REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

Y&R PHILIPPINES, INC., *Petitioner,* — **CTA *EB* NO. 2019** *(CTA Case No. 9437)*

-versus-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* — **CTA *EB* NO. 2020** *(CTA Case No. 9437)*

-versus-

Y&R PHILIPPINES, INC., *Respondent.*

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 2 5 2020
3:35 p.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* are two **PETITIONS FOR REVIEW.** The **PETITION FOR REVIEW** by Y&R Philippines, Inc. ("Y&R's Petition for

Review") was filed last 27 February 2019[1] with the Commissioner of Internal Revenue's **COMMENT (ON PETITION FOR REVIEW)** ("CIR's Comment") filed on 8 April 2019.[2] The **PETITION FOR REVIEW** by the Commissioner of Internal Revenue ("CIR's Petition for Review") was filed on 8 March 2019[3] with Y&R Philippines, Inc.'s **COMMENT/OPPOSITION (On the Petition for Review dated 6 March 2019)** filed on 17 May 2019.[4]

The Parties

The **COMMISSIONER OF INTERNAL REVENUE ("CIR")**, petitioner in CTA *EB* No. 2020 and respondent in CTA *EB* No. 2019, is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges and penalties imposed in relation thereto or other matters arising under the ***National Internal Revenue Code ("NIRC")***, or other laws enforced by the BIR.

Y&R PHILIPPINES, INC. ("Y&R"), petitioner in CTA *EB* No. 2019 and respondent in CTA *EB* No. 2020 is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at 9th Floor Marajo Tower 312, 26th corner 4th Avenue, Fort Bonifacio Global City, Taguig City. It is engaged in the conduct of a general advertising agency business, including the preparation and arrangement of advertisement and the manufacture and construction of advertising devices and novelties.

The Facts

Y&R filed its Annual Income Tax Return for TY 2007 on 8 May 2008. Petitioner likewise filed its Quarterly Value-Added Tax ("VAT") Returns for the four quarters of TY 2007 on 25 April 2007, 25 July 2007, 25 October 2007, and 24 January 2008, respectively.[5]

On 8 August 2008, the CIR issued Letter of Authority ("LOA") No. 200700036680, authorizing revenue officers to examine Y&R's books of accounts and other accounting records for all internal revenue taxes covering the period 1 January 2007 to 31 December 2007.[6]

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1 See Y&R's Petition for Review, Records of CTA EB No. 2019, Vol. 1, pp. 1-66.
2 See CIR's Comment, Records of CTA EB No. 2019, Vol. 1, pp. 71-75.
3 See CIR's Petition for Review, Records of CTA EB No. 2020, Vol. 1, pp. 7-59.
4 See Y&R's Comment, Records of CTA EB No. 2019, Vol. 1, pp. 79-107.
5 See Y&R's Petition for Review, Records of CTA EB No. 2019, Vol. 1, p. 3.
6 *Id.*, at p. 4.

Pursuant to LOA No. 200700036680, Y&R paid the following deficiency taxes, *viz:*[7]

KIND OF TAX	DATE PAID	AMOUNT
Income Tax	12 August 2011	Php4,943,778.75
Withholding Tax on Compensation	12 August 2011	2,101,193.85
Final Withholding Tax	12 August 2011	336,066.52
Fringe Benefits Tax	9 December 2010	7,713,052.50
TOTAL		**Php15,094,091.63**

These payments were confirmed by the CIR on 26 September 2011 through a letter of even date.[8]

On 7 September 2015, the CIR issued a Preliminary Collection Letter ("PCL") demanding payment from Y&R of the amount of Php17,202,373.31 for alleged deficiency income tax, VAT, and compromise penalty, pursuant to Assessment/Demand No. F-050-LNTF-07-059.[9]

On 28 September 2015, a Final Notice Before Seizure ("FNBS") was issued to collect the said amount. Y&R answered that it has already settled all of its deficiency taxes for TY 2007 amounting to Php15,094,091.63 through a letter, dated 19 October 2015.[10]

On 11 December 2015, the CIR sent a letter to Y&R in relation to its tax delinquency amounting to Php17,202,373.31, representing deficiency taxes generated from Letter Notice ("LN") No. 050-RLF-07-00-00077, dated 1 July 2009, for TY 2007. In reply, Y&R sent a letter, dated 22 December 2015, which was received by the CIR on 23 December 23, 2015, requesting for time to respond to the CIR's letter.[11]

The CIR then issued a letter, dated 8 March 2016, which was received by Y&R on 22 March 2016.[12]

On 28 July 2016, the CIR issued a Warrant of Distraint and/or Levy ("WDL"), which was received by Y&R on 2 August 2016, for the collection of the latter's deficiency taxes for TY 2007. Similarly, the CIR issued Warrants of Garnishment to Hong Kong and Shanghai Banking Corporation Limited ("HSBC") and Bank of the Philippine Islands ("BPI"), dated 16

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7 *Ibid.*
8 *Id.*, at p. 5.
9 *Ibid.*
10 *Ibid.*
11 *Id.*, at p. 6.
12 *Ibid.*

August 2016 and 17 August 2016, respectively, for the garnishment of Y&R's deposit accounts. HSBC then placed Y&R's deposit account amounting to Php17,202,373.31 in a separate blocked account and informed the latter of such fact.[13]

Consequently, on 23 August 2016, Y&R filed a Petition for Review (with Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax) with the Court in Division.[14]

In support of its motion to suspend collection of the alleged deficiency taxes, Y&R offered testimonial and documentary evidence. While awaiting the Court in Division's resolution of said motion, HSBC informed Y&R that it received from the CIR an Order for Delivery dated 29 September 2016.[15]

On 7 October 2016, Y&R manifested with the Court in Division that HSBC issued three (3) checks payable to the CIR based on the latter's Order for Delivery.[16]

Due to the foregoing supervening events, Y&R filed an Amended Petition for Review with the Court in Division on 21 October 2016, praying for a refund in the amount of Php17,202,373.31, plus legal interest of six percent (6%) per annum from 3 October 2016.[17]

On 31 August 2018, the Court in Division promulgated a Decision partially granting Y&R's Amended Petition for Review. In said Decision, the Court in Division found that the Preliminary Assessment Notice ("PAN"), Final Assessment Notice ("FAN"), and WDL were void and that the CIR had no right to collect the amount of Php17,202,373.31. However, the Court in Division denied Y&R's prayer for legal interest of six percent (6%) per annum on the amount to be refunded.[18]

On 25 September 2018, Y&R filed its Motion for Partial Reconsideration (of the Decision dated 31 August 2018). On the same date, the CIR filed his Motion for Reconsideration.[19]

On 4 February 2019, the Court in Division issued a Resolution denying both Y&R's Motion for Partial Reconsideration (of the Decision dated 31 August 2018) and the CIR's Motion for Reconsideration.[20]

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13 *Id.*, at p. 7.
14 *Ibid.*
15 *Id.*, at pp. 7-8.
16 *Id.*, at p. 8.
17 *Id.*, at p. 9.
18 See Annex "A" of Y&R's Petition for Review, Records of CTA EB No. 2019, Vol. 1, pp. 34-57.
19 See Y&R's Petition for Review, Records of CTA EB No. 2019, Vol. 1, p. 10.
20 See Annex "B" of Y&R's Petition for Review, Records of CTA EB No. 2019, Vol. 1, pp. 58-66.

Hence, Y&R's Petition for Review and the CIR's Petition for Review were filed on 27 February 2019[21] and 8 March 2019,[22] respectively.

Prior to filing his Petition for Review, the CIR filed a Motion for Extension of Time to File Petition for Review on 20 February 2019 via registered mail,[23] which was granted by this Court.[24]

On 21 March 2019, this Court issued a Resolution ordering the CIR to file his Comment on Y&R's Petition for Review, which was complied with on 8 April 2019.[25]

In a Minute Resolution dated 26 March 2019, this Court ordered the consolidation of CTA *EB* No. 2020 with CTA *EB* No. 2019, being the case with the lower docket number.[26]

On 22 April 2019, this Court issued a Resolution ordering Y&R to file a Comment on the CIR's Petition for Review,[27] which was complied with on 17 May 2019.[28]

On 1 July 2019, this Court issued a Resolution giving due course to Y&R and the CIR's respective Petitions for Review, and directed them to submit their memoranda within thirty (30) days from notice,[29] which was complied with by Y&R on 5 August 2019.[30]

On 5 August 2019, the CIR filed a Manifestation (In Lieu of Submission of Memorandum) manifesting that he will be adopting the arguments and defences in his Petition for Review as his Memorandum.[31]

This Court *En Banc* then issued a Resolution, dated 4 September 2019, submitting the case for Decision.[32]

Hence, this Decision.

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21 See Y&R's Petition for Review, Records of CTA EB No. 2019, Vol. 1, pp. 1-66.
22 See CIR's Petition for Review, Records of CTA EB No. 2020, Vol. 1, pp. 7-59.
23 Records of CTA EB No. 2020, Vol. 1, pp. 1-5.
24 See Resolution, dated 5 March 2019, Records of CTA EB No. 2020, Vol. 1, p. 6.
25 See CIR's Comment, Records of CTA EB No. 2019, Vol. 1, pp. 71-75.
26 See Minute Resolution, dated 26 March 2019, Records of CTA EB No. 2020, Vol. 1, p. 70.
27 See Resolution, dated 22 April 2019, Records of CTA EB No. 2020, Vol. 1, pp. 76-78.
28 See Y&R's Comment, Records of CTA EB No. 2019, Vol. 1, pp. 79-107.
29 See Resolution, dated 1 July 2019, Records of CTA EB No. 2020, Vol. 1, pp. 112-114.
30 See Y&R's Memorandum, Records of CTA EB No. 2020, Vol. 1, pp. 115-163.
31 See CIR's Manifestation (In Lieu of Submission of Memorandum), Records of CTA EB No. 2020, Vol. 1, pp. 164-167.
32 See Resolution, dated 4 September 2019, Records of CTA EB No. 2020, Vol. 1, pp. 168-170.

The Assigned Errors

The issues to be resolved are:

1. Whether or not the Court in Division erred in granting Y&R's Petition for Review before it and ordering the refund of the garnished amount of Php17,202,373.31 representing the erroneously collected taxes;[33] and

2. Whether the Court in Division erred in ruling that Y&R is not entitled to six percent (6%) legal interest per annum.[34]

Arguments of the Parties

In his Petition, the CIR alleged the following:[35]

1. The BIR, as a whole, is not fully informed of Y&R's new address. Y&R failed to comply with ***Section 11 of Revenue Regulation No. 12-85 ("RR 12-85")*** in relation to change of address by taxpayers. Consequently, the PAN and FAN were properly addressed to Y&R. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, more so because of the fault of the taxpayer in not fully informing the BIR.

2. ***Section 6 of the NIRC*** does not limit the CIR's power to examine and to determine tax deficiency only through the issuance of an LOA.

3. The extraordinary prescriptive period of ten (10) years should be applied in the instant case since there is a presumption of falsity in the returns filed by Y&R considering that, through audit investigation, it was revealed that there were undeclared taxable sales in Y&R's VAT returns which were more than thirty percent (30%) of the declared sales.

4. Y&R is not entitled to the refund due to its failure to discharge the burden of proof accorded to taxpayers in tax refund cases.

In response, Y&R argued, as follows:[36]

33 See Y&R's Memorandum, Records of CTA EB No. 2020, Vol. 1, p. 123.
34 *Ibid.*
35 See CIR's Petition for Review, Records of CTA EB No. 2020, Vol. 1, pp. 7-59.
36 See Y&R's Comment, Records of CTA EB No. 2019, Vol. 1, pp. 79-107.

1. The CIR's Petition for Review is a mere rehash of the arguments raised in its Motion for Reconsideration before the Court in Division. Such arguments have already been extensively passed upon by the Court in Division when it resolved the CIR's Motion for Reconsideration.

2. The CIR neither presented nor formally offered any evidence during trial to prove that the PAN and FAN were actually received by Y&R or its representatives. As correctly ruled by the Court in Division, the assessment notices are deemed to have not been issued.

3. The CIR's reliance on ***RR 12-85*** and ***Revenue Administrative Order No. 15-00 ("RAO 15-00")*** is misleading and incorrect. When Y&R changed its address in 2009, requests for transfer of BIR registration were governed by ***Revenue Memorandum Order No. 40-04 ("RMO 40-04"), as amended by Revenue Memorandum Order No. 11-05 ("RMO 11-05"),*** which was properly complied with by Y&R.

4. In ***Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.,*** the factual milieu of which is in all fours with the present case, the Supreme Court ruled that the BIR's knowledge of the actual address trumps the taxpayer's alleged failure to update its registration.

5. Y&R cannot be subject to a second round of audit based on the alleged Letter Notice ("LN"). Even assuming that Y&R may be audited a second time, due process dictates that after the issuance of an LN, a revenue officer should properly secure an LOA before proceeding with further examination and assessment.

6. There was no falsity, fraud, or omission that would warrant the application of the extra-ordinary prescriptive period. The alleged undeclared sales are in fact undeclared purchases, to which no VAT must be imposed. The CIR must prove that the filing of the false return was attended with the intention to evade tax in order for the ten (10)-year extra-ordinary prescriptive period to apply.

7. Y&R is entitled to refund in the amount of Php 17,202,373.31 and to six percent (6%) legal interest per annum.

In its Petition, Y&R argued the following:[37]

1. The Court in Division erred in absolving the CIR from paying the six percent (6%) legal interest. Y&R is entitled to said legal interest based on two grounds:

[37] See Y&R's Petition for Review, Records of CTA EB No. 2019, Vol. 1, pp. 1-66.

a. A claim for damages, in the form of legal interest, on the amount to be refunded by the BIR to the taxpayer is sanctioned by law, *i.e.*, the ***1987 Constitution, NIRC, and the New Civil Code.***

b. The garnishment and collection efforts of respondent and his counsel were attended by arbitrariness, bad faith, and blatant disregard of a taxpayer's right to due process.

In response, the CIR alleged that for payment of interest to accrue on the amount to be refunded to the taxpayer, it must either be clearly or expressly authorized by law or the collection of the tax was attended by arbitrariness, none of which are present in the instant case.[38]

The Ruling of the Court En Banc

This Court resolves to **DENY** both **Petitions** for lack of merit.

The arguments raised in both Petitions are mere reiterations of those argued by the CIR and Y&R before the Court in Division. Considering that these were already extensively and exhaustively passed upon by the Court in Division, there is no reason for this Court to disturb the Court in Division's Decision. Nonetheless, this Court shall tackle once more the parties' arguments to foreclose any doubt in their minds as to the soundness of the Assailed Decision.

The CIR's Petition for Review

The PAN and FAN are void as Y&R did not receive the same.

The CIR is alleging that since Y&R failed to comply with ***Section 11 of RR 12-85 and RAO 15-00*** in relation to change of address by taxpayers, the BIR as a whole was not informed of Y&R's new address. He posits that aside from notifying the Revenue District Office ("RDO") having jurisdiction over the taxpayer's former legal residence, the taxpayer must also notify the RDO having jurisdiction over its new legal residence, the Revenue Data Center, and the Accounts Receivable Division of the BIR National Office of its change of address. In case the taxpayer fails to comply with this requirement, any communication sent to its former legal residence shall be considered legal and binding. Consequently, the PAN and FAN were properly addressed to Y&R.[39]

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[38] See CIR's Comment, Records of CTA EB No. 2019, Vol. 1, pp. 71-75.

[39] See CIR's Petition for Review, Records of CTA EB No. 2020, Vol. 1, p. 12.

This is misplaced.

Y&R correctly argued that neither ***RR 12-85*** nor ***RAO 15-00*** apply to change of address by taxpayers under the current *NIRC*. ***RR 12-85***,[40] otherwise known as the "Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue," was a regulation issued during the advent of the ***1977 Tax Code*** for protesting assessments, particularly to implement ***Section 229*** of said law.[41] This regulation has long been superseded by ***Revenue Regulation No. 12-99 ("RR 12-99")***, which implements ***Section 228 of the NIRC***, the provision that effectively repealed ***Section 229 of the 1977 Tax Code***. As Y&R changed its office address in 2009, during the regime of the current ***NIRC***, ***RR 12-85*** is no longer applicable. Also, there is nothing in ***RAO 15-00***,[42] otherwise known as the "Organization and Functions of the Revenue Data Center Including the Divisions Under It Down to Section Level," which mandates taxpayers changing their office address to notify the BIR's Revenue Data Center of said change of address.[43]

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40 Issued 27 November 1985.

41 "Pursuant to Section 326 of the National Internal Revenue Code of 1977, as amended, in relation to Section 4 of the same Code, the following rules and regulations implementing the provisions of Section 319-A (now 229) of the same Code introduced by P.D. 1773 are hereby promulgated to govern the issuance of assessment notices as well as the adjudication of administrative protests against said assessments."

42 Issued 7 August 2000.

43 "III. FUNCTIONS:
REVENUE DATA CENTER (RDC) shall:
1. Administer and implement the policies, work programs, standards, guidelines and procedures of the Bureau within the RDC;
2. Take charge of the operation and management of distributed information systems under the RDC and ensure the highest IT systems reliability;
3. Provide accurate printed reports and updated on-line information to BIR offices;
4. Provide access to authorized users of the operating systems, databases and networks installed in the RDC and Revenue Regional and District Offices (ROs/RDOs) serviced by the RDC;
5. Implement and maintain security systems within the RDC as provided by the National Office;
6. Perform disaster recovery in case of operating systems (OS), database and network failures and other disruptions at the RDC;
7. Monitor performance of Authorized Agent Banks (AABs) under the data center jurisdiction relative to payment data transmission and coordinate with National Office (NO), ROs/RDOs in resolving related issues;
8. Monitor Information Technology (IT) system performance, identify bottlenecks and tune the system at RDC;
9. Provide a centralized fault/query logging system for every computerized office served by RDC;
10. Undertake necessary action for any application system related problems from production in coordination with other concerned ISG support groups;
11. Oversee the administrative support requirements of the RDC;
12. Provide policy guidance and operational directions to all divisions under the RDC relative to the abovementioned functions;
13. Coordinate with proper offices in the implementation of the abovementioned functions;
14. Monitor, evaluate and improve programs and activities under the responsibility of the RDC;
15. Review, recommend and/or approve all reports and other actions of the divisions under the RDC;
16. Consolidate and/or prepare prescribed reports for submission to the offices concerned; and
17. Perform such other related functions as may be assigned.

Rather, it is ***RMO 40-04***,[44] otherwise known as the "Modified Standard Procedures in Handling Taxpayers' Requests for Transfer of Registration," that governs changes of address under the current ***NIRC***. Under said issuance, a taxpayer changing its office address is not required to notify the Revenue Data Center or the Accounts Receivable Division of the BIR National Office of its change of address. The only offices required to be notified of the change of address are the RDO having jurisdiction over the old office address and the RDO having jurisdiction over the new office address.

Also, ***RMO 40-04*** mandates that a Front Desk Officer must verify if all the documents listed in the Checklist of Requirements are completely attached to the Application for Transfer of Registration. The Front Desk Officer will not accept the said application if the requirements are incomplete.[45]

Afterwards, the documents are further inspected by the Receiving Officer, the Document Processing Section, and the Collection Section. Thereafter, the application is forwarded to the Chief of the Taxpayers Services Section who will review the submitted documents, conduct review/verification procedures, and stamp the application with the notation "APPROVED FOR TRANSFER" to signify his endorsement. The process is done twice: *first,* by the old RDO, and subsequently, by the new RDO. It is only at this point that the Certificate of Registration is issued to the taxpayer by the new RDO, which signifies the approval of the request for transfer of registration.[46]

As duly found by the Court in Division, a Certificate of Registration had already been issued to Y&R indicating its new address at 9th Floor Marajo Tower 312 26th St. cor. 4th Ave., Fort Bonifacio Global City, Taguig City. Following the disputable presumption that an official duty has been regularly performed, Y&R, in the absence of contrary evidence, is presumed to have complied with ***RMO 40-04*** in relation to its transfer of registration.[47] Hence, the BIR is presumed to have been properly notified of Y&R's new address. As such, the assessment notices against Y&R should have been sent to its new address. Since the assessment notices were sent to Y&R's old address, Y&R was denied due process for not being properly notified of the deficiency tax assessment issued against it, as required by ***Section 228 of the NIRC*** and ***Section 3 of RR 12-99***, *viz:*

> "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

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44 Issued 20 July 2004.
45 Part V., I., A., 1., 1.1, f, Revenue Memorandum Order No. 40-04.
46 Part V., Revenue Memorandum Order No. 40-04.
47 Section 131 (m), Rule 131 of the Rules of Court.

findings: Provided, however, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

"SECTION 3. Due Process Requirement 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 Assessment Division or 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, at least by registered mail, 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 x x x. 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.

xxx xxx xxx

> 3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. x x x
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> xxx xxx xxx
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> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation."

It is clear in ***Section 228 of the NIRC*** that the taxpayer must be informed of the facts and the law upon which an assessment against it was made; otherwise, the said assessment will be void. Further, ***Section 3 of RR 12-99***, clearly requires, as part of the due process requirements in issuing deficiency tax assessments, actual receipt by the taxpayer of the assessment notices, which therefore includes that the assessment notices must be properly addressed to the taxpayer. The requirement that an assessment notice must be properly addressed to the taxpayer has its purpose, that is, in order to allow the taxpayer to properly respond and contest the assessment issued against it. The essence of due process is embodied in the basic requirement of notice and a real opportunity to be heard.[48] When an assessment notice is mailed to the wrong address, the taxpayer will surely not receive it. This will then result in the taxpayer's failure to respond to the deficiency tax assessment without any fault or negligence on its part. Thus, it would be the height of injustice to accord validity to an assessment not received by a taxpayer.

And even if Y&R failed to comply with ***RMO 40-04*** in relation to its transfer of registration, still, the CIR has been already shown to have had knowledge of Y&R's new address address at 9th Floor Marajo Tower 312, 26th St. cor. 4th Ave., Fort Bonifacio Global City, Taguig City. This was found by the Court in Division based on the CIR's letter, dated 26 September 2011, that was addressed to Y&R's new address. The CIR's knowledge of Y&R's new address should have prompted him to send the assessment notices to the said new address.

In ***Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.***,[49] the Supreme Court had the occasion to rule that even if a taxpayer failed to properly notify the BIR of its new address but the latter was aware of said new address, the assessment notices should be sent to the new address.

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[48] *Disciplinary Board, Land Transportation Office, et al., v. Mercedita Gutierrez,* G.R. No. 224395, 3 July 2017 *citing Ebdane, Jr. v. Apurillo,* G.R. No. 204172, 9 December 2015.

[49] G.R. No. 198677, 26 November 2014.

Otherwise, the taxpayer will be denied due process, resulting in the invalidity of the tax assessment for failure to be properly notified of the assessment. As such, the assessment notices against Y&R are void since these were not sent to its new address despite the CIR's knowledge of such new address.

Moreover, in ***Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,***[50] the Supreme Court held 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, and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee, *viz:*

> "Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to Respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. **The Supreme Court has consistently held 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 and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee** (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:
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>> 'The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed., 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil. 269).'"
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> (Emphasis, Ours)

In this case, Y&R's witness, Mr. Ricky B. Gundran, denied receiving the PAN and the FAN, *to wit:*

> "37.Q: You mentioned, as well, that the assessment subject of this case is only an allegation of the BIR. What do you mean?

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50 G.R. No. 157064, 7 August 2006.

> A: Y&R never received any Letter of Authority ('LOA'), Letter Notice ('LN'), Preliminary Assessment Notice ('PAN'), and Final Assessment Notice ('FAN') pertaining to the Php17,202,373.31 assessment. Neither did any BIR Revenue Officer contact Y&R to inform us of the investigation, or to ask for Y&R's position in relation to said LOA, LN, PAN or FAN."

Following Y&R's denial of receipt of the PAN and the FAN, it became incumbent upon the CIR to prove by competent evidence that said notices were indeed received by Y&R. However, as duly found by the Court in Division, the CIR did not present any evidence to prove the same, despite having the chance to do so. Hence, the assessment notices are void as there is no proof that these were received by Y&R.

The PAN and FAN are void as these were issued in the absence of a LOA.

The CIR is alleging that his power to examine a taxpayer's books of accounts and issue deficiency tax assessments is not limited through the issuance of a LOA. He posits that the ***NIRC*** authorizes him to issue tax assessments other than by force of LOAs alone, such as on the basis of the "best evidence obtainable" or "through inventory-taking, surveillance and prescribing presumptive gross sales and receivables." In extreme situations, he is even allowed to resort to "jeopardy assessments" even without the benefit of an audit. Also, under ***Revenue Memorandum Order No. 30-2003 ("RMO 30-03")***, the BIR is allowed to issue system generated LNs as a mode of informing taxpayers of the discrepancies uncovered through Reconciliation of Listing for Enforcement System ("RELIEF"), as well as effect collection thereon. Moreover, the LN from which the assessment notices were based was issued by no less than the CIR himself and not by a Regional Director. As such, an LOA is not needed. Further, an LOA is needed only if an examination of the taxpayer's books of accounts will be performed.

These arguments have long been struck down in the case of ***Medicard Philippines, Inc. vs. Commissioner of Internal Revenue ("Medicard Case")***, *viz:*[51]

> "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 tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a

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

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 unless authorized by the CIR himself or by his duly authorized representative, through an LOA, 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.**

With the advances in information and communication technology, the Bureau of Internal Revenue (BIR) promulgated RMO No. 30-2003 to lay down the policies and guidelines once its then incipient centralized Data Warehouse (DW) becomes fully operational in conjunction with its Reconciliation of Listing for Enforcement System (RELIEF System). This system can detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third-party sources. Through the consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases of Goods and services.

Under this RMO, several offices of the BIR are tasked with specific functions relative to the RELIEF System, particularly with regard to LNs. Thus, the Systems Operations Division (SOD) under the Information Systems Group (ISG) is responsible for: (1) coming up with the List of Taxpayers with discrepancies within the threshold amount set by management for the issuance of LN and for the system-generated LNs; and (2) sending the same to the taxpayer and to the Audit Information, Tax Exemption and Incentives Division (AITEID). After receiving the LNs, the AITEID under the Assessment Service (AS), in coordination with the concerned offices under the ISG, shall be responsible for transmitting the LNs to the investigating offices [Revenue District Office (RDO)/Large Taxpayers District Office (LTDO)/Large Taxpayers Audit and Investigation Division (LTAID)]. At the level of these investigating offices, the appropriate action on the LN s issued to taxpayers with RELIEF data discrepancy would be determined.

RMO No. 30-2003 was supplemented by RMO No. 42-2003, which laid down the ***"no-contact-audit approach"*** in the CIR's exercise of its ·power to authorize any examination of taxpayer arid the assessment of the correct amount of tax. The *no-contact-audit approach* includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases and Schedule of Importation submitted by VAT taxpayers under the RELIEF System pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of an LOA with the aid of a computerized/manual matching of taxpayers': documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.

Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.

With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers'· issued LNs by reconciling various revenue issuances which conflict with the NIRC. Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes.

IV. POLICIES AND GUIDELINES

x x x x

8. In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within

One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.

9. In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA) to replace the LN. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex "E" hereof) to the OACIR-LTS I ORD for the preparation of the corresponding LAs with the notation "This LA cancels LN_________ No. "

x x x x

V. PROCEDURES

x x x x

B. At the Regional Office/Large Taxpayers Service

x x x x

7. Evaluate the Summary List of LNs for Conversion to LAs submitted by the RDO x x x prior to approval.

8. Upon approval of the above list, prepare/accomplish and sign the corresponding LAs.

x x x x

10. Transmit the approved/signed LAs, together with the duly accomplished/approved Summary List of LNs for conversion to LAs, to the concerned investigating offices for the encoding of the required information x x x and for service to the concerned taxpayers.

x x x x

C. At the RDO x x x

x x x x

11. If the LN discrepancies remained unresolved within One Hundred and Twenty (120) days from issuance thereof, prepare a summary list of said LN s for conversion to LAs x x x.

x x x x

16. **<u>Effect the service of the above LAs to the concerned taxpayers</u>.**

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the· assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

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

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. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

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 10days 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, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunarely, this was not done in this case.

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.

The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government' s vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR' s revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

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.

> Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.
>
> (Emphasis, Ours)

As stated in the ***Medicard Case***, the requirement of an LOA is not limited to physical examination of the taxpayer's books of accounts. As long as a taxpayer is subjected to an examination to determine the correct amount of taxes due from it, an LOA is necessary.

Further, it is worth noting that inventory-taking, surveillance, prescribing presumptive gross sales and receivables, and jeopardy assessments were declared as having nothing to do with an LOA. As clarified in the ***Medicard Case***, these are simply methods used by BIR revenue officers in examining the taxpayer to arrive at the correct amount of taxes due from it. On the other hand, an LOA provides for and limits the authority of a revenue officer in examining a taxpayer. Hence, unless the examination is undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these methods to arrive at the correct amount of taxes due to a taxpayer without prior authority.

Moreover, the ease by which BIR revenue officers arrive at a taxpayer's correct amount of taxes through the RELIEF as prescribed in ***RMO 30-03*** does not authorize the dispensing of the requirement of a LOA. Regardless of how the examination of a taxpayer will be done, an LOA prevents the undue harassment of the taxpayer and levels the playing field between the government' s vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. This is achieved when the revenue officers conducting the examination is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the ***NIRC***.

Also, there is no merit as to the CIR's contention that since the LN from which the assessment notices were based was issued by no less than the CIR himself and not by a Regional Director, an LOA is no longer needed. As explained in the ***Medicard Case***, an LOA and an LN serve two (2) different purposes. The purpose of an LN is to notify a taxpayer that a discrepancy is found based on the RELIEF. On the other hand, the purpose of an LOA is to provide authority to a revenue officer to examine a taxpayer to determine the correct amount of taxes. Due process demands that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of a taxpayer.

In the Decision, the Court in Division properly found the following facts, which remain unrebutted by the CIR:

> "[The CIR] issued LOA No. 200700036680 on August 08, 2008 for the examination of [Y&R]'s books of accounts and other accounting records for TY 2007. [Y&R] subsequently paid the amount of Php15,094,091.63 as deficiency taxes concluded in the audit of its returns; thus, its tax case was considered closed and terminated. Afterwards, [the CIR] issued LN No. 050-RLF-07-00-00077 on July 01, 2009 for the discrepancy on [Y&R]'s declarations per VAT Returns and information/data provided by third-party sources based on a computerized matching involving the same TY 2007. Then, the PAN and the FAN were issued for deficiency taxes in the amount of Php17,202,373.31 **without any LOA issued for the further examination of [Y&R]'s books of accounts and other accounting records for TY 2007."**
>
> (Emphasis, Ours)

As it remains uncontroverted that the assessment notices issued against Y&R were without any corresponding LOA, the said deficiency tax assessments are void.

With the above discussions, there is no more need to tackle the CIR's other arguments.

Considering that the PAN and FAN issued by the CIR against Y&R are void, all collection efforts instituted based on these assessment notices, namely the WDL and the Warrants of Garnishment, are similarly without effect. Basic is the rule that a void assessment bears no valid fruit. To proceed heedlessly with tax collection without first establishing a valid assessment violates the taxpayer's right to due process, which involves the ability to present their case and adduce supporting evidence.[52]

As the WDL and the Warrant of Garnishments issued against Y&R are void, the amount of Php17,202,373.31 garnished from Y&R's deposit account from HSBC has been erroneously/illegally collected. Thus, it should be refunded to Y&R.

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52 *Commissioner of Internal Revenue vs. BSAF Coating + Inks Phils., Inc.,* G.R. No. 198677, 26 November 2014.

Y&R's Petition for Review

Y&R is not entitled to six percent (6%) legal interest on the amount to be refunded.

In its Petition, Y&R argues that it is entitled to six percent (6%) legal interest based on two (2) grounds, namely: a) a claim for damages, in the form of legal interest, on the amount to be refunded by the BIR to the taxpayer is sanctioned by law, *i.e.,* the ***1987 Constitution, NIRC, and the New Civil Code***; and b) the garnishment and collection efforts of respondent and his counsel were attended by arbitrariness, bad faith, and blatant disregard of a taxpayer's right to due process.

We disagree.

In ***Atlas Fertilizer Corporation v. Commissioner of Internal Revenue ("Atlas Case")***,[53] the Supreme Court ruled that for payment of interest to accrue on the amount to be refunded to taxpayer, it must either be authorized by law or the collection of the tax was attended by arbitrariness, viz.:

> "But the more important consideration is the well settled rule that **in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to taxpayer, the Government cannot be required to pay interest.** Likewise, it is the rule that **interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness."**
>
> (Emphasis, Ours)

We agree with the Court in Division that none of these two circumstances prevail in the case at bar.

Y&R alleges that ***Section 227 of the NIRC*** provides a clear and express mandate authorizing the payment of interest as a form of damages against the BIR for acts done in official capacity.

This contention was previously resolved by the Court in Division in its Resolution, dated 4 February 2019, by ruling that ***Section 227 of the NIRC*** cannot be applied to the present case because Y&R's petition was not filed against an internal revenue officer. Even assuming that the case was filed against the revenue officer, the CIR was not notified of such action.

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53 G.R. Nos. L-26686 & L-26698, 30 October 1980.

Y&R is now contesting this ruling by the Court in Division and is now stating that its Amended Petition for Review before the Court in Division (which prayed for the refund of the erroneously/illegally collected taxes with six percent (6%) legal interest) is actually assailing the BIR counsel's act of recommending the collection of the Php17,202,373.31 while Y&R's Motion for the Issuance of a Temporary Restraining Order was being heard. Further, Y&R alleges that the Court in Division incorrectly ruled that the CIR, through the Office of the Solicitor General ("OSG"), was not notified of such action. According to Y&R, its Amended Petition for Review was copy furnished to the OSG on 21 October 2016. Consequently, all the requirements for filing a claim of damages under ***Section 227 of the NIRC*** have been complied with.[54]

This is misplaced.

Section 227 of the NIRC provides a means for taxpayers to seek redress against erring revenue officers, as follows:

> SEC. 227. Satisfaction of Judgment Recovered Against any Internal Revenue Officer. - **When an action is brought against any Internal Revenue officer to recover damages by reason of any act done in the performance of official duty,** and the Commissioner is notified of such action in time to make defense against the same, through the Solicitor General, any judgment, damages or costs recovered in such action shall be satisfied by the Commissioner, upon approval of the Secretary of Finance, or if the same be paid by the person used shall be repaid or reimbursed to him.
>
> No such judgment, damages, or costs shall be paid or reimbursed in behalf of a person who has acted negligently or in bad faith, or with willful oppression.
>
> (Emphasis, Ours)

To avail of the remedy under ***Section 227 of the NIRC***, the following essential elements must exist: a) that an action has been brought against a revenue officer; b) for the purpose of recovering damages which resulted from the revenue officer's performance of his or her official duties; c) that the CIR has been notified of such action through the OSG; d) that any judgment, damages or costs recovered through such action shall be satisfied by the CIR, upon approval of the Secretary of Finance, or if it has been paid by the revenue officer, that he or she shall be reimbursed thereof; and e) that the CIR shall not pay or reimburse any judgment, damages or costs against a revenue officer who acted negligently or in bad faith, or with willfull oppression.

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54 See Y&R's Memorandum, Records of CTA EB No. 2020, Vol. 1, pp. 146-149.

The first element is lacking in the present case. The Amended Petition for Review filed by Y&R was not brought against the alleged erring revenue officer, *i.e.,* Atty. Catherine Herrera-Chong, who is the indispensable party to an action under ***Section 227 of the NIRC***. "An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest."[55] "If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness."[56] Under ***Section 227 of the NIRC***, an alleged erring revenue officer is a party that has such interest in the allegations against him or her considering that he or she may be made to pay damages for his or her alleged willfull or negligent acts. Consequently, he or she must be made a party to such suit to give him or her the opportunity to present his or her defenses. In the case at bar, Atty. Catherine Herrera-Chong was not even named as one of the parties to the action.

Moreover, while the CIR was notified of the Amended Petition for Review before the Court in Division after a copy thereof was furnished to the OSG, it remains that the case that the CIR was notified of pertains to a refund of erroneously or illegally collected taxes and not one specifically instituted against an erring revenue officer under ***Section 227 of the NIRC***.

More importantly, ***Section 227 of the NIRC*** is not the clear or express mandate directing or authorizing payment of interest on the amount to be refunded to taxpayer from which the Government can be required to pay interest as contemplated in the ***Atlas Case***. A perusal of said provision shows that it does not pertain to a refund of taxes but an action against an erring tax agent.

Y&R also argued that ***Article 32 of the New Civil Code***[57] and ***Section 1 of the Bill of Rights (Article III) of the Constitution***[58] mandate the payment of legal interest on refund cases.[59] Again, a perusal of these provisions does not show that these clearly and expressly authorize the payment of interest on

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55 *Philip L. Go, et al., v. Distinction Properties Development and Construction, Inc.,* G.R. No. 194024, 25 April 2012, *citing Fort Bonifacio Development Corporation v. Hon. Sorongon,* G.R. No. 176709, 8 May 2009.

56 *Philip L. Go, et al., v. Distinction Properties Development and Construction, Inc.,* G.R. No. 194024, 25 April 2012, *citing Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation,* G.R. No. 171115, 9 August 2010.

57 **Article 32.** Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

xxx xxx xxx

(6) The right against deprivation of property without due process of law;

xxx xxx xxx

58 Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

59 See Y&R's Memorandum, Records of CTA EB No. 2020, Vol. 1, pp. 149-151.

refunds of taxes. These provision are simply general provisions providing for remedies against deprivation of property without due process of law.

Y&R further argues that the garnishment and collection efforts of the CIR and his counsel were attended by arbitrariness and blatant disregard of a taxpayer's right to due process.

We, again, disagree.

Instead, we agree with the ruling of the Court in Division when it ruled that there was no arbitrariness on the CIR's part. As properly held by the Court in Division, an action is not arbitrary when it is exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. On the contrary, arbitrariness presupposes inexcusable or obstinate disregard of legal provisions.[60]

There were no legal provisions violated when the CIR proceeded with the collection of the garnished amounts in Y&R's deposit accounts with HSBC pending the Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax before the Court in Division.

Basic is the rule that injunction is not available to restrain the collection of tax. ***Section 218 of the NIRC*** provides:

> "SEC. 218. Injunction not Available to Restrain Collection of Tax. — No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code."

Nonetheless, ***Section 11 of Republic Act ("R.A.") No. 1125, as amended by R.A. No. 9282***, provides for a suspension of collection of taxes if in the Court's opinion, the collection may jeopardize the interest of the government and/or the taxpayer, *viz:*

> "Section 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — xxx xxx xxx
>
> xxx xxx xxx
>
> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or

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60 *Philex Mining Corporation v. Commissioner of Internal Revenue and the Court of Appeals,* G.R. No. 120324, 21 April 1999.

the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court."

Thus, the general rule and the exception to the suspension of collection of taxes was incorporated in ***Rule 10 of the Revised Rules of the Court of Tax Appeals (RRCTA)*** in this wise:

"RULE 10

SUSPENSION OF COLLECTION OF TAX

SEC. 1. No suspension of collection of tax, except as herein prescribed. — No appeal taken to the Court shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of his tax liability as provided under existing laws, except as hereinafter prescribed. (n)

SEC. 2. Who may file. — Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, may jeopardized the interest of the Government or the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability. (RCTA, Rule 12, sec. 1a)"

Pending the resolution of Y&R's Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax, the CIR is not precluded from collecting the garnished amount. As there is no order yet from the Court in Division suspending the collection of the alleged deficiency taxes against Y&R when the CIR proceeded with the collection of the garnished amounts, the latter did not disobey any lawful order from the Court in Division. Hence, he was not arbitrary when he proceeded with the collection of the garnished amounts. As there is no arbitrariness that transpired in the collection of the garnished amounts, no legal interest at six percent (6%) per annum is due from the amount to be refunded to Y&R.

WHEREFORE, the respective Petitions for Review filed by Y&R Philippines, Inc. and the Commissioner of Internal Revenue are hereby **DENIED** for lack of merit. Accordingly, the Decision dated 31 August 2018 and Resolution dated 4 February 2019 promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

Y & R PHILIPPINES, INC.,
Petitioner,

CTA EB NO. 2019
(CTA Case No. 9437)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2020
(CTA Case No. 9437)

- versus -

Members:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

Y & R PHILIPPINES, INC.,
Respondent.

Promulgated:
SEP 25 2020
3:35 p.m.

x- -x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* of my esteemed colleague, Honorable Associate Justice Maria Rowena Modesto-San Pedro.

I, however, wish to address the matter raised in the Concurring and Dissenting Opinion of my esteemed colleague, Honorable Associate Justice Catherine T. Manahan anent the propriety of granting a judicial claim for refund *sans* a prior administrative claim filed with the Bureau of Internal Revenue.

While Y & R Philippines, Inc. did not file a claim for refund with respondent as required under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, I submit that such failure does not bar the Court from granting the refund in the amount of Php17,202,373.31 which was erroneously and illegally released by the Hong Kong and Shanghai Banking Corporation (HSBC) to respondent pursuant to the Warrant of Garnishment dated August 16, 2016.

The grant of refund despite the taxpayer's failure to file a prior claim for refund as required under the law, is not novel.

In *Dr. Felisa L. Vda. De San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin vs. Commissioner of Internal Revenue,*[1] a case involving a disputed assessment, the Supreme Court reiterated the dictum laid down in *Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue*[2] and ordered the refund to the Estate of Jose San Agustin of the overpaid surcharge, interests and compromise penalty despite the fact that no claim for refund was filed as required under Section 306 of the then NIRC, before resorting to the CTA. The Supreme Court found no cogent reason to require the estate to undergo the procedure for claiming refunds as it would be a useless formality that can serve the interest of neither the government nor the taxpayer, *viz.*:

> "The case has a striking resemblance to the controversy in *Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue*.
>
> The petitioner in that case paid under protest the sum of P5,201.52 by way of income tax, surcharge and interest and, forthwith, filed a petition for review before the Court of Tax Appeals. Then respondent Collector (now Commissioner) of Internal Revenue set up several defenses, one of which was that **petitioner had failed to first file a written claim for refund**, pursuant to Section 306 of the Tax Code, of the amounts paid. Convinced that the lack of a written claim for refund was fatal to petitioner's recourse to it, the Court of Tax Appeals dismissed the petition for

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[1] G.R. No. 138485, September 10, 2001.
[2] G.R. L-16683, January 31, 1962.

lack of jurisdiction. On appeal to this Court, the tax court's ruling was reversed; the Court held:

> 'We agree with petitioner that Section 7 of Republic Act No.1125, creating the Court of Tax Appeals, in providing for appeals from –
>
> > (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue –
>
> allows an appeal from a decision of the Collector in cases involving' disputed assessments' as distinguished from cases involving' refunds of internal revenue taxes, fees or other charges, x x'; that the present action involves a disputed assessment'; because from the time petitioner received assessments Nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court *a quo,* only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. **To hold that the taxpayer has now lost the right to appeal from the ruling on, the disputed assessment but must prosecute his appeal under section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law, should not be interpreted as to result in absurdities."**

The Court sees no cogent reason to abandon the above *dictum* and to require a useless formality that can serve the interest of neither the government nor the taxpayer. The tax court has aptly acted in taking cognizance of the taxpayer's appeal to it.

xxx

WHEREFORE, the instant petition is partly GRANTED. The deficiency assessment for surcharge, interest and penalties is modified and recomputed to be in the amount of P148,090.00 surcharge of P134,627.37 and interest of P13,462.74. Petitioner estate having since paid the sum of P438,040.38, **respondent Commissioner is hereby ordered to <u>refund</u> to**

> **the Estate of Jose San Agustin the overpaid amount of P289,950.38**. No costs.
>
> **SO ORDERED**." *(Boldfacing and underscoring supplied)*

Substantial justice, equity and fair play take precedence over technicalities and legalisms. The government must keep in mind that it has no right to keep the money not belonging to it, thereby enriching itself at the expense of the **law-abiding citizen or entities who have complied with the requirements of the law in order to forward the claim for refund**.[3]

All told, I *CONCUR* with the ponencia.

ROMAN G. DEL ROSARIO
Presiding Justice

[3] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, January 28, 2015.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

Y & R PHILIPPINES, INC.,
Petitioner,

CTA *EB* NO. 2019
(CTA Case No. 9437)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 2020
(CTA Case No. 9437)

-versus-

Y & R PHILIPPINES, INC.,
Respondent.

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 25 2020
3:35 p.m.

x- x

CONCURRING AND DISSENTING OPINION

I join my esteemed colleague, Justice San Pedro, in affirming the Court in Division's position that the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) issued by the Commissioner of Internal Revenue (CIR) for taxable year 2007, are void on the following grounds:

1. That the CIR failed to discharge the burden that the PAN and the FAN were properly received by Y & R Philippines, Inc. (Y & R) because they were still addressed to its old office address in spite of proper notification (of its new office address) to the Bureau of Internal Revenue (BIR);
2. That the assessment notices issued against Y & R Philippines, Inc. were issued without the corresponding Letter of Authority (LOA).

   It must be noted however, that the facts show that an LOA was initially issued on the first assessment for 2007 but the second one was issued only on the basis of a Letter Notice (LN).

A myriad of cases support both grounds for rendering the 2007 assessments void and Justice San Pedro has eruditely disposed of the issues raised by the CIR in his Petition for Review with the Court *En Banc* and I have nothing more to add to the discussion.

With due respect, however, I dissent to the tax refund which the Court in Division granted in favor of Y & R and which was affirmed by the majority in this *En Banc* decision.

A historical narrative is in order to illustrate my point.

The records show that Y & R filed a Petition for Review with the Court on August 23, 2016, challenging the validity of the subject PAN and FAN issued for taxable year 2007 on the ground the same were issued in violation of its right to due process, i.e. the PAN and the FAN were not properly received because these were sent to the wrong address and that the audit examination was not preceded nor supported by an LOA. Y & R then prayed for the cancellation of the subject assessments and the suspension and collection of the assessed deficiency taxes for taxable year 2007.

On October 21, 2016, Y & R filed an *Amended* Petition for Review (PFR), which converted the prayer for cancellation of the subject assessments under the original Petition for Review into a claim for tax refund in the amount of Php17,202,373.31 This apparently stemmed from the release of the funds by HSBC to the CIR in response to the warrants of garnishment issued against the deposit accounts of Y & R with the said bank. In addition to the refund of Php17,202,373.31, Y & R demanded the imposition of legal interest of 6% per annum from October 3, 2016 by way of damages, based on Section 227 of the 1997 National Internal Revenue Code (NIRC), as amended, because the same was collected arbitrarily.

The Court in Division, aside from the cancellation of the subject assessments, granted the refund but without the imposition of the 6% legal interest.

In affirming the decision of the Court in Division as to the lack of legal basis for the collection of the 6% legal interest on the amount of refund, the majority of the Court *En Banc*, ruled that the application of Section 227 of the 1997 NIRC, as amended, is misplaced and that the remedy therein may only be availed of only if the following elements exist: 1) that an action has been brought against a revenue officer; b) for the purpose of recovering damages which resulted from the revenue officer's performance of his or her official duties; c) that the CIR has been notified of such action through the Office of the Solicitor General (OSG); and d) that any judgment, damages or costs recovered through such action shall be satisfied by the CIR, upon approval of the Secretary of Finance, or if it has ben paid by the revenue officer, that he or she shall be reimbursed thereof; and e) that the CIR shall not pay or reimburse any judgment, damages or costs against a revenue officer who acted negligently or in bad faith, or with willful oppression.

I have no dispute with the above disquisitions as to the elements inherent in Section 227 of the NIRC, as amended, but I do have an issue with the grant of judicial refund *sans* a prior administrative claim filed with the BIR as required by law. Section 203 (C) and Section 229 of the 1997 NIRC, as amended, provides:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may-
>
> xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis ours)*

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – **No suit or proceeding shall be maintained in any court** for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.**

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis supplied)

A written claim for refund duly filed with the CIR is not only a mandatory requirement before judicial appeal may be availed of, it is also jurisdictional. Republic Act (RA) No. 1125[1], as amended by RA No. 9282,[2] Section 7(a) thereof, provides for one of the instances where this Court may exercise its exclusive appellate jurisdiction, *viz.*:

"**Sec. 7.** *Jurisdiction.* –The CTA shall exercise:

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[1] An Act Creating the Court of Tax Appeals.

[2] 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.

(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 or other laws administered by the Bureau of Internal Revenue**;" *(Emphasis supplied)*

Based on the aforequoted provisions of law, this Court may take cognizance of claims for refund only when there is a decision made by the CIR on a taxpayer's claim for refund, by way of a written denial or by inaction, which presupposes a prior administrative claim duly filed with the CIR. There are however, exceptions to this general rule, i.e., when the return filed shows an overpayment, in which case, the return shall be considered as a written claim for credit or refund or where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. None of these exceptions exist in the instant case. Y & R singularly prayed for the refund of the amount assessed plus legal interest upon the happening of a "supervening event", that is, the release of funds deposited by Y & R in HSBC in favor of the BIR, without complying with the basic requirements provided under Sections 204 (C) and 229 of the 1997 NIRC, as amended.

Looking at the factual milieu of the case at hand, Y & R had sufficient time to file an administrative claim, roughly 18 days from the time that it learned of the garnishment of its HSBC funds (i.e., October 3, 2019) and the date it filed its *Amended* PFR (i.e., October 21, 2020).

The Supreme Court has recognized the requirement of filing an administrative claim and discussed its purpose in the case of *CIR vs. Rosemarie Acosta as represented by Virgilio A. Abogado,*[3] and I quote:

"In our view, the law is clear. A claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court. This obviously is intended, first, to afford the CIR an opportunity to correct the action of a subordinate officer; and second, to notify the government that such taxes have been questioned, and the notice should then

[3] G.R. No. 154068, August 3, 2007.

an

> be borne in mind in estimating the revenue available for expenditures." (emphasis supplied)

This was again emphasized by the Supreme Court in the case of *CIR vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.),* when it ruled, thus:

> **"The law only requires that an administrative claim be priorly filed.** That is to give the BIR an opportunity to act on said claim." (emphasis supplied)

In view of the foregoing, I vote to cancel the assessments issued against Y & R for taxable year 2007 but deny the claim for refund in the amount of Php17,202,373.31 for reasons aforestated.

CATHERINE T. MANAHAN
Associate Justice