REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SHIRLEY TAN FESTIN, doing business under the name and style of CSR CONSTRUCTION AND SUPPLY, *Petitioner,*	**CTA Case No. 10264**
	Members:
- versus -	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, and **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 13 2025 2:40 pm

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DECISION

REYES-FAJARDO, *J.*:

We are called upon to rule on petitioner's:

1. Petition for Review[1] dated March 2, 2020, which aims to nullify the Warrant of Distraint and/or Levy (WDL) dated January 28, 2020 and Warrants of Garnishment (WOG), all issued by the Bureau of Internal Revenue (BIR) against Shirley Tan Festin, collecting from her the deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Miscellaneous Charges (MC) covering Taxable Year (TY) 2014; and

2. Supplemental Petition for Review dated October 20, 2020, which seeks for the issuance of a Tax Clearance Certificate (TC) for year 2020.

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1 Docket, pp. 8-34. The Petition is coupled with Very Urgent Motion to Suspend Collection of Taxes and Prayer for Temporary Restraining Order and/or Preliminary Mandatory Injunction to Recall the Warrant of Distraint and/or Levy.

FACTS

Petitioner Shirley Tan Festin is a businesswoman doing business under the trade name and style of **"CSR CONSTRUCTION AND SUPPLY,"** and with office address at National Road, Barangay Sugod, Cajidiocan, Romblon. She may be served with notices, orders, decisions, and other court process at her counsel's office located at 3rd Floor, Bonifacio Technology Center, 31st Street, corner 2nd Avenue, Crescent Park West, Taguig City.[2]

Respondent Commissioner of Internal Revenue (CIR) is being sued in his official capacity, having been duly appointed and empowered to perform the duties of his office. He may be served with summons, notices, and other court processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

Respondent Revenue District Officer Benjamin V. Cruz, Jr. (RDO Cruz, Jr.) is being sued in this official capacity as the Revenue District Officer of Revenue District Officer No. 35-Odiongan, Romblon, who issued and signed the WDL, purportedly upon authority of respondent CIR.[4]

On October 10, 2016, OIC Regional Director Araceli L. Francisco (RD Francisco) of Revenue Region No. 6 – Manila, issued Letter of Authority SN: eLA201100087452 (LOA), empowering Revenue Officer Jinky Bantang (RO Bantang) and Group Supervisor Benjamin JR Cruz (GS Cruz) to examine petitioner's books of account and other accounting records covering the periods January 1, 2014 to December 31, 2014.[5] In this connection, the BIR issued Several Notices for Presentation of Records addressed to petitioner, summarized below:

Notice for Presentation of Records	Date Issued	Exhibit Reference
First Request for Presentation of Records	October 17, 2016	"R-2"[6]

[2] Par. 1.01, Petition for Review, *id.* at p. 2. Admitted in Par. 1, Answer (to the Petition for Review dated 2 March 2020), *id.* at p. 151.
[3] Par. 1.02, Petition for Review, *id.* at pp. 2-3. Admitted in Par. 1, Answer (to the Petition for Review dated 2 March 2020), *id.* at p. 151.
[4] Par. 1.03, Petition for Review, *id.* at p. 3. Admitted in Par. 1, Answer (to the Petition for Review dated 2 March 2020), *id.* at p. 151.
[5] Exhibit "R-1." BIR Records, p. 112.
[6] *Id.* at pp. 118-119.

Second Request for Presentation of Records	January 30, 2017	"R-3"[7]
Final Notice for Presentation of Records	March 9, 2017	"R-4"[8]

Regional Director Romulo L. Aguila, Jr. then issued an undated Preliminary Assessment[9] with Detailed Computation of Deficiency Tax Assessments [10] addressed to petitioner, encapsulating the following findings:

Item	**Basic Tax/Penalty**	**Increments**	**Total**
IT	₱8,629,672.16	₱6,457,236.04	₱15,086,908.20
VAT	3,215,506.56	2,522,547.26	5,738,053.82
EWT	4,500.00	4,498.90	8,998.90
CP	2,000.00		2,000.00

On February 28, 2018, OIC Regional Director Maridur V. Rosario (RD Rosario) issued a Preliminary Assessment Notice (PAN)[11] with Details of Discrepancies[12] addressed to petitioner, containing the proposed deficiency IT, VAT, EWT, and Compromise Penalty (CP) for TY 2014, with the following breakdown:

Item	**Basic Tax/Penalty**	**Deficiency Interest**	**Total**
IT	₱8,128,897.14	₱5,082,230.87	₱13,211,128.01
VAT	3,027,715.93	2,024,007.36	5,051,723.29
EWT	4,500.00	3,042.74	7,542.74
CP	78,000.00		78,000.00

On October 22, 2018, RD Rosario issued a Formal Letter of Demand[13] and Final Assessment Notices[14] (FLD/FAN) addressed to petitioner, assessing the latter for deficiency IT, VAT, EWT, and CP, and corresponding interest, covering TY 2014, computed as follows:

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7 *Id.* at p. 121.
8 *Id.* at p. 123.
9 Exhibit "R-6." *Id.* at pp. 234-235.
10 Exhibit "R-6-1." *Id.* at pp. 232-233.
11 Exhibit "R-9." *Id.* at pp. 265-266.
12 Exhibit "R-9-1." *Id.* at pp. 262-264.
13 Exhibit "R-11." *Id.* at pp. 283-284.
14 Exhibit "R-28." *Id.* at pp. 285-288

Item	Basic Tax/Penalty	Deficiency Interest	Total
IT	₱8,128,897.14	₱5,385,115.97	₱13,514,013.11
VAT	3,027,715.93	2,138,479.91	5,166,195.84
EWT	4,500.00	3,203.01	7,703.01
CP	78,000.00		78,000.00

On January 25, 2019, RDO Cruz, Jr. issued a Notice of Informal Conference (Reinvestigation) addressed to petitioner.[15]

On March 22, 2019, an unsigned PAN (Reinvestigation) addressed to petitioner, embodying the proposed deficiency tax assessment of the latter for TY 2014 was issued, the particulars of which are as follows:

Item	Basic Tax/Penalty	Deficiency and Delinquency Interest	Total
IT	₱8,128,897.14	₱5,665,729.95	₱13,794,627.10
VAT	3,027,715.93	2,242,998.32	5,270,714.25
EWT	4,500.00	3,370.68	7,870.68
CP	78,000.00		78,000.00

On August 22, 2019, petitioner received[16] RD Rosario's Final Decision on Disputed Assessment (FDDA) dated June 27, 2019,[17] finding the former liable for deficiency taxes covering TY 2014, detailed below:

Item	Basic Tax/Penalty	Deficiency and Delinquency Interest	Total
IT	₱8,128,897.14	₱5,866,168.51	₱13,995,065.65
VAT	3,027,715.93	2,317,654.33	5,345,370.26
EWT	4,500.00	3,469.31	7,969.31
CP	78,000.00		78,000.00

15 Exhibit "R-12." *Id.* at p. 294.

16 Per petitioner's Request For Reconsideration dated September 20, 2019. Exhibit "P-16," docket, pp. 206-219.

17 Exhibits "P-15, docket, pp. 203-205; and "R-16," BIR Records (Exhibit "R-28"), pp. 310-312.

On September 20, 2019, petitioner filed her Request for Reconsideration of even date before respondent, assailing RD Rosario's FDDA.[18]

On December 20, 2019, petitioner received RDO Cruz, Jr.'s Preliminary Collection Letter (PCL) dated November 25, 2019.[19]

On January 17, 2020, petitioner received RDO Cruz, Jr.'s Final Notice Before Seizure (FNBS) dated December 11, 2019.[20]

On February 5, 2020, petitioner filed a Letter dated February 4, 2020 with respondent, seeking to restrain the BIR's collection of internal revenue taxes on her for TY 2014. According to petitioner, since her request for reconsideration of RD Rosario's FDDA is still pending before the BIR Appellate Division, the tax assessments for TY 2014 has yet to attain finality.[21]

On January 31, 2020, petitioner received RDO Cruz Jr.'s WDL dated January 28, 2020.[22] The BIR also effected garnishment of petitioner's bank accounts with the Development Bank of the Philippines,[23] Landbank of the Philippines,[24] Philippine National Bank,[25] and Community Rural Bank of Romblon.[26]

On March 2, 2020, petitioner filed a Petition for Review with Very Urgent Motion to Suspend Collection of Taxes and Prayer for Temporary Restraining Order and/or Preliminary Mandatory Injunction to Recall the Warrant of Distraint and/or Levy,[27] docketed as CTA Case No. 10264, initially raffled before the Court of Tax Appeals – First Division.

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18 *Supra* note 16.
19 Exhibits "P-17," docket, p. 220; and "R-18," BIR Records (Exhibit "R-28"), pp. 328-330.
20 Exhibit "R-19." BIR Records (Exhibit "R-28"), pp. 331-333.
21 Exhibit "P-18." Docket, pp. 221-224.
22 Exhibits "P-1," docket, p. 186; and "R-20," BIR Records (Exhibit "R-28"), p. 334.
23 Exhibits "P-2" and "P-13." Docket, p. 187 and 197, respectively.
24 Exhibits "P-3" and "P-4"; and "P-7" and "P-8." *Id.* at pp. 188-189, and 192-193, respectively.
25 Exhibit "P-11." *Id.* at p. 195.
26 Exhibit "P-12." *Id.* at p. 196.
27 *Supra* note 1.

On August 28, 2020, respondent filed his Answer (to the Petition for Review dated 2 March 2020).[28]

On October 30, 2020, petitioner filed through registered mail a Motion for Leave (To File Attached Supplemental Petition for Review),[29] followed by the personal filing thereof on November 3, 2020.[30]

Under Resolution dated November 27, 2020, petitioner's Motion for Leave (To File Attached Supplemental Petition for Review) was granted. Further, the Supplemental Petition for Review was admitted. Also, respondent was directed to file an answer thereon.[31]

Through Resolution dated January 28, 2021, the non-filing of respondent's answer on petitioner's Supplemental Petition for Review was recognized, among others. In view thereof, respondent's Answer on the Petition for Review was considered as his Answer on the Supplemental Petition for Review.[32]

On June 2, 2022, pre-trial conference was held. There, the parties were directed to submit their Joint Stipulation of Facts and Issues, embodying the following issues: (1) whether petitioner is liable for the assessed deficiency IT, VAT, EWT, and MC in the total amount of ₱19,426,405.22 for TY 2014, inclusive of interest and CP; and (2) whether the FDDA, WDL, and WOG is valid. Further, their respective schedule for the marking of documents, and presentation of their respective evidence were, as well, set. In addition, the parties were directed to appear before the Philippine Mediation Center - Court of Tax Appeals (PMC-CTA) for preliminary mediation.[33]

On July 13, 2022, the parties' submitted their Joint Stipulation of Facts and Issues,[34] which was admitted, *via* Resolution[35] dated August 4, 2022.

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28 Docket, pp. 151-160.
29 *Id.* at pp. 499-509.
30 *Id.* at pp. 267-277.
31 *Id.* at pp. 529-530.
32 *Id.* at pp. 541-543.
33 Order dated June 2, 2022. *Id.* at pp. 648-651.
34 *Id.* at pp. 723-732.
35 *Id.* at pp. 735-736.

Meanwhile, petitioner moved,[36] and we granted, and accordingly commissioned[37] Lorenz Samuel D. Gomez as Independent Certified Public Accountant (ICPA Gomez).

On February 1, 2023, the Pre-Trial Order for this case was issued.[38]

Trial followed.

Petitioner presented: (1) herself;[39] and (2) ICPA Gomez,[40] as witnesses.

Meanwhile, CTA Case No. 10264 was transferred from the First Division, to the Third Division of the Court.[41]

On November 3, 2023, the Formal Offer of Documentary Exhibits [For the Petitioner] was filed,[42] to which respondent lodged its Comment[43] on December 4, 2023.

By Resolution dated March 1, 2024,[44] the exhibits offered by petitioner were admitted, save for Exhibits "P-5," "P-14," "P-20," "P-21," "P-23," "P-24," and "P-31 and series." Petitioner rested her case.

Respondent then proceeded to present[45] Revenue Officers: (1) Margie Ramirez (RO Ramirez);[46] and (2) Christy Famero Mendez (RO Mendez)[47] as witnesses.

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36 Petitioner's Motion [To Commission An Independent Certified Public Accountant]. *Id.* at pp. 694-697.

37 Order dated March 28, 2023. *Id.* at pp. 837-839.

38 *Id.* at pp. 768-783.

39 Judicial Affidavit of Shirley Tan Festin dated October 30, 2020. Exhibits "P-10" and "P-10-a." *Id.* at pp. 401-416. Identified in the hearing held on March 28, 2023, see Order of even date, *id.* at pp. 837-839.

40 Judicial Affidavit of Lorenz Samuel Gomez dated May 19, 2023. Exhibits "P-34" and "P-34-a." *Id.* at pp. 907-918. Identified during the hearing held on October 17, 2023, see Order of even date, *id.* at pp. 1007-1008.

41 Notice dated June 1, 2023. *Id.* at p. 1000.

42 *Id.* at pp. 1009-1017.

43 *Id.* at pp. 1020-1022.

44 *Id.* at pp. 1031-1032.

45 The Judicial Affidavits of respondent's witnesses were identified in the hearing held on March 13, 2024. *Id.* at pp. 1036-1037.

46 Judicial Affidavit of Revenue Officer Margie Ramirez dated June 16, 2022, Exhibits "R-29 and "R-29-1," *id.* at pp. 673-684.

On March 26, 2024, the Respondent's Formal Offer of Evidence was filed,[48] *sans* petitioner's comment.[49]

Through Resolution dated June 20, 2024, the exhibits offered by respondent were admitted as evidence.[50] Respondent rested its case.

By Minute Resolution[51] dated August 13, 2024, CTA Case No. 10264 was submitted for decision considering: (1) Memorandum (For the Petitioner) filed on July 29, 2024;[52] and (2) respondent's Memorandum filed on August 5, 2024.[53]

ISSUES[54]

a. Is petitioner liable for the assessed deficiency IT, VAT, EWT, and MC in the total amount of ₱19,426,405.22 for TY 2014, inclusive of interest?

b. Are the FDDA, WDL, and WOG issued by the BIR against petitioner valid?

c. Is petitioner entitled to the issuance of a Tax Clearance Certificate?

ARGUMENTS

Petitioner insists that since she failed to receive the BIR's FLD/FAN, embodying the internal revenue tax assessments covering TY 2014, she was *not* informed of the factual and legal bases thereof, as required in Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, violative of her right to due process.

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47 Judicial Affidavit of Revenue Officer Christy Famero Mendez dated June 16, 2022, Exhibits "R-30" and "R-30-1," *id.* at pp. 688-693.

48 *Id.* at pp. 1039-1051.

49 Records Verification Report dated April 15, 2024. *Id.* at p. 1055.

50 *Id.* at pp. 1061-1062.

51 *Id.* at p. 1107.

52 *Id.* at pp. 1063-1090.

53 *Id.* at pp. 1091-1104.

54 *Supra* note 33.

Petitioner, too, asserts that with the BIR's failure to properly serve the FLD/FAN containing the deficiency tax assessments for TY 2014, its right to assess her for said internal revenue taxes is barred by prescription under Section 203 of the NIRC, as amended.

Petitioner also points out that that the deficiency IT and VAT assessments for TY 2014 are wanting in factual and legal mooring because said taxes were based on unverified third-party information.

Petitioner further contends that since respondent has yet to address her administrative appeal, impugning RD Rosario's FDDA, the 2014 assessed deficiency internal revenue taxes failed to attain finality; hence, the BIR's issuance of the WDL and WOG against her is premature.

Petitioner adds that with the non-finality of the deficiency tax assessments for TY 2014, the TC for year 2020 must be issued by respondent in her favor.

Respondent counters that since petitioner failed to file a valid administrative protest on the FLD/FAN, said assessment was not transmuted to a disputed assessment; hence, this case should be dismissed for lack of jurisdiction.

Respondent further claims that the deficiency tax assessments for TY 2014 issued against petitioner has legal and factual basis. In so claiming, respondent explains:

> *One.* The undeclared revenues/receipts subjected to IT and VAT resulted from the discrepancies between petitioner's Summary Alphalist of Withholding Tax (SAWT) vis-à-vis the Department of Public Works and Highways and pertinent Local Government Units' Alphalist of Payees and BIR Form No. 1604E;
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> *Two.* There was an unexplained increase in petitioner's net-worth subject to IT.
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> *Three.* There were unsupported IT credits; hence, the same was disallowed.

Respondent, too, retorts that the FLD/FAN was served through registered mail on petitioner's given address; thus, the latter was afforded due process in the issuance of the deficiency tax assessments for TY 2014.

RULING

We find: *first,* the Petition for Review dated March 2, 2020 impressed with merit; and *second,* the Supplemental Petition for Review dated October 20, 2020 devoid of merit. Before discussing the corresponding justifications thereon, Our jurisdiction over CTA Case No. 10264 must, foremost, be determined.

Section 7(a)(1) of Republic Act (RA) No. 1125,[55] as amended by RA No. 9282, reads:

> 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;**
>
> ...[56]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[57] elucidated that the CTA in Division has jurisdiction over respondent or his authorized representative's decision or action involving other matters arising from the NIRC, as amended, *inter alia.* One of the matters set forth in Section 2 of the same Code is the BIR's authority to collect all national internal revenue taxes, fees, and charges.[58] This includes the issuance of the rules, regulations, and

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55 An Act Creating the Court of Tax Appeals.

56 Boldfacing supplied.

57 A.M. No. 05-11-07-CTA.

58 **SEC. 2.** *Powers and Duties of the Bureau of Internal Revenue.* - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all

measures in pursuit thereof,[59] such as the distraint and/or levy of property, and garnishment of bank accounts, mentioned in Section 205(a),[60] in relation to Sections 207[61] and 208[62] of the same Code. In addition, Section 11 of RA No. 1125, as amended by RA No. 9282,

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cases decided in its favor by the Court of Tax Appeals and the ordinary courts.... (Boldfacing supplied)

59 See *Commissioner of Internal Revenue v. Bank of the Philippines Islands*, G.R. No. 227049, September 16, 2020.

60 **Section 205.** *Remedies for the Collection of Delinquent Taxes.* - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; ...

61 **Section 207.** *Summary Remedies.* -
(A) Distraint of Personal Property. - Upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same at the time required, the Commissioner or his duly authorized representative, if the amount involved is in excess of One million pesos (P1,000,000), or the Revenue District Officer, if the amount involved is One million pesos (P1,000,000) or less, shall seize and distraint any goods, chattels or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property of such persons; in sufficient quantity to satisfy the tax, or charge, together with any increment thereto incident to delinquency, and the expenses of the distraint and the cost of the subsequent sale.
...
(B) Levy on Real Property. - After the expiration of the time required to pay the delinquent tax or delinquent revenue as prescribed in this Section, real property may be levied upon, before simultaneously or after the distraint of personal property belonging to the delinquent. To this end, any internal revenue officer designated by the Commissioner or his duly authorized representative shall prepare a duly authenticated certificate showing the name of the taxpayer and the amounts of the tax and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines.

Levy shall be affected by writing upon said certificate a description of the property upon which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the Register of Deeds for the province or city where the property is located and upon the delinquent taxpayer, or if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question.
...

62 **Section 208.** *Procedure for Distraint and Garnishment.* - The officer serving the warrant of distraint shall make or cause to be made an account of the goods, chattels, effects or other personal property distrained, a copy of which, signed by himself, shall be left either with the owner or person from whose possession such goods, chattels, or effects or other personal property were taken, or at the dwelling or place of business of such person and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale.
...
Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall tun over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government.

commands that appeal thereon must be taken by the aggrieved party within thirty (30) days from receipt thereof:

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
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> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ....
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> ...[63]

On January 31, 2020, petitioner received RDO Cruz Jr.'s WDL dated January 28, 2020.[64] Counting thirty (30) days from January 31, 2020, petitioner had until March 2, 2020[65] to seek judicial recourse. Therefore, the timely filing of the Petition for Review[66] on March 2, 2020, endowed Us with jurisdiction over CTA Case No. 10264.

We now address the merits of CTA Case No. 10264.

First. Petitioner may not avail the defense of prescription regarding the BIR's right to assess internal revenue taxes for TY 2014.

True, Section 203 of the NIRC, as amended, mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three (3)-year prescriptive period is no longer valid and effective.[67]

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63 Boldfacing supplied.
64 *Supra* note 22.
65 The 30th day, *i.e.*, March 1, 2020, for petitioner to take an appeal fell on a Sunday.
66 *Supra* note 1.
67 See *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

Yet, *AFP General Insurance Corporation v. Commissioner of Internal Revenue (AGIC)*[68] pointed out that to properly claim the defense of prescription of assessment of internal revenue taxes, the taxpayer is required to present as evidence, the pertinent tax returns for the concerned periods:

> Prescription is a matter of defense. The taxpayer has the burden of proving that the prescriptive period has lapsed, including positively identifying when the prescriptive period began to run and exactly when it expired. Consequently, [the taxpayer] cannot avail itself of the defense of prescription inasmuch as they failed to present proof of actual filing of their DST returns.

Petitioner's 2014 Annual Income Tax Return, Quarterly VAT Returns, and EWT Returns were not offered, [69] much more, considered[70] as her evidence. Following *AGIC*, petitioner is precluded from invoking prescription of the 2014 internal revenue tax assessments.

Second. Respondent may not collect from petitioner the assessed deficiency IT, VAT, EWT, and CP for TY 2014, in the total amount of ₱19,426,405.22, inclusive of interest. The reason—no valid final assessment was issued by the BIR to petitioner for TY 2014. Section 228 of the NIRC, as amended, provides:

> SEC. 228. *Protesting of Assessment. —* ...
>
> ...
>
> **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.**
>
> ...[71]

Indeed, a valid assessment is one which sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the

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68 G.R. No. 222133, November 4, 2020.
69 See Formal Offer of Documentary Exhibits [For the Petitioner]. *Supra* note 42.
70 Resolution dated March 1, 2024. *Supra* note 43.
71 Boldfacing supplied.

assessment and adduce supporting evidence in its behalf.[72] Precisely, due process requires that it must be served on and received by the taxpayer.[73] Any deficiency to the mandated content of the assessment or its process will not be tolerated.[74]

Petitioner claims that her non-receipt of the FLD/FAN precluded her from protesting the same, offensive of her right to due process. Respondent says otherwise, contending that the FLD/FAN was served through registered mail at petitioner's address.

We find for petitioner.

When a BIR notice, such as the FLD/FAN, was served *through* registered mail, it is ordinarily presumed that the taxpayer, such as petitioner, received the FLD/FAN in the ordinary course of mail.[75] However, petitioner denied[76] receipt thereof; thus, the BIR is tasked to prove actual receipt of the FLD/FAN by petitioner or her duly authorized representative. *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc. (GJM)*[77] is explicit:

> 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.
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry**

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

73 *Commissioner of Internal Revenue v. Menguito,* G.R. No. 167560, September 17, 2008.

74 *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.,* G.R. No. 215534, April 18, 2016.

75 The facts to be proved to raise this presumption under Section 3(v), Rule 131 of the Rules of Court are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. See *Nava v. Commissioner of Internal Revenue,* G.R. No. L-19470, January 30, 1965.

76 Answer to Question No. 18, Judicial Affidavit of Shirley Tan Festin dated October 30, 2020. Exhibits "P-10" and "P-10-a." *Id.* at pp. 401-416.

77 G.R. No. 202695, February 29, 2016.

> **return card which would have been signed by the taxpayer or its authorized representative.** And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. ...[78]

Respondent failed to meet the benchmark of proof in *GJM*. To be precise, RO Ramirez openly acknowledged that the BIR Records contained no proof of service of the mailed FLD/FAN to petitioner:

REDIRECT EXAMINATION OF WITNESS REVENUE OFFICER MARGIE RAMIREZ

...

Justice Fajardo:	Ms. Witness, you mentioned that there is a, in the BIR records[,] a proof of the service of the formal letter of demand?
A:	Yes, Your Honor.
Justice Fajardo:	Can you show that to us? Was that marked at the, did you submit that in the marking of the?
Atty. Cay-an:	No, Your [Honor].
Justice Fajardo:	Do you have a record of that?
A:	We have the record, Your [Honor].
Justice Fajardo:	Can you show us? Can you flash it?
Atty. Cay-an:	We have not found it yet, Your Honors. The service pertains only to the FDDA.
Justice Fajardo:	Ms. Witness?
	Did you see it?
A:	Service of FDDA.
Justice Fajardo:	**But there is no service of the formal letter of demand?**

[78] Emphasis added.

A: **I cannot see it in the BIR records, Your Honors.**

...[79]

It means that the BIR failed to prove that the FLD/FAN was duly served through registered mail, and actually received by petitioner, thereby yielding two (2) conclusions, namely: *one,* petitioner's right to due process, guaranteed under Section 228 of the NIRC, as amended was violated;[80] and *two,* no valid final assessment was issued by the BIR on petitioner.[81] At this juncture, We ought to remind respondent of the following dictum in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*:[82]

> The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.

Sans a valid final assessment for TY 2014, the WDL dated January 28, 2020 and WOG issued and enforced on petitioner to collect internal revenue taxes for said year are likewise null. To stress, a void assessment bears no valid fruit.[83]

Third. Notwithstanding the above findings, petitioner is not entitled to the issuance of a TC for year 2020.

Item 3.4 of Revenue Regulations (RR) No. 1-2016[84] defines Tax Clearance in the following manner:

> 3.4 Tax Clearance

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79 Pages 16-17, Transcript of Stenographic Notes on the hearing held on March 13, 2024. Boldfacing ours.

80 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, supra* note 72.

81 *Commissioner of Internal Revenue v. Bank of the Philippine Islands,* G.R. No. 224327, June 11, 2018.

82 G.R. No. 215957, November 9, 2016.

83 *Commissioner of Internal Revenue v. Unioil Corporation,* G.R. No. 204405, August 4, 2021.

84 SUBJECT: Amending Certain Provisions of Revenue Regulations No. 3-2005.

> *Refers to the clearance issued by the Accounts Receivable Monitoring Division (ARMD) (formerly Collection Enforcement Division) attesting that the taxpayer has no delinquent account and has satisfied all other criteria for the issuance of Tax Clearance as prescribed under 4.4.2 hereof.*[85]

Before the issuance of a TC may be had, the applicant must satisfy ***all*** the criteria set forth in item 4.4.2 of RR No. 1-2016, providing as follows:

> 4.4.2 *Tax Clearance, with a validity period of six (6) months from the date of issuance shall be issued to any applicant who has satisfied the following criteria:*
>
> a. *no unpaid annual registration fee;*
>
> b. *no open valid "stop-filer" cases;*
>
> c. *a regular user of the BIR's Electronic Filing and Payment System (eFPS) for at least two (2) consecutive months prior to the application for Tax Clearance;*
>
> *The required two (2) consecutive months usage of eFPS shall only apply to new applicants. For those which were previously issued Tax Clearance for bidding purposes, the requested Tax Clearance shall only be issued if they are found to be regular eFPS users from the time of enrollment up to the time of application.*
>
> *d. no pending criminal charge with the Department of Justice or any competent court; and*
>
> e. *no delinquent account and/or judicially protested tax assessments with decision favorable to the BIR.*
>
> *For purposes of this regulations, delinquent account shall refer to the outstanding tax liabilities arising from either self-assessed taxes (i.e., unpaid second installment of income tax due per income tax return*

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85 Italics in the original.

filed, unredeemed dishonored check, tax payments using expired Tax Debit Memo and any unpaid tax due as declared in the tax return filed) or a result of an audit or third party information thru the issuance of an assessment notice which was not protested within the prescribed period.

Tax assessments timely protested administratively pursuant to the provisions of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2014 and/or elevated to the Court of Tax Appeals (CTA) or to higher court within the prescribed period, and where the collection of the assessments are not yet considered final, executory and demandable, shall not be considered delinquent account. Timeliness in the filing of the administrative protest and/or the elevation of the case to the competent court must be certified by the handling office (i.e., Regional Legal Divisions, Litigation Division, Appellate Division); thus, this certification shall form part of the documentary requirements in the filing of an application for Tax Clearance.

However, indiscriminate filing of appeals to the CTA or with the higher court after the assessment has already become final, executory and demandable, is considered frivolous and dilatory in nature; and the same shall not be considered as timely filed. Hence, the concerned handling office should exercise prudence and due diligence in the issuance of the aforesaid required certification.

Applicants with tax assessments which were timely judicially protested but already covered by an earlier court decision favorable to the BIR and the same are subject of appeals or motions for reconsideration timely filed by the taxpayers, shall be issued Tax Clearance, provided an escrow deposit shall be made with any authorized agent bank equivalent to the tax liabilities being protested. However, for pending cases with the higher court which were covered by a decision in favor of the taxpayer, there is no need for the applicant to make an escrow deposit.

...[86]

Following Item 3.4, in relation to Item 4.4.2 of RR No. 1-2016, petitioner erred in requesting a TC from RDO Cruz, Jr. since it is the BIR-ARMD who is authorized to issue such certificate. Her evidence, too, failed to show that she already paid all her registration fees. In addition, no proof was adduced, demonstrating that her "stop-filer" cases, if any, were already closed and terminated. Petitioner likewise failed to demonstrate that she has no pending criminal charge before the Department of Justice, or any competent court. These findings justify the non-issuance of a TC for year 2020 in favor of petitioner.

WHEREFORE, We **RESOLVE** to:

a. **GRANT** the Petition for Review dated March 2, 2020;

b. **NULLIFY** and **LIFT** the Warrant of Distraint and/or Levy dated January 28, 2020 and Warrants of Garnishment, pertinent to the 2014 deficiency internal revenue taxes, and corresponding increments, for being fruits of a void assessment;

c. **PROHIBIT** the Commissioner of Internal Revenue, his agents, or other persons acting on his behalf from collecting on Shirley Tan Festin, the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, and Miscellaneous Charges in the total amount of ₱19,426,405.22, inclusive of interest, covering Taxable Year 2014; and

d. **DENY** the Supplemental Petition for Review dated October 20, 2020, for lack of merit.

SO ORDERED.

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

86 Italics in the original.

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

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

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice