REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

INDRA VERHOMAL MENGHRAJANI, represented by daughter SAVITRI V. MENGHRAJANI,
Respondent.

CTA EB NO. 2338
(CTA Case No. 9269)

Present:

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

Promulgated:
JUN 30 2022 4:20pm

x - x

DECISION

BACORRO-VILLENA, J.:

Assailing the Third Division's Decision dated 24 September 2019[1] (**assailed Decision**) and its Resolution dated 26 June 2020[2] (**assailed Resolution**) in CTA Case No. 9269 entitled *Indra Verhomal Menghrajani, represented by daughter, Savitri V. Menghrajani v. Hon. Kim Jacinto-Henares in her capacity as Commissioner of Internal Revenue,* petitioner Commissioner of Internal Revenue

[1] Division Docket, Volume IV, pp. 1494-1517; Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

[2] Id., pp. 1537-1540.

(petitioner/CIR) filed the instant Petition for Review[3] pursuant to Section 3(b)[4], Rule 8, in relation to Section 2(a)(1)[5], Rule 4 of the Revised Rules of the Court of Tax Appeals[6] **(RRCTA)**.

PARTIES TO THE CASE

Petitioner is the Commissioner of the Bureau of Internal Revenue **(BIR)**, the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.[7]

Respondent Indra Verhomal Menghrajani **(respondent/Indra)**, represented by her daughter, Savitri V. Menghrajani **(Savitri)**, is a BIR-registered taxpayer with Taxpayer Identification Number **(TIN)** 202-355-309 with registered business address at No. 497 P. Quirino Avenue corner Zulueta St., Paco, Manila.[8]

FACTS OF THE CASE

On 21 November 2011, respondent received a copy of Letter Notice No. 034-RLF-08-00-00028 dated 15 November 2011[9] **(LN)** from petitioner informing the former of the 100% discrepancy between her value-added tax **(VAT)** returns and the information provided by third-

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3 Filed on 09 October 2020, *Rollo*, pp. 5-23.

4 **SEC. 3.** *Who may appeal; period to file petition.*

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

5 **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;

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

7 Petition for Review, *Rollo*, p. 6.

8 Paragraph (par.) 2, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 892.

9 Exhibit "P-014", id., Volume III, p. 1167.

party sources amounting to ₱4,521,787.99 for calendar year (**CY**) ending 2008.[10]

The president of Indra Garments Manufacturing, Inc. (**IGMI**) thus filed a letter dated 22 November 2011 with the BIR.[11]

Pursuant to the LN, Revenue District Office (**RDO**) No. 34 issued a Notice of Informal Conference[12] (**NIC**) to respondent dated 26 January 2012 which found deficiency income tax (**IT**) and VAT amounting to a total of ₱4,093,065.10.[13] Respondent received the said NIC on 01 February 2012.

Later, respondent wrote letters dated 08 February 2012[14] to RDO No. 34[15] informing its officials that the matters stated in the NIC have already been addressed in the 22 November 2011 letter. Respondent also reiterated that the discrepancy resulted only because the concerned suppliers encoded a wrong TIN or that no TIN was successfully encoded.

On 23 October 2013, BIR Seizure Agent Benedicto Augusto M. Cruz (**Cruz**) went to IGMI's new registered address and tried to serve the Warrant of Distraint and/or Levy (**WDL**) No. 2013-0637[16] on respondent.[17]

Still later, the Revenue Region No. 6 (**RR No. 6**) Collection Division wrote a letter dated 23 October 2013[18] to respondent[19] stating that the collection enforcement "[was] being held in abeyance for clarificatory issues until resolved".

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10 Par. 3, JSFI, Division Docket, Volume II, p. 892.
11 Par. 4, JSFI, id., p. 892.
12 Exhibit "P-019", id., Volume III, p. 1172.
13 Par. 5, JSFI, Division Docket, Volume II, p. 893. The Court notes that in the parties' JSFI, the total amount of deficiency taxes is stated to be ₱4,521,787.99. However, upon perusal of the subject NIC, the total amount stated therein is only ₱4,093,065.10.
14 Exhibits "P-020" to "P-022", id., Volume III, pp. 1173-1175.
15 Par. 6, JSFI, id., Volume II, p. 893.
16 Exhibit "P-29", id., Volume III, p. 1182; Exhibits "R-28" and "R-28-a", BIR Records, p. 72.
17 Par. 7, JSFI, id., Volume II, p. 893.
18 Exhibit "P-30", id. Volume III, p. 1183.
19 Par. 8, JSFI, id., Volume II, p. 893.

Respondent, through Savitri, wrote a letter[20] to RR No. 6 Regional Director (**RD**), marked "received on 24 October 2013"[21], claiming, among others, that they never received the letter sent to them on 09 January 2013. She also stated that she needed proof of the letter's receipt.

In yet another letter dated 25 October 2013[22] to the Chief of Regional Collection Division of RR No. 6[23], on respondent's behalf, Savitri stated that they were informed that the WDL was issued because of the alleged failure to reply or file a protest against Assessment Notice (**AN**) Nos. 34-08-IT-4040[24] and 34-08-VT-4041[25] and Formal Letter of Demand[26] (**FLD**) all dated 09 January 2013. Respondent thus manifested that they did not receive such ANs and FLD and requested for its proof of receipt and registry receipt number.

In another letter dated 30 October 2013[27] to the RD of RR No. 6[28], respondent stated that she was informed that the docket will be forwarded to the legal division. Respondent thus reiterated her request for proof of receipt of the ANs and FLD.

Respondent further wrote letters dated 12 November 2013[29] to RR No. 6[30] following-up her request for the registry receipt number.

On 15 November 2013, through Savitri, respondent received a letter dated 07 November 2013[31] from OIC-RD of RR No. 6[32] informing her that the Preliminary Assessment Notice[33] (**PAN**) and the Final Assessment Notice (**FAN**) were mailed on 12 December 2012 and 09 January 2103 under Registry Receipt Nos. 918054 and 917270, respectively. On the same day, respondent likewise received a letter

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[20] Exhibit "P-31", id. Volume III, p. 1184.
[21] Par. 9, JSFI, id., Volume II, p. 893.
[22] Exhibit "P-32", id., Volume III, p. 1185.
[23] Par. 10, JSFI, id., Volume II, p. 893.
[24] Exhibit "R-12", id., p. 672.
[25] Exhibit "R-13", id., p. 673.
[26] Exhibit "R-14", id., pp. 674-675.
[27] Exhibit "P-33", id., Volume III, p. 1186.
[28] Par. 11, JSFI, id., Volume II, p. 893.
[29] Exhibits "P-34" and "P-35", id., Volume III, pp. 1187-1188.
[30] Par. 12, JSFI, id., Volume II, p. 893.
[31] Exhibit "P-36", id. Volume III, p. 1189.
[32] Par. 13, JSFI, id., Volume II, p. 893.
[33] Exhibit "R-11", id., pp. 670-671.

dated 14 November 2013[34] from RR No. 6's Chief of Collection Division[35] in reply to her 12 November 2013 letter.

Subsequently, respondent once more sent letters dated 18 November 2013[36] to the RD of RR No. 6, Chief of the Regional Collection Division, Head of the Arrears Management Team (**AMT**) Collection Division, and Seizure Agent.[37] In the said letters, respondent informed them that, *per* Certifications[38] obtained from the Office of the Postmaster of the Central Post Office in Manila, both the PAN and FAN were returned to sender on 20 December 2012 and 15 January 2013, respectively. Respondent likewise queried on why the said letters were both addressed to "497 Pres. Quirino cor. Zulueta St., Paco, Manila".

Through a letter dated 26 November 2013[39], the RD of RR No. 6 replied to respondent[40] explaining that *per* BIR records, there is no showing that she officially changed her registration address. As a result, the PAN and FAN were validly issued hence, the WDL should be enforced as a matter of course.

Respondent, again through Savitri, submitted letters dated 02 December 2013[41] to the RD of RR No. 6 and the Chief of Legal Division[42] maintaining that the WDL should be cancelled because the PAN and FAN were never received.

Unrelenting, respondent wrote another letter dated 04 December 2013[43] to the RD of RR No. 6[44], copy furnished the Chiefs of the Legal Division[45] and Regional Collection Division[46], with the subject "Appeal on 2008 case of Indra Verhomal Menghrajani".

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34 Exhibit "P-37", id. Volume III, p. 1190.
35 Par. 14, JSFI, id., Volume II, p. 893.
36 Exhibits "P-40" to "P-43", id., Volume III, pp. 1193-1196.
37 Par. 15, JSFI, id., Volume II, p. 893.
38 Exhibits "P-38" and "P-39", id. Volume III, pp. 1191-1192.
39 Exhibit "P-44", id., p. 1197.
40 Par. 16, JSFI, id., Volume II, p. 893.
41 Exhibits "P-45" and "P-46", id., Volume III, pp. 1198-1204.
42 Par. 17, JSFI, Volume II, p. 894.
43 Exhibit "P-47", id., Volume III, p. 1205.
44 Par. 18, JSFI, Volume II, p. 894.
45 Exhibit "P-48", id., Volume III, pp. 1207-1208.
46 Exhibit "P-49", id., pp. 1209-1210.

In response, the RD of RR No. 6 sent a letter dated 10 December 2013[47] to Savitri asserting that the PAN and FAN were duly issued and served, and the assessment had thus attained finality.[48]

On 12 December 2013, respondent filed with petitioner an Appeal[49] on the RD of RR No. 6's decision dated 10 December 2013. Later, on 17 December 2013, respondent filed with petitioner a supplement[50] to the Appeal.[51]

On 10 January 2016, petitioner promulgated a Decision[52] denying respondent's protest against the FLD and ANs and ordering the latter to pay the amount of ₱4,415,339.44, plus increments that have accrued thereon until full payment. The said Decision further stated that the same constitutes as the Final Decision of their office on the matter.

PROCEEDINGS BEFORE THE THIRD DIVISION

On 24 February 2016, respondent filed the prior Petition for Review[53] praying that petitioner's Decision be reversed and set aside, and for the Court to order petitioner to permanently desist from collecting the subject taxes.

In the Answer[54], petitioner raised the following affirmative defenses, to wit: (1) considering the substantial under-declaration of purchases which resulted in the filing of false or fraudulent return, the BIR had ten (10) years from discovery thereof within which to make an assessment; (2) the PAN and FAN were duly served at respondent's registered address or the address appearing in her tax returns; and, (3) the subject assessment had already become final, executory and demandable due to respondent's failure to timely file an administrative protest thereon.

[47] Exhibit "P-50", id., p. 1211.
[48] Par. 19, JSFI, id., Volume II, p. 894.
[49] Exhibit "P-51", id., Volume III, pp. 1212-1214.
[50] Exhibit "P-201", id., pp. 1367-1370.
[51] Par. 20, JSFI, id. Volume II, p. 894.
[52] Annex "A", Petition for Review, id., Volume I, pp. 46-57.
[53] Id., pp. 10-45.
[54] Id., pp. 315-320.

When trial ensued, respondent presented her daughter, Savitri, Arthur S. Tiu (**Tiu**), President of Pacific Rayon Mfg., Inc. (**Pacific**), Wilbert Tan Kuo (**Kuo**), Plant Manager and Director of Evergreen Textile Printing & Finishing, Inc. (**Evergreen**) and Marissa Sable (**Sable**), Acting Chief of Records of Manila Central Post Office.

On 05 December 2016, Savitri[55] testified that: (1) the BIR's assessments are void and therefore not collectible against respondent; (2) petitioner's Decision dated 10 January 2016 is void and should be reversed and set aside; and, (3) the WDL and other written directives for respondent to pay the deficiency taxes are likewise void.

On 30 January 2017 and 27 February 2017, respondent presented Tiu[56] and Kuo[57], respectively. Tiu and Kuo similarly testified to prove that: (1) respondent did not enter into any transaction with Pacific and Evergreen; and, (2) the assessment for deficiency taxes insofar as it makes reference to the supposed transactions with Pacific and Evergreen are not correct and therefore not collectible against respondent.

On 24 April 2017, respondent presented Sable[58] who testified to prove that respondent did not receive the subject PAN and FAN as both were returned to sender.

Petitioner, on the other hand, presented Revenue Officer (**RO**) Mark T. Rellon (**Rellon**), RO-Reviewer Ronnie Roel Y. Bolledo (**Bolledo**), BIR Seizure Agent RO Cruz, and Benhur C. Nacorda (**Nacorda**), Mailing In-Charge of the Administrative Division of BIR Manila.

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55 Exhibits "P-203" and "P-203-a", Judicial Affidavit of Savitri V. Menghrajani, id., pp. 352-384.

56 Exhibits "P-205" and "P-205-a", Judicial Affidavit of Arthur S. Tiu, id., Volume II, pp. 771-775.

57 Exhibits "P-204" and "P-204-a", Judicial Affidavit of Wilbert Tan Kuo, id., pp. 976-982. The Third Division noted that while the said exhibits were offered as such, the same were actually marked as Exhibits "P-207" and "P-207-a" (see Resolution dated 14 July 2017, id., Volume III, p. 1385).

58 Exhibits "P-209" and "P-209-a", Judicial Affidavit of Marissa Sable, id., Volume III, pp. 1085-1088. The Third Division noted that while the said exhibits were offered as such, the same were actually marked as Exhibits "P-207" and "P-207-a" (see Resolution dated 14 July 2017, id., p. 1385).

On 17 July 2017, petitioner presented RO Rellon[59] to prove that: (1) the audit of respondent was assigned to him by virtue of a Memorandum of Assignment No. RR6-034-111-00239 dated 17 November 2011[60] (**MOA**); and, (2) the detailed results of his audit findings are reflected in his reports, including the Memorandum Report of Investigation[61] and Revenue Officer's Audit Report on IT[62] and VAT.[63]

On 09 October 2017, petitioner presented RO-Reviewer Bolledo[64] to prove that: (1) respondent's 2008 tax case was assigned to him by virtue of an Assignment Slip[65]; (2) after review, he found out that respondent is liable for deficiency IT and VAT in the amounts of ₱3,166,299.21 and ₱1,240,580.41, respectively; and, (3) he prepared and caused the issuance of PAN, FAN and FLD with Details of Discrepancies.

On 05 February 2018, petitioner presented RO Cruz[66] to prove that: (1) respondent's case was assigned to him for enforcement of collection; and, (2) he served the WDL and other BIR communications to respondent.

Finally, on 17 April 2018, petitioner presented Nacorda[67] to prove that: (1) he is a BIR employee designated as Mailing In-Charge of the Administrative Division of BIR Manila; and, (2) based on BIR records, the PAN and FAN were sent by the BIR Manila's Administrative Division, to respondent by registered mail on 12 December 2012[68] and 09 January 2013[69], respectively.

After the trial, the Third Division promulgated the assailed Decision.[70] The dispositive portion of which reads:

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59 Exhibits "R-25", and "R-25-a", Judicial Affidavit of Mark T. Rellon, id., Volume II, pp. 644-648.
60 Exhibit "R-1", id., p. 649.
61 Exhibit "R-5", id., p. 655.
62 Exhibit "R-6", id., p. 657.
63 Exhibit "R-7", id., p. 658.
64 Exhibits "R-26" and "R-26-a", Judicial Affidavit of Ronnie Roel Y. Bolledo, id., pp. 666-668.
65 Exhibit R-10", id., p. 669.
66 Exhibits "R-27" and "R-27-a", Judicial Affidavit of Revenue Officer Benedicto Augusto M. Cruz, id., Volume III, pp. 1392-1395.
67 Exhibits "R-29" and "R-29-a", id., pp. 1403-1406.
68 Exhibits "R-22" and "R-22-a", id., pp. 1427-1428.
69 Exhibits "R-23", "R-23-a", "R-24" and "R-24-a", id., pp. 1429-1431.
70 Supra at note 1.

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> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Consequently, the assessment on the deficiency Income Tax and VAT for the taxable year 2008 under Assessment Notice Nos. 34-08-IT-4040 and 34-08-VT-4041, both dated January 09, 2013, and the Warrant of Distraint and Levy dated October 23, 2013 are **CANCELLED** and **SET ASIDE**.
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> **SO, ORDERED.**
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> ...

In the assailed Decision, the Third Division found that it had jurisdiction over the case as respondent filed its prior petition on 24 February 2016 or within thirty (30) days from the receipt of petitioner's Decision on 26 January 2016 which constituted as the final decision on the matter. The Third Division then ruled that petitioner failed to prove that respondent actually received the PAN and FAN and that the ROs are without authority to conduct the examination on respondent's tax liabilities.

Aggrieved, petitioner filed a Motion for Reconsideration[71] (**MR**) on 17 October 2019, to which respondent filed its Comment[72] on 28 January 2020. However, the Third Division denied the said MR in the assailed Resolution.[73]

<u>PROCEEDINGS BEFORE THE COURT *EN BANC*</u>

Unsatisfied, petitioner filed the instant Petition for Review[74] on 09 October 2020. On 14 December 2020, respondent filed its Comment.[75]

On 14 January 2021, the Court *En Banc* directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for mediation proceedings.[76] However, respondent later

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[71] Division Docket, Volume IV, pp. 1518-1523.
[72] Id., pp. 1529-1532.
[73] Supra at note 2.
[74] Supra at note 3.
[75] *Rollo*, pp. 60-74.
[76] Id., pp. 77-78.

filed a Manifestation[77] where she dismissed the possibility of any amicable settlement and thus requested that the mediation be terminated accordingly. As a result, the case was submitted for decision on 30 June 2021.[78]

ISSUES

Petitioner raises the following grounds in support of the instant petition:

> I.
> WITH ALL DUE RESPECT, THE HONORABLE THIRD DIVISION HAS NO JURISDICTION OVER THE ORIGINAL PETITION. THE ASSESSMENT AGAINST RESPONDENT INDRA VERHOMAL MENGHRAJANI HAD BECOME FINAL, EXECUTORY AND DEMANDABLE;
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> II.
> WHILE MAINTAINING THAT THE HONORABLE THIRD DIVISION HAS NO JURISDICTION OVER THE ORIGINAL PETITION, THE HONORABLE THIRD DIVISION ERRED IN DECLARING THE ASSESSMENT VOID FOR THE ALLEGED FAILURE ON THE PART OF PETITIONER COMMISSIONER OF INTERNAL REVENUE TO PROVE SERVICE THEREOF TO RESPONDENT INDRA VERHOMAL MENGHRAJANI; AND,
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> III.
> WHILE MAINTAINING THAT THE HONORABLE THIRD DIVISION HAS NO JURISDICTION OVER THE ORIGINAL PETITION, THE HONORABLE THIRD DIVISION ERRED IN DECLARING THE ASSESSMENTS VOID FOR THE ALLEGED LACK OF AUTHORITY OF THE REVENUE OFFICERS TO CONDUCT THE AUDIT OF RESPONDENT INDRA VERHOMAL MENGHRAJANI.[79]

Petitioner contends that the FAN, with attached Details of Discrepancies and the corresponding ANs, were duly served upon respondent by registered mail. Since respondent had thirty (30) days from receipt of the FAN within which to file a protest thereto and failed to do so, the assessment against her is now considered final, executory and demandable.

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77 Id., pp. 82-83.
78 Id., pp. 85-86.
79 Id., p. 10.

Citing *Allied Banking Corporation v. Commissioner of Internal Revenue*[80], petitioner asserts that this Court is a court of special jurisdiction and can only take cognizance of matters that are clearly within its jurisdiction. Since there is no disputed assessment in this case as respondent failed to file a protest to the FAN, the Court's Third Division had no jurisdiction over the prior petition.

As regards the issue on the service of PAN and FAN, petitioner avers that the fact of its mailing is duly supported by Registry Receipt Nos. 918054 and 917270 issued by Philippine Postal Corporation as well as the transmittal of the PAN and FAN to the post office for mailing.

Petitioner adds that the BIR is bereft of any information as to respondent's change of address as there is only one address on record to which the subject PAN and FAN were sent.

Petitioner invokes the presumption that when a mail matter is sent by registered mail, it is received in the regular course of mail; and, the facts to be proved to raise this presumption is that the letter is properly addressed with postage prepaid and that it was mailed. In this case, the fact of mailing was supported by registry receipts.

Petitioner also contends that the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[81] (**Metro Star**), which cited the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[82] (**Barcelon**), was invoked erroneously. Petitioner claims that since *Barcelon* was further based on *Republic of the Philippines v. The Court of Appeals, et al.*[83] (**Republic**), which is a collection case and where the CIR is the petitioner, the latter obviously had the initial burden to discharge in view of the taxpayer's denial of receipt thereof. Thus, *Republic* was wrongfully cited in *Barcelon* and now erroneously used.

80 G.R. No. 175097, 05 February 2010.
81 G.R. No. 185371, 08 December 2010.
82 G.R. No. 157064, 07 August 2006.
83 G.R. No. L-38540, 30 April 1987.

Petitioner further maintains that even *Barcelon* instructs that if a party was able to produce the registry return receipt, the same is sufficient to prove actual mailing and raise the presumption of receipt of mail matter. As such, the *onus probandi* had already shifted to respondent.

Petitioner also avers that the Court should not lose sight of the fact that the present case is a civil case where the burden of proof is merely preponderance of evidence. Moreover, technicalities should not prevail.

As regards the issue on the ROs' authority to conduct the audit, petitioner claims that the absence of a Letter of Authority (**LOA**) does not render the assessment null and void. Petitioner emphasizes that since it was the CIR himself or herself who issued the subject LN, there is no need to issue an LOA pursuant to Section 6(A)[84] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. In other words, an LOA is only indispensable when it is the RD who authorizes the examination but not when it is the CIR himself or herself who does so.

Additionally, under Revenue Memorandum Order (**RMO**) No. 42-2003[85], the LN already serves as notice to the taxpayer of the discrepancy in his or her return.

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84 **SECTION 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided*, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further*, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.

...

85 Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Taxes covered by a Letter Notice (LN) issued under the RELIEF System as defined in Revenue Memorandum Order (RMO) No. 30- 2003 and other data matching processes.

Petitioner further notes that the right to due process in administrative proceedings is different from the right of due process in a civil or criminal case as the former merely requires notice and opportunity to be heard. Since respondent was given ample opportunity to respond to the LN and dispute the assessment, the right to due process was not violated.

Lastly, petitioner maintains that in the absence of proof to the contrary, the examiner's assessment should be given full weight and credit as the tax assessments are *prima facie* presumed correct and made in good faith and the taxpayer has the duty to prove otherwise.

On the other hand, respondent maintains that the Court in Division had jurisdiction over the case.

According to respondent, the 10 January 2016 Decision of petitioner denied respondent's appeal and stated therein that the same constitutes as the final decision on the matter. Respondent received the same on 26 January 2016 and thus had 30 days therefrom (or until 25 February 2016) within which to file a petition with the Court in Division. As the prior petition was filed on 24 February 2016, the same was thus timely filed.

Respondent also debunks petitioner's claim that the Court is bereft of jurisdiction (since the assessment had become final, executory and demandable for the alleged failure to file a protest) by citing the case of *Republic of the Philippines v. Leonor de la Rama, et al.*[86] There, it was held that when the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory.

Respondent adds that the presentation of the transmittal letter and registry receipts merely shows that petitioner mailed the PAN and FAN. However, as to the actual receipt thereof, petitioner failed to show that respondent or her authorized representative signed the same (as to prove their due receipt).

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[86] G.R. No. L-21108, 29 November 1966.

Respondent maintains that the Certifications dated 15 November 2013[87] issued by the Office of the Postmaster of the Manila Central Post Office clearly negates petitioner's claim as it even stated that the mails were returned to sender. As such, it becomes indubitable that she, indeed, never received the PAN and FAN.

Respondent likewise contends that assuming for the sake of argument that she had duly received the assessment notices, the fact remains that ROs who conducted the examination was without any LOA but merely armed with an LN.

Respondent cites RMO No. 32-2005[88] stating that "[i]n case the above discrepancies remained unresolved at the end of the [120]-day period, the RO assigned to handle the LN shall recommend the issuance of LOA to replace the LN." Respondent avers that the Supreme Court upheld this procedure in the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* (**Medicard**).[89] Since the LN was merely followed by a MOA[90] naming RO Mark T. Rellon (**Rellon**) to conduct the audit/verification, the assessment is clearly void for lack of authority on the part of the RO.

RULING OF THE COURT *EN BANC*

After a careful consideration of the arguments raised by the parties *vis-à-vis* the pertinent laws, rules and jurisprudence, the Court *En Banc* finds no merit in the instant petition.

Here, petitioner argues in sum that: (1) the Court in Division had no jurisdiction over the prior petition as the assessment has become final, executory and demandable; (2) the presentation of the registry receipt is sufficient to prove actual mailing and raise the presumption of receipt of the mail matter; and, (3) the LN suffices for the ROs to validly conduct the examination and no LOA is needed since the LN was issued by the CIR himself or herself.

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87 Supra at note 38.

88 Prescribing Guidelines and Procedures in Handling Letter Notices for Deployment via the Information Delivery Portal in the Years 2005 Onwards for Audit and Enforcement Purposes.

89 G.R. No. 222743, 05 April 2017.

90 Supra at note 60.

We do not agree.

The reasons for our denial are discussed below, *in seriatim*, starting with the second and third contentions as the same are determinative of whether the first argument is impressed with merit.

RESPONDENT DID NOT RECEIVE THE SUBJECT ASSESSMENT NOTICES.

In this case, petitioner is merely relying on its presentation of the registry receipts in establishing respondent's supposed receipt of the subject PAN and FLD with ANs.

Such reliance is misplaced.

The mere presentation of registry receipts was held to be insufficient to prove receipt of the assessment notices, as ruled in *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[91] **(T Shuttle)**.

> ...
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> As can be gleaned from the above provisions, service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.
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> In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.
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> As ruled by the CTA *En Banc*, the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN. ...
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> ...

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91 G.R. No. 240729, 24 August 2020; Citation omitted.

In the case at bar, respondent has consistently denied receiving the subject assessment notices. As such, the burden is shifted to petitioner (the party favored by the presumption) to establish that respondent actually received the subject PAN and FLD with ANs. However, petitioner still heavily relies on this disputable presumption (that a letter duly directed and mailed is received in the regular course of the mail) and failed to discharge the burden of proving actual receipt.

On the other hand, respondent has amply proven that she did not receive the subject assessment notices, as evidenced by the Certifications[92] obtained from the Central Post Office in Manila stating that the mails containing the foregoing were both returned to sender on 20 December 2012 and 15 January 2013, respectively.

We also do not find merit in petitioner's claim that since this case involves assessment and not collection, the initial burden should be on the taxpayer to disprove the fact of receipt of the assessment notices.

By this time, it is already well-settled that if a taxpayer denies receipt of assessment from the BIR, it becomes incumbent upon the latter to prove by competent evidence that the taxpayer received the notices. This has been the clear declaration of the Supreme Court in *Barcelon, Metro Star Superama,* and later on in the cases of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*[93] and *T Shuttle* which all involve assessment and not collection.

Furthermore, it is also worthy to mention that despite the PAN being returned to sender 20 December 2012, the BIR still mailed the FLD to the same address on 09 January 2013. Worse, after respondent's filing of her Annual Income Tax Return (**ITR**) for CY 2012[94] on 21 March 2013 indicating therein her address as "3rd Floor Panvin Bldg. 1247 Zobel Roxas St., Brgy. 758 Zone 82, Malate, Manila", which petitioner apparently noticed or became aware of as the ensuing WDL[95] issued on 23 October 2013 indicates respondent's address at

92 Supra at note 38.
93 G.R. No. 202695, 29 February 2016.
94 Exhibit "P-11", Division Docket, Volume III, p. 1138.
95 Supra at note 16.

"497 PRES QUIRINO AVE COR ZULUETA ST. PACO MANILA 1007 & or No. 1247 3rd and 4th flr. PANVIN Bldg., Zobel Roxas St.,(near Taal St)" (and was in fact served at the latter address), petitioner still did not attempt to serve the assessment notices on respondent thereat.

With the above, the Court thus finds the ruling in *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[96] equally applicable. There, the Supreme Court held that:

> ...
> **Furthermore, petitioner should have been alerted by the fact that prior to mailing the FAN, petitioner sent to respondent's old address a Preliminary Assessment Notice but it was "returned to sender."** This was testified to by petitioner's Revenue Officer II at its Revenue District Office 39 in Quezon City. **Yet, despite this occurrence, petitioner still insisted in mailing the FAN to respondent's old address.**
>
> **Hence, despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address** as shown by documents replete in its records. As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed.
> ...
>
> **It might not also be amiss to point out that petitioner's issuance of the *First Notice Before Issuance of Warrant of Distraint and Levy* violated respondent's right to due process because no valid notice of assessment was sent to it.** 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.
> ...

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96 G.R. No. 198677, 26 November 2014; Citations omitted, emphasis supplied and italics in the original text.

THE ASSESSMENTS ARE ALSO VOID AS NO LETTER OF AUTHORITY (LOA) WAS ISSUED FOLLOWING THE ISSUANCE OF A LETTER NOTICE (LN).

In herein case, the subject assessment emanated from the CIR's issuance of LN on 15 November 2011. Following such LN is an MOA issued by Petronilo C. Fernandez, as "Authorized Revenue Official/Head, Investigating Office" in favor of RO Rellon and Group Supervisor (**GS**) Manuel B. Hernandez (**Hernandez**) with reference to the said LN. Petitioner thus argues that as the said LN was issued by the CIR himself or herself, there is no need for the issuance of an LOA as the latter only applies if the examination is to be authorized by the RD and not if it is the CIR himself or herself.

We do not agree.

As the said LN was not followed by an LOA but a mere MOA (which is signed by an official who is not authorized to issue an LOA pursuant to existing laws, rules and regulations), the examination must be declared a nullity. Moreover, as clearly stated in *Medicard*, the same conclusion is to be arrived at irrespective of the fact the LN was issued by the CIR himself or herself. The Supreme Court explained therein that:

> ...
> In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.
>
> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.* the Court said that:
>
>> 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>**.

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.[97]

...

[97] Supra at note 89; Citations omitted, emphasis, italics and underscoring in the original text.

This was reiterated in the more recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[98] where the Supreme Court categorically ruled:

> ...
> The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that **the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued**. In that case, We have stated that "**[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner**. Unfortunately, this was not done in this case." **The result of the absence of a LOA is the nullity of the examination and assessment** based on the violation of the taxpayer's right to due process.
> ...

Furthermore, aside from the fact that no LOA was issued to RO Rellon and GS Hernandez following the LN, the Court *En Banc* also noted that another RO participated in the audit of respondent without being authorized to do so through an LOA. Specifically, RO-Reviewer Bolledo prepared and caused the issuance of the assessment notices[99] by virtue of a mere Assignment Slip[100] issued to him.

As early as in 2010 in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[101], the Supreme Court already ruled that:

> ...
> 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>**
> ...

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[98] G.R. No. 242670, 10 May 2021; Citations omitted, italics in the original text and emphasis supplied.

[99] Question and Answer (Q&A) No. 8, Exhibit "R-26", Judicial Affidavit of Ronnie Roel Y. Bolledo, Division Docket, Volume II, p. 667.

[100] Supra at note 65.

[101] G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

Likewise, in the more recent case of *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[102], the Supreme Court further reiterated that only the ROs **actually named** in the LOA are authorized to examine the taxpayer, to wit:

> ...
>
> ... Likewise, the CTA *EB* correctly held that the deficiency tax assessments were invalid due to revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer... In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.
>
> ...

Thus, in addition to reasons discussed above, the assessments should also be declared void due to the fact that RO-Reviewer Bolledo prepared and caused the issuance of the subject assessment notices without being named in an LOA.

VOID ASSESSMENTS COULD NOT ATTAIN FINALITY.

Based on the disquisitions above, the subject assessment should be declared as void for violating respondent's right to due process (by not furnishing the copies of FAN and FLD with ANs, and as the examination was not supported by an LOA). Perforce, the said assessment cannot attain finality, as succinctly held by the Supreme Court in *T Shuttle,* to wit:

> ...
>
> Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves. As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord respondent due process in their issuance, the CIR's argument necessarily fails.[103]
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> ...

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[102] G.R. Nos. 249883-84, 27 January 2020 (Resolution); Citations omitted.

[103] Supra at note 91.

All told, the Court *En Banc* does not find that the Third Division erred in declaring the assessments against respondent void.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 09 October 2020 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 24 September 2019 and Resolution dated 26 June 2020 of the Third Division in CTA Case No. 9269, entitled *Indra Verhomal Menghrajani, represented by daughter, Savitri V. Menghrajani v. Hon. Kim Jacinto-Henares in her capacity as Commissioner of Internal Revenue,* are **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ENJOINED** from proceeding with the collection of the taxes assessed against respondent Indra Verhomal Menghrajani as provided in the Assessment Notice (AN) Nos. 34-08-IT-4040 and 34-08-VT-4041 and Formal Letter of Demand all dated 09 January 2013 representing deficiency income tax and value-added tax for calendar year 2008.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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