REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

THE COMMISSIONER OF INTERNAL REVENUE in the person of Caesar R. Dulay,	**CTA *EB* NO. 2578** (CTA Case No. 9977)
Petitioner,	Present:
	DEL ROSARIO, P.J.,
	RINGPIS-LIBAN,
	MANAHAN,
	BACORRO-VILLENA,
-versus-	**MODESTO-SAN PEDRO,**
	REYES-FAJARDO,
	CUI-DAVID, *and*
	FERRER-FLORES, *JJ.*
	Promulgated:
LBP SERVICE CORPORATION,	
Respondent.	AUG 30 2023 4:05 p.m.

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D E C I S I O N

MODESTO-SAN PEDRO, J.:

The Case

Under consideration of the Court *En Banc* is a **Petition for Review**,[1] filed on 14 March 2022, seeking the reversal of the Decision[2] ("Assailed Decision"), promulgated on 1 July 2021, and the Resolution[3] ("Assailed Resolution"), dated 23 February 2022, both issued by the Court's First Division ("Court in Division"); and the upholding of petitioner's findings of respondent's alleged deficiency value-added tax ("VAT") amounting to Php131,278,597.75.[4]

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1 See Petition for Review, *Rollo,* pp. 1-45, with annexes.
2 See Decision, dated 1 July 2021 ("Assailed Decision"), *id.*, pp. 30-41.
3 See Resolution, dated 23 February 2022 ("Assailed Resolution"), *id.*, pp. 42-45.
4 See Prayer, Petition for Review, *id.*, p. 20.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR" or "petitioner") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who is authorized to decide on disputed assessments, on refunds of internal revenue taxes, fees, and other charges, on penalties in relation thereto, as well as other matters arising under the tax laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

On the other hand, LBP Service Corporation ("LSERV" or "respondent") is a corporation organized and existing under the laws of the Philippines with principal business address at Unit C & D, 21st Floor, Petron Mega Plaza, 358 Gil Puyat Avenue, Makati City.[6]

The Facts

On 8 March 2012, respondent received from petitioner a Letter Notice ("LN") No. 049-RLF-10-00-00083 stating an alleged deficiency VAT for the taxable year 2010 ("TY2010"), arising from a finding of discrepancy from the former's VAT returns and third parties' Summary List of Purchases.[7]

A Preliminary Assessment Notice ("PAN") was thereafter issued by petitioner on 15 June 2017. The same was received by respondent on 21 June 2017, to which it responded on 5 July 2017.[8]

Petitioner then issued a Formal Assessment Notice ("FAN") on 12 July 2017, but this was apparently not served to or received by respondent.[9]

On 22 August 2018, respondent received a Collection Letter ("CL"), dated 23 July 2018. A Final Notice Before Seizure ("FNBS"), dated 23 August 2018, was thereafter received by respondent on 13 September 2018.[10]

On 23 October 2018, petitioner issued the subject Warrant of Distraint and/or Levy ("WDL") which was received by respondent on even date.[11] Hence, respondent filed the Petition for Review with the Court of Tax Appeals ("CTA") on 22 November 2022. The case, docketed as CTA Case No. 9977, was raffled to the Court's First Division.

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5 See Par. 1, Parties, Petition for Review, *id.*, p. 2; Par. 2, The Parties, Assailed Decision, *id.*, p. 30-31.
6 See Par. 2, Parties, Petition for Review, *id.*, p. 2; Par. 1, The Parties, Assailed Decision, *id.*, p. 30.
7 See The Fact, Assailed Decision, *id.*, p. 31.
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*

On 1 July 2021, the Court in Division rendered the Assailed Decision,[12] the dispositive portion of which states:

> **WHEREFORE**, premises considered, [respondent's] *Petition for Review* is **GRANTED**. Accordingly, [petitioner's] PAN, FAN, CL, FNBS, and WDL are hereby **CANCELLED** and **SET ASIDE**.
>
> [Petitioner], his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from taking any further action against [respondent] arising from the PAN, FAN, CL, FNBS, and WDL.
>
> **SO ORDERED**.

On 22 July 2021, petitioner filed a Motion for Reconsideration,[13] which was likewise denied by the Court in Division on 23 February 2022.[14]

This led to the filing of the current Petition for Review[15] on 14 March 2022. Respondent, on the other hand, filed its Comment[16] on 14 June 2022.

The instant case was submitted for decision on 1 June 2022.[17]

The Issue

WHETHER THE COURT IN DIVISION ERRED IN CANCELLING THE ALLEGED DEFICIENCY VAT OF LSERV IN THE AMOUNT OF PHP131,278,597.75 FOR THE YEAR 2010.[18]

The Arguments

In its Petition for Review, petitioner raises the following arguments:

(1) With the failure on the part of the respondent to file a valid protest, the assessment became undisputed and has become final, unappealable, and, thus, beyond the jurisdiction of the CTA;[19]
(2) The absence of a LOA does not render the deficiency tax assessment void since there is no such requirement under the law;[20]

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[12] *Supra* note 2.
[13] See Motion for Reconsideration, Division Docket Vol. II, pp. 1088-1107.
[14] *Supra* note 3.
[15] *Supra* note 1.
[16] See Comment, *Rollo*, pp. 60-75.
[17] See Resolution dated 1 June 2022, *Rollo*, p. 52.
[18] See Assignment of Error, Petition for Review, *Rollo*, p. 3.
[19] See Arguments/Discussions, Petition for Review, *Rollo*, pp. 6-10.
[20] *Id.*, pp. 10-14.

(3) The ***National Internal Revenue Code, as amended, ("Tax Code")*** does not limit the audit investigation to the appreciation of the records or documents provided by the taxpayer as it grants petitioner the power to obtain information from other sources, such as the **Reconciliation of Listing for Enforcement (RELIEF) System** under ***Revenue Memorandum Order (RMO) No. 30-2003***, to ascertain the correctness of any return;[21]

(4) The ten (10)-year extraordinary prescriptive period is applicable to the instant case due to the finding of substantial under-declaration in respondent's 2010 VAT returns.[22]

By way of Comment,[23] dated 14 June 2022, respondent echoes the Court in Division's conclusion that: *one*, the CTA has jurisdiction over the present case, under other matters arising from the NIRC, as amended; *two*, petitioner's tax assessment is time-barred, prior to the issuance of the PAN; and *three*, petitioner failed to issue and serve a valid LOA to the respondent. Therefore, according to respondent, the Court in Division correctly struck down petitioner's PAN, FAN, CL, FNBS, and WDL issued against it.

The Ruling of the Court

We shall first look into the timeliness of the filing of the Petition for Review before the Court *En Banc*.

Under ***Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[24] a party adversely affected by a decision or resolution of a Division of the CTA on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a petition for review within fifteen (15) days from receipt of the assailed decision or resolution.

In the case at hand, the Assailed Resolution was received by the petitioner on 3 March 2022.[25] Counting fifteen (15) days therefrom, petitioner had until 18 March 2022 within which to file an appeal before the Court *En Banc*. Hence, the instant Petition for Review was seasonably filed on 14 March 2022.

We shall now proceed to determine the merits of the instant case.

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[21] *Id.*, pp. 14-16.
[22] *Id.*, pp. 16-19.
[23] *Supra* note 16.
[24] A.M. No. 05-11-07-CTA, 22 November 2005.
[25] See Notice of Resolution stamped "Received" by the Legal Service Division of the BIR on 3 March 2022, Division Docket Vol. II, p.1134.

The Court in Division had jurisdiction over the Petition for Review

In his Petition for Review, petitioner maintains that the assessment against respondent has already become final, executory, and demandable due to the latter's failure to file a protest against the FAN; thus, the Court in Division's lack of jurisdiction over the original petition for review.

Respondent, on the other hand, categorically denies that it received the FAN. It further contends that the thirty (30)-day period to file a petition for review must be reckoned from the date of receipt of the WDL, pursuant to the CTA's power to review "other matters" arising under the Tax Code.

The Court *En Banc* finds the petitioner's contentions unmeritorious.

Section 7 (a)(1), in relation to ***Section 11 of Republic Act (RA) No. 1125,[26] as amended by RA No. 9282,***[27] provides that the appellate jurisdiction of the CTA is not limited to the cases involving decisions related to matters of assessments and refunds. In addition, an aggrieved party by such action must appeal the same to the Court, within thirty (30) days from receipt thereof. These provisions respectively read:

> "**SEC. 7. *Jurisdiction.*** - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;
>
> x x x
>
> **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,** the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts 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.

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[26] An Act Creating the Court of Tax Appeals, 16 June 1954.

[27] 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; 30 March 2004.

> 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. x x x"
> (Emphasis and underscoring provided.)

Based on the foregoing and as found by the Supreme Court in the case of ***Philippine Journalist, Inc., vs. Commissioner of Internal Revenue***,[28] the CTA has jurisdiction not just on decisions of the CIR but also on other matters arising from the Tax Code, thus:

> "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 covers other cases that arise out of the NIRC or related 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.
>
> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court."
> (Emphasis and underscoring supplied; citations omitted.)

A similar conclusion was reached in the recent case of ***Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)***,[29] citing ***Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division***. The CIR argued therein that the reliance on the WDL as the basis of the taxpayer's petition for review was misplaced since the FDDA should be the basis of the action in the CTA. However, the Supreme Court ruled that due to the clear and simple wording of the above-cited ***Section 7 of the Tax Code, amended***, the CTA is given the jurisdiction to determine the validity of the WDL which is considered an "other matter" arising out of the Tax Code.

In the case at hand, the WDL was issued by the petitioner and received by the respondent on 23 October 2018.[30] Counting thirty (30) days therefrom, the Court *En Banc* finds that the original Petition for Review was seasonably filed before the Court in Division on 22 November 2018.

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[28] G.R. No. 162852, 16 December 2004
[29] G.R. No. 255473, 13 February 2023.
[30] See Par. 6, The Facts, Assailed Decision, *Rollo* p. 31.

Meanwhile, the Court *En Banc* also notes that petitioner emphasizes his contention that the CTA's lack of jurisdiction resulted from the alleged finality of the FAN due to respondent's failure to file a valid protest against the assessment.

However, We agree with respondent that petitioner failed to dispense the burden of proof on LSERV's receipt the subject FAN. It must be emphasized that during the proceedings at the Court in Division, respondent categorially and directly denied that it received the FAN.[31] Accordingly, pursuant to a well-settled rule in jurisprudence, it then became incumbent upon petitioner to prove by competent evidence that such notice was indeed received by the taxpayer.

This rule has been elucidated by the Supreme Court in the case of ***Barcelon, Roxas Securities, Inc. (now known as UBP Securities Inc.) vs Commissioner of Internal Revenue***,[32] as cited in ***Commissioner of Internal Revenue v. Metro Star Superama, Inc. ("Metro Star case")***,[33] to wit:

> "Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held 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 and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:
>
> > **"The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed.** Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil. 269)."
>
> .... **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts.** This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:

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[31] See Petition for Review, CTA Case No. 9977, Division Docket Vol. 1, pp. 17-33; Memorandum, Division Docket Vol. 2, pp. 979-986.
[32] G.R. No. 157064, 7 August 2006.
[33] G.R. No. 185371, 8 December 2010.

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." (Nava vs. CIR, 13 SCRA 104, January 30, 1965).
>
> XXX XXX XXX.
>
> The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. (Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR, CTA Case 4885, August 22, 1996)."
> (Emphasis included.)

The modes of services of notices are provided under ***Section 3.1.6 of Revenue Regulations ("RR") No. 18-2013***[34] which states:

> "**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 personal service** 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 by substituted service or by mail.
>
> (ii) **Substituted service** can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.
>
> If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.
>
> If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such

[34] Subject: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, issued on 28 November 2013.

absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

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

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

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."
(Emphasis supplied.)

Upon perusal of the records of the case, the Court *En Banc* notes that petitioner failed to establish the service of the FAN through any of the modes enumerated in the above-cited provision. Petitioner's sole witness, Revenue Officer Minda D. Macaombang, did not provide any testimony regarding respondent's receipt of the FAN. Instead, her testimony was limited to the supposed issuance or physical existence of such notice.[35]

Neither can the purported FAN[36] be considered proof of the actual service of the same to the respondent. Upon checking of the FAN, the same was received by a certain Nhoy Etcobanez on 18 July 2017. However, no proof was adduced to prove the relationship, if any, of the recipient with LSERV. There was likewise no testimony given that the server of the notice made any verification on the authority of the such Mr. Etcobanez to receive documents on behalf of respondent.

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[35] See Judicial Affidavit of Revenue Officer Minda D. Macaombang, Division Docket, Vol. 2, p. 742.
[36] Exhibit "R-6", BIR Records, pp. 46-49.

Thus, there being no proof of respondent's receipt of the FAN, it cannot reasonably be expected to file a protest thereto. Accordingly, the Court *En Banc* finds no merit on petitioner's position that the assessment attained its finality due to being uncontested.

The assessment is void due to (a) failure to establish proper service of the FAN; (b) lack of a properly issued LOA; and (c) having been issued beyond the three (3)-year prescriptive period

(a) Petitioner failed to establish proper service of FAN to the respondent

As it was found that the CIR failed to establish compliance with the requirements of proper service of FAN under ***Section 3.1.6 of RR No. 18-2013***, it now bears emphasis that this necessarily results in a violation of a petitioner's due process rights. Following the pronouncement of the Supreme Court in the recent case of ***Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.***,[37] such denial of due process renders an assessment void. In so ruling, the High Court found guidance from ***Commissioner of Internal Revenue vs. Dominador Menguito***[38] and the ***Metro Star Case***, and held as follows:

> "...[T]he Court holds that insofar as the proper service of the formal letter of demand and assessment notice is part of the due process requirement in the issuance of a deficiency tax assessment under Sec. 3 of RR No. 12-99, the absence of such service renders nugatory any assessment made by the tax authorities.
>
> In line with Metro Star, the Court similarly rules that the word "shall" in subsection 3.1.4 of RR No. 12-99 likewise describes the mandatory nature of the service of the formal letter of demand and assessment notice. **In view of the ruling therein that the persuasiveness of the right to due process reaches both substantial and procedural rights, and that the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process, the Court declares that the CIR's failure to prove that the FLD-DDAN was properly served on SEGI by registered mail renders void the deficiency assessment issued by the CIR.**
>
> It bears emphasis that despite the inevitability and indispensability of taxation, it is required in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure; otherwise, the taxpayer has a right to complain and the courts will then come to its succor. For all the awesome power of the tax collector, it may still be stopped in its tracks if the taxpayer can demonstrate that the law has not been observed."
> (Emphasis supplied.)

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[37] G.R. No. 223767, 24 April 2023.
[38] G.R. No. 167560, 17 September 2008.

Considering the foregoing, the lack of proper service of the FAN can by itself invalidate the subject assessment. However, the Court *En Banc* shall proceed to discuss below the other matters raised by petitioner which, based on our analysis, bolsters respondent's position on the nullity of the assessment.

(b) A properly issued LOA is required for the validity of the assessment

In his Petition for Review, the CIR raises that ***Section 6(A) of the Tax Code***[39] provides the legal basis for the utilization of LNs, relative to his power to examine all taxpayers and assess proper taxes. According to petitioner, such provision does not require the existence of an LOA, and that he has the inherent power to examine returns in order to validate the amount of taxes declared and paid by a taxpayer. Further, through citing ***Revenue Memorandum Order ("RMO") Nos. 30-2003***[40] ***and 42-2003***,[41] petitioner argues that the LN suffices for the validity of the tax assessment issued against the respondent.

In light of established jurisprudence, petitioner's argument is futile.

As stated in the Assailed Decision, the Supreme Court has already emphasized the significance of an LOA in the doctrinal case of ***Medicard Philippines, Inc., vs. Commissioner of Internal Revenue ("Medicard case")***.[42] A clear-cut comparison and delineation of purposes of LN versus LOA was thoroughly discussed by the High Court as follows:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. **It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax**. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.
>
> x x x
>
> 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

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[39] SECTION 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement 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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. x x x

[40] SUBJECT: Prescribes the guidelines and procedures in the extraction, analysis, disclosure/dissemination, utilization, and monitoring of RELIEF data for audit and enforcement purposes, issued on 1 October 2003.

[41] SUBJECT: Prescribes additional guidelines on the assessment of national internal revenue taxes covered by "Letter Notice" issued under the RELIEF System, issued on 21 November 2003.

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

> 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 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that **after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.** Unfortunately, this was not done in this case.
>
> Contrary to the ruling of the CTA en banc, **an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined**. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The **requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination**."
> (Emphasis and underscoring supplied.)

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

> "That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had 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**."
> (Emphasis and underscoring supplied.)

Evidently, it can be inferred from the foregoing that an assessment, even as a result of the no-contact-audit approach under the BIR's RELIEF System, can only be validly issued upon the prior approval and authorization of the CIR or his duly authorized representative, through an LOA. An LN would not suffice for such purpose.

Akin to *Medicard*, the audit and examination on respondent for TY2010 was simply based on an LN and not an LOA. This point is reinforced by Revenue Officer Minda D. Macaombang's (RO Macaombang) testimony, whereby she attested that after the issuance of the LN, no LOA was ever issued by the proper authorities:

> "JUSTICE DEL ROSARIO:
>
> Just a point of clarification, Ms. Witness. Did I get it right that after the issuance of the letter notice, there was no letter of authority ever issued?
>
> MS. MACAOMBANG:
>
> A: Yes, Sir.
>
> JUSTICE DEL ROSARIO:
>
> No Letter of Authority was issued in connection with this case?
>
> MS. MACAOMBANG:
>
> A: **Yes, your Honors, no Letter of Authority.**"[43]

Thus, considering the lack of a validly issued LOA for TY2010, the deficiency VAT assessment which was issued without prior permission and authority from petitioner or his duly authorized representative is therefore void.

(c) Petitioner failed to establish applicability of the extra-ordinary 10-year prescriptive period to assess due to having been based on mere presumption

Petitioner raises that the issuance of its deficiency VAT assessment against the respondent is not barred by prescription. He argues against the applicability of the three (3)-year prescriptive period under ***Section 203 of the Tax Code***, and instead invokes ***Section 222 (a)*** thereof which states:

> "**Section 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a **false or fraudulent return** with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *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.**

[43] Transcript of Stenographic Notes (TSN) of Hearing held on 21 January 2020, pp. 23-24.

x x x"
(Emphasis and underscoring supplied.)

When the filing of tax returns is tainted with intentional falsity, or fraud with intent to defeat payment of tax, or omission to file tax returns, the prescriptive period to assess internal revenue taxes is ten (10) years after discovery thereof. However, this provision does not find application in this case.

Petitioner's deficiency VAT assessment against the respondent for TY2010 arose from an alleged undeclared sales amounting to Php389,376,631.87. Such amount was the discrepancy between respondent's sales per VAT Returns of Php149,525,120.83, and the alleged purchases made by its customers amounting to Php538,901,752.70.[44]

According to petitioner the computed deficiency resulted in a substantial under-declaration of sales exceeding the thirty percent (30%) threshold under ***Section 48 (B)***[45] ***of the Tax Code***, thus constituting *prima facie* evidence of a false or fraudulent return.

The Court *En Banc*, however, believes that such *prima facie* finding of falsity or fraud cannot arise from this case since the assessment was based on unverified information and mere presumptions.

As admitted[46] by petitioner, the alleged discrepancy was based on the RELIEF System under ***RMO No. 30-2003***.[47] Note that ***Item IV(E)(3)(B.3)*** thereof states that if the taxpayer is refuting the data appearing in the LN, there must be a confirmation request (CR) on the TPI sources. The TPI sources should then confirm the data through a confirmation certificate.

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[44] Exhibit "P-1", Division Docket, Vol. 1, pp. 132-148.

[45] **Section 248.** Civil Penalties –

x x x

(B) **In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of deficiency tax,** in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That **failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration** of sales, receipts or income or for overstatement of deductions, as mentioned herein."
(Emphasis supplied)

[46] Footnote 10 of Petition for Review. *Rollo*, pp. 15-16.

[47] *Supra* note 40.

Further guidance is provided in ***RMO No. 28-2007***,[48] which prescribes the guidelines and procedures in the extraction, matching, analysis and utilization of extracted data from the RELIEF System. Specifically, ***Item b.3.c.*** thereof commands the BIR to prepare a CR to the TPI source/s, who in turn shall confirm the TPI through a confirmation certificate. Additionally, if the TPI sources are agreeable to the data shown by the BIR, sworn statements, acknowledging the veracity of such TP data is as well required.[49]

Gleaning from the foregoing observations, petitioner erroneously imputed undeclared sales of Php389,376,631.87 to respondent for TY2010 on the basis of extracted information which appears to be unverified by respondent's alleged customers as was confirmed in the hearing held on 21 January 2020:

"JUSTICE MANAHAN:

> So, the question of this Court is, what other step or procedure did you undertake to confirm or to validate said figures? What are these confirmation letters that are mentioned in your answer to Question 15? You are confirming this data with who?

[MS.] MACAOMBANG:

> A: With the *(Interrupted)*

JUSTICE MANAHAN:

> With the taxpayer?

[MS.] MACAOMBANG:

> A: With their customer.

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[48] SUBJECT: Prescribing Guidelines and Procedures in the Transmittal and Processing of the Annual Information Return on Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF), Annual Information Return of Creditable Taxes Withheld — Expanded/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) and Monthly/Quarterly/Transactional Remittance Returns (BIR Forms Nos. 1601C, 1601E, 1601F, 1600, 1606, 1602, 1603) with the Monthly Alphalist of Payees (MAP) and Returns Required to have Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) (1701, 1702, 2550Q, 2551M, 2551Q, etc.) under Revenue Regulations No. 2-2006 and Procedures in the Extraction, Matching, Analysis, Dissemination, Utilization of Payor/Payees Data Including Monitoring the Extent of Compliance of Withholding Agents and Income Recipients Subject to Withholding Tax through the Tax Reconciliation System, issued on 24 September 2007.

[49] b.3.c. If the discrepancy is on the data submitted by a third party, obtain Sworn Statements from the TPI sources (Annexes "M1" and "M2") attesting to the veracity of the data provided.

i. Prepare and send a "Confirmation Request" (CR) (Annex C) to be signed by the heads of the concerned investigating office for purposes of verifying the accuracy of the figures appearing in the DWAPR.

ii. **If the TPI source agrees with the figures in the CR, secure a sworn statement to allow the RO to build a case. The confirmation by the Taxpayer/withholding agents/TPI source should be embodied in a Confirmation Certificate"** (CC) (Annexes "G" and "G-1").

iii. Request for CC from the TPI source, if necessary.

x x x

(Emphasis supplied.)

JUSTICE MANAHAN:

> So, you wrote the individual suppliers and asked them or validated whether, are these the sales that you had with LBP Service Corporation?

[MS.] MACAOMBANG:

> Yes, your Honors.

JUSTICE MANAHAN:

> And did they reply?

[MS.] MACAOMBANG:

> A: They did not reply, your Honors.

JUSTICE MANAHAN:

> The suppliers did not reply to your confirmation letter request?

[MS.] MACAOMBANG:

> A: Yes, your Honors."[50]

Clearly, the origin of petitioner's deficiency VAT assessment against respondent for TY2010 was the alleged purchases made by its customers from the latter. However, said purchases were unvalidated; hence, they cannot be utilized as the factual foundation of said assessment. *A fortiori*, there was no *prima facie* falsity or fraud in the filing of respondent's Quarterly VAT Returns for TY2010. This warrants the non-application of the ten (10)-year extraordinary prescriptive period to assess internal revenue taxes under ***Section 222(a) of the NIRC***, as amended.

Accordingly, applying the three (3)-year prescriptive period, the issued assessment against respondent for TY2010 is time-barred, as illustrated below:

2010 VAT Assessment						
Quarter	**Actual Date of Filing of VAT Return**	**Last Day Prescribed by Law for filing of VAT Return**	**Start of Prescriptive Period**	**Last Day to Assess**	**Date when Final Assessment was Issued[51]**	**Remarks**
1st	April 23, 2010[52]	April 25, 2010	April 25, 2010	April 25, 2013	July 12, 2017	Prescribed
2nd	July 26, 2010[53]	July 25, 2010	July 26, 2010	July 26, 2013	July 12, 2017	Prescribed

[50] TSN of Hearing held on 21 January 2020, pp. 18-19.
[51] Exhibit "R-6", BIR Records, pp. 45-49.
[52] Exhibit "P-23", Division Docket Vol 2, p. 725.
[53] Exhibit "P-24", *id.* at p. 726.

3rd	October 22, 2010[54]	October 25, 2010	October 25, 2010	October 25, 2013	July 12, 2017	Prescribed
4th	January 25, 2011[55]	January 25, 2011	January 25, 2011	January 25, 2014	July 12, 2017	Prescribed

Taking all of the foregoing into consideration, it now requires emphasis that an invalid assessment bears no fruit. Thus, after having found the assessment void, the CL, FNBS, and WDL issued pursuant to the same are likewise ineffectual and cannot be subject of a lawful execution. Therefore, the Court *En Banc* finds no reason to overturn the rulings of the Court in Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 1 July 2021 and Resolution dated 23 February 2022, in CTA Case No. 9977are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
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

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[54] Exhibit "P-25", *id.* at p. 727.
[55] Exhibit "P-26", *id.* at p. 728.

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
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