21-000203-0045

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10533

VIVIAN B. MAWIS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. VISMARCK S. UY
Bureau of Internal Revenue
Legal Division, Revenue Region 8A-Makati City
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Avenue corner Chino Roces Avenue
Makati City

PADERNAL & PARAS LAW OFFICES
Unit 8A, 8th Floor, Sagittarius Office Condominium
H.V. Dela Costa Street, Salcedo Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **December 19, 2024**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 20, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

VIVIAN B. MAWIS,
Petitioner,

CTA CASE NO. 10533

- versus -

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 19 2024 4:25PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Vivian B. Mawis (**petitioner**) against respondent Commissioner of Internal Revenue (**respondent/CIR**) pursuant to Section 3(a)[2], Rule 8 in relation to

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1 Filed on 24 May 2021, Division Docket, pp. 12-38.

2 **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 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.

Section 3(a)(1)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals[4] (**RRCTA**). It prays for the lifting of the Warrant of Garnishment (**WOG**) No. RR8A-WG-2020-09-0148[5] that seeks to collect the alleged deficiency taxes of ₱5,016,119.72 (inclusive of penalties), and the cancellation of respondent's Formal Assessment Notice[6] (**FAN**) Part I and Part II for taxable year (**TY**) 2015, both issued against petitioner.[7]

PARTIES TO THE CASE

Petitioner is a registered taxpayer with Taxpayer Identification Number (**TIN**) 174-742-310-000.[8] Her registered address with the Bureau of Internal Revenue (**BIR**) is at G/F Makati Creekside Mall, Amorsolo cor. Herrera Streets, Legaspi Village, Makati City (**Creekside address**).[9] She is the sole proprietor of Active Petron Service Station[10] (**Active Petron**), a gasoline station located at F. Reyes Street, Balibago Sta. Rosa City, Laguna (**Laguna address**).[11] Based on the Department of Trade and Industry (**DTI**) registration, petitioner's current address is at 16 J.P. Rizal Ext., Comembo, Makati City (hereinafter referred to as **Comembo address**).[12]

Respondent, on the other hand, is the head of the BIR charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, and penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof, administered by the BIR. He or she holds office at the BIR, National Office Building, BIR Road, Diliman, Quezon City.[13]

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3 **SEC. 3**. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over 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[.]

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

5 Exhibit "R-11", Division Docket, p. 235.

6 Exhibit "R-6", id., pp. 269-274.

7 See Prayer in the Petition for Review, supra at note 1, pp. 23-24.

8 Paragraph 1.2, Joint Stipulation of Facts and Issues (**JSFI**), Division Docket, p. 307.

9 Par. 1.3, id.

10 Exhibits "P-1" and "P-2", id., pp. 490-491.

11 Based on the letterhead of Active Petron Service Station, Exhibit "P-4", id., p. 496.

12 Supra at note 10.

13 Par. 1.1, JSFI, Division Docket, p. 307.

FACTS OF THE CASE

On 22 October 2016, petitioner, through a certain Harry G. Lopez[14] (**Lopez**), received a Letter of Authority (**LOA**) dated 12 October 2016 with reference No. AUDR01/008055/2016 (eLA201200033052) issued by then Revenue Region No. 8's Regional Director Jonas DP. Amora (**RD Amora**).[15] The LOA authorized Revenue Officer Jose Eric Almosara (**RO Almosara**) and Group Supervisor Emmanuel Obsequio (**GS Obsequio**) to conduct an audit or examination of petitioner's books of account and other accounting records for all internal revenue taxes for the period 01 January 2015 to 31 December 2015, or TY 2015. Petitioner's Creekside address was indicated in the said LOA.[16]

On 14 November 2016, *per* the LOA, petitioner made a partial submission of the required documents. In the transmittal letter of her submission, she used Active Petron's letterhead and address in Sta. Rosa, Laguna or the Laguna address.[17]

After respondent issued to petitioner the First Notice[18] and the Second and Final Notice[19] (on 02 November 2016 and 15 November 2016, respectively) using Active Petron's Laguna address, she again made partial submissions of documents. Similarly, petitioner used Active Petron's letterhead and the Laguna address in her transmittal letter.[20]

Based on the records, on 22 February 2018, respondent issued against petitioner the Preliminary Assessment Notice (**PAN**) Part I[21] with Details of Discrepancies, which initially assessed the latter for deficiency taxes of ₱4,827,755.95, inclusive of interests and surcharges. The assessment comprised of income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), withholding tax on compensation (**WTC**), documentary stamp tax (**DST**), and registration fees.

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14 Exhibit "R-1-b", id., p. 256.
15 Exhibit "R-1-a", id.
16 Exhibit "R-1", id.
17 Exhibit "P-4", supra at note 11.
18 Exhibit "P-5", Division Docket, p. 497.
19 Exhibit "P-6", id., p. 498.
20 See Exhibit "P-7", id., pp. 499-501; Exhibit "P-8", id., pp. 502-503; Exhibit "P-9", id., pp. 504-520; Exhibit "P-10", id., pp. 521-525; Exhibit "P-11", id., pp. 526-532; Exhibit "P-12", id., pp. 533-551; Exhibit "P-13", id., pp. 552-561; and, Exhibit "P-14", id., pp. 562-570.
21 Exhibit "R-5", id., pp. 263-267.

Respondent also issued PAN Part II[22] which assessed petitioner for compromise penalty of ₱97,000.00. The PAN Part I and Part II were both sent through registered mail in petitioner's registered address at Creekside.[23]

Thereafter, on 16 March 2018, respondent issued the FAN Part I[24] with Details of Discrepancies, FAN Part II[25], and the Assessment Notices[26] (**ANs**), where respondent had adjusted the deficiency tax assessments to ₱5,016,119.72 (still for IT, VAT, EWT, WTC, DST, registration fees and compromise penalty). The said notices were also sent by registered mail to petitioner's Creekside address.[27]

Allegedly, on 02 July 2019, petitioner's security guard, who was stationed at the Laguna address, found a photocopy of the FAN under the office door of Active Petron. The security guard forwarded the FAN to petitioner.[28] Surprise of the assessment, petitioner was prompted to contest the FAN and thus filed a Protest Letter[29] (using Active Petron's letterhead and Laguna address) dated 03 July 2019. Respondent received the same on 04 July 2019.

