REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

GLOVAX BIOTECH CORP., Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA Case No. 10602

Present:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:
MAY 2 1 2025
4:30 p.m.

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DECISION

FERRER-FLORES, J.:

At bar is a **Petition for Review** praying for the Court to render judgment reversing and setting aside the *Warrant of Garnishment* dated July 28, 2021 issued by respondent **Commissioner of Internal Revenue (CIR)**, and declaring petitioner **Glovax Biotech Corp.**, not liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), fringe benefits tax (FBT), and compromise penalty, amounting to **₱50,583,904.90** for taxable year (TY) 2017.[1]

THE PARTIES

Petitioner Glovax Biotech Corp. is a domestic corporation duly organized and existing under Philippine laws.[2]

Respondent, on the other hand, is the duly appointed CIR empowered to perform the duties of said office including, among others, the power to

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[1] Statement of the Case, Pre-Trial Order dated October 4, 2022, Docket – Vol. I, p. 373.

[2] Par. 2.1, Admitted Facts/Documents, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 359.

decide disputed assessments, refunds of internal revenue taxes, fees or charges, penalties imposed in relation thereto, as provided by law.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Respondent served upon petitioner the electronic *Letter of Authority* (LOA) No. 201600017497 (LOA-039-2018-00000902) dated August 29, 2018, authorizing Revenue Officer (RO) Eliza Nacional and Group Supervisor (GS) Julieta Supan of the Bureau of Internal Revenue (BIR), to examine petitioner's books of accounts and other accounting records on all internal revenue taxes for the period January 1, 2017 to December 31, 2017.[4]

A *Notice of Informal Conference* (NIC) was issued by Revenue District Officer Arnulfo A. Galapia, requesting a representative of petitioner to appear at their office for an informal conference within 15 days from receipt thereof, and to bring documents or records to refute the findings of the examiner.[5] The NIC was served via electronic mail (e-mail) to petitioner's accountant, Nerissa Gatdula, on March 9, 2020.[6]

On March 15, 2020, Metro Manila was placed under lockdown by the Philippine government due to the increasing number of Covid-19 cases.[7]

Upon recommendation of RO Nacional and GS Cora A. Carolina,[8] a *Preliminary Assessment Notice* (PAN), with attached *Details of Discrepancies*, was issued by the BIR on December 2, 2020.[9]

Thereafter, on January 5, 2021, respondent issued the *Formal Letter of Demand* (FLD) No. 039-2020-B066-17, with attached *Details of Discrepancies*,[10] and *Assessment Notices*,[11] requesting payment of the following deficiency taxes, including the corresponding increments, totaling ₱50,583,904.90, for TY 2017, broken down as follows:

Tax Type	Total
Income tax	₱ 26,624,142.54
EWT	17,844.93
FBT	200,088.33

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3 Par. 2.2, Admitted Facts/Documents, JSFI, Docket – Vol. I, p. 359.
4 Par. 2.4, Admitted Facts/Documents, JSFI, Docket – Vol. I, p. 359; Exhibit "R-1", BIR Records (Exhibit "R-12"), p. 1.
5 Par. 2.5, Admitted Facts/Documents, JSFI, Docket – Vol. I, p. 359.
6 Exhibit "P-2", Docket – Vol. I, pp. 234 to 240.
7 Par. 2.6, Admitted Facts/Documents, JSFI, Docket – Vol. I, p. 359.
8 Exhibits "R-4", "R-4-A", "R-4-B", "R-4-C", and "R-5", BIR Records (Exhibit "R-12"), pp. 298 to 301 and 304, respectively.
9 Exhibit "R-6", BIR Records (Exhibit "R-12"), pp. 380 to 384.
10 Exhibit "R-7", BIR Records (Exhibit "R-12"), pp. 394 to 399.
11 Exhibits "R-7-A", "R-7-B", "R-7-C", and "R-7-D", BIR Records (Exhibit "R-12"), pp. 400 to 403.

Tax Type	Total
VAT	23,726,829.10
Compromise penalty	15,000.00
Total	**₱ 50,583,904.90**

Respondent, through Ms. Marivic G. Tulio, Chief, Collection Division of Revenue Region No. 7A-Quezon City, issued the letter dated June 15, 2021,[12] addressed to petitioner's President Mr. Giovanni DC. Alingog, appealing to settle the above-stated tax liabilities.

Mr. Alingog then sent, on July 7, 2021, his letter of even date,[13] asserting that they have not been accorded due process of law that would allow petitioner to exercise the right to present documents or dispute the findings of respondent.

Respondent issued several *Warrants of Garnishment* dated July 28, 2021 to collect from petitioner the deficiency taxes amounting to ₱50,583,904.90, including increments, and ordering the garnishment of petitioner's deposits.[14] It states that petitioner is liable for deficiency taxes for TY 2017,[15] *viz.*:

Assessment /Demand No.	Date issued	Kind of tax	Amount
039-2020-B066-17	January 5, 2021	Income tax	₱ 26,624,142.54
039-2020-B066-17	January 5, 2021	VAT	23,726,829.10
039-2020-B066-17	January 5, 2021	EWT	17,844.93
039-2020-B066-17	January 5, 2021	FBT	200,088.33
039-2020-B066-17	January 5, 2021	Compromise penalty	15,000.00
Total			**₱50,583,904.90**

The *Warrants of Garnishment* were then served by respondent to various banking institutions,[16] one of which was served to United Coconut Planters Bank (UCPB) on July 28, 2021, the subject of this case.[17]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* and *Motion for Suspension of Collection of Tax* via e-mail on August 27, 2021,[18] with the

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[12] Par. 2.7, Admitted Facts/Documents, JSFI, Docket – Vol. I, p. 360; BIR Records (Exhibit "R-12"), pp. 433 to 434.

[13] Par. 4.7, Statement of Facts, *Petition for Review*, Docket – Vol I, p. 20; BIR Records (Exhibit "R-12"), pp. 440 to 441.

[14] Par. 2.3, Admitted Facts/Documents, JSFI, Docket – Vol. I, p. 359.

[15] Par. 2.8, Admitted Facts/Documents, JSFI, Docket – Vol. I, p. 360.

[16] BIR Records (Exhibit "R-12"), pp. 443 to 458.

[17] *Id.* at 450.

[18] Docket – Vol. I, pp. 14 to 15.

physical copies mailed via private courier on September 1, 2021, and received by the court on September 16, 2021.[19]

In the Resolution dated October 21, 2021,[20] petitioner was directed to submit a compliant *Petition for Review* and *Verification and Certification of Non-Forum Shopping* within five days from notice. Petitioner filed its *Compliance* on December 13, 2021.[21]

Thereafter, respondent filed his *Entry of Appearance with Motion for Extension of Time to File Answer Petition for Review* on March 18, 2022.[22] This was noted and granted by the Court in the Resolution dated March 23, 2022.[23]

At the hearing for petitioner's *Motion to Suspend Collection of Taxes*,[24] petitioner's witness, Mr. Alingog, testified on direct examination,[25] followed by cross and re-direct examinations. Petitioner was then granted a period of five days, or until April 11, 2022, to file its formal offer of evidence, while respondent was granted a similar period of five days to file his comment or opposition thereto. Likewise, respondent was given until April 11, 2022 to file his comment/opposition to petitioner's pending motion.

On April 8, 2022, petitioner filed its *Formal Offer of Evidence (Motion for Suspension of Collection of Tax)*.[26] Respondent filed his *Opposition (on Petitioner's Motion for Suspension of Collection of Tax)* and *Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated April 06, 2022)* on April 11, 2022,[27] and April 18, 2022,[28] respectively.

Respondent filed his *Answer* on May 2, 2022.[29]

In the Resolution dated May 17, 2022,[30] the Court admitted the offered exhibits of petitioner, and granted its *Motion for Suspension of Collection of Tax*, subject to, *inter alia*, the posting of cash or surety bond.

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19 Docket – Vol. I, pp. 17 to 32 and 56 to 61, respectively.
20 *Id.* at 67 to 68.
21 *Id.* at 71 to 72.
22 *Id.* at 132 to 135.
23 *Id.* at 130 to 131.
24 Minutes of the hearing held on, and Order dated, April 6, 2022, Docket – Vol. I, pp. 141 to 143.
25 Exhibits "P-3" and "P-4", Docket – Vol. I, pp. 241 to 250.
26 Docket – Vol. I, pp. 144 to 148.
27 *Id.* at 189 to 196.
28 *Id.* at 197 to 200.
29 *Id.* at 204 to 211.
30 *Id.* at 275 to 286.

The Pre-Trial Conference was set and held on August 4, 2022.[31] Ahead of the scheduled conference, petitioner's *Pre-Trial Brief*,[32] and *Respondent's Pre-Trial Brief*,[33] were both filed on August 1, 2022.

The case was referred to mediation before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) given that the parties signified their willingness to undergo mediation. However, on August 18, 2022, the PMC-CTA submitted the *No Agreement to Mediate* dated August 17, 2022.[34]

On September 5, 2022, the parties filed their *Joint Stipulation of Facts and Simplification of Issues*,[35] which was admitted and approved by the Court in its Order dated September 8, 2022,[36] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated October 4, 2022 was then issued.[37]

Trial ensued.

Petitioner offered the testimony of its President, Mr. Alingog.[38]

On October 28, 2022, petitioner filed its *Formal Offer of Evidence*,[39] to which respondent submitted his *Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated October 26, 2022)* on November 14, 2022.[40] In the Resolution December 20, 2022,[41] the Court admitted all of petitioner's exhibits.

The *BIR Records* for this case was transmitted to the Court on January 23, 2023.[42]

For his part, respondent offered the testimonies of ROs Nacional,[43] Kimberly Anne C. Villasper,[44] and Joanna O. Mallari.[45]

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31 Notice of Pre-Trial Conference dated May 24, 2022, Docket – Vol. I, pp. 287 to 288; Minutes of the hearing held on, and Order dated, August 4, 2022, Docket – Vol. I, pp. 353 and 355 to 356, respectively.
32 Docket – Vol. I, pp. 289 to 297.
33 *Id.* at 299 to 303.
34 *Id.* at 357.
35 *Id.* at 358 to 368.
36 *Id.* at 369.
37 *Id.* at 373 to 379.
38 Exhibits "P-3" and "P-4", Docket – Vol. I, pp. 241 to 250; Minutes of the hearing held on, and Order dated, October 26, 2022, Docket – Vol. I, pp. 384 and 387 to 388, respectively.
39 Docket – Vol. I, pp. 390 to 393.
40 *Id.* at 395 to 398.
41 *Id.* at 403 to 404.
42 *Compliance* dated January 23, 2023, Docket – Vol. I, pp. 413 to 414.
43 Exhibit "R-13", Docket – Vol. I, pp. 308 to 314; Minutes of the hearing held on, and Order dated, August 15, 2023, Docket – Vol. II, pp. 429 to 430.

On December 7, 2023, respondent's *Formal Offer of Evidence* was filed.[46] Petitioner then filed its *Comment/Opposition to Formal Offer of Evidence* via accredited courier on December 26, 2023.[47] In the Resolution dated April 1, 2024,[48] the Court admitted all of respondent's offered exhibits.

Respondent's *Memorandum* was filed on May 6, 2024;[49] whereas, the *Memorandum (For the Petitioner)* was filed on May 16, 2024.[50]

The present case was then considered submitted for decision on May 21, 2024.[51]

THE STIPULATED ISSUE

The sole issue stipulated by the parties for this Court's resolution is as follows:

> Whether or not Petitioner is liable for deficiency income tax, value-added tax, expanded withholding tax, fringe benefits tax, and compromise penalty, totaling ***Pesos Fifty Million Five Hundred Eighty-Three Thousand Nine Hundred Four and 90/100 (Php50,583,904.90)***, for taxable year 2017, inclusive of deficiency interest and compromise penalty, as provided in the NIRC of 1997, as amended.[52]

Petitioner's arguments:

Petitioner argues that respondent had not validly served the LOA when it assessed petitioner of deficiency taxes as it failed to comply with the requirements in constructively serving the LOA. It was likewise deprived of due process when it did not receive respondent's PAN, *Final Assessment Notice* (FAN), and FLD.

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44 Exhibit "R-14", Docket – Vol. I, pp. 328 to 333; Minutes of the hearing held on, and Order dated, August 15, 2023, Docket – Vol. II, pp. 429 to 430.
Exhibit "R-15", Docket – Vol. II, pp. 424 to 428; Minutes of the hearing held on, and Order dated, November 7, 2023, Docket – Vol. II, pp. 431 to 432.
46 Docket – Vol. II, pp. 433 to 439.
47 *Id.* at 508 to 518.
48 *Id.* at 521 to 522.
49 *Id.* at 523 to 529.
50 *Id.* at 530 to 562.
51 Minute Resolution dated May 21, 2024, Docket – Vol. II, p. 564.
52 Simplification of Issues, JSFI, Docket – Vol. I, p. 360.

Respondent's counter-arguments:

Respondent contends that, in case personal service is not possible, the assessment notice shall be served either by substituted service or by mail. In any case, the assessments for deficiency income tax, VAT, EWT, FBT, and compromise penalty, have long been final, executory and demandable, for petitioner's failure to timely file a valid protest.

THE COURT'S RULING

The *Petition for Review* is meritorious.

The Court has jurisdiction over the instant case.

Respondent assails the jurisdiction of the Court on the ground that the assessment had already become final, executory and demandable, for failure of petitioner to timely file a valid protest to the assessment.

While it is true that the Court lacks jurisdiction over final and executory assessments, such is not the case at bar. Petitioner primarily seeks relief from this Court the reversal and setting aside of the *Warrant of Garnishment* issued on July 28, 2021. Besides, petitioner denies having received the PAN, FAN and FLD.

It is well settled in our jurisprudence that the Court's jurisdiction is not only limited to decisions of the CIR in matters relating to assessment and refund, but also covers "other matters" arising from the NIRC of 1997, as amended, and other related laws administered by the BIR.

Sections 7(a)(1) and 11 of Republic Act (R.A.) No. 1125,[53] as amended by R.A. No. 9282,[54] provides, in part, as follows:

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

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[53] AN CREATING THE COURT OF TAX APPEALS.

[54] 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 Code or other laws administered by the Bureau of Internal Revenue**;
>
> xxx xxx xxx

In *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*,[55] the said jurisdiction of this Court on "other matters" was reiterated by the Supreme Court, thus:

> Contrary however to the CIR's argument, Section 7(a)(1) of Republic Act No. (RA) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC:
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> 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[.]
>
> As explained by the Court in *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division*,[56] the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. The **second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.**[57] *(Emphasis added)*

Thus, considering that the present *Petition for Review* prays for the reversal and setting aside of the subject *Warrant of Garnishment*, this Court is clearly endowed with jurisdiction to take cognizance of the instant case.

As to the timeliness of petitioner's appeal, Section 11 of R.A. No. 1125, as amended, also provides that the party adversely affected may file an appeal with this Court within 30 days from receipt of such notice or decision.

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55 G.R. No. 255473, February 13, 2023.

56 G.R. No. 258947, March 29, 2022.

57 *Philippine Journalists Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

> 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 xxx **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx. *(Emphases added)*

Petitioner alleged that it received a notice of the issuance of the *Warrant of Garnishment* when the Branch Manager of UCPB sent an e-mail to its Chief Financial Officer on July 29, 2021.[58] Counting 30 days therefrom, petitioner had until August 31, 2021[59] within which to file the Petition for Review.

Records show that the *Petition for Review* was electronically filed on August 27, 2021, and the physical copy thereof was sent through licensed courier on September 1, 2021 and received by the Court on September 16, 2021. The *Petition for Review* was, thus, timely filed.

The Court shall now proceed to discuss the merits of the case.

The LOA was not duly served on petitioner, thus void.

Petitioner contends that the failure of respondent to properly serve the LOA within the 30-day period rendered the same invalid.

Respondent claims otherwise. He submits that the constructive service of the LOA was made pursuant to the fourth paragraph of 3.1.6 (ii) of Revenue Regulations (RR) No. 18-2013.[60]

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 accounting records of a taxpayer for the purpose of collecting the correct amount of

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58 Par. 4.8, Statement of Facts, *Petition for Review*, Docket – Vol. I, p. 20.
59 The next working day, with August 28, 2021 falling on a Saturday and August 30, 2021 a regular holiday.
60 Under Section 2 of RR. 18-2013; Par. 15, *Answer*, Docket – Vol. I, p. 206.

tax.[61] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment,[62] consistent with Sections 6(A) and 13 of the NIRC of 1997, as amended.[63]

Relative thereto, Item VIII(C)(2)(2.3) of Revenue Audit Memorandum Order No. 1-2000[64] dated March 17, 2000 (which was in effect when the subject LOA was issued)[65] mandated that an LOA must be served within 30 days from the time it is issued, *viz*:

> 2.3 **A Letter of Authority <u>must be served or presented to the taxpayer</u> within 30 days from its date of issue; <u>otherwise, it becomes null and void</u> unless revalidated.** xxx. *(Emphasis and underscoring added)*

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[66] the Supreme Court held as follows:

> **The foregoing rule <u>invalidates</u> a previously issued LOA, which has remained unserved for more than 30 days past its issuance date, unless the same is revalidated.**
>
> In the exercise of the power to assess and collect taxes, the BIR has the commensurate duty to uphold a taxpayer's fundamental right to due process. Thus, **its authority must be understood to take effect only after the CIR or his duly authorized representative *issues an LOA* and <u>the designated revenue officer *serves it* upon the intended taxpayer</u>.** That a LOA remains unserved signifies that the tax authorities have yet to formally apprise the taxpayer and, consequently, have not commenced actual audit.
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> **Read in these lights, the rules clearly impose a *30-day expiration period for service.* Upon expiration, the LOA becomes wholly unenforceable, inasmuch as it cannot be served without**

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

62 *Commissioner of Internal Revenue vs. De La Salle University, Inc.*, G.R. Nos. 196596, 198841 and 198941, November 9, 2016.

63 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, 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 form authorizing examination of any taxpayer.

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

64 SUBJECT: Updated Handbook on Audit Procedures and Techniques Volume I (Revision – Year 2000)

65 Cf: Refer to Revenue Memorandum Circular No. 82-2022 dated June 28, 2022 [SUBJECT: Clarification on the Service of Letter of Authority Pursuant to Revenue Audit Memorandum Order (RAMO) No. 1-2000].

66 G.R. No. 222133, November 4, 2020.

> **revalidation upon the taxpayer who, in turn, has the right to refuse the same.**
>
> The revalidation requirement involving an *unserved LOA* is imposed on the revenue officer because he/she exclusively derives authority therefrom. **It is intended to *reconfirm his/her designation* as the BIR personnel duly authorized (by the CIR) to examine the taxpayer's books and *extend the period of service*. Otherwise, his/her subsequent presence in a taxpayer's premises for a supposed tax audit shall be illegitimate.** *(Emphases and underscoring added)*

After a careful examination of the records of the case, the Court finds that the LOA was not properly served upon petitioner.

Here, respondent resorted to substituted service of the LOA No. eLA201600017497 (LOA-039-2018-00000902) dated August 29, 2018[67] to Mr. Pedro M. Linda, a traffic enforcer of Barangay Paligsahan, as witnessed by Judy Javier Columna.[68]

Pertinently, paragraph 23, III. Policies and Procedures, of RMO No. 19-2015,[69] mandates that the RO assigned to the case shall present or serve the LOA to the taxpayer or his representative in accordance with Section 3.1.6 of Revenue Regulations (RR) No. 12-99,[70] as amended by RR No. 18-2013,[71] to wit:

> 3.1.6. **Modes of Service.** – xxx
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii.) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> xxx

[67] Exhibit "R-1", BIR Records (Exhibit "R-12"), p. 1.
[68] *Sworn Statement of Eliza Victoria C. Nacional* (Exhibit "R-13"), Docket – Vol. I, pp. 309 to 310.
[69] SUBJECT: BIR Audit Program
[70] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
[71] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of Deficiency Tax Assessment

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

At the hearing,[72] RO Nacional testified that the reason for the resort to substituted service was due to the refusal of the security guard on duty or any of petitioner's employees to receive the LOA. To corroborate RO Nacional's testimony, respondent presented the following:

1. LOA No. eLA201600017497 (LOA-039-2018-00000902) dated August 29, 2018;[73]
2. Photocopy of the identification card of Pedro M. Linda;[74] and,
3. Photocopy of the identification card of Judy Javier Columna.[75]

Even lending credence to respondent's argument that there was justification for the substituted service of the LOA, the Court finds that the service was not in accordance with the procedure laid down in RR 18-2013, therefore, improperly served.

First, the rules require that service shall be made to a barangay official who may be, among others, a barangay captain, or barangay kagawad, as provided under Section 387, Chapter 2, R.A. No. 7160, otherwise known as the Local Government Code of 1991,[76] and not to a traffic enforcer of the barangay.

Second, there must be the presence of two disinterested witnesses who must be persons of legal age other than BIR employees. However, respondent himself revealed that the service was witnessed by a certain Judy Javier Columna only.

Third, a closer examination of the LOA shows that it merely contains the notation: "Constructively served by: ELIZA VICTORIA C. NACIONAL," without indicating the required details such as the date of service as well as the relevant facts surrounding the substituted service (*i.e.*,

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[72] Transcript of Stenographic Notes (TSN) dated August 15, 2023, pp. 15 to 16.
[73] Exhibit "R-1", BIR Records (Exhibit "R-12"), p. 1.
[74] BIR Records (Exhibit "R-12"), p. 4.
[75] BIR Records (Exhibit "R-12"), p. 6.
[76] SEC. 387. *Chief Officials and Offices*. – (a) There shall be in each barangay a punong barangay, seven (7) sangguniang barangay members, the sangguniang kabataan chairman, a barangay secretary, and a barangay treasurer."

fact of refusal and the names, official position and signatures of the witnesses).

It is evident that respondent was remiss of its duty to comply with the provisions of Section 3.1.6 of RR 18-2013, as amended, when it resorted to substituted service. This is, in fact, admitted by respondent's witness, RO Nacional during her cross-examination. Below is an excerpt of the cross-examination of RO Nacional:[77]

> ATTY. APDUA: Is there anything on the LOA that shows the name Pedro Linda? That it was received by Pedro Linda.
>
> RO NACIONAL: Apparently, it is not readable but that's why I attached the ID.
>
> xxx xxx xxx
>
> ATTY. APDUA: Okay. So, Ms. Witness, do you agree with me that your audit was covered by the BIR rules RAMO 1-2000?
>
> RO NACIONAL: Yes.
>
> ATTY. APDUA: And it provides that the Letter of Authority must be served or presented to the taxpayer within thirty (30) days from date of its issue otherwise it becomes null and void. Do you agree?
>
> RO NACIONAL: Yes, sir.
>
> ATTY. APDUA: In the Letter of Authority, does it show that it was served within thirty (30) days after the Letter of Authority date of issuance? Again, Ms. Witness, I am asking if the Letter of Authority itself, Exhibit R-1 clearly indicates that it was served within thirty (30) days after the LOA's issuance which was August 29, 2018.
>
> RO NACIONAL: No, sir.
>
> ATTY. APDUA: So will you agree with me that it does not show that the LOA was served within thirty (30) days after the LOA's date of issuance?
>
> RO NACIONAL: Yes, sir.
>
> ATTY. APDUA: Also, do you agree with me that the LOA marked as Exhibit R-1 does not indicate the date of constructively receipt by Pedro Linda?
>
> RO NACIONAL: No, sir.
>
> ATTY. APDUA: So, there is no date of actual receipt.
>
> RO NACIONAL: Yes, sir.

[77] TSN of the hearing dated August 15, 2023, pp.8-12.

ATTY. APDUA: And Ms. Witness, is it correct Ms. Witness that the words indicated on the subject LOA indicate that the LOA is witnessed by a certain Pedro Linda?

RO NACIONAL: Yes, sir.

ATTY. APDUA: And it does not indicate that it was received by Pedro Linda?

ATTY. APDUA: So do you agree with me that the LOA does not indicate who actually received the LOA?

RO Nacional: No, sir.

ATTY. APDUA: Okay. You also mentioned that it was witnessed by a certain Judy Javier. DO you have proof that it was witnessed as to the service by a certain Judy Javier based on the Letter of Authority? Ms. Witness, can you tell the Court if there is a certain Judy Javier written on the Letter of Authority marked as Exhibit R-1?

RO NACIONAL: No, sir.

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ATTY. APDUA: So, do you agree with me that for the record, the LOA marked as Exhibit R-1 does not indicate the name, Judy Javier as a witness?

RO NACIONAL: No, sir.

ATTY. APDUA: You do not agree with me?

RO NACIONAL: I'm sorry, yes, sir.

ATTY. APDUA: Okay. As far as the BIR on substituted service of notices, do you agree with me that the BIR requires two (2) disinterested persons who should witness the substituted service to the barangay officials?

RO NACIONAL: Pardon, sir.

ATTY. APDUA: Do you agree with me that based on the BIR rules, the BIR requires two (2) disinterested persons who should witness the substituted service to the barangay officials?

RO NACIONAL: Yes, sir.

ATTY. APDUA: Do you agree with me that Exhibit R-1 does not show that it was witnessed by two (2) disinterested persons?

RO NACIONAL: Yes, sir.

ATTY. APDUA: Do you agree with me that the service of the LOA did not comply with the requirements of the substituted service to the taxpayers?

RO NACIONAL: Yes, sir.

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From the foregoing, the Court finds that the LOA is invalid as it was improperly served on an unauthorized person, added to the fact that it cannot be said that the same was served within 30 days from its issuance. This inevitably leads to the conclusion that the LOA is a nullity, thereby stripping the ROs of authority to conduct the audit investigation.

All told, any tax assessment issued pursuant to such audit is undoubtedly null and void. Absent a valid tax assessment, respondent's attempts to collect any deficiency taxes based therefrom through the subject *Warrant of Garnishment* dated July 28, 2021 is similarly void and ineffectual. The Court, thus, finds it unnecessary to delve on the validity of the assessment for a void assessment bears no valid fruit.[78]

WHEREFORE, premises considered, the instant **Petition for Review** is **GRANTED**.

Accordingly, the *Formal Letter of Demand* and *Assessment Notices*, both dated January 5, 2021, assessing petitioner for deficiency income tax, VAT, EWT, FBT, and compromise penalty, in the aggregate amount of **₱50,583,904.90**, for taxable year 2017, and the *Warrant of Garnishment* dated July 28, 2021 are **CANCELLED** and **SET ASIDE**.

Correspondingly, respondent is **ENJOINED** from collecting the said amount from petitioner.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

[78] *Commissioner of Internal Revenue vs. Pilipinas Shell* Corporation, G.R. No. 197945, July 9, 2018.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice