REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1551** (CTA Case No. 8689)
	Present:
- versus -	Del Rosario, *PJ*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
ITHIEL CORPORATION, Respondent.	Promulgated: NOV 17 2017 4:09 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review filed by petitioner Commissioner of Internal Revenue, seeks to reverse and set aside the CTA 3rd Division's Decision[1] dated July 4, 2016 and the Resolution[2] dated October 18, 2016.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the Petition for Review filed by Ithiel Corporation is **GRANTED**. Accordingly, the Final Decision on

[1] Penned by Associate Justice Esperanza R. Fabon-Victorino, Division Docket, Vol. 4, pp. 2334-2350.
[2] Division Docket, Vol. 4, pp. 2365-2366.

Disputed Assessment (FDDA) dated May 31, 2013, assessing Ithiel Corporation with deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax in the aggregate amount of **THIRTY EIGHT MILLION FORTY THOUSAND FORTY NINE and 98/100 (₱38,040,049.98)**, inclusive of interests and surcharges, is hereby **CANCELLED** and SET **ASIDE**.

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

"**WHEREFORE**, there being no new matters and issues advanced by respondent to justify a reconsideration, let alone a modification of the assailed Decision of July 4, 2016, respondent's *Motion for Reconsideration* is hereby **DENIED**, for lack of merit.

SO ORDERED."

THE FACTS

The facts[4] as found by the CTA 3rd Division, are as follows:

"Petitioner [now respondent] Ithiel Corporation is a domestic corporation, with principal office at No. 770 E. Rodriguez Extension, Malibay, Pasay City. Its primary purpose is to build, erect, lease, or otherwise, acquire, manage, occupy, maintain, operate and deal in market, stalls and slaughterhouses, office buildings and lands, building for market stalls and slaughterhouse and business structures of all kinds for the accommodation of marketers, producers, service providers and the public client, consumers or buyers. It is registered with the Bureau of Internal Revenue (BIR) – Revenue District Office No. 51 of Pasay City under Revenue Region No. 8, Makati City, Philippines.

Respondent [now petitioner] Commissioner of Internal Revenue (CIR), on the other hand, is authorized to enforce revenue laws and collection of taxes and duties. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

[3] See Note 1, p. 2349.
[4] See Note 1, pp. 2334-2339.

On August 10, 2007, petitioner received from respondent an undated Letter of Authority (LOA) No. 00062393, for the examination of its books of accounts and other accounting records pertaining to its internal revenue taxes for taxable year 2006.

Subsequently, respondent issued a Preliminary Assessment Notice (PAN) dated September 23, 2010, with attached Details of Discrepancies for its alleged deficiency IT, VAT and EWT for taxable year 2006 in the aggregate amount of ₱30,445,536.52, broken down as follows:

TAX TYPE	BASIC	SURCHARGE	INTEREST	TOTAL
Income Tax	₱10,821,314.85	₱5,410,657.42	₱7,554,167.19	₱23,786,139.45
VAT	2,631,022.55	1,315,511.28	1,952,002.48	5,898,536.31
EWT	435,425.18		325,435.58	760,860.76
TOTAL				**₱30,445,536.52**

On October 12, 2010, petitioner protested the PAN.

On November 23, 2011, petitioner received a Final Assessment Notice (FAN) dated November 18, 2011, reiterating the alleged tax deficiencies indicated in the PAN.

On December 9, 2011, petitioner protested the FAN.

On December 27, 2011, petitioner received from respondent a letter dated December 22, 2011, stating that as a consequence of its protest to the FAN, the docket of the case was forwarded to Revenue District No. 51, Pasay City for further evaluation and necessary action.

On May 31, 2013, respondent issued the assailed FDDA denying petitioner's protest prompting the latter to file the instant Petition for Review before this Court on August 8, 2013.

In her Answer, respondent counters that the assessment issued against petitioner for deficiency IT, VAT and EWT for taxable year 2006 is in accordance with law and regulations and issued within the prescriptive period under Section 222(b) of the 1997 Tax Code, as amended, in view of the Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC duly executed by petitioner. Even assuming that the assessment was issued beyond the three (3) year prescriptive period, the assessed deficiency IT and VAT for taxable year 2006 were made within the ten (10) year prescriptive period under Section 222(a) of the same Tax Code since petitioner failed to file the required return for taxable year 2006.

On April 30, 2014, a Pre-Trial Order was issued based on the parties' Joint Stipulation of Facts and Issues (JSFI) filed after the pre-trial conference.

During the trial, petitioner presented as witnesses (1) its Accounting Supervisor, Normina Simafranca; and (2) the Court-commissioned Independent Certified Public Accountant (ICPA), Michael L. Aguirre.

By way of a Judicial Affidavit, witness **Normina Simafranca** testified that as petitioner's Accounting Supervisor, she assists in the preparation and recording of all transactions of petitioner subject to tax, both national and local; ensures that all the taxes withheld are remitted to the proper agency; and reviews tax returns including but not limited to Withholding Tax Returns.

She further testified that upon receipt of the undated LOA, petitioner coordinated with the assigned Revenue Officers and submitted books of accounts, accounting records, tax returns and other pertinent documents required by the BIR. Thereafter, the BIR issued a Report of Investigation finding petitioner liable for deficiency IT and VAT. In the series of Informal Conferences conducted, petitioner maintained that it was not liable for any deficiency tax for taxable year 2006. Subsequently, the BIR issued the PAN dated September 23, 2010, to which petitioner protested on October 12, 2010.

Petitioner received the FAN dated November 18, 2011 covering the taxable year 2006 only on November 23, 2011, to which petitioner protested on December 9, 2011.

On July 10, 2013, petitioner received the FDDA dated May 31, 2013, denying its protest and reiterating the assessment for internal revenue taxes contained in the FAN. She believes that the subject assessment lacks factual and legal bases and respondent's right to assess petitioner for taxable year 2006 has already prescribed.

ICPA **Michael L. Aguirre** testified that based on his audit, the deficiency tax assessment issued against petitioner for taxable year 2006 should be reduced to: (1) IT - ₱418,319.77; (2) VAT - ₱229,485.48; and (3) EWT – ₱9,022.19. *ja*

After formal offer of its exhibits, petitioner rested its case.

For her part, respondent presented BIR group supervisor, Liza C. Dimaya and Revenue Officer I of the Revenue District Office No. 51, Pasay City, Florentino A. Guarino III.

Witness **Liza C. Dimaya** testified that petitioner's case was assigned to her and Revenue Officer (RO) Victoria M. Cubillo for reinvestigation as a consequence of petitioner's filing of a protest letter on October 13, 2010.

In view of the said assignment, they collated and examined all the documents/requirements submitted by petitioner. Thereafter, they prepared a Memorandum Report dated October 13, 2011, reiterating the original findings with recommendation for issuance of a FAN. On November 18, 2011, Assessment Notices and FAN with Details of Discrepancies were issued to which petitioner filed a protest on December 9, 2011.

In view of the protest, the case was referred back to her with instruction to have it forwarded to RO Florentino A. Guarino III for the reinvestigation of petitioner's internal revenue tax liabilities for calendar year 2006 under her supervision. Despite notice, petitioner failed to present within the prescribed period the required documents and records for verification and evaluation. Hence, the findings in the FAN were reiterated and per their recommendation, the assailed FDDA with attached Details of Discrepancies dated May 31, 2013 was issued to petitioner.

Contrary to petitioner's claim, respondent's right to assess petitioner for taxable year 2006 has not prescribed as petitioner executed several Waivers of the Defense of Prescription.

Revenue Officer Florentino A. Guarino III merely corroborated the testimony of his supervisor Liza C. Dimaya.

In the Resolution dated April 7, 2015, respondent was declared to have rested its case."

On July 4, 2016, the CTA 3rd Division rendered the assailed Decision. On July 22, 2016, petitioner filed through registered mail his Motion for

Reconsideration.[5] On October 18, 2016, the CTA 3rd Division promulgated the assailed Resolution.[6]

In granting the Petition for Review of respondent, the CTA 3rd Division found that the persons who conducted the audit and examination of respondent's books of accounts and other accounting records were not armed with LOA. Consequently, the assessment was cancelled and set aside.

On November 4, 2016, petitioner filed through registered mail the instant Petition for Review.[7] On January 6, 2017, respondent filed its Comment/Opposition (to the Petition for Review dated 04 November 2016).[8] On May 10, 2017,[9] the instant case was submitted for Decision. Hence, this Decision.

THE ISSUES

Petitioner raised the following issues in his Petition for Review: (1) Whether there is a need for the issuance of a new LOA if the audit examination was reassigned to another Revenue Officer; and (2) Whether the Petition for Review before the Court in Division was timely filed.

THE RULING

The Court *En Banc* denies the Petition.

An assessment is void when the officer who conducts the examination or assessment has no authority therefore

Petitioner argues that there is no need for the issuance of a new LOA if the audit examination was reassigned only to another revenue officer or group supervisor. In support thereof, respondent cites Revenue Memorandum Order (RMO) No. 8-06 which pertinently provides that:

> "e. In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS."

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[5] 3rd Division Docket, Vol. 4, pp. 2352-2356.
[6] See Note 2.
[7] Court *En Banc* Docket, pp. 1-10.
[8] Court *En Banc* Docket, pp. 45-56.
[9] Resolution, Court *En Banc* Docket, pp. 80-81.

Likewise, respondent cites RMO No. 62-10 which pertinently provides that:

> "7.1 Reassignment for the continuation of the audit investigation to another RO due to resignation/retirement/transfer of the original RO; xxx"

The Court *En Banc* is not convinced.

The above-quoted provision of RMO No. 8-06 contemplates a situation where reassignment is a consequence of transfer, resignation or retirement of both the original Revenue Officer and Group Supervisor. In the instant case, there is no showing that there was a transfer, resignation or retirement of both the original Revenue Officer and Group Supervisor assigned under the LOA.

Likewise, the pertinent provision of RMO No. 62-10 provides the propriety of a reassignment for the continuation of an audit investigation to another Revenue Officer due to resignation, retirement or transfer of the original Revenue Officer. As stated earlier, there is no showing that there was a transfer, resignation or retirement of the original Revenue Officer assigned under the LOA.

Considering that the reassignment of the audit investigation does not conform to respondent's own RMOs, *i.e.*, there is no transfer, resignation or retirement of both the original Revenue Officer and Group Supervisor, or the Revenue Officer alone, it necessarily follows that the audit examination by Revenue Officers Victoria M. Cubillo, Florentino A. Guarino III, and Group Supervisors Benedicto O. Santiago and Liza C. Dimaya, were conducted without authority.

Consequently, the Court *En Banc* agrees with the conclusion reached by the CTA 3rd Division which is succinctly supported by the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[10] *viz*:

> "Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**."[11]

[10] G.R. No. 178697, November 17, 2010.
[11] See Note 1, p. 2342.

In sum, the *Sony* case clearly emphasizes that any revenue officer must be armed with authority to conduct an examination or assessment. Since the persons who conducted the examination or assessment in this case were not armed with such authority, the CTA 3rd Division correctly ruled that the assessment or examination by respondent is a nullity.

Finally, considering that the subject assessment is a nullity and following the time-honored principle in taxation that "a void assessment bears no valid fruit",[12] the Court *En Banc* need not discuss the other issues raised by petitioner.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit. Accordingly, the CTA 3rd Division's Decision dated July 4, 2016 and the Resolution dated October 18, 2016 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[12] *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

(With Separate Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1551** *(CTA Case No. 8689)*
	Members:
- versus -	Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, JJ.
ITHIEL CORPORATION, Respondent.	Promulgated: NOV 17 2017 4:09 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I hesitate to give my assent to the *ponencia* of my learned colleague, the Honorable Associate Justice Juanito C. Castañeda, Jr., which denied the Petition for Review filed by the Commissioner of Internal Revenue (CIR) and affirmed the assailed Decision and Resolution of the Court in Division.

The Court in Division cancelled and set aside the Final Decision on Disputed Assessment (FDDA) dated May 31, 2013 issued by Regional Director Nestor S. Valeroso on the ground that the Final Assessment Notices (FAN) issued against Ithiel Corporation are void for lack of authority of the revenue officers who continued the conduct of the audit and investigation of respondent's books of accounts and other accounting records for the taxable year 2006.

After a careful scrutiny of the records of the case, I submit that Ithiel's failure to appeal the FDDA within the thirty (30)-day reglementary period, **reckoned from its receipt of the FDDA on June 5, 2013,** has prevented the Court in Division from acquiring jurisdiction over the case and consequently, from reviewing the validity and correctness of the FAN and FDDA issued against Ithiel.

One of the issues identified in the April 30, 2014 Pre-Trial Order of the Court in Division pertains to the timeliness of the Petition for Review filed by Ithiel which assails the FDDA, *viz.*:

"PRE-TRIAL ORDER

I. Statement of the Case

xxx xxx xxx

II. The parties stipulated on the following per their Joint Stipulation of Facts filed on April 7, 2014:

A. Admitted Facts

xxx xxx xxx

B. Issues

xxx xxx xxx

*2. **Whether or not petitioner filed the petition on time pursuant to Section 228 of the 1997 Tax Code**; and*

xxx xxx xxx." (Boldfacing supplied)

The resolution of the afore-mentioned issue is essential in determining whether the Court in Division has acquired jurisdiction over Ithiel's Petition for Review.

It is well-settled that **perfection of appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and **precluding the appellate court from acquiring jurisdiction over the case.** The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[1] The

[1] CIR vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.

thirty (30)-day period within which to file an appeal with the CTA is **jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction**.[2]

Under Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, a party adversely affected by a decision of the CIR may file an appeal with the Court of Tax Appeals (CTA) within thirty (30) days after receipt of such decision.[3] Similary, Section 3.1.5 of Revenue Regulations (RR) No. 12-99 categorically states that if the protest is denied, in whole or in part, by the CIR or his duly authorized representative, **the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.** But if the taxpayer elevates his protest to the CIR within thirty (30) days from date of receipt of the final decision of the CIR's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the CIR.

Records disclosed that Ithiel opted to appeal the FDDA issued by the CIR's duly authorized representative directly to the CTA. To timely invoke the jurisdiction of the Court in Division to review the FAN and FDDA issued by the CIR's reprepresentative, Ithiel should have filed its Petition for Review with the Court in Division within thirty (30) days from receipt of the FDDA; otherwise, the Court in Division would be deprived of its jurisdiction to review the same or to rule on the validity or correctness of the FAN and the FDDA.

It is therefore crucial to establish the date when Ithiel received the FDDA as it will settle the issue of whether or not Ithiel's Petition for Review was timely filed with the Court in Division.

Ithiel posits that it received the FDDA on July 10, 2013.[4] Its witness, Normina B. Simafranca, testified in her Judicial Affidavit that she personally received the FDDA on July 10, 2013 which was sent

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[2] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006.

[3] Sec. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a) (2) herein. xxx.

[4] CTA Case No. 8689 Docket, pp. 6-7.

by the BIR to respondent via registered mail.[5] Thus, according to Ithiel, counting thirty (30) days from July 10, 2013, Ithiel had until August 9, 2013 within which to file an appeal with the Court in Division. Since its Petition for Review was filed on August 8, 2013, Ithiel contends that it was filed on time.

On the other hand, the CIR avers that Ithiel received the FDDA on June 5, 2013. He argues that Ithiel cannot escape liability by simply denying that the security guard on duty who received the FDDA, in the person of Mr. Florencio Flores, has no authority to accept the same. CIR points out that Mr. Flores is the same person who received the other notices issued by the Bureau of Internal Revenue (BIR) such as the Preliminary Assessment Notice (Exhibit R-3), Letter dated October 20, 2011 (Exhibit R-2) and Letter dated July 18, 2012 (Exhibit R-7). He further stresses that Group Supervisor Liza Dimaya and Revenue Officer Florentino Guarino III admitted during cross examination that the copy of the said notices or letters were given to Mr. Florencio Flores because they were not allowed to enter the business premises of Ithiel.

Notably, **Ithiel does not dispute in its Memorandum the fact that the FDDA was served by personal service to Mr. Flores**, the security guard at Ithiel's office premises. Ithiel contends, however, that for purposes of determining the period within which to appeal the FDDA, what constitutes valid service of the FDDA to Ithiel was the service by registered mail which was received by Ithiel on July 10, 2013, and not the personal delivery thereof to Mr. Flores on June 5, 2013 as Mr. Flores allegedly has no authority to receive the FDDA on behalf of Ithiel.

RR No. 12-99 enumerates the modes of serving notices to a taxpayer, namely: by registered mail, by personal delivery, or by constructive service if the taxpayer refused to acknowledge receipt of notice by personal service. There is nothing in RR No. 12-99 which gives preference to service by registered mail over personal delivery. The BIR is also not precluded from availing of both modes of service if only to ensure receipt of notices by the taxpayer.

Given the circumstances of the present case, I submit that the FDDA was validly served on Ithiel on June 5, 2013, the date the security guard, Mr. Flores, received the same through personal delivery by Florentino A. Guarino III, the Revenue Officer

[5] CTA Case No. 8689 Docket, p. 1608.

who conducted the investigation of respondent's internal revenue taxes.[6]

The reason in allowing the security guard of the company to receive the FDDA was elaborated by the BIR Group Supervisor, Ms. Liza C. Dimaya, in her re-direct examination:

"ATTY. SANTOS
Q. Madam Witness, going on question and answer 58, as you said that FDDA was received by Mr. Florencio Flores, and you said that Mr. Florencio Flores is the security guard on duty of the said taxpayer company.

MS. DIMAYA
A. Yes, sir.

ATTY. SANTOS
Q. Could you please explain or elaborate why did you let the said FDDA received by the said security guard of the company?

MS. DIMAYA
A. **Every time since the beginning of the case, like in the service of the Letter of Authority, the first and second notices and the third notice for the presentation of records, it is Florencio Flores receiving those documents, but before he received such documents he calls the office and ask for permission to receive such document. The RO and the Group Supervisor, going to the registered business place of said taxpayer when ever allow and received. Whenever a document were served it is only at the gate. So that's why that's the reason why it's Florencio Flores receiving all these documents, because he is given by the office an authority to receive such document. He does not receive any document not unless after such a call he made a call to the office**."[7] (Boldfacing supplied)

Ms. Dimaya testified during her cross-examination that while there is no Florencio Flores in Ithiel's Alphalist,[8] the same does not discount the possibility that Florencio Flores is an employee of the security service provider or contractor assigned to Ithiel on the basis of a permissible contractor relationship.[9] **Oddly, Ithiel never**

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[6] CTA Case No. 8689 Docket, p. 226.
[7] Transcript of Stenographic Notes (TSN), November 13, 2014, pp. 13-14.
[8] TSN, November 13, 2014, p. 13.
[9] In Polyfoam-RCG International Corporation, vs. Concepcion, G.R. No. 172349, June 13, 2012, the Supreme Court declares that "permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless

bothered to present any evidence to rebut the presumption that the revenue officer's official duty has been regularly performed.[10] While such presumption may not be set aside simply by a blanket or frivolous denial, no evidence was presented by Ithiel, like an office policy prohibiting the security guard on duty to receive documents issued by the BIR or the procedure to be observed by the security guard before receiving any documents for Ithiel or that a subsequent investigation was conducted to hold liable the security guard for receiving a document for Ithiel despite the absence of authority to do so. **Neither did Ithiel present Mr. Flores to prove that he did not actually receive the FDDA on June 5, 2013 on behalf of Ithiel or that he was not authorized by Ithiel to receive the same.**

On this score, I quote pertinent parts of my Dissenting Opinion in ***Commissioner of Internal Revenue vs. SVI Technologies, Inc.***[11] on the matter of the validity of a service to a security guard of the building where the taxpayer holds office, *viz.*:

> "In contrast, **the present case involves a situation where the FAN/FLD was actually received by the security guard of the building where respondent holds office**. The manner by which the FAN/FLD was delivered has been narrated in detail. *First*, Mr. Arnold C. Larossa, the Administrative Aide II who is in charge of all mailing matters of BIR, Revenue Region No. 7, Quezon City, confirmed that a copy of the endorsement of the FAN of respondent was stamped "received" by the post office. *Second*, Mr. Virgilio A. Martinez, the LC-Chief Supervisor of the Pasig City Central Post Office, testified that while he did not personally deliver the mail matter, as his role was limited to overseeing that all the mail matters were delivered on time by their mailmen, their records, however, disclose that the mail matter involved in this case was **actually received by the security guard of the building occupied by the addressee on January 12, 2010**. *Third*, **the**

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of whether such job, work or service is to be performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

(a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

(b) The contractor or subcontractor has substantial capital or investment; and

(c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.

[10] Section 3(m), Rule 131, Rules of Court.

[11] CTA EB No. 1304, May 24, 2016.

> **receipt by the aforestated security guard was the only way by which delivery of the mail could be effected as proceeding to the exact unit in the building where the addressee holds office is prohibited**.
>
> Indeed, to rebut the presumption that the mail matter was not received by the addressee, respondent should have at the very least presented evidence showing that its office is not located at 6th Floor JMT building, 27 ADB Avenue, Ortigas Center, Pasig City; or that the mail matter was sent to an address different from the aforestated address where it holds office; or that **the security guard did not have authority to receive mail matters addressed to the building tenants; and finally, that there existed no policy prohibiting letter carriers from directly making deliveries of mail matters to building tenants**. To sustain the position that mere self-serving and blanket denial of receipt of FAN/FLD **despite the scenario where a messenger or a mailman is not allowed to go to the units of building tenants would thwart the service of official communications quite so conveniently while rendering helpless government officials in notifying affluent individuals staying in posh commercial or residential establishments**. The law should not require the impossible in complying with a procedural mandate on due process."

I humbly submit that the totality of evidence presented by both parties regarding the service of the FDDA leads to a conclusion that a valid service thereof through personal delivery was made when Mr. Flores (the security guard at Ithiel's office premises) received the FDDA on June 5, 2013.

Considering its receipt of the FDDA on June 5, 2013, Ithiel had thirty (30) days, or until **July 5, 2013** to file the Petition for Review before the Court in Division. Since the Petition for Review before the Court in Division was filed only on **August 8, 2013**, the same was clearly filed beyond the thirty (30)-day reglementary period. Consequently, the Court in Division was deprived of its jurisdiction to act on the Petition for Review and review the correctness and validity of the FAN and the FDDA issued against Ithiel.

Since the Court in Division did not acquire jurisdiction over the appeal of Ithiel, the assailed Decision and assailed Resolution of the Court in Division are void and must perforce be set aside. This was emphasized by the Supreme Court in the very recent case of ***Aichi Forging Company of Asia, Inc. vs. Court of Tax Appeals – En Banc and Commissioner of Internal Revenue***,[12] *viz.*:

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[12] G.R. No. 193625, August 30, 2017.

"**Considering our holding that the CTA did not acquire jurisdiction over the appeal of AICHI, the decision partially granting the refund claim must therefore be set aside as a void judgment**.

The rule is that **where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars anyone, and under which all acts performed and all claims flowing out are void**. We quote our pronouncement in *Canero v. University of the Philippines*:

> A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.

Since the judgment of the CTA Division is void, it becomes futile for any of the parties to question it. xxx xxx xxx." (Boldfacing supplied)

By way of obiter, I wish to state that had the Court in Division acquired jurisdiction over Ithiel's Petition for Review, the cancellation of the FAN for being void is warranted. As found by the Court in Division and reiterated in the *ponencia*, the new Revenue Officers who continued the audit and investigation were not duly authorized to do so as no new Letter of Authority (LOA) was issued by the BIR. A new LOA is necessary to vest said Revenue Officers with authority to continue the audit and examination of Ithiel's books of accounts and other accounting records for the taxable year 2006; the absence thereof rendered the FAN issued against Ithiel instrinsically void.

At the appropriate time, when the issue on the right of the BIR to collect the deficiency tax liabilities of Ithiel for taxable year 2006 is **timely brought before this Court**, the Court shall resolve the same in accordance with existing jurisprudence on the matter. For one, ***Metro Star Superama, Inc. vs. Commissioner of Internal Revenue***[13] is categorical in stating that **a void assessment bears no fruit**. Thus, the collection of the assessed amount, albeit no protest was timely filed by the taxpayer, was not permitted since the assessment issued against the taxpayer was void. Also, in

[13] G.R. No. 185371, December 8, 2010.

Commissioner of Internal Revenue v. Hambrecht & Quist, Philippines, Inc.,[14] it was emphasized that the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to **collect the validly assessed tax** has prescribed. Clearly, at the collection stage, only those taxes which have been validly assessed or covered by a valid FAN may be collected by the BIR.

Unfortunately for Ithiel, in the present case, for want of jurisdiction, the Court is precluded from cancelling the FAN or declaring the FAN void.

All told, I **VOTE** to **GRANT** the Petition for Review filed by the Commissioner of Internal Revenue. Accordingly, the assailed Decision and Resolution of the Court in Division dated July 4, 2016 and October 18, 2016, respectively, should be declared **VOID** and **SET ASIDE** as the Court in Division did not acquire jurisdiction over the Petition for Review filed by Ithiel Corporation; and, the Petition for Review filed by Ithiel Corporation with the Court in Division should ultimately be **DISMISSED**.

ROMAN G. DEL ROSARIO
Presiding Justice

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[14] G.R. No. 169225, November 17, 2010.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1551** (CTA Case No. 8689)
	Members :
-versus-	**DEL ROSARIO**, *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
ITHIEL CORPORATION, *Respondent.*	Promulgated: NOV 17 2017 4:09 p.m.

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SEPARATE CONCURRING OPINION

MANAHAN, J.:

I concur with the ponencia in eloquently elaborating on the need to have the requisite Letter of Authority (LOA) before a revenue officer may validly conduct an audit/examination of the records of petitioner or issue an assessment. The absence of such an authority renders the ensuing examination or assessment a nullity. Be it noted though, that the failure to issue an LOA or the non-issuance of a new LOA to a new group of revenue officers, as in the instant case, does not constitute a violation of a taxpayer's right to due process but merely renders the assessment defective, hence null and void. The nullity not only covers the Final Decision on the Disputed Assessment (FDDA) but essentially the embodied assessment itself thus bringing forth the doctrine that a "void assessment bears no fruit" giving then a logical order in the manner by which this Court should dispose a case , i.e., that assessments having been declared null and void, any action or document resulting therefrom are likewise rendered null and without any effect e.g. FDDAs or Warrants of Garnishment, etc.

I wish to humbly expound on another matter raised by petitioner on the timeliness of the judicial appeal made by respondent when he asserts that the Petition for Review was filed out of time counted from the time the security guard on duty received the FDDA on behalf of the respondent.

Petitioner maintains that respondent received the FDDA on June 5, 2013 thru the latter's security guard on duty rendering the filing of the Petition for Review with this Court on August 8, 2013 way beyond the thirty-day period provided by relevant laws and regulations.

On the other hand, respondent argues that what should be controlling is its receipt of the FDDA via registered mail on July 10, 2013 and not the receipt by personal delivery of the security guard on June 5, 2013.

I am inclined to agree with the respondent.

The subsequent delivery of the FDDA via registered mail to the respondent a little over a month after the same FDDA was sent by personal delivery to the security guard found within the premises of the respondent's offices, is the dominant mode of service which has the effect of superseding the latter mode for the following reasons:

1. Personal service of the FDDA to a security guard who is not an employee of respondent constitutes an invalid service as it was not served upon the taxpayer itself or to its authorized representative. The law and relevant regulations impose more stringent requirements when service is done through personal mode. When an official notice is served by *personal delivery*, **proof of completeness of service shall consist of a written admission of the party served**, **or the official return of the server or the party serving.** I quote Rule 13 of the Rules of Court, thus:

"**Rule 13**

cn

Section 13. Proof of Service. -Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by *ordinary mail,* proof thereof shall consist of an affidavit of the person mailing of the facts showing compliance with Section 7 of this Rule. If service is made by *registered mail,* proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee." (italics ours)

2. In Revenue Regulations (RR) 12-99, service by personal delivery should be made upon the *taxpayer himself* or his *authorized representative who shall acknowledge receipt by signing his name, stating his designation and his authority to receive the same.* In Section 3.1.6 of RR 18-2013, which amended certain provisions of RR 12-99, the requirements for personal delivery of the FDDA are stricter – it must be served only to the party (taxpayer) at his registered or known address or wherever he may be found. Hence, *personal delivery* of the FDDA to a security guard found within the premises of the taxpayer's address is not a valid service.

3. The decision of the Supreme Court[1] which recognized the authority of security guards to receive official notices is confined to situations where the notice is served by registered mail, and we quote:

> "All that the rules of procedure require in regard to *service by registered mail* is to have the postmaster deliver the same to the addressee himself or to a person of sufficient discretion to receive the same.
>
> Thus, in prior cases, a housemaid, or a bookkeeper of the company, or a clerk who was not even authorized to receive the papers on behalf of its employer, was considered within the scope of a person of sufficient discretion to receive the registered mail. The paramount consideration is *that the registered mail* is delivered to the recipients address and received by a person who would be able to appreciate the importance of the papers delivered to him, even if that person is not a subordinate or employee of the recipient or authorized by a special power of attorney."

[1] Land Bank of the Philippines vs. Heirs of Fernando Alsua, et.al., G.R. No. 167361, April 2, 2007.

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> In the instant case, the receipt by the security guard of the order of dismissal should be deemed receipt by petitioners counsel as well." (italics ours)

In my view, the stringent requirements imposed by both the Rules of Court and pertinent revenue regulations on personal delivery of official notices stem from the "unofficial" or "informal nature" of such mode of service without the intervention of any government instrumentality such as the Philippine Postal Service thereby making personal service more prone or open to fraud. This is not to say, of course, that the Philippine Postal Service is not altogether foolproof, but the fact remains that certain safeguards are in place if delivery is made via registered mail and a firm "official" paper trail is evident and available in this kind of service.

It is at this point that I venture a different perspective when it comes to resolving issues of receipt of official notices such as the Preliminary Assessment Notice (PAN), the Final Assessment Notice (FAN), the FDDA and other documents from government offices, as certainly there will be many similar judicious controversies that this Court will encounter on the matter. It is worthy to differentiate the different modes of service and the corresponding standards of proof of service inherent in each one instead of lumping them together under one general standard.

In view of the foregoing considerations, I concur with the majority decision and vote that the Petition for Review filed by the Commissioner of Internal Revenue be dismissed.

CATHERINE T. MANAHAN
Associate Justice