensed with. Petitioner then filed on November 5, 2018, a *Supplemental Motion (Re: Manifestation and Motion dated October 29, 2018)*,[45] wherein it prayed that (1) the requirement of the Court in its Order/Resolution dated May 25, 2018, to deposit a cash bond or to post a surety bond, be dispensed with; and (2) the Warrant of Distraint and/or Levy issued against petitioner on June 28, 2017 be lifted, pending the final disposition of this case. On November 26, 2018, respondent filed his *Opposition (Re: Manifestation and Motion)*.[46] Subsequently, petitioner submitted on December 18, 2018 its *Reply (Re: Respondents Opposition dated November 26, 2018)*.[47] Respondent failed to file his comment on

---

[39] Docket – Vol. III, pp. 951 to 953.
[40] Docket – Vol. III, pp. 954 to 957.
[41] Docket – Vol. III, pp. 958 to 961.
[42] Docket – Vol. III, pp. 963 to 965.
[43] Docket – Vol. III, p. 971.
[44] Docket – Vol. III, pp. 972 to 975.
[45] Docket – Vol. III, pp. 980 to 985.
[46] Docket – Vol. III, pp. 991 to 996.
[47] Docket – Vol. III, pp. 1028 to 1034.

petitioner's *Supplemental Motion (Re: Manifestation and Motion dated October 29, 2018).*[48]

In the Resolution dated January 25, 2019,[49] the Court: (1) noted petitioner's *Manifestation and Reply*; (2) held in abeyance the resolution of petitioner's *Motion* and *Supplemental Motion (Re: Manifestation and Motion dated October 29, 2018)*; and (3) cancelled and reset until further orders the initial presentation of respondent's evidence previously set on January 28, 2019.

During the hearing on petitioner's motion to dispense with the bond requirement, petitioner presented again Ms. Servidad,[50] and Ms. Nica Marsha V. Gasapo,[51] petitioner's counsel. There being no other witness to be presented in the preliminary hearing on the motion to dispense with the bond requirement, and as prayed for, petitioner was allowed to make an oral formal offer of evidence of the testimonies of Ms. Servidad and Ms. Gasapo. Considering that no objection was interposed by respondent, the testimonies of petitioner's witnesses were admitted as part of the evidence of petitioner.[52] Upon manifestation of respondent's counsel that he has no witnesses to be presented in the hearing on the motion, and after considering the evidence presented by petitioner, the Court granted the motion for suspension of collection of taxes.[53]

Respondent also presented his documentary and testimonial evidence. For his testimonial evidence, respondent offered the testimony of his lone witness, Ms. Dely Cayetano,[54] a Revenue Officer (RO) IV of the BIR.

On June 14, 2019, respondent filed his *Formal Offer of Evidence*.[55] Petitioner then filed its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence)*.[56] In the Resolution dated July 17, 2019,[57] the Court admitted respondent's Exhibits, except for *pc*

---

[48] Records Verification dated January 7, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1042.
[49] Docket – Vol. III, pp. 1046 to 1049.
[50] Exhibit "P-15", Docket – Vol. III, pp. 1054 to 1067; Minutes of the hearing held on, and Order dated, February 20, 2019, Docket – Vol. III, pp. 1074 to 1077.
[51] Exhibit "P-16", Docket – Vol. III, pp. 1068 to 1073; Minutes of the hearing held on, and Order dated, February 20, 2019, Docket – Vol. III, pp. 1074 to 1077.
[52] Minutes of the hearing held on, and Order dated, February 20, 2019, Docket – Vol. III, pp. 1074 to 1077.
[53] *Id.*
[54] Exhibit "R-10", Docket – Vol. III, pp. 1002 to 1006; Minutes of the hearing held on, and Order dated, April 10, 2019, Docket – Vol. III, pp. 1078 to 1079; Exhibit "R-11", Docket – Vol. III, pp. 1087 to 1091; Minutes of the hearing held on, and Order dated, June 10, 2019, Docket – Vol. III, pp. 1099 to 1100.
[55] Docket – Vol. III, pp. 1101 to 1107.
[56] Docket – Vol. III, pp. 1112 to 1121.
[57] Docket – Vol. III, pp. 1123 to 1124.

Exhibits "R-1", "R-2", "R-3", and "R-13", for failure to present originals for comparison.

Consequently, respondent filed an *Omnibus Motion (a) Motion for Partial Reconsideration; and (b) Motion to Set Commissioner's Hearing,*[58] praying that the Court: (1) reconsider its Resolution dated July 17, 2019; and (2) set a commissioner's hearing preferably on September 16, 2019 for the comparison of Exhibits "R-1", "R-2", "R-3", and "R-13" with the original copies. On September 2, 2019, petitioner filed its *Comment/Opposition (Re: Omnibus Motion dated August 6, 2019).*[59]

In the Resolution dated September 19, 2019,[60] the Court granted respondent's *Omnibus Motion*, particularly the *Motion to Set Commissioner's Hearing,* and thus, setting the Commissioner's Hearing on October 2, 2019, for the comparison of respondent's Exhibits "R-1", "R-2", "R-3", and "R-13" with the original copies, and held in abeyance the resolution of respondent's *Motion for Partial Reconsideration.*

Subsequently, respondent filed his *Supplemental Formal Offer of Evidence* on October 7, 2019.[61] Thereafter, on October 9, 2019, respondent submitted a *Tender of Excluded Evidence,*[62] wherein it prayed that Exhibits "R-3" and "R-13" be attached to and made part of the records of the instant case.

In the Resolution dated October 30, 2019,[63] the Court (1) partially granted respondent's *Motion for Partial Reconsideration,* admitting Exhibits "R-1" and "R-2", while still excluding Exhibits "R-3" and "R-13", for failure to present the originals for comparison; (2) rendered moot respondent's *Supplemental Offer of Evidence,* considering that Exhibits "R-1" and "R-2" have already been admitted into evidence by the Court; and (3) noted respondent's *Tender of Excluded Evidence,* letting Exhibits "R-3" and "R-13" form part of the records of the instant case, in accordance with Section 40, Rule 132 of the Rules of Court.

On December 11, 2019, respondent filed his *Memorandum.*[64]

---

[58] Docket – Vol. III, pp. 1126 to 1129.
[59] Docket – Vol. III, pp. 1154 to 1157.
[60] Docket – Vol. III, pp. 1183 to 1184.
[61] Docket – Vol. III, pp. 1187 to 1189.
[62] Docket – Vol. III, pp. 1197 to 1199.
[63] Docket – Vol. IV, pp. 1202 to 1204.
[64] Docket – Vol. IV, pp. 1205 to 1222.

Thereafter, petitioner recalled Ms. Servidad, to testify on rebuttal.[65] There being no other witness to be presented on rebuttal evidence, and upon motion, petitioner was allowed to make an oral *Formal Offer of Evidence* of the *Judicial Affidavit* and *Supplemental Judicial Affidavit* executed by Ms. Servided on August 28, 2019[66] and June 4, 2020,[67] respectively. Respondent's counsel interposed no objection to the admission of said exhibits. Accordingly, petitioner's evidence on rebuttal was admitted. Considering that respondent will not present any evidence on surrebuttal, the Court granted the parties a period of thirty (30) days from notice within which to file their respective Memoranda.[68]

On August 19, 2020, petitioner filed its *Memorandum*.[69]

The Court deemed the case submitted for decision on October 27, 2020.[70]

THE ISSUES

The parties did not stipulate on any issue. However, the following are the issues they proposed in their respective *Manifestation*, to wit:

<u>For petitioner:</u>

"A. Whether or not Petitioner can be made liable for deficiency internal revenue taxes due to its cessation of operations and loss of corporate existence.

B. Whether or not the assessment for deficiency income tax and value-added tax for taxable year 2008 is null and void for lack of letter of authority required under the National Internal Revenue Code (Tax Code) to empower Respondent's representatives to examine financial records and make assessments. *gr*

[65] Minutes of the hearing held on, and Order dated, June 22, 2020, Docket – Vol. IV, pp. 1259 to 1260.
[66] Exhibit "P-15", Docket – Vol. III, pp. 1142 to 1147.
[67] Exhibit "P-16", Docket – Vol. IV, pp. 1255 to 1257.
[68] Minutes of the hearing held on, and Order dated, June 22, 2020, Docket – Vol. IV, pp. 1259 to 1260.
[69] Docket – Vol. IV, pp. 1273 to 1313.
[70] Resolution dated October 27, 2020, Docket – Vol. IV, p. 1318.

C. Whether or not the assessment for deficiency income tax and value-added tax for taxable year 2008 is null and void for Respondent's failure to comply with the notice requirements under the National Internal Revenue Code, applicable jurisprudence and Revenue Regulations No. 12-99, in violation of Petitioner's right to due process.

D. Whether or not the period to assess for deficiency income tax and value-added tax for taxable year 2008 has already prescribed; and

E. Whether or not Respondent has factual and legal bases for the alleged tax deficiency assessments."[71]

For respondent:

1. Whether or not the Honorable Court has jurisdiction to act on the instant petition for review.

2. Whether or not the assessment for deficiency Income Tax and VAT was issued in accordance with law, rules and jurisprudence.

3. Whether or not petitioner was informed of the law and the facts upon which respondent based his assessment.

4. Whether or not petitioner complied with the requirements for Registration Information Update (BIR Form 1905).

5. Whether or not petitioner is liable for deficiency Income Tax and Value-Added Tax assessment in the aggregate amount of P26,712,499.01 for calendar year 2007."[72]

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the instant case; that there can be no valid assessment for deficiency income tax and VAT because petitioner's corporate existence had already been

[71] Petitioner's *Manifestation on Proposed Issues in accordance with the Joint Motion dated July 12, 2018*, Docket – Vol. III, pp. 774 to 776.
[72] Respondent's *Manifestation*, Docket – Vol. III, pp. 777 to 779.

extinguished; that the WDL and the assessment for deficiency income tax and VAT for taxable year 2008, upon which the WDL is based on, are null and void for lack of LOA, in violation of petitioner's right to due process; that the same WDL and assessment for deficiency income tax and VAT for taxable year 2008 are null and void for respondent's failure to comply with the procedural requirements under Revenue Regulations (RR) No. 12-99, in violation of petitioner's right to due process; that respondent's authority to assess petitioner for deficiency income tax and VAT for taxable year 2008 has already prescribed; and that respondent does not have factual or legal bases for the alleged deficiency income tax and VAT.

Respondent's counter-arguments:

Respondent contends that the Court has no jurisdiction over the instant *Petition for Review*; that petitioner is liable for deficiency tax and VAT for taxable year 2008; that respondent's assessment for deficiency income tax and VAT for taxable year 2008 has not prescribed; and that tax assessments by tax examiners are presumed correct and made in good faith.

THE COURT'S RULING

The instant *Petition for Review* has merit.

This Court has jurisdiction over the instant case.

For an orderly resolution of the foregoing issues, the Court shall first determine whether it has jurisdiction to entertain the instant *Petition for Review*.

We rule in the affirmative.

Section 7(a)(1) of RA No. 1125,[73] as amended by Republic Act No. 9282,[74] provides: *gc*

[73] AN ACT CREATING THE COURT OF TAX APPEALS.
[74] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

"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;**" (*Emphasis added*)

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*[75] the Supreme Court held that this Court has jurisdiction to review, on appeal, "other matters" arising under the NIRC or other laws administered by the BIR which include the determination of whether the WDL issued by the BIR is valid, to wit:

"The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on 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 Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.

