REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HON. THELMA S. MILABAO OIC REGIONAL DIERCTOR, BUREAU OF INTERNAL REVENUE, REGION NO. 18, Petitioner,	CTA EB No. 1782 (CTA Case No. 9039)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
	Promulgated:
DIONISIA D. PACQUIAO, Respondent.	JUL 05 2019 11:43 a.m.

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DECISION

Fabon-Victorino, J.:

While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly, and always in strict adherence to the requirements of law and of the Bureau of Internal Revenue's own rules.[1] This is the essence of the present case.

In this Petition for Review dated February 21, 2018,[2] petitioner Hon. Thelma S. Milabao,[3] challenges the Decision[4]

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[1] See *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. and Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 201398-99, October 3, 2018.

[2] *Rollo,* pp. 6-35.

[3] Officer-in-Charge (OIC), Regional Director, Bureau of Internal Revenue (BIR), Region No. 18.

and Resolution[5] dated May 30, 2017 and January 18, 2018 respectively, both rendered by the Court in Division in CTA Case No. 9039, which nullified petitioner's deficiency income tax and VAT assessments, together with increments for taxable year (TY) 2010 issued against respondent Dionisia D. Pacquiao for violation of the latter's right to due process.

As chronicled from the record, the facts are as follows:

Petitioner is the officer-in-charge (OIC), Regional Director of Revenue Region No. 18 of the Bureau of Internal Revenue (BIR), the government agency tasked to assess and collect all national internal revenue taxes, fees, and charges, among others.

On the other hand, respondent is a registered taxpayer of the BIR Revenue Region No. 18, Revenue District No. 110[6] with registered address at Purok Acharon Labangal General Santos City 9500.

Per the undated Letter Notice (LN) No. 110-TRS-10-00-00019,[7] the BIR computerized-matching system revealed some inconsistencies between the information/data provided by withholding agents/payors and payees/income recipients against respondent's declarations in her Income/VAT/Percentage/Withholding tax returns for TY 2010. Thus, in a Letter dated March 2, 2012[8], petitioner granted respondent an opportunity to reconcile or explain such discrepancies.

In a Follow-Up Letter dated June 17, 2013, petitioner[9] reminded respondent that a review/assessment shall be conducted in the event that she failed to explain the discrepancies stated in the subject LN.

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[4] *Rollo,* pp. 39-64.
[5] Ibid. at pp. 65-70.
[6] Per respondent's Certificate of Registration No. 2PC0000305534 with Taxpayer Identification Number (TIN) 277-142-824-000, see p. 1 challenged Decision.
[7] Exhibit R-2.
[8] Exhibit R-3.
[9] See Note 9.

On September 16, 2013, petitioner issued a Preliminary Assessment Notice (PAN), Part I[10] and Part II[11] (Compromise Penalties), with Details of Discrepancy[12] finding respondent liable for deficiency IT and VAT, with increments for TY 2010.

On November 5, 2013, respondent received[13] petitioner's Formal Letter of Demand (FLD), Part I[14] and Part II,[15] with Details of Discrepancy,[16] all dated October 16, 2013, assessing her of deficiency IT and VAT, with increments for TY 2010, computed as follows:

Assessment No: **L/D# 0206-10/2013 (IT)**
Income Tax - 2010

Gross Sales/Income Payment per Alphalists of Payors to one and the same Payee		₱2,477,136.98
Add: Taxable Income per Income Tax Return		0.00
Total Taxable Income per Investigation		₱2,477,136.98
Income Tax Due Thereon		₱ 757,683.83
Less: Creditable Taxes Withheld		369,737.21
Deficiency Income Tax Due		₱ 387,946.62
Add: 50% Surcharge	₱193,973.31	
20% Interest per annum from 04-16-11 to 11-15-13	200,260.97	₱ 394,234.28
TOTAL AMOUNT DUE		**₱782,180.90**

Assessment No: **L/D# 0207-10/2013 (VT)**
Value-Added Tax - 2010

Gross Sales/Income Payment per Alphalists of Payors to one and the same Payee		₱2,477,136.98
Less: Adjustment per Evaluation		0.00
Net Discrepancy		₱2,477,136.98
Multiply by Value-Added Tax Rate		x 12%
Deficiency Value-Added Tax Due		₱ 297,256.44
Less: Value-Added Tax Paid per Return		0.00
Deficiency Value-Added Tax Due		₱ 297,256.44
Add: 50% Surcharge	₱148,628.22	
20% Interest per annum from 01-26-11 to 11-15-13	166,448.01	₱ 315,076.23
TOTAL AMOUNT DUE		**₱612,332.67**

GRAND TOTAL AMOUNT DUE AND COLLECTIBLE **₱1,394,513.57**

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10 Exhibit R-6.
11 Exhibit R-7.
12 Exhibit R-6.
13 See statements found in Exhibits P-5 and P-8.
14 Exhibits P-2 and R-10.
15 Exhibit R-11.
16 Exhibits P-4 and R-10.

Assessment No: **L/D# 0206(A)-10/2013 (IT)**
Income Tax - 2010

Nature of Violation	***Violated Provision***	***Amount Due***
Failure to pay income tax at the time/s required by law	RMO No. 19-2007	₱16,000.00
TOTAL AMOUNT DUE		**₱16,000.00**

Assessment No: **L/D# 0207(A)-10/2013 (VT)**
Value-Added Tax - 2010

Failure to pay value-added tax at the time/s required by law	RR No. 16-2005	₱16,000.00
TOTAL AMOUNT DUE		**₱16,000.00**

GRAND TOTAL AMOUNT DUE AND COLLECTIBLE **₱32,000.00**

On December 4, 2013, respondent protested the FLD, arguing that the subject assessments are wanting in factual and legal bases.[17]

In a Letter dated January 23, 2014, petitioner denied respondent's protest and accordingly demanded settlement of the subject assessments.[18]

On July 3, 2014, respondent filed a "Written Protest Signifying Objection and Disagreement to Formal Letter of Demand Nos. 0206 & 0207-10/2013 issued to Dionisia D. Pacquiao" dated June 30, 2014,[19] which petitioner denied in a Letter dated July 21, 2014, by upholding the IT and VAT assessments and demanded for their payment.[20]

On November 18, 2014, respondent filed a request for reconsideration[21] of the denial of her protest, which was followed by an Addendum filed on January 6, 2015, complaining that no Notice of Informal Conference (NIC) and PAN were served against her.[22]

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[17] Exhibits P-5, P-5-a, P-5-b and P-5-c.
[18] Exhibits P-6 and P-6-a.
[19] Exhibits P-7 to P-7-h.
[20] Exhibits P-8 and P-8-a.
[21] Exhibits P-9 to P-9-m.
[22] Exhibits P-10 to P-10-d.

On March 19, 2015,[23] respondent received petitioner's Letter[24] dated March 17, 2015, together with a Final Decision on Disputed Assessment (FDDA)[25] dated January 5, 2015.

On April 17, 2015,[26] respondent elevated her case before the Court in Division.

On May 20, 2018, the Court in Division promulgated the challenged Decision, the decretal portion of which reads as follows:

> **WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and VAT assessments issued against (respondent), including the imposition of compromise penalties, for taxable year 2010 are **CANCELLED** and **WITHDRAWN** for violation of (respondent's) right to due process. Consequently, (petitioner's) **Final Decision on Disputed Assessment** dated January 5, 2015 is **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED**.

The Court in Division explained that no valid service and receipt of PAN were made on respondent since petitioner failed to prove that a certain Analyn N. Abrera was authorized to receive the PAN for and on behalf of respondent. Even assuming that Analyn N. Abrera was respondent's authorized representative, the alleged validity of the assessments could not be sustained as petitioner prematurely issued the FLD on October 16, 2013, or two (2) days before respondent's receipt of the PAN on October 18, 2013. For violating respondent's right to due process, the impugned assessments were cancelled and set aside.

Aggrieved, petitioner sought,[27] but failed[28] to obtain a favorable ruling on her bid for reconsideration, hence, this appeal.

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[23] Answers to Questions No. 4 and 25, Exhibit P-14.
[24] Exhibit P-1.
[25] Exhibit P-1-a.
[26] Respondent filed the Petition for Review before the Court in Division via registered mail on April 17, 2015. It was received by the Court on May 8, 2015. See docket (CTA Case No. 9039), p. 15.

Petitioner insists that the Court in Division was without competence to entertain respondent's appeal. Under Section 228 of the NIRC, as amended, respondent had thirty (30) days from receipt of her Letter dated July 21, 2014, which she claimed to be the FDDA, or until August 20, 2014, to appeal with the Court in Division, lest the disputed assessments shall become final, executory and demandable. With respondent's belated filing of her appeal with the Court in Division on April 14, 2015, the subject assessments became unalterable and could no longer be disturbed.

Petitioner also finds erroneous respondent's move to reconsider on her claimed FDDA of January 23, 2014, suggesting that the remedy under the circumstances would be to file an appeal before the Court in Division within thirty (30) days from receipt of her adverse ruling, or in the alternative, elevate the matter to Commissioner of Internal Revenue (CIR) within the same period of time. Respondent's filing of another motion for reconsideration and subsequent addendum thereto questioning her alleged FDDA of January 23, 2014 were neither sanctioned by the Tax Code nor by any BIR rules and regulations. By availing a non-existent remedy, the assessments in question attained incontrovertibility, says petitioner.

Further, contrary to respondent's contention, her Letter dated March 17, 2015, which the former questioned before the Court in Division was not the FDDA contemplated by law and jurisprudence as it was just a communication reminding respondent of her previously issued FDDA of January 5, 2015, which respondent failed to seasonably assail. Due to such failure to timely seek judicial intervention, a review on the validity of the assessments by the Court in Division was no longer possible.

Petitioner also contends that her presentation of the pertinent registry return receipt, together with a Certification issued by the Koronadal Post Office proved the actual

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[27] Petitioner's Motion for Reconsideration (Re: Decision promulgated on 30 May 2017), docket (CTA Case No. 9039), pp. 690-698.

[28] Resolution dated January 18, 2018, docket (CTA Case No. 9039), pp. 740-745.

mailing and receipt of the PAN by respondent per pertinent jurisprudence[29] on the matter.

Respondent was also accorded opportunity to register her opposition or reply to the PAN in accordance with Section 228 of the NIRC, as amended, as implemented by RR No. 12-99, posits petitioner. Given that the PAN was sent via registered mail on September 24, 2013, respondent had fifteen (15) days, or until October 9, 2013 to refute her findings, but failed. Thus, the FLD dated October 16, 2013 was properly issued, hence, legally binding upon respondent.

Petitioner also puts premium on respondent's alleged admission of her receipt of various BIR correspondence[30] and notices[31] sent to her registered address which allegedly negates her claim of non-receipt of the PAN which was also served by mail using the same address. This, according to petitioner rendered respondent in estoppel preventing her from denying receipt of the PAN.

Finally, respondent failed to raise at first instance her alleged non-receipt of the PAN. Her belated action must be deemed an afterthought invoked a year after the claimed FDDA of July 21, 2014 was issued. Since respondent slept on her right to assail the assessments issued against her, she is barred by laches from questioning the same.

On the other hand, respondent failed to register her comment/opposition to the instant Petition for Review, despite the opportunity granted.[32]

THE RULING OF THE COURT

The instant petition must fail.

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[29] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 157064, August 7, 2006.

[30] Follow-Up Letter dated June 17, 2013 and alleged Decision denying respondent's protest to FLD.

[31] Letter Notice No. 110-TRS-10-00-00019; and FLD.

[32] Records verification report dated July 16, 2018, *rollo,* p. 77.

Petitioner insists that since respondent failed to seasonably assail before the Court in Division the twin letters of January 23, 2014 and July 21, 2014 constituting her alleged FDDA, the assessments contained therein became incontrovertible and beyond scrutiny by the Court in Division.

The Court is not persuaded.

Section 228 of the NIRC, as amended confers upon a taxpayer aggrieved by the decision of the CIR or his duly authorized representative, such as petitioner, a period of thirty (30) days from receipt thereof to appeal the same with the Court in Division, lest the administrative decision on disputed assessment shall become final, executory and demandable, thus:

> **SEC. 228. Protesting of Assessment.** – xxx
>
> xxx xxx xxx
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Concomitantly, Section 3.1.6 of RR No. 12-99[33] requires the CIR or his authorized representative to unequivocally declare in his/her administrative decision on the taxpayer's protest that the same is *final*. The two-fold purpose for such rule of conduct is not that difficult to comprehend - *first,* is to prevent the taxpayer to continually delay the finality of the assessment and, consequently, the collection of the amount demanded as taxes by repeated requests for recomputation and reconsideration; and *second,* to deter the CIR or petitioner from making the taxpayer

[33] 3.1.6 Administrative Decision on a Disputed Assessment. — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) **that the same is his final decision**. (emphasis supplied)

grope in the dark and speculate as to which action constitutes the decision appealable to the tax court.[34] To shed light on whether the letters of January 23, 2014 and July 21, 2014 may be equated to petitioner's FDDA, resort to the language used and tenor thereof is in order.[35]

The twin Letters respectively dated January 23, 2014[36] and July 21, 2014[37] reveal the following: a) respondent failed to pay the deficiency taxes due indicated in the FLD; b) that the assessments stands as is; and c) payment thereof is demanded. Such letters neither contain any categorical statements, nor spell out words of similar import emanating from petitioner that it was her final decision on respondent's administrative protest, thus, they cannot be deemed as her FDDA. On the other hand, petitioner's own FDDA dated January 5, 2015[38] enclosed in her Letter dated March 17, 2015[39] clearly indicated that it was her final decision on the matter, *viz.*:

> This is our final decision. If you disagree, you or your authorized representative may appeal with the Commissioner of Internal Revenue (CIR) or with the Court of Tax Appeals (CTA).[40]

In *Allied Banking Corporation vs. Commissioner of Internal Revenue,[41]* the Supreme Court ruled that under prevalent tax laws, the term appeal refers to the judicial recourse available to the taxpayer before the CTA, to wit:

> xxx. Although there was no direct reference for petitioner to bring the matter directly to the CTA, <u>it cannot be denied that the word appeal under prevailing tax laws refers to the filing of a Petition for Review with the CTA.</u> As aptly pointed out by petitioner, under Section 228 of the NIRC, the terms protest, reinvestigation and reconsideration refer to the

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[34] See *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 134062, April 17, 2007; and *Surigao Electric Co., Inc. v. Court of Tax Appeals*, L-25289, June 28, 1974.
[35] The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer. See *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 148380, December 9, 2005.
[36] Docket (CTA Case No. 9039), pp. 48-49.
[37] Ibid. at pp. 64-65.
[38] Id. at pp. 38-39.
[39] Id. at pp. 37.
[40] Id. at p. 39.
[41] G.R. No. 175097, February 5, 2010.

> administrative remedies a taxpayer may take before the CIR, while the term appeal refers to the remedy available to the taxpayer before the CTA. Section 9 of RA 9282, amending Section 11 of RA 1125, likewise uses the term appeal when referring to the action a taxpayer must take when adversely affected by a decision, ruling, or inaction of the CIR. xxx (emphasis supplied)

Plainly, petitioner's use of the words "final decision," "appeal," and "Court of Tax Appeals" in the FDDA dated January 5, 2015 appended to the Letter dated March 17, 2015 yields no other conclusion - that it was her final decision on respondent's administrative protest properly cognizable by the Court in Division.

Also, respondent did not appeal the Letter dated March 17, 2015, contrary to petitioner's averment. For it was the FDDA of January 5, 2015 attached thereto that was elevated[42] with the Court in Division. Consistent with Section 228 of the NIRC, as amended, respondent had thirty (30) days from receipt of the said FDDA dated January 5, 2015 on March 19, 2015, or until April 19, 2015 to seek judicial recourse with the Court in Division. Hence, respondent timely lodged her Petition for Review with the Court in Division on April 17, 2015.[43] Consequently, petitioner's administrative decision on the protested assessments did not attain immutability. In other words, the Court in Division has the jurisdiction to entertain respondent's appeal.

We now proceed to the merits of this case. It is beyond refutation that xxx the Preliminary Assessment Notice [is] a part of due process. [It] give[s] both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice.[44] Precisely, Section 228 of the NIRC, as amended mandates that the issuance of the PAN which must be served and received by the taxpayer, thus:

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[42] See paragraph 1, respondent's petition for review before the Court in Division, docket (CTA Case No. 9039), p. 16.
[43] See Note 27.
[44] See Note 1.

> SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases: xxx
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> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. xxx (underscoring supplied)

Petitioner contends that the presentation of the pertinent registry receipt and Certification from the Koronadal Post Office adequately established respondent's actual receipt of the PAN.

The contention is specious.

Section 3(v), Rule 131 of the Rules of Court teaches us that when a letter was duly directed and mailed, it is presumed that it was received in the regular course of mail. To raise the presumption, the following must be proved (a) that the letter was *properly addressed* with postage prepaid, and (b) that it was *mailed*. Once established, the presumption 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 may already be invoked.[45]

Granting that petitioner sent the PAN to respondent via registered mail, adhering to the above rule, it is *presumed* that the latter received the PAN in the ordinary course of mail. This presumption is however not conclusive, but merely disputable and may be overcome, as obtaining in the present case, by respondent's denial of such receipt.

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[45] See *Nava vs. Commissioner of Internal Revenue,* G.R. No. L-19470, January 30, 1965.

Consequently, the burden of proving actual receipt of the PAN by respondent shifted back to petitioner. This position finds solace in *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.,*[46] where it was held that:

> If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the clue course of mail. It has been settled 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, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.

To prove respondent's receipt of the PAN, petitioner presented the registry receipt and the Certification dated September 4, 2015 issued by the Postmaster, Philippine Postal Corporation[47] to the effect that a certain Analyn N. Abrera received mail matter no. 244 containing the PAN. However, the evidence presented leaves much to be desired. Apart from the fact that petitioner was not certain as to whether Analyn N. Abrera was also residing in the same Barangay or locality as that of respondent, she also failed to prove by convincing evidence the authority of the said person to receive the mail matter for and on behalf of respondent. Without any formidable proof that Analyn N. Abrera was authorized to receive the PAN on respondent's behalf, it is safe to conclude that no valid PAN was served, let alone received by respondent, rendering the assessments issued against respondent invalid.

Even granting further that Analyn N. Abrera was indeed authorized by respondent to receive the PAN, petitioner failed to accord respondent the period required under Section 3.1.2. of RR No. 12-99 to refute the assessment and ventilate her defense.

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[46] G.R. No. 202695, February 29, 2016.

[47] Exhibit R-9. The location of the post office is at Postal Area 7 (Eastern Mindanao).

Section 228 of the NIRC, as amended mandates[48] *inter alia,* that a taxpayer be granted a period prescribed by regulations to refute the initial findings in the PAN. Pertinently, Section 3.1.2 of RR No. 12-99 specifically grants the taxpayer a period of fifteen (15) days from receipt of the PAN to contest the proposed assessment stated therein. It reads:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
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> 3.1 *Mode of procedures in the issuance of a deficiency tax assessment*:
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability inclusive of the applicable penalties. xxx (emphasis supplied)

Petitioner asserts that the fifteen (15)-day period for respondent to register her response or reply to the PAN lapsed on October 9, 2013. As such, her FLD/FAN was properly issued on October 16, 2013.

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[48] See page 11 of this Decision.

This should be corrected.

A *summa contrario* with petitioner's posture, respondent's fifteen (15)-day period to respond or reply to the PAN commenced *not* from the issuance or service, but from respondent's or her authorized representative's *receipt* thereof. Thus, while the PAN was purportedly issued on September 16, 2013, and subsequently served through registered mail on September 24, 2013, respondent's alleged authorized representative Analyn N. Abrera *received*[49] the same only on October 18, 2013. Counting fifteen (15) days from the receipt of the PAN, respondent had until November 4, 2013[50] to refute the assessments stated therein. Petitioner's precipitate issuance of the FLD/FAN on October 16, 2013 or two (2) days prior to respondent's alleged receipt of the PAN evinces her intent to disregard any defense that respondent might still adduce in violation of her right to due process.

Petitioner as well argues that respondent is precluded from raising the defense of non-receipt of the PAN under the equitable doctrines of estoppel and laches.

The Court disagrees.

Petitioner is proscribed to casually implore the principles of estoppel and laches as she herself violated various mandatory and prohibitory provisions of the Tax Code as follows: *first,* failure to ensure that the PAN was actually received by respondent;[51] and *second,* neglect to grant respondent ample opportunity to respond to the PAN.[52] Indeed, estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate.[53]

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[49] Exhibit R-9.
[50] November 2 and 3 of year 2013 fell on a Saturday and Sunday respectively.
[51] Section 228 of the NIRC, as amended, as implemented by RR No. 12-99.
[52] Ibid.
[53] *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

Simply put, estoppel and laches may not sanitize acts committed in open defiance of the law.

Finally, even if it were true that respondent received the PAN; and that she was granted the requisite 15-day period prescribed in Section 3.1.2 of RR No. 12-99 to express her objections thereto as petitioner insinuates, the nullity of the assessments is inescapable for lack of a valid Letter of Authority (LOA) of the examining revenue officers to audit respondent.

Section 6(A)[54] of the NIRC, as amended primarily confers upon the CIR or petitioner the authority to examine or audit any taxpayer. By way of exception, the same provision allows BIR personnel to validate a taxpayer's accounting record or books of account provided that they are armed by an authority from the CIR or petitioner duly issued for that purpose. The powers granted by law to the CIR or his authorized representative such as petitioner are intended, among other things, to determine the liability of any person for any national internal revenue tax.[55]

Section 13 of the NIRC, as amended, mandates that a valid LOA must be issued by the CIR or petitioner in favor of a revenue officer performing assessment functions to legally examine or audit a taxpayer's books of account, or other accounting records, thus:

> 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

[54] SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.**

(A) Examination of Returns and Determination of tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: xxx.

[55] See *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017.

> acts could have been performed by the Revenue Regional Director himself.

Hence, there must be a grant of authority before any revenue officer may conduct an tax examination and issue an assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[56]

Significantly, in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[57] the Supreme Court declared in no uncertain terms that a LN is not a substitute for a LOA. Pursuant to RMO No. 32-2005, a previously issued LN must be converted to a LOA before a revenue officer may proceed with further examination and assessment of the taxpayer, to wit:

> **Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**
>
> xxx xxx xxx
>
> 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.

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[56] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,* G.R. No. 178697, November 17, 2010.
[57] G.R. No. 222743, April 5, 2017.

xxx xxx xxx

> *xxx* **Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.**
>
> 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. *(Emphasis supplied)*

On the strength of the above observations, the validation/examination piloted by ROs Sittie Skhanesa Jalila A. Ali[58] and Leilah Jane L. Dohinog on respondent was pivoted upon a undated LN No. 110-TRS-10-00-00019.[59] The record is bereft of any showing that such LN was transformed into a LOA as decreed by both RMO No. 32-2005 and jurisprudence. This means that the investigation/audit on respondent commanded by ROs Ali and Dohinog from which the subject assessments were predicated has no prior legal authorization from the CIR or petitioner rendering the FLD/FAN void and without legal consequence.

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[58] Answer to Question No. 8, Judicial Affidavit of RO Sittie Skhanesa Jalila A. Ali, docket (CTA Case No. 9039), p. 160.

[59] Exhibit R-2.

On a final note, taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. However, such collection should be made in accordance with law as any arbitrariness will negate the very reason for the Government itself.[60]

WHEREFORE, the Petition for Review dated February 21, 2018, filed by petitioner Hon. Thelma S. Milabao is **DENIED**. The challenged Decision and Resolution dated May 30, 2017 and January 18, 2018 respectively, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[60] *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue,* G.R. No. 171251, March 5, 2012.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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