REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1953** **(CTA Case No. 9109)**
	Present:
-versus-	Del Rosario, *PJ*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
YUSEN LOGISTICS CENTER, INC., Respondent.	Promulgated:
	DEC 09 2019 4:17 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before this Court is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) on October 30, 2018 assailing the Decision[1] and Resolution[2] promulgated on April 26, 2018 and on October 2, 2018, respectively, by the then CTA Third Division (CTA Division) in the case *Yusen Logistics Center, Inc. v. Commissioner of Internal Revenue,* docketed as CTA Case No. 9109.

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[1] *Rollo*, pp. 37-64; Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice (now retired) Lovell R. Bautista. Associate Justice Ma. Belen M. Ringpis-Liban was on leave.
[2] *Rollo*, pp. 65-72; Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban.

The dispositive portion of the April 26, 2018 Decision ("Assailed Decision") reads:

> **WHEREFORE,** premises considered, the Petition for Review is **GRANTED.** Accordingly, the FLD/FAN dated April 14, 2014, the FNBS dated March 4, 2015, and the Warrant of Distraint and/or Levy dated June 8, 2015 are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

The dispositive portion of the October 2, 2018 Resolution ("Assailed Resolution") reads:

> **WHEREFORE,** respondent's *Motion for Reconsideration Ad Cautelam* dated May 16, 2018 is **DENIED.** The Decision dated April 26, 2018 is **AFFIRMED**.
>
> **SO ORDERED.**

THE FACTS

The facts of this case as found by the then CTA Third Division[3] are as follows:

> Petitioner Yusen Logistics Center, Inc. is a domestic corporation with principal office at L3, B4, East Science Avenue, Laguna Technopark, Biñan, Laguna. It is registered with the Philippine Economic Zone Authority (PEZA) with Amended Certificate of Registration No. 06-12-L.
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> Per its Articles of Incorporation, petitioner's primary purpose is to engage in the business of international logistics operations, which includes warehousing, storage, cargo, consolidation, material handling, inventory control, picking, sorting, kitting, sub-assembly, cataloguing, and distribution of parts and products for clients and generally, to do and perform any and all acts connected with the business above-defined or arising therefrom or incidental thereto.

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[3] *Rollo*, pp. 37-47; Citations omitted; The petitioner and the respondent in the CTA Division case are now the respondent and petitioner, respectively, in the CTA *En Banc* case.

xxx xxx xxx

On September 16, 2011, respondent issued Letter of Authority (LOA) No. 057-2011-00000291 for the examination of books of accounts and other accounting records of petitioner for TY 2010.

On July 10, 2013, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitation of the NIRC through its Treasurer, Socorro Z. Niro, extending the period to assess until June 30, 2014.

Thereafter, respondent issued a Notice of Informal Conference (NIC) dated November 15, 2013, with attached computation of the deficiency taxes, informing petitioner of its alleged deficiency tax liability in the amount of ₱18,659,482.57, to which petitioner filed a Reply on December 3, 2013.

On January 14, 2014, petitioner received a Revised NIC dated January 6, 2014, informing it that after investigation, respondent still found it liable for deficiency Value-Added Tax (VAT) in the amount of ₱195,838.20.

On February 21, 2014, petitioner received a Preliminary Assessment Notice (PAN) (Amended NIC) dated February 10, 2014, informing petitioner that it was liable for deficiency taxes in the total amount of ₱2,890,548.14.

On March 7, 2014, petitioner filed its Reply to the PAN.

On April 14, 2014, a Formal Letter of Demand (FLD) with Final Assessment Notice (FAN) was issued by respondent.

On October 23, 2014, petitioner received a Preliminary Collection Letter (PCL) dated October 2, 2014, requiring it to pay the amount of ₱3,787,116.73 for alleged deficiency taxes for TY 2010.

On October 30, 2014, petitioner filed its Reply questioning the issuance of the PCL dated October 2, 2014 alleging that it only received a PAN prior to the said PCL.

On March 16, 2015, petitioner received from respondent a Final Notice Before Seizure (FNBS) dated March 4, 2015, to which it filed a Reply on March 27, 2015.

On July 7, 2015, petitioner received a Warrant of Distraint and/or Levy (WDL) dated June 8, 2015 for the amount of ₱2,915,372.11 plus all increments incident to the tax delinquency, computed as follows:

TYPE OF TAX	AMOUNT
Income Tax (IT)	₱445,458.38
Value-Added Tax	186,029.48
Expanded Withholding Tax (EWT)	2,226,884.25
Compromise Penalty	57,000.00
TOTAL	**₱2,915,372.11**

The issuance of the WDL was treated by petitioner as a decision on its protest to the assessment. Hence, on August 5, 2015, petitioner filed the instant Petition for Review (With Urgent Motion to Suspend Collection of Tax).

In support of its Motion to Suspend Collection of Tax, petitioner presented Attorney Melitha F. Gasapos who identified several documents.

On September 11, 2015, petitioner posted its Memorandum and Formal Offer of Evidence on the pending incident, while respondent posted his on September 14, 2015.

On October 22, 2015, respondent filed his Answer basically questioning the jurisdiction of the Court over the petition, claiming that petitioner did not file any protest to the FAN/FLD, rendering the assessment final, due and demandable. Further, the deficiency tax assessments for IT, VAT, EWT and Miscellaneous Tax (MT) were issued in accordance with law, rules, and jurisprudence, thus valid. Lastly, petitioner cannot deny receipt of the FLD/FAN as all notices he issued were sent to its registered address at Lot 3, Block 4, East Science Avenue, Laguna Technopark, Biñan, Laguna.

On January 5, 2016, the Court granted petitioner's Motion to Suspend the implementation of the WDL conditioned on petitioner's filing of a surety bond equivalent to one and one half (1 1/2) times of the amount sought to be collected by respondent. Petitioner posted the required surety bond per the Resolution of April 8, 2016.

After the issuance of the Pre-Trial Order on June 10, 2016, petitioner presented its witnesses, Cherrylou B. Patron and Marilyn M. Derilo.

Witness **Cherrylou B. Patron** testified that as petitioner's Assistant Manager, she receives for petitioner the notices or letters from various government agencies. Precisely, she was the one who personally received the questioned WDL issued by respondent on July 7, 2015 bearing the address of petitioner's main office at East Science Avenue, Laguna Techno Park, Biñan, Laguna, where she is the Assistant Manager. Petitioner has three other offices, two are handled by Ana Teresa Bealsa, and the other by Ryan Liwanag.

The other witness **Marilyn M. Derilo** declared that as petitioner's Assistant General Manager for Finance and Accounting since April 2012, she manages, supervises and monitors the day-to-day finance and accounting matters of petitioner including the daily posting of transactions, filing and payment of tax returns and review of the BIR's assessments and audits.

Petitioner is a PEZA-registered enterprise engaged in the business of international logistics operations, which includes warehousing, storage, cargo, consolidation, material handling, inventory control, picking, sorting, kitting, sub-assembly, cataloguing, and distribution of parts and products for clients and generally, to do and perform any and all acts connected with the business above-defined or arising therefrom or incidental thereto, as indicated in its Amended Articles of Incorporation approved by the Securities and Exchange Commission on September 20, 2013.

As a PEZA-registered Ecozone Logistics Service Enterprise, petitioner enjoys certain tax incentives, such as five percent (5%) gross income tax, tax and duty-free importations and VAT zero rating, among others. Thus, petitioner is qualified for zero-rating of its transactions with its local suppliers of goods, properties and services.

Witness Derilo further declared that the present case started when the BIR served petitioner LOA-057-2011-0000291/SN:eLA201000080907 dated September 16, 2011 for tax investigation for TY 2010. She actively participated in the examination/audit and timely submitted to the BIR the requested documents for the TY 2010. As requested by the BIR, petitioner executed a Waiver on July 10, 2013, through its Treasurer, Socorro Z. Niro. Thereafter, the BIR sent petitioner a copy of said Waiver bearing the signature of Revenue District Officer of Revenue District No. 057, Julio G. Alcasabas.

Petitioner submitted more documents to the BIR on September 12, 2013, October 20, 2013 and November 4, 2013.

On November 19, 2013, petitioner received from respondent a NIC dated November 15, 2013, finding it liable for deficiency taxes in the amount of ₱18,659.482.57, to which it filed a Reply on December 3, 2013.

On January 14, 2014, petitioner received a Revised NIC, indicating a lower deficiency tax of ₱195,838.20. However, when petitioner was about to settle the deficiency taxes stated in the Revised NIC, respondent issued a PAN dated February 10, 2014, which it received on February 21, 2014, indicating higher deficiency taxes liability for TY 2010 in the amount of ₱2,890,548.14. Petitioner disputed the said findings through its Reply on March 7, 2014.

Subsequently, petitioner was notified that the docket of its case was forwarded to the Assessment Division of the BIR Regional Office, San Pablo City. On October 23, 2014, petitioner received from the BIR a PCL to which it filed a Reply, stressing that it did not receive the notice of assessment referred to in the PCL or in any letter from the BIR. Petitioner also questioned the issuance of the PCL on the ground that there was no FAN issued prior to it and reiterated that the subject assessment has prescribed.

Upon inquiry, petitioner was informed that the FAN was sent to it through registered mail, which it readily denied. On December 22, 2014, petitioner was advised by the Assistant Revenue District Officer, Rufo Ranario, to provide the BIR Revenue District Office in San Pablo City, Laguna, with a copy of its Reply to the PCL, which it did on the same day. *gr*

Subsequently, petitioner received the FNBS dated March 4, 2015, directing it to settle the deficiency taxes for TY 2010 with information that the BIR sent to it a letter dated September 10, 2014. On March 27, 2015, petitioner filed a Reply to the FNBS, denying receipt of the alleged letter of September 10, 2014. Petitioner also reiterated its arguments in its Reply to the PAN.

On July 7, 2015, petitioner received the assailed WDL, which prompted it to file the instant Petition for Review on August 5, 2015.

The witness stressed that respondent's right to assess petitioner has already prescribed as the latter did not receive any FAN, a fact unrefuted by the BIR. Consequently, both the assessment and the WDL are erroneous and without bases in fact and in law.

She also believed that respondent's finding that petitioner has undeclared sales of ₱781,069.08 is incorrect since: a) some invoice entries were inadvertently excluded by the BIR in the computation of sales per book; and b) petitioner's sales recorded as sales in the books of 2010 was adjusted as the said amounts were already reported as part of the its income in 2009 and taxed in 2009. The BIR also incorrectly disallowed petitioner's claimed tax credits in 2010 on the ground that it was unsupported as petitioner's Income Tax Return (ITR) shows that the amounts claimed as tax credit matches the Certificates of Withholding Taxes (CWTs) in possession of petitioner. Lastly, petitioner has an outstanding CWT in the amount of ₱1,720,283.00, which is more than sufficient to cover the disallowed CWT claimed by petitioner.

On the alleged deficiency VAT assessment, witness clarified that the difference between the sales per book and per VAT return was due to the difference in reporting for VAT purposes and for accounting purposes. VAT reporting is based on payments actually received, while in accounting reporting, the sale is deemed accrued once the service is billed.

With respect to the deficiency EWT assessment, petitioner elucidated that petitioner did not withhold from its income payment to Corinthian Industrial Property (Corinthian) and Ecozone Facilities Enterprise (Ecozone), since the two are *Jc*

PEZA-registered enterprises, hence, entitled to incentives such as exemption from IT.

Finally, she was petitioner's Accounting Manager in 2011, hence, aware of the audit/examination conducted against petitioner in that year. She received the Waiver from the BIR and indorsed it to petitioner's Treasurer, Socorro Niro for signature, as the latter was the person authorized to sign the said Waiver.

After petitioner rested, respondent presented Lilibeth R. Ambat and Dolores O. Zaporteza, as his witnesses.

Revenue Officer (RO) III **Lilibeth R. Ambat** testified that she audited petitioner for TY 2010 by virtue of Memorandum of Assignment (MOA) No. 057-LA-00146-11/29/2012 dated November 29, 2012, since the original RO and Group Supervisor (GS) assigned, *i.e.* RO Alexander Onte and GS Emily Singson, who were authorized under LOA-057-2011-00000291/SN: eLA2010000807 dated September 16, 2011, were transferred to another office. Petitioner was informed of said change of RO through a Letter dated December 4, 2012.

During the audit, petitioner was provided with a Checklist of Requirements dated September 20, 2011 and the First Request for Presentation of Record dated October 24, 2011. On March 8, 2013, the Second and Final Request for Presentation of Records was issued to petitioner, reiterating the earlier request for submission of the listed documents, with a warning that continued non-compliance will warrant the issuance of a Subpoena *Duces Tecum*.

On July 10, 2013, petitioner executed a Waiver, extending the period to assess until June 30, 2014, which was notarized on July 10, 2014. Thereafter, witness continued her audit of the books of accounts and documents submitted which unearthed some discrepancies warranting assessment. Thus, on November 15, 2013, a NIC was issued to accord petitioner an opportunity to refute the result of her audit.

On February 10, 2014, she issued the PAN, finding petitioner liable for deficiency IT, VAT and EWT for TY 2010.

The deficiency IT assessment in the amount of ₱462,871.59, inclusive of penalties, pursuant to Section 32 of the NIRC of 1997, as amended, was issued against petitioner due to its undeclared sales per ITR compared with sales per books amounting to ₱781,069.08 and unsupported creditable withholding tax amounting to ₱45,393.54.

She further found that petitioner has VAT deficiency of ₱200,574.66, inclusive of penalties, pursuant to Section 108 of the NIRC of 1997, as amended, due to undeclared sales discovered after computing the amount of sales per book and VAT Return.

With regard the EWT deficiency assessment, the witness explained that petitioner's rental payments to PEZA-registered companies, namely, Corinthians and Ecozone, should have been subjected to withholding taxes since payments to such companies are not automatically exempt from withholding taxes. For petitioner's failure to do so, rendered it liable to EWT in the amount of ₱2,227,101.89, penalties included.

RO Ambat admitted that petitioner filed a Reply to the PAN, however, it was unable to refute her audit findings. Thus, her Memorandum dated March 11, 2014, recommended the issuance of the Assessment Notice against petitioner. Likewise, she admitted that her office issued to petitioner a Revised NIC on January 6, 2014, lowering the deficiency assessment from ₱18,659,482 to ₱195,838.20. She also personally served to petitioner the Letter informing the change of assigned examiner due to reshuffling of ROs, and that the Second and Final Request for Presentation of Record and the PAN had been issued. As to the Waiver executed by petitioner, she confirmed that it was undated and only had the signature of Julio G. Alcasabas.

The OIC-Chief of Assessment Division (OIC-Chief), Revenue Region No. 9, San Pablo City, Laguna, **Dolores O. Zaporteza** also testified for respondent. She declared that her office reviewed the Memorandum dated March 11, 2014 and all its supporting documents prepared and endorsed by the investigating officer from Revenue District Office No. 57, Biñan, Laguna. Thereafter, she issued and served to petitioner through registered mail, the FLD with attached Details of Discrepancies together with the Audit Results/Assessment Notices/BIR Forms 0401. Despite receipt, petitioner did not file any protest to the FLD within the period allowed by law and rules, hence, the said assessment for TY 2010 became final and demandable.

The witness admitted that she issued the FLD on April 14, 2014 which the Administrative Office of the Assessment Division served to petitioner through registered mail on even date, as indicated in the Registry Return Receipt signed by a certain Security Guard (SG) Javier and in the corresponding Certification.

After respondent rested, the case was deemed submitted for decision on May 5, 2017, after the parties filed their respective memoranda.

On April 26, 2018, the CTA Division granted the Petition for Review filed by then petitioner (now respondent) Yusen Logistics Center, Inc. ("YLCI", for brevity). The FLD/FAN dated April 14, 2014, the FNBS dated March 4, 2015, and the Warrant of Distraint and/or Levy dated June 8, 2015 were cancelled and set aside.

On October 2, 2018, the CTA Division denied CIR's Motion for Reconsideration *Ad Cautelam* dated May 16, 2018. The Decision dated April 26, 2018 was affirmed.

On October 22, 2018, the CTA *En Banc* granted the "Motion for Extension of Time to File Petition for Review" filed by the CIR on October 19, 2018.

Within the period of extension granted by this Court, CIR filed the Petition for Review.

On December 10, 2018, YLC filed its Comment/Opposition *(to the Petition for Review dated 2018 October 29)*.

On January 24, 2019, the Petition for Review was submitted for decision.

Hence, this decision. *ge*

ISSUES

The following are the grounds for the petition:

I. WITH ALL DUE RESPECT, THE HONORABLE COURT THIRD DIVISION ERRED IN MAINTAINING THAT IT HAS JURISDICTION OVER THE ORIGINAL PETITION. THE ASSESSMENT AGAINST RESPONDENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.

II. WHILE MAINTAINING THAT THE HONORABLE COURT HAS NO JURISDICTION, WITH ALL DUE RESPECT, THE HONORABLE COURT THIRD DIVISION ERRED IN REQUIRING PETITIONER TO PROVE ACTUAL RECEIPT OF THE ASSESSMENT NOTICES.

III. WHILE MAINTAINING THAT THE HONORABLE COURT HAS NO JURISDICTION OVER THE ORIGINAL PETITION, THE HONORABLE COURT THIRD DIVISION ERRED IN DECLARING THE ASSESSMENTS VOID FOR THE ALLEGED FAILURE ON THE PART OF PETITIONER TO PROVE SERVICE THEREOF TO RESPONDENT.

IV. WHILE MAINTAINING THAT THE HONORABLE COURT HAS NO JURISDICTION OVER THE ORIGINAL PETITION, THE HONORABLE COURT THIRD DIVISION ERRED IN RULING THAT THE DEFICIENCY TAX ASSESSMENT AGAINST RESPONDENT HAS ALREADY PRESCRIBED.

THIS COURT'S RULING

The petition is denied.

After a careful review of the issues and arguments raised by CIR in this Petition, this Court finds that these are mere reiterations of what have been considered and passed upon by the CTA Division in the assailed Resolution dated October 2, 2018, which affirmed the assailed Decision dated April 26, 2018.

CTA has jurisdiction over cases asking for the cancellation and withdrawal of a warrant of distraint and/or levy

CIR stressed that based on Section 228 of the NIRC of 1997 and the applicable regulation, the taxpayer has thirty (30) days from receipt of the FLD/FAN within which to file its protests thereto. CIR alleges that no protest was filed by YLCI within thirty (30) days from receipt of the FLD/FAN. CIR argues that the assessment became undisputed and has now become final and unappealable and is now beyond the jurisdiction of the Honorable Court. According to CIR, the original petition should have been dismissed by the Honorable Court.

YLCI argues that there was no valid assessment to begin with, thus there is nothing that can become final, executory and demandable. YLCI pointed out that it never received the alleged FAN /FLD. YLCI submits that there is no showing of any reversible error committed by the CTA Division when it ruled that the issues raised in the Petition are within its jurisdiction.

We agree with the CTA Division that the CTA has jurisdiction in this case.

Pertinent to this is Section 7(a) of Republic Act (RA) No. 1125,[4] as amended by RA No. 9282,[5]

> "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 Code or other laws administered by the Bureau of Internal Revenue;**
> >
> > "(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees

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[4] *"An Act Creating the Court of Tax Appeals"*, June 16, 1954.

[5] *"AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES"*, March 30, 2004.

> or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;"

Based on the foregoing provisions, CTA has jurisdiction over "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."

In the case *Commissioner of Internal Revenue v. Bank of the Philippine Islands,*[6] ("BPI case", for brevity), the Supreme Court categorically stated that "the CTA did not err in its ruling that it has jurisdiction over cases asking for the cancellation and withdrawal of a warrant of distraint and/or levy as provided under Section 7 of Republic Act (R.A.) No. 9282, thus:

> Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. x x x
>
> 2. Inaction by 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 matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> xxx xxx xxx"

In the case *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,*[7] the Supreme Court ruled that "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision[8] covers other cases that arise out of the NIRC or related

[6] G.R. No. 224327, June 11, 2018.
[7] G.R. No. 162852, December 16, 2004.
[8] In this case, the provision cited was Section 7(1) of Republic Act No. 1125, which states that:

laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the **CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected." (Emphasis Supplied)

In this case, YLCI filed on August 5, 2015 a Petition for Review before the CTA assailing the WDL dated June 8, 2015. YLCI received the assailed WDL on July 7, 2015. Considering that the WDL issued by the BIR was assailed by YLCI, it was within the CTA's jurisdiction under "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue". The CTA Division is correct in ruling that it has jurisdiction in this case.

Assessment on EWT has prescribed even before the issuance of the FAN; Waiver dated July 10, 2013 is defective

Pertinent to this case is Section 203 of the National Internal Revenue Code of 1997 (NIRC), as amended, which states:

> "SECTION 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**."

Based on the foregoing provision, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later.

Pursuant to Section 77(B) of the NIRC of 1997, as amended, the filing of corporate income tax final adjustment return shall be on or before the 15th

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SEC. 7. Jurisdiction. — The Court of Tax Appeals shall exercise 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 imposed in relation thereto, *or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue*; (Emphasis supplied).

day of April, or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.

As to the filing of remittances of expanded withholding taxes, Section 2.58 of Revenue Regulations (RR) No. 2-98,[9] as amended by RR No. 17-03,[10] provides that withholding tax returns, whether creditable or final, shall be filed and payments should be made within 10 days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.

On the other hand, Section 4.114-1 of RR No. 16-05[11] provides that every person liable to pay VAT shall file a return of its quarterly gross sales or receipts within 25 days following the close of the taxable quarter.

Thus, per YLCI's tax returns formally offered to the CTA Division, the end of the 3-year prescriptive period are as follows:

Exhibit	Form	Period Covered	Last Day for Filing	Actual Filing	End of 3 Years
Income Tax					
P-30	1702	2010	4/15/2011	4/14/2011	4/15/2014
Expanded Withholding Tax					
P-25-1	1601-E	Dec-10	1/15/2011	1/11/2011	1/15/2014
P-25-2	1601-E	Nov-10	12/10/2010	12/10/2010	12/10/2013
P-25-3	1601-E	Oct-10	11/10/2010	11/10/2010	11/10/2013
P-25-4	1601-E	Sep-10	10/10/2010	10/8/2010	10/10/2013
P-25-5	1601-E	Aug-10	9/10/2010	9/9/2010	9/10/2013
P-25-6	1601-E	Jul-10	8/10/2010	8/10/2010	8/10/2013
P-25-7	1601-E	Jun-10	7/10/2010	7/9/2010	7/10/2013
P-25-8	1601-E	May-10	6/10/2010	6/10/2010	6/10/2013
P-25-9	1601-E	Apr-10	5/10/2010	5/11/2010	5/11/2013
P-25-10	1601-E	Mar-10	4/10/2010	4/12/2010	4/12/2013
P-25-11	1601-E	Feb-10	3/10/2010	3/8/2010	3/10/2013
Value-Added Tax					
P-26-1	2550Q	4th Qtr	1/25/2011	5/2/2011*	5/2/2014
P-26-4	2550Q	3rd Qtr	10/25/2010	5/2/2011*	5/2/2014
P-26-6	2550Q	2nd Qtr	7/25/2010	5/2/2011*	5/2/2014
P-26-8	2550Q	1st Qtr	4/25/2010	5/2/2011*	5/2/2014

* *amended returns*

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[9] *SUBJECT* : *Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes*, April 17, 1998.

[10] *SUBJECT* : *Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes*, March 31, 2003

[11] *SUBJECT* : *Consolidated Value-Added Tax Regulations of 2005*, September 1, 2005.

The exception to the 3-year period of assessment by agreement of the Commissioner and the taxpayer is provided in Sec. 222(b) of the NIRC, as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

Clearly, the 3-year period of assessment may, however, be extended if the Commissioner and the taxpayer have agreed in writing to its assessment after such time. Such agreement must be made before, not after, the expiration of the original period and may further be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

We reiterate that in *Commissioner of Internal Revenue v. Kudos Metal Corporation,*[12] the Supreme Court ruled:

> Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ________ 19___," which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a

[12] G.R. No. 178087, May 5, 2010.

representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. **Both the date of execution by the taxpayer and date of acceptance by the Bureau** should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement. *(Emphases Supplied).*

This Court reiterates with approval the finding of the CTA Division[13] that the Waiver dated July 10 2013 does not indicate the date of acceptance by the CIR, as follows:

> Since the Waiver dated July 10, 2013 executed by petitioner does not reflect the date of acceptance by respondent, this Court cannot ascertain if the said Waiver was actually agreed upon before the expiration of the three-year prescriptive period and if it validly extended the three-year prescriptive period until June 30, 2014; thus, the Waiver is infirm, hence, invalid and without any binding effect.

In *Commissioner of Internal Revenue v. Stanley Works Sales (Phils.), Inc.,*[14] the Supreme Court states that "the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension." ge

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[13] Assailed Decision, p. 27.
[14] G.R. No. 187589, December 3, 2014.

In effect, the Waiver dated July 10, 2013 did not validly extend the 3-year prescriptive period until June 30, 2014. It follows that even before the issuance of the FAN by the CIR on April 14, 2014, the assessment for deficiency EWT has already prescribed.

The contention of CIR that assessment for deficiency EWT is imprescriptible is bereft of merit. In *Commissioner of Internal Revenue v. Transitions Philippines Optical, Inc.*,[15] one of the assessments which was cancelled was deficiency EWT because prescription has already set in at the time the FAN and the FLD were actually mailed.

Receipt of the assessment is required

In the consolidated cases of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[16] and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue,*[17] the Supreme Court explicitly stated that, "Section 228 of the Tax Code, as implemented by Revenue Regulations No. 12-99,[18] provides certain procedures to ensure that the right of the taxpayer to procedural due process is observed in tax assessments, thus:

> Section 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:
>
> (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

[15] G.R. No. 227544, November 22, 2017.
[16] G.R. Nos. 201398-99, October 3, 2018.
[17] G.R. Nos. 201418-19, October 3, 2018.
[18] RR No. 12-99, was later on amended by RR No.18- 2013. RR 18-2013 deleted the requirement of Notice of Informal Conference in RR 12-99 but RR 7-2018 reinstated the requirement.

liabilities for the taxable quarter or quarters of the succeeding taxable year; or

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

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

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

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.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

xxx xxx xxx

The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the

> assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. xxx xxx xxx
>
> **The use of the word 'shall'** in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is **mandatory.** This is an **essential requirement of due process and applies to** the Preliminary Assessment Notice, **Final Letter of Demand with the Final Assessment Notices**, and the Final Decision on Disputed Assessment.
>
> On **the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment.** xxx xxx xxx Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. **After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.** (*Emphases Supplied).*

In *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.,*[19] citing *CIR v. Metro Star Superama, Inc.*,[20] the Supreme Court ruled 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. xxx xxx xxx 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."

In *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.,*[21] the Supreme Court concluded that, "the CTA is correct in holding that

[19] G.R. No. 202695, February 29, 2016.
[20] 652 Phil. 172, 181 (2010).
[21] G.R. No. 198677, Nov. 26, 2014.

the FAN never attained finality because respondent never received it, either actually or constructively."

In *BPI case* (*supra.)*, the Supreme Court states that "the failure of petitioner to prove the receipt of the assessment by respondent would necessarily lead to the conclusion that no assessment was issued."

In this case, the CTA Division found that the FAN was received by "S/G JAVIER" [per Registry Receipt] and by "S/G S. JADIEL" [per Certification from the Postmaster]. We reiterate pertinent portion in the assailed Decision,[22] as follows:

> An examination of the Registry Receipt and the Certification from the postmaster indicates that the FLD and the FAN were received by a certain "S/G JAVIER" and "S/G S. JADIEL," respectively. This was also admitted by respondent's own witness RO Dolores O. Zaporteza when cross-examined on January 31, 2017.

This Court also noted that in the Registry Return Receipt,[23] the name "S/G Javier S." was written with signature above the portion/line of the "(Signature of Addressee over Printed Name)". The Certification of the Postmaster[24] also states that "xxx said mail was delivered and received by the security guard S. Jadiel dated April 24, 2014 xxx." No proof, however, was presented by CIR to show that the receipt by the security guard can be considered as receipt by YLCI. We, thus, agree with the conclusion of the CTA Division that "[CIR]'s failure to prove the actual receipt of the FLD/FAN by [YLCI] or by its authorized representative is fatal as to render the assailed assessment void."[25]

For failure of CIR to prove receipt of the FAN by YLCI, due process was not complied with. "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 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."[26] This Court, thus, agrees with the CTA Division that, "Failure on the part of [CIR] to establish that the FAN/FLD was actually received by [YLCI] is fatal and

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[22] Assailed Decision, p. 19.
[23] Exhibit "R-11-a", BIR Records, Folder 2.
[24] Exhibit "R-13", Division Docket, Vol. IV, p. 1546.
[25] Assailed Decision, p. 21.
[26] Consolidated cases of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 3, 2018, and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201418-19, October 3, 2018.

amounts to no assessment at all. As such, it cannot bind [YLCI] and may not be utilized as a foundation of a valid collection against it."[27]

Based on the foregoing discussions, there is no need to discuss the other issues/ allegations in this case. This Court finds no reversible error to disturb the assailed Decision and Resolution of the then CTA Third Division.

WHEREFORE, premises considered, the present Petition for Review filed by the Commissioner of Internal Revenue is **DENIED.** Accordingly, the April 26, 2018 Decision and the October 2, 2018 Resolution of the then CTA Third Division in CTA Case No. 9109 are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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[27] Assailed Resolution, pp. 4-5.

(On Leave)
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