REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

V.Y. DOMINGO JEWELLERS, INC.,
Respondent.

CTA EB NO. 2313
(CTA Case No. 9367)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and,*
CUI-DAVID, *JJ.*

Promulgated:
MAR 16 2022 3:39 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] pursuant to Section 2(a)(1)[2], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) against respondent V.Y. Domingo Jewellers, Inc. (**respondent/VYDJI**).

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1 Filed on 20 August 2020, *Rollo*, pp. 1-18.

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

The petition seeks the reversal of the Decision dated 01 October 2019[3] (**assailed Decision**) and Resolution dated 19 June 2020[4] (**assailed Resolution**) of the Court's Third Division in CTA Case No. 9367 entitled *V.Y. Domingo Jewellers, Inc. v. Commissioner of Internal Revenue.*

The antecedent facts follow.

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (**BIR**) authorized by law to collect all revenue taxes, issue and abate tax assessments, and examine books of accounts and returns. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent is a domestic corporation duly organized and existing under Philippine laws with office address at 35 Emerald St., Millionaires Village, Novaliches, Quezon City (**new address**).

Respondent filed its Annual Income Tax Return[5] (**AITR**) for the taxable year (**TY**) 2007 on 23 April 2008.

On 06 January 2011, the BIR served on respondent through registered mail[6] a Preliminary Assessment Notice (**PAN**) dated 05 January 2011[7] for deficiency income tax (**IT**) amounting to ₱1,935,412.23, and deficiency Value-Added Tax (**VAT**) amounting to ₱1,329,962.06, at its address at N. Reyes corner R. Papa St., Sampaloc, Manila (**old address**). On 24 January 2011, the BIR issued Assessment Notice (**AN**) Nos. 32-07-IT-1316[8] and 32-07-VT-1317[9] and a Formal Letter of Demand[10] (**FLD**) and Details of Discrepancies and served them through registered mail[11] at respondent's old address above, holding

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3 Division Docket, Volume II, pp. 923-945. Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro.
4 Id., pp. 975-945.
5 Paragraph 4, Joint Stipulation of Facts and Issues (JSFI), id., p. 537.
6 Exhibit "R-18", id., p. 818.
7 Exhibit "P-7", id., Volume I, pp. 215-216.
8 Exhibit "P-2", id., p. 210.
9 Exhibit "P-3", id., p. 211.
10 Exhibit "R-17", id., pp. 416-418.
11 Exhibit "R-19", id., Volume II, p. 819.

respondent liable for deficiency IT and VAT in the amount of ₱1,954,572.95 and ₱1,343,311.21, respectively.

On 10 June 2011, Revenue District Office (**RDO**) No. 32, Revenue Region (**RR**) No. 6, BIR – Manila issued a 1st Notice dated 04 January 2011[12] (**1st Notice**), informing respondent that the said assessments were due for collection. On 28 July 2011, a Final Notice Before Seizure[13] (**FNBS**) was also issued against respondent. A Preliminary Collection Letter (**PCL**) dated 26 March 2012[14] followed for respondent's tax deficiencies for TY 2007.

Subsequently, on 04 May 2016, the BIR issued a Warrant of Distraint and/or Levy[15] (**WDL**) against respondent. However, prior to the WDL's issuance on 27 April 2016, petitioner had already garnished respondent's deposit accounts with BPI, Security Bank and Metrobank.

On 27 May 2016, respondent filed with this Court a Petition for Review with application for Temporary Restraining Order (**TRO**) and/or Writ of Preliminary Injunction[16] (**WPI**) challenging the WDL's issuance. After due hearing, respondent submitted its Formal Offer of Evidence[17] (**FOE**) with Motion on 29 July 2016, with petitioner's Comment[18] thereto filed on 02 August 2016. In a Resolution dated 11 October 2016[19], the Third Division admitted all of respondent's exhibits.

In the interim, the Third Division granted the TRO in a Resolution dated 21 December 2016.[20]

Prior to the issuance of the above Resolution, or on 14 July 2016, petitioner filed his Answer.[21]

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12 Exhibit "P-10", id., Volume I, p. 220.
13 JSFI, id., Volume II, p. 538.
14 Exhibit "P-9", id., Volume I, p. 219.
15 Exhibit "P-6", id., p. 214.
16 Id., pp. 10-35.
17 Id., pp. 196-207.
18 Id., pp. 289-290.
19 Id., pp. 351-352.
20 Id., Volume II, pp. 564-571.
21 Id., Volume I, pp. 136-146.

On 22 July 2016, the Court issued a Notice of Pre-Trial Conference.[22] Petitioner then submitted his Pre-Trial Brief[23] (**PTB**) on 19 October 2016. On the other hand, respondent submitted its own PTB[24] on 20 October 2016.

On 09 November 2016, the parties submitted their Joint Stipulation of Facts and Issues[25] (**JSFI**). It was later approved as contained in the Pre-Trial Order of 16 January 2017.[26]

When trial proper ensued, respondent presented the testimony of its witnesses, namely: (1) Ana Maria Sereno (**Sereno**), its Corporate Secretary; (2) Ann Bacolod (**Bacolod**), its Senior Export Marketing Manager; and, (3) Jose S. Guevarra (**Guevarra**), its Credit and Collection Manager. All witnesses testified by way of their respective judicial affidavits.

Sereno's testimony was offered to prove that respondent did not receive the PAN, the ANs, and the FLD. She also testified that respondent was not served the Warrant of Garnishment when the BIR garnished its bank deposits.[27]

When Bacolod assumed the witness stand, she corroborated respondent's claim that it did not receive any notice of the assessment against it. She also declared that the BIR's authority to collect deficiency taxes had already prescribed since five (5) years had since lapsed from the issuance of the FLD on 24 January 2011 (when petitioner garnished respondent's bank deposits on 25 April 2016).[28]

Lastly, Guevarra was presented to affirm and corroborate the testimonies of both Sereno and Bacolod.[29]

22 Id., pp. 189-190.
23 Id., pp. 353-358.
24 Id., pp. 379-388.
25 Id., Volume II, pp. 537-544.
26 Id., pp. 573-589.
27 Exhibit "P-11", Judicial Affidavit of Ana Maria Sereno, id., Volume I, pp. 221-235.
28 Exhibit "P-37", Judicial Affidavit of Ann Bacolod, id., Volume II, pp. 687-703.
29 Exhibit "P-38", Judicial Affidavit of Jose S. Guevarra, id., pp. 720-734.

In all the testimonies of its witnesses, respondent is adamant that the BIR was aware of its new address and that it was using the same since 2005.

With no other witnesses to present, respondent filed its FOE[30] on 07 August 2017, with petitioner's Comment[31] thereto filed on 18 August 2017.

In a Resolution dated 07 September 2017[32], the Third Division admitted all of respondent's documentary exhibits.

For his part, petitioner offered the testimonies of the following revenue officers (**ROs**), who also testified *via* their judicial affidavits: (1) Eleuteria B. Sagun (**Sagun**), Group Supervisor, RR No. 6, BIR – Manila; and, (2) Benhur C. Narcoda (**Narcoda**), Mailing In-Charge of the Administrative Division, RR No. 6, BIR – Manila.

When presented to the witness stand, Sagun testified to her involvement in the audit investigation against respondent and the issuance of the PAN, the ANs, and the FLD against the latter.[33] Nacorda, on the other hand, testified to serving the above notices on respondent through registered mail.[34]

Later or on 11 May 2018, petitioner filed its FOE.[35] After respondent filed its objection thereto on 04 June 2018[36], the Third Division admitted all of petitioner's exhibits in a Resolution dated 31 July 2018.[37] In the same Resolution, it also ordered the parties to submit their respective memoranda within thirty (30) days from such order.

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30 Id., pp. 675-685.
31 Id., pp. 752-754.
32 Id., pp. 756-757.
33 Exhibit "R-20", Judicial Affidavit of Group Supervisor Eleuteria B. Sagun, id., Volume I, pp. 405-409.
34 Exhibit "R-21", Judicial Affidavit of Benhur Nacorda, id., Volume II, pp. 790-793.
35 Id., pp. 809-813.
36 Id., pp. 821-833.
37 Id., pp. 835-836.

Petitioner filed his Memorandum[38] on 20 September 2018, while respondent filed its Memorandum[39] on 27 September 2018. Thereafter, in a Resolution dated 11 October 2018[40], the Third Division submitted the case for decision.

On 01 October 2019, the Third Division promulgated the assailed Decision[41], granting respondent's Petition for Review. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, the premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Details of Discrepancies dated January 24, 2011, assessing petitioner for deficiency income tax and VAT in the total amount of Php 3,297,884.16, for calendar year 2007, as well as the Warrant of Garnishment dated April 25, 2016 and the Warrant of Distraint and/or Levy dated May 04, 2016, issued by respondent to enforce the collection of the said deficiency tax liabilities are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**
>
> ...

In arriving at the above assailed Decision, the Third Division found that the WDL had been wrongly issued against respondent given that the assessment from which it is based was invalid.

The Third Division observed that the BIR failed to notify respondent of the assessment against it as the PAN, the subsequent ANs, and the FLD were all served at respondent's old address. The Third Division also found that the BIR was notified of respondent's new address as an earlier 1st Notice[42] was correctly addressed at 35 Emerald St., Millionaire's Village, Novaliches, Quezon City.

The Third Division ruled that the BIR's mailing of the said notices to respondent's old address deprived the latter of due process, therefore, making the whole assessment void and without legal effect.

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38 Id., pp. 847-857.
39 Id., pp. 858-917.
40 Id., p. 921.
41 Supra at note 3.
42 Supra at note12.

It also stated that even assuming that respondent was notified of the assessment (despite the mailing of the PAN, ANs and FLD to its old address), petitioner still failed to prove actual service as the registry receipts covering the said notices were not properly authenticated as it lacked a certification from the postmaster.

In his bid to reverse the assailed Decision, petitioner filed a Motion for Reconsideration[43] (**MR**) on 12 November 2019.

On 19 June 2020, the Third Division denied petitioner's MR.[44] Hence, the present petition before the Court *En Banc*.

In compliance with the Court *En Banc's* directive, respondent filed its Comment[45] to the present petition on 14 December 2020. In a Resolution dated 15 January 2021[46], the Court *En Banc* referred the case to the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for conciliation proceedings.

On 01 March 2021, the PMC-CTA notified the Court *En Banc* of the parties' failure to reach an agreement.[47] As a result, the case was submitted for decision in a Resolution dated 16 March 2021.[48]

In herein petition, petitioner submits the following issues for the Court *En Banc*'s resolution, to wit:

> I.
>
> WHETHER THE COURT OF TAX APPEALS (CTA) HAS JURIDICTION OVER THE ORIGINAL PETITION FOR REVIEW; AND,
>
> II.
>
> WHETHER THE ASSESSMENT NOTICES WERE ISSUED AND SERVED TO RESPONDENT V.Y. DOMINGO JEWELLERS, INC. AS PRESCRIBED BY LAW.[49]

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[43] Division Docket, Volume II, pp. 946-955.
[44] Supra at note 4.
[45] *Rollo*, pp. 65-85.
[46] Id., pp. 87-88.
[47] Id., p. 89.
[48] Id., pp. 91-92.
[49] Id., p. 4.

In support of his petition, petitioner argues that the Court has no jurisdiction over respondent's case since the assessment had already become final and executory. Petitioner invokes Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, that reads:

> ...
>
> **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:
>
> ...
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
>
> ...

Petitioner maintains that due to respondent's failure to protest the assessment within 30 days from the FLD's receipt on 24 January 2011, the assessment became final and this Court could no longer review the same.

Petitioner adds that based on the above provision, what is appealable to this Court is the CIR's decision or that of his duly authorized representative and not the WDL. Given that respondent was given a certified copy of the PAN and the FLD on 04 May 2016, he claims that respondent should have first filed a protest against the same. In elevating his case before the Court, petitioner insists that respondent arguably failed to exhaust administrative remedies.

Petitioner also contends that the relevant notices were validly served on respondent.

Respondent, on the other hand, echoes the ruling of the Third Division. It argues that petitioner was fully aware of its new address, yet he sent the PAN and the FLD to its old address; thus, denying it an opportunity to refute the assessment.

The Court *En Banc*'s ruling follows.

After a careful review of the records of the case and the parties' arguments, the Court *En Banc* finds no merit in the present petition. The reasons are discussed below, *in seriatim*.

THE COURT OF TAX APPEALS HAD JURISDICTION OVER RESPONDENT'S ORIGINAL PETITION FOR REVIEW.

The concept of an appeal being taken from the receipt of a WDL is not novel. In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[50] (as cited in the assailed Decision) the Supreme Court upheld the jurisdiction of this Court to rule on a WDL's validity, to wit:

> ...
>
> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.
>
> ...

This Court' authority to settle such matter is rooted in Section 7(1) of Republic Act (**RA**) No. 1125[51], which provides:

[50] G.R. No. 162852, 16 December 2004.
[51] AN ACT CREATING THE COURT OF TAX APPEALS.

> ...
>
> **Sec. 7.** *Jurisdiction.* – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue[.]
>
> ...

In cases where the validity of the WDL is put in question, the 30-day period under Section 228 of the NIRC of 1997, as amended, shall not be reckoned from the CIR's decision but from the taxpayer's receipt of the WDL. Besides, it is not the first time that a WDL has been treated or deemed to be the CIR's final decision. In *Commissioner of Internal Revenue v. Algue, Inc.*[52] (**Algue**), the Supreme Court deemed the issuance of the WDL as a foreclosure on a taxpayer's administrative remedies. There, the Supreme Court ruled, thusly:

> ...
>
> ... It is true that as a rule the warrant of distraint and levy is "proof of the finality of the assessment" and "renders hopeless a request for reconsideration," being "tantamount to an outright denial thereof and makes the said request deemed rejected."...
>
> ...

Applying the ruling in *Algue*, respondent could no longer be obliged to further pursue its case at the administrative level after its receipt of the WDL. Thus, petitioner's argument that respondent failed to exhaust administrative remedies before elevating its case to the Court is unfounded.

The records disclose that respondent received a copy of the WDL on 04 May 2016. Respondent had 30 days from its receipt thereof to file a petition for review before this Court to challenge its validity. Therefore, when respondent filed its petition on 27 May 2016, the same was timely filed.

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52 G.R. No. L-28896, 17 February 1988; Citations omitted.

THE ASSESSMENT NOTICES WERE NOT VALIDLY SERVED ON RESPONDENT.

The records also show that petitioner does not dispute that the PAN and the FLD were both served at respondent's old address. However, he insists on the valid service thereof even if they were not sent to respondent's new address.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[53], the Supreme Court held that for service of a notice of assessment to be valid, it must not only be proved that the same was sent or served but the same was received as well. The Supreme Court declared:

> ...
> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.
> ...
>
> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be **"sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."**
> ...

With the foregoing, We do not see how petitioner could claim that his service of the PAN and the FLD was valid notwithstanding his admission of sending the same to respondent's old address. Perhaps, it would have been different if it was shown that respondent never notified the BIR of its subsequent change of address. However, as the Third Division correctly found, the BIR was aware of such change since

[53] G.R. No. 215957, 09 November 2016; Citations omitted and emphasis supplied.

just two (2) days prior to the alleged service of the PAN, a 1st Notice was issued against respondent at its new address in Novaliches.

Following petitioner's failure to serve respondent the above notices at its correct address, the Court *En Banc* could now only conclude that the same were not duly received by herein respondent. The lack of notice of the CIR's final demand for payment constitutes a clear violation of respondent's right to due process, thus resulting in the invalidity of the subject assessment. In *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc*[54] (**BASF**), the Supreme Court ruled, thusly:

> ...
>
> ... An invalid 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 taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.
>
> ...

It is noteworthy that in *BASF*, there was an actual assessment notice received by the taxpayer, albeit invalid. However, the Supreme Court reiterated the *BASF* ruling in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*[55], where a taxpayer was issued several collection letters absent any previous receipt of a valid assessment against it.

To reiterate, petitioner's failure to prove valid service of the subject notices, especially the FLD, rendered the subject assessment invalid and without legal effect. Therefore, the subsequent issuance of the WDL and any action for collection of respondent's alleged tax liabilities were devoid of any legal basis.

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[54] G.R. No. 198677, 26 November 2014; Citation omitted.

[55] G.R. No. 197945, 09 July 2018.

Assuming *ex gratia argumenti* that the notices were served at respondent's proper address, it remains petitioner's duty to prove the actual service thereof following respondent's denial of their receipt. In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[56] (**Barcelon**) where the FAN's receipt was also denied by the taxpayer, the Supreme Court ruled in the following wise:

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

In relation to the above ruling, the Supreme Court's decision in *Republic of the Philippines v. Resins, Incorporated*[57] (as cited in the assailed Decision) states that registry receipts alone are insufficient proof of mailing, to wit:

> ...
> ... Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment. Receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters. Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. It cannot be stressed enough that "*it is the registry receipt issued by the mailing office and the affidavit of the person mailing*, which proves service made through registered mail." Absent one or the other, or worse both, there is no proof of service.
> ...

56 G. R. No. 157064, 07 August 2006; Citations omitted.
57 G.R. No. 175891, 12 January 2010; Citations omitted and italics in the original text.

With the legal anchors firmly in place, the Third Division was then correct in giving little credence to petitioner's registry receipts absent any certification or authentication from the postmaster.

WHEREFORE, the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 20 August 2020 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 01 October 2019 and the Resolution dated 19 June 2020 promulgated by the Court's Third Division in CTA Case No. 9367 entitled *V.Y. Domingo Jewellers, Inc. v. Commissioner of Internal Revenue* are hereby **AFFIRMED.**

Consequently, with the cancellation and withdrawal of the Warrant of Distraint and/or Levy dated 04 May 2016, petitioner is **ENJOINED** from enforcing the collection of respondent's alleged income tax and value-added tax deficiencies for taxable year 2007.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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. 2313** *(CTA Case No. 9367)*
	PRESENT:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, *and* **CUI-DAVID**, *JJ.*
V.Y. DOMINGO JEWELLERS, INC., *Respondent.*	**PROMULGATED:** MAR 1 6 2022 3:39 p.m.

x- -x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* which denies the Petition for Review for lack of merit, and affirms the assailed Decision and assailed Resolution of the Court in Division. The Court in Division found that petitioner failed to notify respondent of the assessments against it as the Preliminary Assessment Notice, Assessment Notices and Formal Letter of Demand were all served at respondent's old address. The Court in Division ruled that for failure of petitioner to properly notify respondent of the assessments against it, respondent's right to due process was violated; hence, the assessments are void.

In addition to the foregoing findings, I submit that the assessments issued against respondent are void as the Letter of Authority (LOA) dated August 8, 2008 was served upon respondent on September 17, 2008 or beyond the thirty (30)-day period.

Section 13 of the National Internal Revenue Code of 1997, as amended, states that a Revenue Officer assigned to perform assessment functions in any district may, pursuant to an LOA issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

This was confirmed in Revenue Memorandum Order ("RMO") No. 43-90 dated September 20, 1990, which states that all audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

On March 17, 2000, the BIR issued Revenue Audit Memorandum Order ("RAMO") No. 1-00 which updated the Handbook on Audit Procedures and Techniques. RAMO No. 1-00 illustrates how a revenue officer should conduct his examination:

> "C. Serving of Letter of Authority
>
> xxxx
>
> 2.3 **A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated.** The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on _____' on the face of the copy of the Letter of Authority issued." *(Boldfacing supplied)*

Pursuant to the aforementioned provisions, an LOA must be served to the subject taxpayer within thirty (30) days from the date of its issuance, otherwise said LOA will be null and void. The terms "must" and "should," applying the principle of statutory construction, must be given a compulsory meaning and are imperative and mandatory in character.

In this case, as can be gleaned from Exhibit P-4,[1] LOA dated August 8, 2008 was served upon respondent on September 17, 2008, which was beyond the thirty (30)-day deadline on September 7, 2008. Therefore, LOA dated August 8, 2008 was void for having been served to respondent beyond the thirty (30)-day period, as mandated by RAMO No. 1-00. Consequently, examinations and assessments made pursuant to said LOA dated August 8, 2008 are also void.

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[1] Division Docket, Vol. 2, p. 739.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[2] the Supreme Court was clear in holding that the issuance of a valid LOA is indispensable to the validity of an assessment itself, to wit:

> "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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**." *(Boldfacing and underscoring supplied)*

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

[2] G.R. No. 178697, November 17, 2010.