REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

BANCLIFE INSURANCE CO., INC.,	**CTA CASE NO. 9939**
Petitioner,	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and*
-versus-	**MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 05 2022 2:45 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition"), filed by petitioner, **BANCLIFE INSURANCE CO., INC.** on 28 September 2018, against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), pursuant to ***Section 7 (1) of Republic Act No. 1125, as amended by Section (7) (a) (1) of Republic Act No. 9282 ("RA 1125"),*** seeks to declare the assessments issued by respondent against petitioner for deficiency Income Tax ("IT"), Expanded Withholding Tax ("EWT"), and Final Withholding Tax ("FWT") for the calendar year ("CY") 2013, in the aggregate amount of Php18,067,945.59, as null and void.[1]

The Parties

Petitioner is a registered taxpayer of the Bureau of Internal Revenue ("BIR") – Revenue Region No. 6 ("RR 6"), Revenue District Office No. 34 ("RDO 34") with Tax Identification No. ("TIN") 236-669-934-000.[2]

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[1] *See* Summary of the Case in the Pre-Trial Order, Records, Vol. 2, p. 558.

[2] *See* Admitted Facts in the Pre-Trial Order, *id.*, p. 559.

Respondent is the duly appointed Commissioner of the BIR vested under the appropriate laws with the authority to carry out the function, duties and responsibilities of his Office, including *inter alia*, the power to decide disputed assessments, and to cancel and abate tax liabilities pursuant to the provisions of the ***National Internal Revenue Code of 1997, as amended ("NIRC"),*** other tax laws, and rules and regulations.[3]

The Facts

On 25 July 2014, a Letter of Authority ("LOA") was issued by the Regional Director of RR 6, Araceli L. Francisco, in favor of Revenue Officer ("RO") Divina Santos and Group Supervisor ("GS") Almira Navarro of RDO 34 authorizing them to audit and examine petitioner's books of accounts and other accounting records for the purpose of determining any deficiency tax liability for the period from 1 January 2013 to 31 December 2013.[4]

The LOA and a Checklist of Requirements was received by petitioner from RDO 34 on 1 August 2014.[5] On 14 August 2014, petitioner received a First Request for Presentation of Records from RDO 43 requesting certain documents necessary to the audit.[6] This request was reiterated by the BIR on 28 August 2014 when it issued a Second and Final Request for the Presentation of Records.[7] On 8 September 2014, petitioner submitted the requested documents to RO Santos.[8]

On 13 October 2015, petitioner received a Letter, dated 6 October 2015, from Revenue District Officer Albino M. Galanza, informing it that the audit of its books of accounts and other accounting records would be assigned to RO Aldwin I. Alaan to be supervised by GS Godofredo V. San Diego.[9] A Memorandum of Assignment, dated 30 September 2015, ("MOA") was attached to this Letter indicating that the transfer of the audit to RO Alaan and GS San Diego was due to the previous RO's resignation/retirement/transfer to another district office.[10]

Thereafter, RO Alaan and GS San Diego issued a Memorandum recommending the issuance of a Preliminary Assessment Notice ("PAN").[11] On 22 December 2016, respondent issued a PAN.[12]

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3 See Admitted Facts in the Pre-Trial Order, *id.*
4 Exhibit "R-1", BIR Records, p. 94.
5 Exhibit "P-1", Records, Vol. 1, pp. 148-149.
6 Exhibit "P-2", *id.*, p. 150.
7 Exhibit "P-3", *id.*, p. 151.
8 Exhibit "P-5", *id.*, p. 153.
9 Exhibit "P-4", *id.*, p. 152.
10 Exhibit "R-5", BIR Records, p. 98.
11 Exhibit "R-7", *id.*, pp. 130-131.
12 Exhibit "R-8", *id.*, pp. 139-141.

On 13 January 2017, respondent issued Formal Letters of Demand with corresponding Assessment Notices ("FLD/FAN").[13] The FLD/FAN sought to collect the following deficiency taxes from petitioner:

Tax Type	Amount Due (inclusive of surcharge and interest, and exclusive of compromise penalties)
IT	Php15,382,174.56
FWT	2,497,500.00
EWT	101,271.33

Respondent then issued a Preliminary Collection Letter, dated 8 August 2017, ("PCL") demanding the above stated amounts.[14] Thereafter, respondent issued a Final Notice Before Seizure, dated 25 August 2017, ("FNBS") seeking the collection of the aforementioned deficiency taxes.[15]

On 31 August 2018, Warrants of Garnishment ("WOG") were received by petitioner's affiliates (*i.e.,* Maestro Holdings, Inc., PhilHealthCare, Inc., and Grow Holdings Phil., Inc.) from the BIR seeking to collect the alleged deficiency taxes from petitioner. On 17 September 2018, petitioner's affiliate, PhilPlans First, Inc., also received a WOG from the BIR. Petitioner's affiliates responded to these WOG by informing the BIR that they have no investments/dividends/stocks and receivables due to petitioner and neither is the latter in possession of properties owned by the former.[16]

Upon learning of the presence of these WOGs, petitioner, on 18 September 2018, sent a Letter to the BIR's RR 6 requesting for the cancellation of the WOGs and Warrants of Distraint and/or Levy ("WDL"), if one had been issued, since it never received a copy of the PAN and FAN/FLD in violation of the mandatory requirements under ***Section 228 of the NIRC*** and ***Revenue Regulation No. 12-99 ("RR 12-99")***. Petitioner also requested for copies of the PAN, FAN/FLD, and the WDL, if any had been issued.[17]

Respondent did not comply with petitioner's request. As such, petitioner filed the instant Petition with an Urgent Motion to Quash Warrant of Garnishment and/or to Suspend Tax Collection of Taxes on 28 September 2018, after it considered the WOGs, which were received by petitioner's

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[13] Exhibits "R-9" to "R-19", *id.*, pp. 143-154.
[14] Exhibit "R-20", BIR Records, p. 158; *See* Judicial Affidavit of Jay-pee B. Gambala, Exhibit "R-27", Records, Vol. 1, pp. 250-257.
[15] Exhibit "R-21", BIR Records, p. 159; *See* Judicial Affidavit of Jay-pee B. Gambala, Exhibit "R-27", Records, Vol. 1, pp. 250-257.
[16] *See* Judicial Affidavit of Ms. Nerissa Suganob, Exhibit "P-16", *id.*, pp. 66-69; Exhibit "P-6" to "P-13", *id.*, pp. 154-161.
[17] Exhibit "P-14", *id.*, pp. 162-164; See Judicial Affidavit of Ms. Nerissa Suganob, Exhibit "P-16", *id.*, pp. 69-70.

affiliates on 31 August 2018 and 17 August 2018, respectively, as respondent's decision on other matters arising under the ***NIRC***.[18]

On 15 October 2018, this Court issued Summons to respondent to file an Answer to the Petition.[19]

On 23 October 2018, a hearing was conducted in relation to petitioner's Urgent Motion to Quash Warrant of Garnishment and/or to Suspend Tax Collection of Taxes. In support of its Motion, petitioner presented various documentary evidence which were identified by its witness, Ms. Nerissa Suganob.[20]

On 5 November 2018, respondent filed his Opposition and/or Comment (To Motion to Quash Warrant of Distraint and/or Levy and/or to Suspend Collection of Taxes).[21] He also elevated all of the BIR Records appurtenant to the case on 17 December 2018.[22]

On 7 November 2018, petitioner filed its Formal Offer of Evidence (In Support of Petitioner's Application for Suspension of Collection of Taxes).[23] Respondent interposed no objections to this submission.[24]

On 14 November 2018, respondent filed his Answer.[25]

In a Resolution, dated 11 March 2019, this Court admitted all of petitioner's Exhibits in its Formal Offer of Evidence (In Support of Petitioner's Application for Suspension of Collection of Taxes), and granted petitioner's Urgent Motion to Quash Warrant of Garnishment and/or to Suspend Tax Collection of Taxes.[26]

On 14 March 2019, respondent submitted the Judicial Affidavit of his witnesses, RO Ma. Paz Arcilla,[27] RO Alaan,[28] RO Jay-pee B. Gambala,[29] RO Myla O. Gulle,[30] and RO Benhur C. Nacorda.[31]

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[18] See Petition, *id.*, p. 17.
[19] *Id.*, p. 122.
[20] *Id.*, pp. 123-125; Exhibit "P-16", *id.*, pp. 61-119.
[21] *Id.*, pp. 134-136.
[22] *Id.*, pp. 209-210.
[23] *Id.*, pp. 137-191.
[24] *Id.*, pp. 199-200.
[25] *Id.*, pp. 194-198.
[26] *Id.*, pp. 212-219.
[27] Exhibit "R-26", *Id.*, pp. 220-238.
[28] Exhibit "R-24", *Id.*, pp. 239-249.
[29] Exhibit "R-27", *Id.*, pp. 252-257.
[30] Exhibit "R-25", *Id.*, pp. 258-265.
[31] Exhibit "R-28", *Id.*, pp. 267-291.

On the other hand, petitioner submitted the Judicial Affidavit of its witness, Ms. Nerissa L. Suganob before this Court on 15 March 2019.[32]

Petitioner then filed its Pre-Trial Brief on 23 June 2019,[33] while respondent filed his Pre-Trial Brief on 2 July 2019.[34]

The Court, in a Resolution, dated 2 July 2019, referred the instant case for mediation.[35] After the parties failed to reach an amicable settlement, a Pre-Trial Conference was then set for 20 February 2020.[36]

Pre-Trial ensued on 20 February 2020.[37] Then, on 11 March 2020, the parties submitted their Joint Stipulation of Facts and Issues,[38] which terminated the Pre-Trial.[39] A Pre-Trial Order was issued by the Court on 10 July 2020.[40]

On 1 September 2020, petitioner presented its lone witness, Ms. Nerissa L. Suganob.[41] It then filed its Formal Offer of Evidence.[42] The Court admitted all of petitioner's Exhibits.[43]

Respondent presented witnesses RO Alaan and RO Gulle on 1 December 2020,[44] witness RO Arcilla and RO Gambala on 19 January 2021,[45] and his lone remaining witness, RO Nacorda, on 23 February 2021.[46] Respondent then filed his Formal Offer of Evidence on 3 March 2021,[47] to which petitioner filed a Comment.[48] This Court then admitted all of respondent's Exhibits except Exhibits **"R-2", "R-3", and "R-4"**, for failure to identify these.[49]

On 23 July 2021, petitioner filed its Memorandum.[50] Respondent filed his Memorandum on 26 August 2021.[51] Thus, on 11 October 2021, this Court issued a Resolution submitting the instant case for Decision.[52]

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32 Exhibit "P-25", *id.*, pp. 292-275.
33 *Id.*, pp. 479-497.
34 *Id.*, pp. 502-506.
35 *Id.*, pp. 498-501.
36 *See* Resolution, dated 28 January 2020, Records, Vol. 2, pp. 528-530.
37 *Id.*, pp. 531-535.
38 *Id.*, pp. 536-552-a.
39 See Resolution, dated 19 June 2020, *id.*, pp. 554-556.
40 *Id.*, pp. 557-566.
41 *Id.*, pp. 569-570-a.
42 *Id.*, p. 136.
43 See Resolution, dated 26 November 2020, *id.*, pp. 716-718.
44 *Id.*, pp. 719-721.
45 *Id.*, pp. 722-724.
46 *Id.*, pp. 725-727.
47 *Id.*, pp. 728-738.
48 *Id.*, pp. 740-745.
49 *Id.*, pp. 748-750.
50 *Id.*, pp.751-787.
51 *Id.*, pp. 788-808.
52 *Id.*, pp. 809-810.

Hence, this Decision.

<u>The Issues</u>[53]

"WHETHER THE COURT HAS JURISDICTION TO ENTERTAIN THE PETITION FOR REVIEW";

"WHETHER PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, FWT AND EWT FOR CALENDAR YEAR (CY) 2013 IN THE AGGREGATE AMOUNT OF PHP18,067,945.59";

> "WHETHER OR NOT RESPONDENT FAILED TO COMPLY WITH THE DUE PROCESS REQUIREMENTS UNDER ***SECTION 228, [NIRC],*** AS IMPLEMENTED BY ***[RR 12-99]";***
>
> "WHETHER OR NOT RESPONDENT'S OFFICERS LACKED THE AUTHORITY TO CONDUCT AN INVESTIGATION IN THE ABSENCE OF A NEW [LOA], AS REQUIRED UNDER ***REVENUE MEMORANDUM ORDER NO. 43-1990 [('RMO 43-90')]";*** AND
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> "WHETHER OR NOT THE ASSESSMENTS FOR THE ALLEGED DEFICIENCY [IT], FWT, EWT AND COMPROMISE PENALTY FOR CY 2013 LACKED LEGAL AND FACTUAL BASIS."

<u>Arguments of the Parties</u>

<u>Petitioner's Arguments</u>[54]

Petitioner avers the following in its Memorandum:

a) The Court has acquired jurisdiction over the instant case;

   i. The assessment against petitioner has not yet become final, executory, unappealable, or uncontestable. Petitioner never received a copy of the PAN and FLD/FAN. As such, there was no opportunity for petitioner to file a Reply to the PAN or a Protest to the FLD/FAN. Accordingly, there is no merit in

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[53] See Issues in the Pre-Trial Order, Records, Vol. 2, pp. 559-560.
[54] *Id.*, pp. 757-785.

respondent's argument that the subject assessments have already become final and executory due to petitioner's failure to respond thereto because it had no opportunity to do so since it never received any assessment notice;

ii. Petitioner filed its judicial protest within the prescriptive period fixed by law. Since petitioner never received a copy of the PAN and FLD/FAN, it was constrained to consider the WOGs received by its affiliate companies as respondent's decision on other matters arising under the ***NIRC***. As petitioner's affiliate companies initially received the WOGs on 31 August 2018, it had until 30 September 2018 within which to file a judicial protest. Thus, petitioner timely filed the instant Petition on 28 September 2019;

b) Respondent failed to comply with the due process requirements of the law, as ***Section 3.1.1 and 3.1.4 of RR 12-99*** clearly requires the issuance of a PAN and FLD/FAN for the purpose of informing a taxpayer of his or her tax liabilities. Moreover, it is insufficient that the tax assessment notices were merely issued by respondent. It must likewise be proven that the same were actually received by the taxpayer;

c) In the absence of a new LOA, the ROs who conducted an audit and examination of petitioner's books of accounts lacked the authority to perform the same. Thus, the instant assessment is null and void;

d) The assessments for alleged deficiency IT, FWT, EWT and Compromise Penalty for CY 2013 lacked legal and factual basis; and

e) The WOGs are null and void considering that no valid assessment has been made.

Respondent's Counter-Arguments[55]

Respondent counter argues as follows in his Memorandum:

a) The Court has no jurisdiction over the instant Petition since the assessment has already become final, executory, and demandable;

b) The jurisdiction of the Court over the subject matter of the action is determined by the allegations of the complaint and the character of the relief sought;

[55] *Id.*, pp. 790-804.

c) While maintaining that the subject deficiency tax assessment has already became final and demandable and is already beyond the scope of judicial review, petitioner was not denied due process. Through the various evidence he presented, respondent was able to prove that petitioner was duly served a copy of the PAN and FLD/FAN. Moreover, ***Section 3 (v) of Rule 131 of the Rules of Court*** clearly provides that when mail matter is sent by registered mail, there is a presumption that it was received in the regular course of mail; and

d) While maintaining that the subject deficiency tax assessment has already became final and demandable and is already beyond the scope of judicial review, the tax assessment was issued pursuant to a valid LOA.

The Ruling of the Court

The instant **Petition is impressed with merit.**

The Court has jurisdiction over the present Petition.

Respondent claims that the Court has no jurisdiction to entertain the present Petition as the subject assessments have already become final and executory. This is misplaced.

Jurisdiction by this Court over the instant case is conferred by ***Section 7 (1) of RA 1125***, to wit:

> ***"SEC. 7. Jurisdiction.*** - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;"**
> (Emphasis and underscoring, Ours.)

Jurisdiction by the Court is not solely limited to matters directly related to assessments or refunds of internal revenue taxes. The Court is also empowered to take cognizance of other matters which arise from the implementation of the *NIRC*. This was categorically declared by the High Court in ***Philippine Journalist, Inc. v. Commissioner of Internal Revenue***, to wit:

> **"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**

> **<u>provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue.</u>** 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 Statute of Limitations was validly effected."
> (Emphasis and underscoring, Ours)

In the instant case, petitioner is appealing the issuance of the WOGs, which is part of respondent's efforts to collect the subject deficiency tax assessments. WOGs are not decisions of respondent directly related to assessments, considering that these are usually issued post-assessment. Although not directly related to assessments, the Court still has jurisdiction to determine the propriety of the issuance of such WOGs. This is because the issuance of WOGs qualifies as a decision by respondent relating to other matters arising from the implementation of the ***NIRC*** (*i.e.,* collection of taxes) that may be appealed before this Court as provided under ***Section 7 (1) of RA 1125***.

Furthermore, while petitioner is mainly appealing respondent's efforts to collect the subject deficiency taxes, this does not mean that this Court is limited in determining whether the collection procedure employed after assessment is proper. The Court may also rule upon the validity of the assessment itself.[56] After all, a void assessment bears no fruit,[57] and no tax collection can be pursued from such a void assessment.

After determining that the instant case falls under the Court's "other matters" jurisdiction, it should now be determined whether petitioner timely filed its judicial appeal.

It has been shown that petitioner learned of the existence of the WOGs when petitioner's affiliates informed petitioner that they received such WOGs seeking to collect the subject deficiency taxes. Based on the uncontradicted testimony of Ms. Suganob[58] and the Letter Replies filed by petitioner's affiliates,[59] some of petitioner's affiliates (*i.e.,* Maestro Holdings, Inc., PhilHealthCare, Inc., and Grow Holdings Phil., Inc.) initially received the WOGs from the BIR on 31 August 2018 and, on the day of receipt, informed petitioner of the receipt of such document.

Under ***Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),*** "[a] party adversely affected by a decision… of the Commissioner of Internal Revenue… may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision.

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[56] Commissioner of Internal Revenue v. MIFFI Logistics Co., Inc., CTA *EB* No. 1979, CTA Case No. 9122, 26 November 2019.
[57] Commissioner of Internal Revenue v. Azucena T. Reyes and Azucena T. Reyes v. Commissioner of Internal Revenue, G.R. Nos. 159694 & 163581, 27 January 2006.
[58] Exhibit "P-25", Records, Vol. 1, pp. 300-303.
[59] Exhibits "P-6" to "P-9", *id.,* pp. 154-157.

Following this, petitioner had thirty (30) days upon learning of the receipt of the WOGs by its affiliates, which is deemed the earliest date upon which petitioner can be considered to have received a copy of respondent's decision to collect the subject deficiency taxes, or until 30 September 2018 within which to file a judicial appeal before this Court. As petitioner filed the instant Petition on 28 September 2018, this Court properly assumed jurisdiction over the present case.

Once receipt is denied, the CIR must prove through a preponderance of evidence that the assessment notices were indeed received by the taxpayer.

Respondent argues that it presented sufficient evidence that he properly served a copy of the PAN and FLD/FAN to herein petitioner. Further, he alleges that ***Section 3 (v) of Rule 131 of the Rules of Court*** clearly provides that when mail matter is sent by registered mail, there is a presumption that it was received in the regular course of mail.

Respondent is mistaken.

Respondent failed to adduce evidence that he indeed properly served a copy of the PAN and FLD/FAN to petitioner. Respondent simply offered in evidence proofs of mailing of the PAN (*i.e.,* Registry Receipt No. RD 672 783 309 ZZ),[60] and the FLD/FAN (*i.e.,* Registry Receipt No. 003154).[61] These pieces of evidence only prove that the PAN and the FLD/FAN were mailed through registered mail. However, these do not conclusively show that the PAN and the FLD/FAN were actually received by petitioner.

The Court is not unmindful of the cited presumption under ***Section 3 (v) of the Rules of Court***. But this presumption is disputable and not conclusive in nature.

Once receipt of the assessment notices is denied and controverted by the taxpayer, the burden of proof is shifted to the CIR to prove through a preponderance of evidence that the taxpayer, or his or her authorized representative, indeed received the subject assessment notices. This was categorically declared by the Supreme Court in ***Commissioner of Internal Revenue v. T Shuttle Services, Inc.***,[62] to wit:

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[60] Exhibit "R-22", Records, Vol. 2, p. 737.
[61] Exhibit "R-23", *id.*, p. 738.
[62] Resolution, G.R. No. 240729, 24 August 2020.

"Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires the assessment to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Section 228 pertinently provides:

> 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:
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> x x x x
>
> 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.
>
> x x x x
>
> (Emphasis supplied)

To highlight the due process requirement in Section 228 of the NIRC, Section 3 of Revenue Regulations (RR) 12-99 dated September 6, 1999 provides:

> 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.

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 x x x. 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.

x x x x

3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void x x x. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

x x x x

As can be gleaned from the above provisions, **service of the PAN or the FAN to the taxpayer may be made by registered mail. 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.**
>
> **In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.**"
> (Emphasis and underscoring, Ours.)

As in the case cited above, petitioner has unequivocally denied receipt of the PAN and the FLD/FAN. Accordingly, the burden to prove that the PAN and the FLD/FAN were received by petitioner is shifted to respondent.

A perusal of the evidence offered by respondent (*i.e.,* proofs of mailing and the testimony of RO Nacorda)[63] would show that he failed to provide convincing proof that the PAN and FLD/FAN were actually received by petitioner or its duly authorized representative; as already stated, they only show that the PAN and FLD/FAN were mailed through registered mail.

Failure to prove that the PAN and the FLD/FAN were indeed received by the petitioner renders the instant assessment null and void. Without proof of receipt, the PAN and the FLD/FAN are deemed not received by petitioner. Accordingly, petitioner was not notified and informed of the deficiency tax assessment issued against it. Consequently, petitioner was not able to avail of the remedies allowed under the ***Section 228 of the NIRC*** in protesting deficiency tax assessments. Petitioner's right to due process in assessment proceedings, particularly the right to be informed of the deficiency tax assessments issued against it, has thus been violated.

An LOA as an instrument of due process should particularly name the revenue officers who are authorized to conduct an audit.

Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with a LOA. This is a principle undeterred under our tax laws. A 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.

[63] Exhibit "R-22", Records, Vol. 2, p. 737; Exhibit "R-23", *id.,* p. 738; Exhibit "R-28", *id.,* pp. 267-291.

The importance of a LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court in the ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[64] 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:
>
> > **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 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 bimself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**
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> 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>**.

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

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.)

In fact, the Supreme Court even went further in highlighting the importance of a Letter of Authority as an instrument of due process when it recently ruled in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp. ("McDonald's Case")***[65] that a Letter of Authority should specifically name the revenue officers who will pursue the tax audit, to wit:

"A. **<u>Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation</u>**

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In Medicard Philippines, Inc. v. Commissioner of Internal Revenue, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that '[d]ue process demands xx x that after [a Letter Notice] 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.' The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be

[65] G.R. No. 242670, 10 May 2021.

> in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**
>
> We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, 'any' revenue officer may then act under such validly issued LOA.
>
> The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers, pursuant to Sections 6, 10(c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, i.e., a revenue officer. Hence, petitioner is mistaken to characterize the LOA as a document 'issued' to the taxpayer, and that once so issued, 'any' revenue officer may then act pursuant to such authority."
> (Emphasis and underscoring, Ours.)

Thus, respondent's contention, that an LOA simply authorizes the conduct of audit of a taxpayer by the CIR's revenue officers, and in the event that the revenue officers indicated in the LOA can no longer perform the audit due to resignation, transfer, or death, such authority remains and the conduct of audit must necessarily be reassigned and assumed by another revenue officer without the need for a new LOA under the name of such new revenue officer, is mistaken. A taxpayer has the right to know the specific revenue officers who are authorized to examine his or her books of accounts and other accounting records. Consequently, a LOA must particularly state the revenue officers authorized to audit/investigate a particular taxpayer. Otherwise, if the new revenue officer assigned to take over the audit of a taxpayer (due to the resignation, transfer, or death of the previous revenue officer) is not provided an LOA specifically to his or her name, any resulting assessment arising from the audit conducted by the new revenue officer is null and void.

A MOA cannot take the place of an LOA.

In the ***McDonald's Case***, the Supreme Court declared that a MOA cannot substitute for an LOA. A MOA simply notifies a taxpayer of the transfer of an audit/investigation to another set of revenue officers. Unlike a LOA, a MOA does not show that the new set of revenue officers who will pursue the audit are properly authorized to do so. A LOA is a special grant of authority to a specific set of revenue officers to examine a taxpayer's books of accounts and other accounting records for purposes of determining the taxes due. The Supreme Court ruled, as follows:

"B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But **an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives."
(Emphasis, Ours.)

In the present case, LOA No. 034-2014-00000287, dated 25 July 2014,[66] was initially issued authorizing RO Divina Santos and GS Almira Navarro of RDO 34 to audit/examine petitioner for possible deficiency tax liabilities for CY 2013. Subsequently, a MOA[67] was issued, transferring the audit to RO Alaan and GS San Diego. Through the MOA issued in favor of

[66] Exhibit "R-1", BIR Records, p. 94.
[67] Exhibit "R-5", *id.*, p. 98.

RO Alaan and GS San Diego, they were able to come up with audit findings that then resulted in the issuance of assessment notices against petitioner. [68]

In totality, RO Alaan and GS San Diego were able to audit, examine, and inspect petitioner's books of accounts and other accounting records (which then lead to deficiency tax assessments against respondent) through a mere MOA, despite the clear requirement that all revenue officers conducting an audit/investigation of a taxpayer should be properly authorized with an LOA.

It is noteworthy that assessments issued without the requisite LOA are inescapably void.[69]

Consequently, due to the absence of a LOA authorizing RO Alaan and GS San Diego to examine petitioner, the deficiency tax assessments issued against respondent are void. Accordingly, no tax collection can be pursued based on these assessments.

The subject MOA cannot be treated as a valid LOA.

It may be argued that a LOA does not partake a particular form. Following this line of argument, any document may qualify as a LOA provided that the essential requisites of a LOA are present.

To be effective, a LOA must be issued either by respondent himself or by his duly authorized representative. Under ***Section 13 of the NIRC***, the duly authorized representative is the Revenue Regional Director. Under ***Section D (4) of RMO No. 43-90***, petitioner expanded the list of duly authorized representatives who may issue Letters of Authority:

> "1. Regional Directors;
> 2. Deputy Commissioners;
> 3. Commissioner; and
> 4. Other officials that may be authorized by the Commissioner for the exigencies of service."[70]

Using this line of thought, a MOA may be considered a valid and effective LOA, provided that it was issued by any of the persons named above.

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68 Exhibit "R-7", BIR Records, pp. 130-131.
69 Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, 5 April 2017.
70 Commissioner of Internal Revenue v. Sugar Crafts, Inc., CTA EB No. 1757; CTA Case No. 8738, Resolution, dated 10 September 2019.

In the present case, the subject MOA was issued by a mere Revenue District Officer, Albino M. Galanza.[71] This signatory is not among those listed above. Hence, the subject MOA cannot qualify as a valid LOA.

Considering that the revenue officers who examined and audited petitioner's books of accounts and other accounting records is not armed with a proper LOA, the resulting deficiency tax assessment is undoubtedly null and void.

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**. The PAN, FLD/FAN, PCL, FNBS and WOGs issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency IT, FWT and EWT assessments issued against petitioner for CY 2013, in the aggregate amount of Php18,067,945.59 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

W CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[71] Exhibit "R-5", BIR Records, p. 98.

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