

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

**CITIAIRE INDUSTRIAL
SERVICES CORPORATION,**
Petitioner,

**CTA EB NO. 2511
(CTA CASE NO. 9713)**

Present:

- versus -

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, J.J.

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

MAR 07 2023

11:30 am

X ----- X

DECISION

DEL ROSARIO, P.J.:

Before the Court *En Banc* is the Petition for Review filed by Citiare Industrial Services Corporation on October 21, 2021, which seeks the reinstatement of the Decision dated January 23, 2020 rendered by the Court of Tax Appeals - Second Division (Court in Division)¹ and prays that the Formal Assessment Notice (FAN) and Formal Letter of Demand with Demand No. 39-B058-12 (FLD) for taxable year 2012 be cancelled and revoked for being null and void *ab initio*, including the Warrants of Garnishment issued pursuant thereto.²

¹ Penned by Associate Justice Jean Marie A. Bacorro-Villena, with Associate Justices Juanito C. Castañeda, Jr. (retired) and Cielito N. Mindaro-Grulla (retired) concurring.

² Docket (CTA EB No. 2511), p. 17.

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The present Petition appeals the Amended Decision dated October 14, 2020³ and Resolution dated June 3, 2021.⁴ The dispositive portions of the assailed Amended Decision and Resolution respectively read:

Amended Decision dated October 14, 2020

"WHEREFORE, with the foregoing, respondent Commissioner of Internal Revenue's Motion for Reconsideration is **GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated 23 January 2020 is hereby amended to read as follows:

'WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.'

SO ORDERED."⁵

Resolution dated June 3, 2021

"WHEREFORE, with the foregoing premises, petitioner Citiale Industrial Services Corporation's Motion for Reconsideration filed on 04 November 2020 is **DENIED** for lack of merit.

SO ORDERED."⁶

PARTIES

Petitioner Citiale Industrial Services Corporation is a domestic corporation duly organized and existing under Philippine laws with principal office at 25 Road 4, Project 6, Quezon City. It is engaged in the business of specialized construction, plumbing, electrical works and other allied works.⁷

Respondent Commissioner of Internal Revenue⁸ (CIR) is the duly appointed head of the Bureau of Internal Revenue (BIR) vested with authority to decide disputed assessments, among others.

³ Penned by Associate Justice Jean Marie A. Bacorro-Villena, with Associate Justice Juanito C. Castañeda, Jr. (retired) concurring.

⁴ *Id.*

⁵ Docket (CTA EB No. 2511), p. 99

⁶ *Id.* at 55.

⁷ *Id.* at 28.

⁸ The incumbent CIR is Hon. Romeo D. Lumagui, Jr.



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FACTS

In September 2017, petitioner received a Warrant of Garnishment dated June 29, 2017.⁹ Warrants of Garnishment were also sent to the Union Bank of the Philippines,¹⁰ Asia United Bank,¹¹ BPI-Family Bank,¹² Bank of the Philippine Islands,¹³ Banco de Oro,¹⁴ Philippine Bank of Communications¹⁵ and Metropolitan Bank and Trust Company.¹⁶

Surprised at respondent's action, petitioner wrote a letter to respondent, through the BIR Regional Director, Revenue Region No. 7 of Quezon City, requesting a reinvestigation.¹⁷

Petitioner received respondent's letter denial of its request for reinvestigation on October 9, 2017.¹⁸

Thus, on November 8, 2017, petitioner filed a Petition for Review¹⁹ docketed as CTA Case No. 9713.

Summonses were served upon respondent on November 22, 2017 and the Office of the Solicitor General on November 23, 2017.²⁰

On February 6, 2018, within the extended period,²¹ respondent filed an Answer²² alleging that: (i) petitioner failed to update its business address through BIR Form No. 1905; (ii) it failed to comply with other documentary requirements such as the amended Securities and Exchange Commission (SEC) certificate bearing its new address, mayor's/business permit or duly received application, board resolution approving the change of address and lease contract; (iii) any update or change in registration information details, without following the proper procedure, could not bind the BIR; and, (iv) tax assessments by tax examiners are presumed correct.²³

⁹ Docket (CTA EB No. 2511), p. 75.

¹⁰ Docket (CTA Case No. 9713), p. 281.

¹¹ *Id.* at 289.

¹² *Id.* at 282.

¹³ *Id.* at 283.

¹⁴ *Id.* at 285.

¹⁵ *Id.* at 286.

¹⁶ *Id.* at 288.

¹⁷ Docket (CTA EB No. 2511), p. 75.

¹⁸ *Id.* at 83.

¹⁹ Docket (CTA Case No. 9713), pp. 10-75.

²⁰ *Id.* at 75 and 81-82.

²¹ *Id.* at 89.

²² *Id.* at 90-95.

²³ *Id.* at 91-92.



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Both parties filed their respective Pre-Trial Briefs²⁴ on May 21, 2018.

The Pre-Trial Conference was held on May 24, 2018, during which the parties were given fifteen (15) days to file their Joint Stipulation of Facts and Issues (JSFI); petitioner was likewise granted fifteen (15) days to file its Motion to Commission an Independent Certified Public Accountant (ICPA) and the judicial affidavits of its witnesses.²⁵

On July 30, 2018, within the extended period,²⁶ the parties filed their JSFI.²⁷

On August 7, 2018, the Court approved and adopted the parties' JSFI and issued the Pre-Trial Order, thereby terminating the pre-trial.²⁸

Petitioner presented three (3) witnesses, namely: Antonio M. Cambe,²⁹ petitioner's CEO; Kathrina Rose D. Cambe,³⁰ petitioner's HR and Administrative Officer; and, Rosalinda D. Cambe,³¹ petitioner's Treasurer and Finance Officer. No ICPA was commissioned in this case despite the period granted to petitioner to file a Motion to Commission an ICPA.

On December 20, 2018, petitioner filed its Formal Offer of Evidence.³²

On January 10, 2019, respondent filed a Motion to Cancel Hearing³³ with attached Memorandum³⁴ stating that in lieu of testimonial evidence, respondent is submitting a Memorandum and praying that the hearing set on January 30, 2019 for the presentation of his evidence be cancelled and the Memorandum be noted. The Court granted the motion and noted respondent's Memorandum.³⁵

²⁴ *Id.* at 113-117 and 118-124.

²⁵ *Id.* at 131-132.

²⁶ *Id.* at 219.

²⁷ *Id.* at 221-224.

²⁸ *Id.* at 230-235.

²⁹ *Id.* at 140-191, 255.

³⁰ *Id.* at 192-213, 238.

³¹ *Id.* at 326-341, 255.

³² *Id.* at 256-262.

³³ *Id.* at 342.

³⁴ *Id.* at 345-352.

³⁵ *Id.* at 354.

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In the Resolution dated March 13, 2019, the Court admitted petitioner's offered evidence except Exhibits "P-1", "P-1-A", "P-4-F", and "P-8". Petitioner was also granted thirty (30) days from receipt thereof to file a memorandum, considering respondent has already filed a memorandum.³⁶

Petitioner filed a Motion for Reconsideration of the denial of aforesated excluded evidence.³⁷

On April 22, 2019, petitioner filed its Memorandum.³⁸

In the Resolution dated June 10, 2019,³⁹ the Court granted petitioner's prayer to allow it to examine and review the dockets of the case and gave petitioner five (5) days from receipt thereof, within which to submit the duly marked and identified exhibits subject of its Motion for Reconsideration.

On July 2, 2019, petitioner filed a Manifestation and Compliance.⁴⁰

In the Resolution dated July 19, 2019, the Court admitted petitioner's previously denied exhibits particularly, Exhibits "P-1", "P-1-A", "P-4-F" and "P-8" and submitted for decision CTA Case No. 9713.⁴¹

On January 23, 2020, the Court in Division rendered its Decision cancelling the subject assessment and Warrants of Garnishment. The dispositive portion thereof reads:

"WHEREFORE, with the foregoing, this Petition for Review filed by petitioner Citiae Industrial Services Corporation is hereby **GRANTED**. Accordingly, the Formal Letter of Demand with the Notice of Assessment and the Warrants of Garnishment issued against petitioner by respondent Commissioner of Internal Revenue are **CANCELLED** and **SET ASIDE**.

SO ORDERED."⁴²

³⁶ *Id.* at 360-361.

³⁷ *Id.* at 362-365.

³⁸ *Id.* at 370-385.

³⁹ *Id.* at 388-389.

⁴⁰ *Id.* at 390-397.

⁴¹ *Id.* at 398-400.

⁴² *Id.* at 404-422.



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On February 10, 2020, respondent filed *via* registered mail a Motion for Reconsideration (Decision dated 23 January 2020),⁴³ which the Court in Division granted in the assailed Amended Decision dated October 14, 2020 dismissing the petition for lack of jurisdiction.

Petitioner moved for the reconsideration of the Amended Decision,⁴⁴ which the Court in Division denied in the assailed Resolution dated June 3, 2021.

On July 22, 2021, petitioner filed a Motion for Extension of Time to File Petition for Review,⁴⁵ which the Court *En Banc* granted in the Minute Resolution dated July 28, 2021⁴⁶ granting petitioner a final and non-extendible period of fifteen (15) days or until August 7, 2021, within which to file its petition for review.

On October 21, 2021, petitioner timely filed through private courier its Petition for Review,⁴⁷ consistent with Supreme Court policies on the period within which pleadings may be filed during the then on-going pandemic.

In the Resolution dated February 3, 2022,⁴⁸ the Court *En Banc* directed petitioner to submit a duplicate original or certified true copy of the decision appealed from within ten (10) days from notice.

On March 14, 2022, petitioner filed a Manifestation and Compliance⁴⁹ in compliance with the Resolution dated February 3, 2021, which the Court *En Banc* noted in the Resolution dated March 29, 2022.⁵⁰ In the same Resolution, respondent was ordered to file a comment on the petition.⁵¹

In the Resolution dated July 4, 2022,⁵² the present case was referred to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA). The parties or through their authorized representatives were ordered to personally appear at the PMC-CTA on August 10, 2022 at 1:30 p.m. to allow them to enter into mediation. The

⁴³ *Id.* at 422-425.

⁴⁴ *Id.* at 434-441.

⁴⁵ Docket (CTA EB No 2511), pp. 1-26.

⁴⁶ *Id.* at 25.

⁴⁷ *Id.* at 26-63.

⁴⁸ *Id.* at 66-67.

⁴⁹ *Id.* at 69-100.

⁵⁰ *Id.* at 102-103.

⁵¹ *Id.*

⁵² *Id.* at 106-108.



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court proceedings were also suspended for thirty (30) days from the date of the preliminary mediation conference.⁵³

In the Resolution dated October 11, 2022,⁵⁴ the Court *En Banc* noted the parties' No Agreement to Mediate dated August 10, 2022, thereby terminating the mediation proceedings and reinstating the court proceedings on the case. In the same Resolution, considering respondent's failure to file a comment on the Petition, the Court *En Banc* also submitted for decision the present case.⁵⁵

ISSUES

Petitioner raises the following issues for the Court *En Banc*'s consideration:

- (i) Whether the Warrants of Garnishment and Final Assessment Notice/Formal Letter of Demand (FAN/FLD) issued by respondent are null and void *ab initio*;
- (ii) Whether the assailed FAN/FLD issued by respondent are void for being insufficient in form and substance; and,
- (iii) Whether respondents right to assess and collect alleged tax deficiencies against petitioner is barred by prescription and/or statute of limitations.⁵⁶

PETITIONER'S ARGUMENTS

Petitioner argues that the Court in Division committed grave and palpable error in reversing its own findings of fact on the FAN/FLD's lack of due date and its validity; in ruling on the validity of service of both Preliminary Assessment Notice (PAN) and FAN/FLD via registered mail; in drawing false conclusion on the JSFI as to the service of the PAN and FAN/FLD by way of registered mail; in ignoring the undeniable fact of respondent's exclusive resort to substituted service via registered mail; and, in disregarding the issue of prescription and statute of limitations.⁵⁷ Allegedly:

⁵³ *Id.*

⁵⁴ *Id.* at 111-112.

⁵⁵ *Id.*

⁵⁶ *Id.* at 31-32.

⁵⁷ *Id.* at 32.



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1. It is beyond cavil that the service of both PAN and FAN/FLD was solely and exclusively made via registered mail to its old address at 5F Ben-Lor Building No. 1184, Quezon Avenue, Quezon City. It sets a bad precedent for indolence and stupor on the part of government worker as against fair and acceptable mode of actual and faithful service of tax assessments in furtherance to the basic tenets of due process of law;

2. The JSFI relative to the service of the PAN and FAN/FLD by registered mail does not necessarily equate to actual or constructive receipt of the same but merely admits the fact of service done by way of registered mail as opposed to the fact of receipt;

3. The fact that petitioner duly received a *subpoena duces tecum* personally served by a revenue officer (RO) at its current address at #25 Road 4, Project 6, Quezon City, clearly conveys respondent's prior knowledge or awareness of the fact of petitioner's current, true and correct address;

4. The direct testimonies of petitioner's witnesses affirmed with certainty that respondent had prior knowledge of petitioner's current and actual address, which testimonies were neither contradicted nor debunked by respondent leading to the inescapable reality of conclusiveness of facts duly attested;

5. Petitioner was not properly informed by respondent of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property because no effective protest can be made;

6. Respondent's erroneous and consistent resort to service by registered mail in both PAN and FAN/FLD despite "return to sender (RTS)" advise from the postmaster and prior knowledge of petitioner's true and correct address, clearly goes to show that respondent deliberately ignored and violated petitioner's constitutionally guaranteed right to due process of law;

7. The three (3)-year prescriptive period commenced to run on April 3, 2013, the actual date petitioner filed its Annual Income Tax Return (ITR) for taxable year 2012. The assailed FAN/FLD was only issued on June 10, 2016. Thus, the FAN/FLD may be barred by the statute of limitations;



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8. The appreciation and inclusion in evidence of the Waiver of the Defense of Prescription, which was neither presented nor offered in evidence, is a clear and egregious error and causes injustice against petitioner;

9. The Amended Decision's reversal on the existence of due date by quoting the last paragraph of the FAN/FLD may have overlooked the legal implications and repercussions of such inexcusable neglect to indicate the actual due date. The inescapable fact remains that the actual due date in the FAN/FLD is utterly lacking; and,

10. The totality of the circumstances from which the basic rudiments of fair play must be upheld and applied liberally.⁵⁸

COURT *EN BANC*'S RULING

The Court *En Banc* finds the present Petition for Review unmeritorious.

Timeliness of the petition

Section 18 of Republic Act No. 1125, as amended, provides that "[a] party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*." Relatedly, Sections 1 and 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, provides the following procedure for appeals with the Court *En Banc*:

**RULE 8
PROCEDURE IN CIVIL CASES**

Sec. 1. Review in cases in the Court *en banc*. – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

xxx xxx xxx

Sec. 3. Who may appeal; period to file petition. –

xxx xxx xxx

⁵⁸ *Id.* at 34-41.



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"(b) A party adversely affected by a decision or resolution of a Division of the Court on 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.**" *(Boldfacing added)*

In the present case, petitioner received the assailed Amended Decision on October 21, 2020. On November 4, 2020, it timely filed its Motion for Reconsideration thereof, which was denied in the assailed Resolution.

Petitioner allegedly received the assailed Resolution on July 8, 2021. Pursuant to the aforecited law and rules, it had until July 23, 2021 to file a petition for review to challenge the assailed Amended Decision and Resolution. On July 22, 2021, it filed a Motion for Extension of Time to File Petition for Review, which the Court *En Banc* granted in the Minute Resolution dated July 28, 2021, giving petitioner until August 7, 2021 to file its petition for review.

In the meantime, the Supreme Court issued Administrative Circular (AC) No. 56-2021 on July 30, 2021 physically closing all courts in the National Capital Region (NCR) from August 2 to 20, 2021, and suspending the time to file pleadings and motion during the said period, which shall resume seven (7) calendar days from the first day of the physical reopening of the courts. The closure of courts was subsequently extended until the Supreme Court's issuance of AC No. 83-2021 on October 18, 2021 opening all the collegiate appellate courts in the NCR on October 20, 2021 and lifting the suspension of time to file pleadings and motions, and providing that the filing thereof shall resume on October 27, 2021.

Thus, petitioner had six (6) days remaining when the time to file was suspended on August 2, 2021. Consequently, it had until November 2, 2021 (November 1, 2021 was a holiday) to file its petition for review. Clearly, the filing of the present Petition for Review on October 21, 2021 was timely.



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Consideration of the BIR Records as evidence

The Court *En Banc* re-echoes the Supreme Court's pronouncement in *Joel F. Latogan vs. People of the Philippines*,⁵⁹ anent the importance of compliance with procedural rules in the administration of justice and the concomitant prerogative of courts to relax compliance therewith, *viz.*:

"The Court is fully aware that procedural rules are not to be simply disregarded as they insure an orderly and speedy administration of justice. Nonetheless, it is equally true that courts are not enslaved by technicalities. They have the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to an opportunity to be heard. Cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, as a rule, not serve as bases of decisions. In that way, the ends of justice would be served."

Prefatorily, the Court *En Banc* deems it necessary to address the propriety of the Court in Division's action in considering the BIR Records in the disposition of CTA Case No. Case No. 9713. While the BIR Records was not formally offered in evidence by either parties, documents found in the BIR Records were used as basis by the Court in Division in reversing its original Decision, which cancelled the subject assessment in favor of petitioner.

In *Commissioner of Internal Revenue vs. Jerry Ocier*,⁶⁰ the Supreme Court, proclaimed that the "[Court of Tax Appeals (CTA)] *En Banc* had the positive duty as a court of law to consider and give due regard to everything on record *relevant* and *competent* to its resolution of the ultimate issue presented for its adjudication", *viz.*:

"Nonetheless, the petitioner's failure to establish the nature of the transaction as a sale between the respondent and Tan due to the non-offer of the evidence did not prevent the CTA *En Banc* from resolving the issue *in favor* of the petitioner. There was enough proof extant in the records on which to base a ruling *against* the respondent. **The CTA *En Banc* had the positive duty as a court of law to consider and give due regard to everything on record *relevant* and *competent* to its resolution of the ultimate issue presented for its adjudication.** Even if the CTA *En Banc* could not validly consider and appreciate any matter that had not been formally offered by the petitioner, **it could not turn a blind**

⁵⁹ G.R. No. 238298, January 22, 2020.

⁶⁰ G.R. No. 192023, November 21, 2018.



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eye as to disregard the record that showed the transfer of shares that gave rise to the tax liability on the part of the respondent, including the evidence formally offered by the respondent himself as well as his admission. The CTA *En Banc* was all too aware of the presence of such proof in the records because it precisely declared that 'the Court need no longer look into whether or not the subject BW shares were actually transferred, as this was clearly not controverted.' Thus, the CTA *En Banc* gravely erred in upholding the ruling of the CTA in Division." (*Boldfacing added*)

Relatedly, Section 8 of Republic Act No. 1125, as amended, provides that the proceedings in the CTA shall not be governed strictly by technical rules of evidence.

Mindful that the proceedings in the CTA shall not be governed strictly by technical rules of evidence and taking cue from *Ocier*, the Court *En Banc* affirms the Court in Division's consideration of the BIR Records in deciding CTA Case No. 9713.

Likewise, the Court *En Banc* shall give due regard to the evidence extant in the BIR Records relevant to the disposition of the present petition. It is also well to emphasize that while it is established that rules of procedure are tools designed to facilitate the attainment of justice, courts shall not strictly and rigidly apply them if it will only frustrate, rather than promote substantial justice.⁶¹ For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.⁶²

Service of the assessment

The modes of service of assessments is provided under Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, viz.:

"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

⁶¹ *Noel F. Manankil et al. vs. Commission on Audit*, G.R. No. 217342, October 13, 2020.

⁶² *Bank of the Philippine Islands vs. Domingo R. Dando*, G.R. No. 177456, September 4, 2009.



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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.

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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.

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. xxx" (*Boldfacing and underscoring added*)

Under RR No. 12-99, as amended, the assessment shall be served through personal service and **in case personal service is not practicable**, it shall be served by substituted service or registered mail.

On the other hand, RR No. 12-85 mandates that a taxpayer shall give a written notice of its change of address, failing which, communications sent to its former address shall be considered valid and binding for purposes of reckoning the period within which to reply, viz.:

"SECTION 11. *Change of address.* — In case of change of address, the taxpayer must give **written notice** thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and **in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period**



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involved shall be considered valid and binding for purposes of the period within which to reply.” (Boldfacing added)

Nonetheless, in *Commissioner of Internal Revenue vs. BASF Coating + Inks Philippines, Inc.*,⁶³ it was declared that actual knowledge of the BIR or respondent of the taxpayer's current/new address is sufficient compliance with the written notice required under RR No. 12-85, viz.:

"In addition, Section 11 of BIR Revenue Regulation No. 12-85 states:

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

It is true that, under Section 223 of the Tax Reform Act of 1997, the running of the Statute of Limitations provided under the provisions of Sections 203 and 222 of the same Act shall be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected. In addition, Section 11 of Revenue Regulation No. 12-85 states that, in case of change of address, the taxpayer is required to give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business. However, this Court agrees with both the CTA Special First Division and the CTA *En Banc* in their ruling that the abovementioned provisions on the suspension of the three-year period to assess apply only if the BIR Commissioner is not aware of the whereabouts of the taxpayer.

In the present case, petitioner, by all indications, is well aware that respondent had moved to its new address in Calamba, Laguna, as shown by the following documents which form part of respondent's records with the BIR:

- 1) Checklist on Income Tax/Withholding Tax/Documentary Stamp Tax/Value-Added Tax and Other Percentage Taxes;
- 2) General Information (BIR Form No. 23-02);

⁶³ G.R. No. 198677, November 26, 2014.



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- 3) Report on Taxpayer's Delinquent Account, dated June 27, 2002;
- 4) Activity Report, dated October 17, 2002;
- 5) Memorandum Report of Examiner, dated June 27, 2002;
- 6) Revenue Officer's Audit Report on Income Tax;
- 7) Revenue Officer's Audit Report on Value-Added Tax;
- 8) Revenue Officer's Audit Report on Compensation Withholding Taxes;
- 9) Revenue Officer's Audit Report on Expanded Withholding Taxes;
- 10) Revenue Officer's Audit Report on Documentary Stamp Taxes.

The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna.

The CTA also found that BIR officers, at various times prior to the issuance of the subject FAN, conducted examination and investigation of respondent's tax liabilities for 1999 at the latter's new address in Laguna as evidenced by the following, in addition to the abovementioned records:

- 1) Letter, dated September 27, 2001, signed by Revenue Officer I Eugene R. Garcia;
- 2) Final Request for Presentation of Records Before Subpoena Duces Tecum, dated March 20, 2002, signed by Revenue Officer I Eugene R. Garcia.

Moreover, the CTA found that, based on records, the RDO sent respondent a letter dated April 24, 2002 informing the latter of the results of their investigation and inviting it to an informal conference. Subsequently, the RDO also sent respondent another letter dated May 30, 2002, acknowledging receipt of the latter's reply to his April 24, 2002 letter. These two letters were sent to respondent's new address in Laguna. Had the RDO not been informed or was not aware of respondent's new address, he could not have sent the said letters to the said address.

Furthermore, petitioner should have been alerted by the fact that prior to mailing the FAN, petitioner sent to respondent's old address a Preliminary Assessment Notice but it was "returned to sender." This was testified to by petitioner's Revenue Officer II at its Revenue District Office 39 in Quezon City. Yet, despite this occurrence, petitioner still insisted in mailing the FAN to respondent's old address.

Hence, despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address as shown by documents replete in its records. As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed."



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In the case at bar, the PAN and FAN/FLD were served upon petitioner through registered mail at its registered address at 5F Ben-Lor Building No. 1184, Quezon Avenue, Quezon City.

In particular, the BIR Records shows that the PAN was sent via registered mail at its registered address on May 19, 2016⁶⁴ albeit with notation "MOVED OUT RTS" while the FAN/FLD was sent via registered on June 10, 2016,⁶⁵ also with "MOVED OUT RTS" notation.

Petitioner also judicially admitted the fact of service by registered mail of the PAN in its Memorandum⁶⁶ and Motion for Reconsideration⁶⁷ filed with the Court in Division and in its present Petition for Review⁶⁸.

The service of the FAN/FLD through registered mail at petitioner's registered address was judicially admitted by petitioner in its Pre-Trial Brief,⁶⁹ Memorandum,⁷⁰ and Motion for Reconsideration⁷¹ filed before the Court in Division and in its present Petition for Review.⁷² Both parties also judicially admitted the same in their JSFI.⁷³ Consequently, such fact need not be proven pursuant to Section 4, Rule 129 of the Rules of Court.

Clearly, the service of the PAN and FAN/FLD through registered mail at petitioner's registered address is beyond dispute.

Contrary to petitioner's allegation that respondent solely resorted to service by registered mail, the BIR Records reveal that respondent initially served the PAN to petitioner's registered address through personal service on May 19, 2016, as disclosed by the Affidavit of Service of Preliminary Assessment Notice (PAN) executed by RO Ma. Lourdes E. Ereño and Group Supervisor (GS) Araceli D. Flores on June 2, 2016.⁷⁴ Likewise, the FAN/FLD was also initially served through personal service based on the undated Memorandum on the service of the FAN/FLD also by RO Ereño and GS Flores.⁷⁵

⁶⁴ BIR Records, p. 328 and between pages 246 and 247.

⁶⁵ *Id.* at 358-359.

⁶⁶ Docket (CTA Case No. 9713), p. 375.

⁶⁷ *Id.* at 445.

⁶⁸ Docket (CTA EB No. 2511), p. 39.

⁶⁹ Docket (CTA Case No. 9713), p. 114.

⁷⁰ Docket (CTA Case No. 9713), p. 375

⁷¹ *Id.* at 445.

⁷² Docket (CTA EB No. 2511), p. 39.

⁷³ Docket (CTA Case No. 9713), p. 221.

⁷⁴ BIR Records, p. 341.

⁷⁵ *Id.* at 379.



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It was petitioner's move to its current address without informing the BIR or respondent thereof, which rendered the personal service of the assessment to petitioner not practicable. Respondent cannot be expected to serve the assessment at petitioner's new address considering that the BIR or respondent was not yet aware of petitioner's new address at the time the PAN and FAN/FLD were served by registered mail. Indeed, the subsequent service by registered mail of the assessment to petitioner's registered address was justified and thus, valid.

Citing *BASF Coating*, petitioner insists that its right to due process was violated considering that it was not informed of the basis of the assessment since the assessment was not properly served to it. It also asserts that the notice to the BIR of its change of address need not be formal, as what is important is that the BIR or respondent becomes aware of its new address, invoking *Commissioner of Internal Revenue vs. Coolmate Corporation*.⁷⁶

Petitioner's reliance on *BASF Coating* and *Coolmate* is misplaced.

In *BASF Coating*, prior to the mailing of the FAN/FLD, the BIR was already aware of the new address of the taxpayer as evidenced by the following pieces of evidence containing the taxpayer's new address: 1) Checklist on Income Tax/Withholding Tax/Documentary Stamp Tax/Value-Added Tax and Other Percentage Taxes; 2) General Information (BIR Form No. 23-02); 3) Report on Taxpayer's Delinquent Account, dated June 27, 2002; 4) Activity Report, dated October 17, 2002; 5) Memorandum Report of Examiner, dated June 27, 2002; 6) Revenue Officer's Audit Report on Income Tax; 7) Revenue Officer's Audit Report on Value-Added Tax; 8) Revenue Officer's Audit Report on Compensation Withholding Taxes; 9) Revenue Officer's Audit Report on Expanded Withholding Taxes; 10) Revenue Officer's Audit Report on Documentary Stamp Taxes.

Furthermore, in *BASF Coating*, an RO testified as to the fact that **prior** to mailing the FAN, the CIR sent to taxpayer's old address a PAN but it was "returned to sender". In the present case, however, the evidence offered to support petitioner's contention that the BIR had prior knowledge of petitioner's true and correct address is simply a *subpoena duces tecum*.

But personal service of the cited *subpoena duces tecum* at petitioner's current address does not establish that the BIR or

⁷⁶ CTA EB No. 1226, June 8, 2016.



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respondent had prior knowledge of such address. As noted by the Court in Division, the *subpoena duces tecum* was personally served upon petitioner at its current address on **October 10, 2016, which was after the mailing date of the FAN/FLD on June 10, 2016.**⁷⁷

In the same vein, in *Coolmate*, there is proof that the taxpayer notified the BIR of its change of address, *i.e.* BIR Form No. 1905 (Application for Registration Information Update). The taxpayer also submitted its annual ITR (BIR Form No. 1702) for fiscal years 2007 and 2008 filed with the new Revenue District Office to show that the BIR was notified and was aware of the taxpayer's new address prior to the issuance of the PAN and FAN.

In the present case, petitioner's tax returns for taxable year 2012 such as BIR Form Nos. 1604-E,⁷⁸ 1604-CF⁷⁹ and 1702,⁸⁰ among others, and even its audited financial statements⁸¹ found in the BIR Records indicate petitioner's old address as its place of business.

To verify petitioner's allegations that it informed the BIR or respondent of its change of address or that the BIR or respondent has prior knowledge of its current address,⁸² the Court *En Banc* reviewed the case records and the BIR Records. Like the Court in Division, the Court *En Banc* finds that there is nothing therein which can corroborate petitioner's allegations.⁸³

Considering the foregoing discussion, the Court *En Banc* holds that petitioner is bound by the service through registered mail of the PAN and the FAN/FLD, consistent with the provisions of RR No. 12-85.

Due date of the assessment

The Court *En Banc* also sustains the Court in Division's findings that the assessment notice is compliant with the requirement that the assessment must contain a specific due date for the payment of the assessment. Notwithstanding that the space for the due date in the FAN was left blank, the following statement in the FLD is sufficient to

⁷⁷ *Id.* at 11, 85-86; BIR Records, pp. 358-359.

⁷⁸ BIR Records, p. 228.

⁷⁹ *Id.* at 226.

⁸⁰ *Id.* at 93-95.

⁸¹ *Id.* at 83-92.

⁸² Docket (CTA Case No. 9713), pp. 18 and 378-381; Docket (CTA EB No. 2511), pp. 37-38.

⁸³ Docket (CTA EB No. 2511), pp. 85-86.



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inform petitioner of the specific due date when the assessment should be paid:

"Pursuant to the provisions of Section 228 of the NIRC of 1997, as amended, and its implementing Revenue Regulations (RR), you are hereby given fifteen (15) days from receipt hereof to pay the aforesaid deficiency tax liabilities in a duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0605)."⁸⁴

Based on the foregoing, the FAN/FLD is valid as it contains a specific due date for payment and was validly served to petitioner via registered mail at its BIR-registered address. Petitioner's failure to timely protest the valid FAN/FLD rendered the same final, executory and demandable pursuant to Section 228 of the National Internal Revenue Code of 1997 and Section 3.1.4 of RR No. 12-99, as amended. Thus, with the finality of the subject assessment, the Court in Division was deprived of jurisdiction to review the FAN/FLD and correctly dismissed the appeal disputing the same.

Prescription of the assessment

While petitioner indeed raised the issue of prescription in its Pre-Trial Brief⁸⁵ and in the JSFI⁸⁶ filed before the Court in Division, considering the Court *En Banc*'s affirmation of the finality of the FAN/FLD, the Court in Division is correct in holding that the issue of prescription may no longer be considered.

More so because as found by the Court in Division,⁸⁷ the BIR Records shows that petitioner, through Rosalinda D. Cambe, VP-Finance, executed a Waiver of the Defense of Prescription dated June 19, 2015 extending respondent's period to assess until June 30, 2016, which was subsequently received by petitioner on July 8, 2015.⁸⁸ Considering that the FLD/FAN was served via registered mail on June 10, 2016, the same was issued within the extended period to assess.

All told, the Court *En Banc* finds that the Court in Division did not commit a reversible error in the assailed Amended Decision and Resolution. Hence, there is no cogent reason to grant the reliefs prayed for in the present Petition for Review.

⁸⁴ BIR Records, p. 350.

⁸⁵ Docket (CTA Case No. 9713), p.114.

⁸⁶ *Id.* at 222.

⁸⁷ Docket (CTA EB No. 2511), pp. 54-55.

⁸⁸ BIR Records, p. 232.



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WHEREFORE, premises considered, the Petition for Review filed by Citiale Industrial Services Corporation on October 21, 2021 is hereby **DENIED**.

The Amended Decision dated October 14, 2020 and Resolution dated June 3, 2021 of the Court in Division are **AFFIRMED**.

SO ORDERED.



ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:



ERLINDA P. UY
Associate Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice



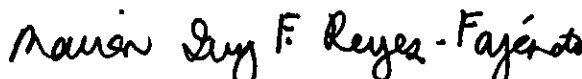
CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice

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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.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', with a stylized, cursive script.

ROMAN G. DEL ROSARIO

Presiding Justice