This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David,*[76] **we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue.** Also, in *Commissioner of Internal Revenue v. Court of Appeals,*[77] the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." (*Emphasis Supplied*) *gr*

[75] G.R. No. 162852, December 16, 2004.
[76] 111 Phil. 197 (1961).
[77] G.R. No. 115712, February 25, 1999.

Based on the foregoing jurisprudential pronouncements, this Court has the authority or jurisdiction to act on a petition to invalidate or annul the distraint orders of the respondent. Correspondingly, this Court may look into the validity of the subject WDL issued by respondent, and in case it finds the same as invalid, it may annul the same.

The subject tax assessments and WDL are void, since the RO who conducted the investigation of petitioner was not duly authorized to do so.

Section 6(A) of the National Internal Revenue Code (NIRC) of 1997 reads:

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

Based on the foregoing, an authority emanating from respondent or his duly authorized representative is required before an examination and an assessment may be made against a taxpayer.

Relative thereto, Sections 10 and 13 of the NIRC of 1997 provides that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised **pursuant to an LOA**, to wit:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary

> of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:
>
> xxx xxx xxx.
>
> (c) **Issue <u>Letters of Authority</u> for the examination of taxpayer within the region**;
>
> xxx xxx xxx." *(Emphasis and underscoring added)*
>
> "SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring added)*

Thus, a grant of authority, through an LOA issued by the Revenue Regional Director, must be made assigning an RO, to perform tax assessment functions, in order that the latter may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

Moreover, in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* ("*Medicard* case"),[78] the Supreme Court emphasized the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. **It empowers or enables said revenue officer to examine the books of account and other**

[78] G.R. No. 222743, April 5, 2017.

accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) **Examination of Return and Determination of Tax Due.** – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x (Emphasis and underlining Ours)

Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, an examination of the taxpayer cannot ordinarily be undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[79] the Court said that: ℛ

[79] 649 Phil. 519 (2010).

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underlining ours)

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. xxx.

xxx xxx xxx

Contrary to the ruling of the CTA en banc, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination**.

xxx xxx xxx

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void</u>**." *(Emphases and underscoring added)*

It is explicit from the foregoing that all audit investigations must be conducted by a duly designated RO, authorized to perform audit and examination of taxpayer's books and accounting records, **pursuant to an LOA.**

In this case, respondent formally offered in evidence LN No. 057-RLF-07-00-00047 dated January 4, 2012[80] to prove, among others, that petitioner was accorded due process and given the opportunity to explain the discrepancy noted. Granting for the sake of argument, that petitioner had indeed received respondent's LN dated January 4, 2012, he still cannot seek refuge under an LN to justify the examination of petitioner's record. As held in the *Medicard* case:

> "The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. **Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, <u>the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner</u>. Unfortunately, this was not done in this case.**" (*Emphasis and underscoring added*)

Just as in the *Medicard* case, there is no showing that the subject LN was converted into an LOA. Correspondingly, the proceedings that led to the issuance of deficiency income tax and VAT assessments against petitioner had no prior approval and authorization from respondent or his duly authorized representatives. Not having authority to examine petitioner in the first place, the subsequent assessments issued by respondent are inescapably void. *Apropos*, a void assessment bears no valid fruit,[81] and thus, must

[80] Exhibit "R-12", BIR Records, p. 5.
[81] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

not be given any effect, including all the subsequent proceedings in pursuance thereof, such as the issuance of a WDL.

Nevertheless, even granting that the absence of an LOA is not fatal, the Court finds that there are still other grounds that render the subject assessments and WDL invalid.

Respondent's failure to prove that the assessment notices were received by petitioner renders the subject assessments void for violation of petitioner's right to due process. Consequently, the WDL is likewise void.

Petitioner contends that it was not properly informed of the facts and law upon which the deficiency tax assessments were based considering that it received no NIC, PAN, *Formal Assessment Notice* (FAN), and/or *Final Decision on Disputed Assessment* (FDDA). Thus, according to petitioner, due process was clearly violated, and respondent's assessment is invalid.

On the other hand, respondent claims that it was informed in writing of the law and the facts on which the assessment was made; and that both the PAN and the FAN stated clearly the same information.

We agree with petitioner.

Section 228 of the NIRC of 1997 reads:

> "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:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayer 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.

xxx xxx xxx." *(Emphases added)*

Based on the foregoing provision, as a rule, when respondent or his duly authorized representative finds that proper taxes should be assessed, the concerned taxpayer must first be notified of the BIR's findings, through a preassessment notice or a PAN. Furthermore, the said taxpayer is required to be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Implementing the above-quoted Section 228, Section 3 of RR No. 12-99[82] provides, in part, as follows:

[82] 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

"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

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

3.1.3 ***Exceptions to Prior Notice of the Assessment.*** — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

3.1.4 *Formal Letter of Demand and Final Assessment Notice.* — **The formal letter of demand <u>and</u> assessment notice shall be issued by the Commissioner or his duly authorized representative.** The letter of demand 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 based; *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX 'B' hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.**" *(Emphases added)*

On the basis of the foregoing provisions, **parts of the due process requirement in the issuance of a deficiency tax assessment** are the following:

1) The issuance of a PAN, unless the case falls under any of the above-enumerated exceptions; and

2) The issuance of a FLD and assessment notice, which must be sent to the taxpayer only registered mail or by personal delivery.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,*[83] the Supreme Court said:

> "**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void.</u> While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is 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 submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. <u>Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity</u>.**
>
> xxx xxx xxx
>
> **The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. <u>Section 3.1.2 of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section</u>**

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

3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. xxx.

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.

xxx xxx xxx

The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notice, and Collection Letter null and void, and of no force and effect.

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[84] this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first

[84] 652 Phil. 172 (2010) [Per J. Mendoza, Second Division]

> establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations – that taxpayers should be able to present their case and adduce supporting evidence. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes,*[85] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for <u>failure to inform the taxpayer of the law and the facts on which the assessment was made</u>**, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue,*[86] this Court ruled, among others, that **the taxpayer was deprived of due process when the Commissioner failed to issue** a notice of informal conference and **a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.**

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[87]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> xxx xxx xxx
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. <u>For all the awesome power of the tax collector, he may still be stopped in his tracks if the</u>**

[85] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[86] 565 Phil. 613 (2007) [Per J. Velasco, Jr., Second Division].
[87] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

> **<u>taxpayer can demonstrate...that the law has not been observed</u>.** (Emphasis supplied)
>
> xxx. ***<u>[The Commissioner of Internal Revenue's]</u>*** **<u>disregard of the standards and rules renders the deficiency tax assessments null and void</u>.** xxx." *(Emphases and underscoring ours)*

Based on the foregoing jurisprudential pronouncements, one of the due process requirements in the issuance of tax assessments is that the taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the PAN, but also in the FLD and final assessment notice. In case respondent or the BIR fails to observe, *inter alia*, the said requirement, it shall have the effect of rendering the subject deficiency tax assessment void, and of no force and effect, since such failure violates the due process rights of the concerned taxpayer.

As a corollary, in *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.* ("*GJM* case"),[88] the Supreme Court 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, <u>in fact</u>, 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 <u>which would have been signed by the taxpayer or its authorized representative</u>.** 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

---

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

and any other pertinent document executed with its intervention. **The Court does not put much credence to the self-serving documentations made 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, <u>the release, mailing, or sending of the same must still be clearly and satisfactorily proved</u>**. 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 offices." *(Emphasis and underscoring added)*

Based on the foregoing jurisprudential pronouncements, 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 shifts the burden to the sender to prove that the said letter was *actually* received by the addressee.

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.

In this case, petitioner directly denies having received the subject PAN and FAN. Thus, the burden of proving the *actual* receipt of the same lies with respondent.

To prove service of the subject PAN by registered mail, respondent offered the following exhibits,[89] to wit:

Exhibit	Description	Purpose
"R-5"[90]	Preliminary Assessment Notice (PAN) dated 19 February 2013 with	To prove that petitioner was informed of the factual and legal bases of the deficiency tax assessment issued against it

[89] Respondent's *Formal Offer of Evidence*, Docket – Vol. III, at pp. 1102 to 1103.
[90] BIR Records, pp. 14 to 12.

	attached Details of Discrepancies	for taxable year 2007
"R-5a"[91]	Registry Return Receipt for the PAN	To prove that the PAN was served to petitioner and that the same was duly received
"R-6"	Certification dated 29 November 2018 from the General Services Division of the BIR	To prove that Notice of Informal Conference dated 10 May 2012 and Preliminary Assessment Notice dated 19 February 2013 were mailed to petitioner on 11 May 2011 and 13 March 2013, respectively.

Thus, it can be inferred from the foregoing that the only evidence adduced by respondent in proving the fact of mailing of the PAN are a copy of a Registry Return Receipt issued by the Philippine Postal Corporation and a Certification from the BIR's General Services Division. Unfortunately, these hardly suffice to prove that the said notices were indeed served and received by petitioner or by any of its authorized representative/s, pursuant to the above-mentioned rules. The said Registry Return Receipt merely proved the fact of mailing,[92] and nothing more. The glaring fact remains that nowhere can it be seen from the evidence presented that the said PAN was actually served and received by petitioner or by any of its authorized representative. Particularly, there is no indication in the subject Registry Return Receipt that the signature appearing therein refer to petitioner or its authorized representative. On this matter, the case of *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*[93] (*T Shuttle* case) is on point, to wit:

> "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 FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, <u>it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives</u>.** 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. *fc*

[91] BIR Records, p. 8.
[92] Refer to *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, supra.
[93] G.R. No. 240729, August 24, 2020.

> xxx xxx xxx
>
> **The Court sees no reason to set aside the findings of the CTA *En Banc*.** 'It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, has accordingly developed an exclusive expertise on the resolution [of tax problems,] unless there has been an abuse or improvident exercise of authority.' xxx." *(Emphasis added)*

While the subject Registry Return Receipt indicates a signatory, there is no indication that the latter is petitioner's duly authorized representative. Thus, the said document cannot be treated as proof of the actual receipt of the subject PAN by petitioner or its duly authorized representative.

Moreover, respondent's witness, Ms. Cayetano, testified as follows during cross examination, to wit:

> "ATTY. BACAY:
>
> Good morning, Ms. Witness. Ms. Witness, in Q&A, No. 14 of your Judicial Affidavit, you were asked 'what is your proof that these documents were sent to petitioner by registered mail'. Your response is 'I have with me a Certification certifying that the documents were duly mailed to petitioner'. Ms. Witness, I am showing to you a Certification dated November 29, 2018, it says here that there is an attached certified true copy of the transmittal. Now, I am showing to you the transmittal letter dated March 13, 2013, will you kindly read aloud the first line below the date.
>
> A:
>
> Transmitted to the head Bureau of Internal Revenue Philippines Postal Corporation Field Office hereunder stated 'registered mail'.
>
> Q:
>
> I am also showing you another Transmittal letter dated May 11, 2012, also read the first line?
>
> A:
>
> Transmitted to the head Bureau of Internal Revenue Philippines Postal Corporation Field Office hereunder stated 'registered mail'.
>
> Q:
>
> Based on the transmittal letter Ms. Witness, it shows that the documents were transmitted to the head of the Bureau

of Internal Revenue Philippine Postal Corporation, am I correct?

A:
Yes.

Q:
So, it was only to the head and not to the petitioner, am I correct?

A:
Yes.

Q:
So, Ms. Witness, the Certification only shows that the documents were transmitted to the head but it was not shown that the documents were mailed to petitioner's address? That's the only thing that the certification shows, am I correct?

A:
Yes.

Q:
In that case, Ms. Witness, do you still submit to your statement in Q & A No. 14 that the certification proves that the documents were mailed to the petitioner? Do you maintain your position, Ms. Witness?

A:
Yes, as far as, our division is concerned. Once we delivered documents to the General Service Division, they are in charge of the mailing. So, as far as we are concerned, we delivered it.

Q:
So because of that you just assumed that the documents were already mailed to the petitioner because they were transmitted to the head of the ...

A:
Yes.

Q:
So, let me clarify, Ms. Witness, the head is the one in charge of the mailing of the documents of the petitioner?

A:
The head of?

Q:
The head of Bureau of Internal Revenue Philippine Postal Corporation, they are the ones who are in charge of the mailing of the documents?

A:
We already made that because all the documents that we sent to them should be mailed.

Q:
So, by transmitting the documents to the head, you're just assuming that they were mailed to the petitioner?

A:
Yes.

Q:
Ms. Witness, in Q & A, No. 12 of your Judicial Affidavit, you attached a Notice of Informal Conference dated May 10, 2012, is there anything in the Notice of Informal Conference that shows that it was duly received by the petitioner?

A:
The recipient of the registry return receipt Emerenciano is the first name.

Q:
Ms. Witness, who is Emerenciano Balugo?

A:
I don't know it's the recipient. We assumed that's a part of the one who received in your letters.

Q:
So again Ms. Witness, you are assuming that Ms. Emerenciano is connected to the petitioner?

A:
Yes.

Q:
You have no idea who he really is, Ms. Witness?

A:
Yes.

Q:
What about Ms. Witness the attachment in Q &A No. 14, the Preliminary Assessment Notice dated February 19, 2013, is there anything which shows that it was received by the petitioner, Ms. Witness?

A:
Exhibit 'R-5'.

Q:
Again, Ms. Witness, in Q & A No. 13, you attached document entitled 'Preliminary Assessment Noticed dated February 19,

2013, is there anything in the document which shows that it was received by the petitioner?

A: Yes.

Q: Where Ms. Witness?

A: (Witness is showing to the counsel)

Q: Ms. Witness, it was received by a certain Mr. Balugo EGI. Again, Ms. Witness, do you know who Balugo EGI is? So you just also assumed that it was received by the petitioner because given to a certain Mr. Balugo?

A: Yes.

Q: I am referring you to Q & A No. 10 of your Affidavit, you were asked 'do you recall having mailed certain documents' in which you answered 'yes'. Now, may I clarify, were you the one who actually mailed the documents, Ms. Witness?

A: No, it was forwarded to your General Service Division signed by Mr...

Q: So, you confirmed that you do not have any personal knowledge as to the mailing of this document?

A: Yes, as far as our division is concerned, once it is delivered to the General Service Division, it is considered mailed.

Q: So, you also mentioned in Q & A No. 8 that you were the one who caused the mailing of various documents including the Job ordered. Were you the one who prepared the Job Orders, ms. Witness?

A: Yes.

Q: In your Job Order, Ms. Witness, do you have any signature in the Job Order? It is attached as 'R-1'.

A: (No answer from the witness)

Q:
Ms. Witness, you mentioned that you were the one who prepared this. Does it have your signature, Ms. Witness?

A:
The first copy forwarded to the Assistant Chief General Service Division does not contain my initial anymore, at the second page only but the note at the top of the page dated May 12, 2012 'it's for mailing', it's my handwriting.

Q:
Ms. Witness, in relation to the present case, do you recall having supervised the mailing of Letter of Authority?

ATTY. BABARAN:
Objection, your Honors, that is not part of the testimony of the witness?

JUSTICE CASTAÑEDA:
Let her answer if she knows. Do you think do you have any participation in the issuance of the letter of Authority?

A:
No, your Honor.

ATTY. BACAY:
No further questions, your Honors.

ATTY. BABARAN:
No re-direct, your Honors."[94] (*Emphasis supplied)*

xxx xxx xxx

"ATTY. BACAY:
Ms. Witness, in line Q of your Judicial Affidavit, you were asked if you recall having the receiving documents which involves the present case to which you answered 'yes'. Were you the one who mailed the documents?

A:
I am the supervisor. I just supervise the mailing but the mailing is done in one of the divisions, the General Service Division.

Q:
Since you were not the one who personally handling the documents of the petitioner, do you know if the documents were received by the petitioner?

A:
No knowledge at all, Mam.

[94] Transcript of Stenographic Notes (TSNs) taken during the hearing held on April 10, 2019, pp. 7 to 13.

Q:

In Q-14 of your Judicial Affidavit, you mentioned that the proof that the documents received by the petitioner by registered mail is a Memorandum certifying that the Letter Notice and Follow Up Letter was received by the Bureau of Internal Revenue Post office. I am presenting to you a Memorandum attached in your Judicial Affidavit as exhibit 'R-18', can you please tell us what these are?

A:

Attached are certified true copy of the registry transmittal Job order form, of the Letter Notice and Follow Up Letter received by the Bureau of Internal Revenue Post office on January 10, 2012 and February *12*, 2012, respectively.

Q:

Ms. Witness, can you confirm that the Memorandum can only certify that the documents were received by the Bureau of Internal Revenue Post Office and not by the petitioner?

A:

Yes."[95] (*Emphasis supplied)*

Such being the case, just as in the case of the above-stated Registry Return Receipt, the Certification dated November 29, 2018 issued by the BIR's General Services Division does not prove the actual receipt of the subject PAN by petitioner or its duly authorized representative.

In any event, even granting that the PAN was validly served to petitioner, it is noteworthy that respondent has not offered any evidence to prove that the FAN to which the subject WDL is anchored, was served to, or received by, petitioner. Thus, on this score alone, there is a clear indication of respondent's violation of petitioner's right to due process.

In view of respondent's failure to prove that the PAN and FAN were properly and duly served upon or received by petitioner, the assessments made against petitioner for deficiency income tax and VAT for taxable year 2008 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.

[95] TSNs taken during the hearing held on June 10, 2019, pp. 6 to 10.

Moreover, anent the imposed compromise penalty, considering that petitioner cannot be considered as such, the same is likewise without any basis. Nevertheless, even granting that the subject tax assessments may considered as valid, the imposition of compromise penalty cannot be sustained. It must be stressed that a compromise is, by its nature, mutual in essence.[96] It implies agreement. One party cannot impose it upon the other.[97] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[98] Considering that there is no indication that petitioner consented to the subject compromise penalty, the same cannot be imposed.

Correspondingly, the WDL issued by respondent to petitioner, insofar as it seeks to collect from petitioner the aforesaid delinquent income tax and VAT, plus compromise penalty, for taxable year 2008 is perforce invalid.

Considering that the subject deficiency income tax and VAT assessments, compromise penalty, and the corresponding WDL issued against petitioner, are void, the cancellation thereof is warranted. It then becomes unnecessary to address the other issues or arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the assessments issued against petitioner for alleged deficiency income tax and VAT, and compromise penalty, in the total amount of ₱26,712,499.01, for calendar year 2008, and the *Warrant of Distraint and/or Levy* dated June 27, 2017, are hereby **DECLARED VOID**, and are therefore, **CANCELLED.**

SO ORDERED.

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

---

[96] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[97] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
[98] Refer to Part III.5, Revenue Memorandum Order No. 19-2007.

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

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

CERTIFICATION

Pursuant to Section 13, Article VIII 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