REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

INDRA VERHOMAL MENGHRAJANI, REPRESENTED BY DAUGHTER SAVITRI V. MENGHRAJANI,
Petitioner,

CTA CASE NO. 9269

Members:

- versus -

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

HON. KIM JACINTO-HENARES IN HER CAPACITY AS COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 24 2019
11:20 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

Before this Court is a Petition for Review[1] filed by Indra Verhomal Menghrajani, as represented by her daughter, Savitri V. Menghrajani, praying that the Decision[2] dated January 10, 2016 ("Assailed Final Decision") imposing tax deficiencies amounting to Php4,415,339.44 for taxable year 2008 be reversed and set aside, and the Warrant of Distraint and Levy ("WDL") dated October 23, 2013 demanding payment thereof be likewise cancelled.

1 Docket (vol. 1), pp. 10-43.
2 *Id.* (vol. 2), Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, Par. 1, p. 892.

The Facts

Petitioner Indra Verhomal Menghrajani is a Bureau of Internal Revenue (BIR) registered taxpayer with Tax Identification No. ("TIN") 202-355-309[3] and with registered business address at No. 497 P. Quirino Avenue corner Zulueta St., Paco, Manila.[4]

On the other hand, respondent Hon. Kim Jacinto-Henares is sued in her capacity as the former Commissioner of the BIR. Respondent is tasked to, among others, collect all national internal revenue taxes and has the power to decide disputed assessments, fees, penalties or other charges imposed in relation thereto, or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as amended. The Commissioner of Internal Revenue ("CIR") holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 21, 2011, petitioner received a copy of Letter Notice ("LN") No. 034-RLF-08-00-00028[5] dated November 15, 2011 from respondent, informing petitioner of a 100% discrepancy between her value-added tax ("VAT") returns and information provided by third party sources for taxable year ending 2008, amounting to Php4,521,787.99.[6]

On November 23, 2011, Pishoo B. Mahibubani, President of Indra Garments Manufacturing Inc. ("IGMI"), filed with the BIR a letter[7] dated November 22, 2011,[8] informing the BIR of the following, *viz*:

1. Indra Garments used to be a single proprietorship owned by Indra Verhomal Menghrajani (TIN 205-355-309). This business was closed in year 2003;

2. In 2004, IGMI was incorporated with TIN 228-605-398 located in the same address;

3. All of the suppliers enumerated in the aforesaid LN were suppliers of IGMI since 2004 up to present, and were also suppliers of Indra

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[3] Exhibit "P-028".
[4] Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 2, p. 892.
[5] Exhibit "P-014"; Exhibit "R-2".
[6] Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 3, p. 892.
[7] Exhibit "R-3".
[8] Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 4, p. 892.

Garments Proprietorship. Said suppliers had erroneously used the old TIN and reported the said purchases in year 2008 under Indra Garments Proprietorship (TIN 202-355-309);

4. However, IGMI reported and declared those purchases in year 2008 under its TIN 228-605-398. These can be verified in the filed VAT returns and VAT Relief System of IGMI in 2008. A copy of IGMI's Reconciliation of Listings for Enforcement System, Summary of Purchases was enclosed for reference and perusal;

5. Therefore, IGMI had properly reported all its purchases in year 2008 including those listed in the aforesaid LN.

On January 26, 2012, BIR Revenue District Office ("RDO") No. 34 issued a Notice of Informal Conference[9] ("NIC") to petitioner pursuant to the said LN No. 034-RLF-08-00-00028 finding a deficiency income tax and VAT amounting to Php4,521,787.99 which was received by petitioner.[10]

In response, petitioner wrote a letter[11] dated February 8, 2012 to BIR RDO No. 34,[12] questioning the issuance of the NIC in spite of the explanations given by IGMI to the BIR in the letter dated November 22, 2011.

Thereafter, on October 23, 2013, BIR Seizure Agent Benedicto Augusto M. Cruz went to IGMI's new registered address[13] and tried to serve WDL No. 2013-0637[14] of even date against petitioner.[15] On the same day, BIR Revenue Region No. 6 Collection Division wrote petitioner a letter[16] informing her of the collection enforcement of her deficiency tax.

Petitioner, through her daughter Savitri Verhomal Menghrajani, wrote a reply letter[17] addressed to the Regional Director of BIR RDO No. 34, Revenue Region No. 6, which was marked as received on October 24, 2013.[18] Petitioner's daughter questioned the issuance of the WDL arguing that, other than the NIC, they did not receive any other notices regarding her mother's alleged tax deficiencies.

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9 Exhibit "P-019"; Exhibit "R-4".
10 Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 5, p. 893.
11 Exhibit "P-020".
12 Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 6, p. 893.
13 Exhibit "P-027".
14 Exhibit "P-029"; Exhibit "R-28".
15 Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 7, p. 893.
16 *Id.* (vol. 2), JSFI, Summary of Admitted Facts, Par. 8, p. 893; Exhibit "P-030".
17 Exhibit "P-031".
18 Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 9, p. 893.

Subsequently, petitioner, again through her daughter Savitri, wrote a letter[19] dated October 25, 2013 to the Chief of Regional Collection Division of BIR Revenue Region No. 6. [20] Petitioner's daughter inquired about Assessment/Demand Nos. 34-0-IT-4040 and 34-08-VT-4041, both dated January 09, 2013, as reflected in the WDL dated October 23, 2013. Petitioner's daughter Savitri insisted that neither she nor petitioner received the said Assessment/Demand notices, and that they be furnished any proof of receipt by her or by petitioner.

Undaunted, petitioner's daughter Savitri wrote follow up letters on October 30, 2013[21] and November 12, 2013[22] to BIR Revenue Region No. 6 about her request for a copy of the proof of receipt of the said assessment notices.

On November 15, 2013, petitioner, through her daughter Savitri, received a reply letter[23] dated November 7, 2013 from the BIR OIC Regional Director Revenue Region No. 6.[24] The letter stated that the Preliminary Assessment Letter ("PAN") and Final Assessment Letter ("FAN") were mailed under Registry Receipt Nos. 918054[25] and 917270[26] on December 12, 2012 and January 09, 2013, respectively, at the Manila Central Post Office.

Then, on November 18, 2013, petitioner's daughter Savitri wrote the BIR Revenue Region No. 6 Regional Director, Chief of Regional Collection Division, Head of Arrears Management Team Collection Division and Seizure Agent letters[27] dated November 18, 2013.[28] In the said letters, petitioner attached the Certifications[29] both dated November 15, 2013 issued by Mr. Rodrigo Romero, Head of Records Unit of the Office of the Postmaster, Central Post Office, Manila, stating that the PAN under Registry Receipt No. 918054 and FAN under Registry Receipt No. 917270 were both returned to the sender on December 20, 2012 and January 15, 2013, respectively.

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19 Exhibit "P-032".
20 Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 10, p. 893.
21 *Id.* (vol. 2), JSFI, Summary of Admitted Facts, Par. 11, p. 893; Exhibit "P-033".
22 *Id.* (vol. 2), JSFI, Summary of Admitted Facts, Par. 12, p. 893; Exhibit "P-034".
23 Exhibit "P-036".
24 Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 13, p. 893.
25 Exhibit "R-22-a".
26 Exhibit "R-24-a".
27 Exhibits "P-040" to "P-043".
28 Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 15, p. 893.
29 Exhibits "P-038" and "P-039".

In reply, OIC – Regional Director of BIR Revenue Region No. 6 wrote Savitri a letter[30] dated November 26, 2013.[31] The letter claims that as per BIR Record, there was no showing that petitioner officially changed registration of address, thus, the PAN and the FAN were validly issued and enforceable thereby making the issuance of the WDL necessary for enforcement.

In response, petitioner, through her daughter Savitri, wrote the Regional Director and Chief Legal of BIR Revenue Region No. 6 letters[32] dated December 2, 2013.[33] In the letters, petitioner maintained that the WDL should be cancelled since the PAN and FAN were not received by petitioner and, in fact, were returned to sender as per the Postmaster's Certifications.

More so, petitioner, through her daughter Savitri, wrote again the Regional Director of BIR Revenue Region No. 6 a letter[34] dated December 04, 2013,[35] pleading their case by requesting for reconsideration of the BIR's findings taking into account the foregoing incidents.

However, in a letter[36] dated December 10, 2013, the Regional Director of BIR Revenue Region No. 6 wrote petitioner's daughter Savitri,[37] informing her that their request for reconsideration is denied in view of the fact that the deficiency assessments have already become final and executory.

Thereafter, petitioner filed an Appeal[38] to respondent on December 12, 2013, and, subsequently, a Supplement[39] to the Appeal was filed on December 17, 2013.[40]

On January 10, 2016, respondent issued the Assailed Final Decision denying petitioner's appeal. Aggrieved, petitioner filed the present Petition for Review on February 24, 2016 with this Court.

In his Answer[41] filed on April 08, 2016, respondent interposes the following special and affirmative defenses, *viz.*:

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[30] Exhibit "P-044"; Exhibit "R-21".
[31] Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 16, p. 893.
[32] Exhibits "P-045" and "P-046".
[33] Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 17, p. 894.
[34] Exhibits "P-047" to "P-049".
[35] Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 18, p. 894.
[36] Exhibit "P-50".
[37] Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 19, p. 894.
[38] Exhibit "P-51".
[39] Exhibit "P-201".
[40] Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 20, p. 894.
[41] *Id.* (vol. 1), pp. 315-320.

"18. Respondent hereby adopts by way of reference all of the allegations in the foregoing paragraphs in so far as the same are material and relevant, and alleges that:

19. Under Section 203 of the Tax Code, as amended, the BIR, as a rule, has three (3) years within which to make an assessment, reckoned from the last day prescribed by law for the filing of the return or from the day the return was filed if the same is filed beyond the period prescribed by law. Section 222 of the same code provides the exceptions, thus:

> *'SEC. 222- Exceptions as to period of limitation of assessment and collection of taxes. –*
>
> *(a) In the case of as* ***false or fraudulent*** *return with intent to evade tax or of failure to file a return, the tax* ***may be assessed****, or a proceeding in court for the collection of such tax may be begun without assessment,* ***at any time within ten years after the discovery of the falsity, fraud, or omission****: Provided, that in a fraud assessment which has become final and executor, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action to the collection thereof.' [Emphasis supplied]*

20. In the instant case, records clearly show that the subject deficiency tax assessments were issued as a result of investigation conducted by the BIR due to the substantial under-declaration of purchases pursuant to Letter Notice (LN) No. 034-RLF-08-00-00028;

21. The aforesaid substantial under-declaration of purchases resulted to an income tax liability for 2008 in the total amount of [Php]3,172,153.60. The same constitutes filing of a false or fraudulent return for such taxable year; accordingly, the BIR has ten years (10) from the discovery of the said falsity and omission to make an assessment pursuant to Section 222 of the Tax Code of 1997, as amended;

22. Anent the claim of the petitioner that she did not receive the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) which are mandatory due process

requirements, it must be stressed that PAN and the FAN were duly served upon the petitioner at her registered business address at No. 497 Pres. Quirino Ave. corner Zulueta Sts. Paco Manila which is the address appearing in her tax returns for the year covered by the investigation;

23. Based on records, petitioner remains to be a registered taxpayer of Revenue District Office No. 34 and her registered business address is still at No. 497 Pres. Quirino Ave. corner Zulueta Sts., Paco Manila. Thus, The Bureau cannot be faulted in sending the PAN and FAN to the said registered address;

24. Finally, it must also be stressed that the subject assessments have already become final, executory and demandable;

25. Under Section 228 of the Tax Code of 1997, as amended, an 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;

26. In the instant case, petitioner denied having received any PAN and FAN issued in connection with the subject assessments. As previously discussed, however, these documents were mailed at the petitioners registered address within the prescriptive period;

27. To reiterate, petitioner remains to be an active and registered taxpayer of the BIR, thus, all communications sent to her registered business address which is also the address appearing in the tax returns for the period involved in the investigation are all valid and binding upon her;

28. Accordingly, the subject assessments were deemed made when the BIR mailed or sent the assessment notices at the petitioner's registered address on 9 January 2013. Petitioner would have thirty days from 9 January 2013 or until 9 February 2013 to file a valid protest against the subject assessments. However, petitioner failed to file the same. Thus, for failure of the petitioner to timely file an administrative protest thereon, the subject assessments became final and demandable."

On April 14, 2016, a Notice of Pre-Trial Conference[42] was issued setting the case for pre-trial conference on July 26, 2016. As such, a Pre-Trial Brief (For Petitioner)[43] was filed on July 13, 2016, while Respondent's Pre-Trial Brief[44] was filed on July 14, 2016.

Thereafter, pre-trial ensued.

On October 25, 2016, the parties submitted their Joint Stipulation of Facts and Issues[45], which this Court approved and adopted in the Pre-Trial Order[46] issued on November 07, 2016. After which, the pre-trial was deemed terminated.

During the trial, petitioner presented as witnesses Ms. Savitri V. Menghrajani[47], her daughter and representative; Ms. Marissa Sable[48], Acting Chief of Records, Manila Central Post Office; and, petitioner's former business suppliers, namely: Mr. Arthur S. Tiu[49], President of Pacific Rayon Mfg., Inc.; and, Mr. Wilbert Tan Kuo[50], President of Evergreen Textile Printing & Finishing, Inc., who all testified on direct by way of judicial affidavits.

Then, on May 22, 2017, petitioner filed her Formal Offer of Documentary Evidence[51] offering Exhibits "P-001" to "P-209". Accordingly, in the Resolution[52] dated July 14, 2017, this Court admitted most of petitioner's exhibits except for Exhibits "P-003", "P-005", "P-015", "P-016", "P-017", "P-018", "P-023", "P-024", "P-025", "P-026", "P-079", "P-162", "P-191", "P-202", "P-206", and "P-208", for failure to present their originals for comparison. Thereafter, petitioner was deemed to have rested her case.

When called to present his case, respondent offered as witnesses the following Revenue Officers, *viz*: Mark T. Rellon[53], Ronnie Roel Y. Bolledo[54],

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[42] *Id.* (vol. 1), pp. 323-324.
[43] *Id.* (vol. 1), pp. 330-351.
[44] *Id.* (vol. 2), pp. 638-643.
[45] *Id.* (vol. 2), pp. 892-913.
[46] *Id.* (vol. 2), pp. 932-949.
[47] *Id.* (vol. 1), Judicial Affidavit dated July 13, 2016, pp. 352-384; Exhibit "P-203".
[48] *Id.* (vol. 3), Judicial Affidavit dated March 25, 2017, pp. 1085-1088; Exhibit "P-209".
[49] *Id.* (vol. 2), Judicial Affidavit dated July 20, 2016, pp. 771-775; Exhibit "P-205".
[50] *Id.* (vol. 2), Judicial Affidavit dated July 20, 2016, pp. 676-682; Exhibit "P-204".
[51] *Id.* (vol. 3), pp. 1096-1117.
[52] *Id.* (vol. 3), pp. 1384-1386.
[53] *Id.* (vol. 2), Judicial Affidavit dated July 14, 2016, pp. 644-648; Exhibits "R-25" and "R-25-a".
[54] *Id.* (vol. 2), Judicial Affidavit dated July 14, 2016, pp. 666-668; Exhibits "R-26" and "R-26-a".

Benedicto Augusto M. Cruz[55] and Mr. Benhur C. Nacorda[56], who all testified on direct by way of judicial affidavits.

Subsequently, on May 15, 2018, Respondent's Formal Offer of Evidence[57] was filed. In a Resolution[58] dated July 2, 2018, this Court admitted most of respondent's exhibits except for Exhibits "R-8" for failure to present the original for comparison, and "R-15", "R-16", "R-17" and "R-18", for failure to identify the exhibits. Thus, respondent was deemed to have rested his case. The parties were also given a period of thirty (30) days within which to submit their respective memoranda.

In compliance, Respondent's Memorandum [59] was filed, through registered mail, on August 06, 2018 while Memorandum For Petitioner[60] was filed through registered mail on September 03, 2018. Thus, in the Resolution[61] dated September 24, 2018, the present case was deemed submitted for decision.

The Issues

The parties submitted the following issues[62] for the Court's determination:

1. Whether the Honorable Court has no jurisdiction over the Petition for Review due to the failure of the petitioner to file a protest within thirty (30) days from receipt of the assessment; and

2. Whether Petitioner is liable for the deficiency tax assessments under Assessment Notice Nos. 34-08-IT-4040 and 34-08-VT-4041 dated January 09 and January 13.

Petitioner's Arguments

Petitioner disputes the deficiency assessments issued against her primarily because the transaction from which the tax assessment arose was not her

55 *Id.* (vol. 3), Judicial Affidavit dated January 29, 2018, pp. 1392-1395; Exhibits "R-27" and "R-27-a".
56 *Id.* (vol. 3), Judicial Affidavit dated April 11, 2018, pp. 1403-1406; Exhibits "R-29" and "R-29-a".
57 *Id.* (vol. 3), pp. 1419-1426.
58 *Id.* (vol. 3), pp. 1444-1445.
59 *Id.* (vol. 3), pp. 1446-1454.
60 *Id.* (vol. 3), pp. 1457-1487
61 *Id.* (vol. 3), p. 1490.
62 *Id.* (vol. 2), JSFI, Joint Issues, p. 894.

transaction *per se*, but rather between a third person supplier-seller and IGMI, the purchaser-corporation to which she is only a member of the Board of Directors.

Petitioner further claims that the tax assessment proceedings undertaken by the BIR should be considered void since she was denied her right to due process. Petitioner questions as to why the PAN and the FAN were allegedly sent by registered mail to her old address, despite BIR's knowledge of her new one, while the WDL was sent to her correct address, as has always been indicated in her tax returns. In any case, petitioner contends that pursuant to Section 203 of the NIRC of 1997, as amended, the period for which the BIR is allowed to assess her has already prescribed considering that the PAN was issued and mailed only on December 12, 2012 while the subject deficiency tax assessment was for the year 2008.

Respondent's Counter-arguments

On the other hand, respondent maintains that the Honorable Court has no jurisdiction over the present Petition due to petitioner's failure to file a protest within thirty (30) days from receipt of the assessment. By failing to do so, the subject assessments have already become final, executory and demandable pursuant to Section 228 of the NIRC of 1997, as amended. Respondent continues that it is a well-established doctrine in taxation that an assessment, whether valid or void, shall become final, and executory, when no administrative protest is filed within thirty (30) days from receipt of the assessments.[63] In fact, even an assessment which is contrary to law can attain finality if the same is not protested.[64]

Respondent further claims that the PAN and FAN were mailed at No. 497 P. Quirino Avenue corner Zulueta St., Paco, Manila, which is petitioner's registered address as per the BIR Integrated System (ITS). Thus, considering that petitioner is still active and registered taxpayer of the BIR, all communications were sent to the said registered business address which is also the one appearing in her tax returns.

On the issue of prescription, respondent insists that based on the investigation conducted by the BIR, there was substantial under-declaration of purchases resulting to an income tax liability for 2008 in the total amount of Php3,172,153.60. Such substantial under-declaration constitutes filing of false or

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63 Allied Bank Corporation vs. Commissioner of Internal Revenue, CTA EB No. 167, August 23, 2006.

64 Singer Finance Corporation vs. Commissioner of Internal Revenue, CTA EB No. 10, March 04, 2005, CTA Case No. 6743 *citing* Republic vs. Manila Port A Service, G.R. 18208, November 27, 1964.

fraudulent return which prescribes in ten (10) years from the discovery of the said falsity or fraud.

<u>Discussion/Ruling</u>

The Court has jurisdiction over the present case.

The Court shall determine first the timeliness of the filing of the instant Petition for Review.

Section 11 of Republic Act ("RA") No. 9282, amending RA No. 1125, provides that a party may file an appeal with the CTA within thirty (30) days from the receipt of the decision or ruling of the BIR Commissioner to wit:

> "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 **<u>may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling</u>** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[65]

On January 10, 2016, a Decision was promulgated by Respondent denying Petitioner's appeal and imposed tax deficiencies amounting to Php4,415,339.44 for taxable year 2008. It was stated therein that the same constitutes as the final decision of the CIR on the matter. The Decision was received by petitioner on January 26, 2016. Thereafter, within thirty (30) days therefrom or on February 24, 2016, petitioner elevated respondent's denial *via* the filing of a Petition for Review with this Court. Hence, the instant Petition is clearly filed within the period mandated by law, thereby giving this Court jurisdiction over the present case.

Respondent failed to prove the PAN and FAN were actually received by the petitioner.

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[65] *Emphasis and underscoring supplied.*

At the onset, respondent maintains that the PAN and FAN were mailed to petitioner's registered address on record, at 497 P. Quirino Avenue corner Zulueta St., Paco, Manila. However, petitioner asserts that she did not receive any of the said notices.

While there is a presumption[66] that a letter duly directed and mailed is received in the regular course of the mail, such presumption however is a disputable one. When the taxpayer denies receipt of the notice, the burden shifts to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee, as explained by the Supreme Court in the case of *Republic of the Philippines vs. The Court of Appeals, et al.*[67], to wit:

> "We do not agree with petitioner's above contentions. As correctly observed by the respondent court in its appealed decision, while the contention of petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, still this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee."

Furthermore, in the case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[68], the Supreme Court, adopting the decision of this Court, held that:

> "Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee** *(Republic vs. Court of Appeals, 149 SCRA 351)*. Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:*

[66] Rules of Court, Rule 131, Section 3(v).
[67] G.R. No. L-38540, April 30, 1987.
[68] G.R. No. 157064, August 07, 2006.

> 'The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing *Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269).'*

x x x **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts**. This Court does not put much credence to the self-serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing."[69]

Apparently, presentation of proof of actual receipt of the assessment by the taxpayer is required in order to establish that the right of the taxpayer to be informed of the assessment has not been violated. In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[70], the Supreme Court ruled that it is a requirement of due process that the taxpayer must actually receive the assessment, to wit:

"x x x. It must be noted, however, that the foregoing rule requires that the notice be sent <u>to the taxpayer</u>, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:

> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer

[69] *Emphasis supplied.*
[70] G.R. No. 155541, January 27, 2004.

> to determine his remedies thereon, **<u>due process requires that it must be served on and received by the taxpayer</u>**."[71]

From the aforequoted cases, it is therefore clear that it is incumbent upon the BIR to prove that the assessment notices were actually received by the taxpayer. Otherwise, the assessment is void.

In the present case, to prove that the PAN and FAN were sent on December 12, 2012 and January 09, 2013, respectively, by the Administrative Division of the BIR – Manila, and petitioner's subsequent receipt thereof by registered mail, respondent presented the following documentary evidence, *viz*.:

1. Transmittal letter to the Postmaster of the Central Post Office dated December 12, 2012;[72]

2. Name of Indra Vermohal [*sic*] Menghrajani No. 18 in the list with Registry Receipt No. 918054;[73]

3. Transmittal letter to the Postmaster of the Central Post Office dated January 9, 2013;[74]

4. Name of Indra Vermohal [*sic*] Menghrajani No. 14 in the list;[75]

5. Transmittal of Final Assessment;[76] and,

6. Registry Receipt No. 917270.[77]

Moreover, to corroborate the above evidence, respondent offered the testimony of Mr. Benhur C. Nacorda to prove that the PAN and FAN were mailed by the former mailing in-charge Armando Macatangay. However, during his cross-examination, when asked on whether he received the registry return cards of Registry Receipts Nos. 918254 and 917270, Mr. Nacorda replied in negative, thus:

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71 *Emphasis and underscoring supplied.*
72 Exhibit "R-22".
73 Exhibit "R-22-a".
74 Exhibit "R-23".
75 Exhibit "R-23-a".
76 Exhibit "R-24".
77 Exhibit "R-24-a".

"ATTY. DEJARESCO:

Q It was the former mailing in charge Armando Macatangay who mailed the assessment notices, is that correct?

MR. NACORDA

A Yes, sir.

ATTY. DEJARESCO:

Q You are testifying here based on records?

MR. NACORDA:

A As per our records, sir.

x x x

JUSTICE LIBAN

Did you see that preliminary assessment notice?

MR. NACORDA

A As per our records, Your Honors.

JUSTICE LIBAN

So, per records only?

MR. NACORDA

A Yes, Your Honors.

JUSTICE LIBAN

So, you do not know the details, what is inside the envelope?

MR. NACORDA

A No.

JUSTICE LIBAN

Next question.

x x x

ATTY. DEJARESCO:

I understand, we will withdraw the question.

Q When you say your duty is for proper record keeping, is it the requirement that as a mailing officer that the return registry return card is included in the mailing?

MR. NACORDA

A Yes, sir.

ATTY. DEJARESCO:

Q And in your duties in the execution of your duties as recording keeping, are you the one who receives the registry return card?

JUSTICE LIBAN

Why don't you just ask if the registry return card was received by them with regards with the matters that were mailed, corresponding to the registry receipt number 918254 and registry receipt number 917270?

MR. NACORDA

A Yes, Your Honor.

JUSTICE LIBAN

Q **Did you receive the return card?**

MR. NACORDA

A **No, Your Honor.**

JUSTICE LIBAN

There is no return card insofar as these two (2) registry return receipts are concerned?

MR. NACORDA

Yes, Your Honor."[78]

Notably, the presentation of the transmittal letter and registry receipts merely shows that the PAN and FAN were mailed by respondent. However, with regard to their receipt thereof, respondent failed to show that the registry return card was signed by petitioner or her authorized representative. At the very least, a certification from the Bureau of Posts stating that the said notices were indeed received by petitioner should have been presented by respondent. Such omissions readily show that respondent failed in discharging the burden of disproving petitioner's claim that it did not receive the assessment notices.

Respondent's argument is further weakened when petitioner presented Ms. Marissa Sable, Acting Chief of Records of the Manila Central Post Office, who testified that the documents were returned to the BIR since petitioner is no longer at the address indicated in the notices, thus:

"JUSTICE VICTORINO

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[78] Transcript of Stenographic Notes (TSN) dated April 17, 2018, pp. 7-11; *Emphasis supplied.*

Sabi mo doon sa certification mo e na hindi naserved yuong dokumento tapos merong attachment sa iyong document na ito ay ibinalik sa BIR. Meron ba kayong katunayan na binalik ninyo sa BIR yuong indikasyon na hindi natanggap yuong letter?

MS. SABLE

Ito po. Iyong sa 2013 po. Buhay pa po noong magbigay ako ng certification.

JUSTICE VICTORINO

Na?

MS. SABLE

Na nareceived po ng BIR na si Armand Macatangay iyong kanyang, iyong nuong RTS[79] po.

JUSTICE VICTORINO

Na nagsasabing hindi natanggap?

MS. SABLE

Opo.

JUSTICE VICTORINO

Pati yung dokumento na dapat ipadala ng BIR?

MS. SABLE

Opo.

x x x

[79] Return to Sender.

ATTY. CAÑERO

Q Would you know the reason, Ms. Witness, why the two mail matters were returned to sender based on the documents? Because you were not the one who delivered, right?

MS. SABLE

A Opo.

x x x

MS. SABLE

Doon po sa, iyong January 28, 2013, may request po kasi sa akin ang BIR ng certification tungkol dito sa 917270. Hindi ko po nabigyan ang BIR ng certification dahil retired na po yung kartero na nagdeliver po niyan. Base po doon sa mga tinanungan ko, iyong kasunod nya na nagretiro, moved out na raw po yung Indra, wala na raw po doon. Kaya para macheck ko kung talagang bumalik yung sulat, pinihitan ko kung sinong magdedeliver ng pabalik sa BIR. Nakita ko po iyong record na bumalik nga po.

ATTY. CAÑERO

Moved out.

JUSTICE VICTORINO

So bago ka nagberipika, meron ka nang impormasyon na kaya hindi nadelivered doon sa addressee e sapagkat wala na iyong addressee doon.

MS. SABLE

Opo. N

JUSTICE VICTORINO

Umalis na. Tapos nagberipika ka uli...interrupted

MS. SABLE

Opo."[80]

The foregoing testimony was further corroborated by the Certifications[81] dated November 15, 2013 issued by the Office of the Postmaster of the Manila Central Post Office stating that the following registered mails addressed to petitioner at 497 Pres. Quirino corner Zulueta St., Paco, Manila posted at Manila Central Post Office were returned to sender, to wit:

Registered Mail Nos.	Date of Mailing	Date of Return	Reason for Return
918054	December 12, 2012	December 20, 2012	Moved
917270	January 9, 2013	January 15, 2013	Moved out

Henceforth, since respondent failed to prove that petitioner actually received the PAN and FAN, petitioner's right to due process was indeed violated, thereby rendering the assessments void.

Revenue Officers are bereft of authority to conduct the examination on petitioner's tax liabilities.

More so, *assuming arguendo* that petitioner had duly received the assessment notices, further examination of the evidence presented by the parties reveals that the authority of the revenue officer to conduct an examination of petitioner's books of accounts and, thereafter, issue assessment notices if warranted was only made pursuant to LN No. 034-RLF-08-00-00028[82] dated November 15, 2011.

Perforce, there must be a grant of authority before any revenue officer can conduct an examination or assessment.[83] In this aspect, a valid grant of authority

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80 TSN dated April 24, 2017, pp. 14-15 and 28-29; *Emphasis supplied.*
81 Exhibits "P-038" and "P-039".
82 Exhibit "P-014"; Exhibit "R-2".
83 Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.

from the CIR or his duly authorized representative before a revenue officer conducts an examination or issue an assessment is in the form of a Letter of Authority ("LOA").[84]

Section 13[85] of the NIRC of 1997, as amended, in relation to Revenue Memorandum Order ("RMO") No. 32-2005 prescribes procedures in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes, *viz.*:

> "IV. POLICIES AND GUIDELINES
>
> x x x
>
> 8. In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.
>
> **9. In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA) to replace the LN**. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex "E" hereof) to the OACIR-LTS I ORD for the preparation of the corresponding LAs with the notation "This LA cancels LN________ No."[86]

In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[87], the Supreme Court held that under RMO No. 32-2005, the previously issued LN should be converted to an LOA first before a revenue officer proceeds with the

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84 Sec. 13, NIRC of 1997, as amended.

85 **SEC. 13.** *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

86 *Emphasis supplied.*

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

further examination and assessment of the taxpayer. The pertinent parts of the decision state:

> "In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid x x x.
>
> x x x
>
> The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. **Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.** Unfortunately, this was not done in this case."[88]

In the present case, LN No. 034-RLF-08-00-00028[89] dated November 15, 2011 was issued by the respondent against petitioner, informing her of a 100% discrepancy between her VAT returns and information provided by third party sources for the taxable year ending 2008 amounting to Php4,521,787.99.[90] Pursuant to such LN, a Memorandum of Assignment[91] dated November 17, 2011 was subsequently issued to Revenue Officer Mark Rellon to conduct an audit/verification of petitioner's 2008 all internal revenue tax liabilities.

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[88] *Emphasis supplied.*
[89] Exhibit "P-014"; Exhibit "R-2".
[90] Docket (vol. 2), JSFI, Summary of Admitted Facts, Par. 3, p. 892.
[91] Exhibit "P-019"; Exhibit "R-4".

Thereafter, a NIC[92], PAN[93] and FAN[94] were issued pursuant to the said LN. Evidently, the authority of the revenue officer to conduct an examination of petitioner's tax liabilities is already lacking since the beginning. Under RMO No. 32-2005, the LN should have been converted to a LOA before proceeding with the examination and assessment of the petitioner.

Accordingly, considering that the examination and assessments were issued pursuant only to a LN, the said assessments are void for lack of authority.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

92 Exhibit "R-1".
93 Exhibit "R-11".
94 Exhibit "R-14".

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.

ERLINDA P. UY
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.

ROMAN G. DEL ROSARIO
Presiding Justice