REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

HUEY COMMERCIAL, INC., *Petitioner,*	**CTA CASE NO. 8985**
-versus-	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 30 2021

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition") filed by petitioner **HUEY COMMERCIAL, INC.** against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), praying that the Warrant of Distraint and/ or Levy No. RR5-2AMT-DA-12-10-14-825(027) dated 10 December 2014 ("WDL") be cancelled, and that the 2010 tax assessment referred to in the said WDL be declared null and void.[1]

The Parties

Petitioner is a duly organized corporation existing in accordance with and by virtue of the laws of the Republic of the Philippines with principal office at B2 L4 Bulacan Agro Industrial (Bais), Pio Cruzcosa, Calumpit Bulacan.

Respondent is the head of the Bureau of Internal Revenue ("BIR"), the government agency in charge over matters arising under the National Internal Revenue Code, as amended ("NIRC"), including the issuance of the WDL. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

[1] See Summary of the Case in the Pre-Trial Order, Records, p. 96.

The Facts

On 26 August 2011, Letter of Authority No. LOA-25A-2011-00000293 ("LOA") was issued authorizing revenue officer ("RO") Victorio San Antonio and group supervisor ("GS") Elisa Guilalas to perform an examination of petitioner's books of accounts and other accounting records as a mandatory audit pursuant to a claim for income tax refund by petitioner.[2] The LOA covered all internal revenue taxes due from petitioner for the taxable period starting 1 January 2010 to 31 December 2010. On 2 September 2011, RO San Antonio personally went to petitioner's office, located at B2 L4 Bais, Pio Cruzcosa, Calumpit Bulacan. Upon arrival, he was accommodated by a person named Noli Salarda who was the only person present in petitioner's place of business. Upon being asked if he was an authorized representative of petitioner, Salarda answered in the affirmative. RO San Antonio did not, however, ask for a company identification card from Salarda to verify such assertion. Instead, he immediately presumed that Salarda was an authorized representative of petitioner who may be validly served a copy of the LOA. Thus, he served the LOA along with the First Notice and Checklist of Requirements to Salarda.[3] Upon serving the LOA, RO San Antonio also asked Salarda to place his address on the receiving copy of the LOA so that other requests for documents may be sent to him should these become necessary. Salarada complied with the request and placed "73 Mariano Cuenco St., cor. Banawe, Quezon City" in the face of the receiving copy.[4]

Due to petitioner's failure to submit the documents required in the First Notice and Checklist of Requirements, RO San Antonio prepared the Second and Final Request for the Presentation of Documents and sent it via registered mail on 31 October 2011 to petitioner's registered business address, Blk. 2 Lot 4 Bais, Pio Cruzcosa, San Marcos, Calumpit Bulacan.[5] He did not, however, provide a copy of the registry return card showing actual receipt by petitioner of said documents.[6]

While the audit pursuant to the LOA was being conducted, Letter Notices with Nos. 25A-RLF-10-00-00079 and 25A-TRS-10-00-00023 were issued by respondent against petitioner requesting for reconciliation of certain discrepancies in its books of accounts and other accounting records. Again, these were all received personally by Salarda on 3 November 2011.[7]

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2 BIR Records, p. 12.

3 Hearing, dated 14 March 2019, TSN, pp. 7-14; See Judicial Affidavit of Victorio V. San Antonio, Exhibit "R-8", Records, pp. 205-207; Exhibit "R-2", *id.*, p. 214; Exhibit "R-1", *id.*, p. 213; BIR Records, p. 12.

4 Hearing, dated 14 March 2019, TSN, pp. 13-14; BIR Records, p. 12.

5 See Judicial Affidavit of Victorio V. San Antonio, Exhibit "R-8", Records, pp. 207-208; Exhibit "R-3", *id.*, p. 215.

6 Hearing, dated 14 March 2019, TSN, pp. 14-15.

7 BIR Records, pp. 1-12.

As petitioner still failed to respond to the Second and Final Request for the Presentation of Documents, RO San Antonio prepared a Memorandum recommending the issuance of a Subpoena Duces Tecum against petitioner.[8] On 9 July 2012, RO San Antonio personally served the Subpoena Duces Tecum issued against petitioner to Salarda at petitioner's registered business address, Blk. 2 Lot 4 Bais, Pio Cruzcosa, San Marcos, Calumpit Bulacan.[9] Of note is that in the receiving copy of the Subpoean Duces Tecum, there is an annotation that Salarda is a "caretaker".[10] Again, RO San Antonio did not request for a company identification card to ascertain whether Salarda is indeed an authorized representative of petitioner.[11]

On 16 July 2012, petitioner's president, Halbert Uy, submitted a letter to respondent requesting for an extension of thirty (30) working days within which to reconcile the discrepancies found under Letter Notice No. 25A-RLF-10-00-00079. Further, petitioner alleged in the letter that it only received a copy of Letter Notice No. 25A-RLF-10-00-00079 when a certain Mr. Fernandez dropped by respondent's office last 3 July 2012 and that petitioner found out that the said Letter Notice was received by a certain Noli Salarda who forwarded the same to his own office in Makati City.[12]

Meanwhile, due to petitioner's failure to respond to and submit the necessary documents required in the Subpoena Duces Tecum, a referral was filed on 27 July 2012 with the City Prosecutor of Caloocan to file the necessary criminal charges against Uy, as President of petitioner, due to petitioner's failure to respond to or obey the subpoena issued by respondent.[13] On 10 August 2012, the Chief of the Legal Division of Revenue Region No. 5, Caloocan City then issued an Indorsement ordering RO San Antonio to assess petitioner based on the best evidence obtainable.[14]

On 1 August 2012, respondent issued a Notice of Informal Conference based on the Letter Notices with Nos. 25A-RLF-10-00-00079 and 25A-TRS-10-00-00023. This was personally served again to Salarda on 2 August 2012.[15]

On 13 September 2012, respondent issued a Notice of Informal Conference to petitioner based on the LOA. This was sent by RO San Antonio to petitioner via registered mail at the address "No. 73 Mariano Cuenca St. corner Banawe, Quezon City".[16] RO San Antonio explained that since petitioner was no longer operating at its registered business address and no

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[8] See Judicial Affidavit of Victorio V. San Antonio, Exhibit "R-8", Records, p. 208; Exhibit "R-4", *id.*, p. 216.

[9] See Judicial Affidavit of Victorio V. San Antonio, Exhibit "R-8", *id.*, pp. 208-211; Exhibit "R-5", *id.*, p. 217; Exhibit "R-6", *id.*, p. 218

[10] BIR Records, p. 21; Exhibit "R-5", Records, p. 217.

[11] Hearing, dated 14 March 2019, TSN, pp. 21-23.

[12] BIR Records, pp. 13-23.

[13] *Id.*, pp. 22-25.

[14] *Id.*, p. 26.

[15] *Id.*, pp. 24-26.

[16] See Judicial Affidavit of Victorio V. San Antonio, Exhibit "R-8", Records, pp. 210-211; Exhibit "R-7", *id.*, p. 219-221; Hearing, dated 14 March 2019, TSN, pp. 23-24.

person was present therein to receive documents and correspondences, he sent the Notice of Informal Conference to "No. 73 Mariano Cuenca St. corner Banawe, Quezon City" which, according to RO San Antonio, was the address of the President of petitioner.[17]

On 14 September 2012, RO San Antonio prepared a Memorandum to the Regional Director of Revenue Region No. 5 recommending the issuance of a Preliminary Assessment Notice based on the findings as set forth in the Notice of Informal Conference, dated 13 September 2012.[18] On same date, RO San Antonio also prepared a Memorandum addressed to the Regional Director of Revenue Region No. 5 recommending the issuance of a Preliminary Assessment Notice based on the findings in the Letter Notices with Nos. 25A-RLF-10-00-00079 and 25A-TRS-10-00-00023.[19]

In response to these Memoranda, Assistant Regional Director Ma. Gracia B. Javier issued a Memorandum on 19 October 2012 ordering RO San Antonio to revise his computations of the deficiency taxes due against petitioner and requiring him to consolidate the computation of the deficiency taxes due per LOA with the computation of deficiency taxes per Letter Notices with Nos. 25A-RLF-10-00-00079 and 25A-TRS-10-00-00023.[20]

On 4 December 2012, respondent issued a Notice for Informal Conference (Amended) providing for an amended findings of deficiency tax liability against petitioner. This was sent to petitioner via registered mail without any registry return card attached.[21]

Similarly, on 4 December 2012, RO San Antonio prepared a Memorandum to the Regional Director of Revenue Region No. 5 recommending the issuance of a Preliminary Assessment Notice based on the edits proposed by Assistant Regional Director Javier in her Memorandum, dated 19 October 2012. Compared to the previous Memoranda prepared by RO San Antonio wherein the same were reviewed by GS Guilalas, the Memorandum, dated 4 December 2012, was reviewed by a different group supervisor, Marita P. Panteriori.[22]

On 28 February 2013, Assistant Regional Director Javier issued a Memorandum requiring RO San Antonio to revise the proposed Preliminary Assessment Notices based on the review findings by RO Joselle S. Casidsid.[23]

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[17] *Id.*, pp. 31-40.
[18] BIR Records, pp. 52-59.
[19] *Id.*, pp. 27-31.
[20] *Id.*, pp. 32-35.
[21] *Id.*, pp. 46-51.
[22] *Id.*, pp. 36-53.
[23] *Id.*, pp. 58-62.

On 30 April 2013, respondent issued another Notice for Informal Conference (Amended) providing for an amended findings of deficiency tax liability against petitioner. This was sent to petitioner via registered mail without any registry return card attached.[24]

On same date, RO San Antonio prepared a Memorandum to the Regional Director of Revenue Region No. 5 recommending the issuance of a Preliminary Assessment Notice with the proposed amendments by RO Casidsid incorporated.[25]

On 12 July 2013, Assistant Regional Director Javier issued a Memorandum requiring RO San Antonio to further revise the proposed Preliminary Assessment Notices based on findings made by another reviewer, RO Casidsid.[26]

On 14 October 2013, RO San Antonio prepared a Memorandum to the Regional Director of Revenue Region No. 5 replying to the comments set forth in the Memorandum, dated 12 July 2013. He similarly requested the outright issuance of a Preliminary Assessment Notice to expedite the collection of the deficiency taxes contained therein.[27]

Finally, on 6 December 2013, respondent issued the subject Preliminary Assessment Notice with No. 4697 ("PAN"). This was sent to petitioner through registered mail and received by petitioner on 10 December 2013.[28]

On 14 March 2014, respondent issued the subject Final Letter of Demand and its corresponding Final Assessment Notices ("FLD/FAN") finding petitioner liable for deficiency income tax, value added tax ("VAT") and expanded withholding tax ("EWT") in the total amount of Ten Million Six Hundred Eighty Eight Thousand Six Hundred Twenty Two and 19/100 Pesos (Php10,688,622.19). This was received personally again by Salarda on 17 March 2014.[29]

On 10 April 2014, petitioner's president, Uy, requested for a forty-five (45) day extension to submit a Protest against the FLD/FAN.[30] On 29 April 2014, respondent, through a letter, gave petitioner thirty (30) days to act on the assessment.[31]

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[24] *Id.*, pp. 63-66.
[25] *Id.*, pp. 67-68.
[26] *Id.*, p. 70.
[27] *Id.*, p. 71.
[28] See Judicial Affidavit of Joselle Casidsid, Exhibit "R-12", Records, pp. 328-329; Exhibit "R-9", *id.*, p. 331; Exhibit "R-10", *id.*, pp. 332-334; BIR Records, pp. 73-75.
[29] See Judicial Affidavit of Joselle Casidsid, Exhibit "R-12", *id.*, pp. 329-330; Exhibit "R-11", *id.*, pp. 335-340; BIR Records, pp. 82-27.
[30] BIR Records, p. 88.
[31] *Id.*, p. 89.

On 15 August 2014, respondent issued a Preliminary Collection Letter ("PCL") against petitioner seeking to collect the aforementioned deficiency taxes. The PCL was sent via registered mail to petitioner's registered business address, Blk. 2 Lot 4 Bais, Pio Cruzcosa, San Marcos, Calumpit Bulacan, on 22 August 2014. However, the PCL was returned to respondent since the addressee indicated had "moved out".[32]

On 28 October 2014, respondent issued a Final Notice Before Seizure ("FNBS") against petitioner seeking the settlement of the aforementioned deficiency taxes. The FNBS was sent via registered mail to petitioner's registered business address, Blk. 2 Lot 4 Bais, Pio Cruzcosa, San Marcos, Calumpit Bulacan, on 5 November 2014. However, similar to the PCL, the FNBS was returned to respondent since the addressee indicated had "moved out".[33]

Petitioner, however, denied receipt of all the aforementioned documents.[34]

To enforce the alleged deficiency taxes in the total amount of Ten Million Six Hundred Eighty Eight Thousand Six Hundred Twenty Two and 19/100 Pesos (Php10,688,622.19), respondent issued, on 10 December 2014, Warrants of Distraint and/or Levy ("WDL") and Warrants of Garnishment against petitioner.[35] On 12 January 2015, the WDL was served upon Uy at his residence at 73 Mariano Cuenco St., corner Banawe, Quezon City. This was done by leaving a copy of the WDL at the gate of Uy's residence.[36] A perusal of the WDL shows that the service was witnessed by a certain Tiborcio R. Jose and a Rosette B. Del Rosario, who allegedly was the Barangay Secretary of Barangay Lourdes, Quezon City.[37]

Hence, when Uy's driver found the WDL at the residential gate, he presented the same to Juanito M. Enriquez, petitioner's corporate secretary and liaison officer. Enriquez then requested petitioner's external auditors to accompany him to BIR Revenue Region No. 5 to inquire about the WDL. According to Enriquez, this visit was the only time that petitioner discovered that deficiency tax assessments were issued against it. Enriquez denied receipt by petitioner of any of the aforementioned documents above related to the deficiency tax assessment issued against it. He alleges that there was always a personnel stationed at petitioner's registered business address at Blk. 2 Lot 4 Bais, Pio Cruzcosa, San Marcos, Calumpit Bulacan, and that such personnel was allowed to receive any incoming documents addressed to petitioner. Hence, documents intended for petitioner would have been properly received.

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32 *Id.*, p. 91.
33 *Id.*, p. 92.
34 See Judicial Affidavit of Juanito M. Enriquez, Exhibit "P-4", Records, pp. 57-58.
35 BIR Records, pp. 97-112.
36 *Id.*, p. 96; See Memorandum, dated 13 January 2015, *id.*, between pp. 96 and 97; See Judicial Affidavit of Juanito M. Enriquez, Exhibit "P-4", Records, pp. 55-57.
37 Exhibit "P-2", *id.*, p. 306.

Upon asking his trusted personnel, none of the above mentioned documents had been received at petitioner's registered business address.[38]

Thus, petitioner filed the instant Petition on 11 February 2015.[39]

On 20 February 2015, Summons was issued to respondent requiring him to file an Answer to the Petition.[40]

On 11 March 2015, respondent filed a Motion for Extension of Time to File Answer,[41] which was allowed by this Court in a Resolution, dated 17 March 2015.[42] Respondent then filed his Answer on 10 April 2015.[43]

On 14 April 2015, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference on 26 May 2015, at 9:00 a.m.[44]

On 21 April 2015, respondent filed a Manifestation and Compliance, elevating the BIR Records before this Court.[45] This was noted by this Court in a Resolution, dated 28 April 2015.[46]

On 20 May 2015, petitioner filed its Pre-Trial Brief.[47] On same date, petitioner filed a Motion to Admit Judicial Affidavit[48] seeking the admission of the Judicial Affidavit of Enriquez.[49]

On 22 May 2015, respondent filed his Pre-Trial Brief.[50]

On 26 May 2015, the Pre-Trial Conference ensued.[51] The parties then submitted their Joint Stipulation of Facts and Issues on 5 June 2015.[52] Following this, the Court issued a Pre-Trial Order on 23 June 2015, providing for the manner by which this case would proceed.[53]

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[38] See Judicial Affidavit of Juanito M. Enriquez, Exhibit "P-4", *id.*, pp. 54-59.
[39] *Id.*, pp. 6-21.
[40] *Id.*, p. 22.
[41] *Id.*, pp. 23-26.
[42] *Id.*, pp. 27-28.
[43] *Id.*, pp. 30-36.
[44] *Id.*, pp. 37-38.
[45] *Id.*, pp. 39-41.
[46] *Id.*, pp. 42-43.
[47] *Id.*, pp. 44-48.
[48] *Id.*, pp. 50-52.
[49] *Id.*, pp. 53-70.
[50] *Id.*, pp. 72-76.
[51] *Id.*, pp. 77-82.
[52] *Id.*, pp. 87-91.
[53] *Id.*, pp. 95-102.

Petitioner presented two witnesses, Enriquez on 24 August 2015[54] and Ricardo Valdez on 15 March 2016.[55] For his part, respondent also presented two witnesses, RO San Antonio on 14 March 2019[56] and RO Casidsid on 7 August 2019.[57]

On 3 June 2020, petitioner filed its Memorandum through registered mail,[58] which was noted by this Court in a Resolution, dated 16 June 2020.[59] On 4 September 2020, petitioner filed a Compliance submitting additional copies of its Memorandum.[60] Meanwhile, respondent failed to file his Memorandum.[61]

As such, on 16 September 2020, this Court issued a Resolution submitting the instant Petition for decision.[62]

Hence, this Decision.

The Issues[63]

"WHETHER THE COURT HAS JURISDICTION OVER THE PRESENT PETITION FOR REVIEW";

"WHETHER THE LOA FOR TAXABLE YEAR 2010 ISSUED AGAINST HCI IS VOID";

"WHETHER A VOID LOA FOR TAXABLE YEAR 2010 (ISSUED AGAINST HCI) NECESSARILY INVALIDATES A SUBSEQUENTLY ISSUED TAX ASSESSMENT";

"WHETHER THE LETTER OF AUTHORITY WAS VALIDLY ISSUED AND SERVED AGAINST HCI";

"WHETHER THE ALLEGED 2010 DEFICIENCY TAX ASSESSMENTS REFERRED TO IN THE WDL IS VALID AND ENFORCEABLE EVEN IF NO LETTER OF AUTHORITY AND NO FINAL ASSESSMENT NOTICE,

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[54] *Id.*, p 114.
[55] *Id.*, p 155.
[56] *Id.*, pp. 320-322.
[57] *Id.*, pp. 362-364.
[58] *Id.*, pp. 376-388.
[59] *Id.*, p. 389.
[60] *Id.*, pp. 391-404
[61] See Records Verification Reports, dated 7 July 2020 and 8 September 2020, *id.*, p. 390 and 405.
[62] *Id.*, pp. 406-407.
[63] See Issues in the Pre-Trial Order, *id.*, pp. 97-98.

AMONG OTHERS, WERE EVER RECEIVED BY PETITIONER-TAXPAYER";

"WHETHER THE WDL IS VALID AND ENFORCEABLE EVEN IF NO LETTER OF AUTHORITY AND NO FINAL ASSESSMENT NOTICE, AMONG OTHERS, WERE EVER RECEIVED BY PETITIONER-TAXPAYER";

"WHETHER THE FINAL ASSESSMENT NOTICE AND FORMAL LETTER OF DEMAND WAS VALIDLY SERVED BY THE BIR AND WAS RECEIVED BY HCI";

"WHETHER THE ALLEGED TAX DEFICIENCY AGAINST PETITIONER-TAXPAYER HAS FACTUAL AND LEGAL BASES"; AND

"WHETHER THE ASSESSMENT FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX, AND EXPANDED WITHHOLDING TAX ISSUED BY THE BIR TO HCI HAS BECOME FINAL, EXECUTORY AND DEMANDABLE."

Arguments of the Parties

Petitioner's Arguments[64]

Petitioner avers the following in its Memorandum:

a) The LOA issued against petitioner is not valid because it was not duly served;

b) The subsequently issued FLD/FAN against petitioner is likewise invalid, there being no valid LOA preceding its issuance;

c) The 2010 deficiency tax assessments in the WDL is not valid and unenforceable, there being no valid LOA nor FLD/FAN duly served to the petitioner; and

d) Petitioner is not liable for any payment of 2010 deficiency tax.

[64] See Memorandum, *id.*, pp. 378-386.

Respondent's Counter-Arguments[65]

Respondent counter argued as follows in his Answer:

a) This Court has no jurisdiction to try the present case; and

b) Petitioner immediately filed the instant Petition without exhausting its administrative remedies before respondent. Hence, there is a lack of a cause of action for the present Petition, making the same dismissible.

The Ruling of the Court

The instant Petition is impressed with merit.

This Court has jurisdiction over the instant Petition.

In the list of issues to be determined by this Court, the issue on jurisdiction takes precedence over all others. Here, respondent alleges that this Court's jurisdiction is solely confined to appeals from final decisions or assessments which he made or, in cases wherein he did not act within the period prescribed by the NIRC involving disputed assessments, refunds, or other matters arising under said law or other laws administered by the BIR. Consequently, this Court is devoid of jurisdiction to exercise its power of appellate review over the present Petition. This is terribly misplaced.

Jurisdiction is conferred by law. As such, the Court of Tax Appeals, as a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[66]

Section 7 (a) (1) of Republic Act ("RA") No. 1125, as amended by RA No. 9282, provides for the Court's jurisdiction thus:

> "Section 7. Jurisdiction. - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters**

[65] See Answer, *id.*, pp. 31-35.
[66] Commissioner of Internal Revenue vs. Silicon Philippines, Inc., G.R. No. 169778, 12 March 2014.

arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;"
(Emphasis, Ours)

Section 3 (a) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA"), further provides as follows:

"Rule 4

Sec.3. Cases within the jurisdiction of the Court in Divisions.-

The Court in Division shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."**
(Emphasis, Ours)

In this case, petitioner filed the instant Petition to challenge the validity of the WDL on the ground that it was issued based on a void assessment. In effect, petitioner is not appealing a decision by respondent on a disputed assessment. As a general rule, this Court acquires jurisdiction over a decision of respondent on a "disputed assessment," which in turn is elevated by a taxpayer to this Court via a Petition for Review. However, this Court in many instances has also taken cognizance of cases falling under the category of "other matters," including the determination of the validity of a WDL.

In the case of ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue***,[67] the Supreme Court affirmed the jurisdiction of this Court over disputes involving the validity of WDLs and clarified the coverage of the term "other matters," as follows:

"The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of the Statue of Limitations was validly effected."
(Emphasis, Ours)

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[67] G.R. No. 162852, 16 December 2004.

More recently, in the case of ***Commissioner of Internal Revenue v. Bank of the Philippine Islands***,[68] the Supreme Court had the occasion to reaffirm this Court's jurisdiction over issues surrounding the issuance of WDLs under its "other matters" jurisdiction. The Supreme Court ruled in this wise:

> "The OSG relies heavily on the letter dated February 5, 1992—that it was a 'final decision' denying Citytrust's protest. Citytrust's failure to appeal the 'final decision' within 30 days from receipt thereof rendered the tax assessment final, executory, and unappealable. Thus, BPI's Second CTA petition in 2011 was filed out of time, over which the court below did not acquire jurisdiction.
>
> Petitioner's reasoning is specious and misplaced.
>
> First, this was the CIR's same argument in the 2018 Case. To recall, the Court did not give evidentiary weight to the letter dated February 5, 1992 due to the CIR's failure to prove Citytrust's receipt thereof. In the present case, not only is there still no proof of receipt. The CIR did not even attach a copy of the letter relied upon to the present petition. Notably, failure to append 'material portions of the record as would support the petition' is a ground for dismissal thereof.
>
> Second, the aforementioned letter is irrelevant in ascertaining whether or not the tax court properly took cognizance of BPI's Second CTA Petition. **As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.**
>
> **The law expressly vests the CTA the authority to take cognizance of 'other matters' arising from the 1997 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.**
>
> Thus, the CTA properly exercised jurisdiction over BPI's Second Petition."
> (Emphasis, Ours)

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[68] G.R. No. 227049, 16 September 2020.

There is no denying, then, that this Court has jurisdiction, under the term "other matters" pursuant to the aforequoted ***Section 7 (a) (1) of RA No. 1125 and Section 3 (a) (1), Rule 4 of the RRCTA***, to determine whether respondent's issuance of the subject WDL was properly made.

With the Court's ruling that it has jurisdiction to determine the validity of the subject WDL, it becomes imperative to determine if petitioner complied with the periods stated in the ***RRCTA*** to properly invoke such jurisdiction. This matter is equally essential to determining whether this Court can indeed assume jurisdiction over the present Petition.

Section 3 (a) of the RRCTA provides, as follows:

> "SEC. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling,** or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes."
> (Emphasis, Ours)

Following this provision, appeals before this Court shall be made within thirty (30) days after receipt of the assailed decision or ruling or after the expiration of the period fixed by law for respondent to act. In the case at bar, petitioner received the WDL, which is deemed to be respondent's assailed decision to collect alleged deficiency taxes against petitioner, on 12 January 2015.[69] Correspondingly, petitioner had until 11 February 2015 to file an appeal via a Petition for Review before this Court to contest the said WDL. As petitioner filed the instant Petition on 11 February 2015, it has timely filed its appeal before this Court. Thus, this Court can properly assume jurisdiction over the instant case.

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[69] Exhibit "P-2", Records, p. 306.

The LOA was not properly served to petitioner.

Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with an LOA. This is a principle undeterred under our tax laws. An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in auditing a taxpayer.

Section 13 of the NIRC is clear that revenue officers conducting examinations of taxpayers must first be authorized to do so:

> **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, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director,</u> 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.**
> (Emphasis, Ours)

The importance of an LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue ("Medicard Case")***,[70] to wit:

> **"An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
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>> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>>
>> (A) **Examination of Return and Determination of Tax Due.**- After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination**

[70] G.R. No. 222743, 5 April 2017, *citing Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

> **of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x

<u>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.</u> 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 the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

xxx xxx xxx

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives<u>. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>**

(Emphasis and Underscoring, Ours)

Respondent even recognized the importance of the Supreme Court's ruling on LOAs in the ***Medicard Case*** when he issued ***Revenue Memorandum Circular No. 75-2018***,[71] which provides, as follows:

> "The judicial ruling, invoking a specific statutory mandate, states that no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, through an LOA. **The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
>
> xxx xxx xxx
>
> **To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions."**
> (Emphasis and Underscoring, Ours)

Procedural standards must also be observed in issuing the LOA to ensure that such authority is not arbitrarily exercised. There is a need to establish constraints on the authority of the revenue officers acting under delegated authority from the respondent. As part of due process, the purpose of the LOA is not only to give the subject taxpayer notice on the coverage of the tax investigation, but also to prevent the examiner from claiming blanket authority to conduct the audit and investigation.[72]

Revenue Memorandum Order No. 43-90 ("RMO 43-90")[73] mandates that:

> "xxx xxx xxx
>
> C. Other policies for issuance of L/As.
>
> 1. All **audits/ investigations,** whether field audit or office audit, **should be conducted under a Letter of Authority."**
> (Emphasis, Ours)

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[71] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

[72] *Dakay Construction and Development Corporation v. Commissioner of Internal Revenue,* CTA *EB* No. 1294, CTA Case No. 8265, 20 September 2016.

[73] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

In relation to this, ***Revenue Audit Memorandum Order No. 1-00 ("RAMO 1-00")***[74] explicitly requires that all LOAs should be served or presented to the taxpayer; otherwise, it becomes null and void, to wit:

> "C. Contact With Taxpayer
>
> 1. Arranging for an Appointment
>
> A telephone or a personal call by the Revenue Officer should be made to the taxpayer himself and not his representative.
>
> 2. Serving of Letter of Authority
>
> 2.1 **On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA) together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else.** He should have the proper identification card and should be in proper attire.
>
> 2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.
>
> 2.3 **A Letter of Authority must be served or presented to the taxpayer** within 30 days from its date of issue; **otherwise it becomes null and void,** unless revalidated. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on________' on the face of the copy of the Letter of Authority issued."
> (Emphasis, Ours)

Clearly, in order for an LOA to validly authorize the examination of a taxpayer's accounting records and, as such, validate a tax assessment, the said LOA must first be served upon the taxpayer. The rationale for this is simple. Proper service of an LOA is a due process requirement in tax assessments. The LOA informs a taxpayer that it is subject to a tax audit and that the revenue officers named therein are authorized to examine its accounting records for purposes of determining the correct taxes due. Without being presented such a document, a taxpayer will not know that it is subject of a tax audit. In turn, it cannot protect its interests as it will not be able to present the necessary books of accounts and other accounting records which would show that it has indeed declared, remitted, and paid the correct amount of taxes.

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[74] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), 17 March 2000.

Worse, the BIR would have to resort to a jeopardy assessment (*i.e.*, one based on mere estimates and assumptions without actual audit) just to protect the government's interest in collecting the correct amount of taxes, simply because the taxpayer was not given a chance to provide its books of accounts and other accounting records.

In fact, the need to properly serve the LOA has been stressed recently when respondent issued ***Revenue Memorandum Circular No. 110-2020 ("RMC 110-2020")***[75] to clarify the proper mode of service of LOAs. ***RMC 110-2020*** provides, as follows:

> "Under item III.23 of Revenue Memorandum Order (RMO) No. 19-2015, the Revenue Officer (RO) authorized to conduct examination of the books of accounts of a particular taxpayer shall present/serve a copy of the electronic Letter of Authority (eLA) to the concerned taxpayer in accordance with Section 3.1.6 of Revenue Regulations No. 12-99, as amended by RR No. 18-2013. Since there are times when the concerned taxpayer or his authorized representative, or **authorized officer in case of a non-individual taxpayer,** could not be found in the registered address, the detailed procedures on the modes of service of assessment notices, in accordance with those prescribed in the regulations, are laid out in RMO No. 40-2019.
>
> Considering that the said regulations cover the service of assessment notices only, there are ROs who may not be aware that the same modes of service apply to the service of an eLA despite its adoption in RMO 19-2015. Hence, clarifications for the proper service of eLA are presented below:
>
> 1. The eLA shall be served to the taxpayer through personal service by delivering personally a copy of the eLA at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> Personal or substituted service of the eLA shall be effected by the RO assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose.
>
> 2. In case personal service is not possible, the eLA shall be served either by substituted service or by mail. However, substituted service can only be resorted to when the party is not present at the registered or known address. ℓ

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[75] Clarifications on the Proper Modes of Service of an Electronic Letter of Authority, 24 September 2020.

2.1 Substituted service shall be done as follows:

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

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

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

2.1.4 If no person is found in the party's registered or known address, the Revenue Officers (ROs) concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they rnay personally observe and attest to such absence. The original copy of the eLA shall be given to said barangay official. (See required details of acknowledgement of receipt in item no. 4, hereof)

2.1.5 Should the party be found at his registered or known address or any other place but refuses to receive the eLA, the ROs concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The original copy of the eLA shall be given to said barangay official. (See required details of acknowledgement of receipt in item no. 4, hereof) 'Disinterested witnesses' refer to persons of legal age other than employees of the Bureau of Internal Revenue.

2.2 Service by mail shall be done by sending a copy of the eLA through –

2.2.1 Registered mail with an instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered; or

2.2.2 Reputable professional courier service; or

2.2.3 Ordinary mail, if no registry or reputable courier is available in the locality of the taxpayer.

xxx xxx xxx

7. **Personal service shall be complete upon actual delivery of the eLA to the taxpayer or his representative.** Service by registered mail is complete upon actual receipt by the taxpayer or after five (5) days from the date of receipt of the first notice of the postmaster, whichever date is earlier. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing."

(Emphasis, Ours)

While ***RMC 110-2020*** was not yet in force at the time the questioned LOA in the present case was issued, the fact of such subsequent issuance of ***RMC 110-2020*** by respondent gives the Court all the more reason to rule, if only for consistency and uniformity, that for a LOA to validly confer authority to a revenue officer assigned to examine/investigate a taxpayer, the same should be properly served upon the taxpayer. And following the above citations, to properly serve an LOA, the same should be personally served to the taxpayer or his representative, or to the authorized officer in the case of a non-individual taxpayer. It is only when personal service is not possible that substituted service and service by mail can be resorted to.

It is crucial, here, that petitioner denies receipt of the subject LOA.[76]

A review of the documents and testimony presented shows that although RO San Antonio personally went to petitioner's registered business address located at B2 L4 Bais, Pio Cruzcosa, Calumpit Bulacan, no authorized person was present there. Instead, only one named Noli Salarda was there. RO San Antonio claims that Salarda answered in the affirmative when asked if he was an authorized representative of petitioner. Thus, based solely on this representation, RO San Antonio served the subject LOA to Salarda, who in turn received the same by affixing his name and signature on the receiving copy of the LOA. However, RO San Antonio did not ask for any proof from Salarda showing his alleged lawful representation of petitioner such as a company identification card.[77] RO San Antonio simply relied on the bare assertions by Salarda, to wit:

> "ATTY. LU
>
> Q Mr. Witness, this Noli Salarda, when you arrived, where did you serve this Letter of Authority to him?
>
> MR. SAN ANTONIO
>
> A At this address, sir.
>
> (Witness is pointing to a Letter of Authority)
>
> ATTY. LU
>
> Q Mr. Witness, this Noli Salarda prior to this time, you have not met him? ℓ

[76] See Judicial Affidavit of Juanito M. Enriquez, Exhibit "P-4", Records, pp. 57-58.

[77] Hearing, dated 14 March 2019, TSN, pp. 7-14; See Judicial Affidavit of Victorio V. San Antonio, Exhibit "R-8", Records, pp. 205-207; Exhibit "R-2", *id.*, p. 214; Exhibit "R-1", *id.*, p. 213; BIR Records, p. 12.

MR. SAN ANTONIO

A Yes, Sir.

ATTY. LU

Q And prior to this time, have you ever been to Huey Commercial, Inc.?

MR. SAN ANTONIO

A No, sir.

JUSTICE LIBAN

Before the service of the LOA, have you been to Huey Commercial, Inc.?

MR. SAN ANTONIO

No, Your Honor.

ATTY. LU

Q Mr. Witness, the question also that you answered a while ago in the affirmative is that, you have never made met Noli Salandra?

MR. SAN ANTONIO

A Prior to serving of Letter of Authority to him, yes, sir.

ATTY. LU

Q Mr. Witness, when you asked this Noli Salarda to sign the Letter of Authority, the receipt of the Letter of Authority, did you ask him for any ID that says that he is Noli Salarda?

MR. SAN ANTONIO

A No, sir.

ATTY. LU

Q Mr. Witness, you are just relying on his saying so that he is Noli Salarda?

MR. SAN ANTONIO

A He was the only person in that place of business.

ATTY. LU

Q But you do not know if he is even employed by the company because you did not ask for a company ID?

MR. SAN ANTONIO

A The fact that he answered in the affirmative that he is authorized representative I presumed that he is employed with the company.

ATTY. LU

Q So it is a mere presumption, you did not even ask for a valid ID that shows that he is even in fact that he is Mr. Salarda?

MR. SAN ANTONIO

A We do not usually ask for an ID, Because he was in the place of business of the taxpayer."[78]

Under the circumstances, the Court finds that respondent indeed failed to properly serve a copy of the LOA to petitioner and, as such, the latter was not able to receive the subject LOA. Indeed, petitioner denied the authority of Salarda in its letter, dated 16 July 2012, which requested for an extension within which to reconcile the discrepancies found under Letter Notice No. 25A-RLF-10-00-00079, considering that said Letter Notice was not received by petitioner but was "received by a certain Noli Salarda who erroneously forwarded the same to their office in Makati."[79]

The negligence committed by RO San Antonio of not properly verifying if Salarda was an employee of petitioner unfairly denied petitioner of its right to due process in the tax assessment proceedings. By not receiving a copy of the LOA, petitioner was not a given a chance to participate in the tax audit and present its books of accounts and other accounting records to support its position that it has declared, paid, and remitted all taxes due.

As provided above, an unserved LOA is a null and void LOA. Without a valid LOA, the revenue officers who conducted the tax audit are not properly authorized to do so. Accordingly, any tax assessment issued pursuant to such audit is undoubtedly null and void. Absent a valid tax assessment, respondent's attempts to collect any deficiency taxes based therefrom through summary remedies, such as the present WDL, are similarly void and ineffectual. A void assessment bears no valid fruit.[80]

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[78] Hearing, dated 14 March 2019, TSN, pp. 10-12.

[79] BIR Records, p. 23.

[80] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,* G.R. No. 197945, 9 July 2018.

Certain revenue officers examined petitioner's books of accounts and other accounting records without the requisite authority.

Even assuming *arguendo* that the instant LOA was properly served upon petitioner and received by the latter, it has been shown that certain revenue officers still examined petitioner's books of accounts and other accounting records without being named in the subject LOA or, at the very least, being issued a document properly authorizing them to perform such audit.

It is well settled that a new handling revenue officer shall be issued a new LOA when the tax audit of a particular taxpayer has been transferred to him from another revenue officer. This is primarily for the purpose of complying with the rule that each and every revenue officer examining a taxpayer's books of accounts and other accounting records must possess sufficient authority to do so. In fact, respondent, being aware of the necessity of an LOA before a revenue officer can examine a taxpayer, issued ***RMO 43-90***, which provides:

> "**Any reassignment/ transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/ A number and date of issue of said L/As."
> (Emphasis, Ours)

A cardinal rule in statutory construction is that where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application. The use of the word "shall" connotes a mandatory order and denotes an imperative obligation and is inconsistent with the idea of discretion.[81] Hence, the use of the word "shall" in ***RMO 43-90*** can only mean that the issuance of a new LOA in cases of transfer of audits to another set of revenue officers is mandatory.

A perusal of the case records shows that subject LOA authorized RO San Antonio and GS Guilalas of Revenue District No. 25A – Plaridel Bulacan to examine petitioner's books of accounts and other accounting records for purposes of determining the correct amount of all internal revenue taxes due for the period from 1 January 2010 to 31 December 2010.[82] Both RO San Antonio and GS Guilalas performed the examination of petitioner's books of

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[81] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 175707, 180035, 181092, 19 November 2014.
[82] BIR Records, p. 12.

accounts and other accounting records up to the preparation of the Memoranda, both dated 14 September 2012, addressed to the Regional Director of Revenue Region No. 5 recommending the issuance of a Preliminary Assessment Notice based on the LOA[83] and Letter Notices with nos. 25A-RLF-10-00-00079 and 25A-TRS-10-00-00023.[84] However, on 4 December 2012, the Memorandum prepared by RO San Antonio recommending the issuance of a Preliminary Assessment Notice based on the edits proposed by Assistant Regional Director Javier in accordance with her Memorandum, dated 19 October 2012, was reviewed and noted by a different group supervisor, GS Panteriori.[85]

Fatal to respondent's cause is that the records are bereft of any document granting authority to GS Panteriori to examine petitioner's books of accounts and other accounting records. The transfer of the tax audit of petitioner from GS Guilalas to GS Panteriori had no documentation whatsoever. Hence, GS Panteriori had no authority to perform the examination of petitioner's books of accounts and other accounting records, whether the same was merely done on a supervisory role.

The same is equally true with respect to RO Casidsid. A perusal of the BIR Records would show that that she reviewed the audit findings of RO San Antonio and group supervisors Guilalas and Panteriori. Her participation in the audit includes recommendations and proposed edits to the audit findings which culminated in: a) the Memorandum, dated 19 October 2012, issued by Assistant Regional Director Javier;[86] b) the Memorandum, dated 28 February 2013, issued by Assistant Regional Director Javier;[87] c) b) the Memorandum, dated 12 July 2013, issued by Assistant Regional Director Javier;[88] d) the preparation of the PAN;[89] and e) the preparation of the FAN/FLD.[90] Again, she did these without the requisite authority to do so. Indeed, during her cross-examination, RO Casidsid admitted that no LOA was issued in her favor:

> "JUSTICE UY
>
> Justice San Pedro has questions.
>
> JUSTICE SAN PEDRO
>
> Just to clarify. You have no copy of the LOA issued in your favor?
>
> REVENUE OFFICER CASIDSID
>
> No, ma'am. No, your Honor.

[83] *Id.*, pp. 52-59.
[84] *Id.*, pp. 27-31.
[85] *Id.*, pp. 36-53.
[86] BIR Records, pp. 32-35.
[87] *Id.*, pp. 58-62.
[88] *Id.*, p. 70.
[89] *Id.*, in between pp. 73 and 72 (no page number).
[90] See Judicial Affidavit of Joselle Casidsid, Exhibit "R-12", Records, p. 329

xxx xxx xxx

JUSTICE UY

Are you among those named in the LOA?

REVENUE OFFICER CASIDSID

No, ma'am."[91]

To affirm the validity of an assessment even if one of the revenue officers who performed the examination is not authorized by an LOA would utterly disregard the above provisions of the ***NIRC***, administrative issuances, and related jurisprudence mandating the necessity of an LOA in favor of revenue officers who will perform an audit/investigation of a taxpayer.

In a tax audit, the BIR usually assigns several revenue examiners (comprising of a group supervisor, a revenue officer and reviewing revenue officers) to conduct an examination of a taxpayer. To allow only one or some of these revenue examiners to be armed with an LOA will create possibilities for abuse. The BIR could simply assign to a revenue examiner named in an LOA other revenue examiners not so named, causing potential harassment against the taxpayer as the latter may be forced to deal with a plethora of revenue examiners.

It is noteworthy that an LOA is a safeguard against abuses that may be perpetrated by revenue officers against taxpayers. An LOA guarantees a taxpayer that only persons named therein are allowed to examine its books of accounts and other accounting records. Hence, it has a right to deny other revenue officers not so named from auditing it for potential deficiency tax assessments.

In the absence of an LOA authorizing GS Panteriori and reviewing RO Casidsid to examine petitioner, the deficiency tax assessments issued as a result of the examination/audit conducted by these two revenue officers are null and void. Consequently, no tax collection can be pursued based on such deficiency tax assessments. Thus, the subject WDL is similarly void and ineffectual based on the above rationalization.

[91] Hearing, dated 7 August 2019, TSN, pp. 23 and 26.

Petitioner did not receive any Notice of Informal Conference and was denied the right to file a reply thereto.

A further infraction committed by respondent resulting in the nullification of the subject deficiency tax assessments is his failure to properly serve the numerous Notices of Informal Conference issued against petitioner. This is an apparent denial of due process against petitioner as the latter did not receive a Notice of Informal Conference to which it is entitled to. Under ***Section 3.1.1 of Revenue Regulations No. 12-99, as amended, ("RR 12-99")***,[92] a taxpayer subject of a tax investigation is entitled to a Notice of Informal Conference. The purpose of this "informal conference" is to provide the taxpayer the chance to contest the preliminary audit findings of the examining revenue officer prior to the issuance of the formal deficiency tax assessments. ***Section 3.1.1 of RR 12-99*** provides, as follows:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. **If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the tax payer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default,** in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted."
> (Emphasis, Ours)

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[92] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, 6 September 1999.

In the case at bar, several Notices of Informal Conference were issued by respondent against petitioner. This is because several amendments were made by respondent in the Notices of Informal Conference, necessitating the issuance of the amended versions. The first one was issued on 1 August 2012, and the discrepancies therein were based on the Letter Notices with nos. 25A-RLF-10-00-00079 and 25A-TRS-10-00-00023. This was personally served to Salarda on 2 August 2012.[93]

The second version of the Notice of Informal Conference was issued on 13 September 2012. The discrepancies therein were based on the audit conducted based on the LOA. This was sent by RO San Antonio to petitioner via registered mail at the address "No. 73 Mariano Cuenca St. corner Banawe, Quezon City".[94] No registry return card was attached.[95] RO San Antonio explained that since petitioner was no longer operating at its registered business address and no person was present therein to receive documents and correspondences, he sent the Notice of Informal Conference at "No. 73 Mariano Cuenca St. corner Banawe, Quezon City," which, according to RO San Antonio, was the address of the president of petitioner.[96]

The third version of the Notice of Informal Conference was issued on 4 December 2012. This was sent to petitioner via registered mail at the address "No. 73 Mariano Cuenca St. corner Banawe, Quezon City" without any registry return card attached.[97] This version incorporated the edits proposed by Assistant Regional Director Javier in her Memorandum, dated 19 October 2012. Peculiarly, on the same day, 4 December 2012, RO San Antonio also prepared a Memorandum to the Regional Director of Revenue Region No. 5 recommending the issuance of a Preliminary Assessment Notice based on such edits proposed in the Memorandum, dated 19 October 2012.[98]

The fourth version of the Notice of Informal Conference was issued on 30 April 2013. This version incorporated the proposed amendments by RO Casidsid. This was sent to petitioner via registered mail at the address "No. 73 Mariano Cuenca St. corner Banawe, Quezon City" without any registry return card attached.[99] Immediately upon issuing the amended Notice of Informal Conference, RO San Antonio again prepared a Memorandum to the Regional Director of Revenue Region No. 5 recommending the issuance of a Preliminary Assessment Notice wherein the proposed amendments by RO Casidsid were incorporated.[100]

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[93] BIR Records, pp. 24-26.
[94] See Judicial Affidavit of Victorio V. San Antonio, Exhibit "R-8", Records, pp. 210-211; Exhibit "R-7", *id.*, p. 219-221; Hearing, dated 14 March 2019, TSN, pp. 23-24.
[95] BIR Records, pp. 49-51.
[96] Hearing, dated 14 March 2019, TSN, pp. 31-40.
[97] BIR Records, pp. 46-51.
[98] *Id.*, pp. 36-53.
[99] *Id.*, pp. 63-66.
[100] *Id.*, pp. 67-68.

Under ***Section 3(v), Rule 131 of the Rules of Court,*** there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.[101]

In light of petitioner's categorical denial of the due receipt of these documents, the burden was thus shifted to respondent to adduce proof that petitioner or its duly authorized representative indeed received the same. As explained above, service of documents to Salarda was not a valid service to petitioner considering that the former is neither an authorized representative by petitioner nor its employee. Hence, the first version of the Notice of Informal Conference, which was personally served to Salarda, is deemed not received by petitioner. The subsequent versions, meanwhile, were allegedly sent to petitioner through registered mail at the address "No. 73 Mariano Cuenca St. corner Banawe, Quezon City." Due to petitioner's denial of receipt of said versions, it became imperative for respondent to show proof that the second to fourth versions of the Notice of Informal Conference were actually received by petitioner. The registry receipts attached to these documents are not sufficient proof that the second to fourth versions of the Notice of Informal Conference have in fact been received by petitioner. It behooved respondent to present the corresponding Registry Return Cards to prove petitioner's receipt of said Notices. His failure to do so is fatal to his position.

Due to respondent's failure to show any proof that the Notices of Informal Conference were actually received by petitioner, the same are deemed not properly served upon and received by petitioner. Thus, respondent failed to observe a fundamental right to due process accorded to taxpayers in deficiency tax assessment proceedings (*i.e.*, the right to receive a Notice of Informal Conference). The corresponding assessment issued against petitioner is thus consequently null and void.

Furthermore, even assuming that petitioner actually received the various versions of the Notice of Informal Conference, respondent still failed to give petitioner an opportunity to file its reply to the third and fourth versions of the Notice of Informal Conference. A perusal of the BIR Records would show that immediately after issuing the third and fourth versions of the Notice of Informal Conference on 4 December 2012 and 30 April 2013, respectively, RO San Antonio prepared a Memorandum addressed to the Regional Director of Revenue Region No. 5 on 4 December 2012 and 30 April 2013, respectively, recommending the issuance of a Preliminary Assessment Notice based on the version of the Notice of Informal Conference recently released.[102]

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[101] *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, Resolution, G.R. No. 240729, 24 August 2020.
[102] BIR Records, pp. 36-53 and 67-68.

This certainly violates ***Section 3.1.1 of RR 12-99***, the revenue issuance then effective at the time the factual incidents of the present case occurred, which guarantees taxpayers with fifteen (15) days from receipt of the Notice of Informal Conference within which to file a response to the discrepancies noted by the respondent. Petitioner was not given a chance to refute the discrepancies noted in the various versions of the Notice of Informal Conference. By immediately recommending the issuance of a Preliminary Assessment Notice on the same day the Notice of Informal Conference was issued, RO San Antonio already had a pre-conceived judgment, which is to issue a formal assessment for deficiency taxes against petitioner without even taking into account the pieces of documentary evidence which could be offered by petitioner to support its position. This is a clear case of pre-judgment violative of the right to due process accorded to petitioner enshrined in the ***1987 Constitution, the NIRC***, jurisprudence, and related administrative issuances.

Such violation of due process was frowned upon in ***Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.***,[103] where the Supreme Court elaborated as follows:

> "In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.
>
> Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in Commissioner of Internal Revenue v. Algue, Inc.:
>
>> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>>
>> . . . .
>>
>> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits

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[103] G.R. Nos. 201398-99, 3 October 2018; *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201418-19, 3 October 2018.

> intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power."

Considering the foregoing, the deficiency tax assessment issued against petitioner is null and void. Correspondingly, no tax collection can be pursued in relation to such assessment. Thus, the WDL issued by respondent is similarly null and void based on this disquisition.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FLD/FAN issued against petitioner finding it liable for deficiency income tax, VAT and EWT in the total amount of Ten Million Six Hundred Eighty Eight Thousand Six Hundred Twenty Two and 19/100 Pesos (Php10,688,622.19), the PCL, the FNBS, and the WDL are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice