REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2120** (CTA Case No. 8901)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
XYLEM WATER SYSTEMS INTERNATIONAL, INC. (formerly GOULDS PUMPS [N.Y.], INC.), Respondent.	Promulgated: MAR 12 2021 2:10 pm

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DECISION

BACORRO-VILLENA, J.:

Assailing the Special Third Division's Decision dated 31 January 2019[1] and Resolution dated 25 July 2019[2], respectively, in CTA Case No. 8901, entitled *Xylem Water Systems International, Inc. (formerly Goulds Pumps [N.Y.], Inc.) v. Commissioner of Internal Revenue,* petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the present Petition for Review on 28 August 2019[3] pursuant to Section 3(b)[4],

[1] Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Esperanza R. Fabon-Victorino (Ret.), concurring. See Division Docket, Volume III, pp. 1295-1312.

[2] Id., pp. 1365-1369.

[3] *Rollo*, pp. 6-24.

[4] **SEC. 3.** *Who may appeal; period to file petition.*

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for

Rule 8, in relation to Section 2(a)[5], Rule 4 of the Revised Rules of the Court of Tax Appeals[6] (**RRCTA**).

Respondent Xylem Water Systems International, Inc. (**respondent/Xylem**) is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, U.S.A. It is authorized to transact business in the Philippines as a branch office, primarily to engage in the manufacture, assembly, repair and maintenance of various pumps and related products.[7] Respondent is also registered with the Bureau of Internal Revenue (**BIR**), with Taxpayer Identification No. (**TIN**) 246-534-865-000.[8]

On the other hand, petitioner is the duly appointed Commissioner of Internal Revenue, tasked to perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court. Petitioner holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[9]

FACTS OF THE CASE

On 10 October 2005, respondent received from Revenue Region No. 9 - San Pablo City Letter of Authority (**LOA**) No. 00098168[10] dated 15 September 2005.[11] The LOA authorized the examination of the books of accounts and other accounting records of respondent for taxable year (**TY**) 2004.[12]

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costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

5 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
...

6 A.M. No. 05-11-07-CTA.

7 Paragraph 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 598.

8 Paragraph 2, id.

9 Paragraph 3, id.

10 The JSFI executed by the parties, however, states that the LOA is numbered 0009816815.

11 Exhibit "R-1", BIR Records, Folder 1, p. 211.

12 Paragraph 4, Admitted Facts, JSFI, Division Docket, Volume II, p. 599.

On 05 June 2007, respondent received from Revenue District Office (**RDO**) No. 56 a 15-day Preliminary Notice dated 04 June 2007[13] (**Preliminary Notice**). The Preliminary Notice assessed respondent of deficiency value-added tax (**VAT**) and the alleged deficiency expanded withholding tax (**EWT**), final withholding tax (**FWT**), and fringe benefits tax (**FBT**) for TY 2004.[14]

On 07 June 2007, respondent wrote a letter[15] to RDO No. 56, acknowledging receipt of the Preliminary Notice and requesting for an additional period of 15 to 60 days from the BIR's receipt of such letter within which to submit documentary evidence.[16]

On 09 January 2008[17], respondent filed with Revenue Region No. 9 its reply[18] to the Preliminary Assessment Notice[19] (**PAN**) dated 07 December 2007 which it received on 02 January 2008. It attached to the reply its Position Paper dated 25 [July] 2007[20] and supporting documents.[21]

On 22 January 2008, OIC-Regional Director Araceli L. Francisco (**OIC-RD Francisco**) issued the Audit Result/Assessment Notice[22] and Formal Letter of Demand[23] (**FLD**).

On 06 March 2008, respondent availed of the Tax Amnesty Program pursuant to Republic Act (**RA**) No. 9480[24] covering TY 2005 and prior years.[25]

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13 Exhibit "R-5", BIR Records, Folder 1, p. 223.
14 Paragraph 5, Admitted Facts, JSFI, Division Docket, Volume II, p. 599.
15 Exhibit "R-6", BIR Records, Folder 1, p. 226.
16 Paragraph 6, Admitted Facts, JSFI, Division Docket, Volume II, p. 599.
17 The records show, however, that the said reply to the PAN was received by the Office of the Regional Director of Revenue Region No. 9 on 11 January 2008 (BIR Records, Folder 1, p. 285).
18 Exhibit "P-6-SO", Division Docket, Volume I, p. 303.
19 Exhibit "P-5-SO", id., pp. 300-302; Exhibit "R-10", BIR Records, Folder 1, pp. 264-266.
20 Exhibit "P-4-SO", Division Docket, Volume I, pp. 292-296. The Court *En Banc* notes, however, that paragraph 7 of the Admitted Facts of the JSFI states that the Position Paper is dated 25 June 2007.
21 Paragraph 7, id., Volume II, p. 599.
22 Exhibit "R-11", BIR Records, Folder 1, pp. 270-273.
23 Exhibit "R-12", id., pp. 267-269.
24 AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2005 AND PRIOR YEARS.
25 Paragraph 18, Division Docket, Volume II, p. 600.

On March 14, 2008, petitioner received Tax Verification Notice (**TVN**) No. 00215534 dated 12 March 2008[26] from Revenue Region No. 9. The TVN authorized the verification of the supporting documents and records of respondent pursuant to the latter's request for reinvestigation.[27]

On 08 January 2009, respondent received a letter dated 11 December 2008[28] from RDO No. 56, authorizing a new set of revenue examiners to conduct the examination of the books of accounts and other accounting records of respondent.[29]

On 06 January 2011, respondent received another letter from RDO No. 56 dated 21 December 2010[30], informing it that its case will be forwarded to Revenue Region No. 9 for further review, issuance of the statutory assessment and enforcement of collection.[31]

On 21 February 2013, respondent received the Preliminary Collection Letter[32] (**PCL**) from RDO No. 56 which sought to collect the VAT and the alleged deficiency taxes under Assessment No. 56-2004, in the total amount of ₱44,991,188.87[33], broken down as follows:[34]

Kind of tax	Basic tax	Interest	Compromise penalty	Total
VAT	₱592,881.07	₱354,542.88	₱20,000.00	**₱967,423.95**
EWT	842,098.44	508,627.46	20,000.00	**1,370,725.90**
FWT	24,735,321.74	16,501,056.61	25,000.00	**41,261,378.35**
FBT	854,085.10	517,575.57	20,000.00	**1,391,660.67**
Total	₱27,024,386.35	₱17,881,802.52	₱85,000.00	**₱44,991,188.87**

On 22 March 2013, respondent filed its protest (**First Protest**) of the PCL, together with supporting documents, with RDO No. 56.[35] On 24 June 2013, respondent filed with RDO No. 56 a supplement to

26 Exhibit "P-7-SO", id., Volume I, p. 305; Exhibit "R-16", BIR Records, Folder 1, p. 288.
27 Paragraph 8, Admitted Facts, JSFI, Division Docket, Volume II, p. 599.
28 Exhibit "P-8-SO", id., Volume I, p. 306.
29 Paragraph 9, Admitted Facts, JSFI, id., Volume II, p. 599.
30 Exhibit "P-9", id., Volume I, pp. 307-311; Exhibit "R-19", BIR Records, Folder 2, p. 495.
31 Paragraph 10, Admitted Facts, JSFI, Division Docket, Volume II, p. 599.
32 Exhibit "P-10-SO", id., Volume I, p. 312.
33 The Court *En Banc* notes that the total amount stated in the JSFI is One Centavo more than the computed total which may have been due to rounding-off difference.
34 Paragraph 11, Admitted Facts, JSFI, Division Docket, Volume II, p. 599.
35 Paragraph 12, id., p. 600.

the First Protest (**Supplement to First Protest**).[36] Thereafter, it received the reply of RDO No. 56 dated 02 July 2013[37] to its First Protest.[38]

On 28 July 2014, respondent received a Final Notice Before Seizure[39] (**FNBS**) from RDO No. 56. The FNBS gave respondent 15 days from receipt thereof to settle the alleged deficiency taxes as provided in petitioner's PCL.[40] On 08 August 2014, respondent filed with RDO No. 56 its protest to the FNBS (**Second Protest**).[41]

On 09 September 2014, respondent received the Warrant of Distraint and/or Levy[42] (**WDL**) from RDO No. 56, signed by Revenue District Officer Honorata S. Aguilar (**RDO Aguilar**), for the collection of the alleged deficiency taxes, as follows: (**a**) EWT in the total amount of ₱1,370,725.90; (**b**) FWT in the total amount of ₱41,261,378.35; and, (**c**) FBT in the total amount of ₱1,391,660.67.[43]

PROCEEDINGS BEFORE THE THIRD DIVISION

On 03 October 2014, respondent filed its prior Petition for Review (CTA Case No. 8901) with Urgent Motion to Quash the Warrant of Distraint and/or Levy and Application for Temporary Restraining Order and/or Writ of Preliminary Injunction.[44]

In his Answer[45] to the said petition, petitioner claimed that the Court in Division has no jurisdiction over the case as the assessment had become final, executory and demandable. According to him, respondent supposedly received on 06 January 2011 a copy of the letter dated 21 December 2010 denying respondent's protest on the FLD dated 22 January 2008. Therefore, respondent had only until 05 February 2011 within which to appeal such denial with the Court in Division. Since respondent only filed its previous Petition for Review

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36 Paragraph 13, id.
37 Exhibit "P-12", id., Volume I, pp. 314-316.
38 Paragraph 14, Admitted Facts, JSFI, id., Volume II, p. 600.
39 Exhibit "P-13-SO", id., Volume I, p. 317.
40 Paragraph 15, Admitted Facts, JSFI, id., Volume II, p. 600.
41 Paragraph 16, id.
42 Exhibit "P-14-SO", id., Volume I, p. 318.
43 Paragraph 17, Admitted Facts, JSFI, id., Volume II, p. 600.
44 Id., Volume I, pp. 1-34.
45 Id., pp. 378-393.

on 03 October 2014, the assessment had become final, executory and demandable.

In the same Answer, petitioner also contended that his right to assess respondent had not prescribed as a result of the waiver of the defense of prescription executed by respondent prior to the expiration of the three-year prescriptive period.

Finally, petitioner averred that the LOA, Notice of Informal Conference (**NIC**), PAN, FLD and FAN were all issued in accordance with the law, rules and jurisprudence.

In its Reply[46], respondent maintained that the Court in Division acquired jurisdiction over the case as it was not properly notified of the FLD and was only made aware thereof on 21 February 2013 (when it received the PCL making reference to the said FLD). Respondent thus requested a copy of the said FLD on 04 March 2013[47] and received the same on 11 March 2011. As such, petitioner cannot argue that the 21 December 2010 letter of Revenue District Officer Benito B. Wong (**RDO Wong**) denied respondent's protest when, in the first place, there is no valid assessment to speak of.

On 31 January 2019, after the trial on the merits, the Special Third Division[48] issued the assailed Decision.[49] The dispositive portion of which reads:

> ...
> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and the Final Assessment Notice No. 56-2004 dated January 22, 2008, assessing Petitioner for alleged deficiency EWT, FWT, and FBT for taxable year 2004, in the total amount of Php44,023,764.92, as well as the Warrant of Distraint and/or Levy dated September 09, 2014 are hereby **CANCELLED.**

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46 Id., pp. 403-408.

47 The Court *En Banc* notes that in respondent's Formal Offer of Evidence dated 15 October 2014, respondent alleged that its letter request is dated 06 March 2013 which coincides with the BIR letter dated 11 March 2013 (Exhibit "P-11-a", id., p. 313).

48 The Third Division was reconstituted after the issuance of the CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court."

49 Supra at note 1.

SO ORDERED.

...

On 28 February 2019, petitioner filed a Motion for Reconsideration[50] (**MR**) contesting the above Decision. In the said MR, petitioner insisted that the Special Third Division had no jurisdiction over respondent's prior Petition for Review as the assessment had already become final, executory and demandable. Furthermore, the Special Third Division erred in ruling that the subject assessments are void for failure to prove the service thereof to respondent. After respondent filed its Comment/Opposition[51], the Special Third Division issued the assailed Resolution dated 25 July 2019[52] denying petitioner's MR.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the Special Third Division's actions, petitioner filed the present Petition for Review[53], with respondent's Comment/Opposition filed on 26 September 2019.[54]

After the parties decided not to have their case mediated before the Philippine Mediation Center Unit – CTA[55], petitioner subsequently filed a Supplement to the Petition for Review on 09 December 2019[56] to further support his argument that the Special Third Division had no jurisdiction to act on respondent's prior Petition for Review. Citing the then recently issued Resolution dated 14 October 2019 of the First Division in CTA Case No. 10020 entitled *Dennis M. Yap v. Bureau of Internal Revenue* (**Dennis M. Yap**), he sought the reversal of the Special Third Division's rulings.

On 24 February 2020, respondent filed its Comment/Opposition[57] to petitioner's Supplement to the Petition for

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50 Division Docket, Volume III, pp. 1323-1338.
51 Filed on 29 March 2019, id., pp. 1347-1351.
52 Supra at note 2.
53 Supra at note 3.
54 *Rollo*, pp. 55-61.
55 PMC-CTA Form No. 6 – No Agreement to Mediate dated 02 December 2019, id. p. 70.
56 Id., pp. 71-81.
57 Id., pp. 90-95.

Review. Thus, on 12 March 2020, the Court submitted the case for decision.[58]

In the present Petition for Review, petitioner assigns the following errors to the Special Third Division:

> I
> THE SPECIAL THIRD DIVISION ERRED IN RULING THAT IT HAS JURISDICTION OVER THE ORIGINAL PETITION FOR REVIEW; and,
>
> II
> THE SPECIAL THIRD DIVISION ERRED IN RULING THAT THE ASSESSMENTS ARE VOID FOR FAILURE OF PETITIONER COMMISSIONER OF INTERNAL REVENUE TO PROVE SERVICE THEREOF TO RESPONDENT XYLEM WATER SYSTEMS INTERNATIONAL, INC.

In this recourse before Us, petitioner reiterates his arguments in his Answer and MR (on the assailed 31 January 2019 Decision) before the Special Third Division. According to petitioner, since respondent received on 06 January 2011 a copy of the letter dated 21 December 2010[59] denying its protest on the assessment dated 22 January 2008, it had thus belatedly filed its prior Petition for Review on 03 October 2014.

Petitioner further disagrees with the Special Third Division's finding that he failed to prove that the FLD was actually delivered to respondent in the absence of a certification from the Postmaster. Petitioner contends that the Special Third Division erred in holding that the certified photocopy of the registry return card[60] was not properly authenticated as respondent's rebuttal witness, Postmaster Mary Antonette S. Parfan (**Parfan**), confirmed that she was the one who certified the registry return card and that she attested that she saw the original thereof.

Petitioner also finds error in the application of the principle laid down in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities,*

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[58] Resolution dated 12 March 2020, id., pp. 97-98.
[59] Supra at note 30.
[60] Exhibit "R-13", Division Docket, Volume III, p. 1170.

Inc.) v. Commissioner of Internal Revenue[61] (**Barcelon**) as the same is a collection case where he (the CIR) is the petitioner and as such, had the initial burden to prove the fact of receipt in view of the denial of taxpayer's receipt of the assessment. According to petitioner, if the registry return card was produced, the same is sufficient to prove actual mailing and the burden has already shifted to respondent to rebut the disputable presumption.

In his Supplement to the Petition for Review, petitioner additionally contends that, pursuant to the case of *Dennis M. Yap* where the First Division considered the PCL's receipt as the CIR's final decision which could be the subject of an appeal (having reiterated the tax liabilities and requested the payment of the same to avoid accumulation of interest and surcharges, otherwise, administrative summary remedies would be utilized to enforce the collection thereof), respondent's prior Petition for Review should nonetheless be considered belatedly filed.

On the other hand, respondent claims that the Special Third Division correctly assumed jurisdiction as the WDL's issuance constitutes an act of the CIR on "other matters" arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, which may be the subject of an appropriate appeal before the Court.

Respondent also avers that while petitioner was able to present a certified true copy of a certain return card, nothing there indicates that the documents (accompanied by the said return card) were the FAN and the FLD subject of herein case. Moreover, respondent argues that petitioner was unable to present an affidavit of the person who mailed the FAN and the FLD. Petitioner also failed to prove that the signature appearing on the return card belongs to any of its authorized representative. In fact, aside from admitting that she has no personal knowledge on the mailing of FAN and the FLD, respondent's rebuttal witness (Parfan) could not also recall if she indeed saw the original registry return card when it certified the same.

As to the applicability of the case of *Dennis M. Yap*, respondent contends that the said case has a different factual *milieu* from the present case, most notable of which is that there was a valid

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[61] G.R. No. 157064, 07 August 2006.

assessment in the former as the taxpayer therein received the FAN and the FLD.

RULING OF THE COURT *EN BANC*

After an assiduous review of the records of the case, the Court *En Banc* finds no ground to grant the instant Petition for Review. The reasons for the Court *En Banc's* affirmance of the assailed Decision and Resolution *vis-à-vis* petitioner's assignment of errors are discussed below, in *seriatim*.

THE COURT IN DIVISION HAD JURISDICTION OVER RESPONDENT'S PRIOR PETITION FOR REVIEW (CTA CASE NO. 8901).

The crux of petitioner's first assignment of error revolves around the timeliness of respondent's filing of its prior Petition for Review with the Court in Division.

Initially, petitioner contends that the 30-day period for respondent to file an appeal with the Court should have been reckoned from its receipt of the 21 December 2010 letter[62] informing respondent that it failed to submit sufficient documentary evidence and that its "case will be forwarded to Revenue Region 9 – San Pablo City for further review and issuance of statutory assessment and enforce the collection thereof as provided by law."

Subsequently, in its Supplement to the Petition for Review, petitioner additionally avers that pursuant to the First Division's ruling in *Dennis M. Yap* (where the PCL was considered as the final decision appealable to this Court), respondent's prior Petition for Review was still belatedly filed even if the Court would reckon the same from respondent's receipt of the PCL on 21 February 2013.

First, it is erroneous for petitioner to argue that the 30-day period for respondent to file an appeal with the Court in Division should have been counted from its receipt (on 06 January 2011) of the

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62 Supra at note 30.

letter dated 21 December 2010 supposedly denying respondent's protest, as respondent was not able to file its protest to the FLD at that time. The records of the case would show that respondent was only able to file a reply[63] to the PAN prior to its receipt of the letter dated 21 December 2010 and respondent only received a copy of the FLD on 11 March 2013 after it requested copies thereof from the BIR.[64]

In any case, the arguments raised by petitioner as against the Court in Division's jurisdiction has already been passed upon by the Supreme Court in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[65] (**Philippine Journalists**) where it was ruled that:

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> We agree with petitioner. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:
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> > SEC. 7. Jurisdiction. - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue**; (Emphasis supplied).
>
> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. **The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.
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> ...

63 Supra at note 18.
64 Exhibit "P-11-a", Division Docket, Volume I, p. 313.
65 G.R. No. 162852, 16 December 2004; Emphasis in the original text and supplied.

The facts of the said case would show that the taxpayer therein received the PCL on 16 March 1999. It also received the FNBS on 24 November 1999, the copy of the WDL on 28 March 2000, and it filed its petition for review on 26 April 2000.

As correctly noted by the Special Third Division, the Supreme Court, in *Philippine Journalists,* reckoned the 30-day period to file an appeal before this Court from the WDL's receipt. Similar herein, since respondent filed its prior Petition for Review on 03 October 2014 or within 30 days from its receipt of the WDL on 09 September 2014, respondent timely filed its appeal with the Court in Division. Thus, the Special Third Division correctly ruled that it had jurisdiction over respondent's prior Petition for Review.

With respect to petitioner's insistence that the Court *En Banc* should adhere to the First Division's ruling in *Dennis M. Yap*, where it was ruled that the PCL involved therein was considered as the final decision which could be the subject of an appeal, the Court *En Banc* could not oblige. The case of *Dennis M. Yap* is not applicable given the varying facts involved in the two cases. As respondent correctly underscored, the taxpayer in the *Dennis M. Yap* case received FLDs to which he was able to file his protests. In contrast, respondent herein denied having received the FLD and, as a result, it was not able to file its protest.

Clearly, the PCL subject of this case cannot be considered as the CIR's final decision since respondent at the time had yet to receive the FLD when it got hold of the PCL. As such, the Court *En Banc* could not reckon the 30-day period to file an appeal with this Court from the PCL's receipt.

Based on the foregoing, the Court *En Banc* finds that the Special Third Division correctly ruled that it had jurisdiction over respondent's prior Petition for Review.

SINCE PETITIONER FAILED TO SUFFICIENTLY PROVE THAT RESPONDENT RECEIVED THE FORMAL LETTER OF DEMAND (FLD), THE ASSESSMENT IS VOID AS RESPONDENT WAS NOT ACCORDED DUE PROCESS.

Respondent consistently denies the receipt of the FLD at the time the BIR supposedly mailed it to him. According to respondent, it only received the copies of the assessment notices on 11 March 2013 after it requested for said copies through its letter dated 06 March 2013.[66]

On the contrary, petitioner insists that he was able to properly serve the said FLD on respondent, as evidenced by the registry return card.[67] Said registry return card is a certified true copy of the original and that no less than respondent's rebuttal witness, Parfan, affirmed that she was the one who certified the registry return card after she saw the original thereof.[68]

Petitioner thus claims that the *onus probandi* has then shifted to respondent who, other than its bare denial, should have presented other independent and competent pieces of evidence.

We do not agree.

In *Barcelon*[69], which the Special Third Division also cited in the assailed Decision, the Supreme Court ruled that:

> ...
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> **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**

66 Supra at note 64; Question and Answer Nos. 28 and 29, Judicial Affidavit of Adelfa Lubong, Exhibit "P-18", id., pp. 271-272.

67 Supra at note 60.

68 Citing TSN of 18 July 2017, pp. 7-8.

69 Supra at note 61; Emphasis and underscoring supplied.

> **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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> ... However, as can be gleaned from the face of the exhibit, all entries thereon appear to be immaterial and impertinent in proving that the assessment notice was mailed and duly received by Petitioner. Nothing indicates therein all essential facts that could sustain the burden of proof being shifted to the Respondent. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card <u>which would have been signed by the Petitioner or its authorized representative</u>**. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. This Court does not put much credence to the self-serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing.
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> ...

In the case at bar, while petitioner was able to present the registry return card relative to the alleged mailing of the FLD to respondent, **petitioner failed to prove that the same has been signed by the authorized representative of respondent**. Petitioner showed no evidence to attest to the fact that it was respondent's duly authorized representative who received such document supposedly containing the FLD.

In a number of cases[70], the Supreme Court already held that "[r]**eceipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters.**"

Considering that petitioner failed to authenticate the subject registry return card, the inescapable conclusion is that petitioner was unable to discharge his burden to present proof to show that respondent indeed received the FLD, which was sent through registered mail.

Petitioner, however, maintains that *Barcelon* is not applicable herein as what is involved therein is a collection case where the CIR is necessarily the petitioner having the initial burden to prove the taxpayer's receipt of the assessment. Petitioner's argument fails to hold water.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[71], citing *Barcelon* and *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*[72], where the latter two cases involve assessment and not collection, the Supreme Court ruled that if the taxpayer denies having received an assessment from the BIR, it becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.

With the Court *En Banc's* finding that petitioner failed to sufficiently establish that respondent in fact received the subject FLD, the assessment must necessarily be declared a nullity for violating respondent's right to due process.

Section 228 of the NIRC of 1997, as amended, provides:

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[70] *Republic of the Philippines v. Resins, Incorporated*, G.R. No. 175891, 12 January 2011; *The Government of the Philippines v. Salvador Wee*, G.R. No. 147212, 24 March 2006; *In the Matter of the Petition for Habeas Corpus of Benjamin Vergara, et al. v. Hon. Francisco C. Gedorio, Jr., et al.*, G.R. No. 154037, 30 April 2003.

[71] G.R. No. 185371, 08 December 2010.

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

> ...
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> Section 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:** *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> ...
>
> **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.**[73]
>
> ...

In interpreting such statutory requirement, the Supreme Court, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[74], held that:

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

In *Commissioner of Internal Revenue v. Azucena T. Reyes*[75], the Supreme Court also ruled:

> ...
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> **The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.** In the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the

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[73] Emphasis supplied.

[74] G.R. Nos. 201398-99, 03 October 2018; Citation omitted and emphasis supplied.

[75] G.R. No. 159694, 27 January 2006; Emphasis supplied.

> government's claim, there can be no deprivation of property, because no effective protest can be made.
>
> ...

With the foregoing disquisitions, the Court finds no reason to disturb the assailed Decision and Resolution.

WHEREFORE, with the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 31 January 2019 and the Resolution dated 25 July 2019, respectively, of the Special Third Division in CTA Case No. 8901, entitled *Xylem Water Systems International, Inc. (formerly Goulds Pumps [N.Y.], Inc.) v. Commissioner of Internal Revenue,* are hereby **AFFIRMED.**

Further, petitioner Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes assessed against respondent Xylem Water Systems International, Inc., based on the Warrant of Distraint and/or Levy dated 09 September 2014 in the amounts of ₱1,370,725.90, ₱41,261,378.35 and ₱1,391,660.67 representing deficiency expanded withholding tax, final withholding tax and fringe benefits tax for taxable year 2004.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ON LEAVE
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 due respect, please see my CDO)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

XYLEM WATER SYSTEMS INTERNATIONAL, INC., formerly GOULDS PUMPS (N.Y.), INC.,
Respondent.

CTA EB No. 2120
(CTA Case No. 8901)

Present:

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

Promulgated:

MAR 12 2021 3:10 pm

x- x

CONCURRING and DISSENTING OPINION

MANAHAN, *J.*:

I concur with the majority view as clearly expressed by my distinguished colleague, Justice Jean Marie Bacorro-Villena as regards the Court's jurisdiction over the prior Petition for Review filed by Xylem Water Systems International, Inc. (Xylem) with the Special Third Division (Court in Division). In the absence of an actual Final Decision on Disputed Assessment (FDDA) on the protest filed by the taxpayer Xylem, the Warrant of Distraint and/or Levy (WDL) issued by the representative of the Commissioner of Internal Revenue (CIR) may be construed as the final decision appealable to this Court. I find the majority's reliance on the case of *Philippine Journalists Inc. vs. CIR*[1] as proper to support the conclusion that Xylem correctly reckoned the thirty (30) day period to appeal to the Court from its receipt of the WDL.

[1] G.R. No. 162852, December 16, 2004.

In the CTA *En Banc's* decision in the case of *CIR vs. Mannasoft Technology Corp.*,[2] this Court elucidated on the rationale provided in the *Philippine Journalists* case, and I quote:

> "xxx xxx xxx If one would consider the subsequent replies of the BIR as the reckoning point of the jurisdictional period to file an appeal before this Court, then it would be in effect a never-ending question as to which of the subsequent replies would be the reckoning period and a means for the taxpayer to extend a decision that is, in the eyes of the law, already considered to have attained finality, which, in this case, is the WDL."

I however adopt a different perspective on the majority's cancellation of the subject deficiency assessments for being null and void for violating Xylem's right to due process. The nullification of the subject Formal Letter of Demand (FLD) and final assessment notices is anchored on the failure of the CIR to prove valid service of the FLD/FANs to Xylem. The decisions of the Court in Division as affirmed by the majority in the *En Banc* decision mention quite clearly the documents required to support valid service of said notices mailed via registered mail. I do not wish to question such a conclusion as this has been well-settled in a number of Supreme Court decisions. But focused on the arguments of non-receipt versus valid service proferred by both parties, the Court should not overlook the fact that Xylem did secure a copy of the subject FLD/FANs which it denied having received via registered mail. The facts of the case both in the Division and *En Banc* levels confirm that on March 11, 2013, Xylem secured copies of the FAN from the Bureau of Internal Revenue (BIR). In the parties' Joint Stipulation of Facts and Issues (JSFI), it was mentioned that one of the documentary evidence to be offered by Xylem is the letter dated March 11, 2013 to prove that the FAN was furnished to the (then petitioner Xylem) when it requested for the same in its letter dated March 6, 2013.[3] Xylem then filed a protest against the FAN on March 22, 2013 which it calls a "protest to the Preliminary Collection Letter (PCL)" but is in essence, a protest to the FLD/FAN as can be gleaned from the tenor of the Letter Reply issued by Revenue District Officer (RDO) Mr. Carlos Salazar dated July 2, 2013 referring to the matters raised in Xylem's protest letter dated March 22, 2013.[4] I quote portions of the Letter Reply of Mr. Carlos Salazar, to wit:

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[2] CTA EB No. 1637, June 19, 2018.
[3] JSFI, Division Court Docket, Volume 2, pp. 593-611.
[4] Division Court Docket, Volume 1, pp. 314-316.

"On March 22, 2013, you filed a protest letter averring that:

1. **Prior to 11 March 2013**, the Company did not receive the Formal Letter of Demand and Assessment Notice No. 56-2005 in violation of the Company's right to procedural due process under Section 228 of the Tax Code and Revenue Regulations No. 12-99.

xxx xxx xxx

2. The right of the BIR to assess taxes for taxable year 2004 has prescribed.

xxx xxx xxx

3. That the BIR continued its investigation of the Corporation's tax liabilities for the taxable year 2004 even after the supposed due date of 22 February 2008 indicated in the FAN, clearly shows that the BIR has not issued the FAN and that the tax assessments subject thereof have not become final and executory.

xxx xxx xxx

4. That deficiency value-added tax, expanded withholding tax, fringe benefits assessments have no legal and factual basis."

xxx xxx xxx (emphasis supplied)

While it may be argued that the FLD/FANs were not validly served to Xylem due to failure to prove the same, the fact remains that Xylem was duly informed of the contents of the FLD/FANs which gave it the opportunity to file an intelligent protest. The essence of giving importance to valid service of official notices particularly the FLD and FAN, is to fulfill the requirement of the law that the taxpayer must be informed of the law and the facts upon which the assessment is made which is linked to its right to due process. This was elaborated in the case of *CIR vs. Fitness by Design, Inc.* and I quote:

> **"The rationale behind the requirement that taxpayers should be informed of the facts and law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his property without due process of law.** Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process." (emphasis supplied)

I humbly believe that Xylem was duly informed of the facts and the law on which the assessments were made on March 11, 2013 when it secured the subject FLD/FANs thus fulfilling the requirement of the law. The Supreme Court in the same case of *Fitness by Design* also ruled that the purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. This to my mind has been fulfilled in the instant case. To put it in another way, the arguments for or against the validity of the service of the FLD/FANs to Xylem was negated and settled when Xylem admitted that it secured copies of the FLD/FANs from the BIR.

In view of the foregoing, I vote to **GIVE DUE COURSE** to the Petition for Review filed by Xylem and rule upon the substantive merits of the subject tax deficiency assessments.

CATHERINE T. MANAHAN
Associate Justice