REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2813** (CTA Case No. 9937)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
ONE CYPRESS AGRI-SOLUTION, INC., *Respondent.*	Promulgated: MAR 05 2025

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DECISION

ANGELES, *J.*:

Before the Court *En Banc* is a ***Petition for Review***[1] filed on November 14, 2023 by petitioner Commissioner of Internal Revenue (CIR), seeking the reversal of the ***Decision***[2] dated March 7, 2023, and ***Resolution***[3] dated September 27, 2023, both promulgated by the Special Third Division of this Court (the "Court in Division"), in CTA Case No. 9937, entitled "*One Cypress Agri-Solution Inc., vs. Commissioner of Internal Revenue*", which cancelled the deficiency income tax (IT) and value-added tax (VAT) assessments for taxable year (TY) 2013 and lifted the Warrant of Garnishment (WOG) dated July 20, 2018 issued against respondent One Cypress Agri-Solution, Inc. (OCAI).

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[1] Petition for Review dated November 13, 2023, EB Docket, pp. 4-12.
[2] Decision dated March 7, 2023, EB Docket, pp. 16-35.
[3] Resolution dated September 27, 2023, EB Docket, pp. 37-39.

THE PARTIES

Petitioner CIR is the chief of the Bureau of Internal Revenue (BIR) who, under law, is empowered to perform the duties of said office including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith. He may be served with summons and other legal processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

Respondent OCAI is a domestic corporation duly registered with the Securities and Exchange Commission. It is registered with the BIR with registered address at Unit 401, 4th Floor Prestige Tower, Don Fracisco, Ortigas Jr. Road, Center, Pasig City.[5]

THE FACTS

Respondent OCAI was subjected to a tax audit or investigation for all internal revenue taxes including documentary stamp tax and other taxes for TY 2013 under Letter of Authority (LOA) No. LOA-43A-2014-00000944 SN: eLA201100094672 dated October 28, 2014.[6]

On February 7, 2017, OCAI received the Preliminary Assessment Notice (PAN) dated January 26, 2017, together with the Details of Discrepancies, alleging OCAI's deficiency taxes in the total amount of ₱55,578,713.87, inclusive of the basic taxes, surcharges, interests, and compromise penalties.[7]

Subsequently, on September 7, 2018, OCAI attempted to withdraw the amount of ₱20,000 from its Banco De Oro (BDO) Savings Account No. 004390027282 from BDO Northbay – Virgo Drive Branch. However, OCAI was then informed by the said bank that its account had been garnished by the BIR, and was given a copy of the WOG dated July 20, 2018. The said WOG stated that there is due from OCAI the total amount of ₱63,043,868.59 as its alleged deficiency IT and VAT for the TY 2013.[8]

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[4] Par. 3, 1. Admitted Facts, Joint Stipulation of Facts & Issues (JFSI) dated March 6, 2020, Division Docket – Vol. 1, p. 359.
[5] Pars. 1-2, I. Admitted Facts, Joint Stipulation of Facts & Issues (JFSI) dated March 6, 2020, Division Docket – Vol. 1, p. 358.
[6] *Id.*
[7] *Id.*
[8] *Supra* note 2, pp. 17-18.

In order to assail the issuance of the WOG for the alleged deficiency IT and VAT for TY 2013, OCAI filed a *Petition for Review (with Urgent Motions to Lift Warrant of Garnishment and for Suspension of Collection of Tax by the Issuance of Temporary Restraining Order and/or a Writ of Preliminary Injunction)*[9] on September 27, 2018, docketed as CTA Case No. 9937.

The parties submitted the following issues[10] for resolution of the Court in Division:

1) Whether or not OCAI was denied due process in the issuance of the FAN and WOG; and
2) Whether or not OCAI is liable for deficiency taxes for TY 2013.

After trial on the merits, the Court in Division promulgated the assailed *Decision* dated March 7, 2023, granting OCAI's *Petition,* as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, [CIR's] *Warrant of Garnishment* dated July 20, 2018 is **LIFTED** and **SET ASIDE.**
>
> Moreover, for being void, the deficiency income tax and VAT assessments issued against [OCAI], in [sic] the total amount of ₱63,043,868.59, for taxable year 2013, are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED**.

Based on the assailed *Decision*, petitioner CIR failed to prove that the purported Final Assessment Notices (FANs) and Formal Letter of Demand (FLD), both dated February 28, 2017, were duly served upon and actually received by respondent OCAI. As such, the Court in Division ruled that the FLD/FANs are void and the WOG cannot be validly enforced.

Aggrieved by the Court in Division's *Decision*, the CIR filed on April 12, 2023 a *Motion for Reconsideration (on the Decision promulgated on March 7, 2023)*[11] which was denied in the assailed *Resolution* dated September 27, 2023, the dispositive portion of which provides:

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[9] Petition for Review (with Urgent Motions to Lift Warrant of Garnishment and for Suspension of Collection of Tax by the Issuance of Temporary Restraining Order and/or a Writ of Preliminary Injunction) dated September 26, 2018, Division Docket – Vol. 1, pp. 11-25.
[10] Pre-trial Order dated June 26, 2020, Division Docket – Vol. 1, p. 381.
[11] Motion for Reconsideration (on the Decision promulgated on March 7, 2023) dated April 12, 2023, Division Docket – Vol. 2, pp. 689-694.

> **WHEREFORE**, [CIR's] Motion for Reconsideration (on the Decision promulgated on March 7, 2023) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

On October 27, 2023, the CIR filed with the Court *En Banc* a *Motion for Extension of Time to File Petition for Review*[12] which was granted pursuant to the *Minute Resolution*[13] dated November 6, 2023. Thereafter, on November 14, 2023, the CIR filed the instant *Petition for Review* praying that the assailed *Decision* and *Resolution* be reversed, and that OCAI's *Petition for Review* before the Court in Division be dismissed for lack of merit.

In a *Minute Resolution*[14] dated November 23, 2023, OCAI was directed to file its comment on the instant *Petition.* On December 13, 2023, OCAI filed a *Comment/Opposition [Re: Petition for Review dated 13 November 2023]*[15] which was noted pursuant to the *Minute Resolution*[16] dated January 8, 2024. In the same *Minute Resolution,* the case was also referred to the Philippine Mediation Center-Court of Tax Appeals for mediation. However, on February 28, 2024, a No Agreement to Mediate[17] was received by the Court *En Banc.* Accordingly, on March 6, 2024, the present *Petition* was submitted for decision.[18]

ISSUE

Petitioner CIR raises the following error[19] allegedly committed by the Court in Division, to wit:

> THE HONORABLE COURT ERRED IN GRANTING THE PETITION FOR REVIEW THEREBY CANCELING AND WITHDRAWING THE FINAL ASSESSMENT NOTICE AND FORMAL LETTER OF DEMAND WITH DETAILS OF DISCREPANCIES AND THE ASSESSMENT FOR THE 2013 TAXABLE YEAR OF THE [RESPONDENT] IN THE AMOUNT OF ₱63,043,868.59, INCLUSIVE OF INCREMENTS.

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[12] Motion for Extension of Time to File Petition for Review dated October 26, 2023, EB Docket, pp. 1-2.
[13] EB Docket, p. 3.
[14] EB Docket, p. 43.
[15] Comment/Opposition [Re: Petition for Review dated 13 November 2023] dated December 12, 2023, EB Docket, pp. 44-62.
[16] EB Docket, p. 102.
[17] EB Docket, p. 103.
[18] EB Docket, p. 104.
[19] *Supra* note 1, p. 7.

ARGUMENTS OF THE PARTIES

CIR's arguments

In his *Petition*, the CIR reiterates his position that OCAI is in bad faith in claiming that it never received the FANs for TY 2013 when it never notified the BIR of any change in its registered address. The CIR claims that due diligence was exercised in serving the FANs so that OCAI's right to due process will not be violated. Furthermore, the CIR avers that the act of serving the FLD/FANs enjoys the presumption of correctness and regularity in the absence of proof of any irregularities in the performance of duties of the revenue officers.

Finally, the CIR contends that taxes are important because they are the lifeblood of the government, and thus, should be collected without unnecessary hindrance.

OCAI's counter-arguments

In its *Comment*, OCAI claims that the CIR's present *Petition* must be dismissed for being *pro forma* considering that it is merely a shortened version of his *Motion for Reconsideration* to the assailed *Decision*.

OCAI also counter-argues that the registry mail receipts presented by the CIR only prove the fact of mailing of the FLD/FANs, but not its receipt. Moreover, OCAI alleges that since the CIR failed to comply with the procedures for the valid service of the FLD/FANs, its right to due process was violated which renders the deficiency tax assessments null and void.

Lastly, it is OCAI's position that the CIR's invocation of the lifeblood theory cannot stand against clear, positive and substantial evidence that OCAI did not actually receive the FLD/FANs.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit.

The Court En Banc has jurisdiction over the subject matter of the Petition.

Section 2(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides for the cases within the jurisdiction of the Court *En Banc*, thus:

RULE 4
JURISDICTION OF THE COURT

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SEC. 2. Cases within the jurisdiction of the Court *en banc*. – **The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal** the following:

(a) **Decisions or resolutions** on motions for reconsideration or new trial of the **Court in Division in the exercise of its exclusive appellate jurisdiction over**:

(1) Cases arising from administrative agencies – **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; (Emphasis supplied)

As the *Petition for Review* filed by the CIR before the Court *En Banc* prays for the reversal of the assailed *Decision* and *Resolution* both promulgated by the Court in Division, the Court *En Banc* has appellate jurisdiction to review by appeal the subject matter of the instant *Petition* pursuant to Section 2(a)(1), Rule 4 of the RRCTA.

Absent any authorization from the OSG, the BIR has no legal authority to file the instant Petition. Hence, the instant Petition was not validly filed.

As regards the timeliness of filing the *Petition*, Section 3(b), Rule 8 of the RRCTA, provides:

RULE 8
PROCEDURE IN CIVIL CASES

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SEC. 3. Who may appeal; period to file petition. –

xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial

> may **appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, **the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review**. (Emphasis supplied)

A perusal of the records shows that on October 16, 2023, the CIR received the assailed *Resolution,* denying his *Motion for Reconsideration (on the Decision promulgated on March 7, 2023)* filed before the Court in Division.[20]

Pursuant to Section 3(b), Rule 8 of the RRCTA, the CIR has fifteen (15) days from October 16, 2023 or until October 31, 2023, within which to appeal the assailed *Resolution* with the Court *En Banc.* On October 27, 2023, the CIR filed a *Motion for Extension of Time to File Petition for Review* which was granted pursuant to the *Minute Resolution* dated November 6, 2023, wherein the CIR was given an additional period of fifteen (15) days from October 31, 2023 or until November 15, 2023 within which to file its petition for review.

On November 14, 2023, the CIR filed the instant *Petition for Review*. However, We note that the filing of the *Petition* was not accompanied by any authorization from the Office of the Solicitor General (OSG).

It should be emphasized that the OSG is the principal law officer, and legal defender of the government. In *Gonzales v. Chavez*[21], the Supreme Court declared that:

> From the historical and statutory perspectives detailed earlier in this ponencia, it is beyond cavil that **it is the Solicitor General who has been conferred the singular honor and privilege of being the "principal law officer and legal defender of the Government**." One would be hard put to name a single legal group or law firm that can match the expertise, experience, resources, staff and prestige of the OSG which were painstakingly built up for almost a century.

Jurisprudence likewise consistently holds that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings. The only exceptions are: (1)

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[20] Notice of Resolution dated September 27, 2023, EB Docket, p. 36.
[21] G.R. No. 97351, February 4, 1992.

when the government is adversely affected by the contrary position taken by the OSG; (2) when there is an express authorization by the OSG deputizing legal officers to assist the Solicitor General and appear or represent the government in cases involving their respective offices; and (3) when the dismissal of the petition could have lasting effect on government tax revenues, where the issue raised was whether the revenue regulation issued by the CIR has exceeded, on constitutional grounds, the allowable limits of legislative delegation.[22]

It may also be argued that under Section 220[23] of the Tax Code, the institution of civil and criminal actions shall be conducted by the legal officers of the BIR. However, in the case of *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*[24], it was held that Section 220 did not overturn the established rule in requiring the OSG to represent the government in appellate proceedings for both civil and criminal actions, *viz:*

> The institution or commencement before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. **An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long-established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings**. This pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987. Section 35, Chapter 12, Title III, Book IV, of the said Code outlines the powers and functions of the Office of the Solicitor General which includes, but not limited to, its duty to –
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> > "(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; **represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions** and special proceedings in which the Government or any officer thereof in his official capacity is a party.

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[22] People of the Philippines v. Gloria Tuyay, G.R. No. 206579, December 01, 2021.
[23] SECTION 220. Form and Mode of Proceeding in Actions Arising under this Code. - **Civil and criminal actions and proceedings instituted in behalf of the Government** under the authority of this Code or other law enforced by the Bureau of Internal Revenue **shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue** but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.
[24] G.R. No. 144942, July 4, 2002.

"x x x x x x x x x

> "(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court."

The above ruling was likewise reiterated in *People v. Court of Tax Appeals-Third Division, L.M. Camus Engineering Corporation, et al.*[25], thus:

> Foremost, it should be pointed out that the present Petition was filed by the Prosecution Division of the BIR instead of the Office of the Solicitor General (OSG). Perceivably, the OSG declined to institute the present action because it was of the opinion that the CTA, Third Division did not commit grave abuse of discretion in rendering the assailed Resolutions. Nevertheless, the BIR insists that despite the OSG's contrary position, it is allowed to institute the present action independently pursuant to the doctrine in Orbos vs. Civil Service Commission.
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> The Court takes this opportunity to caution both the BIR and the OSG that the doctrine in Orbos is not an absolute rule. **In fact, in the succeeding case of *Commissioner of Internal Revenue vs. La Suerte Cigar & Cigarette Factory*, the Court held that the NIRC did not do away with the established rule in requiring the OSG to represent the interest of the Republic in appellate proceedings** before this Court. This is the clear import of the provisions of the Executive Order No. 292, or the Revised Administrative Code, which provides in detail the duties of the OSG,
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> xxx
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> As an independent office, **the Court has recognized that the Solicitor General has a wide discretion in the management of cases, i.e., "[h]e may start the prosecution of the case by filing the appropriate action in court or he may opt not to file the case at all.** He may do everything within his legal authority but always conformably with the national interest and the policy of the government on the matter at hand." Nevertheless, given the mandatory nature of the above-quoted provision as evident in the use of the word "shall" in the first paragraph thereof, the Court has held that the Solicitor General cannot refuse to perform his duty to represent the government, its agencies, instrumentalities, officials, and agents without a just and valid reason. (Emphasis supplied)

From the foregoing, it can be gathered that the OSG is the proper party statutorily authorized to represent the petitioner in the instant

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[25] G.R. Nos. 251270 and 251291-301, September 05, 2022.

case. Certainly, since the records show that no written authorization from the OSG was ever submitted as proof of authority to file the present *Petition* on behalf of the OSG, the Court *En Banc* is constrained to consider the *Petition* as not validly filed.

The general rule is that only the Solicitor General can bring or defend actions on behalf of the Republic of the Philippines and that actions filed in the name of the Republic, or its agencies and instrumentalities for that matter, if not initiated by the Solicitor General, should be summarily dismissed.[26] In view thereof, the instant *Petition* is dismissible on this ground.

As consistently ruled by the Supreme Court, the right to appeal is not a natural right, nor a part of due process; it is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.[27]

Consequently, since no valid *Petition* was filed, the Court *En Banc* finds that the assailed *Decision* and *Resolution* has attained finality.

Be that as it may, even if the *Petition* was validly filed, a review of the arguments raised in the *Petition* reveals that the same must still be denied for lack of merit as will be discussed below.

Petitioner failed to establish that the FANs and FLD were duly served upon and received by respondent.

The crux of the controversy for this case is whether the FLD/FANs were duly served upon and received by the respondent. In the *Petition*, the CIR insists that there exists a presumption that the mail matter was received in the regular course of mail. The CIR also contends that the burden to refute the validity and correctness of the service of the assessment rests upon the respondent based on presumption of regularity in the discharge of official duties and functions.

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[26] *Republic v. "G" Holdings, Inc.*, G.R. No. 141241, November 22, 2005.
[27] *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc., et al.*, G.R. 177382, February 17, 2016.

Under Section 3(v), Rule 131 of the Revised Rules of Evidence, there is a disputable presumption that a letter properly mailed was received in the regular course of the mail, thus:

> Sec. 3. **Disputable Presumptions**. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
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> xxx
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail.

In the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[28], the Supreme Court discussed the matter regarding service of tax assessments, as follows:

> On the matter of service of a tax assessment, a further perusal of our ruling in Barcelon is instructive, viz:
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> > Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee**. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that **while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**. xxx
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> > **The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued**. xxx (Emphasis supplied)

Clearly, as gleaned from the foregoing, the presumption that an assessment notice is deemed received in the regular course of mail is merely disputable and not conclusive. Said presumption can be controverted, and in case the taxpayer denies receipt of the mailed notice, then the burden of proof shifts to the CIR. More importantly, if the CIR fails to discharge the burden to prove receipt of the notice, then this leads to a conclusion that no assessment was validly issued.

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[28] G.R. No. 185371, December 8, 2010, citing the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 150764, August 7, 2006.

In this case, respondent has categorically denied receipt of the subject FLD/FANs as stated in its *Petition for Review* filed with the Court in Division.[29] Consequently, the burden to prove due service by registered mail and receipt of the FLD/FANs was shifted to the petitioner.

To determine whether there was valid service of the FLD/FANs, the relevant procedures prescribed by the BIR for the proper service of assessment notices found in Revenue Regulations (RR) No. 12-99[30], as amended by RR No. 18-13[31] should be considered, thus:

> 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:
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> (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. xxx
>
> **In case personal service is not practicable, the notice shall be served by substituted service or by mail.**
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> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances: xxx
>
> (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**. xxx
>
> **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**

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[29] Par. 21, *Supra* note 9, p. 21.
[30] 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.
[31] 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.

> **company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing** and shall be attached to the case docket. (Emphasis supplied)

Further, the pertinent provisions in Revenue Memorandum Circular (RMC) No. 11-2014[32], and Revenue Memorandum Order (RMO) No. 40-2019[33] may also be referred to, to wit:

> RMC No. 11-2014
>
> xxx
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> (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**.
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> RMO No. 40-2019
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> xxx
>
> II. Guidelines and Procedures
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> xxx
>
> 2.2 **Service by mail shall be done by sending a copy of the assessment notice through –**
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> 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.
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> 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**

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[32] 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.

[33] 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, May 30, 2019; In *Commissioner of Internal Revenue v. T Shuttle Services, Inc.* (G.R. No. 240729, August 24, 2020), the Supreme Court considered RMO No. 40-2019 despite its non-existence at the time the assessment notices were issued for purposes of consistency and uniformity, to wit: "*While RMO 40-2019 was not yet in force at the time the questioned PAN and FAN in the case were issued, the fact of such subsequent issuance of RMO 40-2019 by the CIR gives the Court all the more reason to affirm, if only for consistency and uniformity, the CTA En Banc's finding that the CIR failed to prove that the PAN and the FAN were properly and duly served upon and received by respondent.*"

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
6.2 **Report on Service by Mail**/Courier

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7. **The following documents as proof of service, shall be provided by the server to the Assessment Division or Reviewing Office** as attachment to the docket of the case:

7.1 Duplicate copy of the assessment notice duly received by the taxpayer/authorized representative or person mentioned under item no. 2.1 hereof, in case of substituted service;
7.2 **Registry receipt issued by the Philippine Postal Corporation (PhlPost),** or the official receipt issued by the professional courier company (PCC);
7.3 **Registry return card or proof of delivery if mailed through the PhlPost**, or proof of delivery if mailed thru PCC;
7.4 **In case of unclaimed notices, the unclaimed envelope containing the assessment notice and notice given by the postmaster to the addressee duly certified by the postmaster,** or certification from the PCC stating the detailed circumstances/reason(s); and
7.5 Any other pertinent document executed with the intervention of the PhlPost/PCC company.

xxx

10. Personal service shall be complete upon actual delivery of the assessment notice to the taxpayer or his representative. **Service by registered mail is complete upon actual receipt by the taxpayer or after five (5) days from the date of receipt of the first notice of the postmaster, whichever date is earlier**. Service by ordinary mail is complete upon expiration of ten (10) days after mailing. (Emphasis supplied)

In sum, the procedure for the proper service of a tax assessment notice by registered mail based on the mentioned BIR issuances are as follows:

(a) the notice must first be served to the taxpayer's registered address before service to its known address, or served to both addresses simultaneously.

(b) there must be an instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered.
(c) the server must accomplish the bottom part of the notice.
(d) the server must execute a written report under oath setting forth the manner, place and date of service, the name of the person/barangay official who received the same and such other relevant information.
(e) the server must submit the following to the Assessment Division or Reviewing Office as attachment to the case docket:

(i) registry receipt and registry return card or proof of delivery; or
(ii) unclaimed envelope containing the assessment notice and notice given by the postmaster to the addressee duly certified by the postmaster, in case of unclaimed notices.

With respect to the completeness of service through registered mail, the same shall be complete upon actual receipt by the taxpayer of the tax assessment notice or after five (5) days from the date of receipt of the first notice of the postmaster, whichever date is earlier. Notably, it appears that the BIR has adopted the rule on completeness of service by registered mail as provided under Section 15, Rule 13[34] of the Revised Rules of Court.

To prove that the FLD/FANs were served to respondent and its responsible officers and incorporators, petitioner offered the following evidence:

Exhibit	Document
R-19	Memorandum of Assignment to Revenue Officer Placido Muñoz
R-20	Formal Letter of Demand with Details of Discrepancies
R-21	Final Assessment Notice – Income Tax
R-21-A	Final Assessment Notice – Value Added Tax
R-21-B	**Registry Receipt No. RD 719 391 934 ZZ**
R-21-C	**Registry Receipt No. RD 719 391 925 ZZ**
R-22 and R-22-A	Letter dated March 1, 2017 to Ms. Melissande D. Salazar and **Registry Receipt No. RD 726 869 795 ZZ**
R-23 and R-23-A	Letter dated March 1, 2017 to Mr. Bruce C. Salazar and **Registry Receipt No. RD 726 869 800 ZZ**
R-24 and R-24-A	Letter dated March 1, 2017 to Ms. Jackelyn Cheng and **Registry Receipt No. 726 869 813 ZZ**

[34] SEC. 15. *Completeness of service.* – xxx **Service by registered mail is complete upon actual receipt by the addressee, or after five (5) calendar days from the date he or she received the first notice of the postmaster, whichever date is earlier.**

R-25 and R-25-A	Letter dated March 1, 2017 to Mr. Ernesto Cheng and **Registry Receipt No. 726 869 901 ZZ**

The above documents were identified by petitioner's witness, Revenue Officer (RO) Placido Muñoz, who testified as to the service of the FLD/FANs[35], to wit:

> (5) Q. What happened next, if any?
>
> A: **I caused the personal service of the FAN/FLD on February 28, 2017 to One Cypress Agri-Solution, Inc.'s registered address at Unit 401 Prestige Tower, Don Francisco, Ortigas Jr. Rd., Ortigas Center, 1605, Pasig City**, but to no avail. **The said taxpayer was no longer operating its business at the said address. Hence, thereafter, I caused the service of the FAN/FLD through registered mail addressed to the Taxpayer's registered address at Unit 401 Prestige Tower, Don Francisco, Ortigas Jr. Rd., Ortigas Center, 1605, Pasig City, and at Unit 1401 A 4th Floor, Corporate Center, Julia Vargas, cor. Meralco Ave., Ortigas Center, 1605 Pasig City through Registry Receipt Nos. RD 791391 934 ZZ and RD 719 391 925 ZZ, respectively**.
>
> xxx
>
> (8) Q. What happened next, if any?
>
> A: **I also caused the service of the said FAN/FLD through registered mail to the responsible officers of One Cypress Agri-Solution Inc.** as indicated in their General Information Sheet, particularly to Ms. Melissande D. Salazar (Corporate Secretary), Mr. Bruce Salazar (General Manager), Jackelyn Cheng (Treasurer) and Mr. Ernesto Cheng (Incorporator). The said FAN/FLD were attached to the Letters dated March 1, 2017 addressed to the above-mentioned officers of One Cypress Agri-Solution Inc. and **sent through registered mail with Registry Receipt Nos. RD 726 869 795 ZZ, RD 726 869 800 ZZ, RD 726 869 813 ZZ, and RD 726 869 901 ZZ, respectively**.

As can be inferred from the foregoing, it appears that RO Muñoz first served the FLD/FANs personally to the respondent's registered address. Considering that respondent was allegedly no longer operating its business therein, RO Muñoz resorted to serve the FLD/FANs via registered mail. As shown in his testimony, RO Muñoz only identified the Registry Receipts which were offered as proof of service of the FLD/FANs. However, such Registry Receipts are

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[35] Judicial Affidavit of Placido Muñoz dated February 13, 2020, Division Docket – Vol. 1, pp. 303-304.

insufficient to prove that the FLD/FANs were properly served upon and duly received by the respondent.

In *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*[36], the Supreme Court, citing *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[37], ruled that mere presentation of the registry receipts does not automatically prove actual receipt by the taxpayer, *viz:*

> In the more recent case of *Commissioner of Internal Revenue v. T Shuttle Services, Inc. (T Shuttle)* where the taxpayer also denied receipt of the PAN and FAN, the Court, reiterating the doctrine in Barcelon, clarified that **mere presentation of registry receipts, absent any authentication or identification that the signature appearing therein is the taxpayer's or his or her authorized representative's, is insufficient to prove actual receipt by the taxpayer**.
>
> > *As ruled by the CTA En Banc, the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.*
>
> Applying the foregoing to the present case, the CTA EB was correct in ruling that the CIR failed to discharge its burden in this case.
>
> While the CIR presented a copy of the registry receipt of the FAN/FLD, it failed to identify or authenticate whether the signature appearing therein belongs to respondent or his authorized representative. In addition, **apart from the registry receipt, no other independent and competent evidence was presented by the CIR to prove respondent's actual receipt of the assessment notices**. Indeed, as ruled in *T Shuttle*, mere presentation by the CIR of the registry receipts does not automatically prove actual receipt by the taxpayer. It must be clearly shown that the assessment notices were properly served to and received by only the taxpayer or his or her duly authorized representative. This exacting standard guarantees the due process mandate that the taxpayer be informed of the basis of the assessment. (Emphasis supplied)

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[36] G.R. No. 249540, February 28, 2024.
[37] G.R. No. 240729, August 24, 2020.

In this case, a perusal of the Registry Receipts offered in evidence by the petitioner merely shows the reference numbers thereof, ***without*** the signature of the postmaster or any other identifiable details of the transaction. Verily, it is readily apparent that the petitioner could not have complied with the requirement of identifying or authenticating the subject Registry Receipts without such identifiable information. Moreover, consistent with the ruling in *Villanueva*, the petitioner should have presented other independent and competent evidence apart from the Registry Receipts to establish valid service and receipt of the FLD/FANs.

RO Muñoz as the server of the FLD/FANs should have executed a written report setting forth the manner, place and date of service, the name of the person/barangay official who received the same, including such other relevant information, and such report should have been offered in evidence for the Court in Divisions' consideration. Further, since it was alleged that the respondent is no longer operating in its registered address, the unclaimed envelope containing the assessment notice and the postmaster's duly certified notice given to the respondent, should have also been presented to prove the fact of non-claim or non-delivery of the subject FLD/FANs. Without presentation of such documents, the completion of service of the FLD/FANs through registered mail cannot be verified.

In view of the foregoing, the Court *En Banc* agrees with the Court in Division that petitioner failed to discharge the burden to prove that the FLD/FANs were duly served upon and received by the respondent.

It should be reiterated that the indispensability of affording taxpayers written notice of their tax liability emanates from Section 228 of the National Internal Revenue Code of 1997, as amended (Tax Code), which states:

> 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: xxx
>
> **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**. xxx (Emphasis supplied)

In relation thereto, Section 3 of RR No. 12-99, as amended by RR No. 18-13 outlines the due process requirements for the issuance of deficiency tax assessments. Essentially, to comply with the requirements of due process, the CIR is required to inform the taxpayer of the factual and legal bases of the deficiency tax assessment and

provide him or her the opportunity to protest such assessment, present his or her case, and adduce supporting evidence. Certainly, as between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.[38]

Considering that petitioner failed to prove the proper service and receipt of the subject FLD/FANs, the Court *En Banc* notes with approval the ruling of the Court in Division that petitioner's disregard of respondent's due process rights rendered the FLD/FANs void. As such, the WOG dated July 20, 2018 cannot also be enforced against the respondent for it is well-settled that a void assessment bears no valid fruit.[39]

Accordingly, there being no new matter or substantial issue raised in the CIR's *Petition*, We find no compelling reason to reverse, amend, or modify the assailed *Decision* and *Resolution*.

WHEREFORE, premises considered, the CIR's *Petition for Review* filed on November 14, 2023, is hereby **DENIED** for lack of merit. Accordingly, the *Decision* dated March 7, 2023, and *Resolution* dated September 27, 2023, both promulgated in CTA Case No. 9937, are **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[38] *Supra* note 36.
[39] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.

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

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice