REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BOHOL JSL ENTERPRISES, INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10575

Members:

BACORRO-VILLENA, *Acting Chairperson,* *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 21 2024
2:43 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed on 08 July 2021 by petitioner Bohol JSL Enterprises, Incorporated (**petitioner**), pursuant to Rule 8, Section 3(a)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks to appeal respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) denial of petitioner's Request for Reconsideration of the latter's alleged deficiency tax assessments in the

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1 Division Docket, Volume I, pp. 11-57.

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

aggregate amount of ₱188,171,929.09 for taxable year (**TY**) 2010 as contained in an Amended Formal Letter of Demand[3] (**FLD**).

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 1011 CPG North Avenue, Tagbilaran City, Bohol. It is registered with the Bureau of Internal Revenue (**BIR**) with Tax Identification Number (**TIN**) 004-917-018-000 and Certificate of Registration No. OCN2RC0000997099 issued on 30 September 1997.[4]

As stated in its Articles of Incorporation (**AOI**), petitioner's primary purpose is to "engage in, conduct and carry on the business of buying, selling, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale or retail and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all goods, wares, merchandise or products, whether natural or artificial".[5]

Respondent, on the other hand, is the duly appointed CIR vested with authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

FACTS OF THE CASE

On 15 September 2011, petitioner received Letter of Authority (**LOA**) No. LOA-084-2011-00000048/eLA201000020910 dated

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3 Exhibit "P-16", Division Docket, Volume I, pp. 211-213.
4 Exhibit "P-3", id., p. 129.
5 Exhibit "P-2-1", id., p. 101.

08 September 2011[6], authorizing Revenue Officer (**RO**) Jaime De Guzman (**De Guzman**) and Group Supervisor (GS) Tohammie Yahya (**Yahya**), to examine petitioner's books of accounts for all internal revenue taxes for the period of 01 January 2010 to 31 December 2010, or TY 2010. Then Regional Director (**RD**) Jose N. Tan (**Tan**) issued and signed the said LOA.

Thereafter, or on 09 June 2012, petitioner received Letter Notice (**LN**) No. 084-RLF-10-00-00015, dated 02 June 2012[7], informing petitioner that, based on the computerized matching of information from third party sources, it had an 86.94% underdeclaration of local purchases.[8]

More than a year after, petitioner received the Notice of Informal Conference (**NIC**) dated 03 June 2013[9], assessing it for deficiency income tax (**IT**), value-added tax (**VAT**) and expanded withholding tax (**EWT**) in the aggregate amount of ₱29,896,248.00. Based on the NIC, RO De Guzman conducted the audit.

Later, petitioner received the Post Reporting Notice (**PRN**) showing a reduced deficiency tax liabilities of ₱26,057,775.00.[10] An Amended PRN was subsequently issued which further reduced petitioner's assessed tax liabilities to ₱15,305,778.00.[11] Both the PRN and the amended PRN were the results of the audit conducted by RO De Guzman and GS Algrecita A. Glovasa (**Glovasa**).

On 14 May 2014, petitioner received the FLD dated 15 April 2014[12], with attached Details of Discrepancies[13], finding it liable for deficiency IT, VAT, EWT and compromise penalty in the total amount of ₱165,277,945.98. Petitioner also received the Assessment Notices (**ANs**) which indicated that it should pay the said liabilities on or before 31 May 2014.[14]

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6 Exhibits "P-26"/"R-1", BIR Records, p. 1.

7 The indicated date is 02 July 2012, however, for purposes of resolution of the case, the date used is 02 June 2012, which is based on the alleged facts of petitioner.

8 BIR Records, p. 4.

9 Exhibit "R-2", id., p. 58; Exhibit "P-4", Division Docket, Volume I, p. 130.

10 Exhibit "P-5", id., p. 138.

11 Exhibit "P-6", id., p. 143.

12 Exhibit "P-7", id., pp. 146-148.

13 Exhibit "P-7-1", id., pp. 149-150.

14 Exhibits "P-7-2", id., p. 151; "P-7-3", id., p. 152; "P-7-4", id., p. 153; and "P-7-5", id., p. 154.

On 11 June 2014, petitioner filed its Protest[15] on the FLD and requested a reinvestigation. On even date, petitioner executed a Waiver of Defense of Prescription under the Statute of Limitations of the NIRC of 1997, as amended, (**waiver**) that extended the assessment period until 15 April 2015. On 25 June 2014, then Officer-in-Charge Regional Director Atty. Hermeno A. Palamine (**OIC-RD Atty. Palamine**) accepted the waiver.[16]

Subsequently, respondent directed petitioner to submit the additional documents in relation to its Protest to the FLD within sixty (60) days from the filing thereof.[17] On 11 August 2014, petitioner submitted its supporting documents.[18]

On 22 January 2015[19], petitioner received respondent's revised computation which increased the deficiency tax liabilities.[20] Simultaneously, petitioner filed an Application for Compromise Settlement of the Deficiency Assessments for TY 2010 on the ground that there is reasonable doubt as to the validity of the assessment. It claimed that it did not receive the Preliminary Assessment Notice (**PAN**) prior to the receipt of the FLD. In addition, it averred that the assessment had already prescribed.[21]

On 14 May 2015[22], petitioner received an Amended PAN dated 20 April 2015 with attached Details of Discrepancies.[23] Aggrieved with the findings therein, it filed its Reply to the Amended PAN[24] through registered mail on 29 May 2015.[25]

On 15 July 2015[26], petitioner received the Amended FLD[27], with attached Details of Discrepancies[28] and ANs[29], all dated 02 July 2015.

15 Exhibit "P-8", id., pp. 156-162.
16 Exhibit "R-7", BIR Records, p. 189.
17 See Letter dated 23 June 2014, Exhibit "R-8", id., p. 192.
18 Exhibit "P-11", Division Docket, Volume I, p. 167.
19 See Letter dated 21 January 2015, BIR Records, p. 427.
20 Exhibits "P-13" to "P-13-1", Division Docket, Volume I, pp. 174-176.
21 Exhibit "P-12", BIR Records, pp. 428-433.
22 Exhibit "P-14-2", Division Docket, Volume I, p. 182.
23 Exhibits "P-14" to "P-14-1", id., pp. 177-181.
24 Exhibit "P-15", id., pp. 183-210.
25 Exhibit "P-15-1", id., p. 183.
26 Exhibit "P-16-6", id., p. 221.
27 Exhibit "P-16", supra at note 3.
28 Exhibit "P-16-1", Division Docket, Volume I, pp. 214-216.
29 Exhibits "P-16-2", "P-16-3", "P-16-4" and "P-16-5", id., pp. 217-220.

Dissatisfied with the findings, on 11 August 2015, petitioner filed its Supplemental Protest[30] through registered mail.[31]

On 10 April 2017[32], petitioner received respondent's letter dated 23 March 2017 denying petitioner's Supplemental Protest.[33] On 08 May 2017, petitioner administratively appealed the said denial to the CIR (administrative appeal).[34]

On 10 June 2021[35], petitioner received the Decision dated 21 May 2021[36] denying its administrative appeal and demanding the payment of the alleged tax deficiencies of ₱188,171,929.09. On 08 July 2021, petitioner filed the instant petition before this Court.[37] The case was raffled to the Second Division and was docketed as CTA Case No. 10575.

On 25 October 2021, respondent filed his or her Answer.[38] There, respondent cited the following special and affirmative defenses: (1) the PAN was validly served on petitioner; (2) the right to assess petitioner's books had yet to prescribe; and, (3) the assessments made against petitioner are valid and binding.

Subsequently, the Court set the case for Pre-Trial Conference on 16 March 2022.[39] Petitioner filed its Pre-Trial Brief[40] on 08 March 2022, while respondent filed his or her Pre-Trial Brief[41] on 09 March 2022.

During the hearing for the pre-trial, the parties were ordered to appear before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for mediation proceedings on 06 April 2022.[42] However,

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30 Exhibit "P-17", BIR Records, pp. 505-534.
31 See Registry Receipt on the Supplemental Protest, Division Docket, Volume I, p. 222.
32 Exhibit "P-18-1", id., p. 259.
33 Exhibit "P-18", id., pp. 252-256.
34 In the normal course of things, a Final Decision on Disputed Assessment is issued. Exhibit "P-19", id., pp. 261-289.
35 Exhibit "P-1-1", id., p. 98.
36 Exhibit "P-1", id., pp. 85-97.
37 Supra at note 1.
38 Division Docket, Volume I, pp. 415-434.
39 Notice of Pre-Trial Conference dated, id., pp. 441-442.
40 Id., Volume II, pp. 446-453.
41 Id., pp. 826-829.
42 See Order dated 16 March 2022, id., p. 875.

they decided not to have their case mediated.[43] The pre-trial conference was then set anew.[44]

In the Pre-Trial Conference that followed, the parties were granted a period of twenty (20) days to file the Joint Stipulation of Facts and Issues (**JSFI**).[45] Within the extended period granted[46], they filed their JSFI on 21 June 2022.[47] The Court then issued the Pre-Trial Order which also adopted the JSFI on 05 July 2022.[48]

At the trial that ensued, petitioner presented its lone witness, Jelibeth P. Clavite (**Clavite**) who testified through her Amended Judicial Affidavit[49] that: (1) she is petitioner's Accounting Officer; (2) during the conduct of the assessment, after petitioner received the NIC, PRN and Amended PRN, it also immediately received the FLD; (3) realizing that no PAN was received, petitioner filed a Protest to the FLD by way of a request for reinvestigation; (4) together with the Protest, petitioner also executed the waiver to extend the period of assessment until 15 April 2015; (5) after the submission of the supporting documents, petitioner received the revised computation of the assessment; (6) subsequently, petitioner filed an application for compromise on the ground that there is reasonable doubt on the assessments' validity due to its non-receipt of the PAN and the prescription of the said tax assessments; (7) on 14 May 2015, petitioner received an amended PAN, to which it filed its Reply; (8) on 15 July 2015, petitioner received the amended FLD, together with the Details of Discrepancies and ANs, which explained that petitioner is classified as one of the Top 10,000 corporations; (9) in the Supplemental Protest, petitioner argued that it did not receive the notice informing that it is a top withholding agent, thus, the assessment for EWT is invalid; (10) respondent denied the Supplemental Protest through a letter dated 23 March 2017; (11) petitioner appealed the CIR's denial through a request for reconsideration; (12) respondent denied the administrative appeal, hence petitioner filed the instant petition; and, (13) she identified the payments for IT, VAT and EWT relevant to the assessments. In her

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43 No Agreement to Mediate dated 06 April 2022, id., p. 895.
44 Resolution dated 20 April 2022, id., p. 899.
45 Order dated 30 May 2022, id., p. 901.
46 See Motion for Extension of Time to File Joint Stipulation of Facts and Issues, id., pp. 902-905; Order dated 20 June 2022, id., p. 907.
47 Id., pp. 908-913.
48 Id., pp. 915-921.
49 Exhibit "P-27", id., pp. 454-487.

Supplemental Affidavit[50], Clavite identified the VAT and IT returns which petitioner filed during TY 2010.

Additionally, Clavite testified that the BIR officers mentioned in LOA No. LOA-084-2011-00000048/eLA201000020910 dated 08 September 2011[51] were RO De Guzman and GS Yahya. Yet, in the PRN and Amended PRN, one of the indicated BIR officers is GS Glovasa. She added that petitioner did not receive any communication regarding the designation of GS Glovasa (*vice* GS Yahya) in the conduct of the assessment.

In her cross-examination[52], Clavite confirmed that petitioner only received the LOA, PRN and FLD, but not the PAN, which were all sent *via* registered mail. Moreover, she declared that petitioner did not receive the notice as a top withholding agent and even raised this matter in its Protest.

As to her answers in her Supplemental Affidavit, Clavite explained that petitioner was not duly informed that the audit of its books was reassigned to GS Glovasa. Nonetheless, she stated that RO De Guzman was present from the start of the audit. No redirect examination was conducted.

Upon conclusion of its presentation of evidence, petitioner, on 08 August 2022, filed its Formal Offer of Documentary Exhibits (**FOE**) consisting of Exhibits "**P-1**" to "**P-28**", inclusive of sub-markings.[53] Respondent filed his or her comment to the FOE on 12 August 2022.[54] In the Resolution dated 08 September 2022[55], the Court admitted all of petitioner's exhibits.

Thereafter, at the hearing held on 29 September 2022[56], respondent presented his or her witness, Atty. Maricel C. Casison-Dungca (**Atty. Casison-Dungca**), who testified by way of her Judicial

[50] Exhibit "P-28", id., pp. 925-931.
[51] Supra at note 6.
[52] TSN dated 20 July 2022, pp. 11-17.
[53] Division Docket, Volume II, pp. 975-996.
[54] Id., pp. 999-1001.
[55] Id., pp. 1004-1006.
[56] Order dated 29 September 2022, id., pp. 1008-1009.

Affidavit[57] that: (1) she is an Attorney III of the BIR's Appellate Division; (2) she reviewed petitioner's administrative appeal by evaluating and verifying the documents in the BIR docket; (3) she identified the documents relevant to the assessments including the BIR's internal documents, such as Memoranda dated 05 November 2013, 03 February 2014 and 06 October 2014[58] and RO's Audit Reports[59]; and, (4) she did not find merit in petitioner's administrative appeal, thus she affirmed the deficiency tax liabilities of ₱188,062,909.09 (inclusive of interests, surcharges and penalties) and compromise penalty of ₱109,000.00.

During cross-examination[60], Atty. Casison-Dungca verified that based on the document itself, it was a certain "Editha" who received the LOA. Further, she confirmed the existence of the memoranda indicating RO De Guzman and GS Glovasa as the BIR officers who prepared them. As to the PAN, Atty. Casison-Dungca pointed out that the records are bereft of proof that petitioner actually received the PAN. No redirect examination was conducted.

On 17 October 2022, respondent filed his or her FOE, consisting of Exhibits "**R-1**" to "**R-15**", inclusive of sub-markings.[61] On the same date, petitioner filed a "Formal Offer of Additional Exhibits for Petitioner" praying for the admission of Exhibits "**P-26-1**" to "**P-33**", inclusive of sub-markings.[62] Over petitioner's objections to respondent's FOE[63], the Court admitted all of the offered exhibits.[64]

As for petitioner's offer of additional exhibits, without respondent's objection to the admission thereof[65], the Court admitted the said exhibits. Also, it directed the parties to file their respective memoranda within thirty (30) days from receipt of the notice.[66]

57 Id., pp. 835-844-
58 See Exhibit "R-3", Memorandum dated 05 November 2013, BIR Records, pp. 118-121; Exhibit "R-4", Memorandum dated 03 February 2014, id., p. 152; and, Exhibit "R-10", Memorandum dated 06 October 2014, id., pp. 423-423-d.
59 Exhibit "R-4-2", id., pp. 138-146.
60 TSN dated 29 September 2022, pp. 5-14.
61 Division Docket, Volume II, pp. 1022-1028.
62 Id., pp. 1016-1018.
63 See "Comment (On Respondent's Formal Offer of Evidence)", id., pp. 1030-1032.
64 See Resolution dated 05 December 2022, id., pp. 1038-1040.
65 See "Comment (on Petitioner's Formal Offer of Evidence)", id., pp. 1041-1043.
66 See Resolution dated 16 January 2023, id., pp. 1046-1047.

In compliance with the Court's directive, respondent filed his or her Memorandum[67] on 17 February 2023 while petitioner filed its Memorandum[68] on 17 March 2023. In a Resolution dated 24 March 2023[69], the case was submitted for decision.

ISSUES

As the parties so stipulated[70], the issue for this Court's resolution is —

> WHETHER PETITIONER BOHOL JSL ENTERPRISES, INCORPORATED IS LIABLE FOR THE ALLEGED DEFICIENCY TAXES CONSISTING OF INCOME TAX (IT), VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT) AND COMPROMISE PENALTY IN THE AGGREGATE AMOUNT OF ₱188,171,929.09 ASSESSED FOR TAXABLE YEAR (TY) 2010.

ARGUMENTS

Petitioner maintains that the deficiency tax assessments against it for TY 2010 are null and void as there was an invalid service of the LOA. According to it, the person who received it (a certain Editha) is not among the corporation's responsible officers. Assuming that the LOA was validly served, the assessments remain invalid since the LOA did not authorize GS Glovasa to audit. As the records show, respondent did not issue a separate or amended LOA to prove that GS Glovasa's participation in the audit of petitioner's books of account for TY 2010 was sanctioned.

Petitioner also claims that respondent violated Section 228[71] of the NIRC of 1997, as amended, when he or she failed to serve the PAN on petitioner prior to the FLD's service. Citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[72] (**Metro Star**), it avers that the service of the PAN is part of the due process requirement in the issuance

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67 Id., pp. 1048-1073.
68 Id., pp. 1078-1120.
69 Id., p. 1123.
70 See Issue/s Stipulated upon by the Parties, Joint Stipulation of Facts and Issues (JSFI), id., p. 909.
71 **SEC. 228**. *Protesting of Assessment*. – ...
72 G.R. No. 185371, 08 December 2010.

of deficiency tax assessment. Hence, the absence of the said service renders the assessments void.

Petitioner further points out that although respondent has claimed that the PAN was served through registered mail, it did not receive the same. Its direct denial of the receipt of the PAN thus shifted the burden of proof to respondent as the Supreme Court ruled in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue* (**Barcelon**).[73]

Likewise, even assuming that the deficiency tax assessments for TY 2010 were not issued in violation of its right to due process, petitioner submits that the FLD, Amended FLD, the letter denying the Supplemental Protest, and the Decision dated 21 May 2021, are all ineffectual and void for, in all of these issuances, no categorical demand for payment (of the tax liabilities) was clearly stated (but only a mere request for payment).

Petitioner posits further that respondent's right to assess had already prescribed since it received the FLD only on 14 May 2014, or beyond the three (3)-year prescriptive period under Section 203[74] of the NIRC of 1997, as amended. Besides, there is no basis for the application of the ten (10)-year prescriptive period to assess it as no fraudulent or false returns were filed. Supposing that the assessments had yet to prescribe, petitioner argues that they should nonetheless be invalidated as they are bereft of any legal or factual bases.

On the other hand, respondent contends that the PAN was validly served on petitioner through registered mail. Basing his or her contention on *Metro Star*, respondent considers the registry receipt as sufficient proof that petitioner received the mail containing the PAN.

Assuming that petitioner did not receive the PAN, respondent points out that he or she was able to issue an Amended PAN which petitioner had duly received. As the latter was able to file its Reply to the Amended PAN, it could not insist that it was not afforded a

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73 G.R. No. 157064, 07 August 2006.

74 **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* – ...

reasonable opportunity to contest the assessments. There is then no violation of petitioner's due process.

Respondent also declares that the assessments had not yet prescribed. Based on his or her investigation, petitioner made a substantial underdeclaration of 86.94% of its local purchases, which necessitated the application of the 10-year prescriptive period under Section 248(B)[75] of the NIRC of 1997, as amended.

Moreover, respondent claims that the notices sent to petitioner contain categorical demands for payment. A perusal of the said notices shows that they contain the facts, laws, rules and regulations on which the assessments were based. Being valid and binding, petitioner is liable to pay the deficiency tax assessments.

RULING OF THE COURT

Before the Court proceeds to discuss the merits of the case, it deems propitious to first determine the timeliness of petitioner's judicial appeal as this is determinative of this Court's valid exercise of jurisdiction.

THE PETITION FOR REVIEW WAS TIMELY FILED.

The law is clear on the period to appeal before this Court if there is a denial of a taxpayer's protest. Section 228 of the NIRC of 1997, as amended, provides:

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75 **SEC. 248.** *Civil Penalties.* – …

…

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further*, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

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> 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 preassessment notice shall not be required in the following cases:
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> ...
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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.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> **If the protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days** from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[76]
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> ...

The aforequoted Section is implemented by Revenue Regulations (**RR**) No. 12-99[77], as amended by RR No. 18-13[78], issued on 28 November 2013. Relevant portions of Section 3.1.4 of RR No. 18-13 state:

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[76] Emphasis supplied and italics in the original text.

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

[78] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

...

Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

...

Sec. 3.1.4 *Disputed Assessment.* — ...

...

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

...

If the **protest is denied, in whole or in part, by the Commissioner's duly authorized representative**, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

...

If the protest or **administrative appeal**, as the case may be, is **denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision**. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.[79]

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[79] Emphasis supplied and italics in the original text.

Based on the foregoing provisions, when the CIR denies a taxpayer's administrative appeal, in whole or in part, the latter may appeal the denial before this Court within 30 days from the receipt of the said decision (denying the appeal).

Here, petitioner received the Decision of 21 May 2021 (denying its administrative appeal) on 10 June 2021.[80] Counting 30 days therefrom, petitioner had until 10 July 2021 to file its judicial appeal. The Petition for Review was filed on 08 July 2021, thus this Court has successfully acquired jurisdiction over the instant case.

THE SUBJECT DEFICIENCY TAX ASSESSMENTS ARE VOID.

Petitioner asserts that the subject deficiency tax assessments are void based on the following grounds: (1) they were done in violation of its right to due process; (2) the assessments had already prescribed; and, (3) GS Glovasa was not duly authorized to conduct the audit of petitioner's books of account for TY 2010.

We find that all of petitioner's arguments are meritorious for the reasons essayed below.

A. RESPONDENT FAILED TO SERVE THE PRELIMINARY ASSESSMENT NOTICE (PAN) ON PETITIONER.

Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-13, provides that issuance of a PAN is part of the due process requirement in the issuance of a deficiency tax assessment:

> ...
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> SEC. 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:

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80 Supra at note 35.

> 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 the proposed assessment is based[.]**[81]
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> ...

Relative thereto, Section 3.1.6 of the same Revenue Regulation enumerates the proper modes of service for the notices, *viz*:

> ...
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> 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:
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> ...
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> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
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> ...
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> (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.[82]
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> ...

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81 Emphasis supplied and italics in the original text.
82 Italics in the original text.

From the foregoing, the CIR may opt to send the PAN to the taxpayer through registered mail when personal service is not practicable.

To prove service by registered mail, the server shall make a written report under oath before a Notary Public setting forth the manner, place and date of service, and the name of the professional courier service company (or the Philippine Postal Corporation [**referred as post office**] such in this case) who received the same and such other relevant information. Further, 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.

Clarifying the receipt of letter served by mail, the Supreme Court in *Barcelon*[83] held that while a mailed letter is presumed or deemed received by the addressee in the ordinary course of mail, the same is merely a *disputable* presumption that may be controverted. Additionally, a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the addressee has indeed received the mailed letter.

Applying the abovementioned rules and the *Barcelon* case, when petitioner denied the PAN's receipt, respondent should have disputed the denial with evidence. Unfortunately, respondent merely alleged that he or she had validly served the notice through registered mail. Basic is the rule that mere allegation is not evidence and is not equivalent to proof.[84] Although the BIR records bear the photocopy of the registry receipt[85] of the PAN's mailing, the same does not conclusively prove that the addressee received the mail (containing the PAN).

With petitioner's denial, respondent could not rely solely on the photocopy of the registry receipt as proof of service because it is not in itself proof without being accompanied by the authenticating affidavit (or affidavit under oath) of the person who actually mailed the PAN. To the mind of the Court, the authentication by affidavit of the mailer is

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83 Supra at note 73.
84 *Pedro M. Banusing v. Atty. Pepin Joye Q. Marfil*, A.C. No. 13456 (Notice), 06 March 2023.
85 See photocopy of registry receipt to Bohol JSL Enterprises, Inc., BIR Records, p. 543.

necessary for the service by registered mail to be regarded as clear proof of the PAN's service.[86]

Similarly, the registry receipt must contain sufficiently identifiable details of the transaction which shall constitute sufficient proof of mailing. Here, the photocopy of the registry receipt only indicates the letter/package number "14-204". It does not even show the exact date of the alleged mailing to petitioner nor does it reflect any other information which would aid the Court in determining the transaction details.

Corollarily, in *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[87], the Supreme Court affirmed the CTA *En Banc*'s findings that mere presentation of the registry receipts is insufficient to prove the actual receipt of the PAN and the Final Assessment Notice (**FAN**), *viz*:

> ...
>
> 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.
>
> **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

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[86] *Resterio v. People*, G.R. No. 177438, 24 September 2012

[87] G.R. No. 240729 (Resolution), 24 August 2020; Citations omitted and emphasis supplied.

> uncertain whether the PAN and FAN were actually received by respondent.
>
> ...
>
> The Court sees no reason to set aside the findings of the CTA *En Banc*. ...
>
> ...

Since the valid service of the PAN on petitioner's part is part of the due process requirement in the issuance of a deficiency tax assessment, the non-observance thereof renders respondent's deficiency tax assessments void.

Assuming that We disregard the non-receipt of the PAN and consider petitioner's subsequent receipt of the Amended PAN, the assessments against petitioner would still be void due to prescription.

B. RESPONDENT'S RIGHT TO ASSESS PETITIONER'S BOOKS OF ACCOUNT FOR TAXABLE YEAR (TY) 2010 HAD ALREADY PRESCRIBED.

Section 203 of the NIRC of 1997, as amended, provides for the prescriptive period in the assessment of internal revenue taxes:

> ...
>
> **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* — **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[88]
>
> ...

88 Emphasis and italics in the original text.

This period extends up to ten (10) years after the discovery of falsity, fraud, or omission in the filing of a taxpayer's return:

> ...
>
> **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.[89]
>
> ...

In *Commissioner of Internal Revenue v. Asalus Corporation*[90] (**Asalus**), the Supreme Court held that, pursuant to Section 248(B)[91] of the NIRC of 1997, as amended, when there is a showing that a taxpayer has substantially underdeclared, there is a presumption that it has filed a false return and the CIR need not immediately present evidence to support the falsity of the return, to wit:

> ...
>
> Under Section 248(B) of the NIRC, there is a *prima facie* evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration. A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced.
>
> In other words, **when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return**, unless the taxpayer fails to overcome the presumption against it.

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89 Emphasis and italics in the original text.

90 G.R. No. 221590, 22 February 2017; Citations omitted, italics in the original text and emphasis supplied.

91 Supra at note 75.

> Applied in this case, the audit investigation revealed that there were undeclared [VATable] sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.
>
> **Hence, the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC. To require the CIR to present additional evidence in spite of the presumption provided in Section 248(B) of the NIRC would render the said provision inutile.**
>
> ...

Herein, as stated in the LN, respondent already had an initial finding of a *prima facie* evidence of false returns. As seen on the Details of Discrepancies of the FLD dated 15 April 2014, respondent already noted that petitioner's purchases (reflected in the returns) were substantially underdeclared compared to the Third Party Information (**TPI**) *i.e.*, the Summary List of Sales (**SLS**) of Apo Cement Corporation (**Apo Cement**) and Philippine Ports Authority (**PPA**). The pertinent parts provide:

> ...
>
> Per subject Letter Notice, total purchases per Summary List of Sales (SLS) submitted by your suppliers namely: APO Cement Corporation and Philippine Port Authority amounted to P 291,420,779.84 and P492,118.89 respectively.
>
> Purchases from APO Cement Corporation of P 291,420,779.84 against total purchases of P 53,738,315.18 per VAT returns/Financial Statements resulted to a discrepancy/under-declaration in the amount of P237,682,464.66. The under-declaration of purchases resulted to additional taxable income of P12,455,014.55, which was computed based on the Cost of Sales ratio of 95.02% and Gross Profit ratio of 4.98% per Financial Statements/Annual Income Tax Return filed in our office.

> Further verification from the sales report, third party information (TPI), submitted by the Philippine Port Authority revealed additional purchases of P 240,404.72 representing transport cost were not captured in the Letter Notice resulting to a total of P 732,523.61. Undeclared sources of cash were [offset] with the unclaimed expenses, namely: Transport Cost from the Philippine Port Authority and unreported Taxes and Licenses.
>
> ...

Since there is *prima facie* evidence of false returns, it is incumbent upon petitioner to proffer evidence to the contrary.

For purposes of determining the proper prescriptive period and considering that the bulk of the underdeclaration pertains to Apo Cement, We deem it proper to discuss it first.

As mentioned above, there are alleged purchases from APO Cement of ₱291,420,779.84 which were not declared as part of petitioner's purchases in its tax return. However, We cannot sustain or uphold the assessments to be valid and binding for respondent's non-compliance with proper procedure for TPI confirmation.

In the implementation of the Reconciliation of Listings for Enforcement (**RELIEF**) system, Revenue Memorandum Order (**RMO**) No. 04-2003[92] states:

> ...
>
> **I. BACKGROUND**
>
> The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.

[92] Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Taxes covered by a Letter Notice (LN) issued under the RELIEF System as defined in Revenue Memorandum Order (RMO) No. 30-2003 and other data matching processes.

The RELIEF System was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.

The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. **The consolidation and matching of information <u>with other externally sourced data</u> will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential.**[93]

...

The procedures to be followed for TPI discrepancy are laid down by RMO No. 46-2004[94], which provides:

...

III. PROCEDURES

...

<u>**Action on Protested LNs due to TPI discrepancy**</u>

The <u>**Revenue Officer**</u> assigned to handle the Letter Notice <u>**shall**</u>:

1. Evaluate the merits of the taxpayer's Protest by:

   1.1 Requiring the taxpayer to submit the necessary schedules and supporting documents to substantiate his claims.

   1.2 Reconciling the Schedule of Sales/Local Purchases submitted by the taxpayer against the Details of Taxpayer's Customers/Suppliers' Records (DTCS) culled from the Quarterly Summary List of Sales/Purchases submitted by taxpayer's suppliers and customers, respectively.

   1.3 Reconciling the Schedule of Importation submitted by the taxpayer against the Details of Importation with Return Information Matching (DIRIM) culled from data provided by the Bureau of Customs (BOC).

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93 Emphasis and underscoring supplied.

94 Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

1.4 Checking for the propriety of the transactions reflected in the schedules submitted by the taxpayer by validating against source documents (e.g. sales invoice, official receipts, import entry declarations, etc.).

2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.

3. **Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.**

3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:

3.1.1 **Prepare "Confirmation Requests"** (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS[.]

3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

3.2 **If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:**

3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

a. **Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source** (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

b. **Secure a sworn statement from the TPI source** thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and

> submit the same to the SCG, for monitoring purposes.[95]

...

Based on the foregoing provisions, in assessment proceedings, if there arises TPI discrepancies, the BIR is required to obtain sworn statements from TPI sources to attest the veracity of the data provided. To obtain the sworn statements, the BIR must first send confirmation requests to the third-party sources, or coordinate with the Revenue District Office (**RDO**), that has jurisdiction over the third-party sources, to course through the confirmation requests to the latter.[96]

Concomitantly, RMO No. 13-2012[97], which lays down the guidelines and procedures in handling LNs generated through TPI data matching programs such as the RELIEF System for SLS and Summary List of Purchases (**SLP**) under RMO No. 30-2003[98], as amended, states:

> ...
>
> **IV. GUIDELINES AND PROCEDURES**
>
> ...
>
> **D. Investigating Offices**
>
> ...
>
> 9. Send a Confirmation Request from TPI sources attesting to the veracity of the data included in the LN package (Annexes "I" and "I-1").
>
> If no response from the TPI source after the lapse of five (5) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. **However, if there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO <u>shall</u> send the Confirmation Request to the taxpayer through registered mail with <u>Registered Return Card</u> and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step.** The RO shall recommend the issuance of an eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales. In case

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95 Emphasis and underscoring supplied.

96 See *Commissioner of Internal Revenue v. MCC Transport Singapore PTE. LTD.*, C.T.A. EB Case No. 1961, 14 July 2020.

97 Revised Guidelines and Procedures in Handling Letter Notices Generated Through Third-Party Information Data Matching with Tax Returns.

98 Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes.

> the TPI source/s is/are located outside of the jurisdiction of the investigating office, the RO shall recommend to the concerned RD/ACIR-LTS the issuance of eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales.
>
> If the TPI source did not agree with the discrepancy reflected in the LN (DTCSR/DIRIM/DWAPR), he/she/it must be required to execute a Sworn Statement to that effect and state his/her/its true and correct sales/purchases (Annexes "J" and "J-1"). The RO shall recommend the issuance of an eLA and the filing of a perjury case against the TPI source for the erroneous declaration in the submitted SLS/SLP/information return or supplying incorrect information. In case the TPI source/s is/are located outside of the jurisdiction of the investigating office, the RO shall recommend to the concerned RD/ACIR-LTS the issuance of eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/ understated sales.[99]
>
> ...

As can be gleaned from the foregoing, if the TPI source/s is/are located outside of the jurisdiction of the investigating or sending office, the BIR confirmation requests must be duly supported by registered return cards.

In herein case, a confirmation request for Apo Cement is attached to the BIR records.[100] It is reflected therein that Apo Cement's registered address is at Tina-an, Naga, Cebu, which is *outside* the jurisdiction of RDO No. 84.[101]

Following the above guidelines, there should have been a registered return card to prove that respondent mailed the said confirmation request to Apo Cement. However, even after a repeated sifting of the records, no such registered return card is found. Even assuming that it was mailed, the records of the case also do not contain any authenticated or sworn statement from Apo Cement confirming the TPI.

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[99] Emphasis and underscoring supplied.

[100] BIR Records, p. 56.

[101] Revenue District No. 84's jurisdiction are: Tagbilaran City, Alburguerque, Alicia, Anda, Antequera, Baclayon, Balilihan, Batuan, Bien Unido, Bilar, Buenavista, Calape, Candijay, Carlos P. Garcia, Carmen, Catigbian, Clarin, Corella, Cortes, Dagohoy, Danao, Dauis, Dimiao, Duero, Garcia-Hernandez, Guindulman, Inabanga, Jagna, Jetafe, Lila, Loay, Loboc, Loon, Mabini, Maribojoc, Panglao, Pilar, Sagbayan, San Isidro, San Miguell, Sevilla, Sierra-Bullones, Sikatuna, Talibon, Trinidad, Tubigon, Ubay, Valencia, all located in the province of Bohol.

Based on the foregoing, the Court can only conclude that respondent failed to comply with his or her own regulations, thus resulting in assessments that had been based on *unverified* information. In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[102], the Supreme Court ruled that for an assessment to stand judicial scrutiny, it must be based on facts supported by credible evidence. We quote:

> ...
>
> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. ***<u>Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.</u>***
>
> ...
>
> Thus, the computations of the EIIB and the BIR on the quantity and costs of the importations of the respondent in the amount of P105,761,527.00 for 1987 have no factual basis, hence, arbitrary and capricious. **The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*, in order to stand judicial scrutiny, <u>the assessment</u>**

[102] G.R. No. 136975, 31 March 2005; Citations omitted, italics in the original, emphasis and underscoring supplied.

> **<u>must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.</u>**
>
> ...

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on *actual* facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[103]

For lack of factual and legal bases, the *prima facie* finding of false returns based on the alleged underdeclaration of purchases necessarily loses a leg to stand on. Thus, to the mind of the Court, respondent could not be justified in his or her application of the ten (10)-year prescriptive period in the assessment of petitioner.

Having determined that the applicable prescriptive period to assess is not 10 years but only three (3) years based on Section 203 of the NIRC of 1997, as amended, the reckoning point of the prescriptive period for the subject taxes for TY 2010 are the following:

Type of Tax	Date when petitioner filed return[104]	Last day to file the return	Last day to assess based on Sec. 203 of the NIRC of 1997, as amended
IT	07 February 2011	15 April 2011[105]	**15 April 2014**
VAT	1st Quarter VAT 23 April 2010 2nd Quarter VAT 23 July 2010	1st Quarter VAT[106] 25 April 2010 2nd Quarter VAT 25 July 2010	1st Quarter VAT 25 April 2013 2nd Quarter VAT 25 July 2013

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103 *The Collector of Internal Revenue (now Commissioner) v. Alberto D. Benipayo*, G.R. No. L-13656, 31 January 1962.

104 See Certification, Exhibit "P-21", Division Docket, Volume II, p. 823.

105 See BIR Form No. 1702, When and Where to File, The return shall be filed, with or without payment, on or before the 15th day of the fourth month following the close of the taxpayer's taxable year.

106 See BIR Form No. 2550Q, When and Where to File, The returns must be filed not later than the 25th day following the close of the quarter.

	3rd Quarter VAT 20 October 2010 4th Quarter VAT 19 January 2011	3rd Quarter VAT 25 October 2010 4th Quarter VAT 25 January 2011	3rd Quarter VAT 25 October 2013 4th Quarter VAT 25 January 2014
EWT	January 2010 29 March 2010 February 2010 29 March 2010 March 2010 12 April 2010 April 2010 11 May 2010 May 2010 10 June 2010 June 2010 12 July 2010 July 2010 10 August 2010 August 2010 13 September 2010 September 2010 08 October 2010 October 2010 10 November 2010 November 2010 10 December 2010 December 2010 10 January 2011	January 2010[107] 10 February 2010 February 2010 10 March 2010 March 2010 10 April 2010 April 2010 10 May 2010 May 2010 10 June 2010 June 2010 10 July 2010 July 2010 10 August 2010 August 2010 10 September 2010 September 2010 10 October 2010 October 2010 10 November 2010 November 2010 10 December 2010 December 2010 15 January 2011	January 2010 29 March 2013 February 2010 29 March 2013 March 2010 12 April 2013 April 2010 11 May 2013 May 2010 10 June 2013 June 2010 12 July 2013 July 2010 10 August 2013 August 2010 13 September 2013 September 2010 10 October 2013 October 2010 10 November 2013 November 2010 10 December 2013 December 2010 15 January 2014

107 See BIR Form No. 1601-E, When and Where to File and Remit, The return shall be filed and the tax paid on or before the tenth (10th) day of the month following the month in which withholding was made except for taxes withheld for December which shall be filed/paid on or before January 15 of the succeeding year.

With the foregoing, We can also only conclude that petitioner's subsequent receipts of the Amended PAN on **14 May 2015** and the Amended FLD on **15 July 2015** were already beyond the allowed period to assess. Furthermore, We are not inclined to give evidentiary weight to the waiver extending the period of assessment to 15 April 2015 because it was executed only on **11 June 2014** (which is also beyond the three (3)-year prescriptive period).

Evidently, respondent's deficiency tax assessments against petitioner had prescribed and are, thus, patently void.[108]

C. GROUP SUPERVISOR (GS) GLOVASA WAS NOT DULY AUTHORIZED TO CONDUCT THE ASSESSMENT OF PETITIONER'S BOOKS OF ACCOUNT FOR TAXABLE YEAR (TY) 2010.

Notwithstanding Our findings that the assessments are void for respondent's violation of petitioner's due process rights and due to the prescription of the assessments, We still deem it *not* unnecessary to point out that one of the BIR officers who conducted the audit was not duly authorized to do so also additionally aggravates respondent's position (insisting the validity thereof).

It is settled that the audit process normally commences with the CIR's issuance of an LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment. At the same time, the LOA authorizes or empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[109] This function of an LOA is emphasized in the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[110], where the Supreme Court explained, thus:

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108 *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue,* G.R. No. 247737, 08 August 2023.

109 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017.

110 G.R. No. 222743, 05 April 2017; Citation omitted.

> ...
>
> 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. ...
>
> ...

In the instant case, the LOA No. LOA-084-2011-00000048/ eLA201000020910[111] explicitly authorized RO De Guzman and GS Yahya to conduct the examination/audit of petitioner. However, as early as the issuance of the PRN[112], Glovasa was already designated as the GS, as follows:

> ...
>
> **POST-REPORTING NOTICE**
>
> ...
>
> Sir/Madam:
>
> This is to inform you that the audit/investigation of your internal revenue tax liabilities for taxable year ending **31 December 2010** covering **All Internal Revenue Taxes** *pursuant to eLA 201000020910 dated September 8, 2010* and *Letter Notice No (s). 084-RLF-10-00-00015 dated July 02, 2012* as conducted by Revenue Officer **JAIME H. DE GUZMAN** and supervised by Group Supervisor **ALGRECITA A. GLOVASA** *has already been completed/submitted for review*.[113]
>
> ...

The same is true with the Amended PRN.[114] In addition, GS Glovasa also signed-off as the group supervisor in the [RO's] Activity Report[115], Checklist of Audit Procedures Undertaken in the Verification of VAT Returns[116] and [ROs'] Audit Report on Expanded Withholding Taxes.[117]

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111 Supra at note 6.
112 Supra at note 10.
113 Emphasis in the original text, italics and underscoring supplied.
114 Supra at note 11.
115 Exhibit "P-30", BIR Records, p. 89.
116 Exhibit "P-29", id, pp. 97-99.
117 Exhibit "R-3-1", id, p. 114.

Moreover, GS Glovasa signed the Memorandum dated 05 November 2013[118] to the RDO which recommended the issuance of PAN, *viz*:

> ...
> MEMORANDUM FOR:
>
> The Revenue District Officer
> Revenue District No. 84
> City of Tagbilaran
>
> This report refers to the **original investigation conducted by the undersigned Revenue Officer** relative to the 2010 all internal Revenue Tax liabilities of BOHOL JSL ENTERPRISES, INC. of E. Jacinto Street, 2nd District, Tagbilaran City pursuant to eLA 201000020910 dated September 8, 2010 and Letter Notice No(s). 084-RLF-10-00-00015 dated July 02, 2012.
> ...
>
> (SGD.)
> JAIME H. DE GUZMAN
> Revenue Officer I
>
> Noted by:
>
> (SGD.)
> **ALGRECITA A. GLOVASA**
> Group Supervisor
> ...

Respondent's lone witness, Atty. Casison-Dungca, also admitted during her cross-examination that no new LOA was issued for GS Glovasa's audit or examination of petitioner's books[119]:

> ...
> Q:
> With regards to the assignment of the Revenue Officer or group supervisor, in the said Letter of Authority, can you confirm the Bureau of Internal Revenue personnel assigned to examine the books of accounts of Bohol JSL Enterprises are **Revenue Officer Jaime De Guzman and GS Tohammie Yahya**, is that correct?

118 Exhibits "R-3" and "P-31", id, pp. 117-121; Emphasis supplied.
119 TSN dated 29 September 2022, pp. 8-11; Emphasis supplied.

A:
Yes, it's correct.

Q:
Now, when I reviewed the Bureau of Internal Revenue records, I found that these [are] internal documents[,] meaning the taxpayer did not receive these documents because these are internal among others. You can check in the Bureau of Internal Revenue records please, Madam Witness, pages 97 to 99, there is a checklist of audit procedures undertaken in the verification of VAT returns **prepared by Jaime H. De Guzman and Algrecita A. Glovasa**, would you confirm the existence of that in the record?

A:
Yes, I confirm the existence of the record, Attorney.

...

Q:
Considering that group supervisor Glovasa was the one who acted as the group supervisor, was there a new Letter of Authority issued to Algrecita Glovasa authorizing her to be part of the examination together with Revenue Officer De Guzman?

A:
Insofar as the records are concern[ed], your Honors, the papers in the records, **there is no such Letter of Authority issued.**

...

The pertinent sections of the NIRC of 1997, as amended, provide clearly:

...

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

(A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

...

> **SEC. 13.** *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned** to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or **to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself.
>
> ...
>
> **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 preassessment notice shall not be required in the following cases[.][120]
>
> ...

Thus, for the examination of a taxpayer to be valid, an LOA must be issued either by the CIR or his or her duly authorized representative. Pursuant to the aforementioned Section 13, in relation to Section 10(c)[121] of the NIRC of 1997, as amended, as well as RMO No. 43-1990[122] and RMO No. 29-2007[123], the CIR's duly authorized representatives are, as follows: (1) RDs; (2) Deputy Commissioners; (3) Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and, (4) other officials but only upon prior authorization by the CIR. However, no new LOA or any equivalent document was issued by respondent for GS Glovasa.

In the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*[124], the Supreme Court has again underscored the importance of identifying the authorized RO that will conduct the examination and assessment against a taxpayer:

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120 Emphasis supplied.

121 **SEC. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...

(c) Issue Letters of Authority for the examination of taxpayers within the region[.]

...

122 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

123 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

124 G.R. No. 242670, 10 May 2021; Emphasis and underscoring supplied.

> ...
>
> 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 <u>other than those named in the LOA</u> conducted the examination and assessment**, taxpayers would be 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 **<u>LOAs must contain the names of the authorized revenue officers</u>**. In other words, **<u>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</u>**.
>
> ...

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[125], the Supreme Court further reiterated that only the ROs **actually named** in the LOA are authorized to examine the taxpayer, to wit:

> ...
>
> ... Likewise, the CTA EB correctly held that the deficiency tax assessments were invalid due to revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe the revenue officers with authority to examine taxpayers. It is axiomatic that **only the revenue officers actually named under the LOA are authorized to examine the taxpayer**... In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.
>
> ...

Well-entrenched is the principle that in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly

[125] G.R. Nos. 249883-84, 27 January 2020 (Resolution); Citations omitted and emphasis supplied.

provided therefor, the resulting assessments shall be void and ineffectual.[126]

As things so clearly stand, considering that GS Glovasa is not named in the LOA and is not authorized to conduct such investigation, the resulting assessments against petitioner are inescapably void.

WHEREFORE, premises considered, the present Petition for Review filed on 08 July 2021 by petitioner Bohol JSL Enterprises, Incorporated is hereby **GRANTED**. Accordingly, the assailed Decision dated 21 May 2021, holding petitioner liable for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT) and compromise penalty in the aggregate amount of ₱188,171,929.09, for taxable year (TY) 2010, is **CANCELLED** and **SET ASIDE**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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126 See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 110; and *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, supra at note 109.

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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