REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

GREENLEE CP ELECTRICAL CORP., *Petitioner,*	**CTA Case No. 10043**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUN 21 2023; 8:50AM

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DECISION

***DEL ROSARIO, P.J.*:**

This is a Petition for Review[1] filed on March 4, 2019 by petitioner Greenlee CP Electrical Corp. against Commissioner of Internal Revenue praying that the Assessments dated January 12, 2018 and any and all Warrants of Garnishment issued in relation thereto be quashed for being void.

THE PARTIES

Petitioner Greenlee CP Electrical Corp. is a domestic corporation duly organized and existing under and by virtue of Philippine Laws with registered address at 2144 Pedro Gil St., Sta. Ana, Manila.[2]

Respondent Commissioner of Internal Revenue (CIR) is the government authority duly designated to collect all taxes, grant refunds, issue and abate tax assessments, and examine books of accounts and returns filed with it to determine the correctness of taxes

[1] CTA Docket, pp. 10-19.
[2] Par. 1, III. Summary of Admitted Facts, Pre-Trial Order, CTA Docket, p. 225.

paid under the National Internal Revenue Code (NIRC) of 1997, as amended.[3]

THE FACTS

On September 21, 2015, petitioner received the Letter of Authority (LOA) No. SN: eLA201200043239 (LOA-034-2015-00000178) dated September 17, 2015 and the Checklist of Requirements dated September 18, 2015.[4]

On October 15, 2015, petitioner received the Second and Final Request for the Presentation of Records dated October 13, 2015.[5]

On December 27, 2017, respondent issued a Preliminary Assessment Notice (PAN)[6] against petitioner for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), fringe benefit tax (FBT), and documentary stamp tax (DST).

On January 12, 2018, respondent issued against petitioner a Formal Letter of Demand with Details of Discrepancies[7], Assessment Notice No. 34-14-1T-18-144,[8] Assessment Notice No. 34-14-MC-18-144(IT),[9] Assessment Notice No. 34-14-VT-18-145,[10] Assessment Notice No. 34-14-MC-18-145(VT),[11] Assessment Notice No. 34-14-WE-18-146,[12] Assessment Notice No. 34-14-MC-18-146(WE),[13] Assessment Notice No. 34-14-WR-18-147,[14] Assessment Notice No. 34-14-MC-18-147(WR),[15] Assessment Notice No. 34-14-DS-18-148,[16] and Assessment Notice No. 34-14-MC-18-148(DS)[17] (collectively, "FLD/FAN") for deficiency IT, VAT, EWT, FBT, DST and compromise penalties.

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[3] Par. 2, III. Summary of Admitted Facts, Pre-Trial Order, CTA Docket, p. 225.
[4] Par. 3, III. Summary of Admitted Facts, Pre-Trial Order, CTA Docket, pp. 225-226.
[5] Par. 4, III. Summary of Admitted Facts, Pre-Trial Order, CTA Docket, p. 226.
[6] Exhibit "R-2", CTA Docket, pp. 95-98.
[7] Exhibit "R-3-J", CTA Docket, pp. 110-115.
[8] Exhibit "R-3", CTA Docket, pp. 100.
[9] Exhibit "R-3-a", CTA Docket, pp. 101.
[10] Exhibit "R-3-B", CTA Docket, pp. 102.
[11] Exhibit "R-3-C", CTA Docket, pp. 103.
[12] Exhibit "R-3-D", CTA Docket, pp. 104.
[13] Exhibit "R-3-E", CTA Docket, pp. 105.
[14] Exhibit "R-3-F", CTA Docket, pp. 106.
[15] Exhibit "R-3-G", CTA Docket, pp. 107.
[16] Exhibit "R-3-H", CTA Docket, pp. 108.
[17] Exhibit "R-3-I", CTA Docket, pp. 109.

Respondent issued to petitioner a Warrant of Garnishment dated September 17, 2018 and served it to the Bank of the Philippine Islands (BPI).[18]

On January 31, 2019, the Directors of petitioner allegedly learned from BPI that a Warrant of Garnishment against petitioner was served to BPI.[19]

On March 4, 2019, petitioner filed the present Petition for Review.[20]

On April 26, 2019, respondent filed his Motion to Admit Attached Answer.[21] This was granted by the Court in the Order dated May 2, 2019[22] and respondent's Answer[23] was admitted.

Respondent's Pre-Trial Brief[24] was filed on May 31, 2019, while the Pre-Trial Brief for the Petitioner Greenlee CP Electrical Corp.[25] was filed on June 3, 2019. The Pre-Trial Conference was held on June 6, 2019.[26]

In the Resolution dated July 18, 2019, the Court referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation.[27]

On September 19, 2019, the Court received the No Agreement to Mediate of even date stating that the parties decided not to have their case mediated by the PMC-CTA.[28]

In the Resolution dated May 31, 2021, the Court resolved to waive the parties' submission of their Joint Stipulation of Facts and Issues.[29] Thereafter, the Court issued the Pre-Trial Order on July 28, 2021.[30]

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[18] Par. 5, III. Summary of Admitted Facts, Pre-Trial Order, CTA Docket, p. 226.
[19] Par. 7, Petition for Review, CTA Docket, p. 11.
[20] CTA Docket, p. 10.
[21] CTA Docket, pp. 22-25.
[22] CTA Docket, p. 35.
[23] CTA Docket, pp. 26-31.
[24] CTA Docket, pp. 53-59.
[25] CTA Docket, pp. 118-124.
[26] CTA Docket, pp. 127-A-127-C and 128-129.
[27] CTA Docket, pp. 146-147.
[28] CTA Docket, p. 158.
[29] CTA Docket, pp. 204-205.
[30] CTA Docket, pp. 222-235.

During trial, petitioner presented testimonial and documentary evidence. Petitioner presented its sole witness, Mr. Charles C. Yao,[31] its Vice-President.

On November 18, 2021, petitioner filed its Formal Offer of Exhibits.[32] In the Resolution dated March 18, 2022,[33] the Court admitted in evidence all of petitioner's exhibits.

Thereafter, respondent presented his witnesses: Revenue Officer (RO) Marl Vilar,[34] RO Ma. Paz Arcilla,[35] and RO Benhur C. Nacorda.[36]

On June 9, 2022, the respondent's Formal Offer of Evidence was filed.[37] In the Resolution dated July 19, 2022, the Court admitted all of respondent's formally offered exhibits.[38]

Respondent's Memorandum[39] was filed on August 12, 2022, while petitioner's Memorandum[40] was filed on August 26, 2022. Thereafter, the case was submitted for decision on September 19, 2022.[41]

ISSUES

The issues to be resolved in this case are the following:[42]

1. Whether the assessments are void on the ground that petitioner failed to receive any assessment notices from respondent; and,

2. Whether the Court has jurisdiction over the case.

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[31] Exhibit "P-2", Judicial Affidavit of Charles C. Yao, CTA Docket, pp. 208-214; and, Order dated November 9, 2021, CTA Docket, pp. 246-246-A.
[32] CTA Docket, pp. 251-253.
[33] CTA Docket, p. 262.
[34] Exhibit "R-5", Judicial Affidavit of Revenue Officer Marl Vilar, CTA Docket, pp. 44-47; and Minutes of Hearing dated May 24, 2022, CTA Docket, pp. 276-280.
[35] Exhibit "R-6", Judicial Affidavit of Ma. Paz Arcilla, CTA Docket, pp. 63-66; and Minutes of Hearing dated May 24, 2022, CTA Docket, pp. 276-280.
[36] Exhibit "R-7", Amended Judicial Affidavit of Benhur Nacorda, CTA Docket, pp. 294-298; and Minutes of Hearing dated June 2, 2022, CTA Docket, pp. 325-327.
[37] CTA Docket, pp. 331-338.
[38] CTA Docket, pp. 346-347.
[39] CTA Docket, pp. 348-357.
[40] CTA Docket, pp. 358-375.
[41] Minute Resolution dated September 19, 2022, CTA Docket, p. 376.
[42] IV. Issues to be Tried or Resolved, Pre-Trial Order, CTA Docket, p. 226.

PARTIES' ARGUMENTS

Petitioner argues that: (i) the Warrant of Garnishment, as well as all other assessments in relation thereto are void; (ii) it never received the PAN, and the FAN/FLD from respondent; (iii) the FAN/FLD should be declared void for failure to comply with the requisites of due process; and, (iv) the Court has jurisdiction over the present case.[43]

Respondent counter-argues that: (i) the Court has no jurisdiction to entertain the present Petition for Review; (ii) the case involves an undisputed assessment as petitioner failed to file its protest against the FAN/FLD within the thirty (30)-day reglementary period from receipt thereof; (iii) the Petition for Review is insufficient in form since the Secretary's Certificate shows that it was not the directors of petitioner who gave authority to Charles C. Yao to sign the Petition for Review, but a certain Greenlee Facility Solutions, Inc.; and, (iv) petitioner has the burden of showing the incorrectness of the subject assessment.[44]

THE COURT'S RULING

This Court finds the Petition for Review meritorious.

The Court has jurisdiction over the case pursuant to Section 7(a) (1) of Republic Act (RA) No. 1125, as amended

The Court of Tax Appeals (CTA) is a court of special jurisdiction. It can only take cognizance of such matters as are clearly within its jurisdiction.[45]

Section 7 of RA No. 1125,[46] as amended by RA No. 9282, confers upon the CTA the jurisdiction to decide not only cases involving disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC.[47] Section 7(a)(1), of RA No. 1125, as amended, provides:

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[43] Memorandum, CTA Docket, pp. 361-674.
[44] Respondent's Memorandum, CTA Docket, pp. 349-355.
[45] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.
[46] An Act Creating the Court of Tax Appeals.
[47] *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022.

"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**; xxx" (*Boldfacing supplied*)

Likewise, Section 3 (a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, includes "other matters" arising under the NIRC in the enumeration of cases falling within the jurisdiction of the Court in Division, to wit:

"**SEC. 3**. *Cases within the jurisdiction of the Court in Divisions.* -The Court in Divisions shall exercise:

(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." (*Boldfacing supplied*)

The exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or 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 (BIR).

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[48] the Supreme Court affirmed the jurisdiction of the CTA over disputes involving the validity of Warrant of Distraint and/or Levy and clarified the coverage of the term "other matters", *viz.:*

"We agree with petitioner. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:

SEC. 7. Jurisdiction. – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review

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

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 supplied).

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.

This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In Pantoja v. David, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in Commissioner of Internal Revenue v. Court of Appeals, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." (*Boldfacing supplied*)

The CTA's jurisdiction on "other matters" was reaffirmed in *Commissioner of Internal Revenue vs. Bank of the Philippine Islands.*[49] In this case, Bank of the Philippine Islands assails the tax collection being implemented by the BIR said the Supreme Court:

"The CTA properly exercised its jurisdiction over BPI's petition for review.

The OSG relies heavily on the letter dated February 5, 1992—that it was a 'final decision' denying Citytrust's protest. Citytrust's failure to appeal the 'final decision' within 30 days from receipt thereof rendered the tax assessment final, executory, and unappealable. Thus, BPI's Second CTA petition in 2011 was filed out of time, over which the court below did not acquire jurisdiction.

Petitioner's reasoning is specious and misplaced.

First, this was the CIR's same argument in the 2018 Case. To recall, the Court did not give evidentiary weight to the letter dated

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

> February 5, 1992 due to the CIR's failure to prove Citytrust's receipt thereof. In the present case, not only is there still no proof of receipt. The CIR did not even attach a copy of the letter relied upon to the present petition. Notably, failure to append 'material portions of the record as would support the petition' is a ground for dismissal thereof.
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> Second, the aforementioned letter is irrelevant in ascertaining whether or not the tax court properly took cognizance of BPI's Second CTA Petition. **As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.**
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> **The law expressly vests the CTA the authority to take cognizance of 'other matters' arising from the 1977 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.**
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> Thus, the CTA properly exercised jurisdiction over BPI's Second Petition." *(Boldfacing supplied)*

Indubitably, the Court has jurisdiction to determine the validity of the Warrant of Garnishment subject of the present case.

The Petition for Review was timely filed

The Petition for Review prays that the FAN/FLD dated January 12, 2018 and any and all Warrants of Garnishment in relation thereto be quashed for being void.

A perusal of the records shows that petitioner learned of the Warrant of Garnishment dated September 17, 2018 when it was advised by BPI on January 31, 2019 that a Warrant of Garnishment was received by the bank.[50]

Thus, petitioner had thirty (30) days from January 31, 2019, or until March 2, 2019 within which to file its appeal before the Court.

[50] Par. 7, Petition for Review, CTA Docket, p. 11.

March 2, 2019, however, fell on a Saturday, hence petitioner had until March 4, 2019 within which to file its appeal before the CTA.

Petitioner timely filed its Petition for Review on March 4, 2019.

The FAN/FLD is void; hence no basis to collect

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner in which tax deficiency assessments should be issued and protested, *viz.*:

> "**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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> xxx xxx xxx
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> **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.**
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> 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.**" (*Boldfacing supplied.*)

Corollary thereto, Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, implements the afore-quoted provision and sets forth the due process requirement in the issuance of tax assessments, *viz.*:

> "**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —***
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> **3.1.1** ***Preliminary Assessment Notice (PAN).*** – If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which

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the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN)*. — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN 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 assessment shall be void (see illustration in ANNEX "B" hereof).

xxx xxx xxx

3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

xxx xxx xxx

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket." (*Boldfacing supplied.*)

Based on the afore-quoted provisions, if there exists sufficient basis to assess the taxpayer, the CIR or his authorized representative is mandated to issue a PAN. The taxpayer is granted a period of fifteen (15) days from receipt of the PAN to reply thereto. If the taxpayer opts not to respond or if the taxpayer's reply is rejected, an FLD and an assessment notice shall be issued by the CIR or his duly authorized representative. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein. Thus, it is essential for respondent to establish and prove that the requisite assessment notices were duly served to the taxpayer within the prescriptive period.

In the present case, petitioner denies receipt of the PAN, and FAN/FLD from respondent. It admits the receipt of the LOA dated September 17, 2015[51] but explains that aside from this, the last correspondence it received from respondent was a Second and Final Request for the Presentation of Records.[52] Petitioner contends that the FAN/FLD should be declared void for failure to comply with the requisites of due process.

Respondent, on the other hand, asserts that the PAN dated December 27, 2017 with Details of Discrepancies[53] and the FLD/FAN dated January 12, 2018[54] were issued and served via registered mail to petitioner at its registered address on December 27, 2017 and February 7, 2018, respectively, in compliance with the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013.[55]

Respondent offered the testimony of his witness, RO Benhur C. Nacorda,[56] the Registry Receipt No. RD 780 623 995 ZZ[57] for the PAN dated December 27, 2017, and the Registry Receipt No. 18[58] for the FAN/FLD dated January 12, 2018 in order to prove service of the assessment notices to petitioner.

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[59] the Supreme Court held that if the taxpayer denies receiving an assessment from the BIR, it becomes incumbent

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[51] Par. 3, III. Summary of Admitted Facts, Pre-Trial Order, CTA Docket, pp. 225-226.
[52] Par. 4, III. Summary of Admitted Facts, Pre-Trial Order, CTA Docket, p. 226.
[53] Exhibit "R-2", CTA Docket, pp. 95-98.
[54] Exhibit "R-3" to "R-3-J", CTA Docket, pp. 100-115.
[55] Par. 19, Special and Affirmative Defenses, Answer, CTA Docket, pp. 27-28.
[56] Exhibit "R-7", CTA Docket, pp. 294-298.
[57] Exhibit "R-2-a", CTA Docket, p. 303.
[58] Exhibit "R-3-k", CTA Docket, p. 321.
[59] G.R. No. 202695, February 29, 2016.

upon the BIR to prove by competent evidence that such notice was indeed received by the addressee, *viz.*:

> "**If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.** Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
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> xxx xxx xxx
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> The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued. xxx" *(Boldfacing supplied)*

In *Protector's Services, Inc. vs. Court of Appeals and Commissioner of Internal Revenue*,[60] it was further ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[61]

Moreover, in *Estate of the Late Juliana Diez Vda. de Gabriel vs. Commissioner of Internal Revenue*,[62] the Supreme Court reiterated its pronouncement that due process requires that the assessment must be **served on and received** by the taxpayer, *viz.*:

> "(D)ue process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.

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[60] G.R. No. 118176, April 12, 2000.
[61] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 224327, June 11, 2018.
[62] G.R. No. 155541, January 27, 2004.

> It also signals the time when penalties and interests begin to accrue against the taxpayer. **To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer**." (*Boldfacing supplied*)

Thus, it is not simply a question of whether the PAN and FAN/FLD were sent to petitioner by respondent, but it is imperative that the taxpayer actually received said tax assessment notices.

To prove that it never received the FLD/FAN dated January 12, 2018, petitioner presented a certification issued by the Philpost dated September 7, 2018,[63] stating that Registered Mail No. 18 addressed to petitioner was returned to sender BIR for the following reason: "refused to receive no longer connected".

Considering that petitioner denied receipt of the subject assessment notices, it was incumbent upon respondent to prove by preponderant evidence that the subject assessment notices were actually received by petitioner. Unfortunately, respondent failed to discharge this burden.

As aforestated, respondent offered in evidence the Registry Receipt No. RD 780 623 995 ZZ[64] and the Registry Receipt No. 18[65] to prove the fact of mailing of the PAN, Assessment Notices and FLD to petitioner. These do not, however, prove actual receipt of the subject assessment notices by petitioner.

Notably, the registry return cards of the notices sent to petitioner through registered mail, which could prove receipt of the notices, were not presented and offered in evidence by respondent.

In fact, respondent's witness, RO Vilar, in answering clarificatory questions from the Court, admitted that there was no registry return card for the PAN dated December 27, 2017, to wit:

"JUSTICE DEL ROSARIO:

> Yes. Kindly talk directly to the microphone. I can hardly hear you.

MR. VILLAR:

> Yes, you Honors.

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[63] Exhibit "P-1", CTA Docket, p. 254.
[64] Exhibit "R-2-a", CTA Docket, p. 303.
[65] Exhibit "R-3-k", CTA Docket, p. 321.

So, you check the record, and based on the record, is there any document showing actual receipt by the petitioner of the Preliminary Assessment Notice?

(At this juncture, the witness is perusing the BIR record)

MR. VILLAR:

Your Honors, based on the documents**, the Preliminary Notice was mailed, was sent via registered mail to the taxpayer**.

JUSTICE DEL ROSARIO:

Is there a registry receipt there?

MR. VILLAR:

There is none, your Honors.

JUSTICE DEL ROSARIO:

I see. So, you have gone over the record and you do not see the registry receipt?

MR. VILLAR:

There is a registry receipt, but there is no actual receipt of the taxpayer.

JUSTICE DEL ROSARIO:

I see. **No return card; the usual return card when you sent a registered mail. There is no return card?**

MR. VILLAR:

There is no return card, your Honors."[66]

Furthermore, respondent's other witness, RO Nacorda, during cross-examination admitted that there was no registry return card for FLD/FAN dated January 12, 2018, to wit:

"**CROSS-EXAMINATION BY ATTY. TONY ROBERTS G. MORENO**

ATTY. MORENO

Q Mr. Witness, you mentioned in Question No. 10 of your Judicial Affidavit that the corresponding **Formal Letter of Demand with Details of Discrepancies dated January 12,**

[66] Transcript of Stenographic Notes dated May 24, 2022, pp. 16-17.

2018 was not returned by the Postmaster of the Manila Central Post Office to the BIR, do you confirm that?

MR. NACORDA

A Yes Sir.

ATTY. MORENO

Q And do you have proof that said Letter of Demand was not returned to the Post Office, ah sorry, was not returned by the Postmaster rather to the BIR?

MR. NACORDA

A **There's no such return card** to the, been **returned to our office Sir**.

ATTY. MORENO

Q As a matter of practice, do you attached a registry return card to the registry return receipt to indicate receipt of whatever documents you send via registered mail?

MR. NACORDA

A Yes Sir.

ATTY. MORENO

Q So, what you're saying in this case that **your office did not receive the appropriate registry return card**?

MR. NACORDA

A **Yes Sir**."[67] *(Boldfacing supplied)*

Respondent's failure to prove that the subject assessment notices were duly served upon and received by petitioner, in compliance with the due process requirements, is certainly fatal to his cause.

Truth to tell, in *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*,[68] the Supreme Court in affirming the findings of the CTA *En Banc* held that since the CIR failed to prove T Shuttle's receipt of the PAN and the FAN, the deficiency IT and VAT assessments against T Shuttle for CY 2007 are void for failure to accord T Shuttle due process in their issuance, *viz.*:

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[67] Transcript of Stenographic Notes dated June 2, 2022, pp. 14-15.
[68] G.R. No. 240729, August 24, 2020.

"**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.**

As ruled by the CTA En Banc, the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.

xxx xxx xxx

The Court sees no reason to set aside the findings of the CTA En Banc. xxx.

xxx xxx xxx

Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves. **As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord respondent due process in their issuance**, the CIR's argument necessarily fails."

Moreover, in *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,*[69] the Supreme Court held that failure to prove receipt of the assessment by a taxpayer would necessarily lead to the conclusion that no assessment was issued, to wit:

"In the case of Nava v. Commissioner of Internal Revenue, this Court stressed on the importance of proving the release, mailing or sending of the notice.

While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. Of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.

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[69] G.R. No. 224327, June 11, 2018.

> **Thus, the failure of petitioner to prove the receipt of the assessment by respondent would necessarily lead to the conclusion that no assessment was issued.**
>
> xxx xxx xxx
>
> It must be remembered that [T]he law imposes a substantive, not merely a formal, requirement. **To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations**: that taxpayers should be able to present their case and adduce supporting evidence. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself." *(Emphasis supplied)*

It is incumbent upon respondent to prove by preponderant evidence that the assessment notices were actually received by petitioner. Stated differently, it is not simply a question of whether the assessment notices were sent to petitioner by respondent, but it is imperative that **petitioner actually received said tax assessment notices.**

Considering that respondent was unable to present sufficient evidence that the subject PAN, and FAN/FLD were properly served and received by petitioner or by its authorized representative/s, there is no valid assessment to speak of in this case. Thus, the failure of respondent to prove receipt of the assessment by petitioner would necessarily lead to the conclusion that there is no valid assessment that may be a legitimate subject of collection under the Warrant of Garnishment. Consequently, the Warrant of Garnishment subject of the present Petition for Review, must perforce be cancelled and set aside.

WHEREFORE, premises considered, the Petition for Review filed on March 4, 2019 by petitioner Greenlee CP Electrical Corp. is **GRANTED**. Accordingly, the Warrant of Garnishment dated September 17, 2018, Assessment Notice No. 34-14-IT-18-144, Assessment Notice No. 34-14-MC-18-144(IT), Assessment Notice No. 34-14-VT-18-145, Assessment Notice No. 34-14-MC-18-145(VT), Assessment Notice No. 34-14-WE-18-146, Assessment Notice No. 34-14-MC-18-146(WE), Assessment Notice No. 34-14-WR-18-147, Assessment Notice No. 34-14-MC-18-147(WR), Assessment Notice No. 34-14-DS-18-148, Assessment Notice No. 34-14-MC-18-148(DS), and Formal Letter of Demand with Details of Discrepancies, all dated January 12, 2018 are **CANCELLED** and **SET ASIDE** for being void *ab initio.*

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner Greenlee CP Electrical Corp. arising from Assessment Notice No. 34-14-IT-18-144, Assessment Notice No. 34-14-MC-18-144(IT), Assessment Notice No. 34-14-VT-18-145, Assessment Notice No. 34-14-MC-18-145(VT), Assessment Notice No. 34-14-WE-18-146, Assessment Notice No. 34-14-MC-18-146(WE), Assessment Notice No. 34-14-WR-18-147, Assessment Notice No. 34-14-MC-18-147(WR), Assessment Notice No. 34-14-DS-18-148, Assessment Notice No. 34-14-MC-18-148(DS), and Formal Letter of Demand with Details of Discrepancies, all dated January 12, 2018. This judgment is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice