REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 3029** (CTA Case No. 10550)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.*, **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES** *JJ.*
SHIP TO SHORE MEDICAL ASSIST, INC., Respondent.	Promulgated: FEB 26 2026 1:12

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DECISION

FERRER-FLORES, J.:

This **Petition for Review (Re: Decision dated June 6, 2024 and Resolution dated October 30, 2024)**[1] (Petition for Review) filed on November 22, 2024 seeks the reversal and setting aside of the Decision dated June 6, 2024 (assailed Decision),[2] and the Resolution dated October 30, 2024 (assailed Resolution),[3] both promulgated by the Third Division of this Court (Court in Division)[4] in CTA Case No. 10550, entitled *"Ship to Shore Medical Assist, Inc., vs. Commissioner of Internal Revenue"* the dispositive portions of which respectively read:

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[1] *Rollo*, pp. 1 to 36.
[2] *Id.* at 42 to 61.
[3] *Id.* at 63 to 68.
[4] Penned by (Ret.) Associate Justice Catherine T. Manahan and concurred in by Associate Justice Marian Ivy F. Reyes-Fajardo and Associate Justice Henry S. Angeles.

Assailed Decision

> **ACCORDINGLY**, the present *Petition for Review* is **GRANTED**. The FLD/FAN dated January 14, 2020 assessing petitioner of deficiency income tax, VAT, WTC, IAET, and compromise penalty, all for TY 2016, in the aggregate amount of ₱23,492,099.42 is **CANCELLED** and **SET ASIDE**. The CIR, his representatives or agents, or any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject assessments.
>
> **SO ORDERED.**

Assailed Resolution

> **ACCORDINGLY**, the respondent's *Motion for Reconsideration (Re: Decision dated June 6, 2024)* filed on July 5, 2024 is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner is the **Commissioner of the Bureau of Internal Revenue (BIR)** empowered under appropriate laws to carry out and perform the functions, duties and responsibilities of the said office, including, among others, the power to decide disputed assessments and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended.[5]

Respondent **Ship to Shore Medical Assist, Inc.** is a corporation duly organized and existing under the laws of the Republic of the Philippines and a taxpayer duly registered with Revenue District Office No. 50 – South Makati, Revenue Region No. 8A – Makati City with registered business address at Unit D 17/F Trafalgar Plaza, 105 H.V. Dela Costa St., Salcedo Village, Makati City.[6]

THE ANTECEDENT FACTS

The factual antecedents, as found by the Court in Division in the assailed Decision, are as follows:[7]

> On September 13, 2017 Ship to Shore received a *Letter of Authority (LOA)* from the BIR Revenue District Office No. 50 of South Makati, Metro Manila, authorizing Revenue Officer (RO) Alona Marie Alegre, RO Carlos

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[5] The Parties, *Petition for Review* dated November 20, 2024, *Rollo*, p. 3.
[6] *Id.*
[7] *Id.* at 42 to 47.

Rivero, and Group Supervisor (GS) Imelda Alcantara to examine its books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2016 to December 31, 2016.

On the same date, Ship to Shore received the *Checklist of Requirements* dated August 30, 2017 in connection with said examination. In compliance therewith, it submitted the requested documents in a letter dated September 22, 2017.

The BIR then issued a *First Notice for Presentation of Records* on October 12, 2017, followed by a *Second & Final Notice for Presentation of Records* on November 21, 2017, requesting the submission of complete documents. These notices were received by Ship to Shore on October 23, 2017 and December 15, 2017, respectively. Ship to Shore submitted the additional documents requested by the BIR on January 3, 2018.

On March 15, 2018, Ship to Shore filed with the Securities and Exchange Commission (SEC) its *General Information Sheet (GIS)* for the year 2018, stating that its principal and business address is at Ground and Third Floors No. 222 Gil Puyat Avenue, Pio Del Pilar, Makati City ("Gil Puyat Avenue address").

The BIR issued an undated *Notice of Informal Conference* with *Details of Discrepancies*, which was received by Ship to Shore on May 24, 2018. Thereafter, the BIR issued the *Preliminary Assessment Notice (PAN) Part I* dated December 4, 2019 and *PAN Part II* dated December 21, 2019, with *Details of Discrepancy*, assessing Ship to Shore of deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), and improperly accumulated earnings tax (IAET) allegedly due for TY 2016.

On January 14, 2020, the BIR issued against Ship to Shore a *Formal Letter of Demand (FLD) Part I* with *Details of Discrepancies* and *Assessment Notices*. The BIR allegedly sent the same to Ship to Shore's registered address at Unit D, 17/F Trafalgar Plaza, 105 H.V. Dela Costa St., Salcedo Village, Makati City ("Trafalgar Plaza address") through private courier (LBC). Details of the assessment are as follows:

Assessment No.	Kind of tax	Basic Tax Due	Interests	Total
IT — eLA50480-16-19-344	Income tax	P8,349,234.81	P3,314,074.36	P11,663,309.17
VT — eLA50480-16-19-344	VAT	4,315,462.67	1,902,114.07	6,217,576.74
WC — eLA50480-16-19-344	WTC	107,448.77	66,176.66	173,625.43
IE — eLA50480-16-19-344	IAET	3,631,053.51	1,756,534.57	5,387,588.08
MC — eLA50480-16-19-344	Compromise penalty	50,000.00		50,000.00
				P23,492,099.42

Subsequently, the Bank of the Philippine Islands (BPI) Alfaro Branch, through its Assistant Business Manager Marie Therese S. Carino, sent a letter dated February 15, 2021 addressed to Ship to Shore informing it of the *Notice of Garnishment* issued by the BIR. The letter was sent via registered mail to the Trafalgar Plaza address but was returned to sender on April 20, 2021. Ship to Shore allegedly received a scanned copy thereof on May 10, 2021, after its attempts to transfer funds from its BPI Alfaro Branch corporate account were disapproved. Another letter with the same content but dated June 7, 2021 and bearing the Gil Puyat Avenue address was purportedly sent by BPI Alfaro Branch.

On June 7, 2021, Ship to Shore filed the present *Petition for Review [With Extremely Urgent Omnibus Motion to: 1. Suspend Collection of Taxes; 2. Lift Warrant of Distraint and/or Levy; & 3. Lift Warrant of Garnishment].* The case was initially raffled to the Third Division of the Court.

The CIR filed his *Answer (Re: Petition for Review dated 07 June 2021)* on October 4, 2021, and transmitted the BIR Records of the case consisting of one (1) folder with six hundred fifty-nine (659) pages on October 21, 2021.

In a *Resolution* dated November 8, 2021, the Court granted Ship to Shore's *Extremely Urgent Omnibus Motion*, subject to the posting of cash or surety bond in the amount of ₱16,403,199.76. The surety bond submitted to the Court on November 26, 2021 was approved in a *Resolution* dated December 17, 2021.

Pre-trial of the case proceeded on November 17, 2021. Ship to Shore filed its *Pre-Trial Brief* on November 15, 2021, while the CIR filed his *Pre-Trial Brief* on November 16, 2021.

On December 17, 2021, Ship to Shore filed with the Court a *Request for Issuance of Subpoena Duces Tecum and Ad Testificandum* to require Marie Therese S. Carino, the Assistant Business Manager of BPI Alfaro Branch, or the latter's official representative; to appear and testify before the Court and to bring the original copy of the *Notice of Garnishment* dated February 15, 2021 [BIR RR8A-WG-2021-02-27-15/ELA50480-16-19-344, ET AL.].

On the same date, the parties filed their *Joint Stipulation of Facts and Issues (JSFI).* The same was approved on January 5, 2022. The Court also issued the *Subpoena Duces Tecum and Ad Testificandum.*

The Pre-Trial Order was issued on March 3, 2022, then trial commenced. The parties presented their respective documentary and testimonial evidence.

Ship to Shore presented the following witnesses: 1.) Christine Mae S. Entrina, its Accounting Supervisor; 2.) Glennda E. Canlas, its Chairman and Treasurer; 3.) Aurora S. De Jesus, its Administrative Manager; and 4.) Zyra Mae Oswa, Branch Manager of BPI Alfaro Branch.

Ship to Shore filed its *Formal Offer of Evidence* on April 4, 2022, with *Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated*

> *04 April 2022)* filed by the CIR on April 19, 2022. The Court admitted Ship to Shore's exhibits except Exhibit "P-2" for failure to submit the duly marked exhibit. Ship to Shore filed a *Motion for Partial Reconsideration [To the Resolution dated 13 June 2022]* seeking the admission of Exhibit "P-2." The Court granted the same in a *Resolution* dated July 19, 2022.
>
> Meanwhile, the case was transferred to the Second Division of the Court, pursuant to Court of Tax Appeals (CTA) Administrative Circular No. 01-2022 reorganizing the Second and Third Divisions of the Court.
>
> The CIR presented as witnesses RO Alona Marie Alegre-Sison and RO Carlos Rivero. The Court received the CIR's *Formal Offer of Evidence* on April 3, 2023, with *Comment/Objection [To Respondent's Formal Offer of Evidence]* filed by Ship to Shore on April 19, 2023. The Court admitted all of the CIR's offered exhibits.
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> The case was again transferred to the Third Division of the Court, pursuant to CTA Administrative Circular No. 01-2023 reorganizing the Divisions of the Court.
>
> The Court received both parties' memoranda on June 29, 2023 and June 30, 2023. Thus, the case was submitted for decision on July 5, 2023. (*Boldfacing and italics in original; citations omitted*)

On June 6, 2024, the Court in Division rendered the assailed Decision granting the *Petition for Review* filed by respondent. In the assailed Decision, the Court in Division cancelled and set aside the Final Assessment Notice and Final Letter of Demand (FAN/FLD) dated January 14, 2020 issued by petitioner for taxable year (TY) 2016 for being null and void. Petitioner, his representatives, agents, or any person acting on his behalf were likewise enjoined from proceeding with the collection of the deficiency taxes against respondent.[8]

Undaunted, petitioner filed his *Motion for Reconsideration (Re: Decision dated June 6, 2024)* on July 5, 2024,[9] to which respondent filed its *Comment/Opposition [To the Motion for Reconsideration dated 04 July 2024]* on July 19, 2024.[10]

On October 30, 2024, the Court in Division promulgated the assailed Resolution denying petitioner's *Motion for Reconsideration* for lack of merit.[11]

Hence, the present *Petition for Review.*

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[8] *Rollo*, pp. 42 to 61.
[9] Division Docket – Vol. II, pp. 769 to 784.
[10] *Id.* at 786 to 804.
[11] *Id.* at 807 to 812.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On November 22, 2024, petitioner filed the instant *Petition for Review*.[12]

In the Minute Resolution dated January 30, 2025, respondent was directed to file its comment on the present *Petition for Review* within a period of 10 days from notice.[13]

Thereafter, respondent filed its *Comment/Opposition [To the Petition for Review]* on February 17, 2025.[14]

On February 26, 2025, the case was submitted for decision.[15]

THE ISSUES

In the instant *Petition for Review*, petitioner assigns the following errors for resolution:

> I. Whether the Court of Tax Appeals (CTA) has jurisdiction over the subject matter of the petition;
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> II. Whether or not petitioner's right to assess respondent for deficiency taxes for TY 2016 has already prescribed; and,
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> III. Whether respondent is liable for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), improperly accumulated earnings tax (IAET) and compromise penalty for TY 2016 in the aggregate amount of ₱23,492,099.42 as per FAN/FLD, inclusive of interest and increments, that were issued by petitioner pursuant to Letter of Authority AUDM35/014200/2017 (SN: ELA201500050480).

Petitioner's arguments

Petitioner contends that the CTA has no jurisdiction over the *Petition for Review* filed by respondent since the assessment had already become final

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[12] *Rollo,* pp. 1 to 36.
[13] *Id.* at 72.
[14] *Id.* at 73 to 111.
[15] *Id.* at 115.

and executory upon respondent's failure to file a protest within 30 days from receipt of the FAN/FLD.

He further contends that, even assuming the subject matter of the appeal can be considered as "other matters" arising under the NIRC of 1997, as amended, the Court still lacks jurisdiction because the *Petition for Review* was filed out of time.

Petitioner claims that respondent was accorded the right to due process as it was duly informed of the facts and the law upon which the assessment was made; and, that the FAN/FLD was mailed to and received by respondent, through SG Carillo, at its registered business address on January 17, 2020. Petitioner points out that there was no formal notice as to respondent's change of address. Thus, as far as petitioner is concerned, no change or transfer of business address was effected, and the FAN/FLD were mailed to and received at respondent's only registered business address.

Lastly, petitioner maintains that the assessment was made within the three-year period of the BIR to assess. According to petitioner, respondent filed its Income Tax Return and VAT Return on April 11, 2017 and January 25, 2017, respectively. The assessment notices were issued on January 14, 2020 and received by respondent on January 17, 2020; thus, the assessment were issued within the three-year prescriptive period.

Respondent's counter-arguments

Respondent counters that the Court has jurisdiction over the *Petition for Review*, as the subject matter falls under "other matters" arising from the NIRC of 1997, as amended.

Respondent contends that it timely filed its *Petition for Review* before the Court in Division and that petitioner failed to prove that it received the first Notice of Garnishment on February 15, 2021; thus, the reckoning date within which to file its *Petition for Review* should be counted from May 10, 2021, the day it received the scanned copy of the Notice of Garnishment from BPI Alfaro Branch.

As to the second Notice of Garnishment, respondent points that there is a disputable presumption that it was received on June 7, 2021. It avers that petitioner can no longer assail the testimony of Branch Manager Zyra Mae Oswa and the documentary evidence identified by her, as these were already admitted by the Court in Division.

Finally, respondent maintains that it is not liable for the alleged deficiency taxes under the FAN/FLD for TY 2016 for having been issued in violation of its right to due process. Respondent asserts that no evidence was proffered by petitioner that SG Carillo was authorized to receive the FAN/FLD on its behalf. Respondent opines that petitioner violated its own procedures and guidelines when it served the FAN/FLD through courier service, without first proving that personal service is not possible, especially considering that the PAN and other documents had been personally served on respondent's authorized representative. Consequently, since no valid FAN/FLD was issued and actually received by respondent, petitioner's right to assess for deficiency taxes for TY 2016 has already prescribed.

THE RULING OF THE COURT *EN BANC*

After an assiduous review of the records of the case, the Court *En Banc* finds no merit in the instant *Petition for Review*.

The present Petition for Review was timely filed; hence, the Court En Banc has jurisdiction over the same.

Section 3 (b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> Sec. 3. Who may appeal; period to file petition. — x x x
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

Based on the foregoing, petitioner had 15 days from receipt of the assailed Resolution within which to file its *Petition for Review*.

Records show that the assailed Resolution of the Court in Division was served on petitioner on November 7, 2024.[16] Petitioner, thus, had 15 days from such receipt, or until November 22, 2024, to file its *Petition for Review* before this Court.

[16] Division Docket – Vol. II, p. 806.

The instant *Petition for Review* was, thus, timely filed on November 22, 2024.

The Court in Division has jurisdiction over the subject matter of the original Petition for Review.

Petitioner argues that only disputed assessments can be the proper subject of a *Petition for Review* before this Court. He further argues that the subject assessment is no longer a disputed assessment as it had already become final and executory when respondent failed to file a protest against the FAN/FLD.

The Court is not convinced.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[17] This Court, being a court of special jurisdiction, can take cognizance only on matters that are clearly within its jurisdiction.[18]

Pertinent to the determination of this Court's jurisdiction over the instant case is Section 7 (a) (1) of Republic Act (R.A.) No. 1125,[19] as amended by R.A. No. 9282,[20] which provides:

> SEC. 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 arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

Corollary thereto, Section 3(a)(1) of Rule 4 of the RRCTA expressly enumerates, among others, the cases falling within the jurisdiction of the Court in Division, to wit:

> SEC. 3. Cases within the jurisdiction of the Court in Division.— The Court in Division shall exercise:

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17 *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

18 *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

19 An Act Creating the Court of Tax Appeals, June 16, 1954.

20 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, Approved: March 30, 2004.

> (a) Exclusive original over 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 supplied*)

Based on the foregoing, the appellate jurisdiction of this Court is not limited to cases which involve decisions of petitioner 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 BIR.[21]

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue (Philippine Journalists case)*,[22] the taxpayer denied receipt of the assessment and filed a Petition for Review with this Court only upon receipt of the Warrant of Distraint and Levy (WDL). The Supreme Court, in affirming this Court's jurisdiction to pass upon the validity of the WDL, categorically held:

> 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 Statute of Limitations was validly effected. (*Emphasis supplied*)

Similar to the *Philippine Journalist* case, what is put in issue in the *Petition for Review* filed by respondent before the Court in Division is the validity of the deficiency tax assessment for TY 2016 despite non-receipt of the FAN/FLD; the validity of the Warrant of Garnishment issued relative to the assessment; and, the prescription of the right of the CIR to assess deficiency taxes for TY 2016.

Relevantly, Section 2 of the NIRC of 1997, as amended, defines the powers and duties of the BIR as follows:

> Sec. 2. Powers and Duties of the Bureau of Internal Revenue. – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and**

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[21] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

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

> **charges, and the enforcement of all forfeitures, penalties, and fines connected therewith**, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws. (*Emphasis supplied*)

Clearly, the issuance of a Warrant of Garnishment is pursuant to the CIR's power to collect arising under the NIRC of 1997, as amended. As such, they are covered by the term "other matters" over which this Court has jurisdiction.

Indeed, jurisprudence has consistently held that this Court's jurisdiction is not limited to cases which involve decisions of petitioner on matters relating to assessment or refunds but extends to other actions arising under the NIRC of 1997, as amended.[23]

Petitioner contends that the doctrine of exhaustion of administrative remedies applies to this case. He argues that, despite respondent's awareness of the consequences of failing to reply to the PAN, respondent opted to await the issuance of the FAN/FLD. Moreover, even after purportedly receiving the FAN/FLD, respondent still failed to file a protest, thereby allowing the assessment to become final and executory.

Petitioner's contention lacks merit.

Section 228 of the NIRC of 1997, as amended, explicitly provides that the filing of an administrative protest against the FAN/FLD within the prescribed period is mandatory. While the opportunity to respond to the PAN is part and parcel of administrative due process, the failure to submit a reply thereto does not, by itself, render the assessment final and executory. It is the failure to administratively protest the FAN/FLD, not the PAN, which gives rise to the finality of an assessment.

Neither may petitioner successfully invoke the doctrine of exhaustion of administrative remedies. The doctrine is not absolute as it admits of exceptions, among which is when there is a violation of due process.[24] Here, respondent alleges that it did not receive the FAN/FLD. Consequently, it cannot be faulted for not filing an administrative protest before filing its judicial appeal before this Court.

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[23] *Commissioner of Internal Revenue vs. Pacific Hub Corporation*, G.R. No. 252944, November 27, 2024; *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023; *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, March 29, 2022; *La Flor Dela Isabela, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021.

[24] *Maglalang vs. Philippine Amusement and Gaming Corp.*, G.R. No. 190566, December 11, 2013.

In view of the foregoing, the Court finds that it is vested with jurisdiction over the subject matter of the instant case.

The Court in Division did not err in finding that the original Petition for Review was timely filed.

In the assailed Decision, the Court in Division held that the first Notice of Garnishment dated February 15, 2021 was not received by respondent; however, with respect to the second Notice of Garnishment dated June 7, 2021, respondent was able to establish the fact of its mailing by preponderance of evidence. The Court in Division, thus, reckoned the period to judicially appeal from June 7, 2021. Hence, respondent had 30 days from June 7, 2021 or until July 7, 2021, within which to file its Petition for Review. The *Petition for Review* filed before the Court in Division was filed on June 7, 2021.[25]

In the instant *Petition*, petitioner argues that, even assuming that the Court has jurisdiction over the subject matter, respondent's *Petition for Review* should nonetheless be dismissed for having been filed out of time. He maintains that the *Petition for Review* should have been filed within 30 days from February 15, 2021, the date when the first Notice of Garnishment was delivered by BPI Alfaro Branch to respondent.

Petitioner further argues that respondent was not able to establish, by preponderance of evidence, the fact of mailing with respect to the second Notice of Garnishment dated June 7, 2021. Consequently, it cannot give rise to the disputable presumption of receipt in the regular course of mail from which this Court may reckon the period to file a judicial appeal.

The Court finds merit in petitioner's contention, but only insofar as the inapplicability of Section 3(v), Rule 131 of the Rules of Court to the Notice of Garnishment dated June 7, 2021 is concerned. Said provision reads:

> Section 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> **(v) That a letter duly directed and mailed was received in the regular course of the mail;** *(Emphasis supplied)*

[25] Division Docket – Vol. I, pp. 7 to 29.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[26] citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*,[27] the Supreme Court held that, in order to invoke the disputable presumption of receipt in the regular course of mail, the facts to be proved are: (a) that the letter was properly addressed with postage prepaid; and, (b) that it was mailed.

Moreover, to prove the second requisite or the fact of mailing, the party invoking the same must present sufficient evidence, such as the registry receipt issued by the Bureau of Posts or the registry return card duly signed by the addressee or its authorized representative. In the event that these documents cannot be produced, the party must, at the very least, submit to the Court a certification issued by the Bureau of Posts, and any other pertinent document executed with the intervention of said office, to wit:

> On the matter of service of a tax assessment, a further perusal of our ruling in *Barcelon* is instructive, *viz.*:
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> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:
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>> "**The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed.** Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. **But if one of the said facts fails to appear, the presumption does not lie.** (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269)."
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> x x x. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts.** This Court does not put much credence to the self serving documentations made by the BIR

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[26] G.R. No. 185371, December 8, 2010.

[27] G.R. No. 150764, August 7, 2006.

personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:

xxx xxx xxx

The Court agrees with the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN dated January 16, 2002. It could have simply presented the registry receipt or the certification from the postmaster that it mailed the PAN, but failed. Neither did it offer any explanation on why it failed to comply with the requirement of service of the PAN. It merely accepted the letter of Metro Star's chairman dated April 29, 2002, that stated that he had received the FAN dated April 3, 2002, but not the PAN; that he was willing to pay the tax as computed by the CIR; and that he just wanted to clarify some matters with the hope of lessening its tax liability. (*Emphasis supplied*)

Upon careful examination of the records, the Court finds that respondent failed to establish, by preponderance of evidence, the second requisite, *i.e.*, the fact of mailing of the second Notice of Garnishment dated June 7, 2021.

During her re-cross examination, Ms. Zyra Mae Oswa, Branch Manager of BPI Alfaro Branch, confirmed that she does not have the registry receipt as proof of its mailing of the second Notice of Garnishment dated June 7, 2021, *viz.*:[28]

ATTY. YU:
So, the servers personally served the letter on June 7, 2021?

MS. OSWA:
It was via registered mail.

ATTY. YU:
Do you have with you the registry receipt of your mailing on June 7, 2021?

MS. OSWA:
No.

In response to the Court's clarificatory questions, Ms. Oswa further confirmed that no registry return card exists for the second Notice of Garnishment dated June 7, 2021, *viz.*:[29]

[28] TSN dated March 24, 2022, p. 47.
[29] TSN dated March 24, 2022, pp. 50 to 51.

JUSTICE LIBAN:

Because of that, on June 7, 2021, after you received the original letter with the RTS from the Post Office, you sent it to the new address?

MS. OSWA:

Yes, Your Honor.

JUSTICE LIBAN:

And also by registered mail?

MS. OSWA:

Yes, Your Honor.

JUSTICE LIBAN:

Is there a return card?

MS. OSWA:

Up to this time, no, Your Honor.

Based on the foregoing, Ms. Oswa cannot be deemed a witness with personal knowledge of the fact of mailing, as she herself testified during cross-examination that a department within the bank is handling the mailing of letters.[30] Thus, the most that her testimony could establish is the existence of the second Notice of Garnishment dated June 7, 2021, but not the fact of its mailing.

Having failed to establish the requisites for the disputable presumption of receipt in the regular course of mail, the presumption does not arise. Consequently, the Court cannot reckon the 30-day period within which respondent should have filed a judicial appeal from the second Notice of Garnishment dated June 7, 2021.

Nonetheless, the Court finds that a careful review of the evidence and records of the case is essential to ascertain which version of the timeline was duly established during trial.

As found by the Court in Division, there are conflicting claims as to the date of receipt by respondent of the subject Warrant of Garnishment. Respondent claims that it only received the scanned copy of the Notice of Garnishment from the bank on May 10, 2021, while petitioner contends that the 30-day period should be reckoned from the date of the first Notice of Garnishment on February 15, 2021.

The Court agrees with the observation of the Court in Division that, apart from petitioner's bare allegation that respondent received the Notice of

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[30] TSN dated March 24, 2022, p. 46.

Garnishment dated February 15, 2021 on even date, petitioner failed to adduce any evidence to substantiate such claim. Respondent, on the other hand, was able to sufficiently prove that it did not receive the first Notice of Garnishment dated February 15, 2021. The Court quotes with approbation the findings of the Court in Division, to wit:

> However, the records of this case are bereft of evidence that the proper procedure for garnishment was observed. Moreover, aside from mere allegation that petitioner received the Notice of Garnishment dated February 15, 2021 on even date, respondent did not offer any evidence to support such claim.
>
> On its part, petitioner presented the testimony of Zyra Mae Oswa, Branch Manager of BPI Alfaro Branch, to prove that it was only through the Notice of Garnishment that petitioner was first informed that the CIR ordered the garnishment of its bank account. During cross-examination, Oswa testified that the bank sent the Notice of Garnishment through registered mail to petitioner on February 23, 2021, not February 15, 2021, and that it was returned to sender on April 20, 2021 due to "company moved out." In connection therewith, petitioner offered in evidence the registry return card which was admitted by the Court. On redirect examination, Oswa further testified that the bank sent the Notice of Garnishment again through registered mail to petitioner on June 7, 2021, after the latter submitted a request form for change of address on May 17, 2021. Petitioner offered in evidence the Notice of Garnishment dated June 7, 2021 which was likewise admitted by the Court.
>
> **Notably, the foregoing evidence still do not directly establish the actual date of receipt by petitioner of the Notice of Garnishment. All it establishes is that petitioner did not receive the Notice of Garnishment dated February 15, 2021.** xxx (*Emphasis supplied*)

For its part, respondent asserts that it only became aware of the first Notice of Garnishment dated February 15, 2021 on May 10, 2021, upon receipt of a scanned copy thereof. To prove receipt on said date, respondent presented Ms. Glennda E. Canlas,[31] its Chairman and Treasurer, Ms. Christine Mae S. Entrina,[32] its Accounting Supervisor and, Ms. Oswa,[33] Branch Manager of BPI Alfaro Branch, who testified that:

1. On February 15, 2021, BPI Alfaro Branch prepared a Notice of Garnishment which was sent *via* registered mail on February 23, 2021. However, based on the Return-to-Sender (RTS) Card received by BPI Alfaro Branch together with the original letter on June 4, 2021, the notice was returned to sender on April 20, 2021 with the remark "company moved out."

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[31] Exhibit "P-23" [Suspension], Division Docket – Vol. I, pp. 87 to 93; TSN dated June 29, 2021, p. 8.
[32] Exhibit "P-25" [Suspension], Division Docket – Vol. I, pp. 77 to 86.
[33] TSN dated March 24, 2022.

2. On May 7, 2021, Ms. Canlas instructed Ms. Entrina to request from BPI Leviste Branch the transfer of funds from its BPI Alfaro Branch account to BPI Alabang Town Center Branch account for the release of dividends for the year 2020. Ms. Entrina was informed that the request was disapproved by BPI Alfaro Branch for the reason that certain amount in the account was put on hold in relation to an order of the BIR.

3. On May 10, 2021, Ms. Canlas again instructed Ms. Entrina to request for a fund transfer, but this time directly with BPI Alfaro Branch, but their request was again denied, and the bank did not provide details on the reason for disapproval as Ms. Entrina was not the authorized representative of respondent with the bank. On the same day, Ms. Canlas requested a copy from Maria Therese Carino, the Assistant Business Manager of BPI Alfaro Branch who provided a scanned copy of the Notice of Garnishment dated February 15, 2021 upon Ms. Canlas' insistence.

Upon evaluation of the evidence adduced by both parties, the Court finds that the evidence adduced by respondent is more credible as it was able to sufficiently and more empirically support the timeline of its receipt of the first Notice of Garnishment dated February 15, 2021. Petitioner, on the other hand, miserably failed to support its claim that respondent received the first Notice of Garnishment dated February 15, 2021. Thus, the 30-day period within which respondent should file its judicial appeal should be reckoned from the date it had actual knowledge of the first Notice of Garnishment issued by BPI Alfaro Branch, which was on **May 10, 2021**. Counting 30 days therefrom, respondent had until **June 9, 2021** within which to file its *Petition for Review*. Hence, the *Petition for Review* filed on June 7, 2021 was timely filed.

Relevantly, the Court finds no merit in petitioner's contention that the Court in Division erred in taking into consideration the 1) Notice of Garnishment dated June 7, 2021 marked as Exhibit "P-32"; 2) RTS Card to the Notice of Garnishment dated February 15, 2021 marked as Exhibit "P-33"; and, 3) the testimony of Ms. Oswa, notwithstanding not being part of the list of evidence in the Pre-Trial Order dated March 3, 2022.

As pointed out by petitioner himself, Section 5(d), Rule 11 of the RRCTA explicitly allows the Court to consider documents or exhibits other than those that had been pre-marked and identified to prevent manifest injustice, *viz.*:

> SEC. 5. Procedure in civil cases. — In civil cases, the parties shall submit, at least three days before the pre-trial, their respective pre-trial briefs containing the following:

xxx xxx xxx

> (d) The documents or exhibits to be presented, stating their purpose. No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been pre-marked and identified, **unless allowed by the Court to prevent manifest injustice;** (*Emphasis supplied*)

Moreover, records show that, during the Pre-Trial Conference on November 17, 2021, respondent already manifested its intent to file a *subpoena duces tecum* for the first Notice of Garnishment dated February 15, 2021.[34] Pursuant thereto, respondent filed a *Request for Issuance of Subpoena Duces Tecum and Ad Testificandum* to compel Ms. Marie Therese S. Carino, the Assistant Business Manager of BPI Alfaro Branch, or the latter's authorized representative to appear and testify before the Court, and to bring the original copy of the first Notice of Garnishment dated February 15, 2021.[35]

Consequently, during the hearing on March 24, 2022, respondent presented Ms. Oswa, a representative of BPI Alfaro Branch. Petitioner interposed no objection to her testimony and even subjected her to cross-examination. In the course thereof, Ms. Oswa testified that the first Notice of Garnishment dated February 15, 2021 was returned to sender due to "company moved out." On re-direct examination, she identified the RTS Card received by the bank, which was marked as Exhibit "P-33". She also testified that, upon receipt of the returned mail, the bank sent another letter dated June 7, 2021, and presented a duplicate copy thereof marked as Exhibit "P-32". On re-cross examination, Ms. Oswa was again questioned on the manner of service and the existence of a registry receipt or return card in relation to the letter dated June 7, 2021.

In view of the foregoing, petitioner can no longer assail the admissibility of Ms. Oswa's testimony as she was subjected to both cross and re-cross examination, her statements having formed part of the judicial record. Likewise, Exhibits "P-32" and "P-33" were admitted by the Court in Division, having been presented in response to petitioner's own line of questioning. Petitioner is, thus, estopped from disputing evidence it had the full opportunity to challenge but failed to discredit.

Petitioner failed to establish that respondent actually received the FAN/FLD.

Petitioner argues that respondent was accorded the right to due process as it was allegedly informed of the facts and law upon which the assessment

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[34] TSN dated November 17, 2021, pp. 7 to 8.
[35] Division Docket – Vol. I, pp. 466 to 470.

was based, and that the FAN/FLD was mailed to and received by respondent at its registered business address, through SG Carillo, on January 17, 2020. Petitioner further reiterates its claim that respondent failed to give formal notice of its change of business address, as required under Section 11 of RR No. 12-85.

After taking a second hard look on the evidence presented by petitioner, the Court *En Banc* agrees with the finding of the Court in Division that petitioner failed to sufficiently establish that the FAN/FLD dated January 14, 2020 was duly received by respondent in accordance with law and implementing rules and regulations. At this juncture, the Court quotes with approbation the following disquisitions of the Court in Division:

> In this case, **although the records establish that the assessment notices were mailed via LBC and that they were received by a certain "SG Carillo,"** <u>**no evidence was adduced by respondent to prove that SG Carillo was authorized to receive assessment notices on behalf of petitioner.**</u> Respondent's mere presentation of the official receipt issued by LBC with the notation "Released to authorized rep. SG Carillo 1/17/20" does not suffice to show that he satisfied the due process mandate under Section 228 of the NIRC that he shall notify the taxpayer of his findings.
>
> While it is true that under RR No. 18-2013, the official receipt issued by the professional courier company containing identifiable details of the transaction constitute sufficient proof of mailing, this remains a disputable presumption subject to controversion. A direct denial of receipt shifts the burden upon the party favored by the presumption to prove that the mailed matter was indeed received by the addressee.
>
> Respondent therefore should have authenticated the notation appearing on the official receipt. However, not only did he fail to do so; as a matter of fact, <u>**he expressly admitted that the recipient is not an authorized representative of petitioner.**</u>
>
> xxx xxx xxx (*Emphasis and underscoring supplied*)

Moreover, the Court finds no merit on petitioner's contention that the requirement of "designation and authority" of the recipient, as discussed in *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue*,[36] applies solely to personal service. Said argument has already been raised in petitioner's *Motion for Reconsideration* before the Court in Division, and was duly considered, thoroughly discussed, and judiciously resolved in the assailed Resolution.

Indeed, even the Supreme Court, in *Commissioner of Internal Revenue vs. T-Shuttle Services*,[37] held that registry receipts are insufficient to prove a taxpayer's receipt of assessment notices where the CIR failed to show that the

[36] G.R. No. 2442002, July 10, 2023.
[37] G.R. No. 240729, August 24, 2020.

signatures appearing therein belonged to the taxpayer's authorized representatives.

It must be stressed that findings of fact of the Court in Division are entitled to great weight and will no longer be disturbed absent any findings that would otherwise support a contrary conclusion,[38] given that the Court in Division directly observed and appreciated the evidence adduced by the parties during the trial of the case.[39]

Moreover, as correctly held by the Court in Division, the defect in due process cannot be cured by respondent's alleged failure to notify petitioner of its change of address. A void assessment, tainted by lack of due process, cannot be validated by non-compliance of an administrative requirement. To hold otherwise would effectively subordinate the constitutional right to due process to a procedural formality.

Settled is the rule that a void assessment bears no valid fruit. Correspondingly, the government is barred from collecting any tax liabilities based on such void assessment. As such, when an assessment is void, any WDL or Warrant of Garnishment based upon it is also void and cannot be executed. As explained by the Supreme Court in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, et seq.*, [40] *viz.*:

> In the normal course of tax administration and enforcement, the BIR must first make an assessment then enforce the collection of the amount so assessed. 'An assessment is not an action or proceeding for the collection of taxes. x x x It is a step preliminary, but essential to warrant distraint, if still feasible, and, also, to establish a cause for judicial action.' **The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment.** A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.
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> In *Commissioner of Internal Revenue v. Reyes (Reyes Case)*, the petitioner issued an assessment notice and a demand letter for alleged deficiency estate tax against the taxpayer estate. The assessment notice and demand letter simply notified the taxpayer estate of petitioner's findings, without stating the factual and legal bases for said assessment. **The Court, absent a valid assessment, refused to accord validity and effect to petitioner's collection efforts – which involved, among other things, the**

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[38] *Deltek Systems (Philippines) Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 1105 (CTA Case No. 7893), August 12, 2015; citing *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011; *Commissioner of Internal Revenue vs. TeaM (Philippines) Operations Corporation [formerly Mirant (Philippines) Operations Corporation]*, G.R. No. 185728, October 16, 2013; and, *Commissioner of Internal Revenue vs. Phil. Gold Processing & Refining Corp.*, C.T.A. EB Case No. 1460 (C.T.A. Case No. 8652), December 7, 2017.

[39] *Commissioner of Internal Revenue vs. Iconic Beverages, Inc.*, CTA EB Case No. 2345, July 21, 2022.

[40] G.R. Nos. 197945 and 204119-20, July 9, 2018.

> **successive issuances of a collection letter, a final notice before seizure, and a warrant of distraint and/or levy against the taxpayer estate** xxx
>
> xxx xxx xxx
>
> **Absent a previously issued assessment** supporting the 1998 and 2002 Collection Letters, it is clear that petitioner's attempts to collect through said collection letters as well as the **subsequent Warrants of Garnishment and Distraint and/or Levy are void and ineffectual. If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place.** *(Emphases and underscoring supplied)*

Similarly, in the fairly recent case of *Commissioner of Internal Revenue vs. Stradcom Corporation*,[41] the Supreme Court upheld this Court's cancellation of the WDL and Warrant of Garnishment issued against therein taxpayer, there being no final and valid assessment, as follows:

> **Thus, the CIR's attempt to collect the alleged income tax from Stradcom without issuing a valid assessment was in clear violation of the due process requirements mandated under the 1997 NIRC and RR No. 12-99, as amended. A tax collection effort that stems from an invalid assessment holds no legal weight.** Even more so, if no assessment was issued at all, then there is absolutely no foundation for any collection to stand on. **Without a proper assessment, there exists no enforceable tax liability, making any attempt to collect through summary remedies entirely void.** Thus, the CIR cannot claim a right to collect taxes that were never properly assessed in the first place.
>
> **There being no final and valid assessment to begin with, the WDL and WOG issued against Stradcom are void and have been correctly cancelled and set aside by the CTA Division and CTA EB.** *(Emphases supplied)*

In sum, the Court *En Banc* agrees with the findings of the Court in Division that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the NIRC of 1997, as amended, and relevant regulations is void and produces no effect. In the absence of a valid service of the FAN/FLD, the subject deficiency assessments cannot be considered as final, executory and demandable. By such reason, the resulting Warrant of Garnishment is likewise void and without effect.

Likewise, the Court finds that petitioner's right to assess deficiency taxes for TY 2016 has already prescribed. As already discussed, petitioner failed to prove that respondent actually received the FAN/FLD within the three-year prescriptive period.

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[41] G.R. No. 255520, April 21, 2025.

All told, the Court *En Banc* finds no compelling reason to reverse or much less set aside, the Court in Division's assailed Decision and Resolution.

While it is true that taxation is the lifeblood of the government, the power of the State to collect tax must be balanced with the taxpayer's right to substantial and procedural due process. The Court has recognized that, between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.[42]

ACCORDINGLY, the instant **Petition for Review** dated November 20, 2024 is **DENIED** for lack of merit. The assailed Decision dated June 6, 2024 and the assailed Resolution dated October 30, 2024 of the Court in Division in CTA Case No. 10550 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[42] *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital),* G.R. No. 255473, February 13, 2023, citing *Commissioner of Internal Revenue vs. Yumex Philippines Corporation,* G.R. No. 222476, May 5, 2021.

Marian Ivy F Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

JEAN MARIE A. BACORRO-VILLENA
Acting Presiding Justice