REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

XYTRIX SYSTEMS CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10629

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

AUG 06 2024
2:40 p.m.

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DECISION

MANAHAN, *J.*:

The *Petition for Review* filed on October 26, 2021, prays that the *Preliminary Assessment Notice* (PAN) and *Formal Letter of Demand* (FLD) issued by respondent against petitioner on its alleged deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT), in the total amount of ₱64,250,549.14, for taxable year 2013, be declared void.[1]

THE PARTIES

Petitioner Xytrix Systems Corporation is a corporation duly organized and existing under Philippine laws with principal place of business at 2nd Floor Security Bank Building, Km. 23 Ortigas Avenue Extension, Brgy. San Isidro, Taytay, Rizal.[2]

Respondent is the Commissioner of Internal Revenue who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on assessment,

[1] Docket, CTA Case No. 10629, Summary of the Case, Pre-Trial Order dated November 2, 2022, p. 385.
[2] *Id.*, Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 375.

with office address at the Bureau of Internal Revenue (BIR), National Office Building, Diliman, Quezon City.[3]

THE FACTS

Respondent issued to petitioner an electronic *Letter of Authority* (LOA) No. 046-2015-00000146 dated March 2, 2015 for taxable year 2013.[4]

Thereafter, respondent issued to petitioner the PAN dated 28 June 2016, finding petitioner liable for income tax, VAT, and EWT, including interests and compromise penalty, in the aggregate amount of ₱63,514,393.61, to wit:

Tax Type	Amount Assessed
Income tax	₱43,714,701.81
VAT	₱18,456,472.09
EWT	₱1,343,219.71
TOTAL	**₱63,514,393.61**[5]

Subsequently, on July 29, 2016, respondent issued to petitioner a FLD, with *Assessment Notices*, both dated July 26, 2016, finding the petitioner liable for income tax, VAT, and EWT, including interests and compromise penalty, in the aggregate amount of ₱64,250,549.14, *viz.*: [6]

Tax Type	Amount Assessed
Income tax	₱44,226,081.34
VAT	₱18,666,051.08
EWT	₱1,358,416.72
TOTAL	**₱64,250,549.14**

Respondent then issued to petitioner an undated *Warrant of Distraint and/or Levy* (WDL) No. RR7B-WDL-2021-08-04-00116.[7]

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[3] Docket, Par. 2, Joint Stipulation of Facts, JSFI, p. 375.
[4] *Id.*, Par. 3, Joint Stipulation of Facts, JSFI, Docket, p. 375.
[5] *Id.*, Par. 4 Joint Stipulation of Facts, JSFI, Docket, p. 376.
[6] *Id.*, Par. 5 Joint Stipulation of Facts, JSFI, Docket, p. 376.
[7] *Id.*, Par. 7, *Petition for Review*, vis-à-vis Par. 3, *Answer*, p. 320, respectively; Docket, Exhibit "P-2", p. 36.

On October 26, 2021, petitioner filed the present *Petition for Review with Motion to Suspend Collection of Taxes*.[8] The case was initially raffled to this Court's Third Division.

At the hearing held for the *Motion to Suspend Collection of Taxes*, petitioner presented the testimony of its President and authorized representative, Mr. Danilo F. Evangelista.[9] In the same hearing, petitioner was given a period of not later than December 20, 2021 to file its *Formal Offer of Evidence*, while respondent was given a period not later than December 27, 2021 to file his comment thereon. Respondent was likewise given ten (10) days from the said hearing, or not later than December 17, 2021, to file his opposition to the said motion.

In compliance, petitioner filed a *Motion for Permanent Marking with Formal Offer of Evidence (Re: Motion to Suspend Collection of Taxes)* on December 20, 2021.[10] No comment was, however, filed thereon by respondent.[11]

On December 22, 2021, respondent filed his *Comment/ Opposition (Re: Petitioner Motion to Suspend Collection of Taxes*.[12]

Thereafter, respondent filed a *Motion for Extension of Time to File Answer* on December 22, 2021,[13] praying that he be granted an additional period of thirty (30) days from December 20, 2021, or until January 19, 2022 within which to file his *Answer*.

In the Resolution dated February 3, 2022,[14] the Court, *inter alia*: (1) admitted petitioner's exhibits; (2) submitted for resolution petitioner's *Motion to Suspend Collection of Taxes*; (3) granted respondent's *Motion for Extension of Time to Answer*; and (4) gave petitioner an additional non-extendible period of thirty (30) days from December 20, 2021, or until January 19, 2022, within which to file his *Answer*.

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[8] Docket, pp. 8 to 32.
[9] *Id.*, Exhibit "P-10-TRO", pp. 67 to 76; Docket, Minutes of the hearing held on, and Order dated, December 7, 2021, pp. 202 to 204.
[10] *Id.*, pp. 209 to 219.
[11] *Id.*, Records Verification Report dated December 28, 2021 issued by the Judicial Records Division of this Court, p. 314.
[12] *Id.*, pp. 298 to 304.
[13] *Id.*, pp. 307 to 309.
[14] *Id.*, pp. 317 to 319.

Respondent filed his *Answer* on February 10, 2022,[15] interposing the following main special and affirmative defenses, to wit:

1. The PAN was properly served; and

2. The Tax assessments are presumed to be correct. There is presumption of regularity in the performance of the Revenue Officer's investigation.

The Pre-trial Conference was initially set on June 30, 2022.[16]

In the Resolution dated March 4, 2022,[17] the Court: (i) granted petitioner's *Motion to Suspend Collection of Taxes*, subject to petitioner's posting of a cash bond or a surety bond from a reputable surety company duly accredited by the Supreme Court, in the amount of ₱43,338,188.40, within ten (10) days from notice; and (ii) ordered petitioner to submit certain documents required under A.M. No. 04-7-02-SC dated July 20, 2004.

Thereafter, in the Resolution dated July 28, 2022,[18] the Court stated that, as per Records Verification Report dated July 12, 2022,[19] petitioner failed to comply with the Resolution dated March 4, 2022, and no surety bond was posted in the instant case. Thus, the Court ordered petitioner to explain why it failed to comply with the said Resolution and required petitioner to complete its compliance within a period of ten (10) days from notice. Failure to do so would warrant the setting aside of the order of Suspension of Collection of Taxes granted in the Resolution dated March 4, 2022. However, no full compliance was made by petitioner.[20]

On August 17, 2022, petitioner posted its *Compliance*,[21] stating, among others, that it will no longer pursue its *Motion to Suspend Collection of Taxes* because of its financial incapacity to post the required amount of bond. Thus, in the Resolution

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[15] Docket, pp. 320 to 324.
[16] *Id.*, Notice of Pre-Trial Conference dated March 11, 2022, Docket, pp. 327 to 328.
[17] *Id.*, Resolution dated March 4, 2022, pp. 330 to 336.
[18] *Id.*, pp. 343 to 344.
[19] *Id.*, p. 341.
[20] *Id.*, Records Verification Report dated August 23, 2022 issued by the Judicial Records Division of this Court, p. 345.
[21] *Id.*, pp. 346 to 348.

dated September 8, 2022,[22] the Court recalled and set aside the Resolution dated March 4, 2022, and set the pre-trial conference of the instant case on September 21, 2022.

The Pre-Trial Conference proceeded as scheduled.[23] Prior thereto, *Respondent's Pre-Trial Brief* was filed on September 15, 2022,[24] while the petitioner's *Pre-Trial Brief* was submitted on September 16, 2022.[25]

On October 19, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[26] which was admitted and approved in the Resolution dated October 27, 2022,[27] thereby deeming termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated November 2, 2022 was issued by the Court.[28]

During the scheduled hearing held on November 3, 2022,[29] petitioner's counsel manifested that its supposed witness, Mr. Danilo F. Evangelista, was not available. Upon agreement of both parties' counsels, Mr. Evangelista's testimony, as well as the direct and cross-examinations of the counsels during the hearing on the *Motion to Suspend Collection of Taxes*, will just be adopted.

In the same hearing, respondent's counsel likewise manifested that upon advice of the earlier handling counsel, no more cross-examination will be conducted on petitioner's subsequent Judicial Affidavit.[30]

Petitioner was given fifteen (15) days to file its *Formal Offer of Evidence*, while respondent was given the same period from receipt thereof to file his comment thereon.

On November 18, 2022, petitioner filed its *Formal Offer of Evidence*,[31] to which respondent filed his *Comment/Objections (Re: Petitioner's Formal Offer of Evidence)* on December 6,

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[22] Docket, pp. 351 to 352.
[23] *Id.*, Minutes of the hearing held on, and Order dated, September 21, 2022, pp. 370 to 372.
[24] *Id.*, pp. 353 to 356.
[25] *Id.*, pp. 358 to 367.
[26] *Id.*, pp. 375 to 379.
[27] *Id.*, p. 374.
[28] *Id.*, pp. 385 to 389.
[29] *Id.*, Minutes of the hearing held on, and Order dated, November 3, 2022, pp. 390 to 392.
[30] Transcript of Stenographic Notes (TSN), Hearing held on November 3, 2022, p. 4.
[31] *Id.*, pp. 393 to 403.

2022.[32] In the Resolution dated January 25, 2023,[33] the Court admitted petitioner's offered documentary evidence and no motion for reconsideration was filed by respondent.

During the hearing on May 3, 2023,[34] respondent's counsel moved to reset the said hearing on the ground that his intended witness was transferred to another office. Petitioner's counsel, on the other hand, moved that respondent be declared to have waived his right to present his witness, which the Court granted. Thus, both parties were given thirty (30) days or not later than June 2, 2023 within which to submit their respective memoranda.

The *Memorandum (For: Petitioner Xytrix Systems Corporation)* was posted on June 2, 2023.[35] Respondent, however, failed to file his memorandum.[36]

The present case was deemed submitted for decision on July 14, 2023.[37]

ISSUE

As stipulated by the parties, the sole issue for this Court's resolution is as follows:

> "WHETHER OR NOT THE PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX AND EXPANDED WITHHOLDING TAX FOR THE TAXABLE YEAR 2013 IN THE TOTAL AMOUNT OF P64,250,549.14."[38]

Petitioner's Arguments

Petitioner argues that the PAN was improperly served, thus, rendering the assessments void.

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[32] *Id.*, pp. 404 to 406.
[33] *Id.*, pp. 411 to 412.
[34] Docket, Minutes of the hearing held on, and Order dated, May 3, 2023, pp. 413 to 415.
[35] *Id.*, pp. 417 to 438.
[36] *Id.*, Records Verification Report dated July 5, 2023 issued by the Judicial Records Division of this Court, p. 441.
[37] *Id.*, Minute Resolution dated July 14, 2023, p. 442.
[38] *Id.*, Joint Statement of Issue to be Tried or Resolved, JSFI, p. 376.

Petitioner further argues that the assessments are void for their failure to indicate: (a) demand to pay tax liabilities, and (b) the due date when the taxes shall be paid.

Petitioner insists that the issuance of the WDL is premature because there was no amended PAN or FLD issued to petitioner after the grant of the latter's request for reinvestigation.

Respondent's Arguments

Respondent argues that the PAN was properly served.

Respondent further argues that the tax assessments are presumed to be correct and it enjoys a presumption of regularity in the performance of the Revenue Officer's investigation.

RULING OF THE COURT

The Court has jurisdiction over the instant case.

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125[39], as amended by RA No. 9282[40], provide as follows:

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

[39] AN ACT CREATING THE COURT OF TAX APPEALS.
[40] 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.

> "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 xxx **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. xxx." *(Emphasis supplied)*

Based on the foregoing, it is clear that the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent 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 BIR.[41]

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*,[42] such CTA jurisdiction on "other matters" was reiterated by the Supreme Court, to wit:

> "Contrary however to the CIR's argument, Section 7(a)(I) of Republic Act No. (RA) 1125, as amended by RA 9282, which 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:
>
>> SEC. 7. Jurisdiction. — The CTA shall exercise:
>>
>> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>>
>> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue [Code] or other laws

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[41] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[42] G.R. No. 255473. February 13, 2023.

> administered by the Bureau of Internal Revenue[.]
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> *As explained by the Court in Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, the 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**...." (*Emphasis supplied*)

The concerned taxpayer or party adversely affected by such may file an appeal with this Court within thirty (30) days after the receipt of such notice.

In the instant case, petitioner grounded its appeal on respondent's WDL.[43]

Applying the abovementioned provisions, petitioner had thirty (30) days from August 4, 2021 or until September 3, 2021 within which to file such appeal.

However, under Supreme Court (SC) Administrative Circular No. 56-2021 dated July 30, 2021, all courts were physically closed from August 2, 2021 and the filing of pleadings was suspended. It was only under SC Administrative Circular No. 83-2021 dated October 18, 2021 that the suspension of the filing of pleadings was lifted and the litigants were granted seven (7) calendar days from October 20, 2021 to file their required pleadings. Thus, the instant petition dated October 26, 2021 was filed on time.

The *Petition for Review* has merit.

There is no showing that the subject PAN was properly served to petitioner.

In claiming that the subject PAN was properly served to petitioner, respondent specifically made the following averments in his *Answer*,[44] to wit:

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[43] Docket, Exhibit "P-2," p. 36.
[44] *Id.*, Pars. 9 to 13, Special and Affirmative Defenses, *Answer*, pp. 322 to 323.

"9. However, resort to substituted service was not proper. As stated by the petitioner in paragraph 19 of its Petition for Review, the Preliminary Assessment Notice (PAN) was received by a certain Ms. Cecile Cainag at the taxpayer's office or place of business. This is the same Ms. Cecile P. Canaig who filed a Request for Reinvestigation before the BIR and represented to be an authorized representative of the taxpayer as shown in the Request for Reinvestigation dated 28 December 2016, Annex-P-6 of the Petition for Review. Considering that the taxpayer's authorized representative received the PAN, it should be considered personal service under Section 3.1.6 (i) of Revenue Regulations (RR) 18-2013 to wit:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address wherever he may be found xxx

10. There is no need to comply with the requirements under substituted service since the PAN was validly served personally through the taxpayer's authorized representative.

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13. In the case at bar, the findings of the Revenue Officers shall stand in the absence of proof of any irregularities in the performance of their duties. The assessment made by the investigating Revenue Officers and approved by their superiors enjoys the presumption of correctness and regularity. The burden of proof to refute the validity and correctness of the assessments issued rests on the Petitioner."

The Court, however, finds the foregoing contentions untenable.

Section 3.1.6 of Revenue Regulations (RR) No. 12-99,[45] as amended by RR No. 18-2013,[46] prescribes substituted service only in specific instances, thus:

"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:

xxx xxx xxx

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[45] Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

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

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

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

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

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

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

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

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the

> **bottom portion of the notice, as well as the names, official position and signatures of the witnesses.**
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> *'Disinterested witnesses'* refers to persons of legal age other than employees of the Bureau of Internal Revenue.
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> (iii) **Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered.** A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
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> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/** professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.
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> xxx xxx xxx." *(Emphases and underscoring added)*

Based on the foregoing provisions, the service of the PAN, among others, may be made through: (1) personal service to the concerned party; (2) substituted service in specific instances; or (3) service by mail.

Anent the mode of personal service, the above-quoted provision requires that such service should be done *"by delivering personally a copy thereof **to the party** at his registered or known address or wherever he may be found."*

With regard to substituted service, the same can be availed of only in specific instances depending on whether the concerned party is present or not, or in case the said party is present, but the same party refuses to receive the notice. **If the party is not present**, the notice may be left at the party's registered or known address, with his/her/its clerk or with a person who is in charge of the office. **If no person is found in the party's registered or known address**, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to *such absence.* **Should the party be found at the registered or known address but refuses to receive the notice**, the concerned revenue officers shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to *such refusal.* In the latter two (2) cases, the notice shall be given to the said barangay official.

As for the service through registered mail, the same must be made by sending the notice *"with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered."* The registry receipt issued by the post office containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Accordingly, substituted service can be resorted to only in three (3) specific scenarios: (1) when the party is not present at the registered or known address; (2) if no person is found in the party's registered or known address; and (3) if the party be found at the registered or known address but refuses to receive the notice.

Undoubtedly, the petitioner as the concerned party for the subject PAN is indisputably a corporation. Needless to state, a corporation is an artificial being created by operation of law,[47] invisible, intangible, and existing only in contemplation of law.[48] Such being the case, as a corporation, petitioner should always be considered present or found at its current address, *i.e.*, at 2nd Floor, Security Bank Building, Km. 23, Ortigas Avenue Extension, Brgy. San Isidro, Taytay, Rizal, the address used by the BIR in serving the said notices.

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[47] *Testate Estate of Idonah Slade Perkins, Deceased. Tayag vs. Benguet Consolidated, Inc.*, G.R. No. L-23145, November 29, 1968.
[48] *Id.*

Furthermore, Section 23, in relation to Section 25, both of the Corporation Code (Batas Pambansa Bilang 68), clearly enunciates that all corporate powers are exercised, all businesses conducted, and all properties are controlled by the board of directors.[49] And just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. The authority of such individuals to bind the corporation is generally derived from law, corporate by-laws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.[50] Hence, the service of the subject PAN shall bind petitioner, when such service was made upon its board of directors; or to certain officers, committees or agents, pursuant to law or its corporate by-laws.

On the other hand, should the said board or individuals, as the case may be, refuse to receive the said notices, substituted service contemplated under the aforequoted Section 3.1.6 (ii) of RR No. 12-99, as amended by RR No. 18-2013, wherein the BIR would need to bring a barangay official and two (2) disinterested witnesses to personally observe the service of the same notices and to attest to such refusal, is justified.

In this case, it is clear that the subject PAN was not served upon petitioner's board of directors. Rather, it was allegedly served upon a certain Ms. Cecile Cainag, whom the respondent even failed to prove for failure to adduce any supporting evidence.

The crux of the controversy then is the determination of whether Ms. Cecile Cainag has been duly authorized by the Board of Directors of petitioner to receive the said PAN and subsequent BIR notices on behalf of petitioner; and whether the same was properly served to her.

We rule in the negative.

The above-quoted arguments raised by respondent in his *Answer* run counter to the observations and findings of Regional Director Marina C. De Guzman (RD De Guzman) in her

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[49] *Philippine Numismatic And Antiquarian Society vs. Aquino, et al.*, G.R. No. 206617, January 30, 2017.
[50] *Cebu Mactan Members Center, Inc. vs. Masahiro Tsukahara*, G.R. No. 159624, July 17, 2009.

Memorandum dated November 14, 2018 addressed to Revenue District Officer (RDO) of Revenue District Office No. 46 – Cainta/Taytay,[51] where RD De Guzman categorically declared that there was a complete departure from the provisions of Section 3.1.6 (ii) of RR No. 18-2013 during and after the service of PAN to petitioner. Pertinent portions of the said *Memorandum* are herein quoted for ready reference:

> "In this case, **the PAN with Details of Discrepancies dated 28 June 2016 was left with a certain Ms. Cecile Cainag at the taxpayer's office or place of business since the taxpayer allegedly refused to receive the said notice**, as per the undated Affidavit of Service of Preliminary Assessment Notice/Final Assessment Notice. However, a close examination of the same would reveal that the procedures laid down by Section 3.1.6 (ii) of RR No. 18-2013 were not correctly and properly observed.
>
> First, contrary to the mandate of Section 3.1.6 (ii) of RR No. 18-2013 **in case of refusal to receive the PAN** with Details of Discrepancies dated 28 June 2016, **a barangay official and two (2) disinterested witnesses were not brought during the service thereof in the presence of the party to personally observe and attest to such act of refusal. Only the Revenue Officers who were tasked to serve the PAN with Details of Discrepancies dated 28 June 2016 and another Revenue Officer who served as witness thereto were present during the service of the said PAN.**
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> Second, Section 3.1.6 (ii) of RR No. 18-2013 explicitly directs that the PAN with Details of Discrepancies dated 28 June 2016 shall be given to said barangay official. However, as mentioned earlier, **the PAN with Details of Discrepancies dated 28 June 2016 was left with a certain Ms. Cecile Cainag, whose connection with the taxpayer was not stated or specified**.
>
> Third, **the above-mentioned facts and circumstances shall be contained in the bottom portion of the notice, as well as the names, official position and signature of the witnesses. On the other hand, the bottom portion of the copy of the PAN with Details of Discrepancies dated 28 June 2016 attached to the docket of this case did not contain such facts and circumstances. The name of the person who received the said PAN, as well as the names, official position, and signature of the disinterested witnesses were all not indicated in the bottom portion of the said PAN.**
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> **What is more, the date of execution of the Affidavit of Service of Preliminary Assessment Notice/Final**

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[51]Docket, Exhibit "P-7", pp. 49 to 55.

> **Assessment Notice was not indicated and the date when it was sworn before the Revenue District Officer was likewise left blank.**
>
> Based from the foregoing discussions, it is clear that there was complete departure from the provisions of Section 3.1.6 (ii) of RR No. 18-2013 during and after the service of the PAN with Details of Discrepancies dated 28 June 2016 since all the requisites for the valid service thereof were not complied or followed. Stated differently, the service of the PAN with Details of Discrepancies dated 28 June 2016 was legally and procedurally flawed, hence, cannot be considered valid against the taxpayer." *(Emphases and underscoring supplied)*

It is, thus, clear from the foregoing that the present case falls under the *third* scenario (*i.e.* if taxpayer refuses to accept the PAN, the concerned revenue officers shall bring a barangay official and two (2) disinterested witnesses to the known address so that they may personally observe and attest to such refusal). Thus, following Section 3.1.6 (ii) of RR No. 18-2013, **the BIR violated its own rules when its revenue officers who served the subject PAN did not only fail to ascertain or specify the authority of Ms. Cecile Cainag to receive the said notice on behalf of petitioner**, but also failed to bring with them a barangay official and two (2) disinterested witnesses who may personally observe and attest to such refusal, and caused the service of the PAN to the said barangay official. Consequently, it is of no moment that it was Ms. Cecile Cainag who filed petitioner's Request for Reinvestigation dated December 28, 2016,[52] since her authority as petitioner's authorized representative has not yet been proven or established at the time the PAN was served to petitioner. Furthermore, since there was a refusal to receive the subject PAN, the notice should not have been served to Ms. Cecile Cainag, but to the said barangay official, with the two (2) disinterested witnesses observing and attesting to the service thereof.

Granting that there was a valid reason for resorting to a substituted service, respondent still failed to follow the requisites of a substituted service. The case of *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*[53] provides an illustrative example, to wit:

> "Section 228 of the Tax Code explicitly provides that when the respondent finds that proper taxes should be assessed, the taxpayer must be properly notified of its

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[52] Docket, Exhibit "P-6", pp. 47 to 48.
[53] G.R. No. 244202, July 10, 2023.

findings. Moreover, under Section 3.1.4 of Revenue Regulations No. 12-99, personal delivery must be acknowledged by the taxpayer **or his duly authorized representative**, viz.:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> x x x x
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand 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 formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. **If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand**, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof. (Emphasis supplied)

The very same provision even requires that the signee-recipient must indicate their "designation and authority to act for and in behalf of the taxpayer," which further emphasizes that personal delivery must be discriminate.

The wisdom for such a requirement is readily apparent — unless the recipient possesses a certain degree of authority or discretion, they would be unable to grasp the gravity of the service of an assessment notice and the potential financial impact it would have to the taxpayer they purport to serve and represent. This is especially true for juridical entity taxpayers who can only act through its officers and employees, and who would otherwise be prejudiced by such recipient's simple ignorance.

While Sections 3.1.1. and 3.1.2. of Revenue Regulations No. 12-99, which govern the NIC and the PAN, respectively, bear no similar qualifications for personal delivery as those found under Section 3.1.4, the Court deems it more in keeping with the spirit of the law that these should likewise be served only upon the taxpayer or, especially for juridical entities, their duly authorized representatives.

This is consistent with the oft-repeated principle that the sending and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the BIR must strictly comply with. *an*

> Certainly, the importance of this preliminary stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.
>
> **Having failed to properly serve petitioner with the NIC and the PAN, it necessarily follows that the succeeding FAN was void and without effect.**" (*Additional boldfacing ours*)

There was no evidence in the records of the instant case to prove that Ms. Cecile Cainag was authorized to receive any documents on behalf of petitioner.

Considering that respondent failed to comply with the requirements stated under existing BIR rules and regulations, petitioner's right to due process was violated in the issuance of the subject PAN, pursuant to Section 228 of the NIRC of 1997, and Section 3.1 of RR No. 12-99, as amended by RR No. 18-2013. Such being the case, the said PAN and the subsequently issued FLD are void. Thus, respondent cannot exercise his authority to collect absent a valid final assessment notice. Therefore, the issuance of the WDL No. RR7B-WDL-2021-08-04-00116 is devoid of legal and factual bases.[54]

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[55] Furthermore, a void assessment bears no valid fruit.[56] Such being the case, the subject tax assessments cannot be enforced against petitioner, and the BIR has no right to collect the same.

On petitioner's argument that the assessments are void for failure to indicate definite tax liabilities and the final due date of payment of the taxes, the notation stating *"Please note that the interest and the total amount due will have to be adjusted if paid after the date specified herein"* does not necessarily mean that it lacks the definite or exact amount of tax liabilities but merely a statement that the interest will be adjusted if the

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[54] Docket, Exhibit "P-2", p. 36.
[55] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[56] *Commissioner of Internal Revenue vs. Unioil Corp.*, G.R. No. 204405, August 4, 2021, citing the case of *Commissioner of Internal Revenue vs. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

taxpayer shall pay the subject assessment after the date specified for payment in the FLD.

Further, the FLD, particularly in its upper right portion,[57] indicated the due date for the payment of the subject tax assessment.

As to the argument of petitioner that the issuance of the WDL is premature because there was no amended PAN or FLD issued to petitioner after the grant of the latter's request for reinvestigation, the issuance of a WDL or any form of demand collecting the subject assessment without the issuance of a Final Decision on Disputed Assessment (FDDA) is tantamount to a denial of the protest as held in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*,[58] to wit:

> "A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.
>
> xxx xxx xxx
>
> The demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the Court of Tax Appeals, "while the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as [his] final decision."

Overall, considering the invalid service of the PAN which is in violation of petitioner's right to due process, the succeeding notices issued relative to the subject assessment were null and void.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, the PAN dated June 28, 2016, FLD dated July 26, 2016, and WDL No. RR7B-WDL-2021-08-04-00116, for the assessments for deficiency income tax, VAT, and EWT, with interests, for taxable year 2013, in the aggregate amount of

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[57] Docket, Exhibit "P-5", p. 40.
[58] G.R. No. 148380, December 09, 2005.

₱64,250,549.14 are **CANCELLED** and **SET ASIDE** for being **NULL** and **VOID**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Concurrence)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(I concur in the result)
HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

XYTRIX SYSTEMS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10629

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, and
ANGELES, *JJ.*

Promulgated:

AUG 06 2024
2:40 p.m.

x - x

CONCURRENCE

REYES-FAJARDO, ***J.*****:**

I agree with the nullification of the deficiency Income Tax (IT), Value-Added Tax (VAT), and Expanded Withholding Tax (EWT) assessments, covering Taxable Year (TY) 2013, issued by the Bureau of Internal Revenue (BIR) against petitioner, albeit, for a different reason.

Let me first unfurl the pertinent fact.

In paragraph 13 of the Petition for Review, petitioner alleged that respondent issued a Formal Letter of Demand with Assessment Notices (FLD) dated July 26, 2016, which, in turn, are appended[1] as Annex "P-5 and series" of said Petition.[2] Respondent *admitted* the genuineness and due execution of, among others, said FLD referred to in paragraph 13 of the Petition.[3] Moreover, the parties' Joint Stipulation of Facts and Issues relayed that on July 26, 2016,

[1] Docket, pp. 40-46.
[2] *Id.* at p. 4.
[3] Par. 3, Answer. *Id.* at p. 320.

respondent issued said FLD to petitioner, assessing the latter for deficiency IT, VAT, and EWT for TY 2013.[4] Undoubtedly, the FLD referred to in this case is the one attached in petitioner's Petition for Review, found in pages 40-46 of the case docket.

With the above backdrop in mind, I find the 2013 deficiency tax assessments issued by the BIR against petitioner void.

Section 6(A) of the 1997 National Internal Revenue Code, as amended, provides that the tax or deficiency tax so assessed shall be paid upon notice and demand from respondent or his duly authorized representative.[5] Appositely, an assessment is described as a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[6] Through these premises, the presence of due dates is indispensable for the validity of the tax assessments. Jurisprudence supports this conclusion.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc. (Fitness)*[7] and *Republic of the Philippines v. First Gas Power Corporation (First Gas)*,[8] the respective tax assessments therein were annulled, for lack of due dates in the assessment notices, among others. Said infirmity is likewise found in the FLD here.

To be precise, the FLD dated July 26, 2016 alluded petitioner's period to pay the 2013 deficiency taxes on the period shown in the enclosed assessment notices.[9] Yet, the due dates for their payment in

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4 Par. 5, Joint Stipulation of Facts and Issues. *Id.* at p. 376.

5 SEC. 6. *Power of the Commissioner to Make and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

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

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

... (Boldfacing supplied)

6 *Commissioner of Internal Revenue v. Megabucks Merchandising Corp.*, CTA EB No. 1974, February 12, 2020, citing *Adamson v. Court of Appeals*, G.R. No. 120935, May 21, 2009.

7 G.R. No. 215957, November 9, 2016.

8 G.R. No. 214933, February 15, 2022.

9 Last paragraph, FLD dated July 26, 2016. Docket, p. 41.

the assessment notices for IT,[10] VAT,[11] and EWT,[12] all dated July 26, 2016, remained unaccomplished. *Fitness* and *First Gas* struck down the tax assessments because of such defect.

So must it be here.

All said, I **CONCUR** in the result.

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

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10 Docket, p. 44.
11 *Id.* at p. 46.
12 *Id.* at p. 45.