BANIQUED AND BELLO
ATTORNEYS-AT-LAW

TAX BULLETIN

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SUPREME COURT ("SC") DECISIONS

SUPREME COURT DECLARES UNCONSTITUTIONAL SECTIONS 2(1) AND 2(2) OF REVENUE REGULATIONS ("REV. REGS.") NO. 4-2014 . Section 2(1) of Rev. Regs. No. 4-2014 obligates self-employed professionals to register and annually pay the registration fee, and to "submit an affidavit indicating the rates, manner of billings, and the factors they consider in determining their service fees upon registration." Further, Section 2(2) mandates self-employed professionals to register their books of account and official appointment books with their clients' names and the date and time of the meeting. Rev. Regs. No. 4-2014 went beyond the Tax Code when it compelled self-employed professionals to submit an affidavit of schedule of fees. Respondents may obtain information only on concluded transactions, which are the taxable services. Requiring professionals to submit affidavits containing their fee structures and considered factors in assessing fees is irrelevant in respondents' primary duty of assessment and collection of tax due. Further, the mandatory registration of appointment books under Section 2(2) of Rev. Regs. No. 4-2014 is an unconstitutional intrusion into the fundamental rights of professionals and their patients and clients. It violates privacy rights and the ethical norms in petitioners' professions. It also violates the ethical standards of petitioners' professions which require strict adherence to confidentiality rules. ***Integrated Bar of the Philippines, et. al. v. Secretary Cesar V. Purisima of the Department of Finance and Commissioner Kim S. Jacinto-Henares of the Bureau of Internal Revenue, G.R. Nos. 211772 and 212178 dated April 18, 2023 (uploaded at SC website on May 31, 2024.)***

COURT OF TAX APPEALS ("CTA") DECISIONS

IF THE CHOSEN PRIMARY MANNER OF FILING OF PETITION FOR REVIEW IS THROUGH EMAIL, THE ATTACHED PDF COPY OF THE PETITION FOR REVIEW IS CONTROLLING. A perusal of the Petition for Review, filed through email, shows that said Petition for Review is unsigned, without Verification and Certification of Non-Forum Shopping, and without scanned copies of the assailed Decision or Resolution. Petitioner's subsequent Compliance on November 3, 2023, submitting the paper copies of the Petition of Review, with the signature and required attachments, does not correct the invalid filing through email precisely because the PDF copy filed via email is controlling. Thus, the unsigned Petition for Review, without Verification and Certification of Non-Forum Shopping, and, without the required attachments, was not validly filed. Neither can this Court consider the filing of the paper copies on November 3, 2023 as the filing date of petitioner's appeal, since by that time, the period to appeal has already lapsed. ***Commissioner of Internal Revenue v. Ford Group Philippines, Inc., CTA EB No. 2804 (CTA Case No. 10288) dated May 2, 2024.***

THE BELATED SUBMISSION OF THE SECRETARY'S CERTIFICATE CONSTITUTES SUBSTANTIAL COMPLIANCE WITH SECTIONS 4 AND 5, RULE 7 OF THE 1997 REVISED RULES ON CIVIL PROCEDURE. Thus, there is no error on the part of the Court in Division in accepting such submission as compliant with the rules. ***Commissioner of Internal Revenue v. SCICIndustrial Corp., CTA EB No.2503 (CTA Case No. 9616) dated May 27, 2024.***

THE CTA CAN CONSIDER ISSUES AND ARGUMENTS RAISED BY THE PARTIES IN THE PETITION AND ANSWER, ALBEIT THE SAME WERE NOT RAISED IN THE ADMINISTRATIVE LEVEL. Without doubt, the Court has the power to rule on the issue anent the

absence of a validly issued Letter of Authority ("LOA") in this case even though the same was not raised by petitioner at the administrative level. ***NCR Corporation Philippines v. Commissioner of Internal Revenue, CTA Case No. 10498 dated May 10, 2024.***

THE GENERAL RULE IS THAT EVIDENCE MAY NOT BE GIVEN PIECEMEAL. HOWEVER, WHEN THE ATTENDANT FACTS WARRANT THE INTRODUCTION OF FURTHER EVIDENCE THAT WOULD QUALIFY AS GOOD REASON FOR REOPENING THE CASE AND WOULD SERVE THE INTEREST OF JUSTICE, THE COURT MAY ALLOW THE RECEPTION OF ADDITIONAL EVIDENCE. Here, petitioner failed to discharge this burden. The present Motion to Reopen does not offer any justification for the correction to warrant the subsequent submission of such exhibits after judgment was already rendered. What is apparent is that petitioner failed to carefully examine and scrutinize all of its supporting evidence before submitting the same to the Court during the trial stage. By exercising reasonable diligence, petitioner could have immediately prepared and presented the "supporting documents" in a timely manner. Absent justifiable explanation, a liberal application of the rules of procedure to suit petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance. ***GHD Pty Ltd. (formerly Gutteridge Haskins & Davey Pty Ltd.) v. Commissioner of Internal Revenue, CTA Case No. 10187 dated May 6, 2024.***

THE COMMISSIONER OF INTERNAL REVENUE'S ("CIR") DENIAL OF AN OFFER OF COMPROMISE COMES WITHIN THE CTA'S JURISDICTION UNDER "OTHER MATTERS" REVIEWABLE BY THE COURT, AS PROVIDED IN SECTION 7(A)(1) OF REPUBLIC ACT ("R.A.") NO. 1125, AS AMENDED BY R.A. NO. 9282. Whether an offer to compromise is acceptable or not is subject to the CIR's sole discretion. However, certainly, this authority is not absolute. When the CIR fails to exercise this power within the parameters set by the law, the Court is vested with authority to review respondent's actions and determine whether there has been any abuse of discretion. ***Gutierrez v. The Commissioner of Internal Revenue, CTA Case No. 10477 dated May 10, 2024.***

THE CTA HAS JURISDICTION OVER A PETITION FOR REVIEW, WHICH APPEALS A NOTICE OF DENIAL OF OFFER FOR COMPROMISE SETTLEMENT. The CIR argues that the CTA has no jurisdiction over the case since Oro Dare failed to file a valid protest against the Formal Letter of Demand/Final Assessment Notices ("FLD/FAN"). After receiving the FLD/FAN on November 14, 2014, instead of filing a formal protest thereto within 30 days, Oro Dare submitted a Letter-Request dated May 25, 2015 to be allowed to pay 40% of the basic tax per assessments on ground of doubtful validity. Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282, and Section 3(a)(1) of the Revised Rules of the Court of Tax Appeals ("RRCTA") vest the CTA with authority to take cognizance of "other matters," arising from the National Internal Revenue Code of 1997, as amended ("1997 NIRC"), and other laws administered by the BIR, which necessarily includes rules, regulations, and measures on the collection of tax. While Oro Dare's appeal to the CTA was immediately preceded by the CIR's rejection of its offer to compromise, the Petition for Review, as amended, was lodged mainly to contest the collection measures implemented by the tax authorities against Oro Dare. To be sure, the FLD/FAN, and Preliminary Collection Letter ("PCL"), as well as the Notice of Denial, all contained requests for the payment of alleged deficiency taxes. Significantly, Oro Dare was even constrained to amend its original Petition for Review in view of the CIR's issuance of the Final Notice Before Seizure ("FNBS"), giving notice that the tax authorities will be implementing summary administrative collection measures under Section 205 of the 1997 NIRC if Oro Dare fails to settle its tax liability. Thus, the CTA correctly took cognizance of Oro Dare's Petition for Review. ***Commissioner of Internal Revenue v. Oro Dare Logistics Corporation, CTA EB No. 2699 (CTA Case No. 9846) dated May 10, 2024.***

IF THE GROUND CITED TO SUPPORT THE APPLICATION FOR COMPROMISE IS DOUBTFUL VALIDITY OF THE ASSESSMENT, IT WILL BE NECESSARY FOR THE COURT TO INQUIRE INTO THE ASSESSMENTS TO DETERMINE WHETHER THE CIR RULED

CORRECTLY ON THE APPLICATIONS. THE COURT MAY THEREFORE TOUCH UPON THE VALIDITY OF THE UNDERLYING ASSSESSMENT. However, in the present case, in reviewing the CIR's Notice of Denial, the CTA may not digress into the validity of any underlying tax assessment. Herein petitioner applied for compromise on account of his alleged financial incapacity to settle the tax assessments against him. In turn, respondent CIR denied petitioner's application precisely because it did not find merit in the claim of financial incapacity. Thus, the review shall be confined to the correctness of the CIR's Notice of Denial. There is no reason for the Court to touch upon the matters of assessment and collection, notwithstanding the parties' express stipulations. The basic rule is that jurisdiction over the subject matter cannot be fixed by mere agreement between the parties or by erroneous belief of the court that it exists. Thus, the Court does not have jurisdiction to review the tax assessments. ***Gutierrez v. The Commissioner of Internal Revenue, CTA Case No. 10477 dated May 10, 2024.***

WARRANTS OF GARNISHMENT MUST BE APPEALED TO THE CTA WITHIN 30 DAYS FROM NOTICE. Verily, the Warrants of Garnishment issued by respondent in this case were attempts to collect alleged deficiency taxes from petitioner. Petitioner acknowledged having been notified of the garnishment in question as early as October 13,2016 and October 25, 2016. However, instead of appealing the Warrants of Garnishment to the Court within 30 days from notice, petitioner elevated these matters to the Regional Director through Letters of Protest/Requests for Reconsideration filed on October 25, 2016. It is clear that when the instant petition was filed on March 5, 2021, petitioner had known of the garnishment for over four years already. Certainly, the period to question the Warrants of Garnishment before the Court had already lapsed. Stated differently, the judicial protest, particularly, to the BIR's collection measures was belated. The Court does not have jurisdiction to entertain any question pertaining to these matters over and beyond the 30-day prescriptive period. ***Gutierrez v. The Commissioner of Internal Revenue, CTA Case No. 10477 dated May 10, 2024.***

THERE IS NO VIOLATION OF THE RULE AGAINST A SECOND MOTION FOR RECONSIDERATION IN FILING A MOTION FOR RECONSIDERATION OF AN AMENDED DECISION AS IT IS "A DIFFERENT DECISION." ***Carmen Copper Corporation v. Commissioner of Internal Revenue, CTA EB Nos. 2568 & 2642 (CTA Case No. 9954) dated May 2, 2024.***

IF THE PROTEST IS NOT ACTED UPON BY THE COMMISSIONER'S DULY AUTHORIZED REPRESENTATIVE WITHIN 180 DAYS COUNTED FROM THE DATE OF FILING OF THE PROTEST IN CASE OF A REQUEST FOR RECONSIDERATION, THE TAXPAYER MAY EITHER: (I) APPEAL TO THE CTA WITHIN THIRTY (30) DAYS AFTER THE EXPIRATION OF THE ONE HUNDRED EIGHTY (180)-DAY PERIOD; OR (II) AWAIT THE FINAL DECISION OF THE COMMISSIONER'S DULY AUTHORIZED REPRESENTATIVE ON THE DISPUTED ASSESSMENT. ***Ong v. The Commissioner of Internal Revenue of the Bureau of Internal Revenue, CTA Case No. 10265 dated May 3, 2024; Bottlers Employees Savings and Loan Association (BESALA) v. Commissioner of Internal Revenue, CTA Case No. 11196 dated May 7, 2024.***

IN CASES WHERE A TAXPAYER'S PROTEST IS DENIED BY THE CIR'S DULY AUTHORIZED REPRESENTATIVE, A TAXPAYER IS GIVEN TWO (2) ALTERNATIVE REMEDIES, TO EITHER: (1) APPEAL TO THE CTA WITHIN 30 DAYS FROM THE DATE OF RECEIPT OF THE REPRESENTATIVE'S DECISION; OR, (2) TO ELEVATE ITS PROTEST THROUGH A REQUEST FOR RECONSIDERATION TO THE CIR, WITHIN 30 DAYS FROM RECEIPT OF THE REPRESENTATIVE'S DECISION , OTHERWISE REFERRED TO AS AN "ADMINISTRATIVE APPEAL". ***Bottlers Employees Savings and Loan Association (BESALA) v. Commissioner of Internal Revenue, CTA Case No. 11196 dated May 7, 2024.***

THE 180-DAY PERIOD REFERRED TO IN SECTION 228 OF THE 1997 NIRC, AND IN SECTION 3.1.4 OF REV. REGS. NO. 12-99, AS AMENDED BY REV. REGS. NO. 18-2013, IS CONFINED

ONLY TO THE PERIOD WITHIN WHICH EITHER THE CIR OR HIS OR HER DULY AUTHORIZED REPRESENTATIVE MAY ACT ON THE INITIAL PROTEST AGAINST THE FLD/FAN. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to the CTA. In other words, when a taxpayer opts to file an administrative appeal, the CIR is not given a fresh or separate 180-day period within which to decide the administrative appeal. ***Bottlers Employees Savings and Loan Association (BESALA) v. Commissioner of Internal Revenue, CTA Case No. 11196 dated May 7, 2024.***

A DIRECT DENIAL OF RECEIPT OF PRELIMINARY ASSESSMENT NOTICE ("PAN") SHIFTS THE BURDEN TO THE PARTY FAVORED BY THE PRESUMPTION TO PROVE THAT THE MAILED MATTER WAS INDEED RECEIVED BY THE ADDRESSEE. Here, respondent offered in evidence the PAN dated January 22, 2015. However, respondent did not present and offer as evidence the registry receipt and the certification of the postmaster to prove the fact of mailing and receipt of the mail by petitioner. Neither did respondent present and offer the testimony of the BIR server or personnel who delivered the mail containing the PAN to the post office. While a perusal of the BIR Records, specifically the registry return card, shows that a certain Norman Llanera allegedly received the PAN, said person was not presented to testify on his functions and to confirm that he received such mail matter on behalf of petitioner. Hence, respondent's failure to serve the PAN to petitioner amounts to the denial of petitioner's right to due process and renders the FLD/FAN null and void. ***Ong v. The Commissioner of Internal Revenue of the Bureau of Internal Revenue, CTA Case No. 10265 dated May 3, 2024.***

AS TO THE SERVICE OF THE FLD/FAN, SECTION 3.1.6 OF REV. REGS. NO. 18-2013 EXPRESSLY PROVIDES THAT THE SERVICE SHALL BE MADE BY PERSONAL DELIVERY, AND IT IS ONLY WHEN PERSONAL SERVICE IS NOT PRACTICABLE THAT THE NOTICE SHALL BE SERVED BY SUBSTITUTED SERVICE OR BY MAIL. In this case, the FLD/FAN was served by mail. Respondent did not present competent evidence proving that personal service was not practicable. He did not explain nor discuss in his Answer or Memorandum why the BIR had to resort to service by mail. The word "shall" in subsection 3.1.6 describes the mandatory nature of the service of the notices. The improper service of the FLD/FAN, in this case, renders void the deficiency assessments. ***Ong v. The Commissioner of Internal Revenue of the Bureau of Internal Revenue, CTA Case No. 10265 dated May 3, 2024.***

INTERNAL REVENUE TAXES SHALL BE ASSESSED WITHIN THREE (3) YEARS AFTER THE LAST DAY PRESCRIBED BY LAW FOR THE FILING OF THE RETURN OR FROM THE DAY THE RETURN WAS FILED AND COLLECTED WITHIN THREE (3) YEARS FROM THE TIME THE FLD/FAN WAS RELEASED, MAILED OR SENT TO THE TAXPAYER. SECTION 222 PROVIDES, BY EXCEPTION, THAT IN CASE OF A FALSE OR FRAUDULENT RETURN OR NON-FILING OF A RETURN, THE ASSESSMENT MAY BE MADE WITHIN TEN (10) YEARS FROM DISCOVERING THE FALSITY, FRAUD, OR OMISSION, AND THE PERIOD FOR COLLECTING TAXES IS FIVE (5) YEARS. ***Ong v. The Commissioner of Internal Revenue of the Bureau of Internal Revenue, CTA Case No. 10265 dated May 3, 2024.***

RULE ON EXTENDING THE PRESCRIPTIVE PERIOD TO ASSESS TO 10 YEARS UNDER SECTION 222(A) OF THE 1997 NIRC. The general rule is there must be proof of false or fraudulent return. A fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due," while a false return simply "implies deviation from the truth, whether intentional or not. It must be stressed, however, that a false return within the meaning of Section 222 (a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a false return when: (1) the return contains an error or misstatement, and (2) such error or misstatement was deliberate or willful. Exception, when there is prima facie evidence of a false or fraudulent return (30% threshold under Section 248 (B) of

the 1997 NIRC). In addition, there must be compliance with due process requirements. First due process requirement: the assessment notice issued to the taxpayer must clearly state that the extraordinary prescriptive period is being applied, and the bases of the allegations of falsity or fraud. Second due process requirement: the tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied. ***Sereno v. Commissioner of Internal Revenue, CTA Case No. 10792 dated May 14, 2024.***

THE PRACTICE OF REASSIGNING OR TRANSFERRING REVENUE OFFICERS ("ROs") ORIGINALLY NAMED IN THE LOA AND SUBSTITUTING OR REPLACING THEM WITH NEW ROs TO CONTINUE THE AUDIT OR INVESTIGATION WITHOUT A SEPARATE OR AMENDED LOA: (I) VIOLATES THE TAXPAYER'S RIGHT TO DUE PROCESS IN TAX AUDIT OR INVESTIGATION; (II) USURPS THE STATUTORY POWER OF THE CIR OR HIS[/HER] DULY AUTHORIZED REPRESENTATIVE TO GRANT THE POWER TO EXAMINE THE BOOKS OF ACCOUNT OF A TAXPAYER; AND (III) DOES NOT COMPLY WITH EXISTING BIR RULES AND REGULATIONS ON THE REQUIREMENT OF A LOA IN THE GRANT OF AUTHORITY BY THE CIR OR HIS/HER DULY AUTHORIZED REPRESENTATIVE TO EXAMINE THE TAXPAYER'S BOOKS OF ACCOUNTS. ***NCR Corporation Philippines v. Commissioner of Internal Revenue, CTA Case No. 10498 dated May 10, 2024.***

THE MEMORANDUM OF ASSIGNMENT IN THE INSTANT CASE CANNOT BE REGARDED AS A VALID LOA WITHIN THE CONTEXT OF LAW AS THE SAID MOA WAS NOT SIGNED BY THE CIR OR HIS DULY AUTHORIZED REPRESENTATIVE. A LOA can only be issued either by the CIR or his duly authorized representative, as identified in Section 10(C) of the 1997 NIRC to be the Revenue Regional Director. The position equivalent to a Revenue Regional Director for the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants. In the present case, the MOA was signed and issued by Ms. Shirley A. Calapatia, Chief of the Regular LT Audit Division 1. She is neither the CIR, Revenue Regional Director, nor an Assistant Commissioner/Head Revenue Executive Assistant of the LTS. She had no authority to issue the MOA which could have authorized RO Cayabyab to continue the audit/investigation of petitioner. ***NCR Corporation Philippines v. Commissioner of Internal Revenue, CTA Case No. 10498 dated May 10, 2024.***

THE USE OF MOA, REFERRAL MEMORANDUM OR ANY OTHER EQUIVALENT DOCUMENT DIRECTING THE CONTINUATION OF AUDIT OR INVESTIGATION BY AN UNAUTHORIZED RO IS A USURPATION OF THE FUNCTIONS OF THE LOA UNDER THE 1997 NIRC. The issuances referring to reassignment of the audit or investigation from one RO to another and the actual authority of the RO who will conduct the actual audit or investigation are different. It is specifically required that a new LOA be issued if ROs are reassigned or transferred. ***Commissioner of Internal Revenue v. SCICIndustrial Corp., CTA EB No.2503 (CTA Case No. 9616) dated May 27, 2024.***

A LETTER NOTICE CANNOT TAKE THE PLACE OF A LOA. The tax assessments in this case were based on the results of the implementation of a "no-contact-audit-approach," whereby data (e.g., sales, purchases, importations, etc.) submitted by VAT taxpayers under the RELIEF System were matched with information from third party sources. The CIR issued Letter Notice Nos. 098-RLF-10-00-00181 and 098-TRS-10-00-00058 to inform Oro Dare of the discrepancies extracted from the BIR's matching/cross-referencing procedures. The subsequent preliminary and formal assessments were issued only on the strength of said Letter Notices, without a LOA. This practice violates the BIR's own procedure set out in Revenue Memorandum Order ("RMO") No. 32-05. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* (G.R. No. 222743 dated April 5, 2017), the SC explained the nature of a Letter Notice and why it cannot take the place of a LOA. The SC further explained in Medicard that a LOA is equally needed under the BIR's RELIEF System. In sum, the lack of the requisite LOA renders the subject assessments (FLD/FAN) void. Without a valid formal assessment, the subsequent resort to summary

administrative collection remedies (e.g., PCL and FNBS) is likewise invalid. ***Commissioner of Internal Revenue v. Oro Dare Logistics Corporation, CTA EB No. 2699 (CTA Case No. 9846) dated May 10, 2024.***

THE ISSUANCE OF A LOA PRIOR TO EXAMINATION AND ASSESSMENT IS A REQUIREMENT OF DUE PROCESS. In this case, the second LOA [first LOA was not signed by CIR or his duly authorized representatives] was only issued after the PAN, FLD and Final Decision on a Disputed Assessment ("FDDA") were furnished to petitioner. Thus, the conduct of the assessment was already concluded when RO Arriola was granted such authority. Well-entrenched is the principle that in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessments shall be void and ineffectual. ***Central Luzon Drug Corporation v. Commissioner of Internal Revenue, CTA Case No. 10045 dated May 2, 2024.***

THERE IS NO PROHIBITION UNDER THE 1997 NIRC AS TO THE NUMBER OF TAXABLE PERIODS TO BE COVERED BY THE LOA. Although the first part of Section C of RMO No. 43-1990 states that a LOA shall cover a taxable period not exceeding one taxable year, it does not foreclose on the possibility of a LOA covering more than one taxable period as long as "the other periods or years shall be specifically indicated in the LOA." If the CIR intends to include another taxable year, he can do so by including it in the LOA or issuing another LOA. Given the foregoing, the Court upholds the validity of the LOA, even if it covers more than one taxable year. ***Sereno v. Commissioner of Internal Revenue, CTA Case No. 10792 dated May 14, 2024.***

WHILE THE LAW EXPLICITLY REQUIRES A LOA TO BE ADDRESSED TO A RO BEFORE AN EXAMINATION OF A TAXPAYER AND RECOMMENDATION OF AN ASSESSMENT MAY BE HAD, THE LAW DOES NOT SPECIFICALLY REQUIRE THE SAME FOR PURPOSES OF RECOMMENDING A FDDA. The requirement for the issuance of a LOA by the Commissioner or his duly authorized representative, as mandated under Sections 6 and 13 of the 1997 NIRC, pertains to such stage where the RO and GS would conduct an audit of the books of accounts and other accounting records of the taxpayer after the filing of the latter's tax returns, and recommend the issuance of a PAN and FAN. It does not envision a situation where a reinvestigation will have to be conducted to come up with a decision on the Protest to the FAN or Assessment Notice by way of an FDDA. Moreover, even assuming that a LOA is required to conduct the reinvestigation, the absence thereof would only invalidate the resulting decision, such as the FDDA. A void FDDA does not *ipso facto* render the assessment void. ***Commissioner of Internal Revenue v. Rieckermann Philippines, Inc., CTA EB No. 2704 (CTA Case No. 9613) dated May 13, 2024.***

THE CIR HAS THE DUTY TO APPRISE THE TAXPAYER OF THE LEGAL AND FACTUAL BASES OF THE ASSESSMENTS ISSUED AGAINST IT, TO CONSIDER THE EXPLANATIONS OR DEFENSES RAISED BY THE TAXPAYER IN CONNECTION WITH THE ASSESSMENTS, AND TO COMMUNICATE TO THE TAXPAYER THE REASON FOR THE REJECTION OF SUCH EXPLANATIONS OR DEFENSES, LEST THE ASSESSMENT BE DEEMED VOID. A careful perusal of the PAN dated August 23, 2017 and FLD dated September 13, 2017 issued against petitioner disclosed that the FLD is a verbatim reproduction of the wordings of the PAN, not even differing in the computation of the interest. Likewise, the Details of Discrepancies attached to the FLD is a verbatim reproduction of the Details of Discrepancies attached to the PAN. Moreover, the FLD neither referred to petitioner's Protest to the PAN dated September 7, 2017 nor addressed the arguments therein. There is also nothing on record which would show that respondent informed petitioner of the reasons for respondent's apparent rejection of its arguments in the Protest to the PAN. Respondent's omission to give due consideration to the arguments raised by petitioner in its Protest to the PAN and to communicate to petitioner his reasons for rejecting its arguments amounts to a deplorable transgression of petitioner's right to due process. ***NCR Corporation Philippines v. Commissioner of Internal Revenue, CTA Case No. 10498 dated May 10, 2024.***

THE TAXPAYER MUST NOT ONLY BE GIVEN AN OPPORTUNITY TO PRESENT ITS DEFENSES AND EVIDENCE BUT ALSO THAT THE COMMISSIONER AND HIS/HER SUBORDINATES MUST GIVE DUE CONSIDERATION TO THESE. FAILURE TO DO SO CONSTITUTES A VIOLATION OF THE TAXPAYER'S RIGHT TO DUE PROCESS. The foregoing doctrinal pronouncement affirms that the issuance of a PAN is a part of due process; that the issuance thereof gives both the taxpayer and the BIR the opportunity to settle the case at the earliest possible time without the need for issuance of a FAN or to reduce the assessment at the earliest opportunity; that this purpose is not served in case the BIR fails to consider the taxpayer's explanations or arguments before the FAN is issued; that the failure of the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process; and that the disregard by the BIR of the standards and rules renders the deficiency tax assessment null and void. ***Sereno v. Commissioner of Internal Revenue, CTA Case No. 10792 dated May 14, 2024.***

THE FACT THAT THE FDDA MAKES FULL REFERENCE TO PETITIONER'S PROTEST, CITING THE ARGUMENTS IN THE PROTEST FOLLOWED BY RESPONDENT'S POSITION, IS INCONSEQUENTIAL. IT IS AXIOMATIC THAT THE DUE PROCESS REQUIREMENT MUST BE OBSERVED IN EVERY STEP OF THE ADMINISTRATIVE PROCEEDING. ***Sereno v. Commissioner of Internal Revenue, CTA Case No. 10792 dated May 14, 2024.***

WHEN CIR REJECTS THE TAXPAYER'S EXPLANATIONS, HE OR SHE MUST GIVE SOME REASON FOR DOING SO. HE OR SHE MUST INDICATE THE PARTICULAR FACTS UPON WHICH HIS OR HER CONCLUSIONS ARE BASED, AND THOSE FACTS MUST APPEAR IN THE RECORD. In the instant case, respondent issued the PAN dated September 8, 2017, which petitioner received on the same day. In its Reply to the PAN, or PAN Protest dated September 22, 2017, petitioner raised legal and factual arguments. Barely five (5) days later, or on September 27,2017, it received a copy of the FLD/FANs with Details of Discrepancies which merely reiterated the findings and deficiency tax assessments of P130,049,871.44 in the PAN with Details of Discrepancies. While the BIR stated in the Details of Discrepancies attached to the FLD/FANs that petitioner's "arguments and documents submitted to refute the assessments per PAN are not sufficient to warrant a reversal and/or modification thereof, such a general statement did not sufficiently inform petitioner of the specific reasons for the BIR conclusions; thus, petitioner was not given a fair and reasonable opportunity to explain or defend itself and prepare an intelligent protest against the FLD/FANs. As established in the *Avon case*, the CIR is not obliged to accept the taxpayer's explanation, like that of the petitioner. Nonetheless, it is imperative that he give the particular facts upon which his conclusion is based, and these facts must appear in the record. ***Sumitomo Corporation – Manila Branch v. Commissioner of Internal Revenue, CTA Case No. 10412 dated May 14, 2024.***

IF CIR FAILS TO CONSIDER TAXPAYER'S EXPLANATION IN ITS REPLY TO PAN BY ISSUING FLD/FAN WHICH REITERATED THE FINDINGS IN THE PAN, AND SUBSEQUENTLY ISSUES AN FDDA WHICH PARTIALLY GRANTED TAXPAYER'S PROTEST AGAINST FLD/FAN BY REDUCING THE DEFICIENCY TAX ASSESSMENT, IT WILL NOT DENIGRATE THE FACT THAT TAXPAYER WAS DEPRIVED OF STATUTORY AND PROCEDURAL DUE PROCESS. Respondent's subsequent issuance of the FDDA, which partially granted petitioner's Protest to FLD/FANs by reducing the deficiency tax assessments from P130,049,871.44 to P63,488,986.11 for IT and VAT, does not denigrate the fact that it was deprived of statutory and procedural due process. Respondent's failure to uphold petitioner's fundamental right to due process under Section 228 of the 1997 NIRC and implemented by Rev. Regs. No. 12-1999 and Rev. Regs. No. 18-2013, renders the subject FLD/FANs null and void**.** ***Sumitomo Corporation – Manila Branch v. Commissioner of Internal Revenue, CTA Case No. 10412 dated May 14, 2024.***

IN CASE THE TAXPAYER DELEGATES THE AUTHORITY TO SIGN WAIVER TO A REPRESENTATIVE, SUCH DELEGATION SHOULD BE IN WRITING AND DULY

NOTARIZED. MOREOVER, THE CONCERNED REVENUE OFFICIAL IS MANDATED TO ENSURE THAT THE WAIVER IS DULY ACCOMPLISHED AND SIGNED BY THE TAXPAYER OR HIS AUTHORIZED REPRESENTATIVE, AND IN CASE THE AUTHORITY IS DELEGATED BY THE TAXPAYER TO A REPRESENTATIVE, TO SEE TO IT THAT SUCH DELEGATION IS IN WRITING AND DULY NOTARIZED. In the instant case, petitioner's General Managers, Hiroshi Shiraishi and Sosuke Ishida, signed the waivers. Hiroshi Shiraishi signed the first three, while Sosuke Ishida signed the fourth and fifth. A further review of respondent's evidence and the BIR Records reveals that no notarized written authority from petitioner's board of directors was attached to all five waivers. Applying Section 222(b), RMO No. 20-90, RDAO No. 05-01, and the cited jurisprudence, the Court finds the subject waivers void and the CIR's period to assess and collect the alleged deficiency income tax and value added tax not validly extended until September 30, 2017. Accordingly, the subject FLD/FANs dated September 27, 2017, are void as they were issued beyond the 3-year prescriptive period. ***Sumitomo Corporation – Manila Branch v. Commissioner of Internal Revenue, CTA Case No. 10412 dated May 14, 2024.***

THE ROLE OF THE CTA IS NOT ONLY CONFINED TO THE DETERMINATION OF WHETHER THE DENIAL BY THE COMMISSIONER OF THE SUBJECT [VAT REFUND] CLAIM IN THE ADMINISTRATIVE LEVEL IS PROPER; TO HOLD OTHERWISE ESPOUSES A LIMITED VIEW OF THE ROLE OF THE COURT OVER APPEALS FILED FROM A DECISION OF THE CIR OR ITS REPRESENTATIVES. The CTA is not precluded from considering evidence that was not presented in the administrative claim with the BIR. Section 8 of R.A. No. 1125 explicitly provides that the CTA shall be a court of record and as such it is required to conduct a formal trial (trial *de nov*o) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration. Suffice it to say, petitioner's failure to submit documents in the administrative level is not fatal to its case filed and pending in the judicial level since the said case is litigated *de novo*, and decided based on what has been presented and formally offered by the parties during trial. ***Manulife Data Services, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9981 dated May 2, 2024.***

THE PETITIONER'S FAILURE TO FILE A JUDICIAL APPEAL WITHIN 30 DAYS FROM THE LAPSE OF THE 90-DAY PERIOD DEPRIVES THE COURT OF THE REQUISITE JURISDICTION TO TAKE COGNIZANCE OF THE CASE. The advent of the TRAIN Law did not have the effect of repealing and/or amending the provisions of RA 1125, as amended by RA 9282, and still remains a good law. The 30-day period is reckoned from the receipt of respondent's decision or ruling or after the expiration of the 90-day period, whichever is sooner. On a practical standpoint, to eliminate the "deemed denial" scenario would place the taxpayers at the mercy of the ROs who might not act on their claims for refund leaving them with no other recourse on their "unacted" claims for refund pending with the BIR. ***Orica Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10036 dated May 14, 2024.***

SECTION 112(A) OF THE 1997 NIRC DOES NOT REQUIRE THAT THE INPUT TAXES MUST BE DIRECTLY ATTRIBUTABLE TO ZERO-RATED SALES BEFORE THE SAME CAN BE A SUBJECT OF A CLAIM FOR REFUND. ***Monte Solar Energy Inc. v. Commissioner of Internal Revenue, CTA Case No. 10434 dated May 2, 2024.***

DIRECT AND ENTIRE ATTRIBUTABILITY OF THE INPUT TAXES TO ZERO-RATED OR EFFECTIVELY ZERO- RATED SALES IS NOT REQUIRED IN CLAIMS FOR TAX REFUND AND ISSUANCE OF TAX CREDIT CERTIFICATE. ***Maxima Machineries, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2590 (CTA Case No. 9453) dated May 2, 2024.***

TO PROVE ZERO-RATED SALES OF SERVICE, THE COURT HAS CONSISTENTLY REQUIRED THE SUBMISSION OF, AT THE VERY LEAST, BOTH A CERTIFICATION OF

NON-REGISTRATION OF CORPORATION/PARTNERSHIP FROM THE SECURITIES AND EXCHANGE COMMISSION (SEC) AND ARTICLES OF INCORPORATION/ASSOCIATION AND/OR TAX RESIDENCE CERTIFICATE FROM THE COUNTRY OF RESIDENCE, AS PROOF OF INCORPORATION/REGISTRATION IN A FOREIGN COUNTRY. Both are prima facie evidence to prove that the companies are not engaged in trade or business in the Philippines. ***Manulife Data Services, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9981 dated May 2, 2024.***

TWO (2) OPTIONS OF A TAXABLE CORPORATION WHOSE TOTAL QUARTERLY INCOME TAX PAYMENTS IN A GIVEN TAXABLE YEAR EXCEED ITS TOTAL INCOME TAX DUE. The taxpayer may either: (1) carry-over the excess amount to the succeeding taxable quarters/years until it is fully utilized or (2) file a claim for refund in the form of cash or tax credit certificate. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period. The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer. In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other. ***Ford Group Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10067 dated May 8, 2024; Global Energy Supply Corporation v. Commissioner of Internal Revenue, CTA Case No. 10501 dated May 3, 2024.***

IN ORDER FOR A TAXPAYER TO BE ENTITLED TO A REFUND OR AN ISSUANCE OF TAX CREDIT CERTIFICATE FOR UNUTILIZED EXCESS CWT, THE FOLLOWING THREE (3) REQUISITES MUST BE FURTHER COMPLIED WITH: (1) The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the 1997 NIRC; (2) The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (3) The income upon which the taxes were withheld must be included in the return of the recipient. ***Ford Group Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10067 dated May 8, 2024; Global Energy Supply Corporation v. Commissioner of Internal Revenue, CTA Case No. 10501 dated May 3, 2024.***

IN CLAIM FOR REFUND OF UNUTILIZED EXCESS CWT, THE FACT OF WITHHOLDING MAY BE ESTABLISHED BY PRESENTING BIR FORMS NO. 2307 COMPLETE IN RELEVANT DETAILS. The lack of petitioner's address in the BIR Forms No. 2307 is not fatal to petitioner's claim. Petitioner's name and TIN which were clearly stated therein are sufficient to prove that the said BIR Forms No. 2307 were indeed issued to petitioner, being the payee or recipient of the income, which was subjected to withholding tax. Similarly, failure to indicate the TIN of the payor's signatory is not fatal to petitioner's claim. What is relevant to the claim is that the BIR Forms No. 2307 contain the payor's name, payor's TIN, printed name and signature of the payor's authorized representative who attested that the BIR Forms No. 2307 were made under the penalties of perjury. ***Ford Group Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10067 dated May 8, 2024.***

THE THIRD REQUISITE FOR CLAIMING REFUND OF UNUTILIZED EXCESS CREDITABLE WITHHOLDING TAX ("CWT") REQUIRES CLAIMANT TO PROVE THAT ITS INCOME PAYMENTS SUBJECTED TO CWT WERE REPORTED AS PART OF ITS GROSS INCOME IN ITS ANNUAL ITR. THE COURT MUST BE ABLE TO TRACE WHETHER THE INCOME PAYMENTS RELATED TO THE CLAIMED CWT FORMED PART OF THE REPORTED SALES IN THE ANNUAL ITR. An examination of petitioner's Annual ITR and Audited Financial Statements ("AFS") for taxable year 2016 shows that petitioner's reported total sales amounted to P40,517,011,631.00 in its Annual ITR and P40,517,011,000.00 in its AFS for taxable year 2016. To prove that the income payments related to the claimed CWTs were declared as part of the reported sales in its 2016 Annual ITR, petitioner offered in evidence its General Ledger ("GL") for taxable years 2016 which reflected the

following revenue/net sales account balances totaling P40,517,011,631.43…However, without the detailed transactions comprising the aforesaid revenue/net sales account balances, the Court cannot trace or verify whether the income payments related to the claimed CWTs formed part of its reported sales in its 2016 Annual ITR. Thus, petitioner's non-compliance with the third requisite is fatal to its claim. ***Ford Group Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10067 dated May 8, 2024.***

THE THIRD REQUISITE FOR CLAIMING REFUND OF UNUTILIZED EXCESS CWT: THE COURT MUST BE ABLE TO TRACE WHETHER THE INCOME PAYMENTS RELATED TO THE CLAIMED CWT FORMED PART OF THE REPORTED SALES IN THE ANNUAL ITR. An examination of petitioner's Summary of Total Revenues per its GL for TY 2018 shows that the aggregated revenues posted therein tallies with the total revenues per petitioner's TY 2018 AFS and Annual ITR. To ascertain whether the income payments totaling P2,662,303,009.36 (related to the CWTs being claimed for refund) were declared as part of its gross income subject to IT in TY 2018, petitioner submitted its billing statements, official receipts, and its Schedule of Total Revenues for the said period. Upon examination of the aforementioned documents and matching the same to the income reflected in the Summary of CWTs vis-a-vis the 2017 and 2018 GLs, this Court finds that petitioner sufficiently showed that the income payments (upon which the claimed CWTs were based) were reported as part of its gross income in its ITRs. ***Global Energy Supply Corporation v. Commissioner of Internal Revenue, CTA Case No. 10501 dated May 3, 2024.***

IN CLAIM FOR REFUND OF UNUTILIZED EXCESS CWT, THE TIMING DIFFERENCE ALONE (BETWEEN THE ACTUAL REPORTING OF THE INCOME AND THE ACTUAL WITHHOLDING OF THE RELATED TAX CREDITS) WOULD NOT BAR TAXPAYERS FROM CLAIMING THE RELATED TAX CREDITS. However, it is incumbent upon the taxpayer-claimant to prove that each of such credits had not yet been claimed in the same year when the corresponding income was reported. ***Global Energy Supply Corporation v. Commissioner of Internal Revenue, CTA Case No. 10501 dated May 3, 2024.***

A WITHHOLDING AGENT MAY FILE A CLAIM FOR A REFUND OF CWT ON BEHALF OF THE TAXPAYER, EVEN IF THEY ARE UNRELATED PARTIES. The person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim. ***Commissioner of Internal Revenue v. Premier Central, Inc., CTA EB No. 2689 (CTA Case No. 10251) dated May 3, 2024.***

A REVIEW OF THE CUSTOMS MODERNIZATION AND TARIFF ACT ("CMTA"), SHOWS THAT THERE IS A PERIOD PROVIDED FOR THE COMMISSIONER OF CUSTOMS TO DECIDE ON PROTESTS [30 DAYS FROM RECEIPT OF THE PROTEST]. As stated by petitioner, it filed a protest on May 6, 2021. Following Section 1110 of the CMTA, the Commissioner of Customs had thirty (30) days, or until June 6, 2021, to decide on the protest. However, the Commissioner of Customs failed to act on the protest. Applying Section 10.3 of Customs Administrative Order ("CAO") No. 2-2020, petitioner's protest was deemed denied and the decision of the Collector was deemed affirmed on June 6, 2021. Counting thirty (30) days from June 6, 2021, petitioner had until July 6, 2021 within which to timely file an appeal to the CTA. Unfortunately, the Petition for Duty and Tax Refund was filed out of time on July 9, 2021. ***Goldmine Rice Marketing v. Hon. District Collector of Customs, CTA Case No. 10580 dated May 8, 2024.***

THE CRIME OF FAILURE TO PAY TAX IS COMMITTED ONLY AFTER RECEIPT OF THE FINAL NOTICE AND DEMAND FOR PAYMENT, COUPLED WITH WILLFUL REFUSAL TO PAY THE TAXES DUE WITHIN THE ALLOTTED PERIOD. This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period. This

interpretation was further applied by the SC in *Tupaz v. Ulep* (G.R. No. 127777 dated October 1, 1999) where it was held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes. In this case, accused allegedly failed to file protest against the FLDs and FAN within 30 days from receipt thereof on December 22, 2016, or on or before January 22, 2017. Thus, on such date, the offense is "committed" for purposes of the five (5)-year prescriptive period. ***People v. Micah Motor, Inc., CTA Crim Case No. O-1009 dated May 15, 2024.***

TAX CASES ARE PRACTICALLY IMPRESCRIPTIBLE FOR AS LONG AS THE PERIOD FROM THE DISCOVERY AND INSTITUTION OF JUDICIAL PROCEEDINGS FOR ITS INVESTIGATION AND PUNISHMENT, UP TO THE FILING OF THE INFORMATION IN COURT DOES NOT EXCEED FIVE (5) YEARS. Plaintiff had five (5) years from 21 January 2017 (i.e., the last day for filing a protest against the FLD/FAN), or until 21 January 2022, within which to file the Information in court. Since the subject Information was filed only on 06 December 2022, five (5) years, eleven (11) months and fourteen (14) days have elapsed since the commission of the violation on 22 January 2017 and the criminal action had already prescribed for ten (10) months and nineteen (19) days reckoned from 21 January 2022 (i.e., the last day of the five [5]- year prescriptive period). Evidently, plaintiff's right to file the subject criminal action has already prescribed. ***People v. Micah Motor, Inc., CTA Crim Case No. O-1009 dated May 15, 2024.***

THE PRESCRIPTIVE PERIOD TO FILE A CRIMINAL CASE IS TOLLED ONLY WHEN THE INFORMATION IS FILED BEFORE THE COURT. In this case, the Information was filed beyond the five (5)- year prescriptive period, thus there is no interruption of said period. ***People v. Micah Motor, Inc., CTA Crim Case No. O-1009 dated May 15, 2024.***

THE VERY FIRST SENTENCE OF RULE 9, SEC. 2 OF THE RRCTA CLEARLY STATES THAT THE FILING OF AN INFORMATION INSTITUTES CRIMINAL ACTIONS BEFORE THE COURT IN DIVISION AND THUS SUSPENDS THE PRESCRIPTIVE PERIOD. NOWHERE DOES IT STATE THAT THE FILING OF A COMPLAINT INSTITUTES CRIMINAL ACTIONS OR SUSPENDS THE PRESCRIPTIVE PERIOD OR THAT A COMPLAINT CAN BE TREATED AS EQUIVALENT TO AN INFORMATION. ***People v. Bernardo, CTA EB Crim No. 122 dated May 7, 2024.***

BIR RULINGS AND ISSUANCES

ISSUANCE AMENDING REVENUE MEMORANDUM ORDER NO. 19-2006 RE: GUIDELINES AND PROCEDURES FOR THE PROCESSING OF PENDING CLAIMS FOR TAX CREDIT/REFUND OF EXCISE TAX PAID ON PETROLEUM PRODUCTS. ***Revenue Memorandum Order No. 16-2024 dated April 30, 2024 (published on May 3, 2024).***

ISSUANCE AMENDING REVENUE MEMORANDUM ORDER NO. 6-2023 RE: BIR'S POLICIES AND PROCEDURES FOR ITS AUDIT PROGRAM. ***Revenue Memorandum Order No. 17-2024 dated May 13, 2024 (published on May 20, 2024).***

ISSUANCE AMENDING REVENUE MEMORANDUM ORDER NO. 20-2024 RE: TIN INQUIRY THRU ELECTRONIC MAIL. ***Revenue Memorandum Order No. 20-2024 dated May 17, 2024 (published on May 29, 2024).***

CLARIFICATIONS AND GUIDANCE ON SECTION 6 OF REV. REGS. NO. 4-2024 ON THE REPEAL OF SECTION 34(K) OF THE 1997 NIRC. On all ongoing audit covering taxable period prior to January 1, 2024, expenses subject to withholding tax shall be allowed as deduction from gross income

only if the corresponding tax required to be withheld has been paid, whether prior to audit or to submission of the audit report to the reviewing office. For taxable year covering January 1, 2024 onwards, expenses/income payments subject to withholding tax shall be allowed as deductions from gross income for purposes of computing taxable income even if no tax was withheld, provided the other requirements for deductibility have been met. ***Revenue Memorandum Circular No. 60-2024 dated April 23, 2024 (published on May 9, 2024).***

SECURITIES AND EXCHANGE COMMISSION ("SEC") OPINIONS

IF THE BY-LAWS ONLY ALLOWS MANUAL VOTING SYSTEM FOR PURPOSES OF ELECTION OF BOARD OF DIRECTORS, THE CONDUCT OF MEETING AND ELECTION OF BOARD OF DIRECTORS MAY BE DONE THROUGH REMOTE COMMUNICATION UPON ISSUANCE OF A BOARD RESOLUTION AUTHORIZING THE SAME. However, such resolution shall only be applicable for that particular meeting/election. As emphasized in SEC-OGC Opinion No. 09-21, the SEC still highly encourages corporations to amend their by-laws, if attendance and voting via remote communication is not yet specifically provided therein, to allow corporations to be more adaptive to technological changes and more importantly to ensure that the right of stockholders/members to participate in meetings and to vote on matters presented therein are recognized and protected. ***SEC OGC Opinion No. 24-12 dated May 8, 2024.***

Note: The information provided herein is general and may not be applicable in all situations. It should not be acted upon without specific legal advice based on particular situations. If you have any questions, please feel free to send us an email at mail@baniquedlaw.com.

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