19-000533-0039

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10207

GRAND GEO SPHERES CONSTRUCTION CORP.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

COMMISSIONER OF INTERNAL REVENUE
Thru: Litigation Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

ATTY. PAULYN ANN A. UMIPIG-LABUCAY
Bureau of Internal Revenue - Revenue Region No. 7-A
5th Floor, Legal Division, Fishermall (Roofdeck)
Quezon Avenue corner Roosevelt Junction, Quezon City

ATTY. ARNOLD A. APDUA
Unit 905 RI - Rance Realty
Corporate Center I, Aseana
Enclave, Paranaque City

GREETINGS:

You are hereby notified by these presents that on **February 6, 2023,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 9, 2023.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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FIRST DIVISION

GRAND GEO SPHERES CONSTRUCTION CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10207

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

FEB 06 2023 ; 3:26 P.M.

x- -x

DECISION

REYES-FAJARDO, *J.*:

The Petition for Review dated November 6, 2019,[1] seeks to nullify the Letter Notice (LN) dated September 25, 2019, issued by the Commissioner of Internal Revenue against Grand Geo Spheres Construction Corp., demanding payment of alleged deficiency income tax (IT), and value-added tax (VAT), in the total amount of Eighteen Million Two Hundred Seventy Thousand Six Hundred Twenty-Six and 08/100 Pesos (₱18,270,626.08).[2]

FACTS

Petitioner Grand Geo Spheres Construction Corp. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 12 South Zuzuarregui Street, Old Balara, Quezon

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1 Docket, pp. 7-18.
2 Par. 3.1, Brief Statement of the Case, Joint Stipulation of Facts and Simplification of Issues (JSFI). *Id.* at p. 202.

City.[3] It is engaged in the construction of road and bridges, flood control, river basin, dams and irrigation systems, water supply, building and other infrastructures.[4]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees, or charges, penalties imposed in relation thereto, as provided by law.[5]

On November 29, 2011, a Letter Notice was issued, stating that petitioner had purported underdeclared sales for calendar year (CY) 2010, amounting to ₱39,619,347.58.[6] Said figure was the resulting discrepancy between sales per its tax returns amounting to ₱11,919,114.25 and the purchases of a certain MTD Construction (Philippines) Inc. (MTD) from petitioner, amounting to ₱51,538,461.83.[7]

On January 19, 2012, a Letter of Authority (LOA) was issued by OIC-Regional Director Quezon City Jonas DP. Amora, authorizing Revenue Officer Melirose Trazona (RO Trazona) and Group Supervisor Emilia Fuentes (GS Fuentes), to conduct audit and examination of petitioner for CY 2010.[8] This was coupled with a First Request for Presentation of Records.[9]

On February 21, 2012, and May 24, 2012, a Second Request,[10] followed by a Final Request for Presentation of Records,[11] were respectively issued by RO Trazona.

Through Letter dated June 4, 2012,[12] petitioner submitted its: 1) Annual Income Tax Return (AITR) for CY 2010;[13] 2) Quarterly ITR for

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3 Par. 2.1, Admitted Facts/Documents, JSFI. *Id.* at p. 203.
4 Par. 2.3, Admitted Facts/Documents, JSFI. *Ibid.*
5 Par. 2.2, Admitted Facts/Documents, JSFI. *Ibid.*
6 Exhibit "R-1." Docket, p. 296. This is different from the LN dated September 25, 2019.
7 Exhibit "R-1-A." *Id.* at p. 297.
8 Exhibit "R-4." *Id.* at p. 307. Said LOA was numbered LOA-039-2012-00000148, under serial number eLA201000086482.
9 Exhibit "R-4-A." *Id.* at p. 308.
10 Exhibit "R-6." *Id.* at p. 310.
11 Exhibit "R-7." *Id.* at p. 311.
12 Exhibit "R-8." *Id.* at p. 312.
13 Exhibit "R-8-A." *Id.* at pp. 313-315.

the 1st Quarter of CY 2010;[14] 3) VAT Returns covering the 1st, 2nd, and 3rd Quarters of CY 2010;[15] and 3) VAT Declarations for the months of May, July, August, and October of CY 2010,[16] with the Bureau of Internal Revenue (BIR).

On April 22, 2013, a Notice of Informal Conference (NIC) was issued.[17]

On May 7, 2019, a Preliminary Assessment Notice (PAN) with Details of Discrepancy was issued against petitioner, containing the proposed deficiency IT and VAT assessments for CY 2010, in the total amount of ₱18,211,288.82.[18]

On June 10, 2019, respondent's authorized representative Regional Director Romulo L. Aguila Jr., issued a Formal Letter of Demand with Details of Discrepancy,[19] and Final Assessment Notices (FLD/FAN),[20] assessing petitioner for deficiency IT and VAT for CY 2010 in the total amount of ₱18,270,626.08.

On October 7, 2019, petitioner received[21] respondent's LN dated September 25, 2019, ordering the payment of deficiency taxes amounting to ₱18,270,626.08, inclusive of penalties.[22]

On November 6, 2019, petitioner filed a Petition for Review,[23] to which respondent filed an Answer[24] on January 3, 2020.

During the pre-trial conference held on September 24, 2020,[25] the Court set the dates for commissioner's hearings and trial for

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14 Exhibit "R-8-B." *Id.* at p. 316.
15 Exhibits "R-8-C," "R-8-D," and "R-8-E." *Id.* at pp. 317-319.
16 Exhibits "R-8-F" to "R-8-I." *Id.* at pp. 320-323.
17 Exhibit "R-12." *Id.* at p. 327.
18 Exhibit "R-13." *Id.* at pp. 330-333. The amount of ₱18,211,288.82 is composed of: a) deficiency IT, surcharge and interest in the sum of ₱6,108,526.54; and b) deficiency VAT, surcharge, and interest in the sum of ₱12,102,762.28.
19 Exhibit "R-14." *Id.* at pp. 336-339.
20 Exhibits "R-14-A" and "R-14-B." *Id.* at pp. 340-341.
21 Par. 3.1, Petition for Review. *Id.* at p. 8.
22 Par. 2.4, Admitted Facts/Documents, JSFI, *id.* at p. 203. Said LN was sent to petitioner's corporate secretary Veronica M. Bautista, and board member Roy M. Bautista.
23 *Supra* note 1.
24 Docket, pp. 37-52.
25 Minutes of Hearing held on September 24, 2020. *Id.* at pp. 167-167-C.

presentation of the parties' respective evidence, as well as required the parties to submit their JSFI.

Through Resolution dated October 23, 2020,[26] the parties' JSFI filed on October 13, 2020 was approved. On the basis thereof, a Pre-Trial Order was issued.[27] Trial ensued.

In the Hearing held on January 26, 2021, petitioner presented its sole witness, and corporate secretary Veronica M. Bautista (Bautista). Petitioner orally offered, and we admitted, Exhibits "P-1," "P-2," and "P-2-1" as its evidence.[28]

In the Hearing held on June 1, 2021, respondent presented her sole witness RO Trazona.[29]

On June 6, 2021, respondent filed her Formal Offer of Documentary Evidence.

Through Resolution dated October 21, 2021, we admitted the pieces of evidence offered by respondent, save for Exhibit "R-17."[30]

In the Resolution dated February 7, 2022,[31] this case was submitted for decision, considering respondent's[32] and petitioner's[33] Memorandum, respectively filed on December 6, 2021, and January 3, 2022.

ISSUE

Is petitioner liable for the deficiency IT and VAT in the aggregate amount of Eighteen Million Two Hundred Seventy

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26 *Id.* at p. 213.
27 *Id.* at pp. 237-248.
28 Judicial Affidavit of Veronica M. Bautista dated September 21, 2020. Exhibits "P-2" and "P-2-1." *Id.* at pp. 102-106. Identified during the Hearing held on January 26, 2021, Order dated January 26, 2021, *id.* at pp. 229-230.
29 Judicial Affidavit of Melirose R. Trazona dated September 17, 2020. Exhibits "R-18" and "R-18-a." *Id.* at pp. 110-119. Identified during the Hearing held on June 1, 2021, see Minutes thereof, *id.* at pp. 261-265.
30 *Id.* at pp. 366-367.
31 *Id.* at p. 413.
32 *Id.* at pp. 368-375.
33 *Id.* at pp. 376-409.

Thousand Six Hundred Twenty-Six Pesos and 08/100 (₱18,270,626.08), inclusive of surcharge deficiency and delinquency interest as provided in the National Internal Revenue Code of 1997, as amended (NIRC, as amended)?[34]

ARGUMENTS

Petitioner argues that the person to whom RO Trazona served the LOA, *i.e.*, Jasmin Mendioro (Mendioro), was without express or implied authority from it. Hence, there was invalid service of such LOA.

Petitioner further disclaims receipt of the PAN, and the FLD/FAN mailed by respondent. Being so, the latter is mandated by law and jurisprudence to prove actual receipt of said notices. As there was no proof of actual receipt thereof by petitioner or its duly authorized representatives, it was not able to ventilate its respective defenses thereon, violative of its right to due process on assessment.

Petitioner, too, asserts that the same is wanting in legal and factual basis. It explains that the deficiency tax assessments stemmed from the discrepancy between sales declared per its tax returns, and the purchases of its alleged customers. Under Revenue Memorandum Order (RMO) Nos. 4-2003[35] and 46-2004,[36] the BIR must obtain sworn statements from third party information (TPI) sources, attesting on the veracity of such TPI, lest the TPI may not be considered for assessment purposes. Since respondent failed to observe said issuances, the deficiency tax assessments issued against it are based on presumptions.

Petitioner also contends that the FLD/FAN were issued beyond the three (3)-year prescriptive period to assess internal revenue taxes enshrined in Section 203 of the NIRC, as amended.

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34 See Roman Numeral III, JSFI. *Id.* at pp. 203-204.

35 SUBJECT: Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002.

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

For these reasons, petitioner concludes that the PAN, FLD/FAN, along with the LN dated September 25, 2019 are a patent nullity.

On the other hand, respondent counters that RO Trazona is a person authorized in the LOA; thus, her audit and examination of petitioner, leading to the issuance of the 2010 deficiency tax assessments against the latter, is valid.

Respondent retorts that by mailing the PAN, and FLD/FAN to petitioner, the latter was afforded due process in the issuance of a deficiency tax assessment, pursuant to Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013.

Respondent ripostes that the assessments issued against petitioner for deficiency income tax and VAT liabilities have factual and legal bases. To be precise, it was based on the information obtained from the BIR RELIEF system, which are presumed true and correct.

Respondent further declares that petitioner substantially under-declared its sales; hence, it is *prima facie* proof of falsity or fraudulent filing of the tax returns under Section 248(B) of the NIRC, as amended. In view thereof, petitioner may be assessed internal revenue taxes within ten (10) years from discovery thereof, under Section 222(a) of the same Code. As such, the FLD/FAN were timely issued on June 10, 2019.

In fine, respondent theorizes that the deficiency tax assessments for CY 2010, issued against petitioner must be upheld.

OUR RULING

The Petition is granted.

We first tackle our jurisdiction over this case. Section 7(a)(1), in relation to Section 11 of Republic Act (RA) No. 1125,[37] as amended by

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37 An Act Creating the Court of Tax Appeals.

RA No. 9282 provides among others, that respondent's action over other matters arising from the NIRC, as amended, are appealable to the Court.[38] In addition, an aggrieved party must appeal such action to the Court, within thirty (30) days from receipt thereof. These provisions respectively read:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue** or other laws administered by the Bureau of Internal Revenue;
> >
> > ...
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ....
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> ...[39]

Among the matters detailed in Section 2 of the NIRC, as amended, is the BIR's authority to collect all national internal revenue taxes, fees, and charges.[40]

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

39 Boldfacing supplied.

40 **SEC. 2.** ***Powers and Duties of the Bureau of Internal Revenue.*** - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.... See

On October 7, 2019, petitioner received[41] respondent's LN dated September 25, 2019, ordering the payment of deficiency taxes amounting to ₱18,270,626.08, inclusive of penalties.[42] Counting thirty (30) days from October 7, 2019, petitioner had until November 6, 2019, to seek judicial redress. Therefore, the timely filing of the Petition for Review on November 6, 2019,[43] clothed us with jurisdiction over this case.

Next, the merits.

We disagree with petitioner's claim that there was no valid service of LOA to it.

True, an LOA must be served or presented to the taxpayer within thirty (30) days from its date of issue, otherwise, said LOA becomes null and void, unless revalidated.[44] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[45] elucidated the *rationale* for the foregoing rule in this wise:

> To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. ... Due process requires that the taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

Commissioner of Internal Revenue v. Bank of the Philippines Islands, G.R. No. 227049, September 16, 2020. (Boldfacing supplied)

41 *Supra* note 21.

42 *Supra* note 22.

43 *Supra* note 23.

44 Item VIII(C)(2)(2.3) of Revenue Audit Memorandum Order (RAMO) 1-2000, otherwise known as "Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000)" provides: "A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. ..." See also *AFP General Insurance Corporation v. Commissioner of Internal Revenue,* G.R. No. 222133, November 4, 2020.

45 G.R. No. 242670, May 10, 2021.

Relevantly, *Calubad v. Ricaren Development Corporation (Calubad),*[46] held that "[t]he general principles of agency govern the relationship between a corporation and its representatives. Article 1317 of the Civil Code similarly provides that the principal must delegate the necessary authority before anyone can act on his or her behalf."

Calubad, too, explains that such necessary authority may be categorized as: *first* actual authority, which, in turn, may either be express or implied; or *second,* apparent authority:

> Actual authority can either be express or implied. Express actual authority refers to the power delegated to the agent by the corporation, while an agent's implied authority can be measured by his or her prior acts which have been ratified by the corporation or whose benefits have been accepted by the corporation.
>
> ...
>
> The doctrine of apparent authority provides that even if no actual authority has been conferred on an agent, his or her acts, as long as they are within his or her apparent scope of authority, bind the principal. However, the **principal's liability is limited to third persons who are reasonably led to believe that the agent was authorized to act for the principal due to the principal's conduct.**
>
> **Apparent authority is determined by the acts of the principal and not by the acts of the agent....**[47]

Here, respondent presented a Letter dated February 15, 2012, whereby petitioner requested Clavelina S. Nacar, Revenue District Officer of RDO No. 39-South Quezon City, for additional time to submit the documents required in LOA-039-2012-00000148 dated January 19, 2012.[48] He also proffered another Letter dated June 4, 2012, establishing petitioner's submission of: *one,* AITR for CY 2010; *two,* Quarterly ITR covering the 1st Quarter of CY 2010; and *three,* VAT Returns for the 1st to 3rd Quarters of CY 2010; and *four,* VAT Declarations for the months of May, July, August, and October of CY 2010,[49] as commanded by said LOA. Notably, the LOA referred to in

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46 G.R. No. 202364, August 30, 2017.
47 Boldfacing supplied.
48 Exhibit "R-5." Docket, p. 309.
49 *Supra* notes 12-16.

said letters is the one being impugned by petitioner for being invalidly served.[50]

Meanwhile, witness Bautista testified in open court that in 2011, petitioner ceased operations upon the death of its alleged president.[51] It must be stressed that no other proof was presented by petitioner to support its witness' declaration.

As between respondent's documentary evidence, vis-à-vis petitioner's testimonial evidence, the former's evidence prevails. Indeed, in weighing evidence, documentary evidence, prevails over testimonial evidence.[52] Testimonial evidence is easy of fabrication and there is very little room for choice between testimonial evidence and documentary evidence.[53]

By petitioner's act of requesting additional time to submit the required documents, coupled with partial submission of its tax returns with the BIR as required in such LOA, it impliedly recognized Mendioro's authority to receive said LOA in its behalf.

We nonetheless find respondent's deficiency IT and VAT assessments for CY 2010, issued against petitioner void because: *one*, petitioner's right to due process on assessment was violated; *two*, said assessments lack factual and legal basis; and *three*, such assessments are barred by prescription. Consider:

One, Section 228 of the NIRC, as amended,[54] as implemented by Section 3[55] of RR No. 12-99,[56] as amended by RR No. 18-2013 govern

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50 *Supra* note 8.

51 Transcript of Stenographic Notes (TSN) of Hearing held on January 26, 2021, pp. 14, 18-19.

52 *Go v. Court of Appeals*, G.R. No. 112550, February 5, 2001.

53 *Government Service Insurance System v. The Court of Appeals, et al.*, G.R. No. 52080, May 28, 1993, citing *Marvel Building Corporation v. David*, 94 Phil. 376 (1954).

54 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 pre-assessment notice shall not be required in the following cases: ...

...

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.

the due process requirement on assessment. In particular, the taxpayer must be afforded the opportunity to contest: *first*, the PAN, within fifteen (15) days from receipt thereof by way of a reply or response thereto;[57] and *second*, the FAN/FLD, within thirty (30) days also from receipt thereof through a valid administrative protest.[58] In

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Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. ...

... (Boldfacing supplied)

55 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:

...

3.1.2 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Assessment Division or 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, 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.

...

3.1.4 Formal Letter of Demand and Assessment Notice. – The formal letter of demand and assessment notice shall 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). The same shall be sent to the taxpayer only by registered mail or by personal delivery. 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.

56 SUBJECT: 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

57 See *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021, whereby the Supreme Court ruled that the service of the PAN, as well as the taxpayer's opportunity to file a reply/response thereto within fifteen (15) days from receipt thereof is mandatory.

58 In *Commissioner of Internal Revenue v. T-Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020, the Supreme Court held that "A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to

reverse, the taxpayer's non-receipt of the PAN and FLD/FAN would be transgressive of the right to due process on assessment.

Respondent served through registered mail, the PAN[59] and the FLD/FAN[60] to petitioner. Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.[61]

Commissioner of Internal Revenue v. T-Shuttle Services, Inc. [62] further clarified that when a taxpayer denies having received the notices mailed by the BIR, the latter is required to identify and authenticate the signatures appearing on the registry receipt to determine whether the signatories thereon is the authorized representative of the taxpayer concerned.

Considering that petitioner disclaimed[63] receipt of the PAN, and FLD/FAN, actual receipt thereof by petitioner or its duly authorized representatives must be established by respondent.

Respondent presented registry receipt RE 021 953 285 ZZ for the PAN,[64] and registry receipt RE 021 955 618 ZZ,[65] along with Affidavit of Service of FAN,[66] for the FLD/FAN, to show respective receipt thereof by petitioner or its duly authorized representatives. These documents leave much to be desired.

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and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'"

59 Exhibit "R-13-A." Docket, p. 335.

60 Exhibits "R-14-C" and "R-15." *Id.* at pp. 341-342.

61 See *Commissioner of Internal Revenue v. Bank of the Philippine Islands,* G.R. No. 224327, June 11, 2018; *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.,* G.R. No. 202695, February 29, 2016; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010; and *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,* G.R. No. 150764, August 7, 2006.

62 G.R. No. 240729, August 24, 2020.

63 Answer to Question No. 12, JA of Veronica M. Bautista dated September 21, 2020. Exhibits "P-2" and "P-2-1." Docket, p. 105.

64 *Supra* note 59.

65 *Supra* note 60.

66 Docket, p. 343.

Specifically, said registry receipts established respondent's mailing of the PAN, and FLD/FAN to petitioner. So was the Affidavit of Service of the FAN, indicative of such fact. However, these documents do not demonstrate that petitioner or its duly authorized representatives actually received the PAN, and FLD/FAN, let alone the latter's corresponding authority to receive the same. Fortifying our observation is RO Trazona's confirmation in open court that indeed, the BIR has no document to prove petitioner's actual receipt of the PAN, and FLD/FAN:

> ATTY. APDUA:
> Q. Do you have any document that the petitioner received the PAN as one of the requirements, which is due notice?
>
> MS. TRAZONA:
> A. **None.**
>
> ...
>
> ATTY. APDUA:
> Q. So as of now, you do not have proof that the FLD and FAN were received by the petitioner or its authorized representative, do you agree?
>
> MR. NARCORDA:
> A. **Yes, sir.**[67]

Moreover, in the Affidavit of Service of the FAN,[68] the server failed to indicate the name of the person who received the FLD/FAN, as well as pertinent information surrounding said service, violative of the requirement under the last paragraph of Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, which reads:

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

[67] Transcript of Stenographic Notes (TSN) of Hearing held on June 1, 2021, pp. 19 and 22, respectively. Boldfacing supplied.

[68] *Supra* note 66.

3.1.6 *Modes of Service.* - **The notice** (PAN/**FLD/FAN**/FDDA) **to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**

...

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/ professional courier service company **who received the same and such other relevant information. The registry receipt issued by the post office** or the official receipt issued by the professional courier company **containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**[69]

Ergo, no valid PAN, and FLD/FAN were issued to and received by petitioner, offensive of its right to due process on assessment.

Two, this case stemmed from the data obtained by the BIR in the Details of Taxpayer's Customers Records for LN No. 039-RLF-10-00-00209,[70] showing that for the 2nd Quarter of CY 2010, MTD had alleged purchases from petitioner amounting to ₱51,538,461.83.

Respondent then treated the MTD purchases amounting to ₱51,538,461.83 as petitioner's *additional* revenues/receipts. By comparing said figure with the revenues/receipts per petitioner's ITR, amounting to ₱18,996,072.30, the variance in the sum of ₱32,542,389.53 was considered as petitioner's undeclared revenue/receipts. Applying the gross profit rate of 20.87% on said undeclared revenue/receipts, respondent concluded that petitioner

[69] Boldfacing supplied.
[70] Exhibit "R-1-A." Docket, p. 297.

had undeclared income in the sum of ₱6,791,596.69, which was subjected to IT.[71]

Respondent likewise compared petitioner's *additional* revenues/receipts of ₱51,538,461.83, with its revenue/receipts per VAT Returns amounting to ₱18,996,072.29, the discrepancy of which amounting to ₱32,542,389.54 was treated as petitioner's undeclared revenues/receipts, which was subjected to VAT.[72]

Notably, respondent's finding of petitioner's additional revenues/receipts amounting to ₱51,538,461.83, originated from the LN anchored[73] on Revenue Memorandum Order (RMO) No. 30-2003.[74] However, by no stretch of imagination can respondent use the MTD purchases found in the LN, as valid factual foundation of her deficiency IT, and VAT assessments for CY 2010, issued against petitioner.

Item IV(E)(3)(B.3) of RMO No. 30-2003[75] states that if the taxpayer is refuting the data appearing in the LN, there must be a confirmation request/s (CR/s) on the TPI source. In turn, the TPI source should confirm the data through a confirmation certificate. Simply put, the BIR must send a CR of said TPI to MTD, who, in turn, must validate said TPI. Such requirement was not met.

In particular, RO Trazona admitted that the data in the LN, *i.e.*, MTD purchases amounting to ₱51,538,461.83, used as foundation of petitioner's deficiency IT and VAT for CY 2010, were unverified:

> ATTY. APDUA:
>
> Q: Ms. Witness, I would like to clarify, the information originated from computerized matching, right, or *(buffering)*.

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71 Details of Discrepancy of FLD. Exhibit "R-14." *Id.* at pp. 338-339.

72 *Ibid.*

73 Respondent admitted in paragraph 44 of her Answer that the LN, from which findings of additional revenues/receipts originated, was based on RMO No. 30-2003. See Docket, p. 48.

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

75 See p. 10 of RR No. 30-2003.

MS. TRAZONA:

A: Yes.

ATTY. APDUA:

Q: And then this is a third party matching which would require aside from the taxpayer, the information indicates third party of those who have transactions with the taxpayer. Now the question is, you as the one assigned to assess (sic), did you confirm with the third party who transacted with taxpayers such information or discrepancy?

MS. TRAZONA:

A: Sorry, Sir, but I cannot remember already the docket because it is already eight years ago.

ATTY. APDUA:

Q: Okay, so it means that for now, there is no document that may be presented?

MS. TRAZONA:

A: Yes, Sir.

ATTY APDUA:

Q: So since for now you were not able to secure statements from third parties confirming the discrepancy when you were assigned as the officer required to conduct the audit.

MS. TRAZONA:

A: I still cannot remember Sir if I send letter notices, letters to the third party.

ATTY. APDUA:

Q: You cannot recall. So there's no document to be presented. So the only fact that you have (Paused) let say you assessed the taxpayer and the only basis of your assessment for Income Tax and VAT is the discrepancy reflected in the letter notice, right?

MS. TRAZONA:

A: Yes, Sir.

ATTY. APDUA:

Q: There's no other source of discrepancy *(Interrupted)*

JUSTICE DEL ROSARIO:

That has been answered. You go to another point. She has answered that already.

ATTY. APDUA:

Q: Okay. **So it only means that what you have considered is an unverified computer-generated data.**

MS. TRAZONA:

A: **Yes, Sir.**

...[76]

Given that the MTD purchases in the sum of ₱51,538,461.83 were unverified, petitioner's additional revenues/receipts of the same amount culled therefrom is simply a presumption, and not a fact. To be valid, an assessment must be based on actual facts and credible evidence.[77] It cannot be made to rest on mere presumptions no matter how reasonable or logical said presumptions may be.[78]

Three, Section 203[79] of the NIRC, as amended, ordains that assessment of internal revenue taxes must be made, within three (3) years from the actual date of filing of a tax return, or the last day prescribed by law for filing of a tax return, whichever is later.[80] In

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76 TSN of Hearing held on June 1, 2021, pp. 14-15.

77 See *Commissioner of Internal Revenue v. MCC Transport Singapore Pte. Ltd.,* G.R. No. 255382, Resolution dated June 28, 2021, citing *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.

78 See *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation, et al.,* G.R. No. L-46644, September 11, 1987.

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

80 See *AFP General Insurance Corporation v. Commissioner of Internal Revenue,* G.R. No. 222133, November 4, 2020; and *Commissioner of Internal Revenue v. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

turn, an assessment is deemed made on the date the assessment notice was released, mailed, or sent to the taxpayer.[81]

Pertinently, Sections 77(B) and 114 of the NIRC, as amended, respectively encapsulate the last day prescribed by law for the filing of Annual Income Tax Return (AITR), and Quarterly VAT Returns:

> **SEC. 77.** ***Place and Time of Filing and Payment of Quarterly Corporate Income Tax.*** –
>
> ...
>
> ***(B) Time of Filing the Income Tax Return.*** - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.
>
> ...
>
> **SEC. 114.** ***Return and Payment of Value-Added Tax.*** –
>
> ***(A) In General.*** - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: ...

Parsed from the above observations, respondent's FLD/FAN, containing the deficiency IT and VAT assessments for CY 2010, mailed to petitioner on June 10, 2019, are barred by prescription, as illustrated below:

2010 IT Assessment					
Actual Date of Filing of AITR	Last Day Prescribed by law for filing an AITR	Start of Prescriptive Period	**Last Day to Assess**	Date when Assessment was Made	Remarks
April 15, 2011[82]	April 15, 2011	April 15, 2011	April 15, 2014	June 10, 2019	Prescribed

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81 *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 174942, March 7, 2008.

82 Exhibit "R-8-A." Docket, p. 313.

2010 VAT Assessment						
Quarter	Actual Date of Filing of VAT Return	Last Day Prescribed by Law for filing of VAT Return	Start of Prescriptive Period	**Last Day to Assess**	Date when Assessment was Made	Remarks
1st	April 26, 2010[83]	April 25, 2010	April 26, 2010	April 26, 2013	June 10, 2019	Prescribed
2nd	July 26, 2010[84]	July 25, 2010	July 26, 2010	July 26, 2013	June 10, 2019	Prescribed
3rd	-	-	-	-	-	-
4th	-	-	-	-	-	-

To be sure, the prescriptive periods for the VAT assessment, covering the 3rd and 4th Quarters of CY 2010 may not be determined because: *one*, the VAT Return for the 3rd Quarter of CY 2010 is illegible;[85] and *two*, no VAT Return covering the 4th Quarter of CY 2010 was presented as evidence. Indeed, proof of actual date of filing of tax returns is indispensable to claim the defense of prescription of assessment of internal revenue taxes.[86]

This notwithstanding, the unverified MTD purchases in the sum of ₱51,538,461.83, which respondent treated as petitioner's purported additional receipts/revenues were traced to April 2010,[87] or covered by the 2nd Quarter of CY 2010. If it were true that petitioner had additional receipts/revenues, it should have been declared in said period.[88] However, as exhibited in the above table, respondent right to assess deficiency VAT covering the 2nd Quarter of CY 2010 is time-barred.

We, too, are mindful of the exception to the three (3)-year prescriptive period to assess internal revenue taxes, enshrined under Section 222(a)[89] of the NIRC, as amended. Specifically, when the

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83 Exhibit "R-8-C." *Id.* at p. 317.

84 Exhibit "R-8-D." *Id.* at p. 318.

85 Exhibit "R-8-E." *Id.* at p. 319.

86 See *AFP General Insurance Corporation v. Commissioner of Internal Revenue,* G.R. No. 222133, November 4, 2020.

87 Exhibit "R-1-A." Docket, p. 297.

88 Section 114(A) of the NIRC, as amended states that: "Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer:..."

89 **SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-***

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax filing of tax returns is tainted with intentional falsity, or fraud with intent to defeat payment of tax, or omission to file tax returns, the prescriptive period to assess internal revenue taxes is ten (10) years after discovery thereof. However, this provision does not find application in this case.

Again, the very root of respondent's deficiency tax assessments against petitioner for CY 2010 was the alleged purchases made by MTD to the latter. Yet, said purchases were unvalidated; hence, it cannot be utilized as factual foundation of said assessments. Precisely, there was no *prima facie* falsity or fraud in the filing of petitioner's 2010 AITR, and Quarterly VAT Returns covering the 1st and 2nd Quarters of CY 2010. This justifies the non-application of the ten (10)-year extraordinary prescriptive period to assess internal revenue taxes under Section 222(a) of the NIRC, as amended.

Being barred by prescription, respondent's deficiency IT and VAT assessments for CY 2010 are ineffectual against petitioner.[90]

In conclusion, respondent's deficiency IT and VAT assessments for CY 2010, amounting to ₱18,270,626.08, issued against petitioner is invalid. Therefore, the LN dated September 25, 2019, demanding payment of said amount against petitioner is as well void. To stress, a void assessment bears no valid fruit.[91]

WHEREFORE, the Petition for Review dated November 6, 2019, filed by Grand Geo Spheres Construction Corp., is **GRANTED**. Accordingly, respondent's Letter Notice dated September 25, 2019, and her deficiency income tax and value-added tax assessments for calendar year 2010, in the total amount of ₱18,270,626.08, issued against petitioner, are **DECLARED** void.

Respondent, her representatives, agents, or other persons acting in her behalf are **ENJOINED** from enforcing the collection of

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may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

90 See *Universal Weavers Corporation v. Commissioner of Internal Revenue*, G.R. No. 233990, May 12, 2021.

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

deficiency income tax and value-added tax assessments for calendar year 2010, in the total amount of ₱18,270,626.08, against petitioner.

SO ORDERED.

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

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice