REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

YUSEN LOGISTICS CENTER, INC. Petitioner,	CTA CASE NO. 9109 Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 26 2018 3:45 P.M.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review filed on August 5, 2015[1], petitioner Yusen Logistics Center, Inc. prays to nullify the Warrant of Distraint and/or Levy dated June 8, 2015 issued by respondent Commissioner of Internal Revenue due to its alleged failure and refusal to pay the deficiency taxes and compromise penalty in the total amount of Two Million Nine Hundred Fifteen Thousand Three Hundred Seventy-Two Pesos and 11/100 (₱2,915,372.11) for taxable year (TY) 2010.

THE FACTS

Petitioner Yusen Logistics Center, Inc. is a domestic corporation with principal office at L3, B4, East Science Avenue, Laguna Technopark, Biñan, Laguna. It is registered

[1] Vol. 1 Docket, pp. 12-43.

with the Philippine Economic Zone Authority (PEZA) with Amended Certificate of Registration No. 06-12-L[2].

Per its Articles of Incorporation, petitioner's primary purpose is to engage in the business of international logistics operations, which includes warehousing, storage, cargo, consolidation, material handling, inventory control, picking, sorting, kitting, sub-assembly, cataloguing, and distribution of parts and products for clients and generally, to do and perform any and all acts connected with the business above-defined or arising therefrom or incidental thereto.[3]

On the other hand, respondent is the Commissioner of Internal Revenue (CIR) with the power to decide 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 (NIRC) or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 16, 2011, respondent issued Letter of Authority (LOA) No. 057-2011-00000291[4] for the examination of books of accounts and other accounting records of petitioner for TY 2010.

On July 10, 2013, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitation of the NIRC through its Treasurer, Socorro Z. Niro, extending the period to assess until June 30, 2014.[5]

Thereafter, respondent issued a Notice of Informal Conference[6] (NIC) dated November 15, 2013, with attached computation of the deficiency taxes, informing petitioner of its alleged deficiency tax liability in the amount of ₱18,659,482.57, to which petitioner filed a Reply on December 3, 2013[7].

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[2] Exhibit "P-7".
[3] Exhibit "P-6-1".
[4] Exhibits "R-3" and "P-11".
[5] Exhibits "R-7" and "P-14".
[6] Exhibit "P-18".
[7] Exhibit "P-19"

On January 14, 2014, petitioner received a Revised NIC dated January 6, 2014[8], informing it that after investigation, respondent still found it liable for deficiency Value-added Tax (VAT) in the amount of ₱195,838.20.

On February 21, 2014, petitioner received a Preliminary Assessment Notice (PAN) (Amended NIC) dated February 10, 2014[9], informing petitioner that it was liable for deficiency taxes in the total amount of ₱2,890,548.14.

On March 7, 2014, petitioner filed its Reply to the PAN.[10]

On April 14, 2014, a Formal Letter of Demand[11] (FLD) with Final Assessment Notice (FAN)[12] was issued by respondent.

On October 23, 2014, petitioner received a Preliminary Collection Letter[13] (PCL) dated October 2, 2014, requiring it to pay the amount of ₱3,787,116.73 for alleged deficiency taxes for TY 2010.

On October 30, 2014, petitioner filed its Reply[14] questioning the issuance of the PCL dated October 2, 2014 alleging that it only received a PAN prior to the said PCL.

On March 16, 2015, petitioner received from respondent a Final Notice Before Seizure[15] (FNBS) dated March 4, 2015, to which it filed a Reply[16] on March 27, 2015.

On July 7, 2015, petitioner received a Warrant of Distraint and/or Levy[17] (WDL) dated June 8, 2015 for the amount of ₱2,915,372.11 plus all increments incident to the tax delinquency, computed as follows:

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[8] Exhibit "P-20".
[9] Exhibit "P-4".
[10] Exhibit "P-5".
[11] Exhibit "R-11".
[12] Exhibit "R-12".
[13] Exhibit "P-2".
[14] Exhibit "P-21".
[15] Exhibit "P-3".
[16] Exhibit "P-23".
[17] Exhibit "P-1"

TYPE OF TAX	AMOUNT
Income Tax (IT)	₱ 445,458.38
Value-added Tax	186,029.48
Expanded Withholding Tax (EWT)	2,226,884.25
Compromise Penalty	57,000.00
TOTAL	**₱ 2,915,372.11**

The issuance of the WDL was treated by petitioner as a decision on its protest to the assessment. Hence, on August 5, 2015, petitioner filed the instant Petition for Review (With Urgent Motion to Suspend Collection of Tax).

In support of its Motion to Suspend Collection of Tax, petitioner presented Attorney Melitha F. Gasapos who identified several documents[18].

On September 11, 2015, petitioner posted its Memorandum[19] and Formal Offer of Evidence[20] on the pending incident, while respondent posted his on September 14, 2015[21].

On October 22, 2015, respondent filed his Answer[22] basically questioning the jurisdiction of the Court over the petition, claiming that petitioner did not file any protest to the FAN/FLD, rendering the assessment final, due and demandable. Further, the deficiency tax assessments for IT, VAT, EWT and Miscellaneous Tax (MT) were issued in accordance with law, rules, and jurisprudence, thus valid. Lastly, petitioner cannot deny receipt of the FLD/FAN as all notices he issued were sent to its registered address at Lot 3, Block 4, East Science Avenue, Laguna Technopark, Biñan, Laguna.

On January 5, 2016, the Court granted petitioner's Motion to Suspend the implementation of the WDL conditioned on petitioner's filing of a surety bond equivalent to one and one half (1½) times of the amount sought to be

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[18] Minutes of the Hearing dated September 7, 2015, vol. 1 docket, pp. 209-210.
[19] Vol. 1 Docket, pp. 236-246.
[20] Vol. 1 Docket, pp. 248-251.
[21] Vol. 1 Docket, p. 267-281.
[22] Vol. 1 Docket, pp. 298-310.

collected by respondent. Petitioner posted the required surety bond per the Resolution of April 8, 2016[23].

After the issuance of the Pre-Trial Order[24] on June 10, 2016, petitioner presented its witnesses, Cherrylou B. Patron and Marilyn M. Derilo.

Witness **Cherrylou B. Patron**[25] testified that as petitioner's Assistant Manager, she receives for petitioner the notices or letters from various government agencies. Precisely, she was the one who personally received the questioned WDL issued by respondent on July 7, 2015[26] bearing the address of petitioner's main office at East Science Avenue, Laguna Techno Park, Biñan, Laguna, where she is the Assistant Manager. Petitioner has three other offices, two are handled by Ana Teresa Bealsa, and the other by Ryan Liwanag.

The other witness **Marilyn M. Derilo**[27] declared that as petitioner's Assistant General Manager for Finance and Accounting since April 2012, she manages, supervises and monitors the day-to-day finance and accounting matters of petitioner including the daily posting of transactions, filing and payment of tax returns and review of the BIR's assessments and audits.

Petitioner is a PEZA-registered enterprise[28] engaged in the business of international logistics operations, which includes warehousing, storage, cargo, consolidation, material handling, inventory control, picking, sorting, kitting, sub-assembly, cataloguing, and distribution of parts and products for clients and generally, to do and perform any and all acts connected with the business above-defined or arising therefrom or incidental thereto[29], as indicated in its Amended Articles of Incorporation approved by the Securities and Exchange Commission on September 20, 2013[30].

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[23] Vol. 3 Docket, p. 1034.
[24] Vol. 3 Docket, pp. 1112-1122.
[25] Exhibits "P-33 and P-33-1".
[26] Exhibit "P-1".
[27] Exhibits "P-34" and "P-34-1".
[28] Exhibit "P-7".
[29] Exhibit "P-6-1"
[30] Exhibit "P-6".

As a PEZA-registered Ecozone Logistics Service Enterprise, petitioner enjoys certain tax incentives, such as five percent (5%) gross income tax, tax and duty-free importations and VAT zero rating[31], among others. Thus, petitioner is qualified for zero-rating of its transactions with its local suppliers of goods, properties and services.

Witness Derilo further declared that the present case started when the BIR served petitioner LOA-057-2011-0000291/ SN:eLA201000080907 dated September 16, 2011[32] for tax investigation for TY 2010. She actively participated in the examination/audit and timely submitted to the BIR the requested documents for the TY 2010[33]. As requested by the BIR, petitioner executed a Waiver[34] on July 10, 2013[35], through its Treasurer, Socorro Z. Niro. Thereafter, the BIR sent petitioner a copy of said Waiver bearing the signature of Revenue District Officer of Revenue District No. 057, Julio G. Alcasabas[36].

Petitioner submitted more documents to the BIR on September 12, 2013[37], October 20, 2013[38] and November 4, 2013[39].

On November 19, 2013, petitioner received from respondent a NIC dated November 15, 2013[40], finding it liable for deficiency taxes in the amount of ₱18,659.482.57, to which it filed a Reply on December 3, 2013[41].

On January 14, 2014, petitioner received a Revised NIC[42], indicating a lower deficiency tax of ₱195,838.20[43]. However, when petitioner was about to settle the deficiency taxes stated in the Revised NIC, respondent issued a PAN dated February 10, 2014[44], which it received on February

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[31] Exhibits "P-8" and "P-8-1".
[32] Exhibit "P-11".
[33] Exhibit "P-13".
[34] Exhibit "P-14"
[35] Exhibit "P-14-1".
[36] Exhibit "P-14-2".
[37] Exhibit "P-15".
[38] Exhibit "P-16".
[39] Exhibit "P-17".
[40] Exhibits "P-18" to "P-18-3".
[41] Exhibits "P-19" and "P-19-1".
[42] Exhibit "P-20".
[43] Exhibit "P-20-1".
[44] Exhibit "P-4".

21, 2014, indicating higher deficiency taxes liability for TY 2010 in the amount of ₱2,890,548.14. Petitioner disputed the said findings through its Reply[45] on March 7, 2014.

Subsequently, petitioner was notified that the docket of its case was forwarded to the Assessment Division of the BIR Regional Office, San Pablo City. On October 23, 2014, petitioner received from the BIR a PCL[46] to which it filed a Reply[47], stressing that it did not receive the notice of assessment referred to in the PCL or in any letter from the BIR. Petitioner also questioned the issuance of the PCL on the ground that there was no FAN issued prior to it and reiterated that the subject assessment has prescribed.

Upon inquiry, petitioner was informed that the FAN was sent to it through registered mail, which it readily denied. On December 22, 2014, petitioner was advised by the Assistant Revenue District Officer, Rufo Ranario, to provide the BIR Revenue District Office in San Pablo City, Laguna, with a copy of its Reply to the PCL[48], which it did on the same day.

Subsequently, petitioner received the FNBS dated March 4, 2015[49], directing it to settle the deficiency taxes for TY 2010 with information that the BIR sent to it a letter dated September 10, 2014. On March 27, 2015, petitioner filed a Reply to the FNBS[50], denying receipt of the alleged letter of September 10, 2014. Petitioner also reiterated its arguments in its Reply to the PAN.

On July 7, 2015, petitioner received the assailed WDL[51], which prompted it to file the instant Petition for Review on August 5, 2015.

The witness stressed that respondent's right to assess petitioner has already prescribed as the latter did not receive any FAN, a fact unrefuted by the BIR. Consequently,

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[45] Exhibit "P-5".
[46] Exhibit "P-2".
[47] Exhibit "P-21"
[48] Exhibit "P-22".
[49] Exhibit "P-3".
[50] Exhibit "P-23".
[51] Exhibit "P-1".

both the assessment and the WDL are erroneous and without bases in fact and in law.

She also believed that respondent's finding that petitioner has undeclared sales of ₱781,069.08 is incorrect since: a) some invoice entries[52] were inadvertently excluded by the BIR in the computation of sales per book; and b) petitioner's sales recorded as sales in the books of 2010 was adjusted as the said amounts were already reported as part of the its income in 2009 and taxed in 2009[53]. The BIR also incorrectly disallowed petitioner's claimed tax credits in 2010 on the ground that it was unsupported as petitioner's Income Tax Return (ITR) shows that the amounts claimed as tax credit matches the Certificates of Withholding Taxes (CWTs)[54] in possession of petitioner. Lastly, petitioner has an outstanding CWT in the amount of ₱1,720,283.00[55], which is more than sufficient to cover the disallowed CWT claimed by petitioner.

On the alleged deficiency VAT assessment, witness clarified that the difference between the sales per book and per VAT return was due to the difference in reporting for VAT purposes and for accounting purposes. VAT reporting is based on payments actually received, while in accounting reporting, the sale is deemed accrued once the service is billed.

With respect to the deficiency EWT assessment, petitioner elucidated that petitioner did not withhold from its income payment to Corinthian Industrial Property (Corinthian) and Ecozone Facilities Enterprise (Ecozone), since the two are PEZA-registered enterprises[56], hence, entitled to incentives such as exemption from IT.

Finally, she was petitioner's Accounting Manager in 2011, hence, aware of the audit/examination conducted against petitioner in that year. She received the Waiver from the BIR and indorsed it to petitioner's Treasurer, Socorro

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[52] Exhibit "P-27-2".
[53] Exhibits "P-27-3" and "P-27-4".
[54] Exhibit "P-29".
[55] Exhibit "P-30-3".
[56] Exhibits "P-31" and "P-32".

Niro for signature, as the latter was the person authorized to sign the said Waiver.

After petitioner rested[57], respondent presented Lilibeth R. Ambat and Dolores O. Zaporteza, as his witnesses.

Revenue Officer (RO) III **Lilibeth R. Ambat** testified[58] that she audited petitioner for TY 2010 by virtue of Memorandum of Assignment (MOA) No. 057-LA-00146-11/29/2012 dated November 29, 2012[59], since the original RO and Group Supervisor (GS) assigned, *i.e.* RO Alexander Onte and GS Emily Singson, who were authorized under LOA-057-2011-00000291/SN: eLA2010000807 dated September 16, 2011[60], were transferred to another office. Petitioner was informed of said change of RO through a Letter dated December 4, 2012[61].

During the audit, petitioner was provided with a Checklist of Requirements dated September 20, 2011[62] and the First Request for Presentation of Record dated October 24, 2011[63]. On March 8, 2013, the Second and Final Request for Presentation of Records[64] was issued to petitioner, reiterating the earlier request for submission of the listed documents, with a warning that continued non-compliance will warrant the issuance of a Subpoena *Duces Tecum.*

On July 10, 2013, petitioner executed a Waiver[65], extending the period to assess until June 30, 2014, which was notarized on July 10, 2014. Thereafter, witness continued her audit of the books of accounts and documents submitted which unearthed some discrepancies warranting assessment. Thus, on November 15, 2013, a NIC[66] was issued to accord petitioner an opportunity to refute the result of her audit.

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[57] Resolution dated November 10, 2016, vol. 4 docket, pp. 1514-1515.
[58] Exhibits "R-15" and "R-15-a".
[59] Exhibit "R-1".
[60] Exhibit "R-3".
[61] Exhibit "R-2".
[62] Exhibit "R-4".
[63] Exhibit "R-5".
[64] Exhibit "R-6".
[65] Exhibit "R-7".
[66] Exhibit "R-8".

On February 10, 2014, she issued the PAN[67], finding petitioner liable for deficiency IT, VAT and EWT for TY 2010.

The deficiency IT assessment in the amount of ₱462,871.59, inclusive of penalties, pursuant to Section 32 of the NIRC of 1997, as amended, was issued against petitioner due to its undeclared sales per ITR compared with sales per books amounting to ₱781,069.08 and unsupported creditable withholding tax amounting to ₱45,393.54.

She further found that petitioner has VAT deficiency of ₱200,574.66, inclusive of penalties, pursuant to Section 108 of the NIRC of 1997, as amended, due to undeclared sales discovered after computing the amount of sales per book and VAT Return.

With regard the EWT deficiency assessment, the witness explained that petitioner's rental payments to PEZA-registered companies, namely, Corinthians and Ecozone, should have been subjected to withholding taxes since payments to such companies are not automatically exempt from withholding taxes. For petitioner's failure to do so, rendered it liable to EWT in the amount of ₱2,227,101.89, penalties included.

RO Ambat admitted that petitioner filed a Reply to the PAN, however, it was unable to refute her audit findings. Thus, her Memorandum dated March 11, 2014[68], recommended the issuance of the Assessment Notice against petitioner. Likewise, she admitted that her office issued to petitioner a Revised NIC on January 6, 2014, lowering the deficiency assessment from ₱18,659,482 to ₱195,838.20. She also personally served to petitioner the Letter informing the change of assigned examiner due to reshuffling of ROs, and that the Second and Final Request for Presentation of Record and the PAN had been issued. As to the Waiver executed by petitioner, she confirmed that it was undated and only had the signature of Julio G. Alcasabas.

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[67] Exhibit "R-9".
[68] Exhibit "R-10".

The OIC-Chief of Assessment Division (OIC-Chief), Revenue Region No. 9, San Pablo City, Laguna, **Dolores O. Zaporteza** also testified for respondent. She declared[69] that her office reviewed the Memorandum dated March 11, 2014[70] and all its supporting documents prepared and endorsed by the investigating officer from Revenue District Office No. 57, Biñan, Laguna. Thereafter, she issued and served to petitioner through registered mail[71], the FLD with attached Details of Discrepancies[72] together with the Audit Results/Assessment Notices/BIR Forms 0401[73]. Despite receipt, petitioner did not file any protest to the FLD within the period allowed by law and rules, hence, the said assessment for TY 2010 became final and demandable.

The witness admitted that she issued the FLD on April 14, 2014 which the Administrative Office of the Assessment Division served to petitioner through registered mail on even date, as indicated in the Registry Return Receipt signed by a certain Security Guard (SG) Javier and in the corresponding Certification.

After respondent rested[74], the case was deemed submitted for decision on May 5, 2017[75], after the parties filed their respective memoranda.

THE ISSUES

The following issues were submitted for the Court's determination:

1. Whether petitioner is liable to pay the total amount of ₱2,915,372.11 for deficiency IT, VAT, EWT for TY 2010, compromise penalties and 20% deficiency and delinquency

[69] Exhibits "R-16" and "R-16-a".
[70] Exhibit "R-10".
[71] Exhibit "R-11-a".
[72] Exhibit "R-11".
[73] Exhibits "R-12" to "R-12-c".
[74] Resolution dated March 16, 2017, vol. 4 docket, pp. 1544-1545.
[75] Vol. 4 Docket, p. 1603.

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interests pursuant to Sections 248 and 249 of the NIRC of 1997;[76]

2. Whether the right of the respondent to assess petitioner for alleged deficiency IT, VAT, EWT for TY 2010 has already prescribed;[77] and

3. Whether the Court has jurisdiction over the instant petition.[78]

Petitioner's arguments:

Petitioner asserts that the Court has jurisdiction to entertain the present Petition for Review, as it did not receive the FLD/FAN allegedly served upon it after the issuance of the PAN. Instead, it received from respondent a PCL demanding payment of therein stated deficiency internal revenue taxes. On this account, it deemed the WDL received on July 7, 2015 as respondent's final decision appealable to this Court within thirty (30) days or until August 6, 2015 pursuant to Section 7(a)(1) Republic Act (R.A.) No. 1125[79], as amended. Therefore, its Petition for Review was timely filed on August 5, 2015, counting from its receipt of the WDL on July 7, 2015.

Further, respondent failed to satisfy the due process requirements and deviated from procedural rules and regulation pertaining to notice to the taxpayer concerned such as petitioner. Petitioner claims that the FLD/FAN was

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[76] Joint Stipulations on Issues, Joint Stipulation of Facts & Issues (JSFI), vol. 3 docket, p. 1104.
[77] Additional Issue for the petitioner, JSFI, vol. 3 docket, p. 1104.
[78] Additional Issue for the respondent, JSFI, vol. 3 docket, p. 1104.
[79] Section 7(a)(1) of R.A. No. 1125, as amended states:

SEC. 7. *Jurisdiction.* – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue or other law administered by the Bureau of Internal Revenue;**
xxx xxx xxx. (Emphasis supplied).

not served upon it or to its authorized representative but to a certain SG Javier as shown in the Registry Return Receipt which respondent himself presented to the Court. For this reason, the assessment should be declared null and void for lack of due process.

Finally, the deficiency internal revenue tax assessment has already prescribed as respondent failed to indicate in the Waiver it executed the date of his acceptance of the same. By reason of this infirmity, the period to assess continued to run allowing prescription to set in, says petitioner.

Respondent's arguments

Respondent maintains that the deficiency tax assessment was issued in accordance with law, rules, and jurisprudence. He insists that the FLD/FAN dated April 14, 2014 was issued to petitioner, however, it failed to file any protest, hence, the assessment became final, due, and demandable. There being no disputed assessment to contest, this Court has no competence to entertain the present petition.

Further, respondent claims that all notices issued to petitioner were sent to its registered address at Lot 3, Block 4, East Science Avenue, Laguna Technopark, Biñan, Laguna. Except for the FLD/FAN, petitioner, according to respondent, acknowledged receipt of the several correspondences sent to it at its registered address.

THE COURT'S RULING

The Court has jurisdiction over the instant petition.

Before going into the merit of the case, it is primordial for the Court to determine whether it has jurisdiction to determine the present action.

Settled is the rule that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[80]

The foregoing jurisprudence finds its roots from Section 7(a)(1) of R.A. No. 1125, as amended, which provides that the CTA shall exercise exclusive appellate jurisdiction to review by appeal, decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other law administered by the Bureau of Internal Revenue.

Further, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides that the Court in Division shall exercise exclusive original or appellate jurisdiction to review by appeal the decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other law administered by the Bureau of Internal Revenue.

Based on the foregoing provisions, the Supreme Court, in the case of *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*[81], ruled that "[t]he 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."

By virtue of all the foregoing and the facts established during the trial, the present case falls within the ambit of the second part of Section 7(a)(1) of R.A. No. 1125, as amended, conferring jurisdiction to this Court which is being

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[80] *Allied Banking Corporation v. CIR*, G.R. No. 175097, February 5, 2010.
[81] G.R. No. 162852, December 16, 2004.

asked to declare as null and void the alleged invalid WDL dated June 8, 2015 issued by respondent against petitioner for lack of factual and legal bases.

<u>Lack of due process rendered the assessment against petitioner and orders to collect the alleged deficiency taxes invalid.</u>

In the present case, petitioner complains that it was not accorded due process in the issuance of assessment notices as it did not receive the FLD/FAN which respondent claims to have been issued and served upon it. Allegedly, its receipt of the PAN was followed by the service of a PCL already demanding payment of the alleged deficiency taxes. Soon, petitioner received the FNBS, then the assailed WDL. Per petitioner, the procedure adopted by respondent is not in accord with the law, rules and jurisprudence on the matter as to render assessment he issued final and demandable. Petitioner was deprived of due process as it was not accorded the opportunity to seasonably take appropriate remedial action, such as the filing of the required protest, to protect its interest. Therefore, the FNBS and the WDL subsequently issued are null and void.

Respondent on the other hand, insists that he issued and served upon petitioner the FLD/FAN dated April 14, 2014 at its registered address as shown in the Registry Return Receipt and in the Certification dated December 11, 2015 issued by the Philippine Postal Corporation, Southern Luzon Area, San Pablo City. Despite receipt, petitioner failed to file any protest against the said FLD/FAN rendering the assailed assessment final, executory and demandable.

Section 228 of the NIRC of 1997, as amended, prescribes the rules in issuance of deficiency tax assessment and in protesting the same, to wit:

> SEC. 228. *Protesting of Assessment*. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a

> preassessment notice shall not be required in the following cases:
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> 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.
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> 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.

A relatively more detailed procedure in the issuance and protest against deficiency assessment is found in Section 3 of Revenue Regulations (RR) No. 12-99, as amended[82], thus:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice [FLD/FAN].* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the

[82] As amended by Revenue Regulations No. 18-2013.

Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void xxx.

3.1.4 *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

xxx xxx xxx

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

xxx xxx xxx

3.1.6 ***Modes of Service.*** – The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or **by mail**.

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

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

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'*Disinterested witnesses*' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) **Service by mail** is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier

> service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. **The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**
>
> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer." *(Emphasis supplied)*

An examination of the Registry Receipt and the Certification from the postmaster indicates that the FLD and the FAN were received by a certain "S/G JAVIER" and "S/G S. JADIEL", respectively. This was also admitted by respondent's own witness RO Dolores O. Zaporteza when cross-examined on January 31, 2017[83].

Generally, the evidence presented by respondent, under the presumption of regularity, is sufficient to prove the fact of mailing of the mail matter and receipt of the same. But with petitioner's denial, respondent is tasked with the burden of proving petitioner's actual receipt of the mailed assessment in accordance with the due process requirement under Section 3 of RR No. 12-99, as amended by RR No. 18-13.

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[83] Transcript of Stenographic Notes (TSN) of the January 31, 2017 hearing, pp. 17-18.

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However, the Court finds that the pieces of evidence presented by respondent to establish service and receipt of the assessment notices wanting to prove that the subject assessment notices were indeed received by petitioner or its duly authorized representative or agent in accordance with law and pertinent jurisprudence. It must be noted that the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it."

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.[84] Likewise basic is the rule that each party must prove his affirmative allegation.[85]

The same principle is laid down in the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[86], where the Final Arbiter held that 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 of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. The significant portions of ruling read as follows:

> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of

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[84] *Republic of the Philippines v. Court of Appeals, et al.,* G.R. No. L-38540, April 30, 1987.
[85] *Lolita Lopez v. Bodega City (Video-Disco Kitchen of the Philippines), et al.,* G.R. No. 155731, September 3, 2007.
[86] G.R. No. 157064, August 7, 2006.

> 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 v. Court of Appeals, 149 SCRA 351).* Thus as held by the Supreme Court in *Gonzalo P. Nava v. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:
>
> xxx xxx xxx
>
> xxx **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative.** 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. xxx" (emphases supplied)

Undeniably, respondent's failure to prove the actual receipt of the FLD/FAN by petitioner or by its authorized representative is fatal as to render the assailed assessment void.

The significance of FLD/FAN in the assessment process is illustrated in the case of *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*[87], as explained by the Supreme Court, thus:

> 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.** (Emphasis supplied)

Significantly, in *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[88], the High Court

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[87] G.R. No. 128315, June 29, 1999.
[88] G.R. No. 193100, December 10, 2014, citing *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

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declared that a void assessment bears no valid fruit. 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 taxpayer should be able to present their case and adduce supporting evidence.

From the record, it appears that petitioner consistently filed replies to all assessment notices received - the Notice of Informal Conference[89], the PAN[90], to the Collection Letter[91], and to the FNBS[92]. It is therefore not inconceivable that given the chance, it would also file protest against the FLD/FAN. Evidently, respondent failed to accord petitioner due process for he violated the requirement that the PAN and the FAN must be served on and received by the taxpayer or his duly authorized representative and not merely to a disinterested party.[93] The invalid service of the FLD/FAN to an unauthorized person rendered the assessment void for violation of the due process requirement.[94]

Following the tenet above-cited, the FLD/FAN dated April 14, 2014 and FNBS dated March 4, 2015 cannot validly be used as bases for the issuance of the questioned WDL dated June 8, 2015.

As held by the Court *En Banc* in *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[95], to wit:

> "Anent the issue, *We* maintain our finding in the assailed *En Banc* Decision dated October 28, 2015. Thus:
>
> > 'Time and again, *We* have consistently held the importance of issuing a Final

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[89] Exhibit "P-19".
[90] Exhibit "P-5".
[91] Exhibit "P-21".
[92] Exhibit "P-23".
[93] *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*, G.R. No. 155541, January 27, 2004.
[94] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue,* CTA Case No. 8745, January 13, 2017.
[95] CTA EB No. 1214, March 22, 2016.

> Assessment Notice (FAN), not only for the purpose of informing the taxpayer concerned of its deficiency taxes but, more importantly, to enable the filing of protest. It is the act of timely filing a protest that makes an assessment a disputed assessment, which in turn qualifies it to fall under the exclusive appellate jurisdiction of the CTA. **Stated differently, there can be no final, executory and demandable assessment where there is no showing that the subject FAN was properly and duly served upon the taxpayer concerned.**
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> xxx xxx xxx
>
> To recapitulate, the timely issuance of a FLD and FAN is a substantive prerequisite to tax collection. This Court cannot turn a blind eye on the importance of such notices. The use of the word "shall" in subsection 3.1.3 describes the mandatory nature of the service of FLD/FAN, and the absence of which renders nugatory any assessment made by the tax authorities. xxx'

In the instant case, considering that the issuance and receipt of a FAN and FLD was questioned and was found to be irregular, the subsequent issuance of a Final Notice Before Seizure or WDL was deemed invalid for petitioner's failure to properly observe due process as required by law. xxx" (emphases supplied)

<u>The Waiver dated July 10, 2013 is infirm.</u>

Under Section 203 of the NIRC of 1997 as amended, respondent has three years within to assess a taxpayer, to wit:

> SEC. 203. *Period of Limitation Upon Assessment and Collection*. – Except as provided in Section 222, internal revenue taxes shall be assessed **within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a

case **where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (Emphases supplied)

The three-year period to assess tax liabilities may be extended in accordance with Section 222(b) of the NIRC of 1997, as amended, through the execution of a valid waiver of the statute of limitations before the expiration of the three-year prescriptive period. Section 222(b) provides:

SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

xxx xxx xxx

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

Section 222 (b) governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[96]

The 3-year period to assess tax liabilities may however be extended through the execution of a valid waiver of the statute of limitations. A waiver is an agreement between the taxpayer and the BIR agreeing in writing that the period to issue an assessment and collect the taxes due is extended to a definite agreed upon date.

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[96] *Commissioner of Internal Revenue v. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.

The importance of strict compliance with the procedure for the execution of this waiver was elucidated by the Supreme Court in the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[97], to wit:

> "1. **A waiver of the statute of limitations under the Tax Code must conform strictly with the provisions of Revenue Memorandum Order No. 20-90 in order to be valid and binding.**
>
> 1.1. The waiver must specify a definite agreed date between the BIR and the taxpayer within which the former may assess and collect revenue taxes.
>
> 1.2. The waiver must be accepted by the Commissioner of Internal Revenue or his duly authorized representative, **and the date of acceptance must be indicated.**
>
> 1.3. The taxpayer must be furnished a copy of the waiver accepted by the BIR.
>
> 2. A waiver of statute of limitations under the Tax Code, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.
>
> 3. A waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain.
>
> 4. A waiver of the statute of limitations is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties." (emphases supplied).

Petitioner does not deny its execution of the Waiver which it submitted to the BIR for acceptance. Respondent however cannot invoke in its favor the said Waiver as he or his duly authorized representative failed to indicate the date of BIR acceptance of the said Waiver. Such infirmity,

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

according to petitioner, failed to suspend the running to the three-year period to assess allowing prescription to set in.

In *Commissioner of Internal Revenue v. Kudos Metal Corporation*[98], the Supreme Court reiterated that pursuant to Section 222(b) of the NIRC of 1997, as amended, the period to assess and collect taxes may only be extended upon a written agreement between the BIR Commissioner and the taxpayer executed before the expiration of the three-year period. The case likewise cited Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, which laid down the procedure for the proper execution of the waiver, to wit:

> "1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase but not after ______ 19 ___, which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
>
> 5. **Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription** or before the lapse of the period agreed upon in case a subsequent agreement is executed.

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[98] G.R. No. 178087, May 5, 2010.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement." (Emphases supplied)

A definite date of acceptance by respondent or his duly authorized representative is necessary for the validity of the Waiver of Statute of Limitations as the said requisite determines whether the waiver was validly accepted before the expiration of the original three-year prescriptive period. [99]

Since the Waiver dated July 10, 2013 executed by petitioner does not reflect the date of acceptance by respondent, this Court cannot ascertain if the said Waiver was actually agreed upon before the expiration of the three-year prescriptive period and if it validly extended the three-year prescriptive period until June 30, 2014; thus, the Waiver is infirm, hence, invalid and without any binding effect.

Following the well-settled rule that a void assessment bears no valid fruit, the FLD/FAN dated April 14, 2014 and the FNBS dated March 4, 2015 cannot be validly used as a basis for the issuance of the Warrant of Distraint and/or Levy.

Even conceding the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[100]

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the FLD/FAN dated April 14, 2014, the FNBS dated March 4, 2015, and the Warrant

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[99] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue v. FMF Development Corporation*, G.R. No. 167765, June 30, 2008; *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[100] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

of Distraint and/or Levy dated June 8, 2015 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice