REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LORENZO SHIPPING CORPORATION,
Respondent.

CTA *EB* NO. 1964
(CTA Case No. 8694)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JAN 26 2021 9:39 a.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review*[1] under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) seeking the nullification of the Decision dated June 28, 2018 by the Court of Tax Appeals (CTA) Third Division and subsequent Resolution dated October 29, 2018. The CTA Third Division cancelled and set aside the Final Assessment Notice (FAN) for deficiency taxes in the aggregate amount of Php2,008,472,584.91, inclusive of interest, surcharges and compromise penalty for taxable year 2008.

The Facts

The CTA Third Division recited the antecedents, as follows:

> Petitioner [now, respondent] Lorenzo Shipping Corporation is a domestic corporate entity organized and

[1] *Rollo*, pp. 10-42. cm

existing under the laws of the Republic of the Philippines with principal office address at 20F Times Plaza Building, United Nations Avenue corner Taft Avenue, Ermita, Manila.

On the other hand, Respondent [now, petitioner] is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to act upon and render final decision on protests filed against internal revenue tax assessments, and other matters arising under National Internal Revenue Code or other laws administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On May 27, 2009, a Letter of Authority NO. 2007-00049470 evenly dated was issued by Zenaida Garcia, OIC-ACIR, Large Taxpayers Service of the BIR for the examination of its books of accounts and other accounting records for all internal revenue taxes covering the period of January 1, 2008 to December 31, 2008.

On June 23, 2010, Petitioner received a Notice of Informal Conference dated June 17, 2010, issued by Mr. Rey Asterio L. Tambis, Head Revenue Executive Assistant, Large Taxpayers Service – Regular.

On March 06, 2013, Petitioner received from Respondent an undated Preliminary Assessment Notice ("PAN"), assessing Petitioner for deficiency income tax, value-added tax ("VAT"), withholding tax on compensation ("WTC"), expanded withholding tax ("EWT"), fringe benefits tax ("FBT"), and documentary stamp tax ("DST"), inclusive of interest and compromise penalty in the amounts of Php1,480,082,550.48, Php420,82,135.71, Php22,521,83.43, Php43,707,236.86, Php15,751,331.62, and Php1,989,950,674.28, respectively.

Subsequently, Petitioner and Respondent allegedly executed Waivers of Statute of Limitations on March 31, 2011, on October 08, 2011 and on June 29, 2012.

On April 18, 2013, Petitioner received from Respondent an undated FAN and undated Audit Result/Assessment Notices assessing Petitioner for alleged deficiency income tax, VAT, WTC, EWT, FBT, and DST, inclusive of surcharges, interest and compromise penalty, broken down as follows:

Nature of Deficiency	**Amount**
Income Tax	Php1,493,935,124.39
Value-Added Tax (VAT)	424,740,697.17
Withholding Tax on Compensation (WTC)	22,727,015.18
Expanded Withholding Tax (EWT)	44,105,756.98
Fringe Benefits Tax (FBT)	15,894,659.44
Documentary Stamp Tax (DST)	7,069,331.75
TOTAL	**Php2,008,472,584.91**

> As a result, Petitioner filed a protest to the FAN dated May 17, 2013 allegedly on the same day *via* registered mail.
>
> Thereafter, on June 26, 2013, Petitioner received from Respondent through Mr. Alfredo V. Misajon, a Preliminary Collection Letter dated June 21, 2013.
>
> In response, on July 04, 2013, Petitioner filed with the Office of Mr. Alfredo V. Misajon a Letter Reply dated July 02, 2013.
>
> On July 15, 2013, Petitioner received from Respondent a letter dated July 12, 2013 denying its protest.[2]

On August 13, 2013, Lorenzo Shipping filed its Petition for Review, docketed as CTA Case No. 8694 and raffled to the CTA Third Division.

After trial, the CTA Third Division rendered its Decision dated June 28, 2018, disposing of the case as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the undated Final Assessment Notice assessing Petitioner deficiency taxes in the aggregate amount of Two Billion, Eight Million, Four Hundred Seventy Two Thousand, Five Hundred Eighty Four and 91/100 Pesos (Php2,008,472,584.91), inclusive of interest and surcharges and compromise penalties for taxable year 2008 is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**[3]

On October 29, 2018, the CTA Third Division denied the CIR's Motion for Reconsideration (Re: Decision dated 28 June 2018).[4]

Hence, this *Petition for Review with Motion for Voluntary Inhibition (Re: Decision dated 28 June 2018)* filed by petitioner CIR. Respondent Lorenzo Shipping filed its *Comment & Opposition (Re: Petitioner's "Petition for Review with Motion for Voluntary Inhibition" dated 27 November 2018).*

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[2] *Rollo*, Decision dated June 28, 2018, pp. 49-51.
[3] *Rollo*, Decision dated June 28, 2018, p. 72.
[4] *Rollo*, Resolution dated October 29, 2018, p. 74-81.

On February 3, 2020, the Court *En Banc* denied the CIR's *Motion for Voluntary Inhibition* of Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.[5] In the same Resolution, the CIR's *Petition for Review* was submitted for decision.[6]

Issue

The CIR submits the following grounds for his *Petition for Review*:

> With all due respect, the Honorable Court Third Division erred in ruling that it has jurisdiction over the original petition. The assessment has already become final, executory and demandable and now beyond the scope of judicial review.
>
> With all due respect, the Honorable Court Third Division gravely erred in ruling that petitioner's Letter dated 12 July 2013 is a decision appealable to the Honorable Court.
>
> The Honorable Court Third Division erred in ruling that the Final Assessment Notice against respondent is void for allegedly not containing a definite due date for payment of the tax liabilities.[7]

The CIR's arguments

The CIR argues that Lorenzo Shipping's allegation that the protest received by the BIR on July 4, 2013 was actually mailed on May 17, 2013, is outside the natural occurrence of things. The CIR argues that the more logical narration is that no such protest was mailed on May 17, 2013 because Lorenzo Shipping's representatives were actively negotiating for the admission and antedating of their protest.

The CIR argues that the testimony of retired postmaster, Mr. Roberto S. Quiogue is fantastic and lacks credibility, as well as his belated certification. The identity of the employee who allegedly resigned and caused the belated dispatching of

[5] *Rollo*, Resolution dated February 3, 2020, pp. 129-131.
[6] *Id.*
[7] *Rollo*, Petition for Review, pp. 12-13. *cmv*

the letter from respondent was never even proven by Lorenzo Shipping. It is not the regular function of an employee to keep the letters instead of dispatching them to the proper addressee and subsequently leave without proper clearance of accountabilities. The blame on the alleged negligence of the postmaster is being shifted to a person whose identity and existence is not even certain.

On the other hand, the CIR argues that the protest letter was actually posted only on June 19, 2013, as based on the earlier Certification issued by Mr. Quiogue. Thus, given the belated filing of the protest, the assessments against Lorenzo Shipping have become final, executory and demandable.

The CIR further argues that the Letter dated July 12, 2013 cannot be considered as a decision which is appealable to the CTA, since it is not a decision on a disputed assessment.

Finally, the CIR argues that an assessment is valid as long as it states the fact, the law, the rules and regulations or jurisprudence on which it was based. The Formal Letter of Demand (FLD) has fixed and definitely set the deficiency tax liabilities of Lorenzo Shipping. The basic tax deficiency as well as the surcharge and applicable interest were computed up to May 31, 2013, subject to adjustment if paid on or before May 31, 2013.

Thus, the CIR argues that the CTA Third Division erred in ruling that the assessments are void for not containing a definite due date for payment of the tax liabilities, and that the doctrine laid down in the case of *Commissioner of Internal Revenue v. Fitness by Design*[8] should be revisited.

Lorenzo Shipping Corporation's arguments

Respondent Lorenzo Shipping states that the grounds relied upon by the CIR are mere rehash of the very same issues already passed upon by the CTA Third Division.

Lorenzo Shipping states that the pieces of evidence show that its protest was timely mailed on May 17, 2013. However, while Lorenzo Shipping timely mailed its protest on May 17,

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[8] G.R. No. 215957, November 9, 2016.

2013 by submitting the same to the post office, it no longer had any control as to the date of dispatch thereof. When Registry Receipt No. 5821 dated May 17, 2013 was presented and formally offered and admitted, the fact of mailing on May 17, 2013 was sufficiently proved.

Lorenzo Shipping further argues that the allegations being proffered by the CIR are contrary to human experience as it is highly illogical and irrational for the said BIR officials to meet with and talk to its representatives over and over again and on several occasions just for the purpose of discussing the alleged illegal request for the admission and antedating of Lorenzo Shipping's protest, which could have been denied outright at the very first instance. Lorenzo Shipping states that the more believable version according to ordinary human experience is that its representatives went to the BIR for the purposes of discussing the merits of its protest and the correctness and accuracy of the subject deficiency assessment.

Assuming that Lorenzo Shipping's protest was not timely filed or not filed at all, it argues that the CIR's right to assess the 2008 deficiency taxes had already expired when he failed to accept the third and final waiver before the expiration of the deadline previously agreed upon in the second waiver.

Further, Lorenzo Shipping argues that the assessment is void for not containing a definite due date for payment of tax liabilities.

Ruling of the Court

The Petition for Review lacks merit.

The Petition for Review was timely filed.

The CIR received the assailed Resolution dated October 29, 2018, on October 31, 2018. The CIR had fifteen days from the date of receipt of the resolution within which to file his petition for review before the Court *En Banc*, pursuant to the

Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).[9]

Counting fifteen (15) days from October 31, 2018, the CIR had until November 15, 2018 within which to file his petition for review.

On November 15, 2018, the CIR filed his *Motion for Extension of Time to File Petition for Review,*[10] which was granted,[11] giving the CIR until November 30, 2018 within which to file his petition for review.

On December 3, 2018, the CIR posted the subject *Petition for Review with Motion for Voluntary Inhibition (Re: Decision dated 28 June 2018),* which was received on December 10, 2018. Hence, the subject *Petition for Review* is timely filed.

There is no compelling reason to reverse or modify the CTA Third Division's findings.

The CIR anchors his appeal on three grounds: that Lorenzo Shipping's protest was filed out of time; that the Letter dated July 12, 2013 is not a decision appealable to the CTA; and, that the Court erred in ruling that the assessment is void for lack of a definite due date. These issues were addressed and resolved in the assailed Decision dated June 28, 2018 and Resolution dated October 29, 2018.

On the matter of the filing of Lorenzo Shipping's protest to the final assessment notice (FAN) and FLD, the CIR once again asserts that the administrative protest was filed out of time, having been dispatched only on June 19, 2013 as contained in the Certification by postmaster Mr. Quiogue.

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[9] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*
xxx xxx xxx
(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[10] *Rollo*, pp. 1-5.

[11] *Rollo*, Minute Resolution dated November 18, 2018, p. 6.

As found by the CTA Third Division, Lorenzo Shipping's administrative protest was filed by registered mail on May 17, 2013.[12]

> The date of filing of Petitioner by registered mail is evidenced by Registry Receipt No. 5821 bearing even date, the Certification of the Muntinlupa Central Post Office ("MCPO"), as well as the testimony of Mr. Roberto S. Quiogue, former Postmaster of MCPO who issued said Certification.[13]

In the BIR Letter dated July 12, 2013,[14] even the BIR acknowledged that the protest was filed by registered mail on May 17, 2013, as follows:

> This is with reference to your <u>letter of protest dated and filed thru registered mail on May 17, 2013</u> and received by this office on July 4, 2013. (*Underscoring ours*)

The CIR relies on the Certification issued on July 10, 2013 to bolster his position that the protest was filed on June 19, 2013. However, such Certification was only with respect to the dispatch of said mail matter on June 19, 2013.

The above Certification was later clarified by a second Certification [15] dated August 8, 2013, which stated the following:

> This is to certify that as per record of this office, Registered Mail with registered receipt # 5281 addressed to the Bureau of Internal Revenue, Regular Large Taxpayers Audit, Room 216 National Office Bldg., BIR Road, Quezon City was <u>duly received for mailing purposes at the Muntinlupa City Central Post Office in the afternoon of May 17, 2013, Friday as evidenced by Registry Receipt No. 5821 dated May 17, 2013</u>. (*Underscoring ours*)

Clearly, Lorenzo Shipping's protest was filed through registered mail on May 17, 2013, notwithstanding its dispatch by the Post Office only on June 19, 2013. This is in accordance with Section 3, Rule 13 of the Revised Rules of Court and *South Villa Chinese Restaurant and City Foods*

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[12] Division Docket, CTA Case No. 8694, Vol. 3, Exhibits "P-4" and "P-5", p. 1193.
[13] *Rollo*, Decision dated June 28, 2018, p. 68.
[14] Division Docket, Vol. 3, Exhibit "P-6", p. 1218.
[15] Division Docket, Vol. 3, Exhibit "P-7-a", p. 1222. am

Corporation v. NLRC,[16] which stated that the date of the post office stamp on the envelope or the registry receipt is considered the date of filing of a pleading sent by registered mail.

Based on the foregoing, the Court *En Banc* agrees with the CTA Third Division's findings that the administrative protest was timely filed on May 17, 2013.

On the matter of lack of definite due date, an examination of the Audit Result/Assessment Notices[17] shows that the spaces provided for the due dates therein were left blank and unaccomplished. Thus, there is no definite period for the payment of the deficiency tax assessments. Following the Supreme Court pronouncement in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[18] failure to indicate a definite period for payment of the tax assessed negates the BIR's demand for payment. Hence, the assessments must be cancelled.

In addition to the foregoing, the Court *En Banc* further notes that the revenue officer who continued the investigation and audit of Lorenzo Shipping was not armed with a Letter of Authority (LOA). Under LOA No. 2007-00494709[19] dated May 27, 2009, Denver Gomez, Evangeline Casipe, Lisette Mallari and Roque Dololras were authorized to examine Lorenzo Shipping's books of accounts and other accounting records. Revenue Officer Gilquin B. Tolentino (RO Tolentino) was not named in the said LOA. In his judicial affidavit, RO Tolentino stated that the audit and investigation of Lorenzo Shipping's books of accounts and other accounting records for taxable year 2008 was assigned to him after the original revenue examiner was transferred. RO Tolentino relies on Memorandum No. D-LOA-0410-0001 dated April 5, 2010 as his authority to continue the audit of Lorenzo Shipping.[20]

There being no new LOA issued to authorize RO Tolentino to continue the examination and assessment of Lorenzo Shipping's books of accounts and other accounting records, the assessments resulting therefrom are therefore

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[16] G.R. No. 112120, November 23, 1995.
[17] Division Docket, Vol. 3, Exhibit "P-3", pp. 1187-1192.
[18] G.R. No. 215957, November 9, 2016.
[19] Division Docket, Vol. 3, Exhibit "P-13", p. 1248.
[20] Division Docket, Vol. 3, *Judicial Affidavit of Revenue Officer Gilquin B. Tolentino*, p. 1391.

void. This is in consonance with *Commissioner of Internal Revenue v. Composite Materials, Inc.*,[21] which states:

> As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA en banc found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> However, the Court agrees with the CTA en banc that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority. To be sure, Revenue Memorandum Order No. 43-90 which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA.

Similar to the abovequoted case, no new LOA was issued to authorize RO Tolentino to continue the examination and assessment of the taxpayer herein.

Based on the foregoing discussions, there is no compelling reason to deviate from the CTA Third Division's ruling that the subject assessments are void.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

[21] G.R. No. 238352, September 12, 2018.

WE CONCUR:

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1964** (CTA Case No. 8694)
	Present:
-versus-	DEL ROSARIO, *P.J.*, CASTANEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, *and* MODESTO-SAN PEDRO, *JJ.*
LORENZO SHIPPING CORPORATION, *Respondent.*	Promulgated: JAN 26 2021 9:39a.m.

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I submit that the totality of evidence presented confirmed petitioner's failure to timely file its Protest to the undated Final Assessment Notice with attached undated Audit Result/Assessment Notices ("FANs"), assessing petitioner for deficiency taxes for the taxable year 2008. Nonetheless, considering that the FANs are void *ab initio* for failure to contain a definite due date for payment of deficiency taxes by petitioner; and, for having been issued *sans* an audit being conducted by revenue officers authorized through a valid Letter of Authority, the FANs may neither attain finality nor be the subject of a lawful execution. Being void assessments, they bear no fruit[1] and must be slain at sight.

All told, I concur in the denial of the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

[1] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.