REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2821** (CTA Case No. 10043)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
GREENLEE CP ELECTRICAL CORP., Respondent.	Promulgated: SEP 19 2024 3:17 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking to reverse and set aside the Decision dated June 21, 2023[1] and Resolution dated October 13, 2023[2] of the Court of Tax Appeals First Division ("First Division"), cancelling and setting aside the Warrant of Garnishment dated September 17, 2018, Assessment Notice No. 34-14-IT-18-144, Assessment Notice No. 34-14-MC-18-144 (IT), Assessment Notice No. 34-14-VT-18-145, Assessment Notice No. 34-14-MC-18-145 (VT), Assessment Notice No. 34-14-WE-18-146, Assessment Notice No. 34-14-MC-18-146 (WE), Assessment Notice No. 34-14-WR-18-147, Assessment Notice No. 34-14-MC-18-147 (WR), Assessment

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1 Penned by Presiding Justice Roman G. Del Rosario with Associate Justices Catherine T. Manahan and Marian Ivy F. Reyes-Fajardo concurring; Division Docket, pp. 382-400.

2 *Id.*, pp. 428-432.

Notice No. 34-14-DS-18-148, Assessment Notice No. 34-14-MC-18-148 (DS), and Formal Letter of Demand with Details of Discrepancies, all dated January 12, 2018, for being void *ab initio*.

The Parties

Petitioner is the Commissioner of the Bureau of Internal Revenue ("BIR"), the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees and charges.[3]

Respondent Greenlee CP Electrical Corp. is a domestic corporation duly organized and existing under and by virtue of Philippine Laws, with registered address at 2144 Pedro Gil St., Sta. Ana, Manila.[4]

The Facts

The facts as found by the First Division are as follows:

> "On September 21, 2015, [Respondent] received the Letter of Authority (LOA) No. SN: eLA201200043239 (LOA-034-2015-00000178) dated September 17, 2015 and the Checklist of Requirements dated September 18, 2015.
>
> On October 15, 2015, [Respondent] received the Second and Final Request for the Presentation of Records dated October 13, 2015.
>
> On December 27, 2017, [Petitioner] issued a Preliminary Assessment Notice (PAN) against [Respondent] for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), fringe benefit tax (FBT), and documentary stamp tax (DST).
>
> On January 12, 2018, [Petitioner] issued against [Respondent] a Formal Letter of Demand with Details of Discrepancies, Assessment Notice No. 34-14-1T-18-144, Assessment Notice No. 34-14-MC-18-144 (IT), Assessment Notice No. 34-14-VT-18-145, Assessment Notice No. 34-14-MC-18-145 (VT), Assessment Notice No. 34-14-WE-18-146, Assessment Notice No. 34-14-MC-18-146 (WE), Assessment Notice No. 34-14-WR-18-147, Assessment Notice No. 34-14-MC-18-147 (WR), Assessment Notice No. 34-14-DS-18-148, and

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3 Division Docket, Petition for Review, Parties, p. 7.

4 *Id.*

> Assessment Notice No. 34-14-MC-18-148 (DS) (collectively, 'FLD/FAN') for deficiency IT, VAT, EWT, FBT, DST and compromise penalties.
>
> [Petitioner] issued to [Respondent] a Warrant of Garnishment dated September 17, 2018 and served it to the Bank of the Philippine Islands (BPI).
>
> On January 31, 2019, the Directors of [Respondent] allegedly learned from BPI that a Warrant of Garnishment against petitioner was served to BPI."[5]

The Proceedings in the First Division

On March 04, 2019, Petitioner filed a "Petition for Review" with the court *a quo*.[6]

On June 21, 2023, the First Division promulgated the Assailed Decision, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed on March 4, 2019 by [Respondent] Greenlee CP Electrical Corp. is **GRANTED**. Accordingly, the Warrant of Garnishment dated September 17, 2018, Assessment Notice No. 34-14-IT-18-144, Assessment Notice No. 34-14-MC-18-144 (IT), Assessment Notice No. 34-14-VT-18-145, Assessment Notice No. 34-14-MC-18-145 (VT), Assessment Notice No. 34-14-WE-18-146, Assessment Notice No. 34-14-MC-18-146 (WE), Assessment Notice No. 34-14-WR-18-147, Assessment Notice No. 34-14-MC-18-147 (WR), Assessment Notice No. 34-14-DS-18-148, Assessment Notice No. 34-14-MC-18-148 (DS), and Formal Letter of Demand with Details of Discrepancies, all dated January 12, 2018 are **CANCELLED** and **SET ASIDE** for being void *ab initio.*
>
> The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from taking any further action against [Respondent] Greenlee CP Electrical Corp. arising from Assessment Notice No. 34-14-IT-18-144, Assessment Notice No. 34-14-MC-18-144 (IT), Assessment Notice No. 34-14-VT-18-145, Assessment Notice No. 34-14-MC-18-145 (VT), Assessment Notice No. 34-14-WE-18-146, Assessment Notice No. 34-14-

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5 Division Docket, Decision dated June 21, 2023, The Facts, pp. 383-384.
6 *Id.*, pp. 10-17.

> MC-18-146 (WE), Assessment Notice No. 34-14-WR-18-147, Assessment Notice No. 34-14-MC-18-147 (WR), Assessment Notice No. 34-14-DS-18-148, Assessment Notice No. 34-14-MC-18-148 (DS), and Formal Letter of Demand with Details of Discrepancies, all dated January 12, 2018. This judgment is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.
>
> **SO ORDERED.**"[7]

Aggrieved, Petitioner filed a "Motion for Reconsideration (Re: Decision dated June 21, 2023)"[8] on July 12, 2023, which the First Division denied in the Assailed Resolution, to wit:

> "**WHEREFORE**, premises considered, [Petitioner's] **Motion for Reconsideration (Re: Decision dated June 21, 2023)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[9]

The Proceedings in the Court of Tax Appeals En Banc

On November 07, 2023, Petitioner filed *via* registered mail an "Urgent Motion for Extension of Time to File Petition for Review"[10], which was granted in a Minute Resolution[11] dated November 17, 2023.

On November 20, 2023, Petitioner filed the present "Petition for Review"[12].

On December 12, 2023, a Minute Resolution[13] was issued directing Respondent to comment on the "Petition for Review" within ten (10) days from notice.

On January 22, 2024, Respondent filed its "Comment to Petition for Review"[14] *via* accredited courier.

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7 *Id.*, Decision dated June 21, 2023, pp. 398-399.
8 *Id.*, pp. 401-413.
9 *Id.*, Resolution dated October 13, 2023, p. 432.
10 Rollo, pp. 1-5. Record shows that Petitioner received the October 13, 2023 Resolution on October 23, 2023; Docket, p. 427.
11 *Id.*, p. 5.
12 *Id.*, pp. 6-22.
13 *Id.*, p. 59.
14 *Id.*, pp. 60-81.

The Court then issued a Minute Resolution[15] on February 01, 2024 noting the "Comment to Petition for Review" and submitting the instant case for decision.

Assignment of Error

Petitioner essentially raises a single ground in support of its petition, that is, the Court in Division erred in granting the Petition for Review filed by Respondent and cancelling and setting aside the Warrant of Garnishment dated September 17, 2018, and assessment notices and its corresponding Formal Letter of Demand ("FLD") with Details of Discrepancies, all dated January 12, 2018.[16]

The Arguments of Parties

First, Petitioner posits that the First Division has no jurisdiction over the original petition. This is because Respondent failed to file a valid protest, and the assessment has now become final and unappealable.

Petitioner also points out that assuming for the sake of argument that the case does not involve an undisputed assessment, the court *a quo* still erred in taking cognizance of the original petition for it was insufficient in form. According to Petitioner, it was not the directors of Respondent who gave authority to Mr. Charles C. Yao to sign the original Petition for Review but a certain Greenlee Facility Solutions, Inc. Such fatal and substantial defect cannot be cured by a mere subsequent submission.

Additionally, Petitioner contends that assuming further that the original petition is sufficient in form, Respondent failed to adduce and offer pieces of evidence which will invalidate the assessments made against it. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue ("CIR") is wrong but also that the taxpayer is right.

Lastly, Petitioner avers that Court in Division erred in ruling that Respondent was not accorded due process.

On the other hand, Respondent in its "Comment to Petition for Review" maintains that the First Division has jurisdiction to determine the validity of the Warrant of Garnishment subject of the present case.

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[15] *Id.*, p. 72.
[16] *See* Rollo, Petition for Review, Grounds for the Petition, p. 9.

Respondent further submits that the Certification and Verification against Forum Shopping signed by Mr. Charles C. Yao attached to the original petition was deemed as substantial compliance as his authority to sign was ratified and confirmed by Respondent upon submission of the Secretary's Certificate.

Finally, Respondent stresses that it never received any of the alleged Preliminary Assessment Notice ("PAN") and/or FLD. It only received a copy of the Warrant of Garnishment after the same was served upon its bank, Bank of the Philippine Islands ("BPI") on January 31, 2019.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration (Re: Decision dated June 21, 2023)" on October 13, 2023. Petitioner received said Resolution on October 23, 2023.[17] Pursuant to Rule 4, Section 2(a)(1)[18] in relation to Rule 8, Section 3(b)[19] of the Revised Rules of the Court of Tax Appeals[20] (RRCTA), Petitioner had fifteen (15) days from the date of receipt of the resolution or until November 07, 2023 within which to file his petition for review.

On November 07, 2023, Petitioner filed *via* registered mail an "Urgent Motion for Extension of Time to File Petition for Review"[21], praying for an extension of fifteen (15) days or until November 22, 2023 within which to file

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[17] Docket, p. 427.

[18] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> xxx xxx xxx
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[19] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[20] A.M. No. 05-11-07-CTA, November 22, 2005.

[21] Rollo, pp. 1-5.

the petition. The same was granted in a Minute Resolution[22] dated November 17, 2023.

On November 20, 2023, Petitioner timely filed the present "Petition for Review"[23]. Hence, the Court *En Banc* validly acquired jurisdiction over the case.

We now proceed to the merits of the case.

The Court in Division properly exercised jurisdiction over the case

Basic is the rule that before any court decides a case on its merits, it must first make sure that it has jurisdiction over it. Jurisdiction is defined as the power and authority to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter.[24]

Petitioner alleges that the First Division has no jurisdiction over the original petition.

Petitioner insists that it is only when there has been assessment and a protest on such assessment can there be a decision on disputed assessment which can be cognizable by this Court. Also, assuming without conceding that the case does involve a disputed assessment, the submission of an incorrect Secretary's Certificate was fatal and cannot be cured by a mere subsequent submission.

The Court disagrees on both points.

Initially, the argument of Petitioner regarding disputed assessment must fail in light of Section 7(a)(1) of Republic Act ("RA") No. 1125,[25] as amended by RA No. 9282,[26] which confers upon this Court the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the National Internal Revenue Code ("NIRC") of 1997, as amended:

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22 *Id.*, p. 5.
23 *Id.*, pp. 6-22.
24 *Perfecto Velasquez, Jr. v. Lisondra Land Incorporated, Represented by Edwin L. Lisondra*, G.R. No. 231290, August 27, 2020.
25 An Act Creating The Court Of Tax Appeals.
26 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes.

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
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> (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**"[27]

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*[28], the Supreme Court reiterated that the exclusive appellate jurisdiction of the Court of Tax Appeals Division is not limited to cases involving decisions of the Commissioner of Internal Revenue or matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC of 1997, as amended, or related laws administered by the BIR. Simply put, the determination of the validity of a warrant, either a warrant of distraint and levy or a warrant of garnishment, is under the jurisdiction of the Court of Tax Appeals.

In this regard, Section 11 of RA No. 1125, as amended by RA No. 9282, provides that a taxpayer aggrieved by a decision of the Commissioner of Internal Revenue, has thirty (30) days to file an appeal with the Court of Tax Appeals from the receipt of the said decision, *viz*:

> "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**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **<u>may file an appeal with the CTA within thirty (30) days after the receipt of such decision</u>** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[29]

In cases where the validity of a warrant of garnishment is put in question, the thirty-day period under Section 11 of RA No. 1125, as amended shall be reckoned from the taxpayer's receipt of the warrant of garnishment.

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[27] *Emphasis supplied.*

[28] G.R. No. 255473, February 13, 2023 *citing Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852,* December 16, 2004.

[29] *Emphasis and underscoring supplied.*

This is because said warrant directs the bank to seize the taxpayer's bank account to settle the BIR's assessment.

In the case at bar, Petitioner alleged in the "Petition for Review" that it was informed by BPI on January 31, 2019 that a Warrant of Garnishment dated September 17, 2018 was received by the bank.[30] This date was not disproved by Respondent during cross-examination or through presentation of contrary evidence. Accordingly, We shall count the thirty (30) days from January 31, 2019. Petitioner had until March 02, 2019 within which to file its appeal before the Court. March 02, 2019 however fell on a Saturday; hence, Petitioner had until March 04, 2019 within which to file its petition. Therefore, the "Petition for Review" was timely filed on March 04, 2019.

Regarding Petitioner's argument on the Secretary's Certificate, suffice it so say that the First Division did not err in taking cognizance of the petition, and validly exercised its jurisdiction.

Admittedly, the original Secretary's Certificate[31] attached to the "Petition for Review" authorizing Charles C. Yao to sign the Verification with Certification of Non-Forum Shopping was issued by the corporate secretary of a certain Greenlee Facility Solutions, Inc. and not by Respondent. Nonetheless, Respondent submitted another Secretary's Certificate[32] this time issued by its corporate secretary. This is considered substantial compliance with the Rules of Court and is allowed by jurisprudence.

Particularly in *Heirs of Dionisio Deloy v. Verna R. Basa-Joaquin*[33], the Supreme Court allowed the belated submission of the proof of authority to sign the verification and certification against forum shopping and considered it substantial compliance, to wit:

> "There is no question that respondents submitted a Verification and Certification Against Forum Shopping. However, Heirs of Spouses Deloy assail the lack of authority of the persons who signed it. Maurino signed the Verification and Certification for Verna; while Angelita signed it for Heirs of Spouses Del Rosario and Heirs of Maxima. Verna attached a photocopy of the SPA that she executed together with the Acknowledgment issued by the Consulate General of the Philippines in San Francisco, California. She submitted the original copy thereof when she filed her formal offer of evidence. As for Heirs of Spouses Del Rosario and Maxima, they submitted the original copy of the SPAs in favor of Angelita when they formally offered their evidence.

[30] Docket, Petition for Review, Brief Statement of Facts with Statement of Material Dates, par. 7, p. 11.
[31] *Id.*, p. 18.
[32] *Id.*, p. 135.
[33] G.R. No. 241841, November 28, 2022.

> The Court has ruled that the belated submission of the proof of authority to sign the verification and certification against forum shopping is substantial compliance with the requirement under the Rules of Court. **Accordingly, respondents' belated submission of the original copies of the SPA proving that Maurino and Angelita were authorized to sign respondents' Verification and Certification Against Forum Shopping is not fatal to their cause**.
>
> In any case, the Court stresses that **the rules on verification and forum shopping should not be interpreted with such absolute literalness as to subvert their own ultimate and legitimate objectives of promoting and facilitating the orderly administration of justice**.
>
> In the recent case of Torres v. Republic, the Court clarified that 'the requirement of strict compliance with the provisions on certification against forum shopping merely underscores its mandatory nature to the effect that the certification cannot altogether be dispensed with or its requirements completely disregarded.'"[34]

Having confirmed the First Division's jurisdiction over the original petition, We now proceed to Petitioner's remaining contentions.

The Court in Division correctly cancelled the assessments

The requirement of informing the taxpayer of the assessment is **mandatory** in nature as provided in Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations ("RR") No. 12-99[35], as amended by RR No. 18-13[36], the pertinent portions of which are quoted hereunder for ready reference:

> "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

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[34] *Emphasis and underscoring supplied.*

[35] 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, September 06, 1999.

[36] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

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.

xxx xxx xxx"[37]

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *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** (see illustration in ANNEX 'A' hereof).

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

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

xxx xxx xxx

37 *Emphasis supplied.*

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void** (see illustration in ANNEX 'B' hereof).

3.1.4 Disputed Assessment. — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows: xxx"[38]

Based on the foregoing provisions, part of the due process requirement in the issuance of a deficiency tax assessment is the – (a) issuance of the PAN and FLD, stating the facts and the law upon which the assessment was made, and (b) the sending of the PAN and FLD by Respondent and the receipt thereof by the taxpayer.

In the instant case, the PAN and FLD were allegedly sent to Respondent through registered mail. However, receipt thereof by Respondent was not established. Much more, it was denied by Respondent. Note that the fact of mailing is not synonymous to receipt.

After a careful scrutiny of the records, the Court finds that there was no valid service of the PAN and FLD to Respondent in this case.

Let it be stressed that it is imperative for Petitioner to satisfactorily prove the release, mailing or sending of the assessment. This was the pronouncement of the Supreme Court in the case of *Barcelon, Roxas Securities Inc. v. Commissioner of Internal Revenue*,[39] citing the case of *Nava v. Commissioner of Internal Revenue*,[40] the pertinent portion of which reads:

"While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, **this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved.** Mere notations made without the taxpayer's intervention, notice or control, without adequate

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[38] *Emphasis supplied.*
[39] G.R. No. 157064, August 7, 2006.
[40] G.R. No. L-19470, January 30, 1965.

> supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense."[41]

Also, it must be noted that Section 3(v) of Rule 131 of the Rules of Civil Procedure provides that "a letter duly directed and mailed **is deemed received** in the regular course of the mail". The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proven, 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.

On this matter, Petitioner's witness, Benhur C. Nacorda of the Administrative Division of BIR Revenue Region No. 6 Manila City, testified that their office sent the PAN and FLD to Respondent thru registered mail.[42] As proof thereof, Petitioner presented Registry Receipt No. RD 780 623 995 ZZ[43] for the PAN and Registry Receipt No. 18[44] for the FLD.

Thus, Petitioner was able to establish the said presumption. And yet, the same is merely disputable.

In the case of *Republic of the Philippines v. The Court of Appeals and Nielson & Co., Inc.*[45] and in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[46], the Supreme Court held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

Respondent denied receiving the PAN and FLD in its "Petition for Review" filed before the Court in Division. Since there is a direct denial of the receipt of the PAN and FLD, the said denial shifts the burden upon Petitioner to prove that the mailed PAN and FLD were indeed received by Respondent.

However, a scrutiny of the pieces of evidence presented by Petitioner reveals that the same are insufficient to prove that the PAN and FLD were indeed received by Respondent in accordance with pertinent jurisprudence.

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[41] *Emphasis supplied.*
[42] Docket, Amended Judicial Affidavit of Benhur Nacorda (Exhibit "R-7") and Notice of Hearing dated June 02, 2022, pp. 294-298 and 325-327.
[43] *Id.*, Exhibit "R-2-a", p. 303.
[44] *Id.*, Exhibit "R-3-k", p. 321.
[45] G.R. No. L-38540, April 30, 1987.
[46] G.R. No. 157064, August 07, 2006.

In the recent case of *Commissioner of Internal Revenue vs. Arturo E. Villanueva, Jr.*[47], the Supreme Court reiterated the rule that mere presentation of the registry receipts does not automatically prove actual receipt by the taxpayer. Otherwise stated, other evidence must be presented to prove that notice by mail was served on the addressee or a duly authorized agent of the addressee –

> "Indeed, as ruled in T Shuttle, mere presentation by the CIR of the registry receipts does not automatically prove actual receipt by the taxpayer. It must be clearly shown that the assessment notices were properly served to and received by only the taxpayer or his or her duly authorized representative. This exacting standard guarantees the due process mandate that the taxpayer be informed of the basis of the assessment."[48]

In the case at bar however, the court *a quo* found that Petitioner's witnesses admitted that there were no registry return cards both for the PAN and FLD, *viz.*:

> "Notably, the registry return cards of the notices sent to petitioner through registered mail, which could prove receipt of the notices, were not presented and offered in evidence by respondent.
>
> In fact, [Petitioner's] witness, RO Vilar, in answering clarificatory questions from the Court, admitted that there was no registry return card for the PAN dated December 27, 2017, to wit:
>
> 'JUSTICE DEL ROSARIO:
>
> Yes, Kindly talk directly to the microphone. I can hardly hear you.
>
> MR. VILLAR:
>
> Yes, you Honors.
>
> So, you check the record, and based on the record, is there any document showing actual receipt by the petitioner of the Preliminary Assessment Notice?
>
> (At this juncture, the witness is perusing the BIR record)
>
> MR. VILLAR:

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47 G.R. No. 249540, February 28, 2024.

48 *Emphasis supplied.*

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

JUSTICE DEL ROSARIO:

Is there a registry receipt there?

MR. VILLAR:

There is none, your Honors.

JUSTICE DEL ROSARIO:

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

MR. VILLAR:

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

JUSTICE DEL ROSARIO:

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

MR. VILLAR:

There is no return card, your Honors.'

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

'CROSS-EXAMINATION BY ATTY. TONY ROBERTS G. MORENO

ATTY. MORENO

Q Mr. Witness, you mentioned in Question No. 10 of your Judicial Affidavit that the corresponding **Formal Letter of Demand with Details of Discrepancies dated January 12, 2018** was not returned by the Postmaster of the Manila Central Post Office to the BIR, do you confirm that?

MR. NACORDA

A Yes Sir.

ATTY. MORENO

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

MR. NACORDA

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

ATTY. MORENO

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

MR. NACORDA

A Yes Sir.

ATTY. MORENO

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

MR. NACORDA

A **Yes Sir.**"

Such being the case, the inevitable conclusion is that the PAN and FLD were not received by Petitioner.

Time and again, the Supreme Court held that it is a requirement of due process that the taxpayer must **actually receive the assessment**, to wit:

> ". . . the foregoing rule requires that the notice be sent *to the taxpayer*, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the

> notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer."[49]

Considering that Petitioner failed to discharge the burden of proving that the PAN and FLD were actually received by Respondent or its duly authorized agent, the PAN and FLD are deemed to have not been issued by Petitioner.

This has two (2) consequences.

First, the assessment (specifically the FLD) cannot be final and unappealable for Respondent did not know that it was required to file a protest thereon.

And second, for failure of Petitioner to inform the taxpayer of the facts and the law on which the assessment was made through the valid service of PAN and FLD as strictly required under the NIRC of 1997, as amended, there was a violation of due process and the subject assessment is void and of no legal effect.

It must be emphasized that a void assessment bears no valid fruit.[50] Such being the case, the Warrant of Garnishment, which seeks to implement the assessment, cannot be enforced against Petitioner.

Finding that the subject tax assessment is void, it is no longer necessary to address or resolve the other issues and arguments raised by the parties.

All in all, We see no reason to reverse the conclusion and ruling of the First Division.

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[49] *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*, G.R. No. 155541, January 27, 2004.

[50] Refer to Commissioner of Internal Revenue v. Reyes, G.R. Nos. 159694 and 163581, January 27, 2006.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on November 20, 2023 is **DENIED** for lack of merit. Accordingly, the Decision dated June 21, 2023 and Resolution dated October 13, 2023 in CTA Case No. 10043 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice