

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

SPECIAL SECOND DIVISION

**SELLERY PHILS. CTA CASE NO. 10049
ENTERPRISES INC.,**

Petitioner,

Members:

-versus-

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

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:
SEP 06 2023

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J 3:50 pm

DECISION

CUI-DAVID, J.:

Before this Court is a Petition for Review¹ filed by petitioner Sellery Phils. Enterprises Inc. against respondent Commissioner of Internal Revenue (CIR), praying for the cancellation and withdrawal of a Warrant of Dstraint and/or Levy (WDL) issued to collect from petitioner the deficiency value-added tax (VAT) in the amount of ₱1,676,905.88, inclusive of interest, penalty, and surcharge, for taxable year (TY) 2014.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the Securities and Exchange Commission (SEC) as engaged in buying, selling, distributing, and marketing plumbing fixture and accessories, architectural hardware, builders and cabinets, and household accessories, among others.²

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¹ Docket – Vol. I, pp. 10-28.

² Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. II, p. 494.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 2 of 24

x-----x

Respondent is the government authority duly designated to collect all taxes, grant refunds, issue and abate tax assessments and examine books of accounts and returns filed with the Bureau of Internal Revenue (BIR) to determine the correctness of taxes paid under the National Internal Revenue Code (NIRC) of 1997, as amended.³

THE FACTS

On April 8, 2015, petitioner filed an Annual Income Tax Return (BIR Form No. 1702-RT) for TY 2014 with Revenue District Office (RDO) No. 25A-Plaridel, Bulacan, declaring zero income tax due with “No Operation” annotation.⁴

On May 20, 2015, petitioner filed an Application for Registration Information Update (BIR Form No. 1905) with RDO No. 25A-Plaridel, Bulacan, stating that its effective date of cessation of business is May 5, 2015.⁵

On August 25, 2015, two (2) separate Letters of Authority (LOAs) for TYs 2013⁶ and 2014⁷ authorizing Revenue Officer (RO) Jayson Baello (RO Baello) and Group Supervisor (GS) Marita Panteriori (GS Panteriori) of RDO No. 25A-Plaridel, Bulacan, were issued to petitioner in connection with the mandatory audit on cessation of business.

On May 8, 2016,⁸ and September 22, 2016,⁹ Revenue District Officer Carlos S. Salazar (RDO Salazar) of RDO No. 25A-Plaridel, Bulacan, issued two (2) separate Memorandum of Assignment (MOA) to RO Cristina C. Yu (RO Yu) and GS Rodolfo M. Roldan, Jr. (GS Roldan, Jr.) for the “continuation of the audit/ investigation to replace the previously assigned ROs who resigned/retired/transferred to another district office.”

On June 2, 2016, RDO Salazar issued two (2) separate Notice of Continuance of Investigation, informing petitioner that RO Yu and GS Roldan, Jr. shall continue the audit/investigation of its books of accounts and other accounting records covering TYs 2012¹⁰ and 2014.¹¹ Both

³ *Id.*, Docket – Vol. II, p. 495.

⁴ Line 16, Exhibit “P-16”, Docket – Vol. I, pp. 298-304.

⁵ Exhibit “P-1”, Docket – Vol. I, p. 263.

⁶ Exhibit “P-5”, Docket – Vol. I, p. 264.

⁷ Exhibit “P-6”, Docket – Vol. I, p. 265; Exhibit “R-2”, BIR Records, p. 1.

⁸ BIR Records, p. 124.

⁹ BIR Records, p. 126.

¹⁰ The Notice of Continuance of Investigation states “taxable year CY 2012”, BIR Records, p. 127.

¹¹ BIR Records, p. 128.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 3 of 24

x-----x

notices were received by petitioner's liaison officer Ms. Raides Umayam (Ms. Umayam).¹²

On June 30, 2017, RDO No. 25A-Plaridel, Bulacan, received a Memorandum,¹³ prepared by RO Yu, recommending that a Preliminary Assessment Notice (PAN) for TY 2014 be sent to petitioner.

On October 13, 2017, the PAN with attached Details of Discrepancy¹⁴ for TY 2014 was issued and served through registered mail to petitioner's address at 78 C. Jose Street, Malibay, Pasay City, on November 3, 2017, under Registry Receipt No. RD 770 400 959 ZZ.¹⁵

On December 6, 2017, a Formal Letter of Demand with Assessment Notice (FLD/FAN)¹⁶ relating to compromise penalty amounting to ₱50,000.00 and another FLD/FAN¹⁷ for deficiency VAT in the amount of ₱1,676,905.88, both for TY 2014, were issued and served through registered mail to petitioner's address at 78 C. Jose Street, Malibay, Pasay City, on December 14, 2017, both under Registry Receipt No. RD 770 391 903 ZZ.¹⁸

On December 18, 2018, a WDL¹⁹ for the collection of deficiency VAT for TY 2014 was issued to petitioner and received by Ms. Umayam on February 19, 2019.²⁰

PROCEEDINGS BEFORE THE COURT

On March 20, 2019, petitioner filed the instant *Petition for Review with Urgent Motion to Suspend Tax Collection and to Quash/Lift Warrant of Distraint and/or Levy*.²¹

On March 27, 2019, respondent received Summons dated March 25, 2019.²²

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¹² *Id.*, *supra*, note 10, *vis-à-vis* pars. 4 & 33-34, Petition for Review, Docket – Vol. I, pp. 11 & 16, respectively.

¹³ Exhibit “R-5”, BIR Records, pp. 167-168.

¹⁴ Exhibits “R-7” & “R-7a”, BIR Records, pp. 175-176.

¹⁵ Exhibits “R-8” & “R-8a”, Affidavit of Service of Preliminary Assessment Notice (PAN), BIR Records, pp. 177-178.

¹⁶ Exhibits “R-9” to “R-10”, BIR Records, pp. 182-183.

¹⁷ Exhibits “R-11” to “R-12”, BIR Records, pp. 184-186.

¹⁸ Exhibits “R-13” & “R-13a”, Affidavit of Service of Final Assessment Notice (FAN) with Formal Letter of Demand, BIR Records, pp. 187-188.

¹⁹ Exhibit “P-10”, Docket – Vol. I, p. 269.

²⁰ Pars. 4 & 33-34, Petition for Review, Docket – Vol. I, pp. 11 & 16, respectively.

²¹ *Supra*, note 1.

²² *Id.*

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 4 of 24

x-----x

On April 8, 2019, a hearing was conducted in relation to petitioner's *Urgent Motion to Suspend Tax Collection and to Quash/Lift Warrant of Distrainment and/or Levy (Urgent Motion)*. In support of the *Urgent Motion*, petitioner presented various documentary evidence, which its witness, Mr. Alex G. Halili, identified.²³ Considering that respondent did not interpose any objection, the exhibits were admitted, and petitioner's *Urgent Motion* was granted without posting a bond.²⁴

On April 22, 2019, respondent filed his Answer.²⁵

On May 2, 2019, the Court issued a Notice of Pre-Trial Conference, scheduling the conference on May 23, 2019.²⁶

On May 16, 2019, respondent filed his Pre-Trial Brief,²⁷ while petitioner filed its Pre-Trial Brief²⁸ on May 20, 2019.

On May 23, 2019, during the pre-trial conference and by agreement of the parties,²⁹ the case was referred to the Philippine Mediation Center Unit – Court of Tax Appeals (PMC-CTA) for mediation on June 26, 2019.

On August 20, 2019, the Court received from the PMC-CTA a Request for Extension³⁰ of thirty days for the parties to reach an amicable settlement, which the Court granted on August 27, 2019.³¹

On September 25, 2019, petitioner filed a *Manifestation*³² stating that it filed with the BIR Revenue Region No. 5-Calocan City an Application for Compromise Settlement together with the proof of payment of 20% of the basic deficiency tax in the amount of ₱213,714.00.

²³ Minutes of the Hearing, *vis-à-vis* Order, Docket – Vol. I, pp. 312 and 313-314, respectively.

²⁴ *Id.*

²⁵ Docket – Vol. I, pp. 318-328.

²⁶ Docket – Vol. I, pp. 329-330.

²⁷ Docket – Vol. I, pp. 331-336.

²⁸ Docket – Vol. I, pp. 355-363.

²⁹ Minutes of the Hearing, *vis-à-vis* Order, Docket – Vol. I, pp. 364 and 365, respectively.

³⁰ Docket – Vol. I, p. 368.

³¹ Resolution, Docket – Vol. I, p. 370.

³² Docket – Vol. I, pp. 371-444, with annexes.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 5 of 24

x-----x

On October 15, 2019, the Court issued a Resolution³³ directing respondent to file his comment within five (5) from receipt thereof. On October 24, 2019, respondent filed his *Comment (Petitioner's Manifestation filed on September 25, 2019)*.³⁴

On November 18, 2019, the Court issued a Resolution³⁵ giving the parties a period of thirty (30) days to enter into a compromise agreement and ordering them to submit a joint report on the status of the compromise within ten (10) days after the lapse of the 30 days.

On December 23, 2019, petitioner filed a *Manifestation with Motion for Extension*³⁶ and another *Manifestation*³⁷ on January 9, 2020.

On January 24, 2020,³⁸ the Court noted petitioner's *Manifestation* and granted petitioner's *Manifestation with Motion for Extension*. Accordingly, the parties were given sixty (60) days from December 26, 2019, or until February 24, 2020, to submit a compromise agreement.

On March 2, 2020, respondent filed a *Manifestation*.³⁹

On March 12, 2020, the Court issued a Resolution giving the parties an additional 60 days from March 2, 2020, until April 1, 2020, to submit a compromise settlement.⁴⁰

On July 16, 2020, the parties filed their *Joint Stipulation of Facts and Issues*.⁴¹ Thereafter, the Court issued the Pre-Trial Order on August 3, 2020.⁴²

Trial proceeded.

On October 5, 2020, petitioner presented and offered the testimony of Mr. Alex G. Halili⁴³ and Ms. Nida B. Riñon,⁴⁴ and Ms. Umayam⁴⁵ on November 16, 2020.

³³ Docket – Vol. I, pp. 446-447.

³⁴ Docket – Vol. I, pp. 448-450.

³⁵ Docket – Vol. I, pp. 452-453.

³⁶ Docket – Vol. I, pp. 454-458.

³⁷ Docket – Vol. I, pp. 459-463, with annexes.

³⁸ Resolution, Docket – Vol. I, pp. 465-466.

³⁹ Docket – Vol. I, pp. 467-469, with annexes.

⁴⁰ Docket – Vol. II, pp. 471-472.

⁴¹ Docket – Vol. II, pp. 494-500.

⁴² Docket – Vol. II, pp. 501-506.

⁴³ Exhibit "P-3", Judicial Affidavit of Witness Alex G. Halili, Docket – Vol. I, pp. 253-262.

⁴⁴ Judicial Affidavit of Nida B. Riñon, Docket – Vol. II, pp. 527-538.

⁴⁵ Exhibit "P-10", Judicial Affidavit of Raides H. Umayam, Docket – Vol. II, pp. 514-521.

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DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 6 of 24

x-----x

On January 4, 2021, petitioner filed one (1) copy of *Formal Offer of Evidence for the Petitioner with Motion for Remarkings of Exhibit (FOE)*.⁴⁶ In compliance with A.M. No. 11-9-4-SC, in relation to CTA *En Banc* Resolution No. 5-2013, petitioner submitted additional three (3) copies of the said *FOE* on January 20, 2021.⁴⁷

On January 15, 2021, respondent transmitted the BIR Records.⁴⁸

On January 21, 2021, the Court's Judicial Records Division reported that respondent failed to file a comment on petitioner's *FOE*.⁴⁹

On March 12, 2021, the Court resolved petitioner's *FOE* and admitted Exhibits "P-1", "P-2", "P-3", "P-9", "P-10", "P-10-a", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-18", "P-27", "P-27-a", "P-28", "P-28-a", "P-29" and "P-29-a". The rest of the exhibits were denied admission.⁵⁰

On May 20, 2021, the Court received the PMC-CTA's Mediator's Report⁵¹ of unsuccessful mediation, which the Court noted on May 26, 2021.⁵²

On June 9, 2021, petitioner filed a *Motion for Reconsideration with Leave of Court to Set Commissioner's Hearing*⁵³ without respondent's comment.⁵⁴

On November 22, 2021, the Court granted petitioner's *Leave of Court to Set Commissioner's Hearing* and held in abeyance the resolution of petitioner's *Motion for Reconsideration*.⁵⁵

On April 12, 2022, the Court partially granted petitioner's *Motion for Reconsideration*. It admitted Exhibits "P-5", "P-6", "P-19-a", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-30" and "P-31," and denied the rest of petitioner's exhibits.

⁴⁶ Docket – Vol. II, pp. 704-712.

⁴⁷ Compliance, Docket – Vol. II, pp. 732-736.

⁴⁸ Compliance, Docket – Vol. II, pp. 715-717.

⁴⁹ Records Verification, Docket – Vol. II, p. 768.

⁵⁰ Resolution, Docket – Vol. II, pp. 776-777.

⁵¹ Docket – Vol. II, p. 778.

⁵² Resolution, Docket – Vol. II, p. 785.

⁵³ Docket – Vol. II, pp. 789-796.

⁵⁴ Records Verification Report dated October 4, 2021, Docket – Vol. II, p. 833.

⁵⁵ Resolution, Docket – Vol. II, pp. 836-837.

W

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 7 of 24

x-----x

On May 11, 2022, respondent presented and offered the testimonies of RO Yu⁵⁶ and RO Ma. Asuncion Alisol H. Somido (RO Somido).⁵⁷

On June 8, 2022, respondent filed his *Formal Offer of Evidence (FOE)*,⁵⁸ while on June 27, 2022, petitioner submitted its *Comment/Opposition (To Respondent Commissioner of Internal Revenue's Formal Offer of Evidence)*.⁵⁹ The Court resolved respondent's FOE on July 12, 2022, and ordered the parties to submit their respective memoranda.⁶⁰

The *Memorandum for the Petitioner*⁶¹ was filed on September 1, 2022, while *Respondent's Memorandum*⁶² was filed through registered mail on August 18, 2022.⁶³

The Court submitted this case for decision on September 12, 2022.

THE ISSUES

The issues, as stipulated by the parties, are:⁶⁴

- a) WHETHER OR NOT THE ASSESSMENT FAILED TO COMPLY WITH DUE PROCESS REQUIREMENTS UNDER SECTION 228 OF THE TAX CODE, AS IMPLEMENTED BY REVENUE REGULATIONS NO. 12-99, AS AMENDED, THUS, THE ASSESSMENT IS VOID;
- b) WHETHER OR NOT THE AUTHORITY OF THE RESPONDENT TO ISSUE THE SUBJECT ASSESSMENT HAS ALREADY PRESCRIBED; and
- c) WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE REMAINING DEFICIENCY TAX, AFTER DEDUCTION OF THE PAYMENT FOR COMPROMISE SETTLEMENT, IN THE TOTAL AMOUNT OF ONE MILLION FOUR HUNDRED SIXTY-THREE THOUSAND ONE HUNDRED NINETY-ONE AND EIGHTY-EIGHT CENTAVOS (PHP1,463,191.88).

⁵⁶ Exhibit "R-14", Judicial Affidavit, Docket – Vol. II, pp. 720-723.

⁵⁷ Exhibit "R-15", Judicial Affidavit, Docket – Vol. I, pp. 339-343; Minutes of the Hearing, *vis-à-vis* Order, Docket – Vol. II, pp. 847 and 848, respectively.

⁵⁸ Docket – Vol. II, pp. 851-855.

⁵⁹ Docket – Vol. II, pp. 856-861.

⁶⁰ Docket – Vol. II, pp. 863-864.

⁶¹ Docket – Vol. II, pp. 865-881.

⁶² Docket – Vol. II, pp. 883-894.

⁶³ Received by the Court on September 6, 2022.

⁶⁴ Statement of the Issues, JSFI, Docket – Vol. II, p. 495.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 8 of 24

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Petitioner's arguments

Petitioner avers that RO Yu, who conducted the assessment for TY 2014, had no authority due to the absence of a LOA authorizing her to examine petitioner. Hence, the deficiency VAT assessment issued against petitioner is void, which means that no tax collection based on the deficiency VAT assessment can be pursued against petitioner.⁶⁵

Petitioner further avers that its right to due process was violated when it did not receive any notice of assessment from respondent, either in the form of a PAN, FAN, or FLD, prior to its receipt of the WDL. Respondent insisted that the assessment had already become final and demandable when it served the said WDL to petitioner.⁶⁶

Petitioner also claims that the authority of respondent to issue the assessment had already prescribed under Section 203 of the Tax Code, which provides for a three (3) year prescriptive period to assess internal revenue taxes. Petitioner's 1st, 2nd, and 3rd quarter VAT returns were filed on April 25, 2014, July 21, 2014, and October 27, 2014, respectively. Hence, when respondent mailed the FLD/FANs on December 14, 2017, which it did not receive, the corresponding prescriptive periods for VAT assessment had already lapsed.⁶⁷

Finally, petitioner submits that the deficiency VAT assessment for TY 2014 lacks legal and factual bases. It refutes respondent's claim that the Inventories and Property, Plant, and Equipment (PPE) reflected in its 2014 Audited Financial Statement (AFS) were subjected to 12% VAT as these were considered transactions deemed sales. Petitioner maintains that no such transaction deemed sale transpired in TY 2014 since petitioner had not yet retired and ceased business. The values of the PPE for TY 2014 were carried over into the balance sheet for TY 2015. Also, the inventories reported in petitioner's 2014 AFS were sold in TY 2015. As such, the VAT was due in TY 2015 and not during TY 2014.⁶⁸

⁶⁵ Pars. 22-29, Memorandum for the Petitioner, Docket – Vol. II, pp. 868-870.

⁶⁶ Pars. 30-40, *id.*, Docket – Vol. II, pp. 870-873.

⁶⁷ Pars. 41-47, *id.*, Docket – Vol. II, pp. 873-875.

⁶⁸ Pars. 48-57, *id.*, Docket – Vol. II, pp. 875-877.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 9 of 24

x-----x

Respondent's arguments

Respondent maintains that petitioner was furnished a copy of the FLD/FANs dated September 6, 2017 [sic], through registered mail at its registered address, per the BIR's Integrated Tax System. Despite respondent's effort to serve the FLD/FAN, petitioner failed to file its administrative protest within thirty (30) days from the date of receipt thereof. Hence, the assessment had already become final, executory, and demandable. Consequently, the Court cannot anymore exercise jurisdiction over petitioner's Petition for Review.⁶⁹

Respondent contends that his authority to issue the assessment had not yet prescribed. The audit conducted by the assigned RO was not made mandatory but arose due to petitioner's application for business retirement. It is a standard operating procedure that before the retirement of a business is granted or allowed, the applicant must be audited to ensure that it has no liability towards the government or deficiency taxes.⁷⁰ Respondent asserts that in the case of cessation of business, should inventories still exist, it shall be considered a transaction deemed sale and shall be subjected to 12% VAT.⁷¹

Respondent concludes that petitioner is still liable to pay the remaining deficiency VAT because "[t]axes... are the lifeblood of the Government and so should be calculated without unnecessary hindrance."⁷²

THE COURT'S RULING

The *Petition for Review* is meritorious.

The CTA has jurisdiction over the instant case.

We shall first resolve whether the Court has jurisdiction over the present case.



⁶⁹ Respondent's Memorandum, Docket – Vol. II, p. 889.

⁷⁰ *Id.*

⁷¹ *Id.*, Docket – Vol. II, p. 892.

⁷² *Id.*

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 10 of 24

x-----x

Under Section 7 (a) (1) of Republic Act (RA) No. 1125, as amended by RA No. 9282,⁷³ the CTA has jurisdiction to decide over cases involving disputed assessments, refunds of internal revenue taxes, or “other matters” arising under the NIRC, *viz.*:

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** or other laws administered by the Bureau of Internal Revenue; [*Emphasis supplied*]

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

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

(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*]

Indeed, the jurisdiction of the CTA is not limited to decisions of the CIR involving assessments and refunds but also includes “other matters” arising under the NIRC of 1997, as amended, or other laws administered by the BIR.⁷⁴

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,⁷⁵ the Supreme Court declared that the CTA has jurisdiction to determine the propriety of a WDL, as the law expressly vests the CTA with authority to take cognizance of “other matters” arising from the NIRC, *viz.*:

⁷³ An Act Creating the Court of Tax Appeals.

⁷⁴ *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

⁷⁵ G.R. No. 227049, September 16, 2020.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 11 of 24

x-----x

...[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.

Thus, the CTA properly exercised jurisdiction over BPI's Second Petition [assailing the WDL].

The above pronouncement is echoed in *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*,⁷⁶ to wit:

... Section 7 (a) (2) of RA 9282 also covers "other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." Clearly, **the CTA has jurisdiction to determine whether the WDL issued by the BIR is valid**[.] ... [*Emphasis supplied*]

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*,⁷⁷ the Supreme Court reiterated the CTA's jurisdiction to determine the validity of a WDL, *viz.*:

... Section 7 (a) (1) of Republic Act No. (RA) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC: ...

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 supplied*]



⁷⁶ G.R. No. 202105, April 28, 2021.

⁷⁷ G.R. No. 255473, February 13, 2023.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 12 of 24

x-----x

Considering that the issuance of a WDL falls under the CTA's jurisdiction to review "other matters arising under the NIRC," this Court can take cognizance of this case.

We shall now determine the timeliness of the Petition.

Section 11 of RA No. 1125, as amended, in relation to Section 3 (a), Rule 8 of the RRCTA, 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*]

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. [*Emphasis supplied*]

Accordingly, in case of an adverse decision or ruling of the CIR, the taxpayer is given thirty (30) days to file a Petition for Review with the CTA.

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DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 13 of 24

x-----x

Here, petitioner received on February 19, 2019 the WDL, which is the adverse decision appealable to this Court.⁷⁸ Thus, it had 30 days, or until March 21, 2019, to file a Petition for Review with the CTA. On March 20, 2019, petitioner timely filed this Petition.

Now, on the merits.

The RO and GS who continued the audit investigation of petitioner have no valid authority; hence, the resulting tax assessment is void.

Records reveal that LOA No. eLA201100074572 dated August 25, 2015 was issued by Gerardo R. Florendo, OIC-Regional Director of Revenue Region No. 5, authorizing RO Baello and GS Panteriori of RDO No. 25A to examine petitioner's books of account and other accounting records for TY 2014.

RO Baello and GS Panteriori eventually replaced RO Yu and GS Roldan, Jr., who continued the audit investigation of petitioner's tax liabilities for TY 2014, based on the two separate Memorandum of Assignment issued by RDO Salazar. Thereafter, a Memorandum was prepared by RO Yu recommending that a PAN be issued against petitioner. Then a PAN and an FLD/FAN were issued and served on petitioner through registered mail.

Petitioner claims that the assessment is void because the RO who continued the audit investigation was not authorized by an LOA.

We agree with petitioner.

The issue presented is not novel and has been the subject of numerous decisions of the Supreme Court,⁷⁹ foremost among which is the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp. (McDonald's)*.⁸⁰

⁷⁸ *Id.*

⁷⁹ *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*, G.R. No. 255473, February 13, 2023; *Republic v. Robiegie Corporation*, G.R. No. 260261, October 3, 2022; *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue (CIR)*, G.R. No. 241848, May 14, 2021; *CIR v. Opulent Landowners, Inc.*, G.R. Nos. 249883-84, January 27, 2020; *CIR v. Composite Materials, Inc.*, G.R. No. 238352, September 12, 2018.

⁸⁰ G.R. No. 242670, May 10, 2021.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 14 of 24

x-----x

The Supreme Court underscored in *McDonald's* case that due process requires the identification of ROs authorized to continue the tax audit or investigation through an LOA. It is a jurisdictional requirement of a valid audit or investigation and, therefore, of a valid assessment by the BIR, *viz.*:

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers.** In other words, identifying the authorized revenue officers in the LOA is a **jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**

Further, RMO No. 43-90 provides that:

C. Other policies for issuance of L/As.

... ..

5. Any **re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As. [*Emphasis supplied*]

Indeed, there must be a grant of authority in the form of an LOA before any RO can conduct an examination or assessment.⁸¹ Only the ROs named in the LOA are authorized to examine the taxpayer,⁸² and only the CIR and his/her duly authorized representatives may issue the LOA.⁸³

⁸¹ *CIR v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021, citing *CIR v. Sony Philippines, Inc.*, G.R. 178697, November 17, 2010.

⁸² *CIR v. Opulent Landowners, Inc.*, G.R. Nos. 249883-84, January 27, 2020.

⁸³ The CIR's duly authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and other officials that may be authorized by the CIR; *CIR v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021, citing Sections 6, 10 and 13 of the NIRC of 1997 and Sec. D (4) of RMO No. 43-90.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 15 of 24

x-----x

Further, the reassignment or transfer of an RO requires the issuance of a new or amended LOA in favor of the substitute or replacement RO.⁸⁴ An MOA issued by the RDO is not proof of the existence of authority of the substitute or replacement revenue officer;⁸⁵ it is not equivalent to an LOA and does not cure the RO's lack of authority.⁸⁶

Without a new or amended LOA, the substitute or replacement RO has no valid authority to continue the audit, and the resulting assessments would be void.⁸⁷

Similarly, in this case, RO Yu and GS Roldan, Jr. continued the audit examination of petitioner for TY 2014 without a new or amended LOA. Their authority was based on the two MOA issued and signed by RDO Salazar, a subordinate official who is *not* authorized to issue a LOA.

Undeniably, RO Yu and GS Roldan, Jr. had no valid authority to continue the examination of petitioner; hence, the resulting deficiency VAT assessment issued against petitioner is void.

Respondent failed to prove petitioner's receipt of the PAN and FLD/FAN.

Even if RO Yu and GS Roldan, Jr. were armed with a new or amended LOA when they examined petitioner, the PAN and FLD/FANs are still void on account of respondent's failure to comply with the due process requirement in the issuance of deficiency tax assessment, as discussed below.

Petitioner claims that it did not receive any assessment notices that could give rise to a valid collection through a WDL.⁸⁸



⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *CIR v. Composite Materials, Inc.*, G.R. 238352, September 12, 2018.

⁸⁷ *CIR v. Opulent Landowners, Inc.*, G.R. Nos. 249883-84, January 27, 2020.

⁸⁸ Par. 45, Petition for Review, Docket – Vol. I, p. 20.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 16 of 24

x-----x

Respondent contends that petitioner was furnished copies of the FAN and FLD through registered mail at its registered address, but petitioner failed to file a protest on the FAN within 30 days from receipt, rendering the assessment final, executory, and demandable.⁸⁹

Section 228 of the NIRC of 1997, as amended, provides for the procedure in issuing tax assessments as well as in protesting the same, *viz.*:

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

... ..

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

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

To highlight the due process requirement in Section 228 of the NIRC, Section 3 of Revenue Regulations (RR) 12-99, as amended by RR 18-2013,⁹⁰ provides:

SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

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

3.1.1 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which

⁸⁹ Par. 3, Respondent's Memorandum, Docket – Vol. II, p. 889.

⁹⁰ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 17 of 24

x-----x

the proposed assessment is based (see illustration in ANNEX "A" hereof).

... ..

3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void (see illustration in ANNEX "B" hereof).

... ..

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:

... ..

(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



DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 18 of 24

x-----x

containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket. [*Emphasis supplied*]

Considering the foregoing, the service of the PAN or the FLD/FAN to the taxpayer may be made by substituted service or by mail in case personal service is not practicable.

Under Section 3 (v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption is subject to direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the mailed letter was actually received by the addressee.⁹¹

In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,⁹² it was ruled by the Supreme Court that although there is a presumption of constructive service, the Court is not precluded from determining whether said notices were received by respondent, *viz.*:

Under Section 203 of the National Internal Revenue Code (NIRC), respondent had three (3) years from the last day for the filing of the return to send an assessment notice to petitioner. In the case of *Collector of Internal Revenue v. Bautista*, this Court held that **an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period.** Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, **it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent.**

... Petitioner alleges that it came to know of the deficiency tax assessment only on 17 March 1992 when it was served with the Warrant of Distrainment and Levy.

In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was

⁹¹ *Barcelon, Roxas Securities, Inc. v. CIR*, G.R. No. 157064, August 7, 2006.

⁹² *Id.*



DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 19 of 24

x-----x

mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.** [*Emphases supplied*]

In *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc. (GJM Philippines)*,⁹³ the Supreme Court emphasized that proof of receipt must also be established in case the assessment was mailed to the taxpayer, *viz.*:

To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.

The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. The CIR offered in evidence Transmittal Letter No. 282 dated April 14, 2003 prepared and signed by one Ma. Nieva A. Guerrero, as Chief of the Assessment Division of BIR Revenue Region No. 8-Makati, to show that the FAN was actually served upon GJM. However, it never presented Guerrero to testify on said letter, considering that GJM vehemently denied receiving the subject FAN and the Details of Discrepancies. Also, the CIR presented the Certification signed by the Postmaster of Rosario, Cavite, Nicarter Looc, which supposedly proves the fact of mailing of the FAN and Details of Discrepancy. It also adduced evidence of mail envelopes stamped February 17, 2003 and April 14, 2003, which were meant to prove that, on said dates, the Preliminary Assessment Notice (PAN) and the FAN were

⁹³ G.R. No. 202695, February 29, 2016.



DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 20 of 24

x-----x

delivered, respectively. Said envelopes also indicate that they were posted from the Makati Central Post Office. However, according to the Postmaster's Certification, of all the mail matters addressed to GJM which were received by the Cavite Post Office from February 12, 2003 to September 9, 2003, only two (2) came from the Makati Central Post Office. These two (2) were received by the Cavite Post Office on February 12, 2003 and May 13, 2003. But the registered mail could not have been the PAN since the latter was mailed only on February 17, 2003, and the FAN, although mailed on April 14, 2003, was not proven to be the mail received on May 13, 2003. **The CIR likewise failed to show that said mail matters received indeed came from it. It could have simply presented the registry receipt or the registry return card accompanying the envelope purportedly containing the assessment notice, but it offered no explanation why it failed to do so. Hence, the CTA aptly ruled that the CIR failed to discharge its duty to present any evidence to show that GJM indeed received the FAN sent through registered mail on April 14, 2003. [Emphasis supplied]**

Here, the PAN and the FLD/FAN were served by respondent through registered mail. Petitioner repeatedly denied actual receipt of the PAN and the FLD/FAN. Hence, the burden was shifted to respondent to prove, by competent evidence, that the service by mail was done in accordance with Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, and that petitioner or its authorized representative received the said assessment notices.

Respondent failed to establish that personal service of the subject PAN and FLD/FAN was not practicable. He likewise failed to refute petitioner's denial of its receipt of the said assessment notices.

Following the *GJM Philippines* case, to prove the fact of mailing, respondent should have presented the acknowledgement by petitioner's authorized representative as indicated in the registry return card. If said documents could not be located, respondent should have, at the very least, submitted to the Court a Certification issued by the Bureau of Posts. In this case, respondent offered in evidence Registry Receipt Nos. RD 770 400 959 ZZ⁹⁴ and RD 770 391 903 ZZ⁹⁵ to prove the fact of mailing the PAN and FLD/FAN, respectively, to petitioner. Respondent did not present any evidence to prove

⁹⁴ Exhibits "R-8" & "R-8a", Affidavit of Service of Preliminary Assessment Notice (PAN), BIR Records, pp. 177-178.

⁹⁵ Exhibits "R-13" & "R-13a", Affidavit of Service of Final Assessment Notice (FAN) with Formal Letter of Demand, BIR Records, pp. 187-188.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 21 of 24

x-----x

receipt of the subject assessment notices by petitioner, such as the registry return card or postmaster's certification.

More, respondent's witness, RO Yu, did not testify on the Affidavits of Service of PAN⁹⁶ and FAN/FLD⁹⁷ that she executed.⁹⁸ She merely identified in her Judicial Affidavit the LOA, which is not issued in her name, the Request for Presentation of Record/Books of Accounts,⁹⁹ and the First Notice for the Presentation of Record/Documents,¹⁰⁰ all of which she claimed to have served to petitioner.¹⁰¹ Oddly enough, it was RO Somido who identified the Affidavit of Service of PAN that RO Yu executed.¹⁰²

The Court also notes that respondent sent the letters and notices he issued to petitioner to different addresses. Respondent sent the LOA dated August 25, 2015, the PAN dated October 13, 2017, and the FAN/FLD dated December 6, 2017 to 78C Jose Street, Malibay, Pasay City, despite petitioner being registered with and under investigation of RDO No. 25A-Plaridel, Bulacan. Further, the Notices of Continuance of Investigation dated June 2, 2016¹⁰³ were addressed to Ilang-Ilang Street, Violeta Village, Sta. Cruz, Guiguinto, Bulacan, which petitioner declared as its registered address in its 2014 Annual Income Tax Return (AITR)¹⁰⁴ and 2014 Quarterly VAT Returns.¹⁰⁵

Respondent's failure to prove petitioner's receipt of the PAN and FLD/FAN would necessarily lead to the conclusion that the subject tax assessment never attained finality. Moreover, respondent's total disregard of petitioner's right to due process in the issuance of the assessment under Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, as amended by RR 18-2013,¹⁰⁶ rendered the same void.

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⁹⁶ Exhibits "R-8" & "R-8a", Affidavit of Service of Preliminary Assessment Notice (PAN), BIR Records, pp. 177-178.

⁹⁷ Exhibits "R-13" & "R-13a", Affidavit of Service of Final Assessment Notice (FAN) with Formal Letter of Demand, BIR Records, pp. 187-188.

⁹⁸ See Exhibit "R-14", Judicial Affidavit, Docket – Vol. II, pp. 720-723.

⁹⁹ Exhibit "R-3", BIR Records, pp. 1-A to 1-B.

¹⁰⁰ Exhibit "R-4", BIR Records, p. 2.

¹⁰¹ A15-17, Exhibit "R-14", Judicial Affidavit, Docket – Vol. II, p. 721.

¹⁰² Exhibit "R-15", Judicial Affidavit, Docket – Vol. I, pp. 341.

¹⁰³ *Supra*, notes 11 and 12.

¹⁰⁴ Exhibit "P-16", Docket – Vol. I, p. 298.

¹⁰⁵ Exhibits "P-11" to "P-14", Docket – Vol. I, pp. 308-311.

¹⁰⁶ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 22 of 24

x-----x

As the Supreme Court explained in *Commissioner of Internal Revenue v. Reyes*:¹⁰⁷

The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. **Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.** [*Emphasis supplied*]

All told, the deficiency tax assessment issued against petitioner for TY 2014 is inescapably void for lack of authority of RO Yu and GS Roldan, Jr. to continue the audit and for having been issued in violation of petitioner's right to due process.

It is well-settled that a void assessment bears no valid fruit¹⁰⁸ and could not be the basis for the issuance of a WDL.

Having arrived at the foregoing conclusion, We find it unnecessary to discuss and rule on the other issues raised by the parties.

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**. Accordingly, the Warrant of Distrainment and/or Levy dated December 18, 2018, the Formal Letter of Demand and the Assessment Notice both issued on December 6, 2017, assessing petitioner for deficiency Value-Added Tax in the amount of ₱1,676,905.88 for taxable year 2014, are **CANCELLED** and **SET ASIDE** for being null and void.

Further, respondent Commissioner of Internal Revenue, his authorized representatives, agents, or any person acting on his behalf are **ENJOINED** from taking any further action against petitioner Sellery Phils. Enterprises Inc. and from enforcing the collection of the foregoing assessment. This Order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.

¹⁰⁷ *Id.*

¹⁰⁸ *Commissioner of Internal Revenue v. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006.



DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

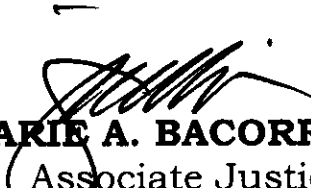
Page 23 of 24

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SO ORDERED.

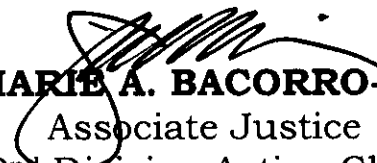

LANÉE S. CUI-DAVID
Associate Justice

I CONCUR:


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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
Associate Justice
Special 2nd Division Acting Chairperson

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DECISION

CTA Case No. 10049

Sellery Phils. Enterprises Inc. v. Commissioner of Internal Revenue

Page 24 of 24

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, 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.



ROMAN G. DEL ROSARIO

Presiding Justice

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