17-000431-0072

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 9719

DIZON COUNTRY FRESH INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

COMMISSIONER OF INTERNAL REVENUE
Thru: Litigation Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

ATTY. WILMER B. DEKIT
ATTY. JOANA Q. BILONGILOT
Bureau of Internal Revenue - Revenue Region No. 8B-South
2/F, Legal Division, BIR Regional Office Bldg.
313 Sen. Gil Puyat Ave., Makati City

AGAN MONTENEGRO MALASAGA & CO.
7th Floor, Electra House Bldg.
115-117 Esteban St., Legazpi Village
1229 Makati City

GREETINGS:

You are hereby notified by these presents that on **June 27, 2023,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 4, 2023.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

DIZON COUNTRY FRESH, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9719

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

JUN 27 2023 2:15PM

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DECISION

REYES-FAJARDO, *J.*:

The Petition for Review dated November 20, 2017, filed by Dizon Country Fresh, Inc., seeks the cancellation and withdrawal of the alleged income tax (IT) – IT-ELA36521-13-17-258; value added tax (VAT) – VT-ELA36521-13-17-258; expanded withholding tax (EWT) – WE-ELA36521-13-17-258; improperly accumulated earnings tax (IAET) – IE-ELA36521-13-17-258; and compromise penalty – MC-ELA36521-13-17-258 assessments, for taxable year (TY) 2013, in the total amount of ₱14,893,789.20.[1]

FACTS

Petitioner Dizon Country Fresh, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at Lot 65A DBP Ave., corner Apahap Rd., FTI Complex, Taguig City.[2]

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1 Summary of the Case, Pre-Trial Order dated August 16, 2018. Docket, p. 116.

2 Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI). *Id.* at p. 109.

Respondent is the duly-appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia,* the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. He may be served with summons, notices and other processes of this Honorable Court at the Legal Division, Bureau of Internal Revenue (BIR), Revenue Region No. 8, 2nd Floor, BIR Bldg., 313 Sen. Gil Puyat Ave., Makati City.[3]

On December 4, 2015, Regional Director Jonas DP Amora of BIR Revenue Region No. 8 issued an electronic Letter of Authority (SN: eLA201200036521), authorizing Revenue Officer (RO) Melvin Raymund Valenzuela and Group Supervisor (GS) Reynaldo Laureta of Revenue District Office (RDO) No. 44, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2013.[4]

On December 28, 2016, the BIR issued a Preliminary Assessment Notice (PAN) to petitioner,[5] containing the proposed deficiency IT, VAT, EWT, and IAET against it for TY 2013.

On January 27, 2017, petitioner received[6] the Formal Letter of Demand [7] and Assessment Notices [8] dated January 13, 2017 (FLD/FAN), representing the alleged assessments for income tax - IT-ELA36521-13-17-258 - ₱9,155,661.31; VAT - VT-ELA36521-13-17-258 - ₱5,027,255.61; EWT - WE-ELA36521-13-17-258 - ₱59,007.83; IAET - IE-ELA36521-13-17-258 - ₱631,864.42; and compromise penalty - MC-ELA36521-13-17-258 - ₱20,000.00, all for TY 2013.

On February 24, 2017, petitioner filed[9] its protest on the FLD/FAN,[10] followed by its submission documents in support thereof on April 25, 2017.[11]

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3 See Par. 2, Summary of Admitted Facts, JSFI. *Ibid.*
4 Exhibit "R-1." BIR Records, p. 3.
5 Exhibit "R-5." *Id.* at pp. 515-520.
6 See *infra* note 9. Petitioner's protest on the FLD/FAN stated that it received the final assessment on January 27, 2017.
7 Exhibit "P-25." Docket, pp. 256-261.
8 Exhibits "P-20," "P-21," "P-22," "P-23," and "P-24." Docket, pp. 249-253.
9 Par. 3, Facts Admitted, JSFI. *Id.* at p. 110.

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On November 21, 2017, petitioner filed its Petition for Review,[12] docketed as CTA Case No. 9719, initially raffled to the Third Division of the Court.

On January 19, 2018, respondent posted his Answer on the Petition for Review.[13]

On July 10, 2018, a Pre-Trial Conference was held, whereby the Court: (1) directed the parties to submit their Joint Stipulation of Facts and Issues, embodying their respective documentary evidence, witnesses, and agreed hearing dates; and (2) set the schedules for the marking of the parties' exhibits, as well as for the presentation of their respective evidence.[14]

On July 16, 2018, the parties filed their Joint Stipulation of Facts and Issues.[15] On the basis thereof, the Court issued a Pre-Trial Order dated August 16, 2018.[16]

Through Order dated September 20, 2018, this case was transferred from the Third Division, to the First Division of the Court.[17]

Trial ensued.

Petitioner presented: (1) Ms. Rosalie Tanguangco, [18] its authorized representative for tax and financial matters; and (2) Ms. Mae Crisitina Galanza, [19] the Court-commissioned independent certified public accountant (ICPA),[20] as its witnesses.

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10 Exhibit "P-26." *Id.* at pp. 262-271.
11 Exhibit "P-27." *Id.* at pp. 281-282.
12 *Id.* at pp. 10-26.
13 *Id.* at 68-70.
14 Minutes of the hearing held on, and Order dated, July 10, 2018. *Id.* at pp. 106, and 108, respectively.
15 *Id.* at pp. 109-114.
16 *Id.* at pp. 116-122.
17 *Id.* at p. 127.
18 Exhibit "P-28," *Id.* at pp. 283-288; Minutes of the hearing held on, and Order dated, June 6, 2019, *Id.* at pp. 180-184.
19 Exhibit "P-30," *Id.* at pp. 289-296; Minutes of the Hearing held on, and Order dated, June 6, 2019, *Id.* at pp. 180-184.
20 Minutes of the Hearing held on, and Order dated, April 2, 2019. *Id.* at pp. 156-159.

On June 14, 2019, petitioner filed its Formal Offer of Evidence,[21] *sans* respondent's comment thereto.[22]

By Resolution dated September 11, 2019,[23] the Court admitted all of petitioner's offered exhibits as its evidence. Petitioner rested its case.

Respondent presented RO Melvin Raymund A. Valenzuela as his witness.[24]

On November 24, 2020, respondent filed his Formal Offer of Evidence,[25] to which petitioner filed its Comment to Respondent's Formal Offer of Evidence on November 26, 2021.[26]

Through Resolution dated March 23, 2022,[27] the Court admitted respondent's offered exhibits, except for Exhibit "R-8," for failure of his witness to identify the said exhibit.

The Memorandum (For the Petitioner) was filed on May 6, 2022.[28] On the other hand, respondent, failed to file his memorandum, despite the opportunity granted.[29]

By Minute Resolution dated June 28, 2022, this case was submitted for decision.[30]

ISSUE

Are the BIR's deficiency IT, VAT, EWT, and IAET assessments, including the compromise penalty imposed upon petitioner for TY 2013 valid?[31]

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21 *Id.* at pp. 187-200.
22 Records Verification dated July 31, 2019, *Id.* at p. 299.
23 *Id.* at pp. 304-306.
24 Exhibit "R-9," *Id.* at pp. 358-369; Order dated February 9, 2021, *Id.* at pp. 448-449; Exhibit "R-12," *Id.* at pp. 465-469; and Minutes of the hearing held on, and Order dated, November 4, 2021, *Id.* at pp. 483-486.
25 *Id.* at pp. 488-497.
26 *Id.* at pp. 507-509.
27 *Id.* at pp. 513-514.
28 *Id.* at pp. 515-550.
29 Records Verification dated June 15, 2022. *Id.* at p. 551.
30 *Id.* at p. 552.
31 See item nos. 1 and 2, Issues, JSFI. *Id.* at p. 110.

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ARGUMENTS

Petitioner maintains that it did not receive the BIR's PAN. For respondent's failure to establish the actual receipt thereof, petitioner was not accorded the opportunity to respond thereto, as guaranteed by Section 228 of the NIRC, as amended, as implemented by Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013. Therefore, respondent violated its right to due process.

Petitioner, too, claims that the FLD/FAN, embodying the BIR's deficiency IT, VAT, EWT, and IAET assessments, including the compromise penalty for TY 2013, is wanting in legal and factual basis, explaining as follows:

First. The deficiency IT stemmed from: (1) unaccounted purchases amounting to ₱4,982,042.48; (2) undeclared sales amounting to ₱13,061,759.19; and (3) disallowance due to non-withholding of tax amounting to ₱1,410,249.99.

For item (1), unaccounted purchases do *not* translate into unreported sales subject to IT.

For item (2), the amount of ₱13,061,759.19 was the alleged resulting discrepancy between collection per audit and data per BIR Form No. 2307. However, the method employed in arriving at said computation is erroneous because it included its receivables, or amounts which have yet to be collected from its customers.

For item (3), the BIR failed to point out the specific details on the income payments which were *not* subjected to withholding tax, violative of Section 228 of the NIRC, as amended.

Second. It is not liable for deficiency VAT because: (1) unaccounted purchases do *not* translate into unreported sales subject to VAT; and (2) the method employed by the BIR in computing the supposed undeclared sales is flawed.

Third. It is not liable for the deficiency EWT because the BIR failed to point out the specific details on the income payments which were *not* subjected to withholding tax, violative of Section 228 of the NIRC, as amended.

Fourth. It is not liable for the deficiency IAET amounting to ₱377,556.70 because the formula used by the BIR, leading to such finding, is contrary to then Section 29 of the NIRC, as amended.

Fifth. It is not liable for the compromise penalty because it never agreed to its imposition.

In view thereof, petitioner concludes that the nullification of the BIR's FLD/FAN, containing the deficiency IT, VAT, EWT, and IAET assessments, including the compromise penalty for TY 2013, is in order.

On the other hand, respondent counters that he was able to demonstrate petitioner's receipt of the PAN; hence, its right to due process on assessment under Section 228 of the 1997 NIRC, as amended, as implemented by Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, was duly complied with.

Respondent further retorts that the BIR's FLD/FAN, containing the deficiency IT, VAT, EWT, and IAET assessments, including the compromise penalty for TY 2013 has sufficient legal and factual basis. The reasons are:

1. Comparison of disbursement per audit as against the data reported 1604-E disclosed that there were unaccounted purchases amounting to ₱4,982,042.48, which was treated as undeclared income.

2. Comparison of collection per audit as against the data reported per creditable tax withheld disclosed an undeclared sales amounting to ₱13,061,759.19.

3. Petitioner did not withhold the appropriate withholding tax due on its income payments. Hence, the expenses amounting to ₱1,410,248.99 were disallowed as deduction.

4. Petitioner's undeclared income from its unaccounted purchases amounting to ₱12,917,226.92 are subject to VAT.

5. Petitioner's undeclared sales amounting to ₱13,061,759.19 are also subject to VAT.

6. Petitioner failed to withhold the corresponding EWT on its income payments previously disallowed as deductions from its gross income, hence, it is liable to pay deficiency EWT.

7. Petitioner accumulated retained earnings in excess of 100% of its paid-up capital and permitted the same to accumulate beyond the reasonable needs of its business to avoid tax upon its shareholders; hence, it is liable for 10% IAET on its improperly accumulated earnings in the amount of ₱3,775,567.00.

On these accounts, respondent believes that petitioner must be held liable for deficiency IT, VAT, EWT, and IAET assessments, including the compromise penalty for TY 2013.

RULING

The Petition is impressed with merit.

First, do we have jurisdiction over this case?

Yes.

Section 7(a)(2) of Republic Act (RA) No. 1125,[32] as amended by RA No. 9282, reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> ...
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal

[32] An Act Creating the Court of Tax Appeals.

> Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;[33]

Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals[34] clarified that the Court in Division has jurisdiction over petitioner's inaction involving disputed assessments, among others.[35] For the inaction of respondent or his duly authorized representatives to be raised on appeal before the Court in Division, there must first be a disputed assessment.[36] To correctly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC, as amended, which states:

> Section 228. *Protesting of Assessment.* — ...
>
> ...
>
> If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[37]

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33 Boldfacing supplied.

34 A.M. No. 05-11-07-CTA.

35 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:

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

...

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

36 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016.

37 Boldfacing supplied.

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In turn, the validity of the administrative protest rests upon the confluence of two (2) conditions, namely: *first,* it must be filed within thirty (30) days from the receipt of the final assessment; and *second,* it must be in such form and manner as may be prescribed by implementing rules and regulations.[38] Concomitant to the *second* condition is Section 3.1.4 of RR No. 18-2013, prescribing the form and manner of an administrative protest:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> **The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.**
>
> ...[39]

Indeed, the taxpayer has thirty (30) days from receipt of the final assessment to file a valid administrative protest, either by way of request for reconsideration or request for reinvestigation. If a request for reinvestigation was filed, the taxpayer has sixty (60) days from the filing of its request for reinvestigation to submit documents in support thereof. Respondent or his authorized representative has one hundred eighty (180) days from said date of submission of supporting documents to decide on the taxpayer's request for reinvestigation. Upon the lapse of such 180-day period and no decision was made by respondent or his authorized representative, the taxpayer's administrative protest is deemed denied; thus, the

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[38] See *Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper Incorporated,* G.R. No. 239464, May 10, 2021.

[39] Boldfacing supplied.

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taxpayer has another thirty (30) days to appeal to the Court in Division.

Petitioner received[40] respondent's FLD/FAN[41] on January 27, 2017. Counting thirty (30) days therefrom, petitioner had until February 26, 2017 to file an administrative protest thereto; thus, its administrative protest was timely[42] filed on February 24, 2017. Said protest also contained: (1) date of the FAN; (2) the factual and legal basis of said protest; and (3) statement of the document in support thereof.[43]

Petitioner stated in its administrative protest that it sought reconsideration *and* reinvestigation of the BIR's FLD/FAN.[44] However, a reading of the entirety of said protest, coupled with: *first*, statement of the document in support thereof; and *second*, submission[45] of the documents in support of said protest, means that said administrative protest is a request for reinvestigation.

Petitioner has sixty (60) days from the filing of its request for reinvestigation on February 24, 2017, or until April 26, 2017, within which to submit the documents in support of thereof; hence, through its Letter dated April 24, 2017,[46] and filed with the BIR on April 25, 2017, petitioner timely submitted supporting documents on its request for reinvestigation.

Respondent or his duly authorized representative has one hundred eighty (180) days from April 25, 2017, or until October 22, 2017, within which to rule on petitioner's request for reinvestigation. As respondent failed to render a decision thereon as of October 22, 2017, petitioner's administrative protest is deemed denied. Hence, it had another thirty (30) days from October 22, 2017, or until November 21, 2017 to file a Petition for Review before the Court in Division. *Ergo*, the timely filing of petitioner's Petition for Review on November 21, 2017,[47] endowed us with jurisdiction over CTA Case No. 9719.

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[40] *Supra* note 6.
[41] *Supra* notes 7 and 8.
[42] *Supra* note 9.
[43] *Supra* note 10.
[44] *Ibid.*
[45] *Supra* note 11.
[46] *Ibid.*
[47] *Supra* note 13.

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Next, are the BIR's deficiency IT, VAT, EWT, and IAET assessments, including the compromise penalty imposed upon petitioner for TY 2013 valid?

No.

Section 228 of the NIRC, as amended,[48] as implemented by Section 3[49] of RR No. 12-99,[50] as amended by RR No. 18-2013 govern the due process requirement on assessment. Among the components thereof is that the taxpayer must be afforded the opportunity to

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48 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. ...

... (Boldfacing supplied)

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

3.1 Mode of procedures 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 the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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

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ventilate its defenses on the PAN, within fifteen (15) days from receipt thereof, by way of a reply or response thereto.[51] Contrariwise, the taxpayer's non-receipt of the PAN would be transgressive of its right to due process on assessment. *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*[52] elucidated on the *rationale* thereof in this wise:

> The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of the FAN.

Respondent claims that the PAN was served upon petitioner through registered mail.[53] 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 controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.[54]

Commissioner of Internal Revenue v. T-Shuttle Services, Inc. (T-Shuttle),[55] too, ordained that when a taxpayer denies having received the notices mailed by the BIR, the latter is required to identify and authenticate the signatures appearing on the registry receipt to determine whether the signatories thereon are the authorized representatives of the taxpayer concerned.

Considering that petitioner disclaimed[56] receipt of the PAN allegedly mailed by respondent, actual receipt thereof by petitioner or its duly authorized representatives must be established by

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51 See *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021, whereby the Supreme Court ruled that the service of the PAN, as well as the taxpayer's opportunity to file a reply/response thereto within fifteen (15) days from receipt thereof is mandatory.

52 G.R. No. 249153, September 12, 2022.

53 Answer to Question Nos. 5 to 8, Supplemental Judicial Affidavit of Melvin Raymund A. Valenzuela dated February 26, 2021. Exhibit "R-12," docket, pp. 465-466.

54 See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018; *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; and *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 150764, August 7, 2006.

55 G.R. No. 240729, August 24, 2020.

56 Par. 7, Petition for Review dated November 20, 2017, docket, p. 12.

respondent. To demonstrate petitioner's actual receipt of the PAN, respondent proffered the following documents:

Exhibit	Description
"R-5"[57] "R-5-A" "R-5-B"	PAN dated December 28, 2016 Signature of RD Clavelina S. Nacar Details of Discrepancies
"R-10"[58]	Proof of Delivery of PAN Tracking No. AC332788755ZZ

What we can refract therefrom is that respondent successfully revealed the fact of *mailing* of the PAN, and nothing more. Taken collectively, said documents do *not* exhibit petitioner's *actual receipt* of the PAN. To be precise, in the Registry Receipt pertaining to the mailed PAN,[59] a certain Mr. Richard Sacdo signed the same, and that the relationship of said person to petitioner is that he is a "Guard." Yet, no formidable proof was adduced by respondent to show that a guard, like Mr. Sacdo, is authorized to receive the PAN on behalf of petitioner, as required in *T-Shuttle*.

In addition, the Registry Receipt[60] pertaining to the PAN was *not* accompanied by an "instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered." Neither was there a written report under oath made by the server thereof, setting forth the manner, place, and date of service of the PAN, the name of the person who received the same, and such other relevant information relating to such service. These deficiencies are preconditions for the valid service of, among others, the PAN. Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013 confirmed:

> SECTION 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:
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> . . .

57 BIR Records, pp. 519-520.
58 Docket, p. 470.
59 *Ibid.*
60 *Ibid.*

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> 3.1.6 *Modes of Service.* - **The notice (PAN**/FLD/FAN/FDDA) **to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**
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> ...
>
> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party **with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered.** A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/ professional courier service company who received the same and such other relevant information.** The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.[61]

Therefore, these observations yield a sole conclusion—no PAN was validly issued to and received by petitioner, offensive to its right to due process on assessment. For this reason, the invalidation of the BIR's deficiency tax assessments issued against petitioner for TY 2013 is in order.

To punctuate our discussion, the essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.[62]

WHEREFORE, the Petition for Review dated November 20, 2017, filed by Dizon Country Fresh, Inc., is **GRANTED**. Accordingly,

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61 Boldfacing supplied.

62 See *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.

the alleged income tax (IT) – IT-ELA36521-13-17-258; value added tax (VAT) – VT-ELA36521-13-17-258; expanded withholding tax (EWT) – WE-ELA36521-13-17-258; improperly accumulated earnings tax (IAET) – IE-ELA36521-13-17-258; and compromise penalty – MC-ELA36521-13-17-258 assessments, for taxable year 2013, in the total amount of ₱14,893,789.20, embodied in the Formal Letter of Demand and Final Assessment Notices, all dated January 13, 2017, are **CANCELLED** and **WITHDRAWN**.

Respondent, his representatives, agents, or other persons acting in his behalf are **ENJOINED** from implementing the collection of the deficiency tax assessments, for taxable year 2013, in the total amount of ₱14,893,789.20, embodied in the Formal Letter of Demand and Final Assessment Notices, all dated January 13, 2017, against petitioner.

SO ORDERED.

Marian Ivy F Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice