REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

## SECOND DIVISION

**LOADSTAR SHIPPING CO. INC., represented herein by TEODORO G. BERNARDINO,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE No. 9902**

Members:

**CASTAÑEDA, JR.,** *Chairperson, and*
**BACORRO-VILLENA,** ***JJ.***

Promulgated:

DEC 07 2020

2:40 p.m.

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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a Petition for Review[1] filed by petitioner Loadstar Shipping Co. Inc. (**petitioner**), seeking the cancellation and

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[1] Pursuant to Section 3(a)(1) of Rule 4 on Jurisdiction of the Court of the *2005 Revised Rules of the Court of Tax Appeals, as amended.*

...

**Section 3**. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

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

...

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

withdrawal of the Warrant of Distraint and/or Levy (**WDL**) dated 05 July 2018 for alleged deficiency income tax (**IT**) and expanded withholding tax (**EWT**) for the taxable year (**TY**) 2014.

Petitioner is a domestic corporation duly organized and existing under Philippine laws. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) empowered to perform the duties of the said office; including, among others, the authority to examine books of accounts of taxpayers and determine the correct amount of taxes as well as decide on disputed assessments arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other laws administered by the Bureau of Internal Revenue (**BIR**).

## FACTS OF THE CASE

On 11 September 2015, respondent issued Letter of Authority (**LOA**) No. eLA201200043194/LOA-034-2015-00000130[2], authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes except value-added tax (**VAT**), including documentary stamp tax (**DST**) and other taxes for TY 2014.

Subsequently, respondent issued a First Request for Presentation of Records.[3] Petitioner then responded to the said request and submitted documents with the cover letter dated 29 October 2015 through its authorized representative, Cecila R. Absalon (**Absalon**).

Still, respondent issued a *Subpoena Duces Tecum* (**SDT**) with SDT No. RR6-2017-0051.[4] Through its counsel, petitioner replied to the same in a letter dated 03 March 2017.[5] Petitioner again sent a letter dated 18 March 2017[6] addressing the SDT through its authorized representative, Jhoana G. Gallos (**Gallos**).

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2 Exhibit "P-9", Division Docket, Volume II, p. 566.
3 Exhibit "P-10", id., p. 567.
4 Exhibit "P-12", id., p. 569.
5 Exhibit "P-13", id., pp. 570-571.
6 Exhibit "P-14", id., p. 572.

Thereafter, petitioner received a Joint Complaint-Affidavit.[7] In reply, the responsible corporate officers submitted their Counter-Affidavit[8] alleging that they did not receive the SDT and that the same was left with the telephone operator, Rianne Gustilo (**Gustilo**), who was not authorized to receive said notices.

Unyielding, respondent issued the Preliminary Assessment Notice (**PAN**) with attached Details of Discrepancies on 20 October 2017[9], assessing petitioner for deficiency IT and EWT for ₱37,613,834.06 and ₱72,286.20, respectively.

Later, respondent issued the Formal Letter of Demand[10] (**FLD**) with attached Details of Discrepancies and Assessment Notices, all dated 28 November 2017[11], reiterating its assessment in the PAN (with adjustments on interests).

Respondent issued the Preliminary Collection Letter (**PCL**) on 04 April 2018[12] which petitioner received on 10 April 2018. Fifteen (15) days after, he issued the Final Notice Before Seizure (**FNBS**).[13]

Petitioner's President, Teodoro G. Bernardino (**Bernardino**), later claimed to have come across the copy of the WDL[14] only on 05 July 2018.

## PROCEEDINGS BEFORE THE COURT

Petitioner filed the instant Petition for Review (with Motion for Suspension of Collection of Tax) on 06 August 2018[15], within thirty (30) days from its receipt of the WDL. Respondent filed his Answer on 12 September 2018.[16]

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7 Exhibit "P-15-b", id., pp. 576-577.
8 Exhibit "P-16", id., pp. 585-590.
9 Exhibit "R-8", id., Volume I, pp. 259-261.
10 Exhibit "R-10", id., pp. 297-299.
11 Exhibits "R-9" and "R-9-A", id., p. 296.
12 Exhibit "R-12", id., p. 204.
13 Dated 25 April 2018; Exhibit "R-13", id., p. 205.
14 Exhibit "R-15", id., p. 214.
15 Id., pp. 10-27.
16 Id., pp. 175-180.

The Notice of Pre-Trial Conference[17] was then issued setting the case for pre-trial conference on 06 December 2018. On 03 December 2018, the parties filed their respective Pre-Trial Briefs.[18]

After the presentation of petitioner's evidence supporting its Motion for Suspension of Collection of Tax, the Court granted said motion subject to the posting of cash or surety bond in the amount of ₱37,850,407.66.[19]

The case was also referred to the Philippine Mediation Center Unit-Court of Tax Appeals (**PMC-CTA**) but the parties decided not to have their case mediated.[20]

Upon resumption of the proceedings for pre-trial and after the Court approved the parties Joint Stipulation of Facts and Issues[21] (**JSFI**), the pre-trial was terminated accordingly.[22]

In the trial that ensued thereafter, petitioner presented Bernardino as its lone witness.

In the Judicial Affidavit[23] that Bernardino executed and which was deemed as his direct testimony, he testified on the nature of petitioner's business and the circumstances pertaining to the issuance of the assessment. He stated that the assessment should be cancelled since the BIR notices and correspondences were served on Gustilo, a telephone operator who had no authority to receive documents for and in behalf of petitioner.

The cross and re-direct examinations centered on Gustilo's receipt of the notices which Bernardino insisted was ineffective to bind petitioner. According to him, petitioner had already informed respondent about this in the counter-affidavit filed with the Department of Justice (**DOJ**) prosecutor.

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17 Id., pp. 193-194.
18 Respondent's Pre-Trial Brief, id., pp. 227-232; Petitioner's Pre-Trial Brief, id., pp. 265-271.
19 See Resolution dated 14 February 2019, id., pp. 281-288.
20 PMC-CTA Form 6, No Agreement to Mediate, id., p. 327.
21 See Minutes of the Hearing dated 06 June 2019, id., p. 455.
22 Order dated 15 July 2019, id., pp. 472-476.
23 Exhibit "P-17", id., pp. 343-353.

When asked on re-cross examination whether petitioner formally informed the BIR that Gustilo is not authorized, Bernardino affirmed that the notice was made only through the counter-affidavit.[24]

Thereafter, petitioner filed its Formal Offer of Evidence (**FOE**) on 19 July 2019.[25] In the Resolution dated 23 August 2019[26], the Court admitted all of petitioner's exhibits except for "P-11"[27] and "P-11-a".[28]

For his part, respondent presented five (5) Revenue Officers (**ROs**) as witnesses namely: (1) Aldwin I. Alaan[29] (**RO Alaan**); (2) Myla O. Gulle[30] (**RO Gulle**); (3) Ma. Paz Arcilla[31] (**RO Arcilla**); (4) Jay-pee B. Gambala[32] (**RO Gambala**); and, (5) Norlika B. Datu-Haron[33] (**RO Datu-Haron**) who all executed their Judicial Affidavits in lieu of their direct testimony.

RO Alaan was first to take the witness stand. In his Judicial Affidavit, he declared that, *per* the LOA, he examined petitioner's books of accounts and other accounting records for TY 2014. Likewise, he personally served the LOA and subsequent notices for the presentation of books of accounts on petitioner. For petitioner's failure to submit the required documents, the SDT was issued and its case was then referred to the Legal Division.

RO Alaan also testified that his recommendation on petitioner's tax liability was based on the best evidence obtainable rule. He declared to have also personally served a copy of the PAN and FAN/FLD on petitioner through Lean Basea (**Basea**) and Gustilo, respectively.

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24 TSN dated 17 July 2019.
25 Division Docket, Volume II, pp. 479-485.
26 Id., pp. 609-610.
27 Formally offered as "Loadstar Shipping Letter dated October 29, 2016".
28 Formally offered as "Signature of Cecilia R. Absalon".
29 Judicial Affidavit, Exhibit "R-28", Division Docket, Volume I, pp. 236-244.
30 Judicial Affidavit, Exhibit "R-29", id., pp. 302-305.
31 Judicial Affidavit, Exhibit "R-30", id., pp. 292-295.
32 Judicial Affidavit, Exhibit "R-31", id., pp. 200-203.
33 Judicial Affidavit, Exhibit "R-32", id., pp. 209-213.

On cross-examination[34], RO Alaan affirmed that he did not ask for Gustilo's authorization to receive documents and there was no waiver on the defense of prescription executed for TY 2014.

RO Gulle took the witness stand next and she declared in her Judicial Affidavit that she reviewed RO Alaan's report of investigation and prepared the RO's Audit Report (BIR Forms 0500 and 0509) for IT and EWT. Thereafter, she prepared the PAN and indorsed the same to RO Alaan for service on petitioner in accordance with a Memorandum Report dated 06 November 2017.

On cross-examination, petitioner's counsel referred to the Memorandum Report dated 06 November 2017 (directing RO Alaan to serve the PAN to petitioner), which was not attached to the Judicial Affidavit. During re-direct examination, respondent's counsel moved for the marking of a Memorandum Report in the BIR Records dated 20 October 2017. Petitioner's counsel pointed out on re-cross examination that RO Gulle's answer in her Judicial Affidavit pertained to a Memorandum Report dated 06 November 2017, whereas respondent's counsel marked a Memorandum Report dated 20 October 2017.

RO Arcilla, petitioner's third witness, testified that she issued the Assessment Notices, together with the FLD with Details of Discrepancies, all dated 28 November 2017, for signature of the Regional Director.

On cross-examination, RO Arcilla avowed that she did not have a hand in furnishing petitioner with the FLD and the Assessment Notices as it was the Administrative Section that handles the same.

RO Gambala also took the witness stand where he declared that he was tasked to enforce the collection of final and demandable internal revenue taxes. As a seizure agent, he served the PCL and the FNBS on petitioner. Therafter, he prepared a report for the continuation of the collection proceedings against it.

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[34] TSN dated 09 September 2019.

The cross, re-direct and re-cross examinations of RO Gambala focused on the signature of Gustilo, the recipient of the PCL and FNBS, and her authority to receive documents in petitioner's behalf.

RO Datu-Haron was respondent's last witness. She testified that she continued the collection proceedings against petitioner. She caused the preparation and service of the WDL. After petitioner failed to pay, she prepared and served the Warrants of Garnishment (**WOG**) to the different banks. Later on, she indorsed and forwarded the entire docket to the Legal Division for the preparation of the Answer to the Petition for Review.

The cross and re-direct examination of RO Datu-Haron again centered on the service of the WDL on Gustilo and the latter's authority to receive documents.

After the presentation of his last witness, respondent filed his FOE on 23 September 2019.[35] In the Resolution dated 24 October 2019[36], the Court admitted all of respondent's exhibits.

Upon the Court's order, petitioner filed its Memorandum on 04 December 2019[37], while respondent filed his Memorandum on 02 December 2019.[38] With the filing of the parties' respective memoranda, the Court submitted the case for decision.[39]

## ISSUES

In their JSFI[40], the parties stipulated on the following issues for the Court's resolution:

I.

WHETHER THIS HONORABLE COURT HAS JURISDICTION TO ENTERTAIN THE PRESENT PETITION FOR REVIEW.

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35 Division Docket, Volume II, pp. 618-626.
36 Id., pp. 634-635.
37 Id., pp. 636-671.
38 Id., pp. 672-678.
39 Resolution dated 27 December 2019, p. 680.
40 JSFI, Division Docket, Volume I, p. 463.

II.
WHETHER RESPONDENT FAILED TO OBSERVE DUE PROCESS IN MAKING THE ASSESSMENTS VOID.

III.
WHETHER PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX AND EXPANDED WITHHOLDING TAX FOR TAXABLE YEAR 2014 IN THE AGGREGATE AMOUNT OF ₱37,850,407.66.

## ARGUMENTS

Petitioner belabors on the lack of authority of its employee Gustilo to receive documents on its behalf. It vehemently argues that respondent failed to observe due process when the latter served the assessment notices on its employee (telephone operator) and not on an authorized officer despite its objection in its counter-affidavit filed with the DOJ. Petitioner posits that respondent should have served the assessment notices on the officers enumerated in Section 11[41], of Rule 14 of the Rules of Court (**ROC**). Moreover, petitioner contends that it did not receive a Notice of Informal Conference (**NIC**), which is required under Revenue Regulations (**RR**) No. 12-99.[42]

On the other hand, respondent, in assailing the jurisdiction of the Court, argues that the assessment has become final, executory and demandable for petitioner's failure to file an administrative protest to the FAN/FLD.

## RULING OF THE COURT

After an assiduous review of the records and the parties' contrasting arguments, We find the instant Petition for Review bereft of merit.

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41 Rule 14. Summons.

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**Section 11.** *Service upon domestic private juridical entity.* – When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

42 *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.*

I. THE COURT HAS NO JURISDICTION

We agree with respondent that the Court cannot anymore delve into the merits of the assessment as the same has already attained finality. The records of the case is bereft of any showing that petitioner filed an administrative protest to the assessment. As the records show, petitioner does not deny receipt of the assessment notices, only that they were not allegedly served on its authorized officers.

It is a basic tenet that an assessment becomes final, executory and demandable if it remains uncontested after the 30-day period allowed by law to file a protest.[43] Stated differently, the assessment cannot be considered a disputed one upon failure to file the protest. As a necessary consequence, this Court will have no authority to take cognizance of the assessment, much less to tackle its merits. Section 228 of the NIRC of 1997, as amended, provides:

> ...
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> **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...
>
> ...
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to the said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such asssessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30)

43 Section 228, NIRC of 1997, as amended.

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.[44]

...

Correspondingly, RR 12-99 which implements the provisions on assessment in the NIRC of 1997, as amended, states:

...

3.1.5. *Disputed Assessment.* – The taxpayer or his duly authorized representative **may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof...**

...

**If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**[45]

...

Consistent with the foregoing, Section 3(a)(1) of Rule 4 on Jurisdiction of the Revised Rules of the Court of Tax Appeals (**RRCTA**) reads:

...

**Sec 3.** *Cases within the Jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

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

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.][46]

...

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44 Emphasis supplied.
45 Emphasis supplied.
46 Emphasis supplied.

Clearly, what is appealable to this Court is respondent's decision or inaction in a *disputed assessment.* A disputed assessment presupposes that an administrative protest has been filed before the CIR or his duly authorized representative in accordance with Section 228 of the NIRC of 1997, as amended, and its implementing rules and regulations.

Herein, petitioner reckoned the 30-day period to file a Petition for Review before this Court from its receipt of the WDL. Although it is true that the Court's jurisdiction also encompasses "other matters" arising under the NIRC, We still cannot entertain petitioner's appeal for the simple reason that it already lost its chance to contest the assessment. Regrettably, the hands of the Court are tied to upholding the assessment issued against petitioner as the same has already attained finality.

II. NO VIOLATION OF DUE PROCESS

Assuming that this Court has jurisdiction and that it can validly rule on the substantive issue raised, its disposition of the case will be unchanged. The Court finds petitioner's claim that its right to due process was violated unsupported by the records of the case.

While petitioner insists that respondent did not observe Section 11[47], Rule 14 of the ROC when he served the notices and correspondences on Gustilo, We find its reliance thereon misplaced. The rule on the service of summons in Rule 14 applies to the courts and not to respondent who belongs to the executive branch of the government. RR 18-2013[48] provides for the modes of service, to wit:

> ...
>
> **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

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47 Supra at note 41.

48 *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment*

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.**[49]

...

Unlike Section 11, Rule 14 of the ROC, the foregoing does not limit the service of the assessment notices only to the supposed authorized officers of a company or corporation.[50]

Petitioner likewise imputes violation of due process for the absence of an NIC pursuant to RR 12-99. Indeed, while it maybe gainsaid that an NIC is mandatory prior to the issuance of the PAN; at the time of the questioned assessment period, however, the requirement was deleted in RR 18-2013. RR 18-2013 reads in part:

...

**Section 2.** ***Amendment.*** - Section 3 of RR 12-99 is hereby amended by **deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference**, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read as follows:

"**Section 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** -

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

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49 Emphasis supplied and underscoring omitted in the original text.
50 Supra at note 41.

> ***3.1.1 Preliminary Assessment Notice (PAN).*** – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based...[51]

...

Considering that the NIC is not required at the time of the assessment period involved in this case, its absence or its non-observance has thus become a non-issue. Obviously, if a procedure is not required to be observed, no right can be derived by any party to invoke the same.

With the foregoing disquisitions, the Court sees no need to further discuss the remaining issue. After all, for petitioner's failure to protest the same, the assessment has already become final, executory and demandable.

**WHEREFORE**, with the foregoing, the instant Petition for Review filed by petitioner Loadstar Shipping Co., Inc. is hereby **DISMISSED** for lack of jurisdiction.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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[51] Underscoring supplied and underscoring omitted in the original text.

**I CONCUR:**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
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.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
2nd Division Chairperson

## CERTIFICATION

Pursuant to Section 13, 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