REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAKATI CITY AND HON. NELIA A. BARLIS, IN HER CAPACITY AS CITY TREASURER, Petitioners,	CTA EB No. 1890 (CTA AC No. 182) (Civil Case No. 14-612)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
DESTINY CABLE, INC., Respondent.	Promulgated: JUL 01 2020 10:52 a.m.

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DECISION

Fabon-Victorino, J.:

On appeal *via* the instant Amended[1] Petition for Review[2] filed by petitioners Makati City and its City Treasurer Nelia A. Barlis are the Decision[3] and Resolution[4] respectively dated March 14, 2018 and June 22, 2018, both rendered by the Court in Division in CTA AC No. 182, which reversed the Decision[5] dated September 21, 2016 and

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1 The Amended Petition for Review was given due course by the Court *En Banc* pursuant to the Resolution dated March 7, 2019. See *rollo*, pp. 144-145.
2 Ibid. at pp. 114-120.
3 Docket (CTA AC No. 182), pp. 102-122.
4 Ibid. at pp. 147-150.
5 Id. at pp. 40-44.

Order[6] dated January 5, 2017, rendered by Regional Trial Court of Makati City (RTC-Makati) Branch 66 in Civil Case No. 14-612.

Uncloaked from the record of the case are the following:

Petitioner City of Makati is a local government unit created by law. It may be served with summons, notices, orders and other processes through the Office of the City Mayor, City of Makati.

Petitioner Nelia Barlis is the City Treasurer of Makati, empowered to perform the duties of the said office, including, *inter alia,* the collection of all local taxes, fees, and charges. She holds office at the Office of the City Treasurer, City of Makati.

Respondent Destiny Cable, Inc., on the other hand, is a domestic corporation engaged in the business of providing cable/community antennae television (CATV) systems and networks and multi-media training systems and other related services in the Philippines and other countries.

On May 12, 2012, respondent and Sky Cable Corporation (SCC) executed two Deeds of Sale and Assignment. Under the first Deed of Assignment, respondent assigned, transferred and conveyed to SCC all its rights, obligations, title and interests to all the assets, permits, licenses and intellectual property used in connection with, or pertaining to its cable television business. In the second Deed of Assignment, respondent assigned, transferred, and conveyed to SCC all its rights, obligations, title, and interest under all the subscription contracts and various other contracts relating to its cable television business.

On July 13, 2012, respondent filed with the Department of Labor and Employment (DOLE) NCR an Establishment Termination Report dated July 12, 2012, notifying the said government agency of the termination of its 163 employees

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[6] Id. at p. 45.

citing as ground cessation of its operations.[7] Among those affected employees was its then Branch Manager Renario Cu Garfin.[8] The latter was informed of severance of his employment and acknowledged the same via a Letter of even date.[9]

On October 8, 2012, petitioners issued a Letter of Authority (LOA) No. 2012-0788, authorizing revenue examiner Nestor R. Guzman to examine respondent's books of account and other pertinent financial record covering the periods 2009 to December 31, 2011. The LOA was received by a certain S/G Arnold Bicoy, and Mr. Garfin on October 15, 2012.[10]

On November 6, 2012, petitioners issued a Final Notice of Compliance (FNC),[11] stating that no financial documents were furnished by respondent despite directive in the LOA of October 8, 2012; and granting it a period of five days for compliance. It was received the following day, or on November 7, 2012, by Mr. Garfin who in his own handwriting indicated the following notation:

> Note:
> Copy forwarded
> Destiny Cable Inc.
> Solid Hauz Bldg.
> Pasong Tamo Ext
> Makati: c/o Cecil Lo 0922-858-3076

In a Letter dated December 10, 2012,[12] respondent, through its Accounting Manager Cecilia Lo, submitted the following documents to petitioners, *viz.*:

a. Duly approved application form for renewal of annual business permits, computerized assessment printouts of mayor's permit and official receipts for 2009-2011;
b. Audited financial statements and income tax returns for 2008-2010;
c. Articles of Incorporation; and
d. Consolidated financial statement for 2008-2010.

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7 Exhibit D, RTC Record, pp. 470-475.
8 Mr. Garfin for brevity.
9 Exhibit F, RTC Record, p. 476.
10 Exhibit G, RTC Record, p. 477.
11 Exhibit H, RTC Record, p. 478.
12 Exhibit M, RTC Record, p. 487.

On August 15, 2013, petitioners issued a Notice of Assessment (NOA), assessing respondent for deficiency local taxes, fees, and charges amounting to Php25,069,245.92 covering taxable periods 2009-2011, which Mr. Garfin received on August 22, 2013.[13]

On March 20, 2014, petitioners issued a Final Notice of Assessment (FNA), stating that respondent's right to contest the NOA of August 15, 2013 under Section 195 of the LGC had prescribed as it failed to file an administrative protest within 60 days from receipt thereof on August 22, 2013; and that collection remedies shall be enforced in case of respondent's failure to pay the deficiency local taxes, fees, and charges as indicated in the NOA dated August 15, 2013. Mr. Garfin received the said FNA dated March 20, 2014 on March 27, 2014.[14]

On April 1, 2014, SCC furnished respondent with a copy of petitioners' FNA dated March 20, 2014.

In a Letter dated April 23, 2014 filed with petitioners, respondent sought the withdrawal and cancellation of the FNA dated March 20, 2014 due to invalid service of NOA dated August 15, 2013 allegedly containing the subject assessment.[15] This plea was however denied in petitioners' Letter dated April 30, 2014 which respondent received on May 8, 2014.[16]

In view of such denial, respondent filed a Complaint for the nullification of the subject assessment before the RTC-Makati on June 9, 2014 which was docketed as Civil Case No. 14-612.

On September 21, 2016, the RTC-Makati rendered a Decision, disposing the case as follows:

> WHEREFORE, PREMISES CONSIDERED, THE INSTANT Complaint is hereby DISMISSED for lack of merit.

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13 Exhibit I, RTC Record, p. 479.
14 Exhibit J, RTC Record, p. 481.
15 Exhibit K, RTC Record, pp. 483-484.
16 Exhibit L, RTC Record, pp. 485-486.

> Herein (respondent) is hereby directed to pay its taxes as assessed and embodied in the Notice of Assessment dated August 15, 2013 in the amount of Php25,069,245.92.
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> SO ORDERED.
> Makati City. September 21, 2016.

In so ruling, the RTC-Makati ruled that there was valid service of NOA dated August 15, 2013 as it found Mr. Garfin clothed with apparent authority to receive documents and other notices for and in behalf of respondent. For failure of respondent to file a protest against the said NOA within sixty (60) days from its purported receipt on August 22, 2013, the questioned local tax assessment attained immutability, hence, could no longer be assailed. Thus, collection of local taxes, fees, and charges as indicated in the NOA was in order.

On October 12, 2016, respondent filed a Motion for Reconsideration of the above adverse Decision, but the same was denied in the Order dated January 5, 2017.

On February 10, 2017, respondent filed a Petition for Review with the Court in Division, insisting that the RTC-Makati egregiously erred in sustaining petitioners' assessment issued against it.

On March 14, 2018, the Court in Division reversed the RTC-Makati by ruling in favor of respondent as follows:

> **WHEREFORE**, premises considered, the Petition for Review filed by Destiny Cable, Inc. is **GRANTED**. The Decision dated September 21, 2016 and the Order dated January 5, 2017 are **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED**.

The Court in Division declared that the RTC-Makati committed reversible error in upholding the assessment in question. Specifically, petitioners' evidence failed to establish that Mr. Garfin had authority to receive the assessment notices for and in behalf of respondent. Due to the infirmity in the service of petitioners' NOA dated August 15, 2013, respondent was not informed of the subject assessment neither was it afforded the opportunity to ventilate its protestations against the same thereby violating its right to due process, justifying the nullification of the subject deficiency local tax assessment.

Petitioners moved[17], but failed[18] to secure a favorable ruling from the Court in Division, hence, the present recourse.

Petitioners ascribe error to the Court in Division in holding that Mr. Garfin was not clothed with apparent authority to receive notices for and in behalf of respondent. They claim that since respondent's Accounting Manager Ms. Lo failed to explicitly instruct Mr. Garfin to desist from receiving the subject assessment, her silence, when ought to speak, bestowed apparent authority on Mr. Garfin to receive documents in respondent's behalf. It appearing that respondent, through Mr. Garfin, received the NOA dated August 15, 2013 on August 22, 2013, it had sixty (60) days therefrom, or until October 31, 2013 to protest the same, but it failed. *A fortiori,* the subject deficiency assessment for local taxes, fees, and charges as embodied in the NOA became incontrovertible, warranting their collection.

In its Comment/Opposition dated February 20, 2019, respondent counters that it did not perform any act which would veer towards a conclusion that it conferred apparent authority to Mr. Garfin to receive in its behalf the NOA dated August 15, 2013. In fact, none of its employees met with petitioners' representative Mr. Flores. Further, it was unaware of any representations made by Mr. Garfin to Mr. Flores. In any event, Mr. Garfin informed Mr. Flores not only verbally but also in writing on where and how to locate respondent by providing its new principal office at Solid House Building, Pasong Tamo Extension, Makati City, with the name and contact details of its authorized representative, Ms. Lo. Thus, the absence of explicit instruction from Ms. Lo prohibiting Mr. Garfin from receiving the NOA dated August 15, 2013 could not be deemed as a grant of apparent authority upon Mr. Garfin to receive the subject assessment in its behalf.

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17 Petitioners' Motion for Reconsideration (of the Decision dated 14 March 2018) dated March 23, 2018. Docket (CTA AC No. 182), pp. 123-127.

18 Resolution dated June 22, 2018. Ibid. at pp. 147-150.

Finally, it had no control power over the acts of Mr. Garfin, an employee of SCC. Respondent and SCC have separate and distinct juridical personalities.

THE RULING OF THE COURT

The instant petition must fail.

Relevant to the present controversy is Section 23[19] of the Corporation Code of the Philippines which explicitly confers upon the board of directors the competence to exercise the corporate powers of corporation.[20] The governance and management of corporate affairs in a corporation lie with its board of directors in case of stock corporations, or board of trustees in case of non-stock corporations.[21] Ordinarily, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.[22] By way of exception, the legal competence of an individual to bind a corporation may be derived from an apparent authority conferred by the juridical entity concerned.

The doctrine of apparent authority provides that a corporation is estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts.[23] The applicability of the principle of apparent authority or ostensible agency requires concurrence of the following requisites, to wit: (a) the acts of respondent justifying belief in the agency by petitioners; (b) knowledge thereof by respondent which is sought to be held; and, (c)

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19 **Section 23.** *The board of directors or trustees.* – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors xxx.

20 See *Banate vs. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.,* G.R. No. 163825, July 13, 2010.

21 *Lim vs. Moldex land, Inc.,* G.R. No. 206038, January 25, 2017.

22 See *Development Bank of the Philippines vs. Sta. Ines Melale Forest Products Corporation,* G.R. No. 193068, February 1, 2017.

23 *Advance Paper Corporation vs. Arma Traders Corporation,* G.R. No. 176897, December 11, 2013.

reliance thereon by petitioner consistent with ordinary care and prudence.[24]

Evidently, not even one of the cited elements of ostensible agency is present in this case. The record is bereft of any proof showing that respondent committed any overt act that would induce belief that agency exists between respondent and Mr. Garfin, or created any incident or event that would promote suspicion that Mr. Garfin was bestowed with authority to receive the assessment notices for and in behalf of respondent.

There is also no fail-proof that respondent was aware of the issuance against it of the subject assessment for local business taxes by petitioners. It only learned, through Mr. Garfin, that petitioners issued the FNC dated November 6, 2012 requiring it to submit documents for purposes of tax examination in relation to its application for business permit. In compliance thereof, respondent, through its Accounting Manager Cecilia Lo, submitted its duly approved application form for renewal of annual business permits, computerized assessment printouts of mayor's permits and official receipts for 2009 to 2010, Audited Financial Statements and Income Tax Returns for 2008 to 2010, Articles of Incorporation and Consolidated Financial Statement from 2008 to 2010.

Significantly, no communication or interaction occurred between petitioners and respondent after the latter's compliance. Virtually, there was nothing to promote perception or even suspicion that Mr. Garfin was bestowed by respondent with apparent authority to validly receive the subject assessment for and in its behalf and upon which it could rely for the purpose of service the assessment notices.

As to the alleged inability of Ms. Lo to instruct Mr. Garfin not to receive communications from petitioners, the same is certainly not tantamount to a grant of apparent authority in favor Mr. Garfin. For one, respondent could no longer exercise control or supervision over Mr. Garfin whose employment with respondent was terminated as early as

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[24] *Woodchild Holdings, Inc. vs. Roxas Electric and Construction Company, Inc.*, G.R. No. 140667, August 12, 2004, citing *Residon v. Miller Distributors Co., Inc.*, 139 N.W.2d 12 (1966).

July 12, 2012, or long before any of the communications or notices were issued by petitioners against respondent. For the other, Mr. Garfin, during the relevant periods, was already connected with SCC, an entity separate and distinct from respondent.

Deeply disturbing is the established fact that long before the NOA and the FNA were respectively issued on August 15, 2013 and March 20, 2014, petitioners already had in their possession the Audited Financial Statements and Income Tax Returns for taxable years 2008 to 2010 bearing respondent's correct address at Solid House Bldg., Pasong Tamo Extension, Makati, which respondent submitted in compliance with their directive as contained in the FNC of November 6, 2012. But for reason only known to them, petitioners used a wrong address U-102 Global Tower cor. Capt. Reyes and Gen. Mascardo Sts., Brgy. Bangkal, Makati City, and erroneously served them to Mr. Garfin.

Also thought provoking is that petitioners did not even attempt to rectify the errors committed despite having been subsequently provided by Mr. Garfin with the correct address of respondent and the details of its authorized representative on November 7, 2012 when the FNC was served. Petitioners continued to use the wrong address in the NOA dated August 15, 2013 and the FNA dated March 20, 2014 and recklessly served them upon Mr. Garfin who repudiated any authority to receive them.

Irrefragably, petitioners failed to validly serve the assessment notices effectively depriving respondent of its right to be informed of the questioned assessment and to contest the same. In other words, respondent was denied due process required in any imposition of tax liability, justifying the cancellation and withdrawal of the subject assessment for local business taxes and increment thereto issued against it. Denial of due process exists when the party is deprived of notice and the opportunity to be heard as obtaining in the present case.

Observance of due process in the issuance and service of notices is explicitly required in Section 195 of the LGC, to wit:

> **Section 195.** *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. *Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment*; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable. (italics supplied)

The *rationale* for this is not that difficult to comprehend - to sufficiently inform the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.[25] Precisely, any deficiency to the mandated content of the assessment or its process will not be tolerated.[26]

Thus, the Court *En Banc* is in unison with the Court in Division in its finding that:

> A careful evaluation of the records shows (petitioners') failure to exercise ordinary care and prudence in serving the Notice of Assessment. As a result, (petitioners) were not able to properly serve the Notice of Assessment, which deprived (respondent) of the opportunity to contest the deficiency LBT assessment against it. Hence, the same is void for being in violation of (respondent's) right to due process.

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[25] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,* G.R. No. 197945, July 9, 2018.

[26] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corp.,* G.R. No. 215534, April 18, 2016.

WHEREFORE, the Amended Petition for Review dated January 8, 2019, filed by petitioners Makati City and Hon. Nelia A. Barlis, in her capacity as City Treasurer is **DENIED**. The Decision dated March 14, 2018, and Resolution dated June 22, 2018, both rendered by the Court in Division in CTA AC No. 182 are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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