Consequently, respondent issued the Preliminary Collection Letter (**PCL**) dated 16 November 2018[30] and the Final Notice Before Seizure (**FNBS**) dated 04 December 2018.[31] Both notices were again sent by registered mail to petitioner's Creekside address. Respondent claimed to have attempted to contact petitioner through the phone on 23 November 2018, 07 December 2018 and 01 April 2019. However, respondent was not able to reach her.[32] Hence, the assessment docket was forwarded to the BIR's Collection Division for the implementation of summary remedies.[33]

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22 Id., p. 268.
23 See Written Report on Personal Service or Substituted Service (WRPSSS) of Revenue Officer Jose Eric Z. Almosara, BIR Records, pp. 516-517.
24 Division Docket, pp. 269-273.
25 Id., p. 274.
26 Exhibits "R-6-b" to "R-6-h", id., pp. 275-281.
27 See Written Report on Personal Service or Substituted Service (WRPSSS) of Revenue Officer Emmanuel James P. Obsequio, BIR Records, pp. 534-535.
28 See Par 1.14, petitioner's Pre-Trial Brief, Division Docket, p. 191.
29 Exhibit "P-16", id., pp. 578-579.
30 Exhibit "R-9", id., p. 233.
31 Exhibit "R-10", id., p. 234.
32 See Memorandum for the Chief Collection Division of Revenue Region No. 8, BIR Records, p. 571.
33 Id.

On 10 November 2020, respondent issued to petitioner WOG No. RR8A-WG-2020-09-0148[34] which demanded the payment of ₱5,016,119.72. The WOG was served on petitioner's different banks, including the Bank of the Philippine Islands (**BPI**).[35] As a result, when petitioner requested BPI for the issuance of a manager's check, the former denied the same. Based on the email notification of 05 March 2021 that petitioner received from her finance manager, petitioner's BPI account was tagged as garnished.[36]

Distressed of the turn of events, petitioner filed the present Petition for Review on 24 May 2021.[37] The case was raffled to this Court's Second Division.[38]

<u>PROCEEDINGS BEFORE THIS COURT</u>

On 31 May 2021, the Court served Summons[39] on respondent. On 09 August 2021, following a thirty (30)-day extension period that the Second Division granted[40], respondent filed his or her Answer.[41]

In the Answer, respondent countered that the tax assessments were made in compliance with the due process requirement. He or she mainly argued that both the PAN and the FAN were duly served, *via* registered mail, at petitioner's registered address at Creekside. Respondent also claimed that petitioner cannot invoke lack of knowledge or receipt of the said notices when the LOA (that authorized the assessment of its books) was previously sent and received at the latter's Creekside address.

Respondent later ultimately assailed the Court's jurisdiction over the case. According to respondent, petitioner failed to timely file her

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34 Supra at note 5.

35 See Acknowledgment Letter from BPI Intramuros Branch Muralla St. Intramuros, Manila, BIR Records, p. 639.

36 Exhibit "P-19", Division Docket, p. 586.

37 Supra at note 1.

38 The Second Division was then composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.) as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as members.

39 Division Docket, p. 120.

40 See Motion for Extension of Time to File Answer, id., pp. 122-124; Order dated 14 July 2021, id., p. 127.

41 Id., pp. 128-144.

protest from the FAN's receipt. Thus, with the finality of the deficiency assessments, petitioner should be precluded from contesting the same. Respondent added that, even assuming that petitioner timely filed her protest, an examination thereof could only reveal that petitioner did not file it with the proper office as the supposed Protest Letter lacked the BIR's official receiving stamp. Such letter then should be rendered as ineffective and void.

Lastly, respondent maintained that the deficiency assessments are with factual and legal bases and petitioner had no other recourse but to pay the assessed tax liabilities.

On 21 October 2021, respondent transmitted the BIR Records (consisting of one [1] folder) to this Court.[42] The case was thereafter set for Pre-Trial on 02 March 2022.[43] Petitioner filed her Pre-Trial Brief[44] on 23 February 2022, while respondent filed his or her Pre-Trial Brief[45] on 24 February 2022.

On 02 March 2022, the case was referred for mediation and the parties were ordered to appear before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) on 25 April 2022.[46] However, the parties failed to arrive at any amicable settlement.[47] Hence, the case was again set for pre-trial.[48]

During the Pre-Trial proper, the Second Division[49] ordered the parties to file their Joint Stipulation of Facts and Issues (**JSFI**) on or before 11 November 2022.[50] On the said date, the parties filed their JSFI.[51] After approving the JSFI[52], the Second Division issued the Pre-Trial Order[53] on 14 February 2023.

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42 See Compliance dated 21 October 2021, id., p. 188.
43 See Notice of Pre-Trial Conference, id., p. 288.
44 Id., pp. 189-204.
45 Id., pp. 206-217.
46 See Order dated 02 March 2022, id., p. 289.
47 See Mediator's Report dated 12 July 2022, id., p. 292.
48 See Resolution dated 19 July 2022, id., p. 302.
49 After retirement of Associate Justice Juanito C. Castañeda, Jr., the Second Division was then composed of Associate Justice Erlina P. Uy (Ret.) as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as members.
50 See Order dated 12 October 2022, Division Docket, pp. 305-306.
51 See Joint Stipulation on Facts and Issues, id., pp. 307-320.
52 See Resolution dated 22 November 2022, id., p. 322.
53 Id., pp. 459-467.

In the trial that subsequently ensued, petitioner presented herself and her finance manager, Mercedes Y. Mabini (**Mabini**), as witnesses.

On the witness stand, petitioner, through her Amended Judicial Affidavit[54], testified that: (1) her current office address is her Comembo address; (2) she is the sole proprietor of Active Petron in Sta. Rosa, Laguna; (3) although her registered business address with the BIR is the Creekside address, she closed her business at the said location in the year 2000 and had since moved to Comembo; (4) even if the indicated address in LOA No. AUDR01/008055/2016 was the Creekside address, the same was delivered to a certain Mr. Allan Dela Peña (**Dela Peña**) at her Comembo address; (5) Dela Peña failed to affix his signature on the receiving copy; (6) the BIR was aware of her change of address prior to the issuance of the LOA, thus it was sent to the Comembo address instead of the Creekside address; (7) Mabini made a transmittal of the requested documents using Active Petron's letterhead and the Laguna address; (8) the BIR sent the First Notice and Second and Final Notice to her Laguna address; (9) petitioner made several transmittals of the supporting documents using Active Petron's letterhead and the Laguna address; (10) regardless of the submissions, she did not receive any PAN; (11) however, on 02 July 2019, her personnel at Active Petron found a photocopy of the FAN under the office door and the same was forwarded to her; (12) on 03 July 2019, she filed a Protest Letter to the said FAN; (13) after the protest, petitioner did not receive any notices from the BIR; (14) in March 2021, she was surprised that BPI denied her request for the issuance of a manager's check as her account therein was allegedly garnished (although she did not receive any prior WOG); and, (15) respondent was already aware that she had changed her address since the assessment for TY 2012 was already sent to her Laguna address.[55]

On cross-examination[56], when asked of her supposed change of address, petitioner answered that while she does not remember when the application (for a change of address) was filed, she assumed that it was processed as all BIR documents were sent to either her Comembo address or Laguna address. She also confirmed the following: (a) the indicated address in the First Notice and Second and Final Notice is the Laguna address; (b) her submissions and the transmittal letters therefor were

[54] Exhibit "P-23", Amended Judicial Affidavit (of Vivian B. Mawis), id., pp. 327-338.
[55] Exhibits "P-17" and "P-18", id., pp. 580-585.
[56] TSN dated 15 February 2023, pp. 8-14.

done using Active Petron's letterhead bearing her Laguna address; and, (c) the FAN was served at her Laguna address.

On redirect and re-cross examinations[57], petitioner maintained that the BIR was already aware of her Comembo address since it served notices at the said address.

Mabini assumed the witness stand next. Based on her Amended Judicial Affidavit[58], which was adopted as her direct testimony, she declared that: (1) as petitioner's Finance Manager, she assisted in the preparation and filing of petitioner's tax returns with the BIR; (2) on 27 October 2016, Dela Peña, a co-employee, received LOA No. AUDR01/ 008055/2016 at the Comembo address although the same indicated the Creekside address; (3) even if he personally received the said LOA, Dela Peña failed to sign the receiving copy thereof; (4) after she made the first transmittal of the documents, respondent indicated and sent the First Notice and Second and Final Notice to petitioner's Laguna address; (5) she made several transmittals of supporting documents using Active Petron's letterhead and Laguna address; (6) after more than two (2) years from the last transmittal, petitioner received a photocopy of the FAN found under Active Petron's office door; (7) petitioner immediately filed a protest to the FAN on 04 July 2019; (8) despite the protest, petitioner did not receive any succeeding notices; (9) however, in March 2021, petitioner's BPI account was tagged as garnished; (10) through inquiry, she received a photocopy of the WOG; and, (11) she claimed that BIR was already aware that petitioner changed her address as the notices for the assessment for TY 2012 were sent to the Laguna address.

During Mabini's cross-examination[59], she explained that even if she was not present when Dela Peña received the LOA, she was sure that it was delivered at the Comembo address as Dela Peña was stationed there. Mabini also declared that the Laguna address is the registered address in the BIR although she was not able to present the BIR Certificate of Registration (**COR**). In relation to the FAN, Mabini explained that she was not present when the personnel found the photocopy under Active Petron's office door.

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57 Id., pp. 14-16.

58 Exhibit "P-24", Amended Judicial Affidavit (Of Mercedes Y. Mabini), Division Docket, pp. 434-443.

59 TSN dated 08 March 2023, pp. 5-19.

On redirect examination[60], Mabini elaborated that the documents sent to and received at the Laguna address were delivered weekly to the Comembo address. Although the Creekside address was indeed registered in the BIR's COR, the address therein was transferred to the Comembo address, and eventually to the Laguna address. No re-cross examination was conducted.[61]

Upon the Court's inquiry[62], Mabini confirmed the following: (**a**) there were notices of change of petitioner's address to the BIR although no evidence was submitted to support the same; (**b**) from its Creekside address, petitioner moved to its Comembo address; and, (**c**) the subject LOA was delivered to and received at the Comembo address.

Subsequently, petitioner filed its "Formal Offer of Evidence"[63] (**FOE**) on 28 March 2023, comprised of Exhibits "**P-1**" to "**P-22**".[64]

60 Id., pp. 19-20.
61 Id., p. 21.
62 Id., pp. 21-23.
63 Division Docket, pp. 481-489.
64

Exhibit	Description
"P-1"	Certificate of Business Name Registration dated 27 June 2023.
"P-2"	Certificate of Business Name Registration dated 16 July 2018.
"P-3"	Letter of Authority No. AUDR01/008055/2016 ("LOA") dated 12 October 2016, addressed to RG-3A GF Makati Creekside Mall, Amorsolo cor. Herrera Sts., Legaspi Village, Makati City ("**Creekside Address**")
"P-4"	Petitioner's Transmittal dated 10 November 2016 sent by petitioner's Finance Manager Mercedes Y. Mabini.
"P-5"	First Notice dated 2 November 2016 addressed at Active Petron Service Station, Laguna Bel-Air, Tagaytay Road, Sta. Rosa, Laguna.
"P-6"	Second and Final Notice dated 15 November 2016 addressed at Active Petron Service Station, Laguna Bel-Air, Tagaytay Road, Sta. Rosa, Laguna.
"P-7"	Petitioner's Letter dated 24 November 2016.
"P-8"	Petitioner's Transmittal dated 24 November 2016.
"P-9"	Petitioner's Transmittal dated 5 December 2016.
"P-10"	Petitioner's Transmittal dated 4 January 2017.
"P-11"	Petitioner's Receiving Copy dated 16 January 2017.
"P-12"	Petitioner's Transmittal dated 25 January 2017.
"P-13"	Petitioner's Transmittal dated 31 January 2017.
"P-14"	Petitioner's Transmittal dated 3 February 2017.
"P-15"	Formal Assessment Notice dated 16 March 2018 addressed at Creekside address.
"P-16"	Petitioner's Letter dated 3 July 2019.
"P-17"	First Notice dated 27 February 2013 for the taxable year 2012 addressed at Active Petron Service Station, Laguna Bel-Air, Tagaytay Road, Sta. Rosa, Laguna.
"P-18"	Formal Assessment Notice dated 20 August 2015 addressed at the Laguna address.
"P-19"	Printout of email dated 5 March 2021.
"P-20"	Warrant of Garnishment dated 18 November 2020.

On 27 April 2023, respondent filed his or her "Comment/Opposition (to Petitioner's [FOE])"[65] and objected to the purposes for which the exhibits were then being offered. Respondent deemed the documents offered to be irrelevant, immaterial, and self-serving.

In the *interim*, the case was transferred to the First Division pursuant to a Resolution dated 29 May 2023.[66] Later, or on 23 June 2023, the First Division admitted all of petitioner's exhibits.[67]

As for respondent, he or she presented RO Almosara and RO Arnie D. Samson (**Samson**) as witnesses.

Based on his Judicial Affidavit[68], RO Almosara testified that: (1) he was one of the assigned BIR officers authorized to audit petitioner's books for TY 2015; (2) he served LOA No. AUDR01/008055/2016 on petitioner, which Lopez received on 22 October 2016; (3) he sent the First Notice and the Second and Final Notice to petitioner through registered mail on 02 November 2016 and 18 November 2016, respectively; (4) based on the PAN, the FAN and the ANs, the address indicated therein was petitioner's Creekside address; (5) the said notices were sent to petitioner's Creekside address through registered mail; and, (6) *per* the BIR's Integrated Tax System[69] (**ITS**), petitioner's registered business address is the Creekside address.

On cross-examination[70], RO Almosara declared that the subject LOA was delivered at petitioner's Laguna address since the latter was no longer at its Creekside address. He confirmed that the Laguna address is one of petitioner's registered branches in the BIR database. RO Almosara also explained that in the BIR database, addresses are either the main business address or branch address.

"P-21"	Preliminary Assessment Notice ("PAN") dated 22 February 2018 addressed at the Creekside address.
"P-22"	Final Notice Before Seizure dated 04 December 2018 addressed at the Creekside Address.

65 Division Docket, pp. 599-606.
66 Id., p. 607.
67 Resolution dated 23 June 2023, id., pp. 611-612.
68 Exhibit "R-12", Judicial Affidavit of Revenue Officer Jose Eric Almosara, id., pp. 240-255.
69 Exhibit "R-7", id., p. 282.
70 TSN dated 06 September 2023, pp. 10-35.

In petitioner's case, RO Almosara stated the Creekside is the main business address while Laguna is the registered branch address. According to RO Almosara, he sent the PAN and the FAN to petitioner's Creekside address (through registered mail) since it was still the latter's registered main business address in the BIR database. However, he only has the proof of mailing and not the proof of receipt for the said notices. Lastly, when asked about petitioner's transmittals of documents that bore the Laguna address, RO Almosara answered that he personally received them as evidenced by his initials appearing thereon.

On redirect examination[71], RO Almosara again confirmed that he sent the PAN and FAN to petitioner's Creekside address as it remains to be petitioner's registered main business address in the BIR-ITS.

On re-cross examination[72], RO Almosara retracted his previous statement and clarified that he came to know of the Laguna address due to the submissions that petitioner made. However, the Laguna address was not registered as a branch address in the BIR-ITS.

Responding to the Court's query as regards the current address *vis-à-vis* the registered address[73], RO Almosara explained that BIR followed the standard procedure of using the registered address in the database. As petitioner failed to apply for the closure or transfer of its business at its registered address in Creekside, the said address remains to be her registered place of business.

As to the BIR's service of the First Notice and the Second and Final Notice sent to the Laguna address and the PAN's and FAN's mailing to the Creekside address, RO Almosara explained that he did not make any attempt to send the PAN and the FAN to the Laguna address since he was informed of Active Petron's impending closure. He added that it is the BIR's policy that the registered addresses in the BIR-ITS will be followed in the service of the PAN and the FAN to a taxpayer.

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71 Id., pp. 35-38.
72 Id., pp. 38-39.
73 Id., pp. 40-49.

RO Samson was also presented to the witness stand where he testified that: (1) he is an officer from the Collection Division; (2) he came to know of the subject assessments when petitioner's case was referred to his Division for collection; (3) respondent issued the PCL and the FNBS to petitioner, and both were served at petitioner's Creekside address through registered mail; (4) eventually, respondent issued the WOG and the indicated address therein is petitioner's Creekside address; and, (5) he was able to serve the WOG to a certain Dominador Tacogue, Jr. on 05 July 2021.[74]

On cross-examination[75], RO Samson stated that there is no proof of receipt for the mailed PCL. No redirect examination was conducted.[76]

On 11 September 2023, respondent filed his or her FOE[77] comprised of Exhibits "**R-1**" to "**R-11**"[78], inclusive of sub-markings. Petitioner filed

[74] See Judicial Affidavit of Revenue Officer Arnie D. Samson, Exhibit "R-13", Division Docket, pp. 619-628.
[75] TSN dated 06 September 2023, pp. 59-61.
[76] Id., p. 62.
[77] See Respondent's Formal Offer of Evidence, Division Docket, pp. 634-640.
[78]

Exhibit	Description
"R-1"	Letter of Authority (LOA) No. SN: eLA201200033052(AUDR01/008055/2016) dated 12 October 2016.
"R-1-a"	Name and signature of Jonas DP Amora, the then Regional Director of Revenue Region No. 8-Makati City.
"R-1-b"	Name and signature of Harry Lopez dated October 22, 2016.
"R-2"	First Notice of Presentation of Records dated November 2, 2016.
"R-2-a"	Name and signature for Revenue Officer Jose Eric Almosara.
"R-2-b"	Registry Receipt dated November 2, 2016, as attached to the First Notice.
"R-3"	Second and Final Notice for Presentation of Records dated November 15, 2016.
"R-3-a"	Name and signature of then Revenue District Officer of Revenue District Office No. 47-East Makati, Florante R. Aninag.
"R-3-b"	Registry Receipt dated November 18, 2016, as attached to the Second and Final Notice.
"R-4"	Memorandum dated June 15, 2017 recommending issuance of PAN.
"R-4-a"	Name and signature of Revenue Officer Jose Eric Almosara.
"R-4-b"	Name and signature of Group Supervisor Emmanuel James Obsequio.
"R-4-c"	Name and signature of then Revenue District Officer of Revenue District Office No. 47-East Makati, Florante R. Aninag.
"R-5"	Preliminary Assessment Notice (PAN) with Details of Discrepancies dated February 22, 2018.
"R-5-a"	Name and signature of then Regional Director of Revenue Region No. 8 – Makati, Glen A. Geraldino
"R-5-b"	Registry Receipt dated February 27, 2018.
"R-6"	Formal Assessment Notice (FAN) with Details of Discrepancies dated March 16, 2018.
"R-6-a"	Name and signature of then Regional Director of Revenue Region No. 8 – Makati, Glen A. Geraldino
"R-6-b"	Assessment Notice covering Income Tax (IT) of Php1,436,883.58 dated March 16, 2018.

her "Comment ([FOE] dated 08 September 2023)"[79] wherein she objected to the purposes for which some of the exhibits were then being offered.

Thereafter, in the Resolution[80] of 25 October 2023, the First Division admitted all of respondent's offered exhibits. Moreover, with the termination of the presentation of evidence, the First Division ordered the parties to file their respective memoranda within 30 days from notice.[81]

On 16 November 2023, petitioner filed her Memorandum[82] while respondent filed his or her Memorandum[83] on 30 November 2023. With the filing of the memoranda, the case was thereafter submitted for decision.[84]

"R-6-c"	Assessment Notice covering Value Added Tax (VAT) of Php3,430,271.23 dated March 16, 2018.
"R-6-d"	Assessment Notice covering Expanded Withholding Tax (WE) of Php9,270.45 dated March 16, 2018.
"R-6-e"	Assessment Notice covering Withholding Tax on Compensation (WC) of Php39,031.79 dated March 16, 2018.
"R-6-f"	Assessment Notice covering Documentary Stamp Tax (DST) of Php2,802.93 dated March 16, 2018.
"R-6-g"	Assessment Notice covering deficiency Registration Fee of Php859.79 dated March 16, 2018.
"R-6-h"	Assessment Notice covering deficiency Compromise Penalty of Php97,000.00 dated March 16, 2018.
"R-6-i"	Registry Receipt dated March 23, 2018.
"R-7"	BIR-Integrated Tax System (ITS) Print Out showing the registered address of the Petitioner.
"R-7-a"	Registered Address of the Petitioner in the BIR-ITS.
"R-8"	Memorandum of Assignment dated September 16, 2019.
"R-8-a"	Name and signature of Benilda M. Nicosia, the OIC-Chief of Collection Division of Revenue Region No. 8A-Makati City.
"R-9"	Preliminary Collection Letter (PCL-11-16-00029) dated November 16, 2018.
"R-9-a"	Name and signature of Alice SA Gonzales, Chief of Collection Division of Revenue Region No. 8 – Makati.
"R-9-b"	Registry Receipt dated November 23, 2018 as attached to the Preliminary Collection Letter.
"R-10"	Final Notice Before Seizure (FNBS-2018-12-04) dated December 04, 2018.
"R-10-a"	Name and signature of Alice SA Gonzales, Chief of Collection Division of Revenue Region No. 8 – Makati.
"R-10-b"	Registry Receipt dated December 7, 2018 as attached to the Final Notice Before Seizure.
"R-11"	Warrant of Garnishment (RR8A-WG-2020-0148-9) dated November 18, 2020.
"R-11-a"	Name and signature of Greg M. Buhain, Assistant Regional Director of Revenue Region No. 8 – Makati City.
"R-11-b"	Name and signature of Dominador Tacogue, Jr. dated November 5, 2020.

79 Division Docket, pp. 641-649.
80 Id., pp. 655-657.
81 Id.
82 Id., pp. 658-684.
83 Id., pp. 685-691.
84 See Minute Resolution dated 19 December 2023, id., p. 693.

ISSUE

Based on the Pre-Trial Order[85], the sole issue for this Court's determination is —

> WHETHER PETITIONER VIVIAN B. MAWIS IS LIABLE FOR THE DEFICIENCY TAXES of ₱5,016,119.72, INCLUSIVE OF PENALTIES AND INTERESTS, COMPRISED OF INCOME TAX (IT), VALUE-ADDED TAX (VAT), EXPANDEND WITHHOLDING TAX (EWT), WITHHOLDING TAX ON COMPENSATION (WTC), DOCUMENTARY STAMP TAX (DST), REGISTRATION FEES AND COMPROMISE PENALTY ASSESSED FOR TAXABLE YEAR (TY) ENDED 31 DECEMBER 2015.

ARGUMENTS

In support of its petition, petitioner mainly argues that she was not afforded due process as the PAN and the FAN were not duly served on her. Citing Section 228[86] of the NIRC of 1997, as amended, respondent is required to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Petitioner adds that under the BIR's related implementing rules and regulations, the notices shall be served either at the taxpayer's registered or known address. However, in this case, in respondent's attempt to remedy his or her lapse, respondent insisted that it was petitioner's fault that she did not notify the BIR of her change of business address (although it was already aware that she had moved out of her previous registered Creekside address). According to petitioner, respondent violated the procedural requirement under the BIR's own rules and regulations.

Petitioner also contends that the assigned RO failed to make a personal service of the PAN and the FAN before resorting to substituted service or registered mail. Moreover, he or she did not present any evidence to prove that petitioner received the said notices. Further, petitioner insists that respondent was in bad faith in serving the PAN and

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85 Supra at note 53.

86 **SEC. 228.** *Protesting of Assessment.*

the FAN. According to her, respondent served the LOA, First Notice and Second and Final Notice at her Laguna address. However, for the subsequent notices, respondent reverted to serving the same at the Creekside address despite being already apprised of her Laguna address.

Relying on the case of *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[87] (**BASF Coating**), petitioner argues that the Supreme Court struck down an assessment due to the CIR's insistence of mailing the FAN to the taxpayer's old address even though he or she became aware of the former's new address (as evidenced by the several documents presented before the Court). Thus, with the foregoing circumstances, respondent's assessments against it, as well as the WOG, should be declared as void.

Lastly, with regard to the timeliness of filing the protest, petitioner maintains that she timely filed the same after she received the FAN's photocopy on 03 July 2019.

On the other hand, respondent counters that the mailing of the PAN and the FAN to petitioner's Creekside address is valid. He or she argues that since petitioner failed to file the necessary application for the change of address pursuant to Section 236[88] of the NIRC of 1997, as amended, thus, the BIR was constrained to serve the PAN and the FAN at the registered Creekside address as shown in the BIR-ITS. Hence, petitioner's non-receipt of the said notices should be attributed solely through her fault and negligence.

Respondent likewise claims that the deficiency assessments were based on factual and legal bases, and must be immediately collected from petitioner.

RULING OF THE COURT

Before delving into the merits of the case, We find it propitious to first discuss whether this Court has jurisdiction over the instant petition.

[87] G.R. No. 198677, 26 November 2014.
[88] **SEC. 236.** *Registration Requirements.*

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE TIMELY-FILED PRESENT PETITION FOR REVIEW.

Section 11 of Republic Act (**RA**) No. 1125[89], as amended by Section 9 of RA 9282[90] provides –

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling or inaction** of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **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.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.[91]
>
> ...

On the other hand, Section 3(a), Rule 8 of the RRCTA states –

> ...
>
> 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 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**

---

[89] AN ACT CREATING THE COURT OF TAX APPEALS.

[90] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[91] Emphasis supplied and italics in the original text.

> **ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.[92]
>
> ...

In the case of *Allied Banking Corporation v. Commissioner of Internal Revenue*[93], the term "decision" in the above quoted provision of RA 9282, has been interpreted to mean the decisions of the CIR on the *protest* of the taxpayer against the assessments. Corollary thereto, Section 228 of the NIRC of 1997, as amended, provides for the procedure for protesting an assessment. It states:

> ...
> SEC. 228. *Protesting of Assessment*. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, that a preassessment notice shall not be required in the following cases:
>
> ...
>
> 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.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
>
> ...

92 Emphasis supplied and italics in the original text.
93 G.R. No. 175097, 05 February 2010.

As may be gleaned from the foregoing, when a taxpayer protests the FAN issued by respondent, the latter has 180 days from receipt of the relevant supporting documents within which to act on the former's request for reconsideration or reinvestigation. After the lapse of the 180-day period, or from the denial of the protest, whichever is earlier, the taxpayer must appeal the same to the Court of Tax Appeals (**CTA**).[94]

However, jurisprudence has also recognized an alternative recourse in case of respondent's inaction to a protest. In *Light Rail Transit Authority v. Bureau of Internal Revenue*[95], the taxpayer may either:

1. File a petition for review with the CTA within 30 days after the expiration of the 180-day period fixed by law for the CIR to act on the disputed assessment; or

2. **Await the final decision of the CIR on the disputed assessments and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision. This is true even if the 180-day period for the Commissioner to act on the disputed assessment had already expired.**

The two options are mutually exclusive and resort to one bars the other.[96] This is also consistent with Section 3(a)(2), Rule 4 of the RRCTA, which states that "should the taxpayer opt to await the final decision of the [CIR] on the disputed assessments beyond the [180] day-period above-mentioned, the taxpayer may appeal such final decision to the [CTA] under Section 3(a), Rule 8 of these Rules".[97]

In her Petition for Review, petitioner claims that respondent failed to act on her Protest Letter.[98] However, respondent counters that the said protest was belatedly filed and, thus, the subject assessments became final and executory.

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94 *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, 10 July 2023.

95 G.R. No. 231238, 20 June 2022.

96 See *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, 24 April 2007.

97 See *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, supra at note 94.

98 See note at 29.

Although it may appear that petitioner lost her right to appeal, the Court cannot disregard petitioner's insistence that she did not receive the PAN, the FAN, and the subsequent notices of PCL, FNBS and the WOG. Hence, without notice, she could not have treated any of the supposed notice as the final decision on her Protest Letter. As the records bear, the only advice that she received regarding the subject assessments was the email notification (of 05 March 2021)[99] that her BPI account was tagged as garnished and the unofficial WOG photocopy that she acquired through Mabini's inquiry.

Relative thereto, Section 7(1) of RA 1125, as amended by RA 9282, confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC of 1997, as amended, provides –

> ...
>
> Sec. 7. *Jurisdiction*. - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.**[100]
>
> ...

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[101], the Supreme Court ruled that –

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

99 Supra at note 36.

100 Emphasis supplied and italics in the original text.

101 G.R. No. 162852, 16 December 2004; Emphasis supplied.

issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.

...

From the foregoing, as stated, this Court could acquire jurisdiction over the present petition that seeks to nullify respondent's WOG. In the instant case, it is noted that when petitioner learned that her BPI account was tagged as garnished on 05 March 2021, she opted to appeal the garnishment. Counting 30 days from receipt of the email notification, petitioner had until 04 April 2021 within which to file her judicial appeal before this Court.

However, within the period allowed by law to file her respective Petition for Review, the Supreme Court issued the following administrative circulars in view of the surge of cases of COVID-19 in the National Capital Judicial Region and nearby provinces which ordered courts to be physically closed, and the period of filing of pleadings and other court submissions to be suspended until 14 May 2021, to wit[102]:

Administrative Circular (AC) No.	Issued on	Contents
AC No. 14-2021	March 28, 2021	*Re: Extension of Filing Periods for Pleadings/Court Submissions for Courts in the National Capital Judicial Region and Nearby Provinces Placed Under Enhanced Community Quarantine from March 29 to April 4, 2021.* "The filing periods of pleadings and other court submissions that fall during the period from March 29 to March 31, 2021 are hereby extended for three (3) calendar days, counted from April 5, 2021."
AC No. 15-2021	April 3, 2021	*"RE: Extension of the Physical Closure of Courts and the filing periods for pleadings and other court submissions in light of the further extension of the enhanced community quarantine from April 5 to April 11, 2021."* "The filing periods of pleadings and other court submissions that fell due or would fall due during the period beginning from March 29 to April 11, 2021 are hereby EXTENDED for seven (7) calendar days, counted from April 12, 2021. Accordingly, Administrative Circular No. 14-2021 is hereby modified in this respect."
AC No. 21-2021	April 10, 2021	*"RE: Extension of Physical Closure of Courts"*

[102] Table lifted from *Philippine Geothermal Production Company, Inc. v. Commissioner of Internal Revenue*, CTA EB Nos. 2455 & 2460 (CTA Case No. 9663), 09 January 2023.

		"ALL the courts and the judicial offices in the National Capital Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) shall remain physically closed until April 18, 2021. The time for filing and service of pleadings and motions during this period is suspended and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 22-2021	April 14, 2021	*"RE: Physical Closure of Courts in Enhanced Community Quarantine and Modified Enhanced Community Quarantine Areas"* "The physical closure of courts in the areas of NCR among others is likewise extended to April 30, 2021. The time for filing and service of pleadings and motions during this period is suspended and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 29-2021	April 30, 2021	*"RE: Work arrangements in Courts on May 3-14, 2021"* "The time for filing and service of pleadings and motions during this period in these areas is suspended and shall resume after seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 33-2021	May 14, 2021	*"RE: Court operations starting May 17, 2021"* "All first and second level courts, and appellate collegiate courts (except the Supreme Court), and the judicial offices in these areas under GCQ shall be physically opened with a skeleton force of at least thirty percent (30%) to at most fifty percent (50%), beginning 17 May 2021 until further notice."

Based on the foregoing circulars, the courts reopened on 17 May 2021. Counting seven (7) days therefrom, the deadline for the filing of the Petition for Review fell on 24 May 2021. Petitioner filed the instant petition on the said date, thus, the same was timely filed.[103]

We then proceed to the material issue of the case.

[103] Supra at note 1.

After an assiduous review of the case records and the parties' arguments, this Court finds the present petition meritorious for the reasons essayed below.

RESPONDENT COMMISSIONER OF INTERNAL REVENUE IS UNAWARE OF PETITIONER'S COMEMBO ADDRESS.

Petitioner argues that the PAN and FAN should have been sent to her current office address at Comembo, as respondent was already aware of this address after allegedly having personally delivered the LOA there. Such delivery was made notwithstanding that petitioner's registered address with the BIR remains to be the Creekside address.[104]

Respondent counters that the notices should still be sent to petitioner's Creekside address since no evidence was proffered to show that the latter formally notified respondent of her change of address.

We agree with respondent.

Section 11 of Revenue Regulations (**RR**) No. 12-85[105] provides for the following:

> ...
> Sec. 11. *Change of Address.* — In case of change of address, the **taxpayer must give written notice** thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and **in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.**[106]
> ...

104 Petition for Review, supra at note 1, p. 14.
105 Procedure covering administrative protests on assessments of the Bureau of Internal Revenue.
106 Emphasis supplied and italics in the original text.

From the foregoing, a taxpayer intending to change his or her address must give a <u>written notice</u> to the Revenue District Officer (**RDO**) that has jurisdiction over the former legal residence and/or place of business; otherwise, any communication previously sent to the said former legal residence or place of business shall be considered valid and binding for purposes of the period within which to reply.

The records yield that respondent was not actually notified of the change in petitioner's business address. Petitioner's insistence that respondent was made aware (as shown in the personal service of the LOA) is devoid of merit.

Firstly, the LOA was addressed to the Creekside address of petitioner and not in her Comembo address.

Secondly, respondent's witness, RO Almosara, testified that he personally served the LOA at petitioner's Laguna address. The pertinent parts of his cross-examination provide:

> ...
> ATTY. JARETA:
>
> Q. **Where did you serve this Letter of Authority**, Mr. Witness?
>
> MR. ALMOSARA:
>
> A. **I served it at the place of business of the taxpayer at Petron Santa Rosa.**
>
> ATTY. JARETA:
>
> Q. Mr. Witness, can you please go over the Letter of Authority?
>
> Mr. Witness, in the upper left portion of the Letter of Authority there is an address which states RG-3A GF Makati Creekside Mall, Amorsolo corner Herrera Sts., Legazpi Village, Makati City. But then again, you mentioned that you served this Letter of Authority in Cabuyao, Laguna, is that correct?
>
> MR. ALMOSARA:
>
> A. No, it's in **Santa Rosa, Laguna**, the place of business of the taxpayer.

ATTY. JARETA:

Santa Rosa, Laguna.

Okay.

Q. Why is it that the Letter of Authority states that the address of the petitioner is in Creekside, Makati but then again you served this in Santa Rosa, Laguna, Mr. Witness?

MR. ALMOSARA:

A. For the record, in our database, **the taxpayer's address or the main address of the taxpayer is in Creekside Amorsolo.** However, when I tried to serve the Letter of Authority in that place, **the taxpayer can no longer be found.** So, I tried other course of actions, so it happens that her **place of business is located at Santa Rosa, Laguna, so I tried to serve the Letter of Authority in that place.**[107]

...

On the other hand, petitioner's evidence; particularly Mabini's testimony, fails to sufficiently counter the firsthand knowledge of RO Almosara, to wit:

...

ATTY. UY:

Ms. Witness, you mentioned that on October 27, 2016, a former fellow member of petitioner [Mawis'] staff, Allan Dela Peña received a copy of the Letter of Authority at the Comembo address. Am I correct?

WITNESS:

Yes, Attorney.

ATTY. UY:

Madam Witness, were you present on the said date when this certain Allan dela Peña received the copy?

WITNESS:

As far as I remember, **I'm not present when he received the Letter of Authority.**

---

107 Supra at note 70, pp. 12-13; Emphasis supplied.

ATTY. UY:
So, Madam Witness, you do not have any personal and firsthand knowledge of when and where the Letter of Authority was received. Am I correct?

WITNESS:
It was received at the Comembo office because Allan dela Peña was based at Comembo office.

ATTY. UY:
Madam Witness, the question is do you have any personal and firsthand knowledge of where and when who received the Letter of Authority?

WITNESS:
It was received by Allan dela Peña.

JUSTICE UY:
By whom?

WITNESS:
By Allan dela Peña, Your Honors, a former employee based on Comembo office.

ATTY. UY:
Madam Witness, the question is do you have personal and firsthand knowledge of who, where and when the said Letter of Authority was received?

WITNESS:
The fact that it was signed personally by Allan dela Peña, I **assume** that. ... (interrupted)

...

ATTY. UY:
So you assumed?

WITNESS:
Yes.[108]

...

Notably, Mabini testified that the LOA was received by a certain Dela Peña, directly contradicting RO Almosara's testimony, *viz:*

[108] Supra at note 59, pp. 6-8; Emphasis supplied.

...

ATTY. JARETA:

Okay

Q. Mr. Witness, in the lower portion of the Letter of Authority you mentioned that **it was received by a certain __Harry Lopez__**, is that correct?

MR. ALMOSARA:

A. Yes, Attorney.

ATTY. JARETA:

Q. Did you personally see Mr. Harry Lopez?

MR. ALMOSARA:

A. Actually, **I personally see whoever receives the Letter of Authority** but I cannot recall his, (inaudible)

ATTY. JARETA:

Q. What does his position in Active Petron?

MR. ALMOSARA:

A. Actually, **he's the Supervisor**.

ATTY. JARETA:

Q. Did he show you any document that he is the authorized representative of Ms. Mawis?

MR. ALMOSARA:

A. He presented, Ma'am, that he is an employee of Petron.[109]

...

Moreover, RO Almosara's testimony is supported by the LOA[110] itself which specifically indicates that the LOA was received by a certain "Harry G. Lopez" on 22 October 2016.[111] As a rule, documentary evidence takes precedence over testimonial evidence as the latter can easily be

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109 Supra at note 70, pp. 14-15; Emphasis supplied.
110 Supra at note 16.
111 Supra at note 14.

fabricated.[112] Thus, RO Almosara's testimony that the LOA was received by Lopez at petitioner's Laguna address, as corroborated by the LOA, prevails over Mabini's conjecture that the LOA was received at the Comembo address by a certain Dela Peña.

Lastly, petitioner's tax returns for TY 2015 such as BIR Form Nos. 1701[113], 1601-C[114], 1601-E[115] and 2550-M/Q[116], among others, indicate petitioner's Creekside address.

In sum, petitioner failed to prove that respondent was made aware of her current address, *i.e.*, the Comembo address. Differently put, the non-receipt at the Comembo address could only be the result of petitioner's lapses in not giving notice of her change of address to respondent. Technically speaking, petitioner was still a duly registered taxpayer under her old address, *i.e.*, the Creekside address.

***Notwithstanding* the foregoing disquisitions, the Court may not still sustain respondent's assessments of petitioner. While, ideally, petitioner should have apprised respondent of her change of address, preponderant evidence shows that respondent was nevertheless aware of an <u>alternative</u> known address for petitioner.**

Section 3.1.6, RR No. 18-2013[117], amending RR No. 12-1999[118], prescribes the modes of service of notice of assessment as follows:

> ...
>
> 3.1.6 *Modes of Service*. — The notice (**PAN**/**FLD**/**FAN**/FDDA) to the taxpayer herein required may be served by the Commissioner or his [or her] duly authorized representative through the following modes:

---

112 *Heirs of Eliseo Bagaygay, namely: Anecita P. Bagaygay et al. v. Heirs of Anastacio Paciente, namely: Meregildo Paciente et al.*, G.R. No. 212126, 04 August 2021.
113 BIR Records, pp. 132-146.
114 Id., pp. 237-269.
115 Id., pp. 201-236.
116 Id., pp. 150-200.
117 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
118 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his [or her] registered **or known address or wherever he [or she] may be found**. **A *known address* shall mean a place other than the registered address where business activities of the party are conducted** or his [or her] place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.[119]
>
> ...

The foregoing, reiterated in Revenue Memorandum Order (**RMO**) No. 40-2019[120], is clear that any assessment notice must first be served personally to the taxpayer at his or her registered address or known address or wherever he [or she] may be found.

In the instant case, it is evident from the unequivocal admission of respondent's witness that he or she had long been aware of petitioner's alternative address, *i.e.*, "F. Reyes Street, Balibago Sta Rosa, Laguna" (or the Laguna address) as early as 2016, at the time when the LOA was duly served, to wit:

> ...
> MR. ALMOSARA:
>
> A. For the record, in our database, **the taxpayer's address or the main address of the taxpayer is in Creekside Amorsolo.** However, when I tried to serve the Letter of Authority in that place, **the taxpayer can no longer be found**. So, I tried other course of actions, so it happens that her **place of business is located at Santa Rosa, Laguna, so I tried to serve the Letter of Authority in that place.**
>
> ATTY. JARETA:
>
> Q. So, **you knew as early as 2016 that petitioner Mawis is no longer in Creekside, Makati?**
>
> MR. ALMOSARA:
>
> A. **Yes.**

119 Italics in the original text, emphasis and underscoring supplied.

120 Prescribing the Procedures for the Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of Revenue Regulations (RR) No. 18-2013.

ATTY. JARETA:

Okay.

Q. So, Mr. Witness, how were you able to determine this, ahm, how were you able to locate her address in Laguna?

MR. ALMOSARA:

A. Actually, there are several methods that we can do that about or to locate at, through our database from which they have registered branches. So, one of that registered branches is at Petron.

ATTY. JARETA:

Q. So, it is also indicated in your registration?

MR. ALMOSARA:

A. Yes.

ATTY. JARETA:

Q. **That Ms. Mawis also has an address in Laguna**?

MR. ALMOSARA:

A. **Yes**.

ATTY. JARETA:

Okay.

MR. ALMOSARA:

A. **That's a branch address**, Attorney.[121]

...

Also, during RO Almosara's re-cross examination:

[121] Supra at note 70, pp. 13-14; Emphasis supplied.

...
JUSTICE DAVID:

So, you considered that address of Active Petron Station **as a known address of the taxpayer**?

MR. ALMOSARA:

A. **Yes, your Honors.**

JUSTICE DAVID:

In this case, **Vivian Mawis**?

MR. ALMOSARA:

A. **Yes, your Honors.**[122]

...

Moreover, the First Notice dated 02 November 2016[123] signed by RO Almosara and GS Obsequio (both duly authorized to conduct the examination) and the Second and Final Notice dated 15 November 2016[124] and signed by RDO Florante R. Aninag (**Aninag**), were all sent by respondent to petitioner's Laguna address. Notably, petitioner's Transmittal dated 24 November 2016[125], Letter dated 24 November 2016[126], Transmittal dated 05 December 2016[127], Transmittal dated 04 January 2017[128], Letter dated 16 January 2017[129], Receiving copy of BIR Form No. 1604-E dated 16 January 2017[130], Transmittal dated 25 January 2017[131], Transmittal dated 31 January 2017[132], and Transmittal dated 03 February 2017[133], which were duly received by respondent and prior to the issuance of the PAN[134] and FAN[135], also bear petitioner's Laguna address.

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122 Id., p. 43; Emphasis supplied.
123 Supra at note 18.
124 Supra at note 19.
125 Exhibit "P-7", supra at note 20, p. 499.
126 Exhibit "P-8", id., p. 502.
127 Exhibit "P-9", id., p. 504.
128 Exhibit "P-10", id., p. 521.
129 Exhibit "P-11", id., p. 526.
130 BIR Records, p. 435.
131 Exhibit P-12", supra at note 20, p. 533.
132 Exhibit "P-13", id., p. 552.
133 Exhibit "P-14", id., p. 562.
134 PAN was issued on 22 February 2018, supra at note 21.
135 FAN was issued on 16 March 2018, supra at note 6.

Evidently, respondent was fully aware of petitioner's Laguna address well before issuing the PAN and FAN. However, notwithstanding respondent's knowledge thereof, respondent chose to mail the same only to petitioner's registered address (Creekside)[136], in violation of the BIR's own rules and regulations.

In the case of *BASF Coating*[137], the Supreme Court underscored that actual knowledge of the new address should take precedence over the registered address (despite the absence of a formal written notice of the taxpayer's change of address) in sending assessment notices in order to comply with the unequivocal mandate of the 1987 Constitution of first informing the taxpayer of the government's claim before there can be a deprivation of property, to wit:

> ...
>
> The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna.
>
> The CTA also found that BIR officers, at various times prior to the issuance of the subject FAN, conducted examination and investigation of respondent's tax liabilities for 1999 at the latter's new address in Laguna as evidenced by the following, in addition to the abovementioned records:
>
> ...
>
> Moreover, the CTA found that, based on records, the RDO sent respondent a letter dated April 24, 2002 informing the latter of the results of their investigation and inviting it to an informal conference. Subsequently, the RDO also sent respondent another letter dated May 30, 2002, acknowledging receipt of the latter's reply to his April 24, 2002 letter. **These two letters were sent to respondent's new address in Laguna. Had the RDO not been informed or was not aware of respondent's new address, he could not have sent the said letters to the said address.**
>
> 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.**

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136 Supra at note 70, pp. 43-46.

137 Supra at note 87; Citations omitted, emphasis and underscoring supplied.

> 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.
>
> ...
>
> ... 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. **<u>In the instant case, respondent has not properly been informed of the basis of its tax liabilities</u>**. 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.
>
> ...

Undoubtedly, respondent violated petitioner's right to due process by mailing the PAN and FAN to petitioner's old and abandoned business address at Creekside, despite an actual knowledge of her alternative known address. It bears noting that it is respondent's duty to ensure that assessment notices are properly served to and received by the taxpayer or his or her duly authorized representative.[138] Any deviation from this duty constitutes a breach of the taxpayer's right to due process, rendering the assessment void and without legal effect.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Vivian B. Mawis on 24 May 2021 is hereby **GRANTED**. Accordingly, the Formal Assessment Notice Part I and Part II dated 16 March 2018 which assessed petitioner for the total deficiency taxes of ₱5,016,119.72, comprised of income tax, value-added tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, registration fees and compromise penalty for taxable year 2015, is hereby **CANCELLED** and **SET ASIDE**. Further, the Warrant of Garnishment No. RR8A-WG-2020-09-0148 dated 10 November 2020 is **LIFTED** and similarly **SET ASIDE**.

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138 See *Commissioner of Internal Revenue v. Artura E. Villanueva, Jr.*, G.R. No. 249540, 28 February 2024.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ENJOINED** and **PROHIBITED** from collecting the tax deficiency amount against petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice