

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB No. 2570  
INTERNAL REVENUE, (CTA Case No. 9635)  
*Petitioner,*

Present:

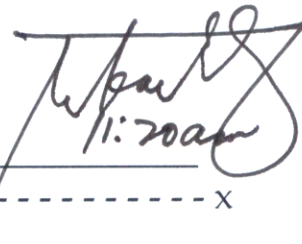
-versus-

DEL ROSARIO, *PJ*,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO,  
CUI-DAVID,  
FERRER-FLORES, and  
ANGELES, *JJ*.

DRUGMAKERS BIOTECH  
RESEARCH  
LABORATORIES, INC.,  
*Respondent.*

Promulgated:

OCT 17 2023



*[Signature]*  
11:20am

X-----X

DECISION

REYES-FAJARDO, J.:

Before us is the Petition for Review<sup>1</sup> dated February 22, 2022, filed by the Commissioner of Internal Revenue (CIR), assailing the Decision<sup>2</sup> dated October 15, 2021 and Resolution<sup>3</sup> dated February 8, 2022, in CTA Case No. 9635. The assailed Decision and Resolution invalidated the Bureau of Internal Revenue (BIR)'s deficiency tax assessments, compromise penalties, and Warrant of Distraint and/or Levy (WDL) dated June 27, 2017, all issued against Drugmakers Biotech Research Laboratories, Inc., for Calendar Year (CY) 2008.

<sup>1</sup> Rollo, pp. 1-15.  
<sup>2</sup> *Id.* at pp. 20-54.  
<sup>3</sup> *Id.* at pp. 55-61.

*[Handwritten mark]*

The antecedents follow.

Petitioner is the duly appointed CIR, vested under appropriate laws with the authority to carry out functions, duties, and responsibilities of his Office, including inter alia, the authority to collect all national internal revenue taxes. He also has the power to decide disputed assessments, refunds on internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code. He may be served summons, pleadings and other processes at his office at the Bureau of Internal Revenue (BIR) National Office, Agham Road, Diliman, Quezon City.

Respondent Drugmaker's Biotech Research Laboratories, Inc. is a domestic corporation organized under Philippine laws, with business address at E&E Industrial Complex, Narra Road, Brgy. San Antonio, San Pedro, Laguna. Drugmaker's Biotech Research Laboratories, Inc. and Biotech Research Laboratories, Inc. was merged with, and into petitioner, with the latter as the surviving corporation, pursuant to the Plan of Merger dated June 1, 2005. The said Plan of Merger was duly approved by the Securities and Exchange Commission (SEC) on March 29, 2007.

On January 4, 2012, petitioner issued the Letter Notice (LN) No. 057-RLF-07-00-00047, informing respondent that a computerized matching conducted by the BIR on information/data provided by third party sources against respondent's declarations per Value-Added Tax (VAT) returns disclosed discrepancies for CY 2008.

On May 10, 2012, the BIR, through its LN Task Force Head, Elenita B. Quimosing, issued to respondent a Notice for Informal Conference (NIC).

On February 19, 2013, petitioner, through Deputy Commissioner Nelson M. Aspe, issued the Preliminary Assessment Notice (PAN), with attached Details of Discrepancies, informing respondent that there has been found from the latter, deficiency Income Tax (IT), VAT, and compromise penalty, for CY 2008.

On June 28, 2017, a WDL, addressed to the Head of the Arrears Management Section of the Collection Division of Revenue Region No. 9 in San Pablo City, Laguna, was served on respondent.

On July 28, 2017, respondent filed its Petition for Review with Motion to Quash the Warrant of Distraint and/or Levy before the Court in Division, docketed as CTA Case No. 9635.

In the Decision dated October 15, 2021,<sup>4</sup> the BIR's deficiency IT and VAT assessments, compromise penalties, and WDL, all issued against respondent for CY 2008 were struck down because: *one*, the examination or audit conducted by the BIR, leading to the issuance of the deficiency IT and VAT assessments against respondent, has no prior permission from petitioner or his duly authorized representatives; and *two*, it failed to demonstrate respondent's actual receipt of the mailed PAN and Formal Letter of Demand and Final Assessment Notices (FLD/FAN), violative of its right to due process on assessment. Ultimately, the Court in Division decreed:

**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the assessments issued against [respondent] for alleged deficiency income tax and VAT, and compromise penalty, in the total amount of ₱26,712,499.01, for calendar year 2008, and the Warrant of Distraint and/or Levy dated June 27, 2017, are hereby **DECLARED VOID**, and are therefore, **CANCELLED**.

**SO ORDERED.**

Petitioner moved,<sup>5</sup> but failed<sup>6</sup> to secure the reversal of the assailed Decision; hence, the present recourse.

Petitioner argues that the Court in Division lacks jurisdiction over CTA Case No. 9635. According to him, the Court in Division only has jurisdiction over his decisions on disputed assessment. Since respondent allegedly received a Preliminary Collection Letter (PCL) tantamount to his final decision on disputed assessment on September 2, 2016, it has thirty (30) days therefrom, or until October 2, 2016 to seek judicial redress. Thus, respondent's belated filing of its Original Petition for Review on July 28, 2017, justifies the dismissal of CTA Case No. 9635.

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> Respondent (now petitioner)'s Motion for Reconsideration (Re: Decision promulgated 15 October 2021). Docket (CTA Case No. 9635), pp. 1384-1390.

<sup>6</sup> *Supra* note 3.

94

Assuming, the Court in Division is clothed with jurisdiction over CTA Case No. 9635, petitioner contends that respondent is liable for deficiency IT and VAT for CY 2008. Specifically, the BIR's LN found discrepancies between respondent's declarations in its VAT Returns and third-party sources, which must be subjected to IT and VAT.

In refutation,<sup>7</sup> respondent points out that *one*, its petition for review in CTA Case No. 9635 was timely filed on July 28, 2017, or thirty (30) days from its receipt of the BIR's WDL on June 28, 2017; *two*, petitioner failed to serve the FLD/FAN to it, offensive of its right to due process on assessment; *three*, since the tax assessments are void, the WDL is as well a patent nullity; *four*, there was no valid tax assessment against it because its corporate existence had already been extinguished; *five*, the tax assessments are anchored on allegations and not facts; and *six*, the tax assessments are a product of an irregular BIR audit.

## RULING

We deny the Petition.

First, the jurisdictional matter advanced by petitioner.

Our jurisdiction is *not* limited to petitioner's decision over disputed assessments. Section 7(a)(1), in relation to Section 11 of Republic Act (RA) No. 1125,<sup>8</sup> as amended by RA No. 9282 also confers us with jurisdiction over petitioner's action over other matters arising from the National Internal Revenue Code (NIRC), as amended.<sup>9</sup> Additionally, an aggrieved party by such action must appeal the same to the Court in Division, within thirty (30) days from receipt thereof. These provisions respectively read:

Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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<sup>7</sup> Respondent's Comment/Opposition (Re: Petition for Review dated February 22, 2022. Rollo, pp. 73-85.

<sup>8</sup> An Act Creating the Court of Tax Appeals.

<sup>9</sup> See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

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;

...

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ....

...<sup>10</sup>

Among the matters detailed in Section 2 of the 1997 NIRC, as amended, is the BIR's authority to collect all national internal revenue taxes, fees, and charges.<sup>11</sup> In particular, Section 205(a)<sup>12</sup> thereof permits the BIR to collect these taxes, fees, and charges through the administrative remedy of distraint and/or levy, *inter alia*.

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,<sup>13</sup> the taxpayer therein sought recourse with the Court in

<sup>10</sup> Boldfacing supplied.

<sup>11</sup> SEC. 2. *Powers and Duties of the Bureau of Internal Revenue.* - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.... See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 227049, September 16, 2020. (Boldfacing supplied)

<sup>12</sup> SEC. 205. *Remedies for the Collection of Delinquent Taxes.* - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

(a) **By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; ...** (Boldfacing supplied)

<sup>13</sup> G.R. No. 227049, September 16, 2020.

Division, to challenge the BIR's issuance and implementation of the WDL. The CTA, both division and *En Banc*, cancelled such WDL. On appeal, the CIR contended that said taxpayer failed to appeal his FDDA, resulting in the Court in Division's lack of jurisdiction. Finding the CIR's contention without merit, the Supreme Court said:

.... As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.

The law expressly vests the CTA the authority to take cognizance of "other matters" arising from the 1977 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.

Akin to *BPI*, the event which triggered respondent's appeal to the Court in Division was primarily the BIR's WDL served upon it on June 28, 2017. This action falls under "other matters" under the NIRC, as amended. Counting thirty (30) days therefrom, respondent had until July 28, 2017 to seek judicial redress. Precisely, the seasonable institution of respondent's Petition for Review with Motion to Quash the Warrant of Dstraint and/or Levy on July 28, 2017, clothed the Court in Division with jurisdiction over CTA Case No. 9635.

Next, the merits.

Petitioner seeks to hold respondent liable for his deficiency IT and VAT assessments for CY 2008. Yet, the Court in Division may *not* be faulted from rejecting the outcome desired. Consider:

*First.* The BIR examination or audit, leading to the issuance of the deficiency tax assessments against respondent for CY 2008, was without prior permission from petitioner or his duly authorized representatives.

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Section 6(A) of the NIRC, as amended, confines the authority to examine any taxpayer for the correct determination of tax liabilities to petitioner or his duly authorized representatives. By way of exception, petitioner or his duly authorized representatives may authorize the examination of any taxpayer for the correct determination of tax liability:

***SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.***

(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: ...

...

Sections 10(c) and 13 of the NIRC, as amended, permits the Revenue Regional Directors to issue Letters of Authority (LOAs) in favor of revenue officers (ROs) performing assessment functions in their respective region and district offices for the examination of any taxpayer within such region:

***SEC. 10. Revenue Regional Director.*** - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...

(c) Issue Letters of authority for the examination of taxpayers within the region;

...

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

In addition, Section D(4) of Revenue Memorandum Order (RMO) No. 43-90<sup>14</sup> provides that deputy commissioners, and other BIR officials authorized by the CIR himself are permitted to issue an LOA.<sup>15</sup> Among the BIR officials expressly authorized<sup>16</sup> by the CIR to issue an LOA are the Assistant Commissioners (ACIRs) and Head Revenue Executive Assistants (HREAs).

Indeed, the LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers pursuant to Sections 6, 10(c) and 13 of the NIRC, as amended. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, a revenue officer.<sup>17</sup> It gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a *particular period*.<sup>18</sup> Conversely, the absence of such an authority renders the assessment or examination a patent nullity.<sup>19</sup>

Here, the BIR examination or audit, leading to the finding of deficiency taxes against respondent for CY 2008, was anchored on LN<sup>20</sup> No. 057-RLF-07-00-00047 dated January 4, 2012.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue (Medicard)*,<sup>21</sup> the BIR anchored its tax assessment against Medicard Philippines, Inc. (MPI) on the findings in an LN. It was also found

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<sup>14</sup> SUBJECT: *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.*

<sup>15</sup> For proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For exigencies of service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

<sup>16</sup> No. 2, Roman Number II of RMO No. 29-2007 permits assistant commissioners and head revenue executive assistant to issue LOAs.

<sup>17</sup> See *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, G.R. No. 242670, May 10, 2021.

<sup>18</sup> *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

<sup>19</sup> See *Hinlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

<sup>20</sup> Exhibit "R-12." BIR Records, p. 5.

<sup>21</sup> G.R. No. 222743, April 5, 2017.



that the BIR failed to issue an LOA in favor of MPI. The Supreme Court explained: *one*, an LN is different from an LOA; and *two*, a previously issued LN must be converted to an LOA before the revenue officer may further proceed with the audit and examination of the taxpayer:

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. 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.

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 10 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.<sup>22</sup>

There being no conversion of the LN to an LOA, or issuance of an LOA by petitioner, or his duly authorized representatives in favor of the examining revenue officers, the Supreme Court in *Medicard* struck down the tax assessment issued against MPI:

What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had

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<sup>22</sup> Boldfacing supplied.

the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**<sup>23</sup>

Like *Medicard*, LN<sup>24</sup> No. 057-RLF-07-00-00047 dated January 4, 2012 was not transmuted to an LOA. Neither did petitioner or his duly authorized representatives issued a new or separate LOA in favor of the examining RO/s to allow the audit or examination of respondent for CY 2008. It means that the BIR examination or audit conducted on respondent for CY 2008 is illegal; hence, the resultant deficiency tax assessments for said year, solely based on such LN are also void.

*Second.* The BIR violated respondent's right to due process.

Section 228 of the NIRC, as amended,<sup>25</sup> as implemented by Section 3<sup>26</sup> of Revenue Regulations (RR) No. 12-99,<sup>27</sup> as amended by

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<sup>23</sup> Boldfacing supplied.

<sup>24</sup> *Supra* note 20.

<sup>25</sup> SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, **he shall first notify the taxpayer of his findings**; Provided, however, That a pre-assessment notice shall not be required in the following cases: ...

...

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

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

... (Boldfacing supplied)

<sup>26</sup> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. -

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

...

3.1.4 Formal Letter of Demand and Assessment Notice. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) his

RR No. 18-2013, govern the due process requirement on assessment. In particular, the taxpayer must be afforded the opportunity to ventilate its defenses on: *first*, the PAN, within fifteen (15) days from receipt thereof, by way of a reply or response thereto;<sup>28</sup> and *second*, the FLD/FAN, within thirty (30) days also from receipt thereof through a valid administrative protest.<sup>29</sup> In reverse, the taxpayer's non-receipt of the PAN and FLD/FAN is offensive of its right to due process on assessment.

Petitioner insists that the PAN was served upon respondent through registered mail.<sup>30</sup> Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.<sup>31</sup>

*Commissioner of Internal Revenue v. T Shuttle Services, Inc.*<sup>32</sup> further elucidated that when a taxpayer denies having received the notices mailed by the BIR, the latter is required to identify and authenticate the signatures appearing on the registry receipt to determine whether the signatories thereon are the authorized representatives of the taxpayer concerned.

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name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

<sup>27</sup> 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

<sup>28</sup> See *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021, whereby the Supreme Court ruled that the service of the PAN, as well as the taxpayer's opportunity to file a reply/response thereto within fifteen (15) days from receipt thereof is mandatory.

<sup>29</sup> In *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020, the Supreme Court held that "A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'"

<sup>30</sup> Answer to Question Nos. 8, 9, and 14, Judicial Affidavit of Dely Cayetano dated November 29, 2018. Exhibit "R-10," docket (CTA Case No. 9635), pp. 1003-1004.

<sup>31</sup> See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018; *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; and *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

<sup>32</sup> G.R. No. 240729, August 24, 2020.

Considering that respondent disclaimed<sup>33</sup> receipt of the PAN allegedly mailed by the BIR, actual receipt thereof by respondent or its duly authorized representatives must be established by petitioner.

Petitioner relied on: *one*, the PAN<sup>34</sup> dated February 19, 2013; *two*, Registry Return Receipt thereof;<sup>35</sup> and *three*, Certification<sup>36</sup> dated November 29, 2018 from the BIR General Services Division (BIR-GSD), to exhibit respondent's actual receipt of the PAN. These documents leave much to be desired.

The PAN dated February 19, 2013 was received by a certain Mr. Belugo EGI.<sup>37</sup> So too does the Registry Return Receipt corresponding to said PAN bear a signature.<sup>38</sup> The BIR-GSD Certification also attested that the PAN was mailed to respondent. These documents simply proved the fact of mailing and nothing more. To be precise, petitioner adduced no formidable proof to show that such Mr. Belugo EGI, or the signatory on said registry return receipt, is respondent's duly authorized representative. Therefore, it is safe to conclude that respondent failed to actually receive the mailed PAN.

Granting *arguendo* that the mailed PAN was indeed received by respondent, petitioner failed<sup>39</sup> to present the pertinent FLD/FAN before the Court in Division as his evidence. Neither did his sole witness Dely Cayetano testified on any circumstance surrounding the issuance, service, and receipt thereof by respondent.<sup>40</sup> The inadequacy in petitioner's evidence would mean that no valid assessment was issued against respondent for CY 2008.<sup>41</sup>

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<sup>33</sup> Par. 18, Petition for Review dated July 27, 2017, docket (CTA Case No. 9635), p. 16. Answer to Question No. 30, Judicial Affidavit of Dayrelle S. Servidad dated August 23, 2017, Exhibit "P-14," docket (CTA Case No. 9635), p. 115.

<sup>34</sup> Exhibit "R-5." BIR Records, pp. 12-14.

<sup>35</sup> Exhibit "R-5-a." *Id.* at p. 8.

<sup>36</sup> Exhibit "R-6."

<sup>37</sup> See pp. 30-31 of the assailed Decision.

<sup>38</sup> *Supra* note 33.

<sup>39</sup> Respondent (now petitioner)'s Formal Offer of Evidence. Docket (CTA Case No. 9635), pp. 1101-1107.

<sup>40</sup> Exhibit "R-10." *Id.* at pp. 1002-1006.

<sup>41</sup> In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018, it was ruled that "... the failure of petitioner to prove the receipt of the assessment by [the taxpayer] would necessarily lead to the conclusion that no assessment was issued."

*Third.* Given that the deficiency tax assessments issued against respondent for CY 2008 are invalid, the WDL also served upon the latter is likewise null. To stress, a void assessment bears no valid fruit.<sup>42</sup>

In conclusion, the BIR's right to assess and collect taxes must conform to the requirements for assessment and collection set forth in the law. There can be no equivocation from this right and duty nexus.<sup>43</sup>

**WHEREFORE**, the Petition for Review dated February 22, 2022, filed by the Commissioner of Internal Revenue in CTA EB No. 2570, is **DENIED**. The assailed Decision dated October 15, 2021 and Resolution dated February 8, 2022, rendered by the Court in Division in CTA Case No. 9635, are **AFFIRMED**.

Petitioner, his agents, or other persons acting in his behalf, are **ENJOINED** from collecting on respondent, the deficiency tax assessments for Calendar Year 2008.

**SO ORDERED.**

  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice


We Concur:

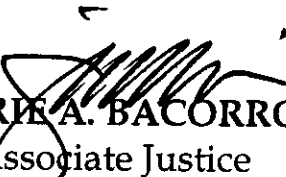
  
**ROMAN G. DEL ROSARIO**  
Presiding Justice


  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice


<sup>42</sup> See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, July 9, 2018.

<sup>43</sup> See *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

  
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

On Leave  
HENRY S. ANGELES  
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