REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2537** *(CTA Case No. 9547)*
	Present:
- versus -	**DEL ROSARIO**, *PJ*, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
GATEWAY RURAL BANK, INC., *Respondent.*	**Promulgated:** JUN 22 2023 3:42 p.m.

x----------x

DECISION

REYES-FAJARDO, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) on November 11, 2021 assailing the Decision[2] promulgated on June 22, 2021 and Resolution[3] promulgated on October 13, 2021 of the Second Division of this Court (Court in Division). The respective dispositions of the assailed Decision and Resolution read as follows:

---

1 *Rollo*, pp. 1-13.

2 Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Jean Marie A. Bacorro-Villena concurring. *Rollo*, pp. 20-43.

3 Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Jean Marie A. Bacorro-Villena concurring. *Rollo*, pp. 45-52.

Assailed Decision

> **WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency assessment for income tax for taxable year 2012 in the amount of ₱258,013,907.77, inclusive of surcharge and legal interest, is void, and thus, is hereby **CANCELLED and SET ASIDE**. Consequently, the PCL dated January 23, 2017 and the FNBS dated February 8, 2017 covering the said assessed deficiency income tax liability are likewise **CANCELLED and SET ASIDE**.

Assailed Resolution

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

FACTS

Petitioner CIR is vested with the power to decide disputed assessments and to cancel and abate tax liabilities, under the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules, and regulations.

On the other hand, respondent Gateway Rural Bank, Inc. (Gateway) is a rural bank organized pursuant to Republic Act (RA) No. 7353,[4] engaged primarily in the business of extending rural credit to small farmers and tenants and to deserving rural industries and enterprises. As such, it is regulated and governed by the rules and regulations issued by the Bangko Sentral ng Pilipinas (BSP).

Gateway filed its 2012 Annual Income Tax Return (BIR Form No. 1702) on April 15, 2013.[5]

On the strength of electronic Letter of Authority (eLOA)[6] No. 25A-2014-00000074 dated March 26, 2014, the Bureau of Internal

---

4 Rural Banks Act of 1992, April 2, 1992.

5 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

6 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

Revenue (BIR) began its examination of Gateway's books and accounting records relative to taxable year 2012.

On April 12, 2016, the BIR[7] issued a **Preliminary Assessment Notice with attached Details of Discrepancies (PAN)**[8] finding Gateway liable for deficiency Income Tax for taxable year 2012 amounting to ₱244,047,206.19,[9] computed as follows:

Basic Tax	₱ 120,023,216.16
Surcharge (50%)	60,011,608.08
Interest	64,012,381.95
Total	₱ 244,047,206.19

On April 29, 2016, Gateway received the PAN, through service upon Mr. Francisco Cruz.[10] Thereafter, on May 19, 2016, it filed a Reply to the PAN[11] dated May 13, 2016.

On May 30, 2016, the CIR wrote Gateway to confirm that it had received the latter's Reply to the PAN and to notify that it will be sending a Final Assessment Notice/Formal Letter of Demand (FAN/FLD).

On January 23, 2017, the CIR issued a **Preliminary Collection Letter (PCL)**[12] requesting Gateway to pay deficiency Income Tax liability amounting to ₱258,013,907.77, computed as follows:

Basic Tax	₱ 120,023,216.16
Surcharge (50%)	60,011,608.08
Interest	77,979,083.53
Total	₱ 258,013,907.77

Notably, the amount reflected on the PCL included the same basic tax and surcharge in the PAN, adjusted only with respect to additional accrued interest.

---

7 Through Jose N. Tan, Regional Director, Revenue Region No. 5.

8 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

9 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

10 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

11 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

12 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

Gateway received the PCL on January 26, 2017. Subsequently, in letters dated January 31, 2017[13] and February 6, 2017,[14] Gateway, through counsel, reminded the CIR and other concerned revenue officers that it has yet to receive any FAN/FLD.

The CIR did not respond to Gateway's letters. Instead, it proceeded to issue a **Final Notice Before Seizure (FNBS)**[15] dated February 8, 2017 reiterating the same amount of alleged deficiency Income Tax due from Gateway as reflected in the PCL. It warned Gateway, *viz*: "Should we fail to hear from you within this period [10 days from receipt of this notice] this Office, much to our regret, will be constrained to serve and execute the Warrants of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your account."

This prompted Gateway to file a Petition for Review[16] before the Court of Tax Appeals (CTA), praying for this Court **to enjoin** the CIR or any of its agents from serving and executing warrants of distraint and/or levy and garnishment and **to set aside** the subject PCL for being null and void.

Gateway's main argument was that the PCL was not preceded by a valid FAN/FLD. Verily, upon inquiry to verify whether there had been an issuance of a FAN/FLD, they were informed that officers from Revenue Region No. 5 caused the personal service of an alleged FLD dated October 14, 2016 at Gateway's branch office located at McArthur Hi-way, Borol 1st, Balagtas Bulacan and that said document was received by Roselyn Dela Cruz (Dela Cruz), a receptionist at said branch. However, Dela Cruz was not authorized to receive the supposed FLD in Gateway's behalf. There having been no valid FAN/FLD in the present case, Gateway averred that the right to assess it for deficiency Income Tax for 2012 already prescribed on April 16, 2016. Significantly, even the subject PAN, which Gateway received only on April 29, 2016, was served outside the prescriptive period.

---

13 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

14 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

15 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

16 Docket (CTA Case No. 9547), Vol. I, pp. 155-197.

The CIR countered[17] that it, in fact, issued a FAN/FLD[18] on October 13, 2016 and served the same upon Gateway on November 4, 2016.[19] It insisted that while the FAN/FLD was received by Dela Cruz, a receptionist at Gateway's branch, "the fact remains that she is employed by the petitioner and she is a person of sufficient age and discretion" to receive the same.[20]

Ruling of the Court in Division

In the Assailed Decision, the Court in Division cancelled and set aside the PCL dated January 23, 2017 and FNBS dated February 8, 2017 on account of the **CIR's failure to establish that there was proper service of a FAN/FLD upon Gateway**.

It found that the BIR, in serving the FAN/FLD in question upon Gateway, employed **substituted service**. However, pursuant to Revenue Regulations (RR) No. 12-99,[21] as amended by RR No. 18-2013,[22] substituted service can be resorted to only: (1) when the party is not present at the registered or known address; (2) when the party is found therein, but refuses to receive the notice; and, (3) if no person is found in the party's registered or known address.

The Court in Division underscored that Gateway is a **corporation**. Thus, it is regarded to be present and located at its current address i.e., at McArthur Highway, Wawa, Balagtas, Bulacan—the address used by the BIR in serving said FAN/FLD. As it is deemed to be always *present* at such address (*i.e.*, first exception to mandatory requirement of personal service), the FAN/FLD cannot be served *via* substituted means or, particularly, with its clerk or with a person having charge thereof.

Following Section 23 of the Corporation Code, the Court in Division explained that the service of the subject FAN/FLD shall bind concerned taxpayer, when such service is made to its "**board of directors**; or to certain officers, committees or agents, pursuant to law

---

17 Docket (CTA Case No. 9547), Vol. I, p. 413-414.
18 Docket (CTA Case No. 9547), Vol. I, p. 433.
19 Docket (CTA Case No. 9547), Vol. I, p. 412.
20 Docket (CTA Case No. 9547), Vol. I, p. 413.
21 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.
22 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

or its corporate by-laws, or if there is a showing that the board has authorized said individuals, or has delegated the function or power of receiving said FAN/FLD to the latter, either expressly or impliedly by habit, custom or acquiescence in the general course of business."[23]

In this regard, it found that Gateway did not authorize Dela Cruz, either through an express provision in the by-law, a board resolution, or an implied authority to that effect by habit, custom or acquiescence, to receive the FAN/FLD. It noted that when the concerned BIR revenue officer served the FAN/FLD in question, he did not inquire further as to which personnel in the premises is in fact authorized to receive notices of this kind. He did not look for Gateway's General Manager, President, Treasurer, or Internal Auditor and proceeded to serve the FAN/FLD upon Dela Cruz, who he perceived to be the receptionist therein.

Improper service of the FAN/FLD rendered the same invalid. Consequently, the Court in Division held that it cannot be the basis for collection of Income Tax from Gateway (i.e., PCL and FNBS) since it does not bear any valid fruit.

In the Assailed Resolution, the Court in Division also denied the CIR's subsequent motion for reconsideration. Hence, the CIR filed the present Petition for Review.

Petitioner's Arguments

The CIR, represented by Atty. Napoleon P. Campos, Jr., BIR Revenue Attorney III/Special Prosecutor, argues as follows:

First, Gateway filed a request for reinvestigation before the BIR. However, Gateway proceeded to this Court *via* Petition for Review without even awaiting the final decision on its request. Thus, its action before the CTA was filed prematurely.[24]

Second, Dela Cruz received the FAN/FLD in question voluntarily, without objection, on behalf of Gateway's corporate officers. Pursuant to the Doctrine of Apparent Authority, even if no actual authority has been conferred on an agent, his/her acts, as long as they are within his/her apparent scope of authority, the agent's acts

---

23 *Cebu Mactan Members Center, Inc. v. Tsukahara*, G.R. No. 159624, July 17, 2009, 610 PHIL 586-594.

24 *Rollo*, pp. 4-5.

still bind the principal.[25] Thus, Dela Cruz's receipt *via* substituted service is valid. She is now estopped from questioning the validity of the manner of service. In turn, Gateway cannot now deny that Dela Cruz was in fact authorized to so receive the FAN/FLD, as receipt thereof was part of her scope of work.[26]

Respondent's Arguments

In its Comment/Opposition,[27] Gateway counters with the following arguments:

First, Gateway's petition for review before the Court in Division was **timely filed**. As there was no valid FAN/FLD, it could not have filed a request for reinvestigation.[28] The letters sent by Gateway to the CIR/BIR after the issuance of the PAN were to emphasize its request for the proper service of the FAN/FLD. Furthermore, following the Supreme Court's pronouncement in *Commissioner of Internal Revenue v. Isabela Cultural Corp.*,[29] the CIR's issuance of an FNBS was an outright denial of any request for investigation it may have filed.[30]

Second, the FAN/FLD was never served upon Gateway: (a) there was no valid **personal service** as the person who allegedly received the FAN/FLD was not authorized to receive tax assessments.[31] Apparent authority is determined by the principal's acts, not by those of the agent. Thus, Dela Cruz's own acts or omissions cannot operate to give her authority to act in Gateway's behalf. To be sure, Gateway did not perform acts to make it appear that Dela Cruz was authorized to receive notices and assessments from the BIR. Such authority, in fact, is vested in Gateway's internal auditor. (b) Even assuming for the sake of argument that **substituted service** may be had in this case, the person who allegedly received the FAN/FLD—a mere receptionist—was not a "clerk" or "a person having charge" of Gateway's office within the meaning of RR No. 12-99, as amended.[32]

---

25 *Rollo*, p. 7.
26 *Rollo*, p. 9.
27 *Rollo*, pp. 65-100.
28 *Rollo*, p. 87.
29 G.R. No. 135210, July 11, 2001, 413 PHIL 376-386.
30 *Rollo*, pp. 89-90.
31 *Rollo*, p. 92.
32 *Rollo*, pp. 96-99.

ISSUES

The central issue in the present case is the propriety of the issuance of the PCL and FNBS. Whether these were issued properly turns upon the matter of whether there had been a valid tax assessment issued against Gateway.

The following questions are crucial to the determination of the validity of the assessment: *First,* was the assessment in question issued within the period prescribed by law? *Second,* assuming that it was issued within the time allowed, was the assessment served properly upon Gateway? *Third,* assuming that there had been valid service, did the petitioner respect Gateway's due process rights in its issuance of the FAN/FLD?

OUR RULING

The Petition for Review is denied for lack of merit. We agree with the Court in Division that the cancellation of the PCL and FNBS is proper as these were not preceded by a valid formal tax assessment.

It is basic that any resort to summary administrative collection processes shall be permissible only if preceded by a valid formal tax assessment. The Supreme Court explained this at length in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*,[33] *viz.*:

> In the normal course of tax administration and enforcement, the BIR must first make an assessment then enforce the collection of the amounts so assessed. "**An assessment is not an action or proceeding for the collection of taxes. x x x It is a step preliminary, but essential to warrant distraint, if still feasible, and, also, to establish a cause for judicial action." The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment**. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.
>
> xxx xxx xxx
>
> In the present case, **it is clear from the wording of the 1998 and 2002 Collection Letters that petitioner intended to pursue, through said collection letters, summary administrative remedies for the collection of respondents' alleged excise tax deficiencies for**

---

33 G.R. Nos. 197945 & 204119, July 9, 2018.

> **the Covered Years.** In fact, in the respondent Shell's case, the collection letters were already followed by the BIR's issuance of Warrants of Garnishment and Distraint and/or Levy against it.
>
> xxx xxx xxx
>
> **Absent a previously issued assessment supporting the 1998 and 2002 Collection Letters, it is clear that petitioner's attempts to collect through said collection letters as well as the subsequent Warrants of Garnishment and Distraint and/or Levy are void and ineffectual.** If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place. (Emphasis supplied)

Similarly, We read the PCL and FNBS in the present case as attempts by the tax authorities to collect summarily the alleged deficiency tax liability from Gateway. This may only be done if there is a previous valid formal tax assessment. Thus, We must now inquire into the validity of the alleged FAN/FLD.

For reasons set out below, We find that the FAN/FLD is invalid because (a) its *issuance* was made outside the prescriptive period for assessment, (b) its *service* was improper and ineffectual, and (c) its issuance was likewise in *violation of due process.*

The CIR's right to assess Gateway for deficiency Income Tax relative to 2012 already prescribed.

Three (3)-Year Prescriptive Period

The general rule under Section 203[34] of the NIRC of 1997, as amended, is that the CIR shall have three (3) years from the filing of a tax return to make an assessment against the taxpayer for the taxes declared therein.

In the present case, it is no longer disputed that Gateway filed its 2012 Income Tax Return on **April 15, 2013**. Thus, applying the general

---

[34] 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.

rule, the CIR only had up to **April 15, 2016** to assess Gateway of deficiency Income Tax for 2012.

On the other hand, We observe the following: *First*, it is a matter of record that Gateway received the PAN on **April 29, 2016**.[35] Second, the CIR's FAN/FLD, claimed by it to have been served on November 4, 2016, was dated/issued on **October 13, 2016**.

It is apparent on its face that the PAN was *served* and the FAN/FLD in question was *issued* beyond the three (3)-year prescriptive period. We arrive at this conclusion even without yet ruling on the existence or validity of the FAN/FLD. Certainly, if the *preliminary assessment* was already served beyond the three-year prescriptive period, it follows then that the *formal assessment* would, with more reason, be belated.

Ten (10)-Year Prescriptive Period

By exception, the prescriptive period for assessment may be extended from three (3) to ten (10) years in the case of a *false or fraudulent return* with intent to evade tax or of failure to file a return.[36] However, this benefit is not readily available to the tax authorities.

"To avail of the extraordinary period of assessment in Section 222 (a) of the National Internal Revenue Code, the Commissioner of Internal Revenue should show that the facts upon which the fraud is based is **communicated to the taxpayer**. The burden of proving that the facts exist in any subsequent proceeding is with the Commissioner."[37] The **assessment notice must contain a categorical statement** that the ten (10)-year period will be applied to the assessment to allow the taxpayer to file an effective protest thereafter.[38] This is an integral part of the cardinal rule that the taxpayer must be informed of the factual and legal bases of the assessment. In the past,

---

35 As per Joint Stipulation of Facts & Issues (JSFI). See Docket (CTA Case No. 9547), Vol. IV, p. 1626.

36 Section 222(A) of the Tax Code provides, "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: 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."

37 *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016, 799 PHIL 391-420.

38 *Commissioner of Internal Revenue v. Asalus Corp.*, G.R. No. 221590, February 22, 2017, 806 PHIL 397-413.

the Supreme Court has nullified assessments where the CIR had been unclear on which facts and law it relied upon.[39]

We note that the FAN/FLD in question included the following statement:

> The 50% surcharge was imposed for filing a fraudulent return, since you failed to declare Sales/Receipts in an amount exceeding 30% of that declared per return pursuant to Section 248B of the Tax Code.[40]

This reference to Section 248B of the Tax Code indicates that the CIR relied on the *presumption of falsity or fraud* to justify the imposition of the 50% surcharge. However, there is nothing in the FAN/FLD that expresses the *tax authorities' intention to apply the ten (10)-year prescriptive period* for assessment in Gateway's case. We cannot allow the application of the ten (10)-year assessment period in the present case absent a clear statement that the CIR in fact intended to rely thereon. To apply the extended assessment period without adequate notification will only amount to a violation of the taxpayer's due process rights.

As the FAN/FLD in question had been issued beyond the three (3)-year period under Section 203 and, at the same time, the ten (10)-year period under Section 222 is not available to the CIR, it is clear that the right to assess Gateway relative to its 2012 income tax liability already prescribed.

Parenthetically, the issue of prescription is not waivable. In general, courts may pass upon this matter *motu proprio* if it is apparent on the face of the pleadings filed and especially if the comprising facts thereon are uncontroverted.[41]

The service of the FAN/FLD was improper and ineffectual

At any rate, even if We discount the issue of prescription, the FAN/FLD in question remains to be invalid.

---

39 *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021.

40 Docket (CTA Case No. 9547), Vol. IV, p. 1626.

41 Rule 9, Section 1 of the Rules of Court reads, "Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by prior judgment or **by statute of limitations, the court shall dismiss the claim.**" (Emphasis supplied)

At the outset, We underscore that the CIR does not dispute that it resorted directly to **substituted means** in serving the FAN/FLD in question upon Gateway.[42]

RR No. 8-2013, amending RR No. 12-1999, sets out the manner by which the assessment notice shall be served upon the taxpayer, *viz.*:

> 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:
>
> (i) **The notice shall be served through <u>personal service</u>** by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> **In case personal service is not practicable, the notice shall be served <u>by substituted service or by mail</u>.**
>
> x x x
>
> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."

Based on these provisions, substituted service is a mode merely subsidiary to personal service. It is allowed only by exception or when personal service may not be had in a practical manner. This now leads us to the question: *Was personal service upon Gateway impracticable so as to justify the CIR's immediate resort to substituted means?*

In this regard, We agree with the Court in Division that the CIR's direct employment of **substituted service is unjustified**.

Under RR No. 8-2013, substituted service is merely a mode secondary to personal service and may be resorted to only when the primary mode is impracticable. However, it did not provide any explanation in doing so, much less demonstrate the impracticability of personal service.

---

42 As observed by the Court in Division; See Docket (CTA Case No. 9547), Vol. V, p. 2318-2319.

Further, that the taxpayer is a juridical person does not, by itself, render personal service impracticable or impossible altogether.

While it is a juridical entity, a corporation may act through its directors, officers, and employees.[43] In particular, its *corporate powers*, including the capacity to sue and be sued,[44] and *all business* and *property* may be ***exercised, conducted, and controlled/held,*** as the case may be, by its board of directors.[45] In other words, personal service may still be employed with respect to corporations, albeit through its board of directors.

It is recognized that a corporation's affairs may consist of voluminous transactions that the members of the board may, at times, be unable to act upon them as necessary.

For purposes of convenience and the orderly administration of its day-to-day affairs, the board may authorize a corporate officer or an agent to perform duties in behalf of the corporation. The authority of a corporate officer or agent in dealing with third persons may be **actual** or **apparent**.[46]

Actual Authority

Actual authority may be **express** or **implied**.

The extent of an agent's *express authority* is to be measured by the power delegated to him by the corporation. On the other hand, the extent of an agent's *implied authority* is measured by its prior acts which have been ratified or approved, or their benefits accepted by the corporation through its board. [47]

In this regard, the board may adopt/amend *by-laws*[48] and/or issue a *resolution*[49] to signify an express delegation of authority or ratification/approval of an agent's prior conduct.

---

43 *Zaragoza v. Tan*, G.R. No. 225544, December 4, 2017.
44 Section 36(1), Corporation Code of the Philippines, Batas Pambansa Blg. 68.
45 Section 23, Corporation Code of the Philippines, Batas Pambansa Blg. 68.
46 *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, G.R. No. 163825, July 13, 2010, 639 PHIL 35-51.
47 *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, G.R. No. 163825, July 13, 2010, 639 PHIL 35-51.
48 Section 47(10), Corporation Code of the Philippines, Batas Pambansa Blg. 68.
49 *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, G.R. Nos. 194964-65, January 11, 2016, 776 PHIL 401-455.

The Rules of Court is also instructive:

> Section 11. Service upon domestic private juridical entity. – When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the **president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.**[50] (Emphasis supplied)

Without an express or implied delegation by the board of directors, either through a specific by-law provision or board resolution, **acts of a person executed on behalf of the corporation are generally not binding on the corporation.**[51]

Apparent authority

In *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*,[52] the Supreme Court discussed the doctrine of "apparent authority," *viz.*:

> The doctrine of "apparent authority," on the other hand, with special reference to banks, had long been recognized in this jurisdiction x x x Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. The principal's liability, however, is limited only to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none was given. **In other words, apparent authority is determined only by the acts of the principal and not by the acts of the agent.** There can be no apparent authority of an agent without acts or conduct on the part of the principal; **such acts or conduct must have been known and relied upon in good faith as a result of the exercise of reasonable prudence by a third party as claimant,** and such acts or conduct must have produced a change of position to the third party's detriment. (Emphasis supplied)

To summarize, an officer or agent may be regarded to have authority to act in behalf of a corporation in the following cases: (1) There is a **by-laws provision** and/or **board resolution** that (a) designates them as such or (b) ratifies/approves acts performed previously (*i.e.*, actual authority); or, (2) There had been no

---

50 Rule 14, Section 11, Rules of Court.

51 *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, G.R. Nos. 194964-65, January 11, 2016, 776 PHIL 401-455.

52 G.R. No. 163825, July 13, 2010.

express/implied authority, but the **corporation/board's conduct led a third party to believe that this person possesses such authority** (*i.e.*, apparent authority).

We cannot accept the CIR's posturing that a **mere receptionist** is authorized to receive to FAN/FLD so as to bind the corporation of its legal effects.

First, the CIR's direct employment of **substituted service is unjustified**.

To repeat, the CIR did not provide any explanation for resorting to a mode of service secondary to personal service, much less demonstrate the impracticability of personal service.

Second, the receptionist had **no actual authority.**

Gateway's By-Laws[53] provides:

> SECTION 4. Manager - The Board of Directors shall provide for the position of a Manager who shall have, subject to the control of the Board of Directors, general management of the business affairs of the bank.[54]

Based on this provision, only the **board of directors** and the **manager** have the specific control over the general management of Gateway's affairs, including receipt of official documents and court processes. Furthermore, the CIR also failed to present any board resolution that bears such authority in favor of the alleged receptionist.

Third, the receptionist had **no apparent authority**.

Assuming to be true that the receptionist had acted as if it was authorized to receive the FAN/FLD in Gateway's behalf, there is nothing in the records that shows that the board of directors led the CIR/tax authorities to believe that the receptionist possessed the requisite authority. Notably, Gateway had been corresponding with the BIR through its *counsel* at least as early as the Reply to the PAN.[55] That the BIR knew of the taxpayer's designation of a third-party representative to handle its tax assessment case appears to be

---

53 Docket (CTA Case No. 9547), Vol. I, pp. 72-93.
54 Docket (CTA Case No. 9547), Vol. I, p. 89.
55 Stamped as "Received" on February 6, 2017 by BIR Revenue Region No. 5, Collection Division. Docket (CTA Case No. 9547), Vol. I, pp. 124.

inconsistent with the theory that there had been some other person authorized to receive correspondence on tax assessment matters.

It was incumbent upon the tax authorities to ensure that it deals and corresponds only with authorized corporate officials and personnel. However, We reiterate the Court in Division's findings: *First*, the BIR did not endeavor to first locate Gateway's General Manager, President, Treasurer, or Internal Auditor. *Second*, the concerned BIR revenue officer served the FAN/FLD in question, did not even inquire further as to which Gateway personnel was in fact authorized to receive the assessment notice. It was quick to assume that a receptionist was sufficiently authorized to receive the FAN/FLD.

These circumstances taken together show an imprudence on the part of the tax authorities and a disregard of the rules and regulations applicable to service upon taxpayers. Plainly, service to an unauthorized person cannot produce any legal effect with respect to Gateway, the principal.

The FAN/FLD was issued in violation of Gateway's right to due process.

It is not disputed that Gateway filed its Reply to the PAN.[56] Having regard to the taxpayer's submission of defenses as early as the preliminary stage of the assessment, the CIR was duty-bound to "***consider* the evidence presented**...[Further, the administrative tribunal or body] should, in all controversial questions, render its decision **in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered.**"[57]

Thus, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (Avon),[58] the Supreme Court nullified the tax assessment after finding that despite the taxpayer's filing of a reply, the CIR simply reproduced the PAN's contents in the subsequent FLD/FAN, without mentioning the taxpayer's arguments (raised in its reply) or any discussion on the merits. It declared that this misstep amounted to a violation of due process.

---

56 Docket (CTA Case No. 9547), Vol. I, pp. 118-121.

57 *Ang Tibay v. Court of Industrial Relations*, G.R. No. 46496, February 27, 1940, 69 PHIL 635-645.

58 G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

In the present case, We observe that both the FAN/FLD in question and the PCL (a) contained basic tax amounts (amounting to ₱120,023,216.16) identical to those in the PAN, varying only in computation of interest and penalties, and (b) had no mention of Gateway's arguments and defenses.

As in *Avon*, the identity in substance between the subject PAN, on the one hand, and the FAN/FLD in question and PCL, on the other, shows that the CIR completely ignored Gateway's Reply to the PAN and failed to give due consideration to the arguments therein.

Thus, even if We disregard the apparent effect of prescription, the FAN/FLD in question remains invalid for the following reasons: *First*, service thereof was flawed and ineffectual. *Second*, the CIR issued a pro-forma FAN/FLD and PCL, failing to consider Gateway's defenses, in violation of its due process rights. Without a valid formal assessment, the subsequent resort to summary administrative collection remedies (e.g., PCL and FNBS) is likewise void.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated June 22, 2021 and Resolution dated October 13, 2021, both rendered by the Second Division of this Court in CTA Case No. 9547 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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