REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

GRAND GEO SPHERES CONSTRUCTION CORP.,
Respondent.

CTA EB No. 2763
(CTA Case No. 9891)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated: OCT 08 2024 10:52 am

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DECISION

BACORRO-VILLENA, J.:

In its bid to reverse the Special Third Division's Decision[1] promulgated on 11 January 2023 (**assailed Decision**) and its Resolution[2] (**assailed Resolution**) issued on 24 May 2023, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the present Petition for

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1 Annex "A", *rollo*, pp. 19-35. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice Erlinda P. Uy (Ret.) and Associate Justice Maria Rowena Modesto-San Pedro.

2 Annex "B", id., pp. 36-39.

Review[3] pursuant to Section 2(a)(1)[4], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

In the assailed Decision and Resolution, the Special Third Division granted respondent Grand Geo Spheres Construction Corp.'s, (**respondent**'s/**GGSCC**'s) prior Petition for Review and thereby, declared void petitioner's deficiency income tax (**IT**) and value-added tax (**VAT**) assessments, in the total amount of ₱8,205,711.61, including interest, for the taxable year (**TY**) 2011, as well as cancelled and set aside petitioner's Demand Before Suit (**DBS**) dated 07 May 2018.[5]

PARTIES OF THE CASE

Petitioner is the duly appointed CIR tasked to decide disputed assessment, refunds of internal revenue taxes, fees or charges, penalties imposed in relation thereto, as provided by law.[6] He or she may be served with all notices, pleadings, resolutions, orders, decisions, and other legal processes of this Court at the Legal Division, Revenue Region 8, 2nd Floor, Bureau of Internal Revenue (**BIR**) Building, 313 Gil Puyat Avenue, Makati City.

Respondent, on the other hand, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the 12 South Zuzuarregui Street, Old Balara, Quezon City.[7] It is engaged in the construction of road and bridges, floor control, river basin, dams and irrigation systems, water supply, building and other infrastructures.[8]

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3 Filed on 03 July 2023, id., pp. 5-18. The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a "Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 19 June 2023, id., p. 4.

4 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motion for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

1. Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry and Department of Agriculture[.]

5 BIR Records, p. 241.

6 *Rollo*, p. 6.

7 Paragraph 2.1, Admitted Facts/Documents, Joint Stipulation of Facts and Simplification of Issues (JSFI), Division Docket, p. 167.

8 Par. 5, Statement of Facts, Respondent's Memorandum dated 09 February 2022, id., p. 324.

FACTS OF THE CASE

On 16 August 2012, petitioner issued an electronic Letter of Authority (**eLOA**) No. 039-2012-00000568 (SN: eLA201100001765)[9], informing respondent that certain BIR officers will examine its books of accounts and other accounting records for all internal revenue taxes for TY 2011.

On 23 January 2013, a Subpoena *Duces Tecum*[10] (**SDT**) was issued against respondent, through its President Anesia B. Bautista (**Anesia**), commanding respondent to appear before the BIR's Legal Division Chief on 13 February 2013 and to bring and submit its books of accounts and other accounting records for TY 2011.

Respondent failed to comply with the SDT.[11] As a result, the case was remanded[12] to Revenue District Office (**RDO**) No. 39-South Quezon City for assessment based on the Best Evidence Obtainable Rule (**BEOR**) pursuant to Section 6(B) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Revenue Memorandum Circular (**RMC**) No. 23-2000.[13]

On 11 June 2013, petitioner issued a Notice for Informal Conference[14] (**NIC**) against respondent, requesting the latter to appear before RDO No. 39-South Quezon City, for an informal conference regarding its deficiency taxes for TY 2011.

On 15 December 2014, petitioner issued a Preliminary Assessment Notice[15] (**PAN**) against respondent. Subsequently, on 08 January 2015,

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9 Exhibit "R-1", id., p. 288. Refer also to the original under the BIR Records (Exhibit "R-8", p. 1). However, the date of issuance as well as the electronic Letter of Authority (eLOA) number in the parties' JSFI, as referenced in the Special Third Division's assailed Decision, differ from the actual document that formed part of the BIR Records. Notably, in paragraph 2.3 under "II. Admitted Facts/Documents" of the parties' JSFI (Division Docket, p. 167), the eLOA number was indicated as 201000086482, and the issue date was 19 January 2012.

10 Exhibit "R-2", id., p. 289.

11 Exhibit "R-3", id., p. 290.

12 Id.

13 Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable"

14 Exhibit "R-5", Division Docket, p. 292.

15 Exhibit "R-6", id., p. 297.

petitioner issued a Final Assessment Notice[16]/Formal Letter of Demand[17] (**FAN/FLD**) with Details of Discrepancies against respondent. Both Assessment Notices[18] (**ANs**) were sent by the Office of the Regional Director, Region No. 7, and signed by then Regional Director Alfredo V. Misajon (**RD Misajon**).

On 30 June 2018, respondent's Corporate Secretary, Veronica M. Bautista (**Veronica**), found a copy of petitioner's DBS in her residential mailbox. The DBS ordered respondent to pay deficiency taxes amounting to ₱8,205,711.61, plus any increments accrued until the actual date of payment.[19]

PROCEEDINGS BEFORE THE COURT IN DIVISION

Disagreeing with the DBS, respondent filed a Petition for Review[20] with this Court on 26 July 2018. The case was docketed as CTA Case No. 9891 and was initially raffled to the First Division. In its petition, respondent argued that: (1) petitioner lacked a valid Letter of Authority (**LOA**) when it assessed respondent for deficiency taxes; and, (2) respondent was deprived of due process by not receiving the PAN and the FAN/FLD. It thus prayed that judgment be rendered reversing and setting aside the DBS and declaring respondent not liable for any deficiency tax for TY 2011.

In the *interim*, Administrative Circular No. 02-2018 was issued, reorganizing the three (3) divisions of the Court of Tax Appeals (**CTA**). Accordingly, the case was transferred to the Third Division.[21]

Later, within the period given to file an Answer to respondent's petition, petitioner filed his or her Answer.[22] Therein, petitioner raised the following arguments in his or her bid to have respondent's case dismissed: (1) the Third Division has no jurisdiction over the case; (2) respondent failed to protest the assessments against it and, thus, does not have the right to elevate the case to the Third Division; (3) since

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16 Exhibit "R-7-1" to "R-7-2", id., pp. 302-303.
17 Exhibit "R-7", id., pp. 299-301.
18 Exhibits "R-6", "R-7-1" to "R-7-2", id., pp. 297 and 302-303, respectively.
19 Par. 2.4, Admitted Facts/Documents, JSFSI, id., p. 167; BIR Records (Exhibit "R-8"), p. 241.
20 Division Docket, pp. 12-26.
21 See Order dated 27 September 2018, id., p. 42.
22 Id., pp. 58-63.

respondent failed to exhaust the administrative remedies provided by law (before the case may be elevated to the CTA), the Third Division could not have validly acquired jurisdiction over it; (4) there is both factual and legal basis to support the assessments against respondent; (5) the revenue officers (**ROs**) who conducted the audit examination found that respondent had IT and VAT deficiencies amounting to ₱8,205,711.61, with attachments detailing the reasons for these deficiencies included in the FLD sent to it; and, (6) the assessments against respondent have factual and legal support, and the FLD/FAN detailed the discrepancies that led to the findings of respondent's tax liabilities).

Still later, the Third Division ordered both parties to undergo mediation proceedings before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[23] However, both parties opted not to proceed with mediation.[24] Consequently, the case was referred back to the court for the resumption of proceedings.[25]

Prior to the conclusion of the Pre-Trial Conference, on 03 September 2019, petitioner transmitted the BIR Records for this case, consisting of one (1) folder, with 241 pages, to the Third Division.[26] On 04 October 2019, the parties filed their "Joint Stipulation of Facts and Simplification of Issues"[27] (**JSFI**), which the Third Division subsequently approved.[28] The Third Division then issued the Pre-Trial Order dated 05 November 2019.[29]

Trial ensued thereafter.

During the hearing on 16 September 2020, respondent presented its Corporate Secretary, Veronica, as a witness.[30] In her Judicial Affidavit dated 04 June 2019[31], which was adopted as her direct testimony, she

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23 See Resolution dated 25 January 2019, id., pp. 67-68.

24 No Agreement to Mediate dated 04 February 2019, id., p. 70.

25 Respondent's Pre-Trial Brief was submitted on 06 June 2019 while petitioner's Pre-Trial Brief was filed on 07 June 2019. Pre-Trial Conference was initially set on 11 June 2019. However, the said Conference was reset to, and held on, 03 September 2019.

26 Compliance with Explanation dated 03 September 2019, Division Docket, p. 137.

27 Id., pp. 166-171.

28 See Resolution dated 09 October 2019, id., pp. 175-176.

29 Id., pp. 178-183.

30 See Minutes of the Hearing and Order, both dated 16 September 2021, id., pp. 202 and 203-204, respectively.

31 Exhibit "P-2", id., pp. 101-105.

declared essentially that: (1) she personally received at her residential mailbox address a copy of petitioner's DBS dated 07 May 2018, which upheld respondent's alleged deficiency taxes amounting to ₱8,205,711.61; (2) the DBS was issued pursuant to eLOA No. 201000086482 dated 19 January 2012 (should be eLOA No. 039-2012-00000568, dated 16 August 2012[32]) , which informed respondent that the BIR will examine its books of accounts and other accounting records for TY 2011; and, (3) respondent did not receive any PAN and FAN/FLD from petitioner.

During her cross-examination, Veronica testified to the following: (1) she and the other members of respondent's Board of Directors (**BOD**) did not receive any PAN and FAN/FLD; (2) the DBS was sent to her personal address; and, (3) respondent had ceased operations after the death of its President. No redirect examination was conducted.[33]

On 24 September 2020, respondent filed its Formal Offer of Evidence[34] (**FOE**), to which petitioner failed to file a comment.[35] In the Resolution dated 04 January 2021[36], the Third Division admitted respondent's offered exhibits.

For his or her part, petitioner presented Revenue Officer Charlaraine G. Dytioco (**RO Dytioco**) as his or her witness.[37] In her Judicial Affidavit dated 17 February 2021, RO Dytioco declared that: (1) she is the RO assigned to audit respondent's books of accounts and other accounting records for TY 2011; (2) she served the LOA at respondent's registered address in Old Balara, Quezon City; (3) respondent failed to submit its books of accounts despite several notices; (4) she recommended the issuance of an SDT against respondent; (5) even after the SDT's issuance, respondent still failed to submit its books of accounts, leading to a recommendation for an assessment based on the BEOR; (6) the BIR docket was returned to RDO No. 39-South Quezon City, where a Memorandum of Assignment (**MOA**), signed by Assistant Revenue District Officer Shirley Calapatia (**ARDO Calapatia**), was issued, allowing the use of the BEOR in the assessment; (7) she attempted to personally serve the PAN and

32 Supra at note 9.
33 TSN dated 16 September 2020, pp. 7-18.
34 Division Docket, pp. 205-207.
35 See Records Verification Report dated 09 November 2020, id., p. 212.
36 Id., pp. 219-220.
37 Exhibit "R-9", id., pp. 247-255; Minutes of the hearing held on and Order, both dated 09 March 2021, id., pp. 273 and 274-275, respectively.

FAN/FLD through personal service, however, respondent's representatives refused to receive the same since they were not authorized to do so; and, (8) the PAN and FAN/FLD were served through licensed courier service *via* LBC.

During her cross-examination, RO Dytioco testified further that: (1) Lynette Juvida (**Juvida**) was the one who received the LOA; (2) she has no proof that Juvida was authorized to receive the LOA; (3) Maribel Fundador (**Fundador**), who received the SDT, informed her that Anesia, respondent's President, had already passed away; (4) there was no LBC confirmation that respondent received the PAN and FAN/FLD; (5) based on the Memorandum dated 23 January 2017[38] that formed part of the BIR Records, the FAN/FLD was also sent through registered mail, but it was marked as RTS (Return to Sender); and, (6) the only proof of receipt is the official receipt (**OR**) issued by LBC for the transaction.[39]

During the redirect examination, RO Dytioco testified that, in accordance with Revenue Regulations (**RR**) No. 18-2013[40], she may resort to service made by a reputable courier (which is an acceptable mode of service) since she already tried to personally serve the notices on respondent.[41] No re-cross examination was conducted.[42]

Later, on 29 March 2021, petitioner's FOE[43] was filed *via* electronic mail.[44] Respondent failed to file its comment thereto.[45] On 22 September 2021, the Third Division issued a Resolution that admitted all of petitioner's exhibits.[46]

On 06 December 2021, petitioner filed his or her Memorandum[47], while respondent filed its Memorandum[48] on 17 February 2022. The case was then deemed submitted for decision on 01 March 2022.[49]

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38 BIR Records, pp. 230-231.
39 TSN dated 09 March 2021, pp. 8-18.
40 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
41 TSN dated 09 March 2021, p. 19.
42 Id., p. 20.
43 Division Docket, pp. 280-287.
44 See "Annex A" attached to Petitioner's Manifestation dated 20 May 2021, id., p. 279.
45 See Records Verification Report dated 29 June 2021, id., p. 311.
46 See Resolution dated 22 September 2021, id., pp. 313-314.
47 Id., pp. 315-320.
48 Id., pp. 323-346.
49 See Resolution dated 01 March 2022, id., p. 350.

In the *interim*, pursuant to Administrative Circular No. 01-2022 dated 21 June 2022[50], which was issued following the retirement of Associate Justice Juanito C. Castañeda, Jr., the Court underwent another reorganization. The instant case stayed with the Special Third Division, which was composed of the remaining members of the prior Third Division.

In the now assailed Decision of 11 January 2023[51], the Special Third Division granted respondent's Petition for Review. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**. The deficiency income tax and VAT assessments in the total amount of ₱8,205,711.61, including interest, for taxable year 2011, are **VOID.**
>
> Accordingly, [petitioner's] *Demand Before Suit* dated May 7, 2018 is **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**
>
> ...

In granting respondent's Petition for Review, the Special Third Division mainly held that: (1) the Special Third Division has jurisdiction over the case; (2) the LOA was not properly served on respondent or its duly authorized representative; and, (3) there is no proof that respondent received the PAN and FAN/FLD, thereby depriving it of due process.[52]

Meanwhile, on 08 February 2023, petitioner filed a "Motion for Reconsideration (Decision dated 11 January 2023)"[53] (**MR**). On 22 March 2023, respondent filed its Comment thereto.[54] On 24 May 2023, the Special Third Division issued the assailed Resolution denying petitioner's MR.[55] In the assailed Resolution, the Special Third Division held that petitioner's arguments were mere reiterations of what has already been passed upon and considered in the assailed Decision. It

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50 Reorganizing the Second and Third Divisions of the Court.
51 Supra at note 1.
52 Supra at note 1.
53 Division Docket, pp. 370-376.
54 Id., pp. 380-391.
55 Supra at note 2.

also reiterated that if a taxpayer denies having received an assessment from petitioner, it then becomes incumbent upon petitioner to prove by competent evidence that the addressee indeed received the same.[56]

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the Special Third Division's actions, petitioner filed the present petition on 03 July 2023 (following the extension of time granted to petitioner[57]). On 04 August 2023, respondent filed its "Comment (To Petitioner Commissioner of Internal Revenue's Petition for Review dated 3 July 2023)".[58] On 19 October 2023, the Court *En Banc* resolved to give due course to the instant case and submitted it for decision. The Court *En Banc* also noted that the PMC-CTA failed to persuade the parties to enter into an amicable settlement.[59]

ISSUE

Before Us, petitioner puts forward the following issue for the Court *En Banc*'s resolution:

> WHETHER THE SPECIAL THIRD DIVISION ERRED IN CANCELING THE DEMAND BEFORE SUIT (DBS) DATED 7 MAY 2018 AND RULING THAT THE DEFICIENCY INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) ASSESSMENTS IN THE TOTAL AMOUNT OF ₱8,205,711.61, INCLUDING INTEREST FOR TAXABLE YEAR (TY) 2011 ARE VOID.

ARGUMENTS

In calling for the reversal of the Special Third Division's actions, petitioner insists that the assessment against respondent is valid and that there is no violation of respondent's right to due process.[60] Petitioner argues that when he or she mailed the ANs through a reputable courier service, a disputable presumption arises that

56 Division Docket, p. 396.
57 *Rollo*, p. 4.
58 Id., pp. 47-61.
59 Id., p. 66.
60 See Petition for Review, supra at note 3.

respondent duly received them.[61] Petitioner further argues that the service and issuance of the LOA were valid.[62] Petitioner asserts that the authority vested to the RO emanates from the LOA itself and is not affected by respondent's denial of its receipt.[63]

As for respondent, it argued that the present petition should be denied for the following reasons: (1) petitioner failed to prove by competent evidence that respondent received the PAN and FAN/FLD; (2) petitioner failed to present sufficient evidence to show that respondent received the LOA; and, (3) petitioner's collection of the amount of ₱8,205,711.61 from respondent on the basis of a void assessment is equivalent to confiscation of property without due process of law.[64]

RULING OF THE COURT *EN BANC*

At the outset, it is noted that the present petition before the Court *En Banc* was timely filed.

Petitioner received a copy of the assailed Resolution on 01 June 2023.[65] Petitioner had fifteen (15) days from receipt of the assailed Resolution, pursuant to Section 3(b)[66], Rule 8 of the RRCTA, or until 16 June 2023, to file a Petition for Review before the Court *En Banc*. On 15 June 2023, petitioner filed a "Motion for Extension of Time to file his or her Petition for Review".[67] The Court *En Banc* granted the said motion and allowed petitioner until 01 July 2023.[68] Considering that 01 July 2023 falls on a Saturday, petitioner timely filed the present Petition for Review on 03 July 2023.[69]

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61 Par. 3, id., p. 11.
62 Par. 3, id., p. 13.
63 Par. 4, id., p. 14.
64 See Comment, supra at note 58, p. 49.
65 See Notice of Resolution dated 25 May 2023, Division Docket, p. 395.
66 **SEC. 3.** Who may appeal; period to file petition. —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

67 *Rollo*, p. 1.
68 Id., p. 4.
69 Supra at note 3.

We proceed to the merits of the case.

After a careful review of the records of the case and the contrasting arguments of the parties, the Court *En Banc* finds the petition bereft of merit.

It is worthwhile to note that the allegations and arguments in the instant petition are but reiterations of petitioner's pleadings before the Special Third Division, which have already been exhaustively discussed and passed upon in the assailed Decision and Resolution. However, for emphasis and for petitioner's further enlightenment, We will oblige to discuss anew the more salient points in *seriatim*.

PETITIONER FAILED TO PROVE THAT RESPONDENT RECEIVED THE PRELIMINARY ASSESSMENT NOTICE (PAN), FINAL ASSESSMENT NOTICE (FAN) AND FORMAL LETTER OF DEMAND (FLD).

Here, petitioner insists that the service through a reputable courier service, such as LBC, constitutes a valid mode of serving the PAN and FAN/FLD, pursuant to RR No. 12-99[70], as amended. Petitioner further argues that the disputable presumption remains—that a letter properly addressed and mailed is presumed to have been received in the regular course of mail.[71]

Petitioner's arguments fail to convince Us.

Firstly, the records do not support petitioner's insistence that the PAN and FAN/FLD were validly sent to respondent *via* LBC. Petitioner's own Exhibit "R-8" or the Affidavits of Service of PAN/FAN executed by RO Dytioco and Revenue Officer Nora U. Flores (**RO Flores**) clearly

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70 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 *Rollo*, p. 11.

negate petitioner's assertion. We quote below the relevant portion of their Affidavit of Service dated 17 December 2014[72], *viz*:

> ...
>
> (x) By delivering the said <u>PAN</u>/FAN to the person/**company** named therein at No. 12 South Zuzuarregui St. Old Balara, Quezon City **thru LBC Express because no authorized person is available to receive the said notice.**
>
> ...

We also quote below the pertinent portion of RO Dytioco and RO Flores' Affidavit of Service dated 13 January 2015[73], to wit:

> ...
>
> (x) By delivering the said PAN/<u>FAN</u> to the person/company named therein at NO. 12 South Zuzuarregui St. Old Balara, Quezon City **thru LBC Express because no authorized person is available to receive the said notice.**
>
> ...

RO Dytioco likewise testified that she indeed sent the PAN and FAN/FLD *via* LBC, to wit:

> ...
>
> **Q24. What are the contents of the Preliminary Assessment Notice and how was it served to [respondent]?**
>
> **A:** The Preliminary Assessment Notice (PAN) contains the facts and the law upon which the assessment is based. It also contains a demand to pay the deficiency tax liabilities stated therein. I tried to personally serve the PAN to [respondent] at its registered address, however, [respondent's] representatives refused to receive the same since they were not authorized to do so. Since no authorized person was available to receive the PAN, I **resorted to sending the PAN through licensed courier service (LBC) in order to ensure immediate receipt thereof.**[74]
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> ...

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72 Exhibit "R-8", BIR Records, p. 137; Underscoring in the original text, emphasis in the original text and supplied.

73 Id., p. 150; Underscoring in the original text, emphasis in the original text and supplied.

74 Exhibit "R-9", Division Docket, supra at note 37, pp. 251-252; Emphasis in the original text and supplied.

Q29. How was the FLD/FAN served to [respondent]?

A: Similar with the manner of service of the PAN, I attempted to serve the FLD/FAN to [respondent] thru personal service at its registered address. However, [respondent's] representatives refused to receive the same since they were not authorized to do so. Since no authorized person was available to receive the FLD/FAN, **I resorted to sending the [PAN] through licensed courier service (LBC) in order to ensure immediate receipt thereof.**[75]

...

Although BIR issuances may be sent *via* reputable couriers, such service does not conclusively prove receipt. As the records bear, petitioner proffered no evidence to establish respondent's actual receipts of the PAN and FAN/FLD.

During her cross-examination, RO Dytioco also confirmed the absence of any proof of receipt, as follows:

...

Q: In Question No. 29, you mentioned that the FLDs and FAN were sent to [respondent] to private courier service LBC, will you confirm with LBC the specific date of the receipt of the FLD and FAN by the [respondent] or his authorized representative?

A: No Sir.

Q: Do you have proof that the FLD and FAN were received by the [respondent] or his authorized representative?

A: No, Sir.

...

Q: Do you have a copy of the proof of receipt from LBC?

A: Only the receipt of LBC.[76]

...

It is, thus, indubitable that petitioner solely relies on the LBC-issued OR as proof of the service of the PAN and FAN/FLD on

[75] Id., pp. 252-253; Emphasis supplied.
[76] TSN dated 09 March 2021, pp. 15-16; Emphasis supplied.

respondent. However, the BIR's own regulations, particularly Section 3.1.6 of RR No. 12-99[77], as amended by RR No. 18-2013[78], provide the following requirements:

> ...
> SEC. 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:
> ...
>
> 3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
> ...
>
> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. **A copy of the notice, may also be sent through reputable professional courier service.** If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> **The server shall accomplish the bottom portion of the notice.** He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or **the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**
>
> ...

Unfortunately, petitioner's Exhibits "R-6", "R-7", "R-7-1" and "R-7-2"[79] failed to show compliance with the above-mentioned

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[77] Supra at note 70.
[78] Supra at note 40.
[79]

Exhibit No.	Description
"R-6"	Preliminary Assessment Notice with Details of Discrepancy, dated 15 December 2014.

requirements on two (2) grounds: (1) the server did not accomplish the bottom portion of the notice, leaving the printed name, signature and designation of the person who received the subject ANs, and the date of receipt blank; and, (2) the OR issued by LBC contains no identifiable details of the transaction, merely noting "document" without further specifics.

Moreover, upon examination of petitioner's other pieces of evidence, it is evident that he or she did not present any written report, certification, or any other document from LBC regarding the service of the subject ANs. Therefore, We cannot agree with petitioner's claim that there was a valid service of the PAN and FAN/FLD on respondent.

The requirement of informing the taxpayer of the assessment is **mandatory** in nature as provided in Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and Section 3 of RR No. 12-99[80], as amended, by RR No. 18-2013[81], the relevant portions of which are quoted hereunder for ready reference:

> ...
>
> **SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings
>
> ...
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**[82]
>
> ...
>
> SEC. 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:

"R-7"	Formal Letter of Demand No. 39-B136-11, dated 08 January 2015, together with Details of Discrepancies.
"R-7-1"	Assessment Notice Demand No. 39-B136-11 for Income Tax, dated 8 January 2015.
"R-7-2"	Assessment Notice Demand No. 39-B136-11 for VAT dated 08 January 2015.

80 Supra at note 70.
81 Supra at note 40.
82 Emphasis supplied and italics in the original text.

> 3.1.1 *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. **It shall show 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 Final Assessment Notice (FLD/FAN) shall be issued** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> ...
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void*** (see illustration in ANNEX "B" hereof).
>
> 3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows: ...[83]
>
> ...

In the case of *Barcelon, Roxas Securities Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[84] **(Barcelon)**, citing the case of *Gonzalo P. Nava v. Commissioner of Internal Revenue*[85], the Supreme Court emphasized that it is imperative for the BIR to satisfactorily prove the release, mailing or sending of the assessment, *viz:*

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83 Emphasis supplied and italics in the original text.

84 G.R No. 157064, 07 August 2006; Citations omitted and emphasis supplied.

85 G.R No. L-19470, 30 January 1965.

> ...
>
> While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, this ruling makes it the more imperative **that the release, mailing or sending of the notice be clearly and satisfactorily proved.** Mere notations made without the taxpayer's intervention, notice or control, **without adequate supporting evidence cannot suffice**; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.
>
> ...

Additionally, regarding petitioner's contention that a letter duly directed and mailed is presumed to have been received in the regular course of mail[86], it is important to note that this presumption remains only when uncontradicted. Put differently, it may be set aside when duly contradicted by other evidence.[87] Here, not only did respondent deny receiving the PAN and FAN/FLD, but petitioner's own pieces of evidence (ironically) also negated this presumption.

Incidentally, the Court *En Banc* must likewise underscore that, in light of respondent's denial of receipt, the burden of proof regarding service on respondent necessarily shifted to petitioner. However, petitioner failed to meet this burden, and the evidence presented even contradicted his or her own claim.

In the case of *Republic of the Philippines v. The Court of Appeals and Nielson & Company, Inc.*[88] and in *Barcelon*[89], the Supreme Court held that a party favored by the presumption has the burden of proving that the addressee received the mailed letter in cases when there is a direct denial of the receipt of the mail. Consistently, the Supreme Court has held that it is a due process requirement that the taxpayer actually receives the assessment, to wit:

> ...
> It must be noted, however, that the foregoing rule requires that the notice be sent <u>to the taxpayer</u>, and not merely to a disinterested party.

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86 Supra at note 71.

87 Rule 131. Burden of Proof and Presumptions.

...

SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence[.]

88 G.R No. L-38540, 30 April 1987.

89 Supra at note 84.

> Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, <u>due process requires that it must be served on and received by the taxpayer</u>.[90]
>
> ...

For petitioner's failure to inform respondent of the facts and the law on which the assessment was made, through the valid service of the PAN and FAN/FLD, as mandated under the NIRC of 1997, as amended, a violation of due process occurred. This violation renders the subject assessment void and of no legal effect. Nothing is more settled but that a void assessment bears no valid fruit.[91]

THE LETTER OF AUTHORITY (LOA) WAS NOT PROPERLY SERVED ON RESPONDENT OR ITS DULY AUTHORIZED REPRESENTATIVE.

Petitioner argues that the LOA was duly served on respondent at its registered address. He or she also contends that the authority vested to the RO emanates from the LOA itself and is not dependent on respondent's acknowledgment or denial of the LOA's receipt. Furthermore, petitioner asserts that when respondent ceased its operations, it became respondent's obligation to inform petitioner of any change in address.[92]

On cross-examination, RO Dytioco testified that no document exists to show that Juvida was authorized to receive the LOA on respondent's behalf:

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[90] *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*, G.R No. 155541, 27 January 2004; Citations omitted, italics and underscoring in the original text.

[91] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G. R Nos. 159694 and 163581, 27 January 2006.

[92] Supra at note 3.

...

Atty. Apdua:

> Ms. Witness, in Question No. 6, you mentioned that you served the Letter of Authority marked as Exhibit R-1 to [respondent's] address as shown by the exhibits there is a **Lynette Juvida** who received the Letter of Authority, will you confirm the recipient **Lynette Juvida** if she was authorized by the [respondent] to receive the Letter of Authority?

A:

> Yes, Sir.

Q:

> If Lynette Juvida present proof of authority, is she received the Letter of Authority (sic)?

A:

> Yes, she presented her ID.

Q:

> Do you have a copy of the said ID?

Witness:

> **I have no copy.**

Atty. Padua:

> **As of now there is no document that would show that she is authorized to receive the Letter of Authority?**

A:

> **Okay.**[93]

...

Petitioner's claim faces scrutiny due to the absence of any proof that the person who received the LOA was authorized to do so. In fact, in her unrebutted testimony, RO Dytioco even agreed that no document exists showing Juvida was duly authorized to receive the LOA. While we agree with petitioner that the RO's authority emanates from the LOA itself, due process mandates that the LOA be received by a taxpayer's duly authorized representative.

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93 TSN dated 09 March 2021, pp. 8-9; Emphasis supplied.

The Court *En Banc* also agrees with the Special Third Division's finding that RO Dytioco's testimony regarding the service and receipt of the LOA is incredulous. While she confirmed that a certain "Lynette Juvida" received eLOA No. 039201200000568 (SN: eLA201100001765) dated 16 August 2012, petitioner's Exhibit "R-1"[94] (or the said eLOA) reveals that it was a certain "Nonette Comida", not "Lynette Juvida," who received it.

Similarly, assuming *ex gratia in argumenti* that respondent failed to notify petitioner of any change of address, this does not change the fact that: (1) respondent's duly authorized representative did not receive the LOA at the address where petitioner's agent or officer had served it; and, (2) petitioner failed to prove that there was a valid service of the PAN and FAN/FLD at respondent's BIR-registered address.

With the foregoing disquisitions, the Court *En Banc* sees no cogent or compelling reason to deviate from the Special Third Division's findings and conclusions. Equally, with the questioned assessments against respondent having been found void and ineffective, We see no need to proceed with an exhaustive discussion or resolution of the other issues raised.

WHEREFORE, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 03 July 2023 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 11 January 2023 and assailed Resolution dated 24 May 2023, of the Special Third Division in CTA Case No. 9891, entitled *Grand Geo Spheres Construction Corp. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

94 Division Docket, p. 288, supra at note 9.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice