Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

COOLMATE CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 48, WEST MAKATI, MAKATI CITY, BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 51, PASAY CITY, and the METROPOLITAN BANK AND TRUST COMPANY,
Respondent.

CTA Case No. 8264
For: Nullification and/or Lifting of Warrants of Garnishment and Declaration of Assessment as Void, with Application for TRO and/or Writ of Preliminary Injunction

Members:
DEL ROSARIO, PJ., Chairperson
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
MAY 19 2014 ; 2:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition For Review filed by Coolmate Corporation as petitioner, against the Commissioner of Internal Revenue (CIR), Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 48, West Makati, Makati City, Bureau Of Internal Revenue, Revenue District Office No. 51, Pasay City, and the Metropolitan Bank and Trust Company (Metrobank), as respondents, for the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to

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

Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

Petitioner seeks the nullification of the Final Assessment Notice that assessed petitioner for alleged deficiency income tax in the amount of ₱17,577,070.63 for taxable year 2006.

Petitioner Coolmate Corporation is a corporation duly organized and existing under the laws of the Philippines.[3]

Respondent Commissioner of Internal Revenue is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to exercise the functions of said office, including, *inter alia*, the power to abate or cancel tax liability. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City. *C*

> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
> x x x x x x

[2] Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

> x x x x x x
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Exhibit "B-2 Petition", Docket, p. 521.

Respondents Revenue District Office (RDO) Nos. 48 and 51 are both attached to the Bureau of Internal Revenue with respect to their responsibilities and office addresses.[4]

Respondent RDO No. 48 issued Letter of Authority (LOA) No. 15793[5] on June 25, 2007, for the examination of petitioner's books of account and other accounting records for all internal revenue taxes covering the taxable year 2006. To comply with the said Letter of Authority, petitioner submitted pertinent documents to RDO No. 48 on September 28, 2007.[6]

Petitioner updated its registration information with respondent on September 12, 2007, transferring its home RDO from RDO No. 48 to RDO No. 49.[7] Consequently, BIR Revenue Region No. 8, RDO No. 49 issued a new Certificate of Registration[8] showing petitioner's new business address at 3005 V. Cruz Extension, Bgy. Sta. Cruz, Makati City. On August 28, 2008, petitioner already moved out from its old office building where it used to maintain its service center and formally turned over its possession to the owner.[9]

Respondent RDO No. 48 sent a letter[10] dated May 5, 2009 to petitioner, which was addressed to Ms. Zeny Maravillas of Coolmate Corp. at 3005 Vito Cruz Extension, Makati City, requiring the latter to submit additional documents for the audit of petitioner's books of accounts. Petitioner sent a Letter-Reply[11] on May 21, 2009, stating that it had submitted the voluminous material requirements and invoking that the Letter of Authority had lost its enforceability after the lapse of more than 120 days from the date of its receipt. c

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[4] Pars. 1 and 2, Joint Stipulation of Facts, Issues and some Petitioner's Documentary Exhibits, Docket, p. 489.
[5] Exhibit "C-Petition", Docket, p. 113.
[6] Exhibit "D-Petition" and "D-1-Petition", Docket, p. 114.
[7] Exhibits "R" to "R-3", Docket, p. 541.
[8] Exhibits "S" and "S-2", Docket, p. 725.
[9] Exhibits "W" and "W-1", Docket, p. 760.
[10] Exhibit "E-Petition", Docket, p. 115.
[11] Exhibits "F-Petition" and "F-1-Petition", Docket, p. 116; Exhibits "1" to "1-c", BIR Records, p. 280.

Due to the supposed failure of petitioner to complete the submission of the required documents after the third and final notice to submit the same was sent, Revenue Examiner Leonita L. Dimagiba recommended the issuance of a subpoena duces tecum[12] to compel petitioner to do so.

On October 29, 2009, petitioner received a subpoena duces tecum[13] from respondent RDO No. 48. Petitioner sent a letter[14] to said respondent through the BIR Office of the Chief Legal Division on November 9, 2009 in response to the said subpoena duces tecum. On November 13, 2009, the BIR Legal Division issued a Certification[15] stating that petitioner had complied substantially with the said subpoena.

Respondent RDO No. 48 issued Reassignment Notice[16] dated October 27, 2009, which petitioner received on November 17, 2009. Post Reporting Notice[17] dated December 15, 2009 was likewise sent to petitioner by respondent RDO No. 48. Petitioner replied thereto through a letter[18] dated January 15, 2010.

Revenue Officer Arsenio Tadeo Leachon recommended to the Regional Director of Revenue Region No. 8, RDO No. 48-West Makati the issuance of a Formal Assessment Notice against petitioner via Memorandum dated February 15, 2010.[19]

On April 8, 2010, petitioner received a Preliminary Assessment Notice (PAN)[20] dated March 24, 2010 with Details of Discrepancies from respondent RDO No. 48 via registered mail for deficiency income tax for the taxable year 2006 in the amount of ₱17,409,327.62. The said

[12] Exhibits "2" to "2-c", BIR Records, p. 289.
[13] Exhibit "G-Petition", Docket, p. 117.
[14] Exhibits "H-Petition", "H-1-Petition" and "H-2", Docket, pp. 118-119.
[15] Exhibits "I-Petition" and "I-1-Petition", Docket, p. 120.
[16] Exhibits "J-Petition", "J-1-Petition", and "J-2-Petition", Docket, p. 121; Exhibits "4" to "4-c", BIR Records, p. 308.
[17] Exhibit "K-Petition", Docket, p. 122; Exhibits "7" to "7-b", BIR Records, p. 420.
[18] Exhibits "L-Petition" to "L-10-Petition", Docket, pp. 123-135.
[19] Exhibit "5", BIR Records, p. 333.
[20] Exhibits "M-Petition" to "M-2-Petition", Docket, pp. 136-140.

assessment was addressed to petitioner's president, with business address at Bldg. 8, La Fuerza Compound, 2241 Chino Roces Avenue, Makati City.[21]

Respondent issued a Formal Assessment Notice (FAN) with Details of Discrepancies and Assessment Notice[22] on April 13, 2010. However, a Certification[23] from the Makati Central Post Office indicated that Registered Letter No. 234-10, posted on April 13, 2010, addressed to petitioner at Bldg. 8, La Fuerza Compound, 2241 Chino Roces Ave., Makati City was returned to sender on the ground that the addressee had moved out.

On February 3, 2011, petitioner received a copy of Warrant of Garnishment No. 2-11-018-0010[24], dated January 1, 2011, from respondent Metrobank on account of tax dues in the amount of ₱17,577,070.63 allegedly per Final Assessment Notice No. IT-LA 15793-06-10-0223 dated April 13, 2010[25].

Petitioner filed a letter[26] dated February 16, 2011, requesting the reconsideration of the alleged FAN dated April 13, 2010, the quashing of the Warrant of Garnishment, and to refrain from garnishing the personal property of petitioner in respondent Metrobank or any bank. Petitioner likewise sent a letter[27] dated February 16, 2011 to respondent Metrobank, demanding that Metrobank must refrain from allowing the garnishment of its account in Metrobank.

Respondent CIR, through Regional Director Jaime Santiago, denied petitioner's letter dated February 16, 2011 for lack of merit via Memorandum dated March 24, 2011.[28]

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[21] Pars. 6, 10, and 11, Joint Stipulation as to the Facts, Issues and some of Petitioner's Documentary Exhibits, Docket, p. 490.
[22] Exhibits "6" and "6-a", BIR Records, p. 369.
[23] Exhibit "8", BIR Records, p. 439.
[24] Exhibit "N-Petition", Docket, p. 141.
[25] Par. 7, Joint Stipulation as to the Facts, Issues and some of Petitioner's Documentary Exhibits, Docket, p. 490.
[26] Exhibits "P-Petition" to "P-1-Petition", Docket, pp. 143-146.
[27] Exhibits "Q Petition" to "Q-2 Petition", Docket, pp. 148-152.
[28] Par. 12, Joint Stipulation as to the Facts, Issues and some of Petitioner's Documentary Exhibits, Docket, p. 491.

Respondent RDO No. 51 sent a Collection Letter[29] to respondent Metrobank on March 31, 2011.

On April 8, 2011, petitioner filed this Petition for Review with an application for a temporary restraining order and/or writ of preliminary injunction.

During the hearing of petitioner's Application for Temporary Restraining Order and/or Writ of Preliminary Injunction, petitioner presented Eufrasio P. Estreras, Jr. as its sole witness.

On May 9, 2011, the Court granted petitioner's motion, which was treated as a Motion for the Suspension of the Collection of the Tax Liability.[30] Accordingly, petitioner was ordered to post a surety bond in the amount of ₱26,365,605.95.

On May 5, 2011, petitioner filed a Manifestation[31] with attached Amended Petition for Review.[32]

Respondent Metrobank filed its Answer[33] on May 13, 2011, interposing special and affirmative defenses, *viz:*

> "2.1 All the foregoing allegations are repleaded hereunder;
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> 2.2 Respondent Metrobank is merely the depository bank of the petitioner. It is not privy to the petitioner's business or corporate operations. Respondent Metrobank does not also participate, whether directly or indirectly, in the dealings or transactions between the petitioner and the public respondents.

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[29] Exhibit "O-Petition", Docket, p. 142.
[30] Docket, pp. 191-200.
[31] Docket, pp. 201-205.
[32] Docket, pp. 206-232.
[33] Docket, pp. 245-253.

2.3 As a garnishee, respondent Metrobank is obliged to comply with the Warrant of Garnishment. Respondent Metrobank, furthermore, is not bound to inquire into the legality and propriety of the said Warrant. (*Rizal Commercial Banking Corporation, vs. The Honorable Pacifico P. De Castro and Philippine Virginia Tobacco Administration,* G.R. No. L-34548 November 29, 1988; *Engineering Construction Inc. v. National Power Corporation*, G.R. No. L-34589, June 29, 1988])

2.4 Respondent Metrobank has no standing at all to impugn the validity of the findings rendered against the petitioner or of the processes issued in execution of such findings by the public respondents.

2.5 Although respondent Metrobank humbly manifests that it is legally obliged to abide by the ruling of this Honorable Court with regard to the claims of the petitioner and the public respondents herein, it is respectfully submitted that it was not necessary to implead respondent Metrobank as a party to this Petition and Amended Petition.

2.6 The petitioner has no cause of action against defendant Metrobank and the Petition and Amended Petition fail to state a cause of action since respondent Metrobank is not a real party-in-interest.

2.7 *Section 2, Rule 3 of the 1997 Revised Rules of Civil Procedure* provides:

> 'SEC. 2. *Parties-in interest.* – A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party-in-interest'

2.8 In the case entitled *'Republic of the Philippines vs. Coalbrine International Philippines, Inc. and Neri'* (G.R. No. 161838, 7 April 2010), the Supreme Court ruled that '(a)n **'interest'** within the meaning of the rule, means **material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest'** (Underscoring supplied).

2.9 Here, the Petition provides that the instant action was filed principally to have the Warrant of Garnishment issued by the public respondents against the petitioner declared null and void. The petitioner likewise seeks to annul the Letter of Authority No. 00015793 dated 25 June 2007, the Preliminary Assessment Notice dated 24 March 2010 and the Final Assessment Notice dated 13 April 2010 all issued by the public respondents.

2.10 As previously discussed, respondent Metrobank is not privy to the affairs or transactions of the petitioner. Respondent Metrobank will not be directly benefited or injured by the judgment that will be rendered in the present action. Rather, respondent Metrobank will simply be bound to comply with the judgment in this case insofar as it will resolve the issues between the petitioner and the public respondents as regards the disposition of the petitioner's bank deposits. Hence, there is no doubt that respondent Metrobank is not a real party in interest in the present case. Respondent Metrobank not being a real party in interest, the petitioner has no cause of action against it.

2.11 Significantly, in *'Relucio vs. Lopez'* (G.R. No. 138497, January 16, 2002), the Supreme Court pointed out that one who is not a real party in interest cannot be an indispensable party nor a necessary party.

2.12 Indeed, respondent Metrobank cannot be an indispensable party. An indispensable party is one without whom there can be no final determination of an action (*Section 7, Rule 3 of the 1997 Revised Rules of Civil Procedure*). Respondent Metrobank's participation in the instant case is not indispensable. Certainly, this Honorable Court can issue a judgment regarding the nullity or validity of the subject Warrant of Garnishment, Letter of Authority, Preliminary Assessment Notice and Final Assessment Notice even without the involvement of respondent Metrobank.

2.13 Undeniably, respondent Metrobank is also not a necessary party. A necessary party is one who is not indispensable but who ought to be joined as party if complete relief is to be accorded those already parties, or for a complete determination or settlement of the claim subject of the action (*Section 8, Rule 3 of the 1997 Revised Rules of Civil Procedure*). The petitioner in this case would be accorded complete relief on its main cause of action, and secure a judgment regarding the nullity or validity of the subject Warrant of Garnishment, Letter of Authority, Preliminary Assessment Notice and Final Assessment Notice without the necessity of impleading respondent Metrobank.

2.14 Even though the instant case includes a prayer seeking injunctive relief to prevent the public respondents from withdrawing funds from the petitioner's accounts with respondent Metrobank, the right to secure an injunctive writ prayed for by petitioner emanates from the supposed nullity of the subject Warrant of Garnishment, Letter of Authority, Preliminary Assessment Notice and Final Assessment Notice, which is the petitioner's main cause of action. Clearly, an injunctive writ directed against the public respondents who are the real party in interest in the instant case, enjoining them from enforcing the subject Warrant of Garnishment, is sufficient to prevent the withdrawal of the garnished funds from the petitioner's accounts with respondent Metrobank. Hence, there is no need to implead respondent Metrobank in the instant case, and it was improper for the petitioner to include it as a party defendant.

2.15 *Section 11, Rule 3 of the 1997 Revised Rules of Civil Procedure* provides that: '. . . [p]arties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. . . .' (Underscoring supplied).

2.16 In this regard, the Supreme Court in *'Union Bank of the Philippines vs. Court of Appeals'* (G.R. No. 131729. May 19, 1998), pointed out that in case of misjoinder of parties, the remedy is to dismiss the case against the party who was improperly joined, and to drop the said party from the case:

> 'SEC. 11. *Misjoinder and non-joinder of parties.* --- Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. **Parties may be dropped or added by order or the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just**. Any claim against a misjoined party may be severed and proceeded with separately.
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> From the foregoing, it is thus clear that **in a case of misjoinder of parties** --- which in this case is the co-filing of the petition for suspension of payments by both the Yutingcos and the EYCO group --- **the remedy has never been to dismiss the petition in its entirety but to dismiss it only as against the party upon whom the tribunal or body cannot acquire jurisdiction**. The result, therefore, is that the petition with respect to EYCO shall subsist and may be validly acted upon by the SEC. The Yutingcos, on the other hand, **shall be dropped from the petition** and be required to pursue their remedies in the regular courts of competent jurisdiction.' (Underscoring supplied)

2.17 Based on the foregoing, and considering that respondent Metrobank was improperly joined as a party in the instant case, the case should be dismissed as against respondent Metrobank and respondent

Metrobank should be dropped as a party defendant hereto."

Petitioner submitted its Reply (To Respondent Metrobank's Answer)[34] on May 23, 2011 through a courier, which was received by this Court on June 8, 2011.

On May 27, 2011, respondent CIR filed a Motion to Defer Filing of Answer[35] and a Motion to Dismiss[36].

On July 15, 2011, the Court approved petitioner's surety bond and enjoined respondent CIR and all persons acting in her behalf from undertaking any and all remedies to collect the subject deficiency taxes, including the enforcement, execution and/or implementation of the Warrant of Garnishment.[37]

In its Resolution[38] dated September 13, 2011, the Court noted petitioner's Manifestation with attached Amended Petition for Review, granted respondent CIR's motion to defer filing of Answer, and denied respondent's Motion to Dismiss.

Respondent CIR filed her Answer[39] on October 21, 2011, through registered mail and received by this Court on November 15, 2011, alleging the following special and affirmative defenses:

> "4. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:

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[34] Docket, pp. 323-330.
[35] Docket, pp. 302-308.
[36] Docket, pp. 309-316.
[37] Docket, pp. 365-366.
[38] Docket, pp. 367-372.
[39] Docket, pp. 385-395.

5. Before our disquisition, it is essential that we re-state first and foremost that this Honorable Court of Tax Appeals has no jurisdiction over the instant case considering the failure of the petitioner corporation to file any protest to the Final Assessment Notice (FAN) issued on April 13, 2010. The flimsy excuse offered by the petitioner that it did not received the FAN is lame. It would be chaotic if we are to allow free reign to parties and afford them immunity from audit and assessment by merely invoking the defense of denial. Verily, any *Tom, Dick and Harry* can raise this simplistic and tolerant pretext.

6. Under Revenue Regulations 12-99, the FAN may be served to the taxpayer only by registered mail or by personal delivery. In the case the FAN is served by registered mail, such service for purposes of the Statute of Limitation to issue an assessment is already effective when the same is duly released, mailed or sent by the Commissioner to the taxpayer. It is not required that the notice be received by the taxpayer within the prescriptive period for the Commissioner to issue the FAN.

7. Verily, Section 3(v), Rule 131 of the Rules of Court provides: 'a letter duly directed and mailed' is presumed to have been received by the addressee thereof 'in the regular course of the mail.' The facts to be proved to raise this presumption are: (a) that the letter was properly addressed with postage duly prepaid, and (b) that it was mailed. Once the 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 mails. For the purposes of the first requisite, the BIR may use the address of the taxpayer as appearing in the return filed upon which the tax is being assessed. Such address is presumed to be correct. In proving the second requisite, the BIR may present the registry receipt of the FAN or a certification from the Bureau of Posts that the FAN was actually mailed.c

8. Alternatively, Section 44, Rule 130 of the Rules of Court provides that 'entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are prima facie evidence of the facts therein stated.'

9. A taxpayer who had lost his right to dispute the validity of an assessment by failing to appeal to the CTA within the 30-day period may no longer sue for the recovery of the tax he thereafter paid on the ground of illegality of said assessment. Similarly, The expedient of an appeal from a denial of a taxpayer's request for cancellation of warrant of distraint and levy cannot be utilized for the purpose of testing the legality of an assessment, which had become conclusive and binding on the taxpayer.

10. In *Commissioner of Internal Revenue v. Conception*, the Supreme Court explained that the taxpayer's failure to appeal to the CTA in due time made the assessment in question final, executory and demandable. He is already barred in a subsequent proceeding from disputing the correctness of the assessment or invoking any defense that would reopen the question of his tax liability on the merit. Otherwise, the period of thirty days for appeal to the CTA would make little sense.

11. On the alleged invalidity of the Letter of Authority No, 0001579 dated June 25, 2007 due to alleged failure of the BIR examiner to comply with the 120-day rule within which to conduct an audit, suffice it to say BIR Ruling No. DA-121-01 dated July 18, 2001, which squarely answer the issued raised by the petitioner clearly states:

> 'Nowhere from RMO No. 12-98, or any other internal revenue issuances on audit programs and policies, is it mentioned that the lapse of 120-days from the date the revenue examiner received the Letter of Authority and the failure of the said examiner to secure a revalidation within the said 120-days period

> will give rise to the taxpayer's immunity from audit for that particular period. The requirement is merely directory and is intended to enhance efficiency while at the same time ensure quality audit. It does not in any way affect the right of the government to issue assessment notices for deficiency taxes within the period/s set forth by law.' Thus, at any time within the regular three year prescriptive period for issuing assessment notices under Section 203 of the Tax Code, the Commissioner or his duly authorized representative, in this case the Regional Director, may still issue an order revalidating Letter of Authority xxx'

12. Likewise, in the most recent Revenue Memorandum Circular (RMC) No. 23-2009 dated April 16, 2009 (Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of cases by the Assessment Division), provided that:

> The revalidation of LA shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to the higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. Failure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.

13. In the case of petitioner, the Letter of Authority was duly revalidated by the BIR Regional Director, RR8 Makati City, and the petitioner duly received the BIR Revalidation Notice on November 27, 2009, as admitted in its Letter Protest belatedly

submitted on February 16, 2011. Consequently, pursuant to Revenue Memorandum Circular (RMC) No. 23-2009 dated 16 April 2009, the revalidation of the subject Letter of Authority shall give rise to the extension of the period within the concerned Revenue Officer (RO) assigned to the case shall submit the report of investigation to the higher authorities for review and approval, and that such extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. Nonetheless, even assuming that there was a failure on the part of the concerned RO to request for the revalidation of the subject Letter of Authority or the expiration of the 'revalidation period', however, it does not nullify the subject Letter of Authority nor will it affect or modify the rules on the reglementary period within an assessment may be validly issued in the instant case.

14. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another. – **Non videtur quisquam id capere quod ei necesse est alii restitutere**."

Petitioner's Pre-Trial Brief,[40] respondent Metrobank's Pre-Trial Brief[41] and respondent CIR's Pre-Trial Brief[42] were filed on December 2, 2011, December 6, 2011 and December 8, 2011, respectively.

On December 16, 2011, petitioner asked the Court to expunge public respondents' Pre-Trial Brief from the records and/or show cause why they should not be cited for indirect contempt.[43] Public respondents filed their

[40] Docket, pp. 399-417.
[41] Docket, pp. 419-424.
[42] Docket, pp. 428-430.
[43] Docket, pp. 432-438.

Opposition/Comment[44] on December 21, 2011 by registered mail and received by this Court on December 29, 2011. The Court denied petitioner's motion on January 16, 2012.[45]

In a Resolution[46] dated March 21, 2012, the Court approved the parties' Joint Stipulation as to the Facts, Issues and some of Petitioner's Documentary Exhibits, and terminated the pre-trial.

The Court dropped respondent Metrobank as a party respondent, after considering the Motion (For Hearing on Respondent Metrobank's Affirmative Defenses) and petitioner's Comment (On Respondent Metrobank's Motion) in a Resolution[47] dated March 23, 2012.

After completion of the presentation and formal offer of evidence for the petitioner, this Court admitted petitioner's Exhibits "A" to "W-1" as per this Court's Resolution dated July 9, 2012[48] and the Minutes of the Hearing on April 1, 2013.[49] With the admission thereof, petitioner formally rested its case.

The documentary evidence formally offered and admitted are as follows:

Exhibits:	Description
A	Sworn Statement of Mr. Eufrasio "Jun" P. Esteras, Jr. to the Questions Propounded by Atty. Rodolfo O. Reyes dated April 28, 2011;
A-1	Signature of Mr. Esteras, Jr., on his own Sworn Statement;
B	Secretary's Certificate dated March 22, 2011;

[44] Docket, pp. 442-446.
[45] Docket, pp. 457-461.
[46] Docket, p. 503.
[47] Docket, pp. 495-501.
[48] Docket, pp. 546-547.
[49] Docket, p. 761.

B-1	Signature of Corporate Secretary, Ms. Zenaida O. Maravillas;
B-2	Petitioner's Certificate of Filing of Amended Articles of Incorporation with Company Registration No. A1998-06935;
C	Letter of Authority No. LA-00015793;
D	Receiving copy of the cover letter sent by petitioner;
D-1	"BIR West Makati" stamp and the date "9/27/07";
E	Certified true copy of the Letter by the BIR RDO No. 48 dated May 5, 2009;
F	Letter-Reply by petitioner dated May 21, 2009;
F-1	Name and signature of "Vincent M. Tagle, President";
G	A Certified True Copy of Subpoena Duces Tecum;
H	Letter of petitioner to BIR RDO No. 48 dated November 9, 2009;
H-1	Name and signature of "Frederick Vincent M. Tagle, President";
H-2	Stamp where the word "RECEIVED" appears and the date of receipt by BIR on "Nov 09, 2009";
I	BIR Certification dated November 13, 2009;
I-1	Name and signature of "Alberto R. Bomediano, Jr., Chief Legal Division";
J	Re-assignment Notice;
J-1	Signature of Zenaida O. Maravaillas;
J-2	The date "11/17/09";
K	Post-Reporting Notice (Notice of Informal Conference) dated December 15, 2009;
L	Letter-Reply to the Notice of Informal Conference by the petitioner dated January 15, 2010;

L-1	Name and signature of "Frederick Vincent Tagle";
L-2	Transmittal Slip attached to the Letter-Reply dated January 15, 2010 or Exhibit L;
L-2-A	Stamp on Exhibit L-2 where the word "RECEIVED" appears and the date of receipt by BIR RDO No. 48 on "1/15/2010";
L-3	Copy of the LA dated June 25, 2007 attached to the Letter-Reply dated January 15, 2010;
L-4	Copy of Transmittal Slip/Checklist of Requirements dated July 23, 2007 attached to the Letter-Reply dated January 15, 2010;
L-5	Copy of Transmittal Slip dated September 28, 2007 attached to the Letter-Reply dated January 15, 2010;
L-5-A	Stamp on the Transmittal Slip dated September 28, 2007, where the word "RECEIVED" appears, and the date of receipt by "BIR West Makati" on "9/27/07";
L-6	Letter to Zeny Maravillas dated May 5, 2009 attached to the Letter-Reply dated January 15, 2010;
L-7	Letter to BIR dated May 21, 2009 attached to the Letter-Reply dated January 15, 2010;
L-8	Photocopy of General Audit Procedures attached to the Letter-Reply dated January 15, 2010;
L-9	Photocopy of Letter to BIR Legal Division dated November 9, 2009 attached to the Letter-Reply dated January 15, 2010;
L-10	Photocopy of Re-assignment Notice dated October 27, 2009 attached to the Letter-Reply dated January 15, 2010;
M	Certified true copy of a Preliminary Assessment Notice (PAN) dated March 24, 2010;
M-1	Portion of Exhibit M;
M-2	Copy of "Details of Discrepancies" attached to the PAN or Exhibit M dated March 24, 2010;

N	Warrant of Garnishment issued on January 1, 2011 by BIR RDO No. 48;
O	Collection Letter from BIR RDO No. 51, addressed to Metrobank dated March 31, 2011;
P	Letter-Request for Reconsideration by the Dario Reyes Hocson and Viado Law Firm dated February 16, 2011;
P-1	Stamp on Exhibit P where the word "RECEIVED" appears and the date of receipt by BIR RDO No. 48 on "2/16/11";
P-2	Copy of the Warrant of Garnishment dated January 1, 2011 attached to the Letter-Request for Reconsideration dated February 6, 2011;
Q	Letter by the Dario Reyes Hocson and Viado Law Firm to Metrobank dated February 16, 2011;
Q-1	Stamp on Exhibit Q where the word "LAW DIVISION" appears and the date of receipt by Metrobank on "2/16/2011";
Q-2	Copy of the Warrant of Garnishment dated January 1, 2011 attached to the Letter dated February 16, 2011 or Exhibit Q;
R	Certified True Copy of BIR Form No. 1905 (Application for Registration Information Update) filed by petitioner on September 12, 2007;
R-1	Stamp of the BIR where the word "RECEIVED" appears;
R-2	Stamp indicating date of receipt by BIR: "Sep 12 2007";
R-3	Address entered as New Registered Address: "3005 Vito Cruz Ext. Brgy Sta Cruz";

Respondents presented their lone witness in the person of Josalyn E. Tan who testified by way of her Judicial Affidavit. Thereafter, respondent formally offered Exhibits "1" to "12" which were admitted in the Resolutions dated

January 30, 2013[50] and March 14, 2013[51]. Hence, respondents formally rested their case.

Respondent's documentary exhibits are as follows:

Exhibits	Description
1	Letter dated May 21, 2009 from Vincent M. Tagle;
1-a	Signature of Vincent M. Tagle;
1-b	The word "3005 Vito Cruz Extension cor. Kakarong St., Brgy. Sta Cruz, Makati City";
1-c	The word "Pasong Tamo Service Center Bldg., #15 La Fuerza Compound 2241 Don Chino Roces Ave., Makati City";
2	Recommendation for Issuance of Sub-poena Duces Tecum issued on May 25, 2009;
2-a	Signature of Leonita L. Dimagiba;
2-b	Signature of Josalyn E. Tan;
2-c	The date "May 25, 2009";
3	1st Indorsement dated May 25, 2009;
4	Re-Assignment Notice dated October 27, 2009;
4-a	Signature of Florante C. De Castro;
4-b	The date "October 27, 2009";
4-c	The hand written name "Zeny Maravilla" over the word Taxpayer/Authorized Representative and the date "11/17/09" under it;
5	Memorandum dated February 15, 2010 (contained in pages 333-331 of the BIR records);
6	Assessment Notices issued on April 13, 2010 together with the Formal Assessment Notice with the Details of Discrepancies (contained in pages 369-364 of the BIR records);

[50] Docket, pp. 705-706.
[51] Docket, pp. 744-745.

6-a	Signature of Jaime B. Santiago;
7	Post-Reporting Notice (Notice of Informal Conference)
7-a	The date "December 15, 2009"
7-b	The address, Bldg. 8 La Fuerza Compd. 2241 Chino Roces, Makati City;
8	Certification from Amabel P. Oliquino, Chief Admin. Unit of the Makati Central Post Office dated May 3, 2011;
9	Certification from Amabel P. Oliquino, Chief Admin. Unit of Makati Central Post Office dated July 12, 2012;
10	Judicial Affidavit of Josalyn E. Tan;
10-a	Signature of Josalyn E. Tan;
11	ORG Original Return Filed (Form Type 1702)
12	ORG Original Return Filed (Form Type 1702)

Petitioner presented its rebuttal witness in the person of Zenaida O. Maravillas who testified by way of her Judicial Affidavit and Supplemental Judicial Affidavit. Thereafter, petitioner thru counsel verbally offered Exhibits on rebuttal:

Exhibits	Description
S	Certified True Copy of the BIR Certificate of Registration issued by Revenue District No. 049;
S-1	The words "Revenue Region No. 8, Revenue District No. 049";
S-2	The registered address of Coolmate Corporation;
T	The Judicial Affidavit dated February 5, 2013;
T-1	The signature of Ms. Zenaida O. Maravillas;

U	The Supplemental Judicial Affidavit executed by Ms. Zenaida O. Maravillas dated March 5, 2013;
U-1	Signature of Zenaida O. Maravillas ;
V	The Contract of Lease dated August 24, 2007;
V-1	Signature of the President of Coolmate Corporation, Mr. Frederick Vincent M. Tagle;
W	Letter dated August 28, 2008;
W-1	Signature of Mr. Frederick Vincent M. Tagle.

On July 10, 2013, the instant Petition for Review was submitted for decision, after the filing of petitioner's Memorandum[52] on April 30, 2013 and respondents' Memorandum[53] on May 31, 2013.[54]

The parties submitted the following issues[55] to be resolved by this Court:

> "1. Whether or not the Warrant of Garnishment is void.
>
> 2. Whether or not the Letter of Authority (LA) issued by BIR RDO No. 48 is void, inasmuch as there was a non-issuance of a Report of Investigation within one hundred twenty (120) days from the date of receipt of the LA by the Petitioner.
>
> 3. Whether or not the Final Assessment Notice is void.
>
> 4. In the alternative, whether or not there is a valid service of Final Assessment Notice to the Petitioner.

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52 Docket, pp. 765-793.
53 Docket, pp. 803-811
54 Docket, p. 814.
55 Docket, p. 491.

5. Whether or not the assessment and audit of Petitioner corporation's 2006 internal revenue taxes have become final and executory.

6. Whether or not the instant petition for review is already barred by prescription.

7. Whether or not Petitioner has a cause of action against Private Respondent Metropolitan and Trust Bank (Metrobank)."

Considering that respondent Metrobank was dropped as a party respondent in this case on March 23, 2012, the Court will no longer resolve the last issue mentioned above.

Petitioner contends that it was deprived of due process. It asserts that it did not receive the copy of the purported Formal Assessment Notice dated April 13, 2010. Petitioner likewise argues that the FAN is void, which would mean that the assessment and audit of petitioner's tax liability for the taxable year 2006 were not final and executory.

Petitioner cites the case of *Golden Harvest Global Corporation vs. Commissioner of Internal Revenue*[56], wherein this Court held that non-compliance with the procedural requirement for the FAN amounts to a violation of due process. Petitioner further states that the said case can be corroborated by the Supreme Court ruling in the case of *Commissioner of Internal Revenue vs. Metro Star Superama Inc.*[57], citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*,[58] that the non-observance of the requisites in the service of FAN and PAN, has the effect of rendering them void. There being no valid assessment, when prescription sets in, the taxpayer can no longer be held liable for the alleged discrepancies. The Supreme Court added that it is

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[56] CTA Case No. 7503, September 18, 2009.
[57] G.R. No. 185371, December 8, 2010.
[58] G.R. No. 150764, August 7, 2006.

incumbent upon the BIR to prove by competent evidence that such notice was indeed received by the addressee.

Petitioner also posits that in order for an assessment to be valid, the procedural requirements provided under Revenue Regulations (RR) No. 12-99, particularly Section 3 on Due Process Requirement in the Issuance of a Deficiency Tax Assessment, and Revenue Memorandum Order (RMO) No. 37-94, particularly paragraph (C) on Review of Reports of Investigation and Service of Pre-assessment Notices must be satisfied.

Respondent counter-argues that she is not unmindful of the requisite that an assessment is deemed made only when the same is actually received by the taxpayer. If it appears that the person liable for the payment did not receive the assessment, it could not become final and executory. She claims that petitioner admitted the receipt of the Preliminary Assessment Notice on April 8, 2010, which was delivered to petitioner at its registered business address at Bldg. 8, La Fuerza Compound, 2241 Chino Roces Ave., Makati City. Respondent contends that it was also impossible that the PAN was mailed to any other address because petitioner did not update its business address with the Revenue District Office having jurisdiction of its place of business, which was RDO No. 48.

Respondent also asserts that twenty (20) days after the issuance of the PAN or on April 13, 2010, the assessment notices, the FAN, and the Details of Discrepancies were issued and sent to petitioner at the same address where the PAN was sent. Another Certification from the Makati Central Post Office was issued to prove that respondent served the FAN to the same address where the PAN was served. She posits that petitioner's argument that it did not receive the FAN runs counter to its admission that it received the PAN.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

"SEC. 228. *Protesting Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

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." *(Emphasis supplied)*

Pertinent thereto, Revenue Regulations No. 12-99 states that:

> "3.1.4 *Formal Letter of Demand and Assessment Notice*. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void** xxx. **The same shall be sent to the taxpayer only by registered mail or by personal delivery.** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." *(Emphasis supplied)*

Based on the foregoing provisions, it is a must that the taxpayer is afforded due process of law when being assessed for tax liability. Due process requires that the assessment notice must be actually received by the taxpayer.

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, **due process requires that it must be served on and received by the taxpayer**.[59]

In the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[60], citing the case of *Collector of Internal Revenue*

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[59] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et. al.*, G.R. No. 128315, June 29, 1999.
[60] G.R. No. 157064, August 7, 2006.

vs. Bautista[61], the Supreme Court held that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the BIR Commissioner to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, it should be clarified that **the rule does not dispense with the requirement that the taxpayer should actually receive**, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent.

Further, when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v) of Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) **that the letter was properly addressed with postage prepaid**; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[62]

Records reveal that petitioner did not receive the FAN, although respondent sent it through registered mail. A Certification[63] from the Makati Central Post Office proves that respondent mailed the assessment notice, but it also establishes that the FAN sent through registered mail was returned to respondent because the addressee (petitioner) had already moved out.

It is noteworthy that the PAN and the FAN were both mailed to petitioner's address at Bldg. 8, La Fuerza Compound, 2241 Chino Roces Ave., Makati City, notwithstanding the fact that petitioner already transferred to another business address. The records also indicate that petitioner admitted the receipt of the PAN on April 8, 2010, c

[61] 105 Phil 1326, 1327 (1959).
[62] *Protector's Services, Inc. vs. Court of Appeals,* 386 Phil 611, 623 (2000).
[63] Exhibit "8".

which was sent through registered mail at its old address. However, petitioner clarified through its witness Eufrasio P. Estreras, Jr. how the PAN, even though addressed to the President of Coolmate Corporation at its old address, was actually received at its new location, to wit:

> "MR. ESTRERAS:
> A. We posted notices indicating where our new address is, so I guess the mailman delivered the Preliminary Assessment Notice in its original registered form to our new address at Vito Cruz Ext. Brgy. San Roque, Makati City."[64]

It is clear from the foregoing that the assessment notice was not properly addressed to petitioner.

The Court opines that respondent was well informed of petitioner's transfer of business address from Bldg. 8, La Fuerza Compound, 2241 Chino Roces Ave., Makati City to 3005 Vito Cruz Extension, Makati City. The pieces of evidence establishing the same are numerous. There are documents proving that petitioner updated its registration information, such as BIR Form No. 1905[65] and Certificate of Registration OCN 9RC0000214970[66] issued by RDO No. 49, reflecting the new address of petitioner. Similarly, on May 5, 2009, respondent sent a letter[67] to petitioner in its new address through Ms. Zeny Maravillas, asking for the submission of pertinent documents. Moreover, petitioner sent letters[68] to respondent with their new address indicated therein.

It is respondent's duty to send the FAN to the proper address of petitioner to ensure its receipt and in order to avail of the disputable presumption provided under Section 3(v) of Rule 131 of the Rules of Court.

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[64] TSN dated April 30, 2012, pp. 20-21.
[65] Exhibit "R".
[66] Exhibit "S".
[67] Exhibit "E-Petition".
[68] Exhibits "F-Petition" and "H-Petition".

Since petitioner denies receiving the assessment notice, and respondent is unable to present evidence that the FAN was sent to petitioner's proper address, the disputable presumption that the assessment notice was received in the regular course of mail will not lie. Failure of respondent to prove receipt of the assessment by petitioner leads to the conclusion that no assessment was issued.[69] There being no valid assessment, when prescription sets in, the taxpayer can no longer be held liable for the alleged discrepancies.

Considering the declaration of the Court that the issued assessment is invalid, the other stipulated issues will no longer be discussed.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **GRANTED**. Accordingly, the subject Final Assessment Notice against petitioner for alleged deficiency income tax for the taxable year 2006 in the amount of ₱17,577,070.63 is declared null and void, and the Warrants of Garnishment dated January 1, 2011 and March 31, 2011 are cancelled and deemed withdrawn.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(on leave)
ERLINDA P. UY
Associate Justice

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[69] *Industrial Textile Manufacturing Co. of the Phils., Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 4885, August 22, 1996.

CERTIFICATION

Pursuant to Section 13 Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, First Division