REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE ,
Petitioner,

- versus -

INTERVET PHILIPPINES, INC.,
Respondent.

CTA EB No. 1507
(CTA Case No. 8815)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

MAR 01 2018 3:37 p.m.

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue on September 6, 2016 against Intervet Philippines, Inc., praying for the reconsideration and setting aside of the Decision dated May 24, 2016[2] and the Resolution dated August 15, 2016[3], both rendered by the Second Division of this Court

[1] EB Docket, pp. 1 to 12.

[2] EB Docket, pp. 17 to 34; Ponencia of Associate Caesar A. Casanova, and concurred by Associate Justice Juanito C. Castañeda, Jr.; former Associate Justice Amelia R. Cotangco-Manalastas (now retired) was then on leave.

[3] The prayer for the setting aside of the Resolution dated August 15, 2016 is not included in the *Petitioner's Petition for Review* but is included in his *Memorandum* dated February 27, 2017; EB Docket, pp. 36 to 44. The ponente of the said Resolution is Associate Caesar A. Casanova, concurred by Associate Justice Juanito C. Castañeda, Jr. and former Associate Justice Amelia R. Cotangco-Manalastas (now retired).

(Court in Division) in CTA Case No. 8815, entitled *"Intervet Philippines, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

Decision dated May 24, 2016:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessments covering income tax, value added tax, expanded withholding tax, and compromise penalty in the total amount of ₱49,139,464.50, inclusive of interest, for taxable year 2006 is hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"

Resolution dated August 15, 2016:

> "**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (or Commissioner), vested by law with authority to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent, Intervet Philippines, Inc. (or Intervet), is a domestic corporation duly organized and registered under the laws of the Republic of the Philippines with principal office at the 43rd Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City, Metro Manila. It is engaged in the wholesale of animal health products and was a wholly owned subsidiary of a multinational corporation, Akzo Nobel Pharma International B.V., and was later acquired by Merck Sharp & Dohme, as subsidiary of Merck Sharp & Co., Inc., a corporation organized and domiciled in the United States of America.

On September 7, 2007, BIR Revenue District Office (RDO) No. 43- Pasig City issued *Letter of Authority* (LOA) No. 200700009224, authorizing the examination of all internal revenue taxes of respondent for taxable year 2006. The LOA indicated respondent's address at 3608 Robinsons Equitable Tower ADB Ave., Ortigas Center, Pasig City (Pasig City office).

Thereafter, in the *Memorandum* dated November 19, 2006, Revenue Officer II Mariano C. Boliche wrote to the Revenue District Officer of RDO No. 43 – Pasig City, that the said LOA No. 200700009224 remained unserved because the taxpayer vacated their place and moved to 8th Floor, Cyber One Building, Eastwood Ave., Eastwood City Cyberpark, Quezon City (Quezon City office). He recommended that said LOA be transmitted/indorsed to RDO No. 40, Quezon City.

Subsequently, on July 23, 2008, a *Certificate of Registration* (COR) was issued by BIR RDO No. 40 – Quezon City, reflecting the 8th Floor, Cyber One Building, Eastwood Ave., Eastwood City Cyberpark, Quezon City, as respondent's registered address.

Hence, on September 9, 2008, Revenue District Officer Rosemarie Ramos-Ragasa of RDO No. 40 – Quezon City, issued LOA No. 00040354, and also, a Final Notice, requesting respondent to present its accounting records. Both the LOA and Final Notice indicated that petitioner's address is at its Quezon City office. Accordingly, respondent presented additional documents and schedules pertaining to the assessment of its internal revenue taxes covering taxable year 2006.

Meanwhile, in a special meeting of respondent's Board of Directors held on September 24, 2008, a Resolution authorizing the transfer of respondent's business address from its Quezon City office to 12th Floor San Miguel Properties Centre, No. 7 St. Francis Street, Ortigas Center, Mandaluyong City (Mandaluyong City office), effective August 1, 2008, was adopted. A COR reflecting petitioner's Mandaluyong City office as its registered address was issued by BIR RDO No. 41 – Mandaluyong on January 22, 2009.

On September 15, 2009, petitioner issued a *Post Reporting Notice*, which was addressed to respondent's Pasig City office, summarizing the report of audit investigation under its previously issued LOA No. 00040354 dated September 9, 2008.

On December 28, 2009, petitioner issued a *Preliminary Assessment Notice* (PAN) against respondent. The PAN indicated the Pasig City office as respondent's address. Subsequently, on January 15, 2010 and April 22, 2010, petitioner issued a *Formal Letter of Demand* (FLD) and *Preliminary Collection Notice*, respectively, which were both addressed to respondent's Pasig City office. Then, on August 9, 2010, Regional Director Antonio F. Montemayor of Revenue Region No. 7 issued *Preliminary Collection Notices* to respondent, addressed to both its Mandaluyong City office and Quezon City office.

On August 25, 2010, petitioner issued a *Final Notice Before Seizure*, again addressed to both respondent's Mandaluyong City office and Quezon City office.

Meanwhile, respondent was acquired by Merck Sharp & Dohme, a subsidiary of Merck Sharp & Co., Inc., thereby prompting respondent to transfer its principal office at the 43rd Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City, Metro Manila (Makati City office).

Then, on September 20, 2011, respondent received by mail a *Preliminary Collection Letter* (PCL) dated August 31, 2011 issued by BIR RDO. No. 50 – South Makati, requesting respondent to pay an aggregate amount of ₱66,792,828.77, allegedly representing respondent's unpaid internal revenue tax liabilities under the FLD dated January 15, 2010.

On September 30, 2011, respondent wrote a letter to petitioner requesting for the cancellation of the collection letter and the tax assessments issued against it, arguing that there was no valid assessment notice and that petitioner's right to assess respondent has already prescribed. Respondent further argued that it properly notified petitioner of its change in address.

On October 20, 2011, respondent again wrote a letter to petitioner to prove that it has been compliant with its tax obligations and that it properly paid its tax liabilities for the year 2006. Respondent, however, noted that such letter does not signify its admission of the validity of the collection letter.

On January 6, 2012, respondent received by mail a *Final Demand Letter* dated January 3, 2012 from the Chief, Legal Division

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of Revenue Region No. 8 – Makati, directing respondent to appear before the Office of the Legal Division within three (3) days from its receipt thereof.

In the letter dated June 4, 2012, respondent reiterated its position in its September 30, 2011 letter, questioning the validity of the issuance of the assessment and collection notice.

Thus, on February 27, 2014, Revenue Officers Arlyn T. Corro, Agripina R. Vallestero, Antonio A. Cariaso, and Luisa M. Labad filed a Joint Complaint-Affidavit against respondent, and its President and General Manager, Dr. Cesar Policarpio, for willful failure to pay taxes for taxable year 2006, in violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended. Accordingly, an Information was filed against respondent, and on March 11, 2014, a subpoena was issued against Dr. Cesar Policarpio.

Respondent considered the referral letter it received on April 8, 2014 as constructive denial of its protests dated September 30, 2011 and October 20, 2011.

CTA CASE NO. 8815

Hence, on May 6, 2014, herein respondent (Intervet) filed a *Petition for Review* before the Second Division of this Court docketed as CTA Case No. 8815, entitled *"Intervet Philippines, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent"*, praying for the declaration of nullity of the subject FLD and assessment notices, and the cancellation thereof.

In the *Answer* filed on June 23, 2014, herein petitioner (Commissioner), as the respondent in said case, interposed Special and Affirmative defenses, which included, among others, the defense that the Court in division lacks jurisdiction because the FLD and FAN have already become final, executory and demandable, due to the failure of respondent to submit the required documents within sixty (60) days from the filing of the protest.

According to the Commissioner, Intervet must prove that its protest to the FLD and FAN complied with the provisions of Section 228 of the NIRC of 1997, as amended, and Revenue Regulation (RR)

No. 12-99. Allegedly, a perusal of Intervet's protest to the FLD and FAN would show that it failed to comply with the parameters provided by RR No. 12-99; and that tax assessments by tax examiners are presumed correct and made in good faith. Thus, in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

Further, Intervet must also prove that it complied with the provisions of Revenue Memorandum Order No. 40-2004, as amended by Revenue Memorandum Order No. 11-2005 as to the requirements for the transfer of taxpayer's registration to another Revenue District Office within the BIR.

On July 1, 2014, Intervet filed its *Reply* stating, among others, that respondent received a copy of petitioner's Answer which allegedly contains a new theory and erroneous and misleading allegations and arguments, thus, it was constrained to file a Reply thereto. In said Reply, Intervet contends that its Petition for Review in CTA Case No. 8815 was filed due to the constructive denial of its protest to the deficiency income tax, value added tax and expanded withholding tax assessments for taxable year 2006, consisting of the following: the filing of a criminal complaint against Intervet and its former General Manager before the Department of Justice for alleged willful failure to pay taxes for taxable year 2006 in violation of Section 255 in relation to Section 256 of the National Internal Revenue Code of 1997. In the Criminal Complaint, the Commissioner alleges that the deficiency tax assessments for taxable year 2006 became final, executory and demandable based on the alleged failure of respondent to file a timely protest. However, the Commissioner, in his Answer, switched his argument and claims that this Court has no jurisdiction over the Petition for Review in CTA Case No. 8815.

Thereafter, pre-trial proceedings were held in CTA Case No. 8815 on September 25, 2014.[4] On October 15, 2014, the parties filed their *Joint Stipulation of Facts and Issues*[5], which was approved and adopted by the Court in Division in its Pre-Trial Order dated October 21 2014.[6] Thereafter, trial ensued.

Intervet presented as witnesses its Finance Controller, Ms. Estela B. Valenzuela, and the court-commissioned Independent

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[4] Minutes of Pre-trial Conference held on September 25, 2014, Division Docket, CTA Case No. 8815, Vol. I, p. 546
[5] Division Docket, CTA Case No. 8815, Vol. II, pp. 554-560
[6] Division Docket, CTA Case No. 8815, Vol. II, pp. 562-569

Certified Public Accountant (ICPA), Mr. Jerome Antonio B. Constantino. Intervet filed its *Formal Offer of Evidence* on December 19, 2014.[7] Upon resolution thereof [8], Intervet rested its case.

On the other hand, the Commissioner presented Revenue Officer Trinity J. De Leon-Rivera, as his sole witness during the hearing held on March 4, 2015.[9] Thereafter, the Commissioner filed his *Formal Offer of Documentary Evidence* on March 12, 2015[10] and the same was resolved in the Resolution dated April 30, 2015.[11]

As directed by the Court, the Commissioner filed his *Memorandum* on June 18, 2015, while Intervet filed its *Memorandum* on June 25, 2015. Accordingly, the case was then submitted for decision on June 30, 2015.

On May 24, 2016, the Second Division promulgated its Decision which granted the *Petition for Review*, and ruled that the assessment notices made by petitioner are void.[12] To reiterate, the dispositive portion of the said *Decision* states:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessments covering income tax, value added tax, expanded withholding tax, and compromise penalty in the total amount of ₱49,139,464.50, inclusive of interest, for taxable year 2006 is hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

The Commissioner filed a *Motion for Reconsideration* on June 9, 2016[13] while on July 1, 2016, Intervet filed its *Comment/Opposition (to Respondent's Motion for Reconsideration dated 9 June 2016)*.[14]

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[7] Division Docket, CTA Case No. 8815, Vol. II, pp. 722-746
[8] Resolutions dated February 24, 2015 and March 16, 2015, Division Docket, CTA Case No. 8815, Vol. II, pp. 771-773; 792-793, respectively.
[9] Minutes of the hearing held on March 4, 2015, Division Docket, CTA Case No. 8815, Vol. II, p. 786
[10] Division Docket, CTA Case No. 8815, Vol. II, pp. 787-791
[11] Division Docket, CTA Case No. 8815, Vol. II, pp. 799-800
[12] EB Docket, pp. 17 to 34; Division Docket (CTA Case No. 8815) – Vol. II, pp. 872 to 889.
[13] Division Docket (CTA Case No. 8815) – Vol. II, pp. 890 to 899.
[14] Division Docket (CTA Case No. 8815) – Vol. II, pp. 902 to 912.

In the assailed Resolution dated August 15, 2016, the Court in Division denied the Commissioner's *Motion for Reconsideration* for lack of merit.[15]

CTA EB CASE NO. 1507

On September 6, 2016, petitioner filed the instant *Petition for Review* before the Court *En Banc entitled "Commissioner of Internal Revenue, Petitioner, versus Intervet Philippines, Inc., Respondent" docketed as CTA EB Case No. 1507.*[16]

In the Resolution dated November 15, 2016, the Court *En Banc* ordered respondent to file its *Comment.*[17]

On December 9, 2016, respondent filed a *Motion for Additional Time to File Comment (To the Petition for Review).*[18] Consequently, the Court *En Banc* granted respondent a final and non-extendible period of ten (10) days from December 12, 2016, or until December 22, 2016.[19] Respondent filed its *Comment/Opposition (To The Petition for Review)* on December 20, 2016.[20]

Thereafter, the Court *En Banc*, gave due course to the instant *Petition for Review*, and required both parties to file their respective memoranda in the Resolution dated January 23, 2017.[21] Petitioner filed his *Memorandum* on February 27, 2017;[22] while respondent filed its *Memorandum* on March 3, 2017.[23] In the Resolution dated March 21, 2017,[24] the instant case was deemed submitted for decision.

Hence, this Decision.

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[15] EB Docket, pp. 36 to 44; Division Docket (CTA Case No. 8815) – Vol. II, pp. 914 to 922.
[16] EB Docket, pp. 1 to 12.
[17] EB Docket, pp. 56 to 57.
[18] EB Docket, pp. 58 to 60.
[19] Minute Resolution dated December 14, 2016; EB Docket, p. 63.
[20] EB Docket, pp. 64 to 73.
[21] EB Docket, pp. 77 to 78.
[22] EB Docket, pp. 79 to 88.
[23] EB Docket, pp. 90 to 107.
[24] EB Docket, pp. 111 to 112.

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THE ISSUE

A lone issue is raised by petitioner in its Memorandum, to wit:

> "Whether or not the Respondent is liable for deficiency Income Tax in the amount of PhP35,834,762.46, Value-Added Tax in the amount of PhP13,057,498.69, Expanded Withholding Tax in the amount of PhP226,203.35 and Compromise Penalty in the amount of PhP21,000.00 inclusive of interest for taxable year 2006."[25]

Moreover, in the instant *Petition for Review*, petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

> "24. The 2nd Division of this Honorable Court erred in ruling that Petitioner failed to prove that the Final Assessment Notice and Assessment Notice on Value-Added Tax and Income Tax were received by the Respondent.
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> 25. The 2nd Division of this Honorable Court had no jurisdiction to rule on the matter by reason of litis pendentia.
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> 26. The 2nd Division of this Honorable Court erred in retroactively applying Revenue Regulations No. 18-2013 in the instant case."[26]

Petitioner's arguments:

Petitioner argues that contrary to the ruling of the Court in Division, the PAN and FLD with Assessment Notices were actually mailed to the registered address of Respondent per the Integrated Tax System of Petitioner. He submits that it cannot personally serve the Final Assessment Notice since respondent vacated its registered address without informing petitioner. As such, petitioner had no recourse but to mail the notices.

According to petitioner, respondent failed to prove that it

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[25] Memorandum filed on February 27, 2017, EB Docket, pp. 79 to 88.
[26] EB Docket, p. 4.

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already transferred its business to another registered address in view of its failure to present the Application for Registration Information Update (BIR Form 1905) which must be duly received by the old RDO which in this case is RDO 40, Quezon City. According to petitioner, under RR No. 7-2012, in case of transfer of registration, respondent is required to furnish the old RDO with a copy of the prescribed BIR Form.

Petitioner further contends that the Court has no jurisdiction to rule on the matter by reason of *litis pendentia*. When the instant case was filed on May 21, 2014, there is already a pending criminal case before the Department of Justice (DOJ) entitled "*Bureau of Internal Revenue vs. Intervet Philippines, Inc.*", with NPS No. XVI-INV-14B-00054, which was filed on February 27, 2014. Allegedly, the parties involved are the same and the cases have the same causes of action such that the filing of the instant case has become unnecessary and vexatious.

Moreover, petitioner points out that the Court in Division erred in retroactively applying RR No. 18-2013, because the one in operation during the taxable year involved was RR No. 12-99. Considering that the taxable year involved is 2006, RR No. 18-2013 was not yet applicable.

Lastly, in his *Memorandum*, petitioner argues that the assessments have already become final, executory and demandable, due to respondent's failure to file its protest to the FLD and assessment notices.

Respondent's counter-arguments:

Respondent counters that the instant *Petition* is anchored on false, misleading, self-serving and malicious allegations which are contrary to the evidence on record.

The records are allegedly replete with evidence that petitioner mailed the PAN and FLD and Assessment Notices to respondent's old and invalid Pasig address despite the fact that Respondent had updated its registered address twice. According to respondent, petitioner issued the relevant COR reflecting the transfer of addresses. Allegedly, petitioner had actual knowledge of its Mandaluyong address as, in fact, the assigned Revenue Officers conducted the examination of the books of accounts of respondent and delivered the BIR letter dated 24 September 2009 and Post Reporting Notice dated 15 September 2009 at the Mandaluyong address.

Respondent further avers that its *Petition for Review* against the deficiency tax assessments may proceed separately and independently from the criminal case filed by petitioner against respondent.

Finally, anent petitioner's argument that RR No. 18-13 is not applicable, respondent submits that a reading of the provisions of RR No. 18-13 quoted in the Decision and the corresponding provisions of RR No. 12-99 would show no substantial change in said provisions.

THE COURT *EN BANC*'S RULING

The *Petition for Review* has no merit.

The Court in Division did not err in ruling that petitioner failed to prove that the PAN and the FLD/FAN were actually received by respondent.

In this case, petitioner claims that the FLD/FAN were sent to respondent's registered address, particularly to their Pasig address. On the other hand, respondent denies the receipt of PAN and the FLD/FAN, and stresses that petitioner should have sent the said notices to their Mandaluyong office, and not to the old and invalid address of their former Pasig office.

We disagree with petitioner.

Section 228 of the NIRC of 1997, as amended, lays down the procedure in the issuance of tax deficiency assessment, viz:

> "**SEC. 228.** ***Protesting of Assessment***. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a **preassessment notice shall <u>not</u> be required in the following cases**:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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" *(Emphasis supplied)*

To implement the foregoing provisions, RR No. 12-99 was issued which specifies the due process requirement to be observed in issuing deficiency tax assessments. Pertinent portions of Section 3 of the said RR reads:

"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:

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3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized

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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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing 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 assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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3.1.4 Formal Letter of Demand and Assessment Notice. — **The formal letter of demand and assessment notice <u>shall</u> be issued by the Commissioner or his duly authorized representative.** The letter of demand 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 formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). **<u>The same shall be sent to the taxpayer only by registered mail or by personal delivery.</u>** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." *(Emphasis and underscoring supplied)*

Based on the foregoing, if there exists sufficient basis to assess the taxpayer, the CIR or his authorized representative is mandated to issue a PAN. Thereafter, a formal letter of demand and an assessment notice shall be issued by the CIR or his duly authorized representative. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein. Thus, it is essential for petitioner to establish and prove that the requisite assessment notices were duly served to the taxpayer within the prescriptive period.

Further, in tax assessment, due process requires that the taxpayer must actually receive the assessment. The case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,*[27] is instructive, viz.:

> "**Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.** The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). . . .
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> xxx...What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative..." *(Emphasis supplied.)*

Applying the foregoing case, in instances that the taxpayer denies having received the assessment notices, it is incumbent upon petitioner to prove by competent evidence that the assessment notices were indeed received by the taxpayer.

In this case, however, petitioner failed to establish that the PAN, FLD with Assessment Notices were actually received by respondent.

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[27] G.R. No. 157064, August 7, 2006.

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Petitioner claims that the registered address of petitioner as shown in the Integrated Tax System is the address of its Pasig office, particularly at *"3608 Robinsons Equitable Tower, ADB Ave., cor. Poveda, Ortigas Center, Pasig City."* Hence, the PAN dated December 28, 2009[28], FLD dated January 15, 2010,[29] and the Assessment Notices dated January 15, 2010,[30] were all sent in respondent's Pasig office. He further insists that he was not duly informed that respondent had already transferred to its Mandaluyong office. Accordingly, he claims that the mailing of the notices is deemed constructive service considering the failure of petitioner to inform him of the change of its registered address.

Again, We disagree with petitioner.

Section 11 of RR No. 12-85[31] reads as follows:

> "SECTION 11. *Change of Address.* — **In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business,** the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, **and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.**" *(Emphasis supplied)*

Based on the foregoing provision, any taxpayer intending to change his address must give a written notice to the RDO having jurisdiction over his former legal residence and/or place of business; otherwise, any communication previously sent to the said former legal residence or place of business shall be considered valid and binding for purposes of the period within which to reply.

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[28] Exhibit "P-3-3", Division Docket (CTA Case No. 8815) – Vol. I, pp. 324 to 327.
[29] Exhibit "P-3-4", Division Docket (CTA Case No. 8815) – Vol. I, pp. 328 to 332.
[30] Exhibit "P-3-6" to P-3-9", Division Docket (CTA Case No. 8815) – Vol. I, pp. 333 to 336.
[31] SUBJECT: Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue.

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In this case, it is clear that respondent complied with the above-quoted provision, as shown in the following documents offered in evidence by respondent, to wit:

1. A letter dated November 28, 2008 executed by respondent's Accounting Supervisor, Ms. Rosalino R. Bueno, stamped received by RDO No. 40 on December 23, 2008, stating the transfer of respondent to RDO No. 41, Mandaluyong City.[32]

2. An accomplished BIR Form No. 1905, stamped received by RDO No. 40 on December 23, 2008, indicating the new registered address of respondent at *"12/F San Miguel Properties Centre, #7 St. Francis St. Ortigas Center, Mandaluyong City"*;[33]

3. Secretary's Certificate issued by respondent's corporate secretary, Jocelyn J. Gregorio-Reyes, stamped received by RDO No. 40 on December 23, 2008, stating the transfer of respondent's principal address to *"12th Floor, San Miguel Properties Centre, No. 7 St. Francis St. Ortigas Center, Mandaluyong City"*;[34]

4. *Transfer Commitment Form* executed by respondent's General Manager, Cezar Policarpio, stamped received by RDO No. 40 on December 23, 2008, indicating the new address of respondent *"12th Flr San Miguel Properties Centre, #7 St. Francis St. Ortigas Center, Mandaluyong City"* and its transfer to a new RDO;[35]

5. *Verification Slip for Transfer of Business Registration*, verified by the Chief Taxpayer Service Section of RDO No. 40 on December 23, 2008, showing respondent's address at "12th Flr San Miguel Properties Centre, #7 St. Francis St. Ortigas Center, Mandaluyong City";[36] and

6. Certificate of Registration No. OCN 3RC 0000422074 issued by RDO No. 41, showing a registered address at *"12/F SAN MIGUEL PROPERTIES CENTRE 7 ST FRANCIS ST*

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[32] Exhibit "P-3-22".
[33] Exhibit "P-3-23".
[34] Exhibit "P-3-25".
[35] Exhibit "P-3-28".
[36] Exhibit "P-3-29".

ORTIGAS CENTER WACK WACK MANDALUYONG CITY", with a notation that respondent transferred from RDO No. 40;[37]

Clearly, the foregoing documents which were received or issued by petitioner indicate that respondent's address is at *"12th Flr San Miguel Properties Centre, #7 St. Francis St. Ortigas Center, Mandaluyong City"*. Hence, petitioner should have sent the PAN and the FLD with Assessment Notices to the said address. Having failed to do so, there was no valid service of said notices to respondent.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[38] the Supreme Court ruled that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 is tantamount to denial of due process.

Applying the foregoing case, the subject assessments should be considered void for failure of petitioner to comply with the due process requirement embodied in the afore-cited Section 228 of the NIRC and RR No. 12-99.

Moreover, granting for the sake of argument, that the registered address is the address of respondent's Pasig office as claimed by petitioner, a perusal of the records of this case shows that petitioner did not even offer any evidence to prove that the PAN and FLD with Assessment Notices were mailed to the said address in Pasig.

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[39] the Supreme Court discussed the requisite proof to show the fact of mailing of assessment notices, *to wit*:

> "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 [the taxpayer] 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

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[37] Exhibit "P-3-30".
[38] G.R. No. 185371, December 8, 2010.
[39] G.R. No. 202695, February 29, 2016.

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 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. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." (Emphasis and underscoring supplied)

Based on the foregoing, to prove the fact of mailing, it is essential for petitioner to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative.

In this case, petitioner did not offer in evidence the registry receipt issued by the Bureau of Posts nor the registry return card signed by the taxpayer or its authorized representative. It is worth noting that nowhere from the BIR records of the case would one find the registry receipt nor the registry return card of the PAN with Details of Discrepancies[40], FLD with Details of Discrepancies[41] and Assessment Notices[42] supposedly sent to respondent's Pasig address.

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[40] Exhibits "R-8" and "R-9", BIR Records, pp. 746 to 749.
[41] Exhibits "R-14", "R-15", and "R-16", BIR Records, pp. 750 to 754.
[42] Exhibits "R-10", "R-11", "R-12", and "R-13", BIR Records, pp. 755 to 758.

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Clearly, even if We assume that the Pasig address is the correct registered address of respondent, petitioner nonetheless failed to establish that the PAN and the FLD with Assessment Notices were mailed to the said address.

Taking all the foregoing into consideration, the Court finds that no competent evidence was presented by petitioner to prove the actual receipt of respondent of the PAN and the FLD with Assessment Notices. As already emphasized, strict compliance with due process requirement is necessary for a valid tax assessment. Having failed to prove compliance thereof, petitioner denied respondent of its right to due process.

Accordingly, the deficiency tax assessments against respondent are null and void for having been issued in violation of the due process requirements under the law and RR No. 12-99.

The Court in Division has jurisdiction in CTA Case No. 8815

Petitioner argues that the Court in Division has no jurisdiction based on the principle of *litis pendentia*. He contends that when the instant case was filed with the Court in Division, there is already a pending criminal case before the Department of Justice entitled "*Bureau of Internal Revenue vs. Intervet Philippines, Inc.",* with NPS No. XVI-INV-14B-00054.

Petitioner is mistaken.

Basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.[43] Considering that it is petitioner who insists on the Court in Division's lack of jurisdiction on the ground of *litis pendentia*, he bears the burden of proving the same. Unfortunately, petitioner failed to discharge his burden.

For *litis pendentia* to exist, the following requisites must be present:

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[43] *MOF Company, Inc. vs. Shin Yang Brokerage Corporation,* G.R. No. 172822, December 18, 2009.

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1. Identity of parties, or at least such parties as those representing the same interests in both actions;

2. Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and

3. Identity with respect to the two preceding particulars in the two cases, is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res adjudicata* in the other case.[44]

Petitioner failed to establish the foregoing requisites. A perusal of petitioner's *Petition for Review* filed with this Court shows that petitioner simply mentioned the title of the criminal case which is pending with the DOJ without presenting a copy of the Information pertinent to the said criminal case. As such, this Court cannot fully determine whether the elements of *litis pendentia* are present.

Nonetheless, We agree with the Court in Division that the principle of *litis pendentia* is not applicable in this case. It is apparent to this Court that the second requisite of the aforementioned principle of *litis pendentia* is not present in this case. This Court finds that there is no identity of rights asserted in both cases. The cause of action in the criminal case is founded on respondent's alleged criminal liability for its failure to pay the correct taxes as well as the right of the Government to collect the said taxes. On the other hand, the cause of action in the present case is grounded on the determination of the validity of the tax assessment conducted by petitioner and the violation of respondent's right to due process. Clearly, the rights asserted and the reliefs are not identical.

Accordingly, there is no merit to petitioner's claim of lack of jurisdiction.

As to the third issue posited by the petitioner, *i.e.*, as to whether RR No. 18-2013 may be retroactively applied to the instant case, the answer is in the negative. However, the same is of no moment. This is simply because the provisions quoted in the assailed Decision by the Court in Division supposedly from RR No. 18-2013 are already in RR No. 12-99. In other words, insofar as the said quoted provisions

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[44] *Lim vs. Vianzon*, G.R. No. 137187, August 3, 2006, citing *Rudecon Management Corporation vs. Singson*, G.R. No. 150798, March 31, 2005.

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are concerned, there is no substantial distinction between that found in RR No. 12-99 and in RR No. 18-2013.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated May 24, 2016 and the Resolution dated August 15, 2016, both rendered by the Court in Division in CTA Case No. 8815, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen S
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE *Petitioner,*	**CTA EB No. 1507** *(CTA Case No. 8815)*
	Present:
- versus -	Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, JJ.
INTERVET PHILIPPINES, INC., *Respondent.*	Promulgated: MAR 0 1 2018 3:37 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR). As eloquently discussed therein, petitioner failed to establish that the Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices (FANs), dated January 15, 2010, assessing respondent for deficiency taxes for the taxable year 2006, were properly mailed and actually received by respondent. Petitioner's failure to comply with the due process requirement anent the proper service of the aforesaid notices rendered the assessments issued against respondent void.

In addition, I noted that the FLD and FAN were issued against respondent *sans* any valid authority on the part of the revenue officers who conducted the audit. The absence of a valid Letter of

Authority (LOA) makes an assessment intrinsically void. It is settled that a void assessment bears no fruit[1] and that estoppel cannot operate to give an effect to an assessment which is *void ab initio*.

The following are the events that transpired relative to the issuance of the FLD and FAN:

- LOA No. 2007 00009224 dated September 7, 2007[2] issued by petitioner, through **Regional Director Merlinda L. Ordoyo,** specifically authorized **Revenue Officer (RO) Mariano C. Boliche** and **Group Supervisor Marcos P. Medalla**, to examine the books of accounts and other accounting records of respondent for all internal revenue taxes for the period January 1, 2006 to December 31, 2006.

- LOA No. 2007 00040354 dated September 9, 2007[3] specifically authorized **RO Jhoanna B. Mejia** and **Group Supervisor Evelyn DG. Magboo**, to examine the books of accounts and other accounting records of respondent for all internal revenue taxes for the period January 1, 2006 to December 31, 2006.

- In an undated Letter addressed to the President of Intervet Philippines, Inc., Revenue District Officer Rosemarie Ramos-Ragasa informed respondent that they have authorized **RO Agripina R. Vallestero under Group Supervisor Evelyn G. Magboo** to continue the investigation of all internal revenue taxes for the year 2006 pursuant to the Letter of Authority No. 2007-40040354/2007-00009224 dated September 9, 2008/September 7, 2007 in view of the transfer of RO Jhoanna B. Mejia.[4]

- In the document entitled Second Request for Presentation of Records, **RO Agripina R. Vallestero** requested for respondent to present its accounting records.[5]

- In the Final Notice dated September 9, 2008, RDO Rosemarie Ramos-Ragas stated that the investigating officer, **RO Agripina R. Vallestero** has recommended that a subpoena duces tecum be duly served on respondent.[6]

- In the undated Memorandum signed by **RO Alfredo M. De Guzman**, he admitted that the investigation of respondent was conducted by him after it was re-assigned to him on June 15, 2009 **in view of RO Jhoanna B. Mejia and RO Agripina R. Vallestero's transfer to another RDO.**[7]

There is, however, nothing in the parties' Joint Stipulation of Facts and Issues, the Pre-Trial Order, and the Exhibits submitted by

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[1] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.
[2] Exhibit "R-2".
[3] Exhibit "R-3".
[4] BIR Records, p. 28.
[5] BIR Records, p. 29
[6] BIR Records, p. 36.
[7] Exhibit "R-4".

the parties which would show the fact that a new LOA was issued in favor of RO Vallestero and RO Alfredo M. De Guzman to conduct the audit and examination of respondent for taxable year 2006. The importance of the RO's authority to conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***,[8] the Supreme Court declared an assessment void for want of a valid LOA:

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID II IT-98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. **The assessment is void for being issued without valid authority**. Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 2008." (Boldfacing and underscoring supplied)

The Supreme Court's pronouncement in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue***[9] on the significance of a valid authority of ROs to conduct an audit and examination of the taxpayer is also instructive, *viz.*:

> ***"The absence of an LOA violated MEDICARD's right to due process***
>
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** Xxx xxx xxx. **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.** Section 6 of the NIRC clearly provides as follows:
>
> xxx xxx xxx
>
> **Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** Xxx xxx xxx. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

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[8] G.R. No. 183408, July 12, 2017.
[9] G.R. No. 222743, April 5, 2017.

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> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case.</u> What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>"** (Citations omitted; boldfacing and underscoring supplied)

A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

> "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." (Boldfacing supplied)

Furthermore, Revenue Memorandum Order (RMO) No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA requires the issuance of a new LOA:

> "C. Other policies for issuance of L/As.
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another ROs, and revalidation of L/As which have already expired, shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." (Boldfacing and underscoring supplied)

Simply put, **the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment.** In the language of ***Commissioner of Internal***

Revenue vs. Sony Philippines, Inc.,[10] its absence makes the assessment or examination a nullity, *viz.*:

> "Based on Section 13 of the Tax Code, **a Letter of Authority or 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.
>
> xxx xxx xxx
>
> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment.** Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity."** (Boldfacing supplied)

In fine, the necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and consequently, to the validity of the FAN that may be issued after said audit. **Here, the absence of a new LOA authorizing RO Vallestero and RO Alfredo M. De Guzman to continue the audit of respondent for taxable year 2006 rendered the assessment issued against respondent void.**

All told, I **VOTE** to: (i) **DENY** the Petition for Review filed by the Commissioner of Internal Revenue; and, (ii) **CANCEL** and **SET ASIDE** the Formal Letter of Demand with Details of Discrepancies and Assessment Notices, dated January 15, 2010, assessing Intervet Philippines, Inc. for deficiency taxes for the taxable year 2006.

ROMAN G. DEL ROSARIO
Presiding Justice

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[10] G.R. No. 178697, November 17, 2010.