REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ADMORLINA L. FONTEJON,
Respondent.

CTA EB No. 1813
(CTA Case No. 9314)

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ*.

Promulgated:

MAY 28 2019 10:51 a.m.

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DECISION

Fabon-Victorino, J.:

Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue (BIR) and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.[1] This principle deeply engrained in the law and jurisprudence is the essence of the ruling of the Court in the case at bar.

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[1] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.,* G.R. Nos. 201398-99; and *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 201418-19, October 3, 2018.

In this appeal,[2] petitioner Commissioner of Internal Revenue (CIR) impugns the Decision and the Resolution dated November 28, 2017[3] and February 20, 2018,[4] respectively, rendered by the Court in Division in CTA Case No. 9314, the decretal portions of which read as follows:

Impugned Decision dated November 28, 2017:

> **WHEREFORE**, in light of the foregoing, the Petition for Review is hereby **GRANTED**. Consequently, the deficiency IT and VAT assessments affirmed in the assailed FDDA are hereby **CANCELLED**.
>
> **SO ORDERED.**

Impugned Resolution dated February 20, 2018:

> **WHEREFORE**, premises considered, (petitioner's) **Motion for Reconsideration Re: Decision promulgated on November 27, 2017** is hereby **DENIED** for lack of merit. Accordingly, the assailed decision promulgated on November 28, 2017 is hereby **AFFIRMED**.
>
> **SO ORDERED.**

Petitioner Commissioner of Internal Revenue is the government official authorized to administer and enforce all internal revenue laws in the Philippines. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On the other hand, respondent Admorlina L. Fontejon, a resident of Block 4, Lot 18, Silver Creek Subdivision, Puli, Carmen, Cagayan de Oro City, is engaged in contracting services, and the sole proprietor and operator of M&A Trucking Services.

On August 22, 2012, respondent received from petitioner a Letter Notice (LN) No. 099-RLF-10-00-00026

[2] Petition for Review dated March 28, 2018, *rollo,* pp. 6-19.
[3] Ibid. at pp. 26-41.
[4] Id. at pp. 42-47.

dated August 8, 2012 and Letter dated August 15, 2012, informing her about the observed discrepancy between her sales declared in her tax return and those in the summary list of purchases submitted by her customers for income tax (IT) and value-added tax (VAT) purposes covering taxable year (TY) 2010.

In her undated response,[5] respondent registered her objection to petitioner's findings and manifested her intention to file a protest should she receive any assessment notice/s.

On September 7, 2012, respondent received petitioner's Follow-Up Letter dated September 5, 2012, demanding her to settle the alleged deficiency IT and VAT for TY 2010 as contained in the LN.[6]

Respondent assailed petitioner's findings in the Follow-Up Letter of September 5, 2012, and prayed in her letter dated September 12, 2012,[7] that her case be reconsidered and deemed closed.

On October 5, 2012, respondent received a Notice of Informal Conference dated October 2, 2012,[8] requesting her appearance on a specified date with warning that failure to attend shall be taken as a waiver of her right to appear.

On September 6, 2013, a certain Queen Lovelle B. Lomongo received for respondent an Amended Notice of Informal Conference dated August 20, 2013.[9]

On September 16, 2013, the revenue officers who conducted the examination on respondent's tax liabilities prepared a memorandum finding her liable for deficiency IT and VAT for TY 2010 as indicated in the LN and recommended the issuance of a Preliminary Assessment Notice (PAN) against her.[10]

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[5] Exhibit R-3, BIR Record, p. 7.
[6] Exhibit R-4. Ibid. at p. 44.
[7] Exhibit R-5, id. at pp. 48-51.
[8] Exhibit R-6, id. at p. 53.
[9] Exhibit R-7, id. at p. 56.
[10] Exhibit R-8, id. at p. 61.

On April 21, 2015, petitioner[11] issued a preliminary assessment notice (PAN),[12] finding respondent liable for deficiency IT and VAT with increments for TY 2010 aggregately valued at ₱7,993,217.16.

On July 1, 2015, respondent received[13] a Formal Letter of Demand (FLD) and a Final Assessment Notice (FAN) with Details of Discrepancy dated June 4, 2015,[14] assessing her for deficiency IT and VAT, with increments[15] for TY 2010, broken down as follows:

	IT	VAT	Total
Basic Tax	1,405,041.39	2,016,472.62	3,421,514.01
50% Surcharge	702,520.70	1,008,236.31	1,710,757.01
Interest	1,182,576.50	1,786,818.79	2,969,395.29
Total Deficiency	3,290,138.59	4,811,527.72	8,101,666.31

On July 3, 2015, respondent protested the FLD/FAN for lack of factual and legal bases.[16] In his letter dated October 26, 2015, petitioner endorsed respondent's tax case to Revenue District Office No. 99, Malaybalay City for reevaluation.

On October 26, 2015, respondent executed a waiver of the defense of prescription under the NIRC's Statute of Limitations which petitioner accepted[17] on even date. The waiver stretched the period for assessment and collection of the subject taxes until December 31, 2016.[18]

On February 26, 2016, respondent received petitioner's Final Decision on Disputed Assessment (FDDA) dated February 4, 2016, demanding payment of deficiency IT and VAT, with increments for TY 2010 in the sum of ₱8,101,666.31.

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[11] Acting through Regional Director (RD) Alberto S. Olasiman.
[12] Exhibit R-10, BIR Record, pp. 68-71.
[13] Respondent acknowledged receipt of the FLD/FAN with Details of Discrepancy dated June 4, 2015, on July 1, 2015 as stated in her administrative protest of even date. See BIR Record, pp. 82-83.
[14] Exhibit R-11, BIR Record, pp. 72-75.
[15] Surcharges and Interests.
[16] BIR Record, pp. 83-84
[17] See Note 11.
[18] BIR Record, p. 90.

On March 28, 2016, respondent elevated her case before the Court in Division.[19]

During trial, respondent presented evidence[20] but for unexplained reason failed to formally offered them, hence the Court in Division deemed her right to formally offer her evidence waived.[21]

On November 28, 2017,[22] the Court in Division rendered the impugned Decision, invalidating petitioner's deficiency IT and VAT assessments for TY 2010 issued against respondent on the following grounds: 1) the FLD/FAN with Details of Discrepancy was issued beyond the three (3)-year prescriptive period to assess internal revenue taxes under Section 203 of the NIRC, as amended; 2) absence of a valid Letter of Authority in favor of the examining revenue officers; and 3) failure of petitioner to prove that the PAN dated November 21, 2015 was received by respondent.

Petitioner sought,[23] but failed[24] to obtain a reconsideration of the adverse decision from the Court in Division, thus, this appeal via the instant Petition for Review,[25] raising the following issues for the consideration of the Court *En Banc*:

I. The FLD/FAN with Details of Discrepancy was seasonably issued within the extra-ordinary ten (10) year prescriptive period under Section 222(a) of the NIRC, as amended.

II. The Court in Division erred in holding that the absence of a LOA violated petitioner's right to due process; and

III. The Court in Division erred in ruling that his failure to prove that the PAN was indeed received by respondent constitutes violation of her right to due process.

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[19] Docket (CTA Case No. 9314), pp. 10-21.
[20] Ibid. at pp. 93-94.
[21] Id. at pp. 153-154.
[22] *Rollo*, pp. 26-41.
[23] Petitioner's Motion for Reconsideration Re: Decision promulgated on November 28, 2017, docket (CTA Case No. 9314), pp. 235-244.
[24] *Rollo*, pp. 42-47.
[25] Ibid. at pp. 6-19.

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Petitioner states that the subject assessment was not covered by the ordinary three (3)-year prescriptive period under Section 203 of the NIRC, as amended. Contrary to the finding of the Court in Division, the FLD/FAN was predicated not on fraud, but on the falsity of respondent's 2010 ITR. According to him, per the BIR's Third-Party Matching Data Program and RELIEF System, a comparison of her 2010 ITR with the Summary List of Purchases made under oath by her customers yielded respondent's substantial under-declaration of sales by 90.63%. Since the filing of respondent's 2010 ITR was tainted with falsity, he had 10 years from the discovery of such falsity on August 8, 2012, or until August 8, 2022 to assess her. Thus, the FLD/FAN were seasonably issued on June 4, 2015, or within the 10-year extraordinary prescriptive period enshrined in Section 222(a) of the NIRC, as amended.

Petitioner further states that the non-issuance of a valid LOA is of no consequence to the validity of the subject assessments which were arrived at after comparing respondent's 2010 ITR with the summary list of purchases submitted by her customers. The result of the process was reflected in the LN duly served to respondent. Hence, the issuance of an LOA to authorize the examining revenue officers to audit respondent's books of account or other accounting records could be dispensed with.[26]

Further, respondent's denial of receipt of the PAN, amidst admission of receipts of other BIR notices and/or correspondences casts serious doubt on the veracity of her claim. Besides, she did not question the authority of a certain Angelina B. Lomoga to receive the PAN on her behalf leading him to believe that the latter was her authorized representative. Hence, respondent is estopped from disclaiming receipt of the PAN. Petitioner believes that by sending the PAN to respondent via registered mail as shown in the registry return receipt pertaining thereto, it is sufficient indication that she actually received the PAN.

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[26] Petitioner invokes *Masin-AES Pte. LTD. - Philippine Branch vs. Commissioner of Internal Revenue,* CTA Case No. 8543, April 10, 2014 as authority.

On the other hand, no comment/opposition thereto was filed by respondent despite opportunity granted.[27]

THE RULING OF THE COURT

The instant petition is devoid of merit.

Petitioner asserts that respondent filed a false return, hence, the prescriptive period within which to assess and collect her IT and VAT liabilities is ten (10) years pursuant to Section 222(a) of the NIRC, as amended,[28] and not the ordinary three (3) year-prescriptive period under Section 203[29] of the same Code.

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage taken of another.[30]

Jurisprudence also has it that the filing of a fraudulent return to warrant the application of Section 222(a) of the NIRC, as amended, requires that the act of the taxpayer must be with intent to evade taxes. Wrong information based on mistake, carelessness, or ignorance, without the intent to evade taxes does not constitute intentional falsity in a tax return.[31]

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[27] *Rollo,* pp. 51.

[28] 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 may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: xxx

[29] 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.

[30] *Commissioner of Internal Revenue vs. Court of Appeals,* G.R. No. 119322, June 4, 1996.

[31] See *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.,* G.R. No. 213943, March 22, 2017.

Significantly and as consistently ruled by the Supreme Court, fraud cannot be presumed[32] and that epithets amounting to fraud must accordingly be proved by clear and convincing evidence.[33]

In the present case and as admitted by petitioner, the assessments he issued against respondent were based on third-party information gathered from the BIR data base. However, there is no indication, nor even a hint that such information was ever verified to justify the issuance of the subject assessments against respondent. Petitioner, after noting the discrepancy in respondent's declared sales per tax return as compared to the summary list of purchases submitted by her customers for IT and VAT purposes for TY 2010, readily notified respondent of his finding and demanded payment of what he perceived as the latter's tax deficiencies for TY 2010. Without verification of the information gathered, the finding was evidently hinged on the presumption that respondent did not reflect in her tax return for 2010 her actual income as supplier of labor. But mere presumption of the existence of undeclared receipts of respondent failed to satisfy the quantum of evidence to establish actual fraud to warrant the application of Section 222 of the NIRC, as amended. Thus, the ordinary three (3)-year prescriptive period to assess and collect the alleged tax deficiencies under Section 203 of the same Code should apply. In other words, the FLD dated June 4, 2015 and the FAN for alleged IT and VAT deficiency assessments had already prescribed, having been issued beyond the three (3)-year prescriptive period mandated under Section 203 of the NIRC, as amended.

Even granting that the FLD/FAN were seasonably issued on June 4, 2015 by applying the extraordinary 10-year prescriptive period to assess and collect the tax deficiencies as claimed by petitioner, the assessments for IT and VAT stated in the FLD/FAN and affirmed in the assailed FDDA dated February 4, 2016 must still be cancelled and set aside.

Without any pretention, petitioner admitted that no Letter of Authority (LOA) was issued authorizing the examination or audit of respondent's books of account and

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[32] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.
[33] *Spouses Ramos vs. Obispo*, G.R. No. 193804, February 27, 2013.

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other accounting record. For petitioner, a LOA was inconsequential and not necessary to the validity of his assessments which were arrived at after comparing respondent's 2010 ITR with the summary list of purchases submitted by her customers taken from the BIR date base. Allegedly, the assessments based on a LN pursuant to the BIR's RELIEF System and Third-Party Matching Program is legally binding against respondent despite the non-issuance of a valid LOA.

Evidently, petitioner failed to recall his solemn duty under Section 2[34] of the NIRC, as amended, in relation to his power to assess and collect taxes. To aid him perform this bounden duty, Section 6(A) of the same Code explicitly allows him or his duly authorized representative to authorize the examination or audit of any taxpayer and assess the correct amount of tax, *viz.*:

> SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.**
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> (A)Examination of Returns and Determination of tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

Note that under Section 13 of the NIRC, as amended, a valid LOA must be issued by petitioner or his authorized representative in favor of a revenue officer performing assessment functions to legally examine or audit a taxpayer's books of account, or other accounting record, to wit:

> SEC. 13. Authority of a Revenue Officer.- Subject to the rules and regulations to be prescribed by the Secretary of

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[34] 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.

> 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.

Hence, there must be a grant of authority before any revenue officer can conduct an examination or issue and assessment against a taxpayer. Apart from this requirement, the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, as obtaining in the present case, the assessment or examination is a nullity.[35]

Relevantly, in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[36] the Supreme Court clarified that a LN is not a valid substitute for a LOA. Under RMO No. 32-2005, a previously issued LN must be transmuted to a LOA before a revenue officer may proceed with further examination and assessment of the taxpayer, *viz*:

> **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.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **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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> In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against

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[35] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,* G.R. No. 178697, November 17, 2010.

[36] G.R. No. 222743, April 5, 2017.

> MEDICARD. Therefore, no LOA was also served on MEDICARD. **The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision**. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid.
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> xxx xxx xxx
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> *xxx* **Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.**
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> The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. **Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.** Unfortunately, this was not done in this case. *(Emphasis supplied)*

Guided by the above doctrinal teachings, the examination and audit conducted by RO Mariceline C. Daba and her supervisor Victoria M. Maandig on respondent anchored on LN No. 099-RLF-10-00-00026 dated August 8, 2012 was invalid. The record is bereft of any showing that such LN was converted into a LOA as mandated by both RMO No. 32-2005 and jurisprudence. It simply means that the investigation conducted on respondent spearheaded by RO Daba and Supervisor Maandig leading to the issuance of the subject assessments had no prior legal permission either from petitioner or his authorized representative. For that reason, the FAN/FLD predicated upon their findings is null and without any legal consequence.

Petitioner finally contends that mere presentation of the registry receipt relating to the PAN is sufficient proof that the PAN was actually received by respondent.

The Court is not persuaded.

Section 228[37] of the Tax Code requires that the taxpayer must be informed of the facts and the law upon which the assessment was made and this can only be done through the service and actual receipt of the notices containing the facts and law upon which it was based. The law imposes a substantive, not merely a formal, requirement.[38] Moreover, receipt of registered letters and return receipts do not prove themselves. They must be properly authenticated in order to serve as proof of receipt of the letter. Section 13, Rule 13 of the Rules of Court provides that it is the registry receipt issued by the mailing office and the affidavit of the person who actually mailed the letter which proves service through registered mail.[39]

In the present case, petitioner only presented the registry receipt[40] pertaining to the alleged PAN[41] which showed that it was received by certain "Angelina P. Lomogo." Aside from petitioner's bare and self-serving allegation that she was respondent's authorized representative who received the PAN, no other evidence was

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[37] 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 not be required in the following cases: xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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.

[38] See *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

[39] See *Republic of the Philippines vs. Resins, Incorporated,* G.R. No. 175891, January 12, 2010.

[40] Ibid.

[41] Exhibit R-10, BIR Record, pp. 68-71.

adduced in support of such claim. It is therefore not remote that petitioner merely presumed that Angelina P. Lomogo received the alleged PAN and that she was the authorized representative of respondent. But conjectures and surmises cannot substitute for the facts.[42] Without any formidable proof that the PAN was issued and actually received by respondent in the regular course of mail, it is safe to conclude that no valid PAN was issued and served upon respondent. That being the case, the subject assessment is undoubtedly void and should be cancelled and set aside. To repeat, the taxpayer's receipt of the PAN and allowing the latter an opportunity to respond[43] thereto must generally[44] precede the issuance of the FLD/FAN. The process cannot be simply reversed.

Section 3(v), Rule 131 of the Rules of Court provides that when a letter was duly directed and mailed, it is presumed that it was received in the regular course of mail. Thus, when the PAN is sent via registered mail, it is presumed that taxpayer-addressee received it in the ordinary course of mail.[45] But in order to raise this presumption the following must be established: (1) that he letter was properly addressed with postage pre-paid; (2) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of mail.[46] However, when the party who is supposed to receive the said letter denies that it actually received such letter, the presumption is destroyed. Thus, the burden to prove otherwise is shifted back to the one who

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[42] See *Spouses Guidangen vs. Wooden,* G.R. No. 174445, February 15, 2012.

[43] Fifteen (15) days from receipt of the PAN. See Section 228 of the NIRC, as amended, as implemented by Section 3.1.2., Revenue Regulations No. 12-99.

[44] The receipt of the PAN is not required in: (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 exciseable 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. See Section 228 of the NIRC, as amended.

[45] See *Nava vs. Commissioner of Internal Revenue,* G.R. No. L-19470, January 30, 1965.

[46] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 157064, August 7, 2006.

claims that he mailed the said letter and he must show through convincing evidence that indeed there was actual receipt of the mail matter by the intended person.

In this case, respondent repudiated her alleged receipt of the PAN, hence, it was incumbent upon petitioner to prove that the PAN was issued and *actually* received by respondent, or at least by her authorized representative. Petitioner utterly failed in this regard. This is the essence of the pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.,*[47] where it was held that:

> If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the clue course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
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> 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. xxx (emphasis supplied)

More importantly, no less than the registry return receipt card[48] itself mandates that the mail matter must only be delivered to the addressee, or his duly authorized agent, no more, no less, thus:

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[47] G.R. No. 202695, February 29, 2016.
[48] Exhibit R-13, docket (CTA Case No. 9314), p. 190.

> A registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write in the addressee's name on the proper space and then affix legibly his own signature below it.

In closing, the adverse consequence for non-observance of prescribed procedure in the issuance of assessment was eloquently explained in *Commissioner of Internal Revenue vs. Algue, Inc.*,[49] to wit:

> But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.

WHEREFORE, the Petition for Review dated March 28, 2018, filed by petitioner Commissioner of Internal Revenue is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[49] G.R. No. L-28896, February 17, 1988.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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