



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

SPECIAL FIRST DIVISION

CTA CASE NO. 10695

**EXCEL CONCRETE LOGISTICS
INC.,**

Petitioner,

- versus -

NOTICE OF DECISION

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. ROSE ANN O. TOLENTINO
Bureau of Internal Revenue-Revenue Region No. 7B
25th Floor, Legal Division, The Podium West Tower
ADB Avenue, Ortigas Center
Mandaluyong City

BANIQUED AND BELLO
Suite 803, 8th Floor, Jollibee Centre
San Miguel Avenue, Ortigas Center
1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **August 17, 2026**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **September 1, 2026.**

Atty. Maria Johanna F. Chan-Te
Executive Clerk of Court III

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

SPECIAL FIRST DIVISION

**EXCEL CONCRETE
LOGISTICS, INC.,**

Petitioner,

CTA CASE NO. 10695

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, JJ.

-versus-

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:

AUG 17 2026 11:00 AM

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*¹ filed on December 3, 2021 by petitioner Excel Concrete Logistics, Inc. (**petitioner**), against respondent Commissioner of Internal Revenue (**CIR** or **respondent**), seeking the cancellation of the deficiency tax assessment issued against petitioner for taxable year (**TY**) 2017.

THE PARTIES

Petitioner was a corporation organized and existing under the laws of the Philippines with office address at 1805-A East Tower Exchange Road, Ortigas Center, Barangay San Antonio Pasig City 1605.²

Respondent is the Commissioner of Internal Revenue, duly appointed to perform the duties of his office, including, inter alia, the power to decide disputed assessments subject to the exclusive appellate jurisdiction of this Court pursuant to Section 4 of the National Internal Revenue Code (**NIRC**) of 1997,

¹ Docket – Vol. I, pp. 7-28.

² *Id.* at 264, Exhibit “P-2”.

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as amended, and Section 7 of Republic Act (**RA**) No. 1125. He holds office at Bureau of Internal Revenue (**BIR**) National Office Building, Agham Road, Diliman, Quezon City.³

THE FACTS

On November 21, 2018, petitioner received Letter of Authority No. eLA201600053042 dated October 18, 2018 (**LOA**) from Revenue District Office (**RDO**) No. 43 - Pasig of the BIR authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2017 to December 31, 2017.⁴

Respondent claims that the LOA was initially served upon a certain April Anne Roma (**Roma**) on October 18, 2018.⁵ Thereafter, a copy of the LOA was sent via registered mail on November 8, 2018 to the home address of petitioner's former Chairman and President, Eduardo Sahagun (**Sahagun**). Respondent further alleges that a third service was effected when the LOA was personally served through petitioner's former Head of Tax and Treasury, Shirley Go (**Go**).⁶

Attached to the LOA was a First Request for Presentation of Records dated October 18, 2018 (**First Request**), requiring petitioner to present and submit various documents for examination.⁷

On November 23, 2018, petitioner submitted various documents to the BIR, through a *Letter* dated November 22, 2018.⁸ On the same date, petitioner received a Second and Final Notice for Presentation of Records (**Second Notice**), reiterating the request to present the accounting records listed in the First Request.⁹

On January 28, 2020, the Securities and Exchange Commission (**SEC**) approved petitioner's amended Articles of Incorporation, shortening its corporate term until January 31, 2021.¹⁰


³ Docket – Vol. II, p. 712, Pre-Trial Order (PTO), II.A Stipulation of Facts, par. 1.

⁴ *Id.* at 713, PTO, II, A. Stipulation of Facts, par.2.

⁵ *Id.* at 590, Exhibit “R-11”, Judicial Affidavit of Karla M. Velas dated May 31, 2022, Answer to Question No. 13.

⁶ *Id.* at 805-806, Exhibit “P-7”, Judicial Affidavit of Dennis G. Segovia dated August 16, 2023, Answer to Question No. 35.

⁷ *Id.* at 954, Exhibit “P-6-1”.

⁸ *Id.* at 955, Exhibit “P-6-2”.

⁹ *Id.* at 956, Exhibit “P-6-3”.

¹⁰ *Id.* at 829, Exhibit “P-1-1”.

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A Notice of Discrepancy (**NOD**) dated September 28, 2020 was served on October 1, 2020 via LBC Express at the 7th Floor, Venice Corporate Center, Milano St., Taguig City.¹¹ Petitioner, however, alleges that it did not receive a Notice of Informal Conference (**NIC**),¹² claiming that its address was on the 5th Floor, One Campus Place Building B, Taguig City, Metro Manila, as allegedly indicated in petitioner's 2017 audited financial statements (**AFS**).

On February 4, 2021, petitioner received Preliminary Assessment Notice (**PAN**) dated January 11, 2021 with attached Details of Discrepancies from Regional Director Romulo L. Aguila, Jr. (**RD Aguila**) of BIR Revenue Region No. 7B.¹³

Thereafter, respondent issued a Final Assessment Notice and Formal Letter of Demand (**FAN/FLD**) and served it *via* LBC Express on February 5, 2021.¹⁴ Petitioner alleges that it did not receive the FAN/FLD.¹⁵ Nevertheless, based on the *Affidavit of Service of the FAN/FLD* executed by Revenue Officer (**RO**) Karla M. Velas (**Velas**),¹⁶ the FAN/FLD was served via private courier to petitioner's address at 1805-A East Tower Exchange Road, Ortigas Center, Barangay San Antonio Pasig City and to its address at 5th Floor, One Campus Place Building B, Taguig City.

On November 3, 2021, respondent issued a Warrant of Garnishment (**WOG**) dated November 3, 2021 seeking to seize, distrain and garnish the savings account, current account, time deposits, stock, bonds, and such other property of petitioner to cover the alleged tax obligation due from petitioner in the amount of ₱16,165,527.22.¹⁷ Petitioner alleges that it was informed by the Legal Division of the Security Bank and Trust Company (**Security Bank**) of the latter's receipt of the WOG.¹⁸



¹¹ *Id.* at 591, Judicial Affidavit of Karla M. Velas dated May 31, 2022, Answer to Question No. 22.

¹² Docket – Vol. III, p. 1324, Memorandum for Petitioner, par. 14.

¹³ Docket – Vol. II, p. 713, PTO, II. A. Stipulation of Facts, par. 3; Exhibit “P-6-4”.

¹⁴ *Id.* at 592-593, Exhibit “R-11”, Judicial Affidavit of Karla M. Velas dated May 31, 2022, Answer to Question No. 34; TSN, Karla M. Velas, January 16, 2025, pp. 17-19.

¹⁵ Docket – Vol. III, p. 1324, Memorandum for Petitioner, par. 14.

¹⁶ BIR Records, p. 280.

¹⁷ Docket – Vol. II, pp. 713, PTO, II.A Stipulation of Facts, par. 4.

¹⁸ *Id.* at 807, Exhibit “P-7”, Judicial Affidavit of Dennis G. Segovia dated August 16, 2023, Answer to Question No. 43.

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PROCEEDINGS BEFORE THE COURT

On December 3, 2021, petitioner filed the instant *Petition for Review*.¹⁹

On February 17, 2022, respondent filed a *Motion to Admit attached Motion for Extension to File Answer*.²⁰ In a *Resolution* dated March 1, 2022,²¹ respondent was granted an extension of time to file his Answer and directed to transmit the BIR records to the Court. In compliance therewith, respondent transmitted the BIR records on March 23, 2022, consisting of one folder containing 479 pages.²²

On March 29, 2022, petitioner filed a *Motion to Admit Attached Judicial Affidavit of Ms. Deeryn Ultra with Manifestation*.²³

On March 31, 2022, respondent filed his *Answer*.²⁴

In a *Resolution* dated April 12, 2022, the Court granted petitioner's *Motion to Admit Attached Judicial Affidavit of Ms. Deeryn Ultra with Manifestation*, admitted the Judicial Affidavit of Ms. Deeryn Ultra, noted respondent's *Answer*,²⁵ and set the Pre-Trial Conference on June 6, 2022.²⁶

On May 27, 2022, petitioner filed a *Motion to Defer Pre-Trial Conference*, in view of its pending Offer of Compromise with the BIR.²⁷

On May 31, 2022, the *Pre-Trial Brief for Petitioner* was filed.²⁸ Respondent thereafter filed his *Pre-Trial Brief* on June 1, 2022.²⁹

Prior to pre-trial, petitioner informed the Court that it had submitted an Offer of Compromise to the BIR and moved for the deferral of the proceedings.³⁰ The parties thereafter filed several manifestations and compliance reports updating the Court on

¹⁹ *Id.* at 7-28.

²⁰ *Id.* at 133-135.

²¹ *Id.* at 143.

²² *Id.* at 145-146, *Compliance*.

²³ *Id.* at 147-153.

²⁴ Docket – Vol. II, pp. 454-466.

²⁵ *Id.* at 503-504.

²⁶ *Id.* at 500-501, *Notice of Pre-Trial Conference*.

²⁷ *Id.* at 508-511.

²⁸ *Id.* at 573-581.

²⁹ *Id.* at 583-586.

³⁰ *Id.* at 508-511, *Motion to Defer Pre-Trial Conference*.



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the status of the proposed compromise settlement. Respondent was allowed to withdraw the BIR records for purposes related to the compromise proceedings, subject to their return.³¹

Eventually, the Court proceeded with the pre-trial.

On November 17, 2022, the Pre-Trial Conference was held.

The *Pre-Trial Order* was promulgated on January 31, 2023.³²

On March 16, 2023, both parties filed their *Joint Manifestation with Motion to Refer the Case to Mediation*.³³

On March 29, 2023, the parties' *Joint Manifestation with Motion to Refer the Case to Mediation* was granted, and the case was referred to the PMC-CTA for mediation on May 9, 2023.³⁴

On November 14, 2023, petitioner presented its witness, Mr. Dennis G. Segovia, who testified by way of his judicial affidavit.³⁵

On December 4, 2023, petitioner filed its *Formal Offer of Evidence with Motion to Set Commissioner's Hearing*.³⁶

In the meantime, on December 18, 2023, the *Mediator's Report* was filed by the PMC-CTA,³⁷ stating that no settlement was reached between the parties. On January 15, 2024, the Court noted the Mediator's Report.³⁸

On April 15, 2024, petitioner filed its *Supplemental Formal Offer of Evidence with Manifestation*.³⁹ Although respondent was directed to file a comment on April 22, 2024,⁴⁰ a Records Verification dated May 6, 2024 revealed that he failed to do so.⁴¹

³¹ *Id.* at 649-650, *Resolution* dated June 7, 2022; 651-652, *Motion to Withdraw BIR Records*; 653-654, *Manifestation*; 655-656, *Compliance (Re. Resolution dated June 7, 2022)*; 659-660, *Resolution* dated July 4, 2022; 662, *Resolution* dated July 19, 2022; 663-665, *Motion to Extend the Return of the BIR Records*; 667-668, *Resolution* dated August 16, 2022; 669-671, *Compliance (Re. Resolution dated August 16, 2022)*; 673-675, *Manifestation as to the Order dated July 19, 2022*; 678-679, *Resolution* dated October 17, 2022; 680-682, *Motion to Extend the Return of the BIR Records and Update on the Status of the Compromise Settlement as to the Order dated August 16, 2022*; 685, *Resolution* dated November 7, 2022.

³² *Id.* at 711-718.

³³ *Id.* at 725-727.

³⁴ *Id.* at 733-734.

³⁵ Docket – Vol. III, unpagged., *Order*.

³⁶ *Id.* at 1039-1046.

³⁷ *Id.* at 1162.

³⁸ *Id.* at 1170.

³⁹ *Id.* at 1180-1182.

⁴⁰ *Id.* at 1260.

⁴¹ *Id.* at 1262.

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In a Resolution dated May 30, 2024, the Court resolved petitioner's *Formal Offer of Evidence* and *Supplemental Formal Offer of Evidence* and admitted the exhibits offered therein.⁴²

On January 16, 2025, respondent presented his witness, Group Supervisor Velas, who testified by way of her judicial affidavit. Respondent also presented RO Mery Ann San Juan Carnaje, who testified by way of her judicial affidavit.⁴³

On January 21, 2025, Respondent's *Formal Offer of Evidence* was filed,⁴⁴ against which petitioner filed its *Comment (on Respondent's Formal Offer of Evidence dated January 20, 2025)* on January 28, 2025.⁴⁵ On February 10, 2025, respondent filed his *Comment with Motion to Set for a Commissioner's Hearing (on Petitioner's Comment dated January 27, 2025)*.⁴⁶

On May 14, 2025, the Court resolved respondent's *Formal Offer of Evidence*. Accordingly, the Court admitted respondent's exhibits. His *Motion to Set for a Commissioner's Hearing* was considered moot. In the same *Resolution*, both parties were granted a non-extendible period of 30 days to file their respective memoranda.⁴⁷

Thus, on June 25, 2025, the *Memorandum for Petitioner* was filed.⁴⁸ A Records Verification dated July 4, 2025 revealed that respondent failed to file his memorandum.⁴⁹

Thereafter, the case was deemed submitted for decision on August 28, 2025.⁵⁰

THE ISSUES

In the *Pre-Trial Order*, the parties stipulated the following issues for resolution, *viz.*:⁵¹

1. Whether or not petitioner is liable for the alleged deficiency income tax the amount of P14,686,526.23, expanded

⁴² Docket – Vol. III, pp. 1269-1270.

⁴³ *Id.* at 1288-1289, *Order*.

⁴⁴ *Id.* at 1291-1297.

⁴⁵ *Id.* at 1299-1303.

⁴⁶ *Id.* at 1309-1311.

⁴⁷ *Id.* at 1317-1320.

⁴⁸ *Id.* at 1321-1357.

⁴⁹ *Id.* at 1365.

⁵⁰ *Id.* at 1366.

⁵¹ Docket – Vol. II, p.713.



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withholding tax the amount of P1,397,921.99, withholding tax on compensation the amount of P31,079.00, and penalties the amount of P50,000.00, or in the aggregate amount of P16,165,527.22 for taxable year 2017.

2. Whether or not the Warrant of Garnishment issued against petitioner is valid.
3. Whether or not the period to assess petitioner internal revenue taxes for taxable year 2017 has already prescribed; and
4. Whether or not the Honorable Court has jurisdiction over this case.

PETITIONER'S ARGUMENTS

In its *Petition for Review and Memorandum*, petitioner argues that the LOA was improperly served, rendering the assessment void. Petitioner contends that Roma was not authorized to receive the LOA on its behalf and that the substituted service upon Sahagun was improper because there was no showing that personal service was impracticable.

Petitioner likewise argues that the NIC and the FAN/FLD were improperly served, thereby rendering the assessment void. It claims that the NIC was sent to the wrong address and that respondent's evidence, consisting merely of an LBC tracking receipt number, is insufficient to establish proper service of the NIC. Petitioner also denies receipt of the FAN/FLD and argues that it becomes incumbent upon respondent to prove that petitioner actually received the FAN/FLD.

Petitioner also contends that respondent's right to assess internal revenue taxes for TY 2017 has already prescribed. It argues that it only came to know about the FAN/FLD covering deficiency income tax, EWT, and WTC for TY 2017 only when it received the WOG on November 3, 2021, or beyond the three-year period prescribed by law for the assessment and collection of taxes.

RESPONDENT'S ARGUMENTS

In his *Answer*, respondent contends that the Court has no jurisdiction over undisputed assessments. According to respondent, the assessment has already become final,



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executory, and demandable because no protest was filed by the petitioner against the FAN/FLD.

Respondent also states that petitioner is estopped from questioning the finality of the assessment because it “in fact recognized the finality and executory [sic] of the said assessment through their application and offer of compromise.” Respondent theorizes that availing itself of a compromise settlement constitutes adherence, recognition, and acceptance of its tax liabilities.

Respondent also argues that his right to assess and collect has not prescribed. He asserts that petitioner transferred from its registered business address without sufficiently notifying the BIR and that such circumstance constitutes a ground for the suspension of the running of the statute of limitations.

Respondent further argues that petitioner was in bad faith in claiming that it has not received the FAN/FLD. Respondent alleges that petitioner “intentionally and in bad faith omitted to notify the BIR that it had changed its business address knowing fully well that it was under audit investigation.” Respondent posits that “the [RO]’s act of serving the assessment on petitioner’s registered address enjoys the presumption of correctness and regularity.”

THE COURT’S RULING

The instant *Petition for Review* is impressed with merit.

The Court has jurisdiction over the instant case.

Before delving into the merits, the Court must first determine whether it has jurisdiction to take cognizance of the present case.

Section 7(a)(1) and (2) of RA No. 1125,⁵² as amended by RA No. 9282,⁵³ vest the Court of Tax Appeals (**CTA**) with exclusive appellate jurisdiction over decisions and inactions of the CIR

⁵² An Act Creating the Court of Tax Appeals, June 16, 1954.

⁵³ An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

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involving disputed assessments and "other matters" arising under the NIRC and other laws administered by the BIR, to wit:

SEC. 7. Jurisdiction. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the [CIR] 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;

(2) Inaction by the [CIR] 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Emphasis supplied)

Likewise, Section 11 of RA No. 1125, as amended by RA No. 9282, authorizes any party adversely affected by a decision, ruling, or inaction of the CIR to file an appeal with the CTA within thirty (30) days from receipt thereof, *viz.*:

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling, or inaction of the [CIR]...may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ... (Emphasis supplied)

The foregoing provisions are likewise provided under Section 3(a)(1) and (2), Rule 4,⁵⁴ and Section 3(a), Rule 8⁵⁵ of the Revised Rules of the CTA.

⁵⁴ Section 3. Cases within the jurisdiction of the Court in Division. — The Court in Division shall exercise:

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

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

(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

⁵⁵ Sec. 3. Who may appeal; period to file petition. —

(a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional

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Respondent is correct in asserting that the CTA's appellate jurisdiction generally extends only to disputed assessments. As a rule, an assessment that is not timely protested becomes final, executory, and demandable, and may no longer be reviewed by the Court. In such cases, the Court is generally left with no recourse but to dismiss the petition.

The rule, however, is not absolute.

In *Ortiz Memorial Chapel Inc. v. Commissioner of Internal Revenue*,⁵⁶ the Supreme Court held that while a tax assessment ordinarily becomes final, executory, and demandable upon a taxpayer's failure to file a protest within the prescribed period, an exception exists where the assessment is void *ab initio* for violation of due process. A void assessment produces no legal effect and, being a nullity, can never attain finality. Consequently, it may be challenged at any time notwithstanding the taxpayer's failure to file an administrative protest. The Supreme Court explained:

The general rule is that a tax assessment becomes final, executory, and demandable if the taxpayer fails to file a protest within the reglementary period. Once final, the assessment attains the character of a judgment that is final, immutable and enforceable. Thus, the CTA can no longer exercise jurisdiction because there is no "disputed assessment" to speak of. The CTA, being a court of limited jurisdiction, can only hear cases and matters that are specifically and exclusively granted to it by law. Accordingly, it is want of jurisdiction over final and executory assessments.

This principle, however, is not absolute. When the assessment is void *ab initio* for want of due process, it produces no legal effect and may be assailed at any time, even if no protest was filed. A void assessment, being a nullity, cannot attain finality.

This exception has long been recognized in the Court's jurisprudence. As correctly observed in the Dissenting Opinion, the Court has set aside tax assessments despite the taxpayer's failure to comply with protest requirements whenever the defect went into the very validity of the assessment itself.

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Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

⁵⁶ G.R. No. 278483, December 3, 2025 [Per J. Singh, Third Division].

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Thus, the CTA may take cognizance of a petition involving an assessment that would otherwise be final if the challenge goes into the very validity of the assessment itself, as in the present case.

Apart from disputed assessments, the Court likewise exercises jurisdiction over "other matters arising under the NIRC."

The phrase "other matters" has been interpreted to include, among others, the review of the CIR's authority to compromise tax liabilities,⁵⁷ the determination of the issue of prescription of the government's right to assess or collect taxes,⁵⁸ and **the adjudication of the validity of a Warrant of Distraint and/or Levy (WDL).**⁵⁹

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue (Philippine Journalists)*,⁶⁰ the Supreme Court ruled that the CTA's jurisdiction is not limited to the CIR's decisions on disputed assessments and tax refunds, as the *second part* of the provision covers other cases arising from the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the WDL issued by the BIR is valid.

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands (BPI)*,⁶¹ the Supreme Court declared that the CTA has jurisdiction to determine the propriety of a WDL, as the law expressly vests the CTA with authority to take cognizance of "other matters" arising from the NIRC.

More recently, in *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*,⁶² the Supreme Court echoed the CTA's jurisdiction to determine the validity of the WDL, *viz.*:

As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, the

⁵⁷ *Philippine National Oil Company v. Court of Appeals*, G.R. Nos. 109976 & 112800, April 26, 2005 [Per J. Chico-Nazario, *En Banc*].

⁵⁸ *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022 [Per J. Caguioa, First Division]; *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010 [Per J. Leonardo-De Castro, First Division].

⁵⁹ *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021 [Per J. Hernando, Third Division]; *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004 [Per J. Ynares Santiago, First Division].

⁶⁰ G.R. No. 162852, December 16, 2004 [Per J. Ynares Santiago, First Division].

⁶¹ G.R. No. 227049, September 16, 2020 [Per J. Inting, Second Division].

⁶² G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division].

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exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or 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 BIR.** The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.** (Emphasis supplied, citations omitted)

The same principle applies in the present case.

In the instant case, respondent issued a WOG dated November 3, 2021, to enforce the collection of petitioner's alleged deficiency tax liability amounting to ₱16,165,527.22.⁶³ Petitioner thereafter filed the present *Petition for Review* on December 3, 2021, or within 30 days from the issuance of the WOG.⁶⁴

Thus, the Court has jurisdiction over the present case.

An application for compromise is not an admission of tax liability.

In his *Answer*, respondent argues that petitioner is estopped from questioning the assessment's finality because it allegedly recognized its finality by filing an application for compromise settlement. Respondent theorizes that petitioner's availment of the compromise settlement is tantamount to its recognition and acceptance of the assessed tax liabilities.

The contention is devoid of legal basis.

Section 204(A) of the NIRC of 1997, as amended, authorizes the Commissioner to compromise the payment of internal revenue taxes when **(1) there exists a reasonable doubt as to the validity of the claim against the taxpayer, or (2) the taxpayer clearly demonstrates financial incapacity to pay the assessed tax.**⁶⁵

⁶³ Docket – Vol. II, pp. 713, II.A. Stipulation of Facts, par. 4.

⁶⁴ Docket – Vol. I, pp. 7-28.

⁶⁵ SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may –

(A) Compromise the payment of any internal revenue tax, when:

(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

The compromise settlement of any tax liability shall be subject to the following minimum amounts:

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Nothing in Section 204(A) requires an admission of tax liability as a condition for seeking a compromise settlement. Neither does the provision state, expressly or impliedly, that the mere filing of an offer to compromise constitutes an admission of liability or a waiver of the taxpayer's right to challenge the assessment. On the contrary, one of the very statutory grounds authorizing a compromise is the existence of **reasonable doubt as to the validity of the government's claim**. This ground necessarily contemplates a situation where the taxpayer disputes the assessment and maintains that it is legally or factually erroneous.

To construe the filing of an application for compromise as an admission of liability would effectively nullify the first ground expressly recognized by Congress. A taxpayer who genuinely believes that an assessment is invalid would be forced to concede liability before being allowed to invoke a statutory remedy specifically intended for cases where the validity of the assessment itself is doubtful. Such an interpretation is contrary to both the text and the evident purpose of Section 204(A).

The administrative regulations implementing Section 204(A) reinforce this interpretation. Revenue Regulations (**RR**) No. 30-2002,⁶⁶ as amended, likewise contain no provision treating an application for compromise as an admission of liability or a waiver of the taxpayer's remedies.

Indeed, a compromise, by its very nature, is simply a means of avoiding or terminating a dispute through mutual concessions. It is not, in itself, an admission that the adverse party's claim is correct. Otherwise, taxpayers would be discouraged from resorting to compromise settlements, thereby defeating the legislative policy of encouraging the amicable resolution of tax controversies.

Petitioner's *Supplemental Letter to Application for Compromise for Taxable Year Ended December 31, 2017*,⁶⁷ directly belies respondent's position. In said letter, petitioner expressly stated that the proposed compromise should not be construed as an admission of the validity of the assessment and

For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and

For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

⁶⁶ SUBJECT: Revenue Regulations Implementing Sections 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001, December 16, 2002.

⁶⁷ Docket – Vol. I, pp. 396-413, Exhibit “P-6-7”.

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that it did not waive its right to contest either the assessment or the proceedings leading to its issuance, *viz.*:

We respectfully submit that the alleged discrepancies as stated in the PAN lacks factual and legal basis and is patently unfair, unjust, inequitable, and excessively punitive.

Nevertheless, the Company proposes a compromise settlement of the alleged 2017 deficiency assessment if only to avoid incurring additional unnecessary costs attendant to contesting the assessments in the administrative and judicial levels.

This application for compromise settlement of the alleged income tax, EWT, and WTC assessments issued against the Company for the year 2017 should not in any way be construed as an admission of the propriety of the assessments. By this application for compromise, the Company does not waive its right to contest the deficiency assessment and the proceedings leading to its issuance.

The doctrine of estoppel finds no application in this case. Petitioner's application for compromise neither constituted an admission that the assessment was valid nor an acknowledgment that it had already become final, executory, and demandable. On the contrary, petitioner expressly disputed the factual and legal bases of the assessment and unequivocally reserved its right to challenge both the assessment and the proceedings leading to its issuance. Moreover, respondent failed to establish the essential elements of estoppel, particularly any clear representation by petitioner that it accepted the validity or finality of the assessment and any corresponding reliance thereon by respondent.

In fine, an application for compromise does not, by itself, constitute an admission of tax liability, an acknowledgment of the finality of an assessment, or a waiver of the taxpayer's right to challenge the assessment absent a clear and unequivocal manifestation of such intent.

Accordingly, the Court shall proceed to determine the substantive issues raised in the *Petition for Review*.

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Having acknowledged the proper service of the LOA, petitioner cannot now assail the validity of its service.

In its *Petition for Review and Memorandum*, petitioner argues that the LOA was improperly served, thereby rendering the assessment void. Petitioner maintains that Roma was not authorized to receive the LOA on its behalf and that the service made upon Sahagun was likewise defective because there was no showing that personal service was impracticable.

The argument is unavailing.

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers the RO to examine the books of accounts and other accounting records of a taxpayer for the purpose of determining and collecting the correct amount of tax⁶⁸ or recommending the assessment of any deficiency tax due.⁶⁹ The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed tax returns is a power that statutorily belongs only to the CIR or his duly authorized representative.⁷⁰

Accordingly, there must be a grant of authority before any RO can conduct an examination or assessment.⁷¹ In the absence of such authority, the assessment or examination is a nullity.⁷² Indeed, the issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality.⁷³

In the instant case, records show that the LOA was initially served upon Roma on October 18, 2018.⁷⁴ This was followed by service through registered mail upon Sahagun at his home address on November 8, 2018. Thereafter, the LOA was personally served through Go, petitioner's former Head of Tax and Treasury, on November 21, 2018.⁷⁵

⁶⁸ *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

⁶⁹ NIRC of 1997, as amended, Sec. 13.

⁷⁰ *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

⁷¹ *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Docket – Vol. II, p. 590, Exhibit “R-11”, Judicial Affidavit of Karla M. Velas dated May 31, 2022, Answer to Question No. 13.

⁷⁵ *Id.* at 805-806, Judicial Affidavit of Dennis G. Segovia dated August 16, 2023, Answer to Question No. 35.

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Significantly, petitioner does not dispute the service of the LOA through Go on November 21, 2018. In fact, petitioner expressly maintains that **proper service occurred only on November 21, 2018, through Go.**⁷⁶ Thus, even if the prior service of the LOA upon Roma and Sahagun were defective or ineffective, petitioner nevertheless admits that the LOA was eventually and properly served through Go on November 21, 2018. This is evident in petitioner's Letter dated November 22, 2018, signed by a certain Minnette Anne A. Hamtig, where petitioner acknowledged receipt of the LOA and submitted documents to the BIR.⁷⁷

Given such admission, petitioner's challenge does not concern the complete absence of service of the LOA. Rather, it concerns only the alleged defects attending the earlier attempts at service. These alleged defects, however, cannot nullify the LOA where petitioner itself acknowledges that the same was subsequently and properly served. At most, petitioner's position merely establishes the date on which valid service was effected.

Moreover, after the acknowledged service of the LOA through Go, petitioner participated in the audit investigation and responded to the assessment proceedings. It was only in these judicial proceedings that petitioner sought to invalidate the assessment by questioning the earlier attempts to serve the LOA. Such belated challenge cannot prevail where petitioner itself recognizes that the LOA was eventually served upon its authorized representative.

Accordingly, the Court finds no basis to invalidate the assessment on the ground of improper service of the LOA.

The improper service of the NOD and respondent's failure to prove valid service of the FAN/FLD render the assessment void.

Petitioner contends that the NOD was improperly served, thereby rendering the assessment void. According to petitioner, the NOD was sent to an incorrect address, and respondent's evidence, consisting merely of an LBC tracking receipt, is

⁷⁶ Docket – Vol. III, pp. 1321-1357, Memorandum for Petitioner, par. 54.

⁷⁷ Exhibit "P-6-2", BIR Records, p. 10.



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insufficient to prove valid service thereof. Petitioner timely raised this issue in its *Supplemental Offer for Compromise*.⁷⁸

Section 3.1.1⁷⁹ of RR No. 12-1999⁸⁰ originally required the issuance of a Notice of Informal Conference as part of the due process requirements governing deficiency tax assessments. Although RR No. 18-2013⁸¹ temporarily removed this requirement,⁸² it was reinstated by RR No. 7-2018, which took effect on **February 16, 2018**.⁸³

Section 2 of RR No. 7-2018 provides:

SEC. 2. *Amendment.* — Section 3 of RR 12-99, as amended by RR No. 13-18, is hereby amended by adding Section 3.1.1 providing for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. The pertinent provisions of Section 3 of RR 12-99 shall now read as follows:

“SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

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

3.1.1 *Notice for Informal Conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said

⁷⁸ Docket – Vol. I, pp. 396-413, Exhibit “P-6-7”.

⁷⁹ SEC.3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

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

3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of “Informal Conference,” in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

⁸⁰ 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, September 6, 1999.

⁸¹ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

⁸² SEC. 2. *Amendment.* — Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities.

⁸³ Fifteen (15) days after its publication in Manila Bulletin on February 1, 2018.

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Officer's submitted report of investigation, **the taxpayer shall be informed, in writing**, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case.** (Emphasis supplied)

The reinstated provision mandates that the taxpayer be informed in writing of any discrepancies discovered during the audit and be afforded an opportunity to present its side before the issuance of a PAN. The use of the word "**shall**" in subsection 3.1.1 underscores the mandatory character of the requirement. Consequently, compliance with the NIC requirement, later replaced by the NOD under RR No. 22-2020,⁸⁴ forms an integral part of the taxpayer's right to due process during assessment proceedings.

Thus, at the time relevant to this case, the issuance and valid service of an NOD were mandatory.

In the instant case, respondent sent the NOD on October 1, 2020 through LBC Express to **7th Floor, Venice Corporate Center, Milano St., Taguig City.**⁸⁵ Petitioner, however, denies having received the NOD,⁸⁶ asserting that its address reflected in its 2017 Audited Financial Statements was **5th Floor, One Campus Place Building B, Taguig City**, Metro Manila, while its BIR Certificate of Registration⁸⁷ and tax returns⁸⁸ indicate its registered address as **1805-A East Tower Exchange Road, Ortigas Center, Barangay San Antonio, Pasig City.**⁸⁹

Respondent offered no explanation as to why the NOD was sent to **7th Floor, Venice Corporate Center, Milano St., Taguig City**, instead of petitioner's known office address at 5th Floor, One Campus Place Building B, Taguig City.

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⁸⁴ SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-1999, as Amended by Revenue Regulations No. 18-2013 and Revenue Regulations No. 7-2018, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

⁸⁵ Docket – Vol. II, p. 591, Exhibit "R-11", Judicial Affidavit of Karla M. Velas dated May 31, 2022, Answer to Question No. 22.

⁸⁶ Docket – Vol. III, p. 1324, Memorandum for Petitioner, par. 14.

⁸⁷ Docket – Vol. I, p. 264, Exhibit "P-2".

⁸⁸ Docket – Vol. III, p. 1076-1083, Exhibit "P-3"; 1085-1119, Exhibits "P-4" to "P-4-11"; 1120-1155, Exhibits "P-5" to "P-5-11."

⁸⁹ Docket – Vol. I, p. 264, Exhibit "P-2".

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To be sure, respondent presented a Certification dated October 30, 2018 stating that petitioner had already vacated its registered address in Pasig City.⁹⁰ However, a careful examination of the BIR records and the case docket reveals no showing that petitioner ever represented that its business address was **7th Floor, Venice Corporate Center, Milano St., Taguig City**.

Respondent attributes bad faith to petitioner for allegedly failing to update its registered address with the BIR. Even assuming this to be true, such omission does not justify service of the NOD at an address that was *neither* petitioner's registered address nor shown to be its known business address.

Accordingly, the Court finds that respondent failed to establish that the NOD was served at either petitioner's registered address or any known address properly attributable to petitioner. The NOD, therefore, cannot be considered validly served.

The defect in the service of the NOD is compounded by respondent's failure to establish valid service of the FAN/FLD.

Records show that the FAN/FLD was served through private courier at **5F One Campus Place, Building B, Taguig City**, as reflected in the Report on Service by Mail/Courier.⁹¹ Although petitioner does not dispute the correctness of this address, it categorically denies having received the FAN/FLD.

It is settled that where receipt of a notice is disputed, *the burden of proving notice rests upon the party asserting its existence*.⁹² As the Supreme Court held in *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*:⁹³

If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the onus probandi has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion,

⁹⁰ BIR Records, p. 4, Exhibit "R-10".

⁹¹ *Id.* at 279.

⁹² *Alburo v. People*, G.R. No. 196289, August 15, 2016 [Per J. Peralta, Third Division].

⁹³ G.R. No. 202695, February 29, 2016 [Per J. Peralta, Third Division].

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the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee. (Emphasis supplied)

The Supreme Court has consistently held that while a mailed letter (or in this case, a notice sent *via* a private courier) is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.⁹⁴

Respondent failed to discharge this burden.

Here, respondent's witness, RO Velas merely identified the Affidavit of Service of the FAN/FLD and the Memorandum of Report. Significantly, her testimony **did not establish who received the FAN/FLD, or whether the recipient was authorized to receive notices on behalf of petitioner.**⁹⁵

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⁹⁴ *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006 [Per J. Chico-Nazario, First Division].

⁹⁵ Docket – Vol. II, pp. 594-595, Exhibit “R-11”, Judicial Affidavit of Karla M. Velas dated May 31, 2022:
36. Q: I am showing you the Formal Letter of Demand issued on February 05, 2021, Assessment Notices for IT, EWT, WC and CP marked as Exhibit “R-7, R-7-A, R-7-B, R-7-C, and R-7-D”, respectively. What is the relation of these documents to what you have just mentioned?
A: They are the same Formal Letter of Demand, Assessment Notices and envelope.

37. Q: What happened next, if any?

A: On February 05, 2021, I executed an Affidavit of Service of the Formal Letter of Demand and Assessment Notices for IT, EWT, WC and CP. It is stated there that the Formal Letter of Demand and Assessment Notices for IT, EWT, WC and CP were constructively served to Petitioner through courier.

38. Q: If I show you the Affidavit of Service of the Formal Letter of Demand and Assessment Notices for IT, EWT, WC and CP, would you be able to identify it?

A: Yes.

39. Q: I am showing you Affidavit of Service of the Formal Letter of Demand and Assessment Notices for IT, EWT, WC and CP executed on February 05, 2021 marked as Exhibit “R-7-E”. What is the relation of this document to what you have just mentioned?

A: It is the same Affidavit of Service of the Formal Letter of Demand and Assessment Notices for IT, EWT, WC and CP.

40. Q: What happened next, if any?

A: A Memorandum of Report was issued on February 05, 2021, which was relative to Petitioner's Formal Letter of Demand stating therein that the Formal Letter of Demand was sent through mail because the Petitioner had already transferred its registered business address but failed to notify the Regional District Office having jurisdiction thereof. It also stated therein the new unregistered business address of Petitioner.

41. Q: If I show you the Memorandum of Report issued on February 05, 2021, would you be able to identify it?

A: Yes.

42. Q: I am showing you a Memorandum of Report issued on February 05, 2021 marked as Exhibit “R-7-F”. What is the relation of this document to what you have just mentioned?

A: It is the same Memorandum of Report issued on February 05, 2021.

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More importantly, during cross-examination, RO Velas admitted that the only document attached to prove service of the FAN/FLD was the LBC tracking receipt.⁹⁶

Thus, aside from proof of mailing, respondent presented no competent evidence showing actual receipt of the FAN/FLD by petitioner.

Accordingly, the Court finds that respondent failed to prove that the FAN/FLD was validly served upon, and received by, petitioner.

All told, the NOD was not shown to have been validly served upon petitioner. As a result, petitioner was deprived of the opportunity to address and explain the discrepancies allegedly discovered by respondent before the issuance of the PAN. Compounding this defect, respondent likewise failed to prove valid service of the FAN/FLD. Consequently, petitioner was never properly informed of the factual and legal bases of the assessment, nor was it afforded the opportunity to administratively challenge the same.

These are not mere procedural lapses. The issuance and valid service of the NOD and FAN/FLD form part of the due process requirements governing tax assessments. A taxpayer is entitled to due process at every stage of the assessment proceedings. Respondent's failure to comply with these mandatory requirements rendered the subject assessment void and incapable of producing any legal effect. Accordingly, the assessment cannot serve as the basis for the collection remedies subsequently undertaken by respondent.

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⁹⁶ TSN, Karla M. Velas, January 16, 2025, p. 19:

ATTY. DOMINGO:

Q. And, that you served the FLD and FAN via LBC and not personal service?

MS. VELAS:

A. Yes.

ATTY. DOMINGO:

Q. And, lastly, Ms. Witness, do you confirm that in your Judicial Affidavit, the only document attached to prove that the FLD and FAN were served to petitioner is the tracking number receipt?

MS. VELAS:

A. Yes. (Emphasis supplied)

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The FAN/FLD is likewise void for failure to indicate a definite due date for payment.

Even assuming that the FAN/FLD was properly served, the assessment remains void for another reason: **it fails to indicate the due date.**

Section 228 of the NIRC of 1997, as amended,⁹⁷ mandates that the taxpayer be informed in writing of the facts and the law upon which the assessment is based; otherwise, the assessment is void.⁹⁸ This requirement is mandatory, not merely directory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.⁹⁹ Moreover, it must be emphasized that failure to comply with Section 228 renders the assessment void and finds no validation in any provision of the Tax Code.¹⁰⁰

To implement Section 228 of the NIRC of 1997, as amended, Section 3.1 of RR No. 12-1999,¹⁰¹ as amended by RR Nos. 18-2013¹⁰² and 7-2018,¹⁰³ explicitly requires that the FAN/FLD must state the factual and legal bases of the assessment; otherwise, it is void.¹⁰⁴

While Section 228 of the NIRC of 1997, as amended, does not require taxpayers to respond to a PAN, the BIR is nonetheless required to consider any reply received within the

⁹⁷ 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:

....

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. (Emphasis supplied)

⁹⁸ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].

⁹⁹ *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division].

¹⁰⁰ *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division] citing *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per CJ Panganiban, First Division].

¹⁰¹ 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 Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

¹⁰² Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

¹⁰³ Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, January 22, 2018.

¹⁰⁴ 3.1.4 Formal Letter of Demand and Final Assessment Notice (FLD/FAN).

— The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the assessment shall be void (see illustration in ANNEX 'B' hereof).

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15-day period allotted to taxpayers.¹⁰⁵ This requirement is not a mere procedural formality. Rather, it reinforces the taxpayer's right to due process and promotes the fair and efficient resolution of tax controversies.

Equally important, the issuance of a valid formal assessment is a substantive prerequisite to the collection of taxes.¹⁰⁶ As held in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*,¹⁰⁷ an assessment consists not only of a **computation of tax liability** but also of a **demand for payment** within a prescribed period. It likewise signals the point when penalties and interest begin to accrue against the taxpayer.¹⁰⁸

Building upon this principle, the Supreme Court, in *Commissioner of Internal Revenue v. Fitness by Design, Inc. (Fitness by Design)*,¹⁰⁹ unequivocally held that a valid FAN must contain both a **demand for payment** and a **definite due date**. The Court explained that a final assessment is not merely a computation of taxes due; it is a notice informing the taxpayer that a specific amount is due and demanding payment thereof within a specific period. Absent a due date, the FAN ceases to be an effective demand for payment and, consequently, ceases to be a valid assessment.

Indeed, *Fitness by Design* declared invalid a FAN that failed to provide a definite due date for payment. The Supreme Court held that the absence of a due date negated the very demand for payment contemplated by law.

The Supreme Court has consistently adhered to this ruling, invalidating assessments that do not contain a **definite due date**,¹¹⁰ because such omission renders the purported demand for payment legally ineffective.

The importance of a due date is further underscored by Section 249(C) of the NIRC of 1997, as amended, which governs

¹⁰⁵ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].

¹⁰⁶ *Commissioner of Internal Revenue v. Menguito*, G.R. No. 167560, September 17, 2008 [Per J. Austria-Martinez, Third Division].

¹⁰⁷ G.R. No. 128315, June 29, 1999 [Per J. Panganiban, Third Division]. See also *Tupaz v. Ulep, et al.*, G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].

¹⁰⁸ *Id.*

¹⁰⁹ G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

¹¹⁰ *Republic v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022 [Per J. Y. Lopez, First Division]; and *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020 [Per J. Inting, Second Division].

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In this case, the FLD and FANs formally offered by respondent do not indicate a due date:¹¹³

[illegible]

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

Adamson v. Court of Appeals, G.R. Nos. 120935 & 124557, May 21, 2009 [Per C. J. Puno, First Division].

Docket – Vol. II, pp. 619-622, Exhibits “R-7” to “R-7-D”. Presented herein are the FLD, marked as Exhibit “R-7,” and the Assessment Notice/FAN for income tax, marked as Exhibit “R-7-A.” The corresponding FANs for the other tax types likewise do not indicate any due date for payment and, for brevity, are no longer reproduced herein.

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The omission is fatal.

A demand for payment necessarily presupposes a specified period within which compliance is required. Without a due date, the taxpayer is left without guidance as to when payment must be made and when the assessment may become delinquent. Stated differently, a purported demand for payment that does not indicate when payment is due is no demand at all.

The Court cannot disregard this defect as a mere technicality.

The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standards must be the overriding concern of government agencies.¹¹⁴ While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly and always in strict adherence to the requirements of the law and of the BIR's own rules.¹¹⁵

Given the foregoing, the Court finds that the FAN/FLD is void for failure to state a definite due date for payment. Without a valid demand for payment within a specified period, there is no valid assessment upon which respondent may predicate collection.

Considering the nullity of the assessment, a further discussion of the remaining issues becomes unnecessary.

WHEREFORE, premises considered, the *Petition for Review* filed by Excel Concrete Logistics, Inc. is hereby **GRANTED**.

Accordingly, the Formal Letter of Demand and Final Assessment Notices dated February 5, 2021, assessing deficiency Income Tax, Expanded Withholding Tax, Withholding Tax on Compensation, and compromise penalties in the aggregate amount of ₱16,165,527.22 for taxable year 2017, are hereby **DECLARED VOID**, and are consequently **CANCELLED** and **SET ASIDE**.

¹¹⁴ *Mabuhay Textile Mills Corporation v. Ongpin*, G.R. No. L-67784, February 28, 1986 [Per J. Gutierrez, Jr., First Division].

¹¹⁵ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].

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The Warrant of Distrainment and/or Levy and the Warrants of Garnishment issued pursuant thereto are likewise **CANCELLED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue as well as any person acting under his authority, is hereby **ENJOINED** and **PROHIBITED** from enforcing the aforesaid void deficiency tax assessment or from undertaking any further collection proceedings based thereon.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

I CONCUR:


JEAN MARIE A. BACORRO-VILLENA
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.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Acting Chairperson

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special First Division Acting 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.



MA. BELEN M. RINGPIS-LIBAN

Presiding Justice