



**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

CTA CASE NO. 10243

**OROVILLE RESOURCES AND
VENTURES, INC. (ORVI),**
Petitioner,

- versus -

NOTICE OF DECISION

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. ELEUTERIO F. DIAO IV
Room 220, Tomas Saco Scapes (TSS)
Tomasco Street, Macasandig, Cagayan De Oro City
9000 Misamis Oriental

GREETINGS:

You are hereby notified by these presents that on **February 27, 2026**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 2, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**OROVILLE RESOURCES CTA CASE NO. 10243
AND VENTURES, INC.
(ORVI),**

Petitioner,

Members:

-versus-

**BACORRO-VILLENA, Acting Chairperson, and
CUI-DAVID, JJ.**

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:

FEB 27 2026 4:00 PM

X- - - - -  - - - - - X

DECISION

CUI-DAVID, J:

Before this Court is a *Petition for Review with Motion to Quash Warrant of Dstraint and Levy* (***Petition for Review***),¹ filed on January 14, 2020, by petitioner Oroville Resources and Ventures, Inc. (**ORVI** or **petitioner**) against respondent Commissioner of Internal Revenue (**CIR** or **respondent**). Petitioner seeks to nullify, cancel, and set aside the assessments issued by respondent for alleged deficiency income tax, value-added tax (**VAT**), expanded withholding tax (**EWT**), final withholding tax (**FWT**), documentary stamp tax (**DST**), and compromise penalties in the aggregate amount of ₱1,102,977.34 for taxable year (**TY**) 2017.²

THE PARTIES

Petitioner is a stock corporation, with principal office address at Capistrano-Cruz Taal Streets, Cagayan De Oro City

¹ Docket, pp.6-19.

² *Id.* at 231, Pre-Trial Order, I. Summary of the Case.



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(**registered address**),³ represented by its President, Ma. Teresa CH. Biaco.⁴ It is duly registered with the Bureau of Internal Revenue (**BIR**) with Tax Identification No. 003-875-474, as evidenced by BIR Form No. 2303 with Certificate of Registration No. 1997-098-0101, issued on September 9, 1997.⁵ Petitioner is engaged in general trading activities and other business undertakings, including but not limited to real estate leasing.⁶

Respondent CIR is empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising from the implementation of the National Internal Revenue Code (**NIRC**) and other laws administered by the BIR.⁷ He may be served with summons and other court processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.⁸

THE FACTS AND PROCEEDINGS BEFORE THE COURT

On April 12, 2018, petitioner filed its Annual Income Tax Return for TY 2017.⁹

On November 25, 2018, petitioner was furnished a copy of *Letter of Authority (LOA)* No. A16-2018-00000047/eLA201600053797, dated October 25, 2018, signed by Regional Director Hermeno A. Palamine of Revenue Region No. 16, Cagayan De Oro City, authorizing Revenue Officer (**RO**) Nor-aisah Mala-atao (**Mala-atao**) and Group Supervisor James Valmoria to examine petitioner's books of accounts and other accounting records for TY 2017.¹⁰

However, petitioner alleges that Mr. Emilio Rodrigo B. Enriquez (**Mr. Enriquez**), who received the LOA on November 6, 2018, is neither an employee nor a stockholder of petitioner, and had no authority to accept such document.¹¹ Also, petitioner contends that the LOA was improperly served at Mr.

³ Docket, pp. 221–222. Joint Stipulation of Facts and Issues (JSFI). Summary of Admitted Facts, par. 2; Exhibit “P-3”. Docket, p. 24.

⁴ Docket, pp. 6–7. Petition for Review, I. The Parties, par. 1; Exhibit “P-1” and “P-2”. Docket, pp. 21–23.

⁵ Docket, pp. 221–222. JSFI. Summary of Admitted Facts, par. 2; Exhibit “P-3”. Docket, p. 24.

⁶ BIR Records (Exhibit “R-16”), p. 155. Financial Statements December 31, 2017. Notes to Financial Statements, Note 1 – General Information.

⁷ Docket, p. 7. Petition for Review, I. The Parties, par. 2; 221–222. JSFI. Summary of Admitted Facts, par. 1.

⁸ *Id.*

⁹ Docket, p. 7. Petition for Review, II. Jurisdictional Allegations, par. 4; 222. JSFI. Summary of Admitted Facts, par. 3; Exhibit “P-4”. Docket, pp. 25–33.

¹⁰ Docket, p. 7. Petition for Review, II. Jurisdictional Allegations, par. 5; 222. JSFI. Summary of Admitted Facts, par. 4; Exhibit “P-5”. Docket, p. 39; Exhibit “R-1”. BIR Records, p. 191.

¹¹ Docket, p. 330. Memorandum for the Petitioner. Statement of the Case and the Facts, par. 2.

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Enriquez's residence at House No. 92, 9th-29th Street, Nazareth, Cagayan de Oro City (**known address**), instead of petitioner's registered address.¹²

Subsequently, on an unknown date, petitioner received by registered mail a *Notice for Informal Conference (NIC)* dated January 11, 2019, signed by Adora L. Sijo, Chief of Assessment Division, with tax liabilities totaling ₱1,052,710.54.¹³

On April 24, 2019, respondent issued a Preliminary Assessment Notice (**PAN**).¹⁴ The PAN was allegedly served by RO Mala-atao on May 16, 2019 at petitioner's registered address but failed because petitioner allegedly no longer maintained an office there.¹⁵ RO Mala-atao then attempted service at the known address the following day, but since the notice was refused by the housekeeper, she resorted to substituted service.¹⁶ On May 31, 2019, the PAN was also sent by registered mail to petitioner's registered address, but was returned to the mailing section.¹⁷

On July 4, 2019, since there was no reply to the PAN, respondent issued a Formal Letter of Demand and Final Assessment Notice (**FLD/FAN**).¹⁸ RO Mala-atao allegedly tried to serve the FLD/FAN on August 19 and 20, 2019, but no one was at the known address of petitioner to receive the same.¹⁹ Hence, she resorted to substituted service on August 22, 2019.²⁰

Petitioner denies ever receiving copies of the PAN and FLD/FAN.²¹

¹² *Id.*

¹³ Docket, p.7-8. Petition for Review, II. Jurisdictional Allegations, par. 6; 222. JSfI. Summary of Admitted Facts, pars. 5-6; Exhibit "P-6"/ Exhibit "R-4". BIR Records, p. 208-216. The breakdown of ₱1,052,710.54 in the NIC was stipulated as follows:

Income Tax	₱ 744,965.89
VAT	34,135.56
EWT	5,635.00
FWT	226,478.17
DST	10,495.92
Compromise Penalties	31,000.00
Total	₱1,052,710.54

¹⁴ Exhibit "R-6", BIR Records, pp. 267-272.

¹⁵ Docket, p. 65. Answer (with Opposition to Motion to Quash Warrant of Dstraint and Levy) [Answer], par. 11.

¹⁶ *Id.* at par. 12.

¹⁷ *Id.* at par. 14.

¹⁸ Exhibit "R-8" & "R-9", BIR Records, pp. 292-303.

¹⁹ Docket, p. 67. Answer, par. 15; 350. Memorandum citing Docket, pp. 178-185. Exhibit "R-17", Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao, Q&A no. 30.

²⁰ Docket, p. 67. Answer, par. 16; 350. Memorandum citing Docket, pp. 178-185. Exhibit "R-17", Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao, Q&A no. 30.

²¹ Docket, p. 9-12. Petition for Review, Arguments and Discussion, par. I.

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On December 16, 2019, petitioner received a Warrant of Dstraint and Levy (**WDL**), dated the same day, reflecting the alleged deficiency taxes in the total amount of ₱1,102,977.34.²²

On January 14, 2020, petitioner filed the present *Petition for Review*.²³

Summons was served on the Office of the Solicitor General on January 24, 2020, and on respondent on January 22, 2020.²⁴

On February 5, 2020, respondent filed a *Motion for Extension of Time to File Answer*,²⁵ which the Court granted, giving respondent thirty (30) days, or until March 7, 2020, to file an Answer.²⁶ Thereafter, respondent filed a *Second Motion for Additional Time to File Answer*²⁷ on March 6, 2020, which the Court likewise granted, giving respondent a non-extendible period of 30 days, or until April 6, 2020, to file an Answer.²⁸

On July 6, 2020, respondent belatedly filed his *Answer (with Opposition to Motion to Quash Warrant of Dstraint and Levy)* [**Answer**].²⁹

In a Resolution dated July 27, 2020, the Court denied petitioner's *Motion to Quash Warrant of Dstraint and Levy*, incorporated in its *Petition for Review*.³⁰

On August 25, 2020, a *Notice of Pre-Trial Conference*³¹ was issued, setting the case for Pre-Trial Conference on September 14, 2020.



²² *Id.* at 8–9. *Petition for Review*, II. Jurisdictional Allegations, par. 9; 222. JSFI. Summary of Admitted Facts, par. 8; 47. Exhibit “P-7”: The breakdown of ₱1,102,977.34 in the WDL is as follows:

Income Tax	₱ 784,251.00
VAT	35,881.82
EWT	5,922.19
FWT	225,508.05
DST	10,414.28
Compromise Penalties	41,000.00
Total	₱1,102,977.34

²³ Docket, pp. 6–19.

²⁴ *Id.* at 48.

²⁵ *Id.* at 49–52.

²⁶ *Id.* at 54. Order dated February 7, 2020.

²⁷ *Id.* at 56–59.

²⁸ *Id.* at 61. Order dated March 10, 2020.

²⁹ *Id.* at 62–90.

³⁰ *Id.*

³¹ *Id.* at 106–107.

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The *Respondent's Pre-Trial Brief*³² was filed on September 11, 2020, while the *Pre-Trial Brief for the Petitioner*³³ was filed on October 5, 2020. Respondent later filed an *Amended Pre-Trial Brief*³⁴ on February 17, 2021.

During the November 4, 2020 Hearing supposedly for the Pre-Trial Conference, the Court referred the case to the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for mediation proceedings and ordered the parties to submit their Joint Stipulation of Facts and Issues (**JSFI**) before the next scheduled hearing.³⁵

On December 4, 2020, the PMC-CTA submitted a *Back to Court* report,³⁶ indicating that mediation was refused by the parties. The Court duly noted the report in its Resolution dated February 22, 2021.³⁷

After several postponements, the Pre-Trial Conference proceeded on November 29, 2021.³⁸

On February 17, 2022, the parties belatedly filed a *Joint Manifestation with Motion to Admit Joint Stipulation of Facts and Issues*.³⁹

On March 10, 2022, the Court issued the Pre-Trial Order,⁴⁰ approving the parties' JSFI and deeming the pre-trial terminated.

On April 4, 2022, petitioner manifested during the hearing that it is willing to enter into a possible compromise settlement with respondent.⁴¹ An *Urgent Motion for Resetting*⁴² with an attached *Letter of Intent to Settle/Compromise Agreement*⁴³ dated April 16, 2022 was received by the Court on June 13, 2022.



³² *Id.* at 108–113.

³³ *Id.* at 130–133.

³⁴ *Id.* at 153–158.

³⁵ *Id.* at 137. Order dated November 4, 2020.

³⁶ *Id.* 143.

³⁷ *Id.* at 146. Resolution dated December 18, 2020.

³⁸ *Id.* at 116. Order dated September 14, 2020; 137. Order dated November 4, 2020; 139. Resolution dated November 4, 2020; 146. Resolution dated December 18, 2020; 187. Order dated February 22, 2021; 194. Order dated February 26, 2021; 214. Resolution dated May 24, 2021; 215. Notice of Resetting dated July 21, 2021; 216. Notice of Resetting dated September 14, 2021.

³⁹ *Id.* at 218–227.

⁴⁰ *Id.* at 231–234.

⁴¹ *Id.* at 236. Order dated April 4, 2022.

⁴² *Id.* at 238–239.

⁴³ *Id.* at 240–241.

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On May 29, 2023, the present case was transferred to the First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated May 23, 2023.⁴⁴

Trial ensued. Petitioner presented a single witness, its Treasurer, Ms. Ma. Arabella CH. Fernando (**Ms. Fernando**), who attended *via* videoconferencing and testified by way of her Judicial Affidavit.⁴⁵

Petitioner filed its *Formal Offer of Evidence*⁴⁶ on February 15, 2024, to which respondent filed a *Comment (Re: Petitioner's Formal Offer of Evidence)*⁴⁷ on February 21, 2024. In a Resolution dated July 8, 2024,⁴⁸ the Court admitted all of petitioner's offered evidence.

Respondent presented two witnesses, namely:⁴⁹ (1) RO Mala-atao,⁵⁰ and (2) RO Sharmaine N. Sampaco.⁵¹

*Respondent's Formal Offer of Evidence*⁵² was filed on October 4, 2024, to which petitioner failed to file a comment.⁵³ The Court admitted all of respondent's exhibits in a Resolution dated February 14, 2025.⁵⁴

On November 11, 2024, the *Memorandum for the Petitioner*⁵⁵ was filed while respondent's *Memorandum*⁵⁶ was filed on March 21, 2025.

On April 21, 2025, the instant case was submitted for decision.⁵⁷

THE ISSUES

As stipulated by the parties, the issues submitted for this Court's resolution are:



⁴⁴ *Id.* at 251. Notice of Resolution dated May 29, 2023.

⁴⁵ *Id.* at 275–276. Order dated February 7, 2024; 120–125. Exhibit “P-8”. Judicial Affidavit.

⁴⁶ *Id.* at 277–280.

⁴⁷ *Id.* at 282–284.

⁴⁸ *Id.* at 306–307.

⁴⁹ *Id.* at 312–313. Order dated September 24, 2024.

⁵⁰ *Id.* at 178–185. Exhibit “R-17”. Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao.

⁵¹ *Id.* at 202–206. Exhibit “R-18”. Judicial Affidavit of Revenue Officer Sharmaine N. Sampaco.

⁵² *Id.* at 316–323.

⁵³ *Id.* at 327. Records Verification dated October 30, 2024.

⁵⁴ *Id.* at 344–345.

⁵⁵ *Id.* at 329–336.

⁵⁶ *Id.* at 348–372.

⁵⁷ *Id.* at 348. Notice of Resolution dated April 21, 2025.

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For petitioner:

1. Whether the assessment is null and void for failure to comply with due process?
2. Whether the Court has jurisdiction on the validity of the Warrant of Dstraint and Levy issued by the respondent?
3. Whether Petitioner is liable for the Income Tax, Value Added Tax, Final Withholding Tax, Surcharge, Interest and Compromise Penalties?

For respondent:

1. Whether or not the Honorable Court has jurisdiction over the instant petition.
2. Whether or not the assessment issued against petitioner is already final and executory for failure of petitioner to file a Protest to FAN/FLD dated 7 July 2019.
3. Whether or not petitioner duly received the PAN, FAN/FLD, and Warrant of Dstraint and/or Levy in accordance with law.⁵⁸

Petitioner's arguments:

In its *Petition for Review*⁵⁹ and *Memorandum for the Petitioner*,⁶⁰ petitioner contends that:

1. The Court has jurisdiction to act on the present *Petition for Review* as its authority extends to "other matters" arising under the NIRC and other laws enforced by the BIR;

2. There was a violation of due process and respondent's own regulations; hence, the assessment is null and void;

3. The LOA was received by an unauthorized person and was not delivered at petitioner's registered business address at Capistrano-Cruz Taal Streets, Cagayan de Oro City, but was instead sent to the residence of Mr. Enriquez located at House No. 92, 9th-29th Street, Nazareth, Cagayan de Oro City;

4. It did not receive the PAN, FAN and FLD; and



⁵⁸ Docket, p. 231. Pre-Trial Order, II, Statement of the Facts & Issues: 222-223. JSFI. Issues To Be Tried Or Resolved.

⁵⁹ Docket, pp. 6-19.

⁶⁰ *Id.* at 329-336.

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5. The assessed deficiency taxes and compromise penalties are without legal and factual bases.

Respondent's counter-arguments:

In his *Answer*⁶¹ and *Memorandum*,⁶² respondent argues that:

1. The Court has no jurisdiction over the instant *Petition for Review* for petitioner's failure to file a protest to the FLD/FAN;

2. Petitioner was not denied due process considering that the ROs have followed the guidelines set forth in Revenue Regulations (**RR**) No. 18-2013 and petitioner is deemed to have received the notices issued by the BIR; and

3. Even assuming without admitting the Court's jurisdiction, the assessment has factual and legal bases and petitioner is liable for the assessed deficiency taxes.

THE COURT'S RULING

The present *Petition for Review* is impressed with merit.

The Petition for Review was timely filed; hence, this Court has jurisdiction over the instant case.

For an orderly disposition of the case, the Court shall first resolve the issue of jurisdiction.

Respondent contends that the Court has no jurisdiction over the present *Petition for Review*, arguing that the assessment has already become final, executory, and demandable due to petitioner's failure to file a valid and timely protest against the FLD/FAN.

In contrast, petitioner denies the receipt of such FLD/FAN, among others. It asserts that the CTA's jurisdiction includes "other matters" arising under the NIRC or other laws

⁶¹ *Id.* at 62-90.

⁶² *Id.* at 348-372.



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administered by the BIR, which encompasses the determination of the validity of a WDL.

The Court agrees with petitioner.

It is well settled in our rules and jurisprudence that the CTA's jurisdiction is not confined solely to decisions or inactions of the CIR involving assessments and claims for refund. Rather, it likewise encompasses "other matters" arising under the NIRC of 1997, as amended, or under other laws administered by the BIR.

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125,⁶³ as amended by RA No. 9282,⁶⁴ confers upon the CTA jurisdiction over decisions, inactions of respondent, and other matters" arising under the NIRC of 1997, as amended, to wit:

SEC. 7. *Jurisdiction.* — The CTA shall exercise:

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

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Emphasis supplied)

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) provides:

SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:



⁶³ An Act Creating the Court of Tax Appeals, June 16, 1954.

⁶⁴ 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 of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(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; (Emphasis supplied)

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,⁶⁵ the Supreme Court categorically ruled that the CTA has jurisdiction to determine the propriety of a WDL, as such matter falls within the phrase “other matters” arising under the NIRC, thus:

[T]he 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.

Moreover, in *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*,⁶⁶ the Supreme Court reiterated the CTA’s jurisdiction to determine the validity of a WDL, viz.:

As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or 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 BIR.** The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.** (Emphasis and underscoring supplied)



⁶⁵ G.R. No. 227049, September 16, 2020 [Per J. Inting, Second Division].

⁶⁶ G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division].

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Considering that the validity of a WDL is appealable to this Court, it is clear that the CTA is properly vested with jurisdiction to take cognizance of the instant case.

Anent the timeliness of petitioner's appeal, Section 11 of RA No. 1125, as amended, reads:

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. (Emphasis supplied)

The above provision is likewise reiterated under Section 3(a), Rule 8⁶⁷ of the RRCTA.

Accordingly, an appeal to the CTA must be filed by the party adversely affected, within 30 days from receipt of the adverse decision or from the occurrence of other appealable matters arising under the NIRC or its regulations.

In the present case, petitioner received the WDL, which is the adverse decision appealable to this Court, on **December 16, 2019**.⁶⁸ Counting 30 days, it had until January 15, 2020 to file a *Petition for Review*. Records show that the *Petition for Review* was filed on **January 14, 2020**, and is timely.⁶⁹

Having established this Court's jurisdiction and the timeliness of the appeal, the Court now resolves the case on the merits.



⁶⁷ *Sec. 3. Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

⁶⁸ Docket, pp. 8–9. *Petition for Review*. II. Jurisdictional Allegations, par. 9: 222. JSFI. Summary of Admitted Facts, par. 8: Exhibit “P-7”. Docket, p. 47.

⁶⁹ Docket, p.6.

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Respondent failed to prove the proper service of the LOA, thereby violating petitioner's right to due process and rendering the deficiency tax assessment void.

Even assuming arguendo that the LOA had been properly served, the PAN, FLD/FAN, and, by extension, the WDL, are likewise void for respondent's failure to comply with the due process requirements laid down by law and by the BIR's own rules on service.

At the outset, petitioner disputes the receipt of the LOA, PAN and FLD/FAN. Consequently, with such denial, the burden of proof now rests upon respondent to establish by competent evidence the proper service and actual receipt of these issuances or notices by the taxpayer.⁷⁰ This rule was emphatically pronounced by the Supreme Court in the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,⁷¹ citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue (Barcelon)*,⁷² thus:

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. (Emphasis supplied)

More recently, in *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc. (South Entertainment)*,⁷³ the Supreme Court similarly held that a direct denial of receipt of an assessment notice shifts the burden to the CIR to prove

⁷⁰ *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016 [Per J. Peralta, Third Division], citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division]; *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G. R. No. 157064, August 7, 2006 [Per J. Chico-Nazario, First Division].

⁷¹ G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].

⁷² G. R. No. 157064, August 7, 2006 [Per J. Chico-Nazario, First Division].

⁷³ G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].

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actual receipt thereof. The Court further held that the CIR “cannot rely on the supposed incompetence and lack of personal knowledge of [the taxpayer’s] witness to testify on the alleged non-receipt of the [assessment notice].”

Thus, it is incumbent upon respondent to sufficiently prove that the LOA, PAN and FLD/FAN were properly served upon petitioner, and that the BIR strictly complied with its own regulations as part of the due process requirements under Section 228 of the NIRC of 1997, as amended, which provides:

Section 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: ...**

. . . .

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. (Emphasis supplied)

Based on the foregoing provision, the taxpayer must be informed in writing of the factual and legal bases of the assessment and afforded the opportunity to respond. Non-compliance with Section 228 “does not only render the assessment void, but also finds no validation in any provision in the Tax Code.”⁷⁴

To implement Section 228, RR No. 12-1999,⁷⁵ was issued, which was subsequently amended by RR No. 18-2013,⁷⁶ and further amended by RR No. 7-2018.⁷⁷ The prescribed modes of service of assessment notices are set forth in Section 3.1.6 of RR No. 12-1999, as amended by RR No. 18-2013, which reads:



⁷⁴ *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division] citing *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 191 (2006).

⁷⁵ 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.

⁷⁶ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

⁷⁷ Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 22 January 2018.

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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 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.



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(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)

Moreover, Item III (23) of Revenue Memorandum Order (**RMO**) No. 19-2015⁷⁸ mandates that the RO assigned to the case shall present or serve the electronic LOA (**eLA**) to the taxpayer or its representative in accordance with Section 3.1.6 of RR No. 12-1999, as amended. Thus, the service of the LOA must likewise conform to the prescribed modes of service applicable to assessment notices.

Further, Revenue Memorandum Circular (**RMC**) No. 11-2014⁷⁹ clarifies that:

(6) The notice (PAN/FLD/FAN/FDDA) **shall first be served to the taxpayer's registered address** before the same may be served to the taxpayer's known address, or in the alternative, may be served to the taxpayer's registered address *and* known address **simultaneously**. (Emphasis supplied)



⁷⁸ SUBJECT: BIR Audit Program. September 15, 2015: Item III(23) of RMO No. 19-2015 states: "The RO assigned to the case shall present or serve the eLA to the taxpayer or his representative in accordance with Section 3.1.6 of RR No. 12-99 as amended by RR No. 18-2013".

⁷⁹ Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to Revenue Regulations (RR) 12-99, as amended by RR 18-2013. February 18, 2014.

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By necessary implication, the same rule applies to the service of the LOA. Accordingly, the LOA and assessment notices must first be served at petitioner's registered address before service may be made at a known address. Consistent with Section 3.1.6 of RR No. 12-1999, as amended, service must primarily be effected through personal service; substituted service or service by mail is permissible only upon proof that personal service was not practicable.

A perusal of the proffered documentary and testimonial evidence shows the modes of service allegedly resorted to by the BIR, as summarized below:

Notice	Address Appearing on the Notice	Address Where Notice was Allegedly Deemed Served	Alleged Mode of Service
LOA ⁸⁰	Cruz Taal-Cor. Capistrano, Cagayan De Oro	House No. 92, 9 th -29 th Sts. Nazareth, Cagayan De Oro City	1. By personal service – Respondent alleged that the RO exerted effort to serve the LOA at petitioner's registered address but found out that the corporation has no existing office therein. ⁸¹ 2. By substituted service – The LOA was served by leaving a copy with Mr. Enriquez. ⁸²
NIC ⁸³	Cruz Taal-Cor. Capistrano, Cagayan De Oro City with notation below "cc: Oroville Resources & Ventures, Inc. House #92, 9 th -29 th Street, Nazareth, Cagayan De Oro City"	It cannot be verified from the records whether the NIC was received at the registered address or known address.	By registered mail – It was stipulated by the parties that petitioner received the NIC dated January 11, 2019 and petitioner admitted that it was received by registered mail. ⁸⁴
PAN ⁸⁵	Cruz-Taal Corner, Capistrano	House No. 92, 9 th -29 th Sts. Nazareth,	1. By personal service – Respondent alleged that the BIR tried to serve the PAN at

⁸⁰ Exhibit "R-1". BIR Records, p. 191.

⁸¹ Docket, p. 73. Answer, par. 38.a: 179. Exhibit "R-17". Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao, Q&A nos. 7-10.

⁸² Docket, p. 73. Answer, par. 38.c: 179. Exhibit "R-17". Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao, Q&A nos. 7-10.

⁸³ Exhibit "P-6"/ Exhibit "R-4". BIR Records, pp. 208-216.

⁸⁴ Docket, p. 222. JSFI. Summary of Admitted Facts, pars. 5-6.

⁸⁵ Exhibit "R-6". BIR Records, pp. 267-272, 277-282.

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	Street, Cagayan De Oro City 9000	Cagayan De Oro City	petitioner's registered address but failed since it was found that there was no existing office therein.⁸⁶ 2. By substituted service – Since the housekeeper refused to receive the PAN, RO tendered the PAN to the housekeeper as witnessed by Brgy. Kagawad Henry Y. Madria and witnesses, Noly Antalan and Christy Salomo.⁸⁷ 3. By registered mail – The PAN was also mailed at petitioner's registered address but returned from the mailing section on July 8, 2019 and mailed again on July 9, 2019.⁸⁸
FLD/ FAN ⁸⁹	Cruz-Taal Corner, Capistrano Street, Cagayan De Oro City 9000	House No. 92, 9th-29th Sts. Nazareth, Cagayan De Oro City	1. By personal service – RO Mala-atao testified that she attempted to personally serve the FLD/FAN at petitioner's known address.⁹⁰ 2. By substituted service – Since no one was at the known address, the FLD/FAN was served by substituted service as witnessed by SK Chairman, Jomarie Emeterio and witnesses, Patrick P. Sanchez and Kristine Jay T. Ong.⁹¹
WDL ⁹²	Cruz-Taal Corner, Capistrano Street, Cagayan De Oro City	House No. 92, 9th-29th Sts. Nazareth, Cagayan De Oro City	1. By personal service – Respondent alleged that the RO went to petitioner's registered address to serve WDL but failed.⁹³ 2. By substituted service – Since petitioner was not in the premises, the WDL was

⁸⁶ Docket, pp. 65 & 74. Answer, pars. 11 & 38.d: 181-182. Exhibit "R-17". Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao. Q&A nos. 20-23.

⁸⁷ Docket, p. 65 & 74. Answer, pars. 12 & 38.e: 181-182. Exhibit "R-17". Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao. Q&A nos. 20-23; BIR Records, pp. 277-282.

⁸⁸ Docket, p. 67 & 74. Answer, pars. 14 & 38.f: 182. Exhibit "R-17". Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao. Q&A nos. 24-26; Exhibit "R-7". BIR Records, 282-285.

⁸⁹ Exhibits "R-8" & "R-9", 292-303.

⁹⁰ Docket, p. 183. Exhibit "R-17". Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao. Q&A no. 30; Exhibit "R-10", BIR Records, p. 306. Affidavit of RO Mala-atao.

⁹¹ Docket, p. 67 & 74. Answer, pars. 15-16 & 38.g: 182-183. Exhibit "R-17". Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao. Q&A nos. 27-32; Exhibits "R-10", "R-11" & "R-12". BIR Records, pp. 304-306.

⁹² Exhibit "R-14", BIR Records, p. 314.

⁹³ Docket, p. 68 & 75. Answer, pars. 24 & 38.j; Exhibit "R-14". BIR Records, p. 314.

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			constructively served at the known address. ⁹⁴
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The Court now proceeds to examine in detail the propriety of the service of the LOA and the assessment notices, and respondent's compliance with the due process requirements laid down by law, jurisprudence, and the BIR's own rules.

a. Service of the LOA

The LOA is the authority given to the appropriate RO assigned to perform assessment functions.⁹⁵ It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax⁹⁶ or to recommend the assessment of any deficiency tax due.⁹⁷ The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment,⁹⁸ consistent with Sections 6 (A) and 13 of the NIRC of 1997, as amended.⁹⁹

Due process attends every stage of the assessment process. The issuance and proper service of the LOA prior to any examination or assessment are requirements of due process. They are not mere formalities or technicalities, but substantive obligations imposed upon the taxing authority. An assessment issued without a valid LOA, or without proper service thereof, is void.

Petitioner challenges the validity of the service of the LOA, arguing that such blatant disregard of procedural requirements

⁹⁴ *Id.*

⁹⁵ *Himlayang Filipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021 [Per J. Carandang, First Division] citing *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

⁹⁶ *Medicaid Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017 [Per J. Reyes, Third Division]; *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

⁹⁷ Section 13 of NIRC of 1997, as amended.

⁹⁸ *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. Nos. 196596 et al., November 9, 2016 [Per J. Brion, Second Division].

⁹⁹ SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) Examination of Return and Determination of Tax Due. — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing examination of any taxpayer.

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.

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and lack of due diligence invalidated the service of the LOA and rendered all subsequent proceedings void.

Petitioner categorically denies receipt of the LOA and asserts that it was served upon Mr. Enriquez, who was neither an officer nor an authorized representative of petitioner. As testified by petitioner's witness, Ms. Fernando, Mr. Enriquez is merely the son of one of petitioner's shareholders, Ms. Ma. Teresa B. Enriquez, and has no participation in petitioner's management or operations. The LOA was allegedly served at Mr. Enriquez's place of business, a carwash establishment, located at No. 92, 9th-29th Streets, Nazareth, Cagayan de Oro City, thus:

11. Question: When was the first time that you were informed that ORVI was subjected to an examination by the respondent CIR?

Answer: When the petitioner was given copies of a Letter of Authority No. eLA 20160005397/LOA-A16-2018-00-000000047 dated October 26, 2018. **It was received and tendered to Emilio Rodrigo B. Enriquez on November 25, 2018, who is not an officer or employee of Petitioner ORVI. In fact Emilio Rodrigo [B.] Enriquez is the son of Teresa B. Enriquez, one of ORVI stockholders and said Letter of Authority was served on his place of business (carwash service) at No. 92, 9-29th Streets, Nazareth, Cagayan de Oro City.** ¹⁰⁰
(Emphasis supplied)

This fact was further emphasized during Ms. Fernando's cross-examination by respondent's counsel:

ATTY. MICHAEL KEVIN P. BAYONA:

Q. Who is this Emilio Rodrigo Enriquez?

MS. MA. ARABELLA C.H. FERNANDO

A. **Emilio Rodrigo is the grandson of my sister. But he is in no way connected to Oroville Resources.**

ATTY. MICHAEL KEVIN P. BAYONA:

Q. All right. He is the grandson?

MS. MA. ARABELLA C.H. FERNANDO

A. Yes.

ATTY. MICHAEL KEVIN P. BAYONA:

Q. And then, Teresa B. Enriquez is your?

¹⁰⁰ Docket, pp. 332-334. Memorandum for the Petitioner, par. II.A; See also Docket, p. 122. Exhibit "P-8", Judicial Affidavit of Ms. Ma. Arabella CH. Fernando, par. 11.

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MS. MA. ARABELLA C.H. FERNANDO

A. The mother of Emilio.

ATTY. MICHAEL KEVIN P. BAYONA:

Q. Of Emilio? She is your sister?

MS. MA. ARABELLA C.H. FERNANDO

A. **Teresa Enriquez is the daughter of my sister, Teresa Bianco.**

ATTY. MICHAEL KEVIN P. BAYONA:

Q. **And she is one of the stockholders of Oroville?**

MS. MA. ARABELLA C.H. FERNANDO

A. **Yes. That's true.**

ATTY. MICHAEL KEVIN P. BAYONA:

Q. All right. So, the Letter of Authority, the Notice for Informal Conference and the WDL or the Warrant of Distrainment and Levy were received (Interrupted).

MS. MA. ARABELLA C.H. FERNANDO

A. By Emilio.

ATTY. MICHAEL KEVIN P. BAYONA:

Q. By Emilio at No. 92929 St., Nazarette St. Cagayan De Oro. Correct?

MS. MA. ARABELLA C.H. FERNANDO

A. Yes. In fact, we have copies of the signature received in those papers, those documents (Interrupted).¹⁰¹ (Emphasis supplied)

Petitioner further claims that the LOA was not served at its registered address located at Capistrano-Cruz Taal Streets, Cagayan de Oro City. Instead, it was allegedly delivered to an unrelated location, the residence of Mr. Enriquez at House No. 92, 9th-29th Street, Nazareth, Cagayan de Oro City, which petitioner alleges also serves as Mr. Enriquez's carwash business establishment.¹⁰²

On the other hand, respondent asserts that RO Mala-atao exerted effort to serve the LOA at petitioner's registered address but allegedly found that petitioner held no office there, as the premises were supposedly leased out. Owing to the alleged impossibility of service, respondent claims that the LOA was instead served at petitioner's "known address."¹⁰³ In her

¹⁰¹ TSN. Ms. Ma. Arabella CH. Fernando. February 7, 2024. pp. 16-17.

¹⁰² Docket. pp. 332-334. Memorandum for the Petitioner. par. 11.A: See also Docket. p. 122. Exhibit "P-8". Judicial Affidavit of Ms. Ma. Arabella CH. Fernando. par. 11.

¹⁰³ Docket. p. 73-74. Answer. pars. 38.a & 38.c.



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testimony, RO Mala-atao affirmed that service was effected at this supposed known address, as follows:¹⁰⁴

8. Q: How was the Letter of Authority served to petitioner?

A: We served the Letter of Authority at its known address at House No. 92, 9th-29th Sts., Brgy. Nazareth Cagayan De Oro City since it was revealed that the corporation holds no office in its registered address because the same was leased out.

She further admitted that the LOA was served upon Mr. Enriquez at the purported known address. During cross-examination, it was also revealed that despite knowing that Mr. Enriquez was merely the son of one of petitioner's incorporators, and not an authorized representative of the corporation, she nevertheless proceeded to serve the LOA upon him, to wit:

ATTY. DIAO

Q And in the Letter of Authority, it is addressed to Oroville Resources and Ventures, Inc., correct?

MS. MALA-ATAO

A Yes Sir.

ATTY. DIAO

Q **With address at Capistrano, Cagayan De Oro City. In your Judicial Affidavit, you admitted that you resorted to a substituted service, correct? You did not serve it at the office of Oroville. Is that correct?**

MS. MALA-ATAO

A **Yes Sir.**

ATTY. DIAO

Q **In fact, it was received by a certain Emilio Enriquez, correct?**

MS. MALA-ATAO

A **Yes Sir.**

....



¹⁰⁴ *Id.* at 179. Exhibit "R-17". Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao. Q&A no. 8.

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ATTY. DIAO

Okay, your Honors.

Q Did you inquire what is the relation of the person who received the Letter of Authority, Mr. Emilio Enriquez, to the taxpayer Oroville Resources and Ventures, Inc.?

MS. MALA-ATAO

A Yes Sir, I did.

ATTY. DIAO

Q What is the relation of Mr. Enriquez to Oroville?

MS. MALA-ATAO

A He is son of one of the incorporators and officer of the Oroville Ventures po.

ATTY. DIAO

Q Did you inquire if Mr. Enriquez is an officer of the taxpayer or an employee of the taxpayer?

MS. MALA-ATAO

A I did inquire but the service was done in a family home address.

ATTY. DIAO

Q By the way, do you know what was the reply of Mr. Enriquez when you inquired from him whether he is connected in any way to Oroville Resources and Ventures, Inc.?

MS. MALA-ATAO

A His replied was, he is son of one of the incorporators.

ATTY. DIAO

Q And where was it served?

MS. MALA-ATAO

A At the House No. 92 19th to 29th Street Nazareth, Cagayan De Oro City.

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ATTY. DIAO

Q **Okay. Not in the official business address of Oroville, correct?**

MS. MALA-ATAO

A **I did not because there is no office in that registered address.**¹⁰⁵ (Emphasis supplied)

RO Mala-atao further explained that after finding no office at petitioner's registered address, they examined petitioner's General Information Sheet (**GIS**) and purportedly discovered that House No. 92, 9th-29th Sts. Nazareth, Cagayan De Oro City, was a common address of petitioner's incorporators. On this basis, she decided to serve the LOA at what she considered petitioner's known address, to wit:

Q Can you explain why it was in the home address?

MS. MALA-ATAO

A **There is a registered address in the BIR records, this was the first address we opt to serve the LA. Unfortunately, the corporation held no office in that registered address, Capistrano St.**

ATTY. RAMO

Q **And when you did not find any office in this official business address or found any physical office, what did you do?**

MS. MALA-ATAO

A **We went to the General Information Sheet, GIS, to see the majority of the [in]corporators addresses.**

ATTY. RAMO

Q **And what did you find in that GIS?**

MS. MALA-ATAO

A **The very common address was the House No. 92 19th to 29th St. Cagayan De Oro City.**



¹⁰⁵ TSN, RO Nor-aisah R. Mala-atao, September 24, 2024, pp. 8-11.

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ATTY. RAMO

Q And that address, was that taxpayer also found in that address?

MS. MALA-ATAO

A It is in our BIR ITS system, Integrated Tax System their addresses. **Some of the incorporator's addresses are also seated in No. 92 9th to 29th Streets.**

. . . .

JUSTICE DAVID

Revenue Officer Mala-atao, in your answer to Question No. 8, you mentioned about this known address at House No. 19th to 29th Streets Brgy. Nazareth, Cagayan De Oro City. Again, this address belongs to, does not belong to the taxpayer or to the petitioner in this case but it belongs to?

MS. MALA-ATAO

Incorporators po, your Honors.

JUSTICE DAVID

And the name of the incorporator is?

MS. MALA-ATAO

Maria Theresa Chavez Bianco.

JUSTICE DAVID

Is Ms. Bianco an officer of the petitioner?

MS. MALA-ATAO

Yes po.

JUSTICE DAVID

What is her position?



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MS. MALA-ATAO

On some documents, she appeared to be the Treasurer. On Financial Statements, she signed as the Chairman or the President.

JUSTICE DAVID

Okay. You mentioned that she also signed as President?

MS. MALA-ATAO

Yes, in the Financial Statements.

JUSTICE DAVID

In the Financial Statements. So, you are telling us that Ms. Bianco is not only the Treasurer but also a President of the company?

MS. MALA-ATAO

Yes Ma'am, yes, your Honors.

JUSTICE DAVID

And what is your basis?

MS. MALA-ATAO

Through the submitted documents and the Financial Statements they submitted to the BIR.

JUSTICE DAVID

Did you attach that Financial Statement as part of your evidence?

MS. MALA-ATAO

Yes, your Honors.

JUSTICE DAVID

Is that part of the BIR records?

MS. MALA-ATAO

Yes, your Honors.

....



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JUSTICE DAVID

Going back, this Ms. Bianco is not only a Director but also a Treasurer. And as you said earlier, sometimes she signed the company's document as President.

MS. MALA-ATAO

Or Chairman.

JUSTICE DAVID

President or?

MS. MALA-ATAO

Chairman.

JUSTICE DAVID

Or Chairman, okay. **And why did you choose to serve the LOA at her address?**

MS. MALA-ATAO

Because she is one of the incorporators. And based on our documents, she signed the Financial Statements.

JUSTICE DAVID

How about the other incorporators? Did you try to serve the LOA to the address of the other incorporators?

MS. MALA-ATAO

One of the incorporators is outside the Cagayan De Oro. ¹⁰⁶ (Emphasis supplied)

Based on the foregoing, it is undisputed that Mr. Enriquez received the LOA at the purported known address. However, given petitioner's categorical denial of such receipt, the burden of proof shifted to respondent to establish, by competent evidence, that the LOA was properly served upon petitioner or its duly authorized representative, and that such service strictly complied with the procedures prescribed by law and regulations. Respondent, however, failed to discharge this burden in this case.

¹⁰⁶ TSN. RO Nor-aisah R. Mala-atao. September 24, 2024. pp. 14–17, 19–20.

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Here, respondent merely alleged that RO Mala-atao exerted efforts to serve the LOA at petitioner's registered address and, upon supposedly finding no office there, resorted to substituted service at a known address. Yet, apart from this bare assertion, no sufficient or convincing evidence was presented to substantiate such claim. No corroborating evidence was offered to establish that petitioner indeed holds no office at the registered address, which would have justified resort to substituted service. Respondent's reliance solely on RO Mala-atao's uncorroborated statements is insufficient to establish compliance with the prescribed procedures.

The Court further notes that RO Mala-atao failed to provide specific details regarding her alleged attempt to personally serve the LOA at petitioner's registered address, such as the actual date of service, or the basis for her assertion that the premises were "leased out." There is also no indication that the registered address had been abandoned or vacated. Although respondent insists that efforts were exerted to personally serve the LOA, these efforts were neither elaborated upon nor reflected in the BIR Records. No verification from any tenant, nor confirmation from the barangay, was presented to show that petitioner held no office at said address.

It is a basic rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. Simply put, mere allegations are not evidence.¹⁰⁷

Moreover, RO Mala-atao deemed House No. 92, 9th-29th Street, Nazareth, Cagayan de Oro City as petitioner's known address merely because it appeared, according to her, on petitioner's GIS as a common address of petitioner's incorporators. However, no GIS or similar document was presented in evidence to support this claim. Even assuming *arguendo* that such address appears therein, the residence of an incorporator does not automatically become the corporation's authorized address for service of official notices.

Evidently, the LOA was served upon a person not shown to be authorized and at an address other than petitioner's registered address, without prior competent proof of a valid attempt at personal service. This contravenes the BIR's own regulations.



¹⁰⁷ *Toyo Seat Philippines Corporation v. Velasco*, G.R. No. 240774, March 3, 2021 [Per J. Gaerlan, First Division].

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Accordingly, respondent failed to discharge its burden of proving proper service of the LOA. The resulting assessment is therefore void.

b. Service of PAN

Petitioner likewise denies receipt of the Preliminary Assessment Notice (PAN).

Respondent alleges that the BIR initially attempted to serve the PAN at petitioner's registered address but failed upon allegedly discovering that petitioner maintained no office there.¹⁰⁸

RO Mala-atao testified that she resorted to substituted service at petitioner's supposed "known address" since the housekeeper refused to receive the PAN. The notice was tendered to the housekeeper, as witnessed by Brgy. Kagawad Henry Y. Madria and two witnesses, namely Mr. Noly Antalan and Ms. Christy Salomo.¹⁰⁹ To prove such service, BIR Records show a copy of the PAN with handwritten notation "*NOTE: REFUSED TO RECEIVE*" on the top side of the notice, together with handwritten names, signatures and positions/designations of the purported witnesses.¹¹⁰

However, similar to the Court's findings with respect to the service of the LOA, respondent failed to establish that personal service at petitioner's registered address was indeed attempted and that resort to substituted service at a known address was justified.

RO Mala-atao made the same unsupported allegations that she initially attempted to serve the PAN at petitioner's registered address but found no office therein, to wit:

21. Q: How did you serve the PAN?

A: Again, I tried to personally serve on the registered business address of the taxpayer but failed since the corporation holds no office at the same. I also tried to serve the notice to the known address of the taxpayer but the said notice was refused to be received by the housekeeper therefore, I resorted to substituted service.

¹⁰⁸ Docket, p. 65 & 74, Answer, pars. 11 & 38.d: 181-182, Exhibit "R-17", Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao, Q&A nos. 20-23.

¹⁰⁹ Docket, p. 65 & 74, Answer, pars. 12 & 38.e: 181-182, Exhibit "R-17", Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao, Q&A nos. 20-23.

¹¹⁰ Exhibit "R-6", BIR Records, pp. 267-272, 277-282.

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The PAN was also sent through registered mail but unfortunately, it was returned to the mailing section with the accompanying return card.¹¹¹

As in the service of the LOA, respondent failed to present competent documentary proof to substantiate RO Mala-atao's assertion. Bare allegations cannot suffice to establish compliance with regulatory requirements.

Compounding this deficiency is an inconsistency in respondent's own pleadings. Paragraph 11 of respondent's *Answer* states that the PAN was attempted to be served at petitioner's registered address at Cruz Taal-Capistrano Street, Cagayan De Oro City on **May 16, 2019**, while paragraph 38.d provides that such attempt occurred on **17 May 2019**. RO Mala-atao's testimony failed to clarify this discrepancy. This inconsistency further raises doubt on the unsupported claim that RO Mala-atao initially attempted to serve the PAN at the registered address, as required under RMC No. 11-2014.

Even assuming *arguendo* that substituted service was properly resorted to, a closer examination of the PAN with the handwritten notation shows that respondent still failed to comply with the requirements set forth in Section 3.1.6 of RR No. 12-1999, as amended by RR No. 18-2013, specifically:

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.** (Emphasis supplied)

The PAN merely contains the handwritten notation "*NOTE: REFUSED TO RECEIVE.*" This bare notation does not satisfy the regulatory requirement that the specific facts constituting the refusal be stated in the notice itself. It fails to indicate the date when the service was made and the party who refused to receive the PAN, which are vital facts to which the barangay official and the witnesses should have attested. Hence, respondent failed to comply with the prescribed procedures in effecting the service of the PAN.



¹¹¹ Docket, p. 181. Exhibit "R-17". Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao. Q&A no. 21.

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Respondent further asserts that to ensure the receipt of PAN, it was also sent by registered mail on May 31, 2019, but was returned to the mailing section on July 8, 2019, and was thereafter re-mailed on July 9, 2019.¹¹²

To prove mailing of the PAN to petitioner's registered address, respondent offered in evidence Registry Return Receipt No. RE 047 483 439 ZZ.¹¹³ However, respondent failed to present the notarized written report on service by mail required under Section 3.1.6 of RR No. 12-1999, as amended by RR No. 18-2013. Said provision expressly requires the server to execute a written report under oath before a Notary Public or authorized officer, setting forth the manner, place, and date of service, the identity of the recipient, and other relevant details, with the registry receipt attached to the case docket, *viz.*:

(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. (Emphasis supplied)

RMO No. 40-2019 dated May 30, 2019,¹¹⁴ reiterates the provisions under Section 3.1.6 of RR No. 12-1999, as amended, and further prescribes the procedures for the proper service of assessment notices. As to service by mail, it provides, among others:



¹¹² *Id.* at 67 & 74. Answer, pars. 14 & 38.f.

¹¹³ Exhibit "R-7", BIR Records, unpagged (between pp. 282-283).

¹¹⁴ SUBJECT: Prescribing the Procedures for the Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of Revenue Regulations (RR) No. 18-2013.

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2. In case personal service is not possible, the assessment notice shall be served either by substituted service or by mail. However, substituted service can only be resorted to when the party is not present at the registered or known address.

....

2.2. Service by mail shall be done by sending a copy of the assessment notice through -

2.2.1 Registered mail with an instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered; or

2.2.2 Reputable professional courier service; or

2.2.3 Ordinary mail, if no registry or reputable courier is available in the locality of the taxpayer.

3. The envelope containing the notice must be properly addressed with the following statement:

3.1 To be printed/stamped on the lower portion of the face of the envelope

....

3.2 To be printed/stamped on the backside of the envelope, the instruction

"If undelivered within ten (10) days, please return to (indicate specific BIR office and address)."

....

6. In compliance with Section 3.1.6 (iii) of Revenue Regulations No. 18-2013, the server shall prepare the following written reports in triplicate copies, which shall be 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.

6.1 Report on Personal/Substituted Service (Annex A)

6.2 Report on Service by Mail/Courier (Annex B)

6.3 Distribution of copies:
(Emphasis supplied)



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The BIR Records are devoid of any notarized written report of the substituted service by registered mail. **Proof of mailing is not equivalent to proof of valid service**, especially where the regulation expressly requires a sworn written report detailing the manner, place, and date of service. The mere presentation of a registry receipt does not cure the defect.

Thus, the service of the PAN was invalid.

c. Service of FLD/FAN

Petitioner likewise categorically denies receipt of the FLD/FAN.

Respondent claims that since no protest was filed against the PAN, the FLD/FAN was served through substituted service at petitioner's alleged known address. In support thereof, respondent presented:¹¹⁵

- (1) FLD/FAN dated July 4, 2019;¹¹⁶
- (2) Affidavit of RO Mala-atao;¹¹⁷
- (3) Report on Personal/Substituted Service;¹¹⁸ and
- (4) Acknowledgment of Receipt;¹¹⁹

Respondent also presented the testimony of RO Mala-atao, to wit:

30. Q: How did you serve the Formal Letter of Demand and the Final Assessment Notice?

A: **I attempted to personally serve the FLD/FAN on August 19 and 20, 2019. However, no one was at the taxpayer's known address to receive the same. On August 22, 2019, I served the same through substituted service.** I executed an affidavit, report and an acknowledgment receipt to prove the service of the notices. ¹²⁰ (Emphasis supplied)

Notably, respondent admits that service was made at the alleged known address and not at petitioner's registered address. Significantly, respondent made no prior attempt to



¹¹⁵ Docket, p. 67, Answer, par. 15.

¹¹⁶ Exhibits "R-8" & "R-9", BIR Records, pp. 297-303.

¹¹⁷ Exhibit "R-10", BIR Records, p. 306.

¹¹⁸ Exhibit "R-11", BIR Records, p. 305.

¹¹⁹ Exhibit "R-12", BIR Records, p. 304.

¹²⁰ Docket, p. 183, Exhibit "R-17", Judicial Affidavit of Revenue Officer Noraisah R. Mala-atao, Q&A no. 30.

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serve the FLD/FAN at petitioner's registered address before resorting to substituted service.

This directly contravenes RMC No. 11-2014, which unequivocally requires that assessment notices be served first at the taxpayer's registered address before service may be made at the known address.

In *South Entertainment*, the Supreme Court held that the proper service of the FLD/FAN forms part of the due process requirements in the issuance of a deficiency tax assessment under Section 3 of RR No. 12-99. Absent valid service, the assessment is rendered nugatory.¹²¹

In fine, even assuming that the LOA had been properly served, the service of the PAN and FLD/FAN remains problematic as the said assessment notices were served in violation of the due process requirements under Section 3.1.6 of RR No. 12-1999, as amended by RR No. 18-2013, and clarified by RMC No. 11-2014. Respondent likewise failed to overcome petitioner's categorical denial of receipt and to establish actual and valid service of the assessment notices.

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999, as amended, is void and produces no effect.¹²²

A void assessment bears no valid fruit¹²³ and could not be the basis for the issuance of a WDL.¹²⁴ Further, jurisprudence dictates that 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.¹²⁵

Corollarily, the Warrant of Dstraint and Levy issued in this case is likewise void and without legal effect.



¹²¹ *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].

¹²² *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaapao, Third Division] citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 186 (2010).

¹²³ *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per C.J. Panganiban, First Division].

¹²⁴ *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaapao, Third Division] citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, (186) 2010).

¹²⁵ *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 & 204119-20, July 9, 2018 [Per J. Leonardo-De Castro, First Division].

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Given the nullity of the assessment and the consequent invalidity of the WDL, the Court finds it unnecessary to pass upon the remaining issues raised by the parties.

WHEREFORE, premises considered, the instant *Petition for Review* filed by petitioner Oroville Resources and Ventures, Inc. (ORVI), is hereby **GRANTED**.

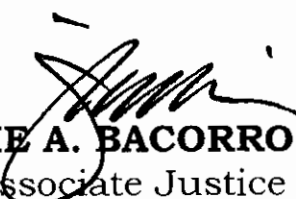
Accordingly, the deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, documentary stamp tax, and compromise penalties in the aggregate amount of ₱1,102,977.34 for taxable year 2017, as reflected in the Formal Letter of Demand and the corresponding Assessment Notices dated July 4, 2019, as well as the Warrant of Distrainment and Levy dated December 16, 2019, are hereby **CANCELLED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue, or any person acting on his behalf, is hereby **ENJOINED** and **PROHIBITED** from further instituting, pursuing, or otherwise taking any action for the collection of the foregoing void assessments.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

I CONCUR:


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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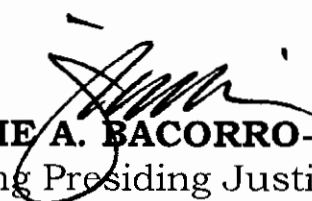
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CERTIFICATION

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's Division.


JEAN MARIE A. BACORRO-VILLENA
Acting Presiding Justice

