

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

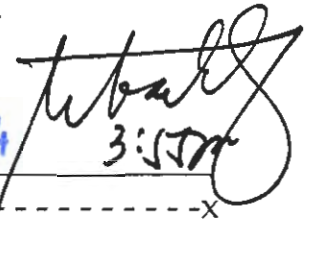
FIDELA D. FERNANDEZ
represented by her attorney-in-fact
Jose Vicente D. Fernandez,
Respondent.

CTA EB No. 2791
(CTA Case No. 9908)

Present:

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

Promulgated:
NOV 06 2024



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DECISION

REYES-FAJARDO, J.:

Before the Court *En Banc* is a Petition for Review¹ filed by the Commissioner of Internal Revenue (CIR) on August 29, 2023 assailing the Decision² and Resolution³ of the Court of Tax Appeals (CTA) Third Division (Court in Division), promulgated on March 24, 2023 and July 20, 2023, respectively. In the assailed issuances, the Court in Division *cancelled* the deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), and expanded withholding tax (EWT) assessments, as well as the Warrants of Garnishment (WOG) issued against herein respondent Fidela D. Fernandez, and *ordered* the CIR to refund the compromise settlement amounting to

¹ Rollo, pp. 7-42.

² Penned by Associate Justice Erlinda P. Uy with Associate Justices Ma. Belen M. Ringpis-Liban and Maria Rowena Modesto-San Pedro concurring.

³ Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Maria Rowena Modesto-San Pedro concurring.



₱99,818.87 paid previously by respondent. The dispositive portions of the assailed issuances are reproduced below.

Assailed Decision

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**.

Accordingly, the Letter-Decision dated July 9, 2018, which denied petitioner's Request for Reconsideration is hereby **ANNULLED** and **SET ASIDE**.

Furthermore, the FLD dated October 8, 2008 and Assessment Notice No. 067-06-103-341-236, assessing petitioner of deficiency income tax, VAT, and withholding tax, in the aggregate amount of P3,835,366.35 for TY 2006, and the Warrants of Garnishment dated November 28, 2012 issued against petitioner, are **CANCELLED** and **SET ASIDE**.

Finally, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of P99,818.87 paid as compromise settlement.

SO ORDERED.

Assailed Resolution

WHEREFORE, premises considered, respondents' Motion for Reconsideration Re: Decision dated 24 March 2023 filed on May 2, 2023 is **DENIED** for lack of merit.

FACTS

Respondent Fernandez is the registered sole proprietor of Bacacay Shell Station located in Magsaysay Avenue, Bacacay, Albay, with Tax Identification No. 103-341-236-VAT registered with Bureau of Internal Revenue (BIR) Revenue District Office No. 67, Legazpi City, Albay.

Proceedings before the BIR.

Letter of Authority dated October 15, 2007 empowered the BIR, through Domingo L. Aguinaldo, Revenue Officer, to examine respondent's books of account and other accounting records

pertaining to all internal revenue taxes for the period January 1, 2006 to December 31, 2006 (TY 2006).

On October 8, 2008, the CIR, through Diosdado R. Mendoza, Officer-in-charge (OIC) Regional Director, BIR Revenue Region No. 10, issued a Formal Letter of Demand (FLD), with Assessment Notice No. 067-06-103-341-236, finding respondent liable for deficiency income tax, VAT, WTC, and EWT in the aggregate amount of ₱3,835,366.35, inclusive of interests, surcharge, and compromise penalty.

On November 28, 2012, the CIR, through Ariel M. Calabia, Revenue District Officer, BIR Revenue District No. 67, Legazpi City, issued WOGs addressed to the Tabaco City branches of Land Bank of the Philippines and China Banking Corporation relative to respondent's bank accounts and the surrender of the balance therein in satisfaction of the aforementioned deficiency tax obligation.

In response to the BIR's collection attempts, respondent wrote a letter⁴ to the BIR⁵ requesting for the cancellation of the WOGs or, in the alternative, for a compromise of the subject deficiency taxes, and, in the meantime, for the suspension of collection during the pendency of the case. The alternative plea for compromise was grounded on the supposed "doubtful validity of the assessment," relative to Section 3.1 paragraphs (a), (b), (c), and (f) of Revenue Regulations No. 30-02.

In its reply, the BIR⁶ insisted that the tax assessments have already become final and executory, with the case having been forwarded to the BIR collection division. Nevertheless, it informed respondent that her request for compromise will be forwarded to the Regional Evaluation Board (REB) for consideration. However, the BIR's favorable recommendation of the case for compromise shall be conditional upon the payment of 10% of the basic tax due.

Respondent continued to question the validity of the assessment;⁷ however, Revenue District Officer Calabia reiterated that the application for compromise cannot be submitted to the REB for

⁴ Letter dated December 1, 2012.

⁵ Addressed to Esmeralda M. Tabulo, Regional Director, BIR Revenue Region No. 10.

⁶ In a letter dated December 5, 2012, through Ariel M. Calabia, Revenue District Officer, BIR Revenue District No. 67.

⁷ In a letter dated December 17, 2012.

review without payment of the offer of ten percent (10%) of the basic tax due, except the withholding tax and compromise penalty.

Thus, respondent tendered the payment of the amount of ₱139,625.00.⁸ In view of respondent's offer of compromise, Revenue District Officer Calabia lifted the WOG on January 24, 2013.

However, through a letter⁹ dated September 7, 2017, the BIR¹⁰ notified respondent that the REB rejected her offer of compromise *via* REB Resolution No. 08-2016, *viz.*:

MS. FIDELA D. FERNANDEZ
Proprietress
Bacacay Shell Service Station
Bacacay, Albay

Thru: ATTY. JOSE VICENTE D. FERNANDEZ
59 Karangahan Blvd., Tabaco City

Madam:

This refers to your deficiency tax for Taxable Year 2006 under Assessment No. 067-06-103-341-236 amounting to Php3,835,366.35.

Please be informed that the Regional Evaluation Board (REB) in its Board Resolution No. 08-2016 dated May 3, 2016, hereto attached, has ruled contrary to the offer and payment of compromise settlement of five percent (5%) of the basic tax liabilities on Income and Value Added Tax (VAT). The Board instead recommended for the payment of the balance for the Income and VAT in the amount of Php667,609.81 and [Php]261,199.79, respectively. The said amounts are necessary in order to qualify for the requirements set under Revenue Regulations No. 30-2002 on compromise settlement on the grounds of doubtful validity of the assessment.

Should you opt to pay the aforesaid balance, you may proceed to the Arrears Management Section, Collection Division x x
x

For your information and guidance.

Very truly yours,

[Signed]

⁸ Par. 7, Joint Stipulation of Facts and Issues, Docket - Vol. 2, p. 593.

⁹ Exhibit "P-11," Docket - Vol. 1, p. 45.

¹⁰ Through Edgar B. Tolentino, Regional Director, BIR Revenue Region No. 10

EDGAR B. TOLENTINO
Regional Director

Respondent moved for reconsideration, but the same was also denied.¹¹

Thus, on August 14, 2018 she proceeded to the Court of Tax Appeals *via* Petition for Review with Motion for the Suspension of Collection, appealing the denial of her application for compromise. The case was docketed as CTA Case No. 9908 and raffled to the Court in Division.

Proceedings before the Court in Division.

The CIR filed an Answer to the Petition on November 19, 2018.

After hearing¹² the Motion for the Suspension of Collection, and upon consideration of the CIR's Comment¹³ thereon, as well as the parties' respective memoranda,¹⁴ the Court in Division resolved¹⁵ to grant respondent's request to suspend the collection of taxes. The Court in Division also granted¹⁶ respondent's request to dispense with the filing of the required surety bond.

When the parties did not come to an agreement during mediation before the Philippine Mediation Center-Court of Tax Appeals, the case proceeded to pre-trial. Trial followed the approval¹⁷ of the parties' Joint Stipulation of Facts and Issues.

Jose Vicente D. Fernandez and Chief Revenue Officer Domingo L. Aguinaldo testified for the respondent and CIR, respectively. The case was submitted for decision¹⁸ after the parties' filing of their respective *Memoranda*.

¹¹ In a letter dated July 9, 2018, through Gerry O. Dumayas, OIC-Regional Director, Revenue Region No. 10.

¹² Order dated October 9, 2018, Docket - Vol. 1, pp. 339-340.

¹³ Docket - Vol. 1, pp. 137-143.

¹⁴ Docket - Vol. 1, pp. 395-402, 409-423.

¹⁵ In a Resolution dated May 23, 2019.

¹⁶ In a Resolution dated October 2, 2019.

¹⁷ In a Resolution dated January 9, 2020.

¹⁸ In a Resolution dated May 18, 2022.

RULING OF THE COURT IN DIVISION

The Court in Division ruled in favor of respondent, annulling and setting aside the tax assessments issued against the latter, as well as the resulting WOGs. As a consequence, the CIR was directed to refund respondent the amount of ₱99,818.87 paid as compromise settlement. It explained as follows:

First, the Court in Division had jurisdiction over Fernandez's Petition for Review. Pursuant to Rule 4, Section 3(a)(1) of the Revised Rules of the Court of Tax Appeals, the Court's appellate jurisdiction covers "other matters" that arise out of the BIR's administration of the National Internal Revenue Code of 1997, as amended (Tax Code), or other related laws. The denial of respondent's application for compromise settlement, inasmuch as it was an exercise of the CIR's power to enter into a compromise under Section 204(A) of the Tax Code, is subject to the Court of Tax Appeals' exclusive appellate jurisdiction.

Second, it was necessary for the Court in Division to, first, delve into tax assessments' validity in order to determine whether the denial of the application for compromise settlement had been proper.

Third, the subject tax assessments were issued in violation of respondent's due process rights. The CIR failed to establish that "Rommel Braga," upon whom the LOA and FLD against respondent was served, was, in fact, respondent's duly authorized representative.

Fourth, having been issued in breach of respondent's right to due process, the subject tax assessments are void. Void assessments do not bear any valid fruit and cannot attain finality. Thus, there was no basis to deny respondent's request to pay 5% of the aggregate basic deficiency taxes as compromise settlement, despite falling below the prescribed limits set out in Revenue Regulations No. 30-02.

Fifth, out of the amount of ₱139,625.00, representing erroneously paid compromise settlement claimed by respondent as refund, she was only able to present proofs of payment thereon to the extent of ₱99,818.87.

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The CIR moved for reconsideration of the Court in Division's Decision, but was denied. Hence, the CIR filed the present petition on August 29, 2023.

After respondent filed a Comment/Opposition¹⁹ to the CIR's petition, the case was submitted for decision on November 6, 2023.²⁰

CIR's Arguments

The CIR imputes error upon the Court in Division in invalidating the subject tax assessments, as well as the resulting collection efforts. It insists the BIR notices were *properly served* upon respondent, but the latter *failed to dispute the same within the reglementary time limits*. As a result, the tax assessments have lapsed into *finality*, depriving the Court of jurisdiction over respondent's judicial *protest*. The CIR's detailed arguments follow:

First, the Court in Division did not have jurisdiction over the subject deficiency tax assessments, which have already become final and executory. Respondent's petition, while filed as an appeal from the denial of the application for compromise settlement, was actually a protest of the assessments. Notably, the petition was filed beyond the 30-day period prescribed under Section 228 of the Tax Code, counted from the receipt of the FDDA. Respondent's failure to file a timely judicial protest removed the case from the Court in Division's jurisdiction.

Second, absent competent proof, respondent's mere allegation that Rommel Braga was not her employee should not be given merit. The government has no control over the taxpayer's business premises; unless taxpayers designate authorized representatives and notify the tax authorities on such designation, the BIR is only expected to serve notices and other correspondences to the persons who appear to have been authorized by the taxpayer. **When the BIR notices were served upon respondent by both the BIR and the Philippine Post Office, Rommel Braga, who was present at respondent's registered address and willingly received the notices, appeared to have been authorized to receive the same.**

¹⁹ *Rollo*, pp. 83-91.

²⁰ Per Resolution dated November 6, 2023.

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Third, respondent cannot be allowed to question the validity of a final assessment through her petition for review for the refund of the amount she offered in compromise; this is patent violation of law and rules. Respondent intends to either belatedly challenge the finality of the assessment made against her or coerce the CIR to accept the offer for compromise. Respondent did not demonstrate that the CIR has the legal duty to enter into a compromise; thus, it cannot be compelled by court action to do so. As it is regarded as a waiver on the part of the government of its right to demand and receive contribution from taxpayers, compromise must be made voluntarily.

Fourth, the minimum offer of compromise in case of financial incapacity is 10% of the basic taxes allowed by law for compromise; respondent's offer of compromise was denied because it was equivalent only to 5% (P139,625.00) of the total basic taxes assessed (P2,656,566.71).

Fernandez's Arguments

In her Comment/Opposition, respondent maintains that the LOA, PAN, and FLD/AN were not properly served to her or any authorized representative. As a result, the tax assessments are void *ab initio*; these cannot become final, executory, and demandable. These void assessments may be brought to the Court of Tax Appeals at any time, even after a compromise offer had been made by the taxpayer and rejected by the CIR.

ISSUES

Based on the parties' submissions, We restate the issues as follows:

- I. Did the Court in Division err in taking cognizance of Fernandez's Petition for Review, which assailed the CIR's denial of the application for compromise?
 - Does the Court of Tax Appeals have jurisdiction to review the CIR's disapproval of an offer to compromise? Does the Court of Tax Appeals' review extend to the matter of the underlying tax assessments' validity?

II. Did the Court in Division err in invalidating the subject FLD, Assessment Notice, and WOG?

- Does service of notices upon any person found in the business premises of and appearing to be authorized by the taxpayer amount to compliance to the rules on proper service and related due process requirements in tax assessments?
- Are the tax authorities required to verify the authority of the receiver in the course of serving BIR notices?

RULING

The Petition for Review is unmeritorious.

The Court in Division correctly took cognizance of Fernandez's Petition for Review.

The law confers exclusive appellate jurisdiction upon the Court to review the CIR's decision/inaction on disputed assessments and "other matters" arising from the BIR's administration of tax laws and regulations.²¹

The Court in Division had jurisdiction over respondent Fernandez's petition, inasmuch as it assailed the CIR's rejection of her offer of compromise settlement of alleged deficiency taxes relative to taxable year 2006, as embodied in the letter dated September 7, 2017.

The CIR's power to compromise the payment of any internal revenue tax is set out under Section 204(A) of the Tax Code, viz.:

SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —

xxx xxx xxx

(A) Compromise the payment of any internal revenue tax, when:

²¹ Section 7(a)(1), Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282.

(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

The compromise settlement of any tax liability shall be subject to the following minimum amounts:

For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and

For other cases, a minimum corporate rate equivalent to forty percent (40%) of the basic assessed tax.

Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners.

It is clear that the CIR's denial of an offer of compromise comes within Our jurisdiction under "other matters" reviewable by the Court, as provided in Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282.

Whether an offer to compromise is acceptable or not is subject to the CIR's sole discretion. However, certainly, this authority is not absolute. When the CIR fails to exercise this power within the parameters set by the law, the Court of Tax Appeals, sitting in Division, is vested with authority to review the CIR's actions and determine whether there has been any abuse of discretion.²²

The Court in Division's cancellation of the subject assessments and invalidation of the WOGs were correct.

Respondent's request for compromise was grounded on the subject tax assessments' "doubtful validity." Thus, to determine whether the CIR was correct in denying respondent's request or

²² *Philippine National Oil Co. v. Court of Appeals*, G.R. Nos. 109976 & 112800, April 26, 2005, 496 PHIL 506-636. Also see *Fernandez v. Dulay*, C.T.A. Case No. 9908, March 24, 2023.

whether there had been any grave abuse of discretion, it is necessary to, first, inquire into the assessment's validity.

We agree with the Court in Division's ruling invalidating the FLD, Assessment Notice, and WOG, on account of the tax authorities' failure to demonstrate its observance of due process requirements in the service of tax notices. The fundamental rule requires that, as a matter of due process, the taxpayer be properly notified of any alleged deficiency tax assessment. On this score, Revenue Regulations No. (RR) 12-99²³ expressly provides that in serving the required notices, personal delivery must be acknowledged by the **taxpayer or his duly authorized representative**.²⁴

In *Mannasoft Technology Corp. v. Commissioner of Internal Revenue (Mannasoft)*,²⁵ the Supreme Court underscored that personal delivery shall be **discriminate**. It shall be made directly to the taxpayer or a **person who has been designated or authorized particularly to act for and in behalf of the taxpayer**. The recipient acting in the taxpayer's behalf must possess sufficient authority or discretion; otherwise, they would be unable to comprehend the tax notice's legal effects and potential financial impact upon and to the prejudice of their principal.

Here, the CIR acknowledges that it served the notices addressed to respondent upon one "Rommel Braga," who it alleges to be respondent's authorized representative. On the other hand, respondent had already denied and demonstrated that she did not authorize this person to receive official BIR correspondences on her behalf. Consequently, **the CIR bore the burden to prove that service had been proper, made upon either the respondent or her authorized representative**.²⁶ Precisely, the CIR failed to discharge this burden.

Following *Mannasoft*, tax authorities must inquire into the extent of authority the representative actually possesses before serving a tax notice, to safeguard the interest of the government, as well as the taxpayer's due process rights. Contrary to the CIR's position in this case, service upon "Rommel Braga" merely because he was **present** at

²³ Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty (September 6, 1999).

²⁴ *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.

²⁵ G.R. No. 244202, July 10, 2023

²⁶ *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.

respondent's registered address, **appeared** to have been authorized by the taxpayer, and was **forthcoming** in receiving the notices, cannot be regarded as proper and effective service.

The tax agents could have very well requested a special power of attorney or valid identification from this "Rommel Braga," to verify his supposed authority. However, apart from the bare assertion that this person was respondent's employee, the CIR did not offer proof that it took the necessary steps to verify and confirm the authority supposedly vested upon the person who received the notices.

The lax approach in the service of the tax notices relative to the subject tax assessments indicates a lack of diligence in the exercise of their functions, as well as non-compliance with their own regulations. It is clear that the CIR and its agents did not meet the strict standards of due process set out in Section 228 of the Tax Code and RR 12-99. Resultantly, the FLD and Assessment Notice No. 067-06-103-341-236, as well as the WOGs emanating therefrom, are all null and void.²⁷

As a final note, We recognize that questions on the validity and correctness of a tax assessment must be raised by the taxpayer in a timely manner, within the applicable administrative protest mechanism; failure to dispute an assessment shall give way to its finality.

However, We cannot uphold a tax assessment upon a technicality, especially when it is patent or otherwise demonstrated that there have been transgressions in due process. The Court cannot be precluded from considering the tax authorities' observance of the taxpayer's fundamental rights, inasmuch as this matter goes into the intrinsic validity of the assessment.²⁸ A taxpayer cannot be held liable for deficiency taxes when it is shown that they were not properly notified of the BIR's findings; ultimately, depriving them of the opportunity to be heard in their defenses. Assessments preceded by such flawed procedures shall be a nullity. It is settled that a void assessment bears no valid effect²⁹ and, thus, cannot attain finality; any attempt to collect taxes premised thereon must be stricken down.

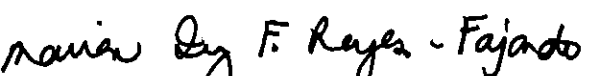
²⁷ Id.

²⁸ *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

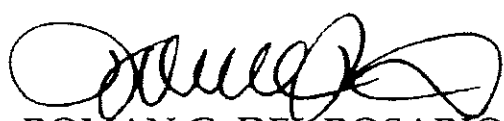
²⁹ *Commissioner of Internal Revenue v. Unioil Corp.*, G.R. No. 204405, August 4, 2021; *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016, 799 PHIL 391-420.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution of the Court of Tax Appeals Third Division, promulgated on March 24, 2023 and July 20, 2023, respectively, in CTA Case No. 9908 are **AFFIRMED**.

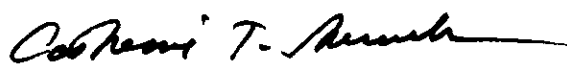
SO ORDERED.

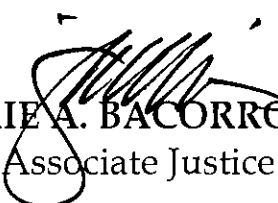

MARIAN IVY F. REYES-FAJARDO
Associate Justice

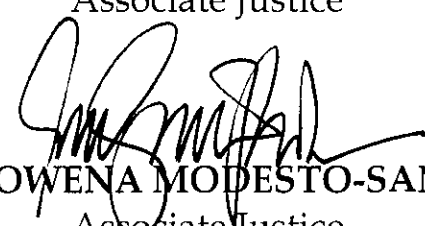
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE
HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO
Presiding Justice