REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CLARK WATER CORPORATION,
Respondent.

CTA EB NO. 2218
(CTA Case No. 8648)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
OCT 12 2021 2:15

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) seeking to nullify the Special

---

1 Filed on 17 February 2020, *Rollo*, pp. 6-22.
Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Section 3. *Who may appeal; period to file petition.* —
...
(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

First Division's Decision dated 19 July 2019[2] (**assailed Decision**) and the subsequent Resolution dated 15 January 2020[3] (**assailed Resolution**) on petitioner's Motion for Reconsideration (**MR**) in the case entitled *Clark Water Corporation v. Commissioner of Internal Revenue* docketed as CTA Case No. 8648.

The antecedent facts follow.

Petitioner is the duly appointed CIR vested with the authority to carry out the functions, duties and responsibilities of his office, including the power to decide on disputed assessments pursuant to the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other tax laws, rules and regulations.

On the other hand, respondent Clark Water Corporation (**respondent/CWC**) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is duly registered as a Clark Freeport Zone (**CFZ**) enterprise engaged in the operation and maintenance of water and sewerage system within the CFZ.

On 13 August 2008, respondent received Letter of Authority (**LOA**) No. 2007-00013347.[4] On 15 June 2010, it also received a Notice of Informal Conference (**NIC**).[5] On 08 September 2011, it received a Preliminary Collection Letter[6] (**PCL**) dated 10 August 2011. Subsequently, on 16 September 2011, it replied to the PCL and protested the deficiency income tax (**IT**) and value-added tax (**VAT**) assessments for calendar year (**CY**) 2007.[7]

---

additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[2] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy concurring. Division Docket, Volume III, pp. 1740-1758.

[3] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario concurring and Associate Justice Erlinda P. Uy on leave. Id., pp. 1816-1821.

[4] Exhibit "P-1", id., Volume II, p. 1239.

[5] Exhibit "P-2", id., p. 1241.

[6] Exhibit "P-3", id., p. 1250.

[7] Exhibit "P-9", id., pp. 1271-1278.

On 11 November 2011, respondent filed with the Collection Division of the Bureau of Internal Revenue (**BIR**) its supplemental reply[8] to the PCL, attaching thereto copies of the documents supporting its Protest to the assessment. One of the contentions raised then was its non-receipt of the Preliminary Assessment Notice (**PAN**) and the Final Assessment Notice (**FAN**).

On 02 March 2012, respondent received a Memorandum[9] dated 20 February 2012 issued by Regional Director Araceli L. Francisco (**RD Francisco**). There, the Revenue District Officer of BIR-RDO No. 21A was directed to serve the certified machine copy of the Formal Letter of Demand[10] (**FLD**) with Details of Discrepancy and Assessment Notices (all dated 28 March 2011) to respondent.

Upon receipt of the certified machine copy, respondent filed its Protest[11] to the FLD/FAN on 30 March 2012. In its Protest, respondent reiterated that it did not receive the PAN and FAN prior to the issuance of the PCL.

On 17 September 2012, respondent received a Letter[12] from the RD of BIR-Revenue Region No. 4 requesting the submission of relevant supporting documents.

On 18 April 2013, Revenue Seizure Officer Sergio D. Pineda, Jr. (**RSO Pineda**) served a Warrant of Distraint and/or Levy[13] (**WDL**) dated 19 March 2013 upon respondent. The WDL sought to enforce the collection of respondent's alleged deficiency IT, VAT and penalties for CY 2007 in the amounts of ₱628,603.84, ₱2,104,551.29 and ₱90,000.00, respectively.

Disagreeing with the BIR's actions, respondent filed a Petition for Review before the Court in Division on 26 April 2013.

---

8 Exhibit "P-10", id., pp. 1279-1286.
9 Exhibit "P-4", id., p. 1251.
10 Exhibit "P-5", id., pp. 1252-1260.
11 Exhibit "P-17", id., pp. 1349-1365.
12 Exhibit "P-7", id., p. 1269.
13 Exhibit "P-8", id., p. 1270.

After a trial on the merits, the Special First Division granted the Petition for Review and cancelled petitioner's assessment against respondent amounting to ₱2,823,155.13. When petitioner filed his MR thereto, it was denied for lack of merit.

Unyielding, petitioner pursues this present appeal before the Court *En Banc*. In attacking the Special First Division's assailed Decision dated 19 January 2019[14] and its Resolution dated 15 January 2020[15], petitioner contends, to wit:

> I.
> PETITIONER COMMISSIONER OF INTERNAL REVENUE OBSERVED DUE PROCESS IN THE ASSESSMENT OF RESPONDENT CLARK WATER CORPORATION'S DEFICIENCY TAX LIABILITY;
>
> II.
> THE SPECIAL FIRST DIVISION HAS NO JURISDICTION OVER THIS PARTICULAR CASE;
>
> III.
> PETITIONER COMMISSIONER OF INTERNAL REVENUE PROPERLY APPRISED RESPONDENT CLARK WATER CORPORATION OF ITS INCOME TAX DEFICIENCIES FOR THE TAXABLE YEAR 2007; and
>
> IV.
> THE LAW HEAVILY PRESUMES THE PROPRIETY AND EXACTNESS OF TAX ASSESSMENTS.[16]

In support of the above assigned errors, petitioner puts forward the following arguments.

First, petitioner claims that he followed the procedural due process requirements. He avers that both the PAN and the FAN were sent through registered mail as evidenced by registry receipts.

---

14 Supra at note 2.
15 Supra at note 3.
16 *Rollo*, pp. 8-9.

Petitioner submits that when he served the PAN and the FAN upon respondent through registered mail, he assumed that the postal service protocol for items sent was followed and that the notices were eventually delivered to respondent. After all, there is a presumption under Section 3(v)[17] of Rule 131 of the Rules of Court that a letter duly directed and mailed was received in the regular course of the mail. Petitioner posits further that even if there was a lack of actual receipt by respondent, the same is not tantamount to a violation of due process.

Petitioner adds that there was never an instance that respondent failed to receive his notices. In fact, even when he learned of respondent's insistence that it did not receive the PAN and the FAN, he still immediately furnished respondent the copies thereof; thus, contrary to the latter's claim, he afforded it every chance to participate in the assessment process.

Petitioner likewise contends that the period to assess respondent has not prescribed since he mailed the assessments within the three-year prescriptive period.

Second, petitioner insists that the Court is bereft of jurisdiction over the instant case after respondent failed to interpose a timely protest on the FAN issued against it. Respondent also failed to submit the necessary supporting documents relevant to its Protest within sixty (60) days.

Relative to the above, petitioner explains that respondent only filed its Protest on 16 September 2011, and thus, it failed to comply with the mandate of Section 228[18] of the NIRC of 1997, as amended. Similarly, respondent also failed to submit supporting documents to substantiate its Protest. Without such supporting documents, petitioner was not able to decide respondent's Protest on the merits, and thus, deprived him of the opportunity to exercise his function properly.

---

17 Sec. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

...

(v) That a letter duly directed and mailed was received in the regular course of the mail[.]

18 Sec. 228. *Protesting of Assessment.* —

Third, petitioner is adamant that respondent was properly apprised of its IT deficiencies for the taxable year (**TY**) 2007 and that it was correctly assessed for its income earned outside of the CFZ.

Fourth, petitioner maintains that he faithfully observed the procedure prescribed under Revenue Regulations (**RR**) No. 12-99[19] and the assessment against respondent was proper in all respects. He adds that the court should keep the presumption of the propriety and exactness of tax assessments in his favor.

Expectedly, respondent opposes petitioner's posturings and instead seeks the affirmance of the Special First Division's assailed Decision and Resolution. It also states that, while it may concede that petitioner was not at fault in failing to serve copies of the PAN and the FLD/FAN, it could not be a ground to condone an illegal or erroneous assessment. According to respondent, the non-receipt of the PAN and the FAN for CY 2007 is fatal. It also calls the Court *En Banc*'s attention to the supposed absence of contest on its claim of non-receipt. In other words, respondent is of the view that petitioner did not deny or dispute its non-receipt of the PAN and the FAN.

In countering petitioner's attack against the Court's jurisdiction, respondent puts emphasis on Section 3.1.5 of RR No. 12-99[20] which provides that a taxpayer has thirty (30) days from *receipt* of the FAN to file its protest, and it has 60 days to file the relevant supporting documents. Moreover, it could not have been properly apprised (as petitioner claims) of the deficiency taxes for CY 2007 since it never received the PAN and the FLD/FAN. The PCL that it subsequently received could not validly substitute the FLD/FAN to prompt the filing of a proper protest.

Lastly, respondent submits that the presumption of correctness of the assessment could not sustain an invalid assessment. The presumption could not lie in the face of a clear breach of the due process requirements.

---

19 *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.*

20 Id.

The Court *En Banc's* ruling follows below.

After an assiduous review of the parties' contrasting arguments as well as records of the case, the Court finds the instant Petition for Review unmeritorious. We essay the reasons below, in *seriatim*.

THE COURT HAS JURISDICTION OVER RESPONDENT'S CASE.

Amongst the issues raised, the issue of jurisdiction will take priority. Does the Court have jurisdiction over respondent's case? We respond in the affirmative.

It is noted that petitioner heavily questions the Court's jurisdiction because of respondent's supposed failure to timely file a protest to the FAN/FLD and to submit the relevant supporting documents. The Court, however, could not agree with petitioner that it is deprived of jurisdiction for this reason.

As the records show, respondent still protested the PCL and the certified machine copy of the FLD/FAN that was thereafter served upon it on 02 March 2012 (and which it protested on 30 March 2012). With this, the assessment could not have attained finality as petitioner insisted.

At any rate, to the mind of the Court *En Banc*, what is equally crucial and consequential is whether it may also take cognizance of the appeal by reason of the issuance of the WDL. Section 7(a)(1) of Republic Act (**RA**) No. 1125, as amended provides:

> ...
>
> Sec. 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decision of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National**

Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

...

Under the aforecited provision, the jurisdiction of the CTA is not limited to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds. Its jurisdiction also includes other cases arising from the NIRC of 1997, as amended, or related laws administered by the BIR. The Supreme Court once held that the question of whether or not to impose a deficiency tax assessment comes within the purview of the words "other matters arising under the National Internal Revenue Code".[21]

Verily, the Court has the authority to entertain matters stemming from the NIRC of 1997, as amended, including rules, regulations and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.[22]

With the filing of the prior Petition for Review with the Court in Division within 30 days from respondent's receipt of the WDL, the Court *En Banc* could only deem that this Court has been validly vested with jurisdiction to take on respondent's case.

THERE WAS A VIOLATION OF RESPONDENT'S RIGHT TO DUE PROCESS.

Although the records support petitioner's claim that the PAN and the FAN were sent to respondent by registered mail, no competent proof of actual receipt was however shown. Likewise, even though respondent was able to later on secure the certified machine copy of the FAN attached to the Memorandum dated 02 February 2012[23] (issued by RD Francisco), said memorandum made no mention of the PAN.

---

21 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017.
22 *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 227049, 16 September 2020.
23 Exhibit "P-4", supra at note 9.

We cannot overstate the significance of the PAN as an element of due process. Section 228 of the NIRC of 1997, as amended, provides:

> ...
>
> **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 preassessment notice shall not be required in the following cases:
>
> > (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> >
> > (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> >
> > (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
> >
> > (d) When the excise tax due on exciseable articles has not been paid; or
> >
> > (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> **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.
>
> ...

Relatedly, the inclusion of the PAN as part of the due process requirements was confirmed in Section 3.1.2 of RR No. 12-99, to wit:

> ...
>
> SEC. 3. *Due process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1.2. *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or 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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based[.]
>
> ...

In *Commissioner of Internal Revenue v. Metro Star Superama Inc.*[24], the Supreme Court has underscored that the receipt of the PAN is an important element of due process, thus:

> ...
>
> This now leads to the question: Is the failure to strictly comply with the notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process? Specifically, are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?
>
> The answer to these questions require an examination of Section 228 of the Tax Code which reads:
>
>> 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 preassessment notice shall not be required in the following cases:
>
> ...
>
> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must be first informed that he is liable for deficiency taxes through the sending of the PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is

---

[24] G.R. No. 185371, 08 December 2010; Citation omitted and emphasis in the original text.

> evidently violative of the cardinal principle in administrative investigations – that taxpayers should be able to present their case and adduce supporting evidence.
>
> ...

Except for the five (5) instances enumerated in Section 228[25] of the NIRC of 1997, as amended, it is clear from the foregoing that the issuance of the PAN is mandatory. The sending of the PAN to the taxpayer to inform him of the assessment made is an indispensable "due process requirement in the issuance of a deficiency tax assessment", the absence of which invalidates any assessment made by the tax authorities.[26]

Additionally, it is noted that respondent brought up the issue of its non-receipt of the PAN and the FAN in its earliest protest to the PCL. With respect to the PAN, while petitioner may have been able to prove the *fact of mailing* of the PAN through the registry receipt, with respondent's denial, the burden to prove respondent's receipt of the PAN and the FAN accordingly shifted to petitioner. In the case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[27], the Supreme Court declared:

> ...
>
> 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 matter 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...[.]
>
> ...

With the above and even in the presence of a disputable presumption that a letter mailed and directed was received in the regular course of mail, petitioner has an undeniable responsibility to

---

[25] Supra at p. 9.

[26] *Commissioner of Internal Revenue v. Metro Star Superama Inc.*, supra at note 24.

[27] G.R. No. 157064, 07 August 2006; Emphasis supplied.

show his compliance with the due process requirements. With a similar burden of proof to discharge his compliance, the presumption could not stand to favor him. We quote in agreement the portion of the assailed Decision, thusly:

> ...
>
> In *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*, the Supreme Court reiterated its pronouncement that due process requires that the assessment must be served on and received by the taxpayer, *viz*:
>
> > "(D)ue process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
> >
> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer.**"[28]
>
> ...

All told, the Court *En Banc* finds no reversible error in the assailed Decision and Resolution that would warrant any modification or deviation from the Special First Division's findings. At this juncture, We deem it unnecessary to discuss the other issues raised.

WHEREFORE, premises considered, the instant Petition for Review filed on 17 February 2020 by petitioner Commissioner of Internal Revenue, is hereby **DENIED** for lack of merit.

Consequently, petitioner Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from enforcing collection with respect to the assessment for taxable year 2007 embodied in the Formal Letter of Demand and Warrant of Distraint and/or Levy dated 28 March 2011 and 19 March 2013, respectively, in the amount of ₱2,823,155.13.

---

28 Citation omitted and emphasis in the original text.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

CERTIFICATION

Pursuant to Section 13, Article VIII 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