REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ENRICO JOHN OLIVARES SANTOS, *Petitioner,*	**CTA Case No. 10704**
	Members:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 03 2025 3:30 p.m.

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DECISION

REYES-FAJARDO, *J*.:

This Petition for Review[1] dated December 15, 2021, filed by Enrico John Olivares Santos aims to cancel the Bureau of Internal Revenue (BIR)'s deficiency internal revenue tax assessments issued against him for Taxable Year (TY) 2017, in the total amount of ₱19,056,975.07.

FACTS

Petitioner Enrico John Olivares Santos is of legal age, Filipino, with address at 85 Katipunan Avenue Extension, Loyola Grand Villas, Marikina City.[2] He is the sole proprietor of VJ7 Printing, which is duly registered with the Department of Trade and Industry, with business address at 7 Legion of Mary St., Marulas, Valenzuela City.[3] He is also registered with the Bureau of Internal Revenue (BIR) on October 3, 1999 as shown in his Certificate of Registration No.

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1 Docket, pp. 7-29.

2 Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI). Docket, p. 1460.

3 Exhibit "P-1." *Id.* at p. 1743.

4RC0000954618 with Taxpayer Identification Number 111-572-457-000.[4]

Respondent Commissioner of Internal Revenue is the chief of the BIR, the government agency tasked with the assessment and collection of all internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith.[5]

On December 13, 2019, Regional Director Gracia B. Javier issued Letter of Authority (LOA) No. LOA-024-2019-00001021, authorizing Revenue Officer Julie Anne Alcantara (RO Alcantara) and Group Supervisor Mercy Vinluan (GS) of Revenue District Office No. 024-Valenzuela, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for periods January 1, 2017 to December 31, 2017.[6]

In an undated Notice of Informal Conference (NIC), Revenue District Officer Rufo B. Ranario invited petitioner or his authorized representative for an informal conference at the Revenue District Officer's Office at RDO No. 024, within fifteen (15) days from receipt thereof.[7]

On December 7, 2020, Regional Director Gerry O. Dumayas (RD Dumayas) issued a Preliminary Assessment Notice (PAN),[8] with Details of Discrepancies,[9] containing the proposed deficiency Income Tax (IT), Value-Added Tax (VAT) assessments, and compromise penalties against petitioner for Taxable Year (TY) 2017, in the total amount of ₱19,461,057.13, inclusive of surcharges and interests.

On January 8, 2021, petitioner received[10] RD Dumayas' Formal Letter of Demand with Details of Discrepancies, and Final Assessment Notices (FLD/FAN),[11] all dated December 28, 2020,

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4 Exhibit "P-2." *Id.* at p. 1744.
5 Par. 3, Summary of Admitted Facts, JSFI. *Id.* at p. 1461.
6 Exhibit "R-2." *Id.* at p. 1309.
7 Exhibit "R-6." *Id.* at p. 1313.
8 Exhibit "R-7." *Id.* at pp. 1317-1318.
9 Exhibit "R-7-B." *Id.* at p. 1319.
10 Answer to Question No. 12 (Amended Judicial Affidavit of Enrico John Olivares Santos). Exhibit "P-13," *id.* at p. 1540.
11 Exhibits "P-3" and "P-3-1," Docket, pp. 1745-1750; and Exhibits "R-10" to "R-10-D," BIR Records, pp. 198-203.

assessing the former for deficiency IT, VAT, and compromise penalties for TY 2017, in the total amount of ₱19,516,679.13, inclusive of surcharges and interests.

On January 27, 2021, petitioner filed his administrative protest (request for reinvestigation) against RD Dumayas' FLD/FAN.[12]

On November 16, 2021, petitioner received[13] RD Dumayas' Final Decision on Disputed Assessment (FDDA) dated October 18, 2021,[14] demanding payment of the alleged deficiency IT and VAT for TY 2017 in the total sum of ₱19,056,975.07, inclusive of surcharges, interests, and compromise penalties.

On December 15, 2021, petitioner filed a Petition for Review, docketed as CTA Case No. 10704, initially raffled before the Court of Tax Appeals - First Division,[15] to which respondent filed his Answer[16] on May 5, 2022.

On November 17, 2022, pre-trial conference was held.[17] There, the issue to be addressed in CTA Case No. 10704 was formulated by the parties. Further, the respective schedule for the marking of their exhibits, along with schedule for the presentation of their respective evidence, were, as well, set. In addition, the parties were directed to file their Joint Stipulation of Facts and Issues not later than December 19, 2022.

On December 13, 2022, the parties filed their Joint Stipulation of Facts and Issues,[18] which was approved *via* Resolution[19] dated January 10, 2023. Accordingly, a Pre-Trial Order[20] was issued on March 3, 2023.

Trial ensued.

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12 Exhibit "P-4," Docket, pp. 1751-1758; and Exhibit "R-1", BIR Records, pp. 391-397.
13 Answer to Question No. 26 (Amended Judicial Affidavit of Enrico John Olivares Santos). Exhibit "P-13," Docket, p. 1543.
14 Exhibit "P-6," *id.* at pp. 216-217; and Exhibit "R-15," *id.* at pp. 1334-1335.
15 *Supra* note 1.
16 Docket, pp. 1284-1297. This was coupled with Motion to Admit and Leave of Court. Admitted *via* Resolution dated June 24, 2022, *id.* at pp. 1365-1366.
17 Order dated November 17, 2022. *Id.* at pp. 1412-1414.
18 *Id.* at pp. 1460-1473.
19 *Id.* at pp. 1500-1501.
20 *Id.* at pp. 1653-1673.

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Petitioner presented himself,[21] and Independent Certified Public Accountant Christian Gene A. Rasos (ICPA Rasos)[22] as witnesses.

On May 4, 2023, petitioner filed his Formal Offer of Evidence,[23] to which respondent filed his Comments/Objections (to the Petitioner's Formal Offer of Evidence) on May 17, 2023.[24]

Under Resolution dated June 2, 2023, CTA Case No. 10704 was transferred from the CTA – First Division, to CTA – Third Division.[25]

By Resolution dated July 6, 2023,[26] the exhibits offered by petitioner were admitted, except Exhibits "P-12-1" to "12-2013," for failure to properly mark the same, and to present the originals thereof for comparison.

In the hearing held on July 26, 2023,[27] respondent presented Revenue Officer Julie Anne Alcantara (RO Alcantara)[28] as witness. Further, petitioner prayed that the following additional evidence be marked:

Description of Additional Evidence	Marking
Memorandum dated July 1, 2019	"P-26"
Memorandum dated July 29, 2019	"P-27"
List of initials found on the bottom left part of Exhibit "R-7"	"P-28"

21 Amended Judicial Affidavit of Enrico John Olivares Santos dated February 9, 2023 (Exhibits "P-13" and "P-13-A"), *id.* at pp. 1537-1555. Admitted, and identified during the hearing held on February 15, 2023, see Order of even date, *id.* at pp. 1639-1642.

22 ICPA Rasos testified twice: (1) on his commissioning during the hearing held on February 15, 2023, wherein he identified his Judicial Affidavit pertaining thereto (Exhibits "P-24" and "P-24-A"), see Order of even date, *id.* at pp. 1639-1642; and (2) on the documents he examined, condensed in his ICPA Report and accompanying Universal Serial Bus Drive, wherein he identified his Judicial Affidavit relative thereto (Exhibits "P-25" and "P-25-A"), see Order dated April 19, 2023, *id.* at pp. 1722-1723.

23 *Id.* at pp. 1725-1741.

24 *Id.* at pp. 1867-1875.

25 *Id.* at p. 1878.

26 *Id.* at pp. 1885-1887.

27 Order dated July 26, 2023. *Id.* at pp. 1889-1891.

28 Judicial Affidavit of Revenue Officer Julie Anne Alcantara dated May 2, 2022 (Exhibits "R-16" and "R-16-A"), *id.* at pp. 1338-1348; and her Supplemental Judicial Affidavit dated November 9, 2022 (Exhibits "R-17" and "R-17-A"), *id.* at pp. 1425-1433.

Petitioner was then allowed to file his Supplemental Formal Offer of Evidence, and for respondent to lodge his comment/opposition thereon.[29]

On July 27, 2023, petitioner filed his Motion for Reconsideration (Re: Resolution promulgated on July 6, 2023),[30] *sans* respondent's comment.[31]

On July 31, 2023, petitioner filed his Supplemental Formal Offer of Evidence,[32] which was met by respondent's Comments/Objections (to the Petitioner's Supplemental Formal Offer of Evidence).[33]

Through Resolution dated January 8, 2024,[34] petitioner's Supplemental Formal Offer of Evidence was resolved. Further, his Motion for Reconsideration (Re: Resolution promulgated on July 6, 2023) was granted.

On January 19, 2024, the Formal Offer of Respondent's Evidence/Exhibits[35] was filed, which was met by petitioner's Comment (on Respondent's Formal Offer of Evidence/Exhibits dated January 12, 2024)[36] filed on February 5, 2024, followed by respondent's Reply (on the Comment on the Respondent's Formal Offer of Evidence/Exhibits dated January 12, 2024)[37] filed on February 13, 2024.

Under Resolution[38] dated May 21, 2024, the exhibits offered by respondent were admitted, save for Exhibits "R-9" and "R-9-A."

On July 3, 2024, CTA Case No. 10704 was submitted for decision[39] considering: (1) petitioner's Memorandum[40] filed on June 27, 2024; and (2) respondent's Memorandum[41] filed on June 28, 2024.

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29 *Supra* note 27.
30 Docket, pp. 1892-1897.
31 Records Verification Report dated October 4, 2023. *Id.* at p. 1944.
32 *Id.* at pp. 1926-1929.
33 *Id.* at pp. 1937-1939.
34 *Id.* at pp. 1947-1950.
35 *Id.* at pp. 1951-1963.
36 *Id.* at pp. 1965-1972.
37 *Id.* at pp. 1974-1976.
38 *Id.* at pp. 1980-1982.
39 *Id.* at p. 2047.
40 *Id.* at pp. 1983-2021.

ISSUE[42]

Is petitioner liable for the alleged deficiency IT, VAT, and Miscellaneous Tax, inclusive of surcharges and interests for TY 2017, in the total amount of ₱19,056,975.07?

ARGUMENTS

Petitioner maintains that since the LOA was improperly served upon Erika Jane Suguitan (Suguitan), the BIR offended his right to due process on examination and audit, guaranteed under Section 1, Article III of the 1987 Constitution. Granting, there was proper service of the LOA upon Suguitan, one of the persons, *i.e.*, GS Anna Verna Buenaventura (GS Buenaventura), who audited and examined him was not named in said LOA.

Assuming for the sake of argument that the BIR's examination and audit for TY 2017 is valid, petitioner nonetheless claims that the BIR offended *another aspect* of due process when he was not informed of the proposed deficiency internal revenue tax assessment for TY 2017 embodied in the PAN, by reason of improper service thereof to Roxanne Rosal (Rosal).

Petitioner, too, insists that the BIR's deficiency tax assessments found against him for TY 2017 were based on presumptions, rather than facts, given that they were pivoted upon unverified third-party information (TPI).

Petitioner also points out that the BIR's right to assess him for deficiency VAT for the 1st to 3rd Quarters of TY 2017, is barred by prescription under Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended.

Petitioner further contends that he, and VJ-7 Printing and Packaging Inc., are separate and distinct from one another, in that the latter's tax liabilities may not be imputed on the former.

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41 *Id.* at pp. 2023-2046.

42 See Statement of Issues, JSFI. *Id.* at pp. 1461-1462.

Through these premises, petitioner concludes that he is not liable for the BIR's deficiency internal revenue tax assessments covering TY 2017.

In refutation, respondent ripostes that the LOA, NIC, PAN, and FLD/FAN were properly served to, and received by petitioner.

Respondent further retorts that the deficiency internal revenue tax assessments found against petitioner for TY 2017 are supported by both factual and legal bases. In addition, the TPI from which said assessments were based, were verified data.

Respondent as well counters that the BIR's right to assess deficiency VAT for the 1st to 3rd Quarters of TY 2017, is not barred by prescription considering that the same was stretched because of the COVID - 19 Pandemic. Also, his right to collect deficiency internal revenue taxes for same year was likewise suspended because he granted petitioner's request for reinvestigation.

Respondent finally declares that petitioner is liable for the 2017 deficiency internal revenue taxes for TY 2017 found against VJ-7 Printing because he is the sole proprietor thereof. Even if VJ-7 Printing was incorporated as a corporation, the separate personality of the latter, and petitioner should be disregarded because the incorporation was designed as a fraudulent scheme to evaded payment of internal revenue taxes lawfully due to the BIR.

RULING

The Petition is impressed with merit.

First. Did We acquire jurisdiction over CTA Case No. 10704?

Yes.

Section 7(a)(1) of Republic Act (RA) No. 1125,[43] as amended by RA No. 9282, endows the CTA exclusive appellate jurisdiction over

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43 An Act Creating the Court of Tax Appeals.

respondent's or his duly authorized representative's decision on disputed assessments:[44]

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> ...[45]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[46] clarified that the CTA in Division has jurisdiction over respondent's or his duly authorized representative's decision involving disputed assessments, among others.[47] For the decision of respondent or his duly authorized representative to be raised on appeal before the CTA in Division, there must first be a disputed assessment.[48] To correctly dispute a final assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC, as amended, which states:

> Section 228. *Protesting of Assessment.* — ...
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> ...
>
> If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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44 See *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*, G.R. No. 208731, January 27, 2016.

45 Boldfacing supplied.

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

47 SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive 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; (Boldfacing supplied)

48 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016.

> **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.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[49]

In turn, the validity of the administrative protest rests upon confluence of two (2) conditions, namely: *first,* it must be filed within thirty (30) days from the receipt of the final assessment; and *second,* it must be in such form and manner as may be prescribed by implementing rules and regulations.[50] Subsection 3.1.4 of Revenue Regulations (RR) No. 18-2013, echoed the period to institute an administrative protest before the BIR, as well as the form and manner thereof, in this wise:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

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49 Boldfacing supplied.

50 See *Commissioner of Internal Revenue v. Court of Tax Appeals - Third Division and Citysuper Incorporated,* G.R. No. 239464, May 10, 2021.

Indeed, the taxpayer has thirty (30) days from receipt of the final assessment to file a valid administrative protest. Upon the taxpayer's receipt of the FDDA, it has another thirty (30) days to seek redress with the CTA in Division.

On January 8, 2021, petitioner received[51] the FLD/FAN[52] dated December 28, 2020. Counting thirty (30) days from January 8, 2021, petitioner had until February 8, 2021[53] to file an administrative protest thereto; thus, he timely[54] lodged his administrative protest on the FLD/FAN on January 27, 2021. Said protest, too, contained: (1) a statement seeking reinvestigation of the assessment, citing various documents and certifications in support thereof; (2) the legal and factual grounds of such protest; and (3) the date of FAN.[55] Therefore, petitioner registered a valid administrative protest on the FLD/FAN, thereby transmuting the assessment to a disputed assessment.

On November 16, 2021 petitioner received[56] RD Dumayas' FDDA. Counting thirty (30) days therefrom, petitioner had until December 16, 2021 to seek judicial recourse. *Ergo*, the timely filing of petitioner's Petition for Review on December 15, 2021[57] clothed Us with jurisdiction over CTA Case No. 10704.

Second. Is petitioner liable for deficiency internal revenue tax assessments covering TY 2017?

No. Consider the following justifications:

One. The BIR improperly served the LOA to Suguitan.

Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp. (McDonald's)[58] implicitly recognized that the proper service of an LOA to the taxpayer is part and parcel of the latter's right to due process, with the following elucidation:

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51 *Supra* note 10.
52 *Supra* note 11.
53 The 30th day, *i.e.*, February 7, 2021, for petitioner to file an administrative protest fell on a Sunday.
54 *Supra* note 12.
55 *Ibid.*
56 *Supra* note 13.
57 *Supra* note 1.
58 G.R. No. 242670, May 10, 2021.

> **To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA.** ... Due process requires that the taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

To adhere with the due process requirement enjoined by *McDonald's*, Item III.23[59] of RMO No. 19-2015[60] commands that the RO assigned to the case shall present or serve the eLA to the taxpayer or its representative in accordance with Section 3.1.6 of RR No. 12-99,[61] as amended by RR No. 18-2013,[62] which reads, in part:

> 3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The **notice shall be served through personal service by delivering personally a copy thereof to the party** at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> **In case personal service is not practicable, the notice shall be served by substituted service or by mail.**

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59 III. Policies and Procedures

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23. The RO assigned to the case shall present or serve the eLA to the taxpayer or his representative in accordance with Section 3.1.6 of RR No. 12-99 as amended by RR No. 18-2013.

60 SUBJECT: BIR Audit Program.

61 SUBJECT: 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.

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

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

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

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

...

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

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

RO Alcantara mentioned that the LOA was served upon Suguitan, petitioner's authorized representative, on January 7, 2020.[63] Yet, what RO Alcantara professed in open court reveals otherwise.

Specifically, RO Alcantara uttered that when she asked Suguitan for identification, the latter presented her identification card. The identification card named VJ7 Printing Corp.[64] as employer of Suguitan:

ATTY. VERGARA

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63 Answer to Question No. 6, Judicial Affidavit of Julie Anne Alcantara (Exhibits "R-16 and "R-16-A"), *supra* note 28.

64 Petitioner said that the corporation's name is VJ7 Printing and Packaging Inc. (Page 16, TSN of Hearing held on February 15, 2023). Thus, VJ7 Printing Corp. is likewise understood as VJ7 Printing and Packaging Inc.

Q Now, Ms. Witness, may I refer you to Exhibit R-3, LOA dated December 13, 2019, which you identified in question no. 6 of your Judicial Affidavit. For the record, the LOA was issued to Enrico Santos, correct?

MS. ALCANTARA

A Yes, sir.

ATTY. VERGARA

Q And based on the said LOA, it was not served to petitioner but to a certain person named Erica Jane Saguitan, correct?

MS. ALCANTARA

A Yes.

ATTY. VERGARA

Q And you do not have any proof of authority of this Erica Jane Saguitan to receive the LOA, correct?

MS. ALCANTARA

A If I may po.

ATTY. VERGARA

Q Whether or not you have proof of authority of Erica Jane?

JUSTICE MANAHAN

Answerable by a yes or no, so question is do you have proof of authority, yes or no.

MS ALCANTARA

Yes, because I require them to present their IDs.

ATTY. VERGARA

Q For the record, Ms. Witness, on the BIR records, do you have any proof of the authority of Erica Jane Saguitan? Do you have any proof on the BIR records?

MS. ALCANTARA

A She represented herself as the AR's staff in the checklist of requirement.

ATTY. VERGARA

Q Ms. Witness, I repeat my question. My question is do you have any proof of authority of Erica Jane Saguitan to represent the petitioner Enrico John Santos?

MS. ALCANTARA

A Aside from the received po na AR staff siya.

ATTY. VERGARA

Q So, **when you said that [s]he is authorized in your Judicial Affidavit you only mean that [s]he is actually the one present in the premise of petitioner's address, correct?**

MS. ALCANTARA

A **Yes.**

ATTY. VERGARA

Q And other **than her presence there is no actually documentary support showing her authority to receive the LOA, correct?**

MS. ALCANTARA

A **Yes.**

JUSTICE MANAHAN

Ms. Witness, did you at least demand to see her ID of which she is an employee of the petitioner.

MS. ALCANTARA

Yes, Your Honor, if I may po, based on my recollection during the time that I served the letter of authority, so the initial approach was to talk to the security guard there and then **I asked whether they know this taxpayer Enrico Santos. And the security guard said 'ah yes si sir', tapos that is when the time that I told them to talk to one of the staff there** kasi ***bihira nga lang daw po nanduon si Mr. Santos,*** and then *tinanong pa nga nung guard saang staff po ba,* Ma'am, **sabi ko,** ***usually accounting or finance or anyone from the company, and then ang natawag po yata is from the accounts' receivable department, so si Ma'am Erica po yung nakausap ko.*** *(sic)*

JUSTICE MANAHAN

So, did you demand an ID from this Ms. Saguitan?

MS. ALCANTARA

A Yes po.

JUSTICE MANAHAN

Did she show you her ID?

MS. ALCANTARA

A Yes po, Your Honor.

JUSTICE MANAHAN

It is clear that Ms. Saguitan is an employee of the petitioner?

MS. ALCANTARA

Yes po.

ATTY. VERGARA

Q Ms. Witness, in your testimony earlier you mentioned that **you asked for the employee of the company, correct?**

MS. ALCANTARA

A **Yes, sir.**

ATTY. VERGARA

Q And **the taxpayer being assessed in this one is Enrico Santos as individual, not the company?**

MS. ALCANTARA

A Yes, I understand.

ATTY. VERGARA

Q In short, you should have served the document to the taxpayer himself not to an employee of a company, correct?

MS. ALCANTARA

A Yes, but my initial . . .*(interrupted)*

ATTY. VERGARA

That will suffice, Ms. Witness.

...

ATTY. GONZALES

Q Ms. Witness, when you served the Letter of Authority to Ms. Erica Saguitan, did you mention or did you ask the name of her employer?

MS. ALCANTARA

A Yes, Atty.

ATTY. GONZALES

Q And what is the name of her employer during that time?

MS. ALCANTARA

A Initially po, tinanong ko sya kung kilala nya si Mr. Santos and then she said 'ah si sir' kilala naman daw po nya. And then sya naman po ang nagkwento na nagincorporate sila, that is why VJ7 Corp. *(sic)*

JUSTICE MANAHAN

Wait please answer the question, you are asking who is the employer, right?

ATTY. GONZALES

Yes, Your Honors.

JUSTICE MANAHAN

Please do not narrate, please just answer the question directly.

MS. ALCANTARA

A She presented an ID po.

JUSTICE LIBAN

So what is the company she is employed with? I mean, what is the company?

MS. ALCANTARA

VJ7

JUSTICE LIBAN

So she is an employee of VJ7?

MS. ALCANTARA

Yes, Your Honor.

JUSTICE LIBAN

And not Enrico Santos?

MS. ALCANTARA

I actually asked that po, Your Honor, kasi VJ7 is. . .

JUSTICE LIBAN

Yes or no?

MS. ALCANTARA

It is also the tradename po nung sole prop.

JUSTICE LIBAN

I am just asking if she is an employee of Enrico Santos.

MS. ALCANTARA

Of the corporation po.

JUSTICE LIBAN

But Enrico Santos, to your mind Enrico Santos is part of the corporation?

MS. ALCANTARA

According to her po, sya po yung nagsabi.

JUSTICE LIBAN

Okay, but you are actually assessing Enrico Santos and not the corporation?

MS. ALCANTARA
Yes, Your Honor.

...

ATTY. GONZALES

Q Ms. Witness, where did you serve the Letter of Authority?

MS. ALCANTARA

A In the given address po.

ATTY. GONZALES

Q Which is?

MS. ALCANTARA

A 1845 P. Gomez St., Barangay Maysan Valenzuela City.

ATTY. GONZALES

Q This is where you also find Ms. Erica Saguitan?

MS. ALCANTARA

A Yes po.

ATTY. GONZALES

Q When you served the Letter of Authority, did you ever mention the name Enrico John Olivares Santos?

MS. ALCANTARA

A Yes po, that is the first thing I asked.

ATTY. GONZALES

Q And **when you asked the name of Enrico John Olivares Santos to Ms. Saguitan, what did** she **say?**

MS. ALCANTARA

A **'Ah si sir', opo kilala daw nya.**
ATTY. GONZALES

Q Did she mention that she is an employee of Mr. Enrico Santos?

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MS. ALCANTARA

A Yes.

JUSTICE MANAHAN

Can I just catch that, so you are saying that Erica Saguitan is an employee of Mr. Enrico Santos?

MS. ALCANTARA

Yes, Your Honor.

JUSTICE MANAHAN

What did you say earlier that she is an employee of the VJ7 of the corporation, you know you are confusing the Court?

JUSTICE LIBAN

You are contradicting yourself.

JUSTICE MANAHAN

Yes, can you please speak clearer in your answer? Can you please repeat the question, so we can once and for all know whether she is an employee of the petitioner or she is an employee of the company or corporation that was earlier mentioned?

ATTY. GONZALES

Q Did Ms. Erica Saguitan mention that she is an employee of Mr. John Olivares Santos?

MS. ALCANTARA

A Yes, she mentioned that, Atty.

ATTY. GONZALES

Q And when you went to the office address or business address, in the ID that she presented, **is there a name or is there a company indicated in the ID that she presented?**

MS. ALCANTARA

A **As far as I reme[mb]er po, the company name is VJ7 Printing Corp.**

JUSTICE LIBAN

In other words, the ID, [her] ID as an employee is VJ7 Printing?

MS. ALCANTARA

VJ7 Printing Corp.

JUSTICE LIBAN

But Enrico John Olivares Santos is a part of that company?

MS. ALCANTARA

Yes.

JUSTICE LIBAN

And therefore **since he is a part of that company, in your mind** he **is also the employer of Saguitan?**

MS. ALCANTARA

Yes, Your Honor.

JUSTICE LIBAN

That is what you meant when you said that she is an employee of John Santos, because John Santos is a part of the company, of the corporation?

MS. ALCANTARA

Yes, Your Honor.[65]

Wensha Spa Center, Inc. and/or Xu Zhi Jie v. Yung (Wensha)[66] decreed that "... a corporation is invested by law with a personality separate and distinct from those of the persons composing it and from that of any other legal entity to which it may be related." Consistent with *Wensha*, VJ7 Printing Corp. is an entity, separate and distinct from petitioner. It then follows that the employee of VJ7 Printing Corp. like Suguitan, is *not* the employee of petitioner. *A fortiori*, RO Alcantara's service of the LOA to Suguitan does *not* equate to service of said LOA to petitioner. Besides, assuming that Suguitan is petitioner's employee, respondent failed to exhibit that

65 Transcript of Stenographic Notes (TSN) for the hearing held on July 26, 2023, pp. 30-35; and 40-47. Boldfacing ours.

66 G.R. No. 185122, August 16, 2010.

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Suguitan received the LOA, under express or implied authority from petitioner. Through these accounts, the BIR improperly served said LOA, resulting in transgression of petitioner's right to due process.

Respondent contends that the separate and distinct personalities of petitioner and VJ-7 Printing Corp. should be ignored, because petitioner is allegedly the owner of 80-90% of shares of stock of said corporation.

We differ.

Jurisprudence is replete with cases holding that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[67] Thus, petitioner's alleged majority ownership of VJ-7 Printing Corp. *alone* does not warrant the piercing desired by respondent.

Respondent nevertheless contends that the incorporation of VJ-7 Printing Corp. is only for the purpose of tax evasion because petitioner failed to secure tax clearance for closure of his sole proprietorship.

We digress.

Indeed, shredding the veil of corporate identity is allowed, provided fraud was employed to evade internal revenue taxes.[68] However, for shredding to be permitted, the facts justifying the application of this doctrine must be pleaded and proved. There must be "clear and convincing proof that the separate and distinct personality of the corporation was purposely employed" to commit fraud.[69] *Commissioner of Internal Revenue v. Javier (Javier)*[70] described fraud, in the context of tax evasion, as follows:

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[67] See *Philippine National Bank v. Hydro Resources Contractors,* G.R. No. 167530, March 13, 2013; *Kukan International Corporation v. Hon. Reyes, et al.,* G.R. No. 182729, September 29, 2010; and *Sunio v. National Labor Relations Commission, et al.,* G.R. No. L-57767, January 31, 1984.

[68] *Commissioner of Internal Revenue v. Menguito,* G.R. No. 167560, September 17, 2008.

[69] See *Commissioner of Internal Revenue v. Spouses Magaan,* G.R. No. 232663, May 3, 2021.

[70] G.R. No. 78953, July 31, 1991. Boldfacing ours.

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> .... The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to fraud with intent to evade the tax contemplated by law. **It must amount to intentional wrong-doing with the sole object of avoiding the tax.** ....

Tested against the benchmark provided by *Javier*, respondent fell short in exhibiting that VJ7 Printing Corp. was used as a vehicle for petitioner solely to perpetuate actual fraud regarding his alleged 2017 deficiency internal revenue taxes. Particularly, just because petitioner is the majority shareholder of VJ7 Printing Corp., along with his failure to secure a tax clearance certificate for closure of his sole proprietorship with the BIR would automatically mean that he deliberately used VJ7 Printing Corp. for the singular objective of evading payment of his alleged 2017 internal revenue tax liabilities. If at all, such failure amounted to petitioner's ignorance or negligence, rather than fraud.

Two. The BIR's deficiency internal revenue tax assessments for TY 2017 lack factual bases, offensive of Section 228[71] of the NIRC, as amended.

Item IV(E)(3)(B.3) of RMO No. 30-2003 states that if the taxpayer is refuting the data appearing in the LN, there must be a confirmation request/s (CR/s) on the TPI source.[72] RMO No. 13-2012 then expounded that the RO must serve a confirmation request to the TPI source/s, and wait for five (5) days (from service thereof), or ten (10) days (from mailing) before such TPI may be considered by said RO as true and correct. Additionally, the corresponding registry return card/s should be presented if CR/s was served through registered mail.[73] In reverse, if the mailing of the CR/s to the TPI

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[71] SEC. 228. *Protesting of Assessment.* - ...

...

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

[72] See p. 10 of RR No. 30-2003.

[73] Item No. 9 under Heading "D. Investigating Offices" of RMO No. 13-2012 provides in part: "**Send a Confirmation Request from TPI sources attesting to the veracity of the data included in the LN package** (Annexes 'I' and 'I-1').

If no response from the TPI source after the lapse of five (5) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. However, if there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO shall send the Confirmation Request to the taxpayer

source/s does *not* have corresponding registry return card/s, then the BIR should have ceased in using the TPI embodied in said CR/s.

Here, while the BIR produced the CRs[74] and their registry receipts,[75] the latter failed to generate their corresponding registry *return cards* as evidence, as required by RMO No. 13-2012,[76] and jurisprudence.[77] Therefore, the TPI embodied in the CRs, relied upon by the BIR to justify the deficiency internal revenue tax assessments for TY 2017, is unverified information. *Commissioner of Internal Revenue v. MCC Transport Singapore PTE. LTD.*[78] declared that unvalidated TPI may not be considered as proper factual bases to support an internal revenue tax assessment against the taxpayer:

> ... Even assuming that [RMO No. 13-2012] is applicable, the same likewise provides that the Confirmation Requests sent out to third parties by registered mail must be supported by registry return cards, which were not submitted as evidence in this case. Consequently, the CTA *EB* was correct **in not relying on the third-party information since unverified data cannot be considered as proper factual bases for the assessment** against [the taxpayer]....

Lastly. With the invalidity of the deficiency internal revenue tax assessments for TY 2017 found by the BIR against petitioner, due to: (1) improper service of the LOA; and (2) lack of factual bases of said tax assessments, elaboration on the other points put forward by petitioner is no longer necessary.

WHEREFORE, the Petition for Review dated December 15, 2021, filed by Enrico John Olivares Santos, is **GRANTED**. Accordingly, the deficiency Income Tax and Value-Added Tax assessments issued by the Bureau of Internal Revenue against him, including their concomitant surcharges and interests, and Miscellaneous Tax (compromise penalties), for Taxable Year 2017, in the total amount of ₱19,056,975.07, are **CANCELLED** and **SET ASIDE**.

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through registered mail with Registry Return Card and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step...." (Boldfacing ours)

74 Exhibits "R-21" to "R-38." BIR Records, pp. 143-159.

75 Exhibits "R-21-A" to "R-38-A." These registry receipts are latched on their respective CRs. *Ibid.*

76 *Supra* note 72.

77 *Infra* note 78.

78 G.R. No. 255382, June 28, 2021. Boldfacing ours.

Respondent, his representatives, or other persons acting on his behalf are **FORBIDDEN** from collecting on Enrico John Olivares Santos, the deficiency Income Tax and Value-Added Tax assessments issued by the Bureau of Internal Revenue against him, including their concomitant surcharges and interests, and Miscellaneous Tax (compromise penalties), for Taxable Year 2017.

SO ORDERED.

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
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.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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