REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

BOSTIK PHILIPPINES, INC.,	CTA CASE NO. 9019
	Members:
Petitioner,	FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	MAR 05 2019 10:15 a.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review[1] dated March 27, 2015, petitioner Bostik Philippines, Inc., prays for the cancellation and withdrawal of the Assessment/Demand Letter No. 43-195 (FAN), the Preliminary Collection Notice dated June 2, 2009, and the Demand Notice Before Suit dated November 26, 2014.

Petitioner Bostik Philippines, Inc. is a domestic corporation registered with the Philippine Securities and Exchange Commission (SEC), with principal office address at 35th Floor, Raffles Corporate Center, Emerald Avenue, Ortigas Business Center, Pasig City.[2] It is registered with the Bureau of Internal Revenue (BIR) since July 21, 2000, as evidenced by its Certificate of Registration No. OCN0000268520.[3]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) with the power to

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[1] Docket, vol. 1, pp. 10-33.
[2] Exhibit "P-3", docket, vol. 1, pp. 206-219.
[3] Exhibit "P-9", docket, vol. 1, p. 226.

decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 7, 2007, petitioner received at its office located at 35th Floor, Raffles Corporate Center, Emerald Avenue, Ortigas Business Center, Pasig City[4] Letter Notice No. 043-AS-05-00-00069[5] dated April 30, 2007 from respondent informing about its alleged value-added tax (VAT) deficiency and invited it to a conference to dispute his finding.

On September 22, 2008, petitioner received from respondent, through the BIR Revenue District Office (RDO) No. 43, a Post Reporting Notice (PRN)[6] pursuant to the Letter Notice No. 043-AS-05-00-00069, stating that the result of the investigation on its alleged tax liabilities for the year 2005 has been prepared. With the PRN was the computation of petitioner's alleged deficiency income tax (IT) and VAT liability. Petitioner was given ten (10) days from notice to discuss the said finding with BIR RDO No. 43.

On October 2, 2008, petitioner filed with respondent a letter-reply dated October 1, 2008[7] inquiring about the basis of the amounts indicated in the PRN and requesting for a conference with the assigned revenue officer.

On October 17, 2008, petitioner submitted a schedule of its importations from April 1, 2005 to March 31, 2006 with the corresponding photocopies of importation documents.[8]

Thereafter, respondent issued a Preliminary Assessment Notice[9] (PAN) dated January 5, 2009, a Final Assessment Notice (FAN) with Details of Discrepancies, and

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[4] Exhibit "P-3", docket, vol. 1, pp. 206-219.
[5] Exhibit "R-1", BIR Records, p. 4.
[6] Exhibit "R-2", BIR Records, p. 8.
[7] Exhibit "R-13", BIR Record, p. 10.
[8] Exhibit "P-5", docket, vol. 1, p. 221.
[9] Exhibit "R-3", BIR Records, pp. 34-35.

a Formal Letter of Demand[10] (FLD), all dated January 23, 2009. However, the address appearing in the said notices was 199 Lemon Square Bldg., Edsa, Pasig City.

Respondent also issued Final Assessment Notices (FAN) with Details of Discrepancies and Formal Letter of Demand[11] both dated January 23, 2009 addressed to Global Brands Company, Inc., 2nd Floor SBBC Bldg. Shaw Blvd., Pasig City.

On June 15, 2009, petitioner received a Preliminary Collection Letter[12] (PCL) dated June 2, 2009 signed by Revenue District Officer Rey Asterio L. Tambis of RDO No. 43, informing it that an assessment notice dated January 23, 2009 was sent to it requesting payment of its alleged deficiency tax liabilities within ten (10) days from such receipt.

On July 15, 2009, petitioner protested the said PCL,[13] on the ground that no FLD and FAN were issued and served upon it in violation of its right to due process.

On February 27, 2015, petitioner received from respondent a Demand Before Suit[14] dated November 26, 2014 requiring it to pay its alleged tax liabilities in the amount of ₱29,740,623.06.

Petitioner deemed the said Demand Before Suit as a denial of its Protest filed on July 15, 2009. Thus, on March 27, 2015[15], petitioner lodged the instant Petition for Review.

Petitioner claims that its right to due process was violated as neither the PAN, FAN, and FLD was served upon it rendering the subject assessment void. With the void assessment, the subsequent issuance of the PCL and Demand Before Suit were likewise void.

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[10] Exhibit "R-4", BIR Records, pp. 54-57; Exhibits "P-7", "P-7-a", and "P-8", docket, vol. 1, pp. 223-225.
[11] Exhibit "R-4-a", BIR Records, pp. 50-53.
[12] Exhibit "P-6", docket, vol. 1, p. 222; Exhibit "R-12", BIR Records, p. 58.
[13] Exhibit "P-10", docket, vol. 1, pp. 227-236.
[14] Exhibits "P-11" and "P-11-a", docket, vol. 1, pp. 237-238.
[15] Docket, vol. 1, pp. 10-33.

In his Answer[16], respondent argues that the Court no longer has jurisdiction over the case since the assessment already gained finality for failure of petitioner to timely assail his inaction on its protest after the lapse of the 180-day period as required under Section 228 of the NIRC, as amended.

Also contrary to petitioner's claim, the PAN, FAN, and FLD, all indicating the factual and legal bases of the assessment, were sent to petitioner using its address found in the BIR computer system. These notices were sent within the 10-year period to assess pursuant to Section 222 of the NIRC, as amended, since there was fraud in petitioner's declaration of sales.

On July 20, 2015, petitioner filed through registered mail a Reply[17] reiterating its non-receipt of the PAN, FAN, and FLD, and respondent's failure to present evidence to justify the application of the 10-year prescriptive period to assess under Section 222 of the NIRC, as amended. The Petition for Review was also timely filed from receipt of the Demand Before Suit, which it deemed as a denial of its protest against the assessment.

After the parties filed their Joint Stipulation of Facts and Issues,[18] on January 25, 2016, a Pre-Trial Order[19] was issued on March 2, 2015 terminating the pre-trial conference.

During trial, petitioner presented its Senior Vice President for Finance and Information Technology, **Gerald B. Dimalaluan**[20], as its lone witness. He testified that he handles for petitioner all tax matters including dealing with the BIR. On September 22, 2008, petitioner received an undated PRN from the BIR about its alleged internal revenue tax liabilities. The said PRN was addressed to Global Brands

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[16] Docket, vol. 1, pp. 263-266.
[17] Docket, vol. 1, pp. 297-307.
[18] Docket, vol. 1, pp. 437-441.
[19] Docket, vol. 1, pp. 475-479.
[20] Minutes of the Hearing dated April 18, 2016, docket, vol. 1, p. 480; Exhibit "P-16", Amended Judicial Affidavit (Direct Testimony of Gerard B. Dimalaluan), docket, vol. 1, pp. 190-202, Transcript of Stenographic Notes dated April 18, 2016 (cross examination).

Company Incorporated, which was the former company name of petitioner.

In response, petitioner filed a letter-reply on October 2, 2008 asking to clarify the amounts of its alleged tax liabilities. Upon verbal request, petitioner submitted documents on October 15, 2008. Nothing followed thereafter until June 15, 2009, when petitioner received a Preliminary Collection Letter (PCL) dated June 2, 2009, demanding payment of its alleged deficiency IT and VAT for the year 2005 within ten (10) days from receipt thereof.

During a conference with the BIR on June 17, 2009, petitioner's representatives were informed that the FAN and FLD had been issued. Claiming non-receipt of the said notices, petitioner's representatives were provided with the copies of the said FAN and FLD which appeared to have been sent to an address different from that of petitioner.

In its protest filed on July 1, 2009, petitioner reiterated non-receipt of the PAN, FAN, and FLD which appeared to have been sent to a wrong address.

Subsequently, respondent issued a Demand Before Suit dated November 26, 2014, requiring petitioner to pay its alleged tax liabilities in the amount of ₱29,740,623.06.

On February 27, 2015, petitioner filed with respondent a Letter-Reply dated February 27, 2015 to the Demand Before Suit.

After the termination of the witness' testimony, petitioner formally offered its evidence and rested its case as indicated in the Resolution[21] dated June 27, 2016.

In support of its case, respondent presented Revenue Officers (ROs) Corazon G. Maravilla[22] and John B. Bajador[23] as his witnesses.

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[21] Docket, vol. 2, pp. 505-506.
[22] Minutes of the Hearing dated February 28, 2017, docket, vol. 2, p. 548; Exhibit "P-10", Judicial Affidavit, docket, vol. 2, pp. 539-543, Transcript of Stenographic Notes dated February 28, 2017.

RO **Corazon G. Maravilla** testified that she continued the tax audit of petitioner for the year 2005 pursuant to the Letter Notice No. 043-AS-05-00-00069 dated April 30, 2007 and Memorandum dated October 27, 2008.

Per her review, the Letter Notice No. 043-AS-05-00-00069 dated April 30, 2007 was served on petitioner on July 7, 2007. This was followed by an undated PRN served on petitioner on September 22, 2008. In the Memorandum dated November 3, 2008, she recommended that the case be forwarded to their Assessment Division for the issuance of corresponding assessment notices. She also learned from the record that the PAN and FLD were sent to petitioner by the BIR Assessment Division.

Admittedly, the Letter Notice and PRN were sent to 35th Floor Raffles Corporate Center Emerald Avenue Ortigas Center, Pasig City 1600. The PAN was however sent to 199 Lemon Square Building, EDSA, Pasig City.

One set of the FAN and FLD was sent to 2nd Floor SBBC Building, Shaw Boulevard, Pasig City and another set to 199 Lemon Square Building, EDSA, Pasig City.

It appears that petitioner has two (2) registered addresses in the BIR computer system, thus, the notices could be sent to either of the two. However, the address used in the Letter Notice and PRN was neither of two found in the BIR computer system.

The notation RTS-Insufficient Add placed by the Post Office on the PAN, means Return to Sender. The same notation appears on the FAN/FLD.

RO **John B. Bajador** testified that he enforced the collection of petitioner's deficiency taxes for the year 2005. Upon examination of the BIR Record, he learned that the PAN, FAN, and FLD issued in this case were all sent to petitioner at 199 Lemon Square Building, EDSA, Pasig City,

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[23] Minutes of the Hearing dated July 31, 2017, docket, vol. 2, p. 567; Exhibit "R-8", Judicial Affidavit, docket, vol. 2, pp. 561-565; Transcript of Stenographic Notes dated July 31, 2017.

which was the active address of petitioner per the BIR Integrated Tax System/BIR Registration System.

Since petitioner failed to pay its tax liabilities, he prepared the Preliminary Collection Letter (PCL) dated June 2, 2009 which the RDO signed and later sent to petitioner via registered mail.

On January 23, 2009, petitioner's representatives came to their office to inquire about the PCL. He informed them that the case was already at the collection stage as no valid protest was filed to refute it rendering the assessment final and demandable. Thereafter, he gave copies of the FAN and FLD to petitioner's representatives.

Witness Bajador however admitted that although the PAN, FAN, and FLD were sent via registered mail, they were not received by petitioner since they were sent to the wrong address, to wit: 199 Lemon Square Building, EDSA, Pasig City. Worse, the PCL was sent to an address different from that used in mailing the PAN, FAN, and FLD. Besides, per the BIR Integrated Tax System/BIR Registration System, petitioner has several registered addresses, which can be interchangeably used.

The witness also suspected that the confusion as to petitioner's registered address arose from the fact that petitioner filed its application for change of address with the wrong RDO. The application for change of address was received by the Collection Division of the BIR on August 7, 2009.

Respondent rested its case after all its documents formally offered were admitted in the Resolution[24] dated January 5, 2018.

The Court declared the case submitted for decision on March 13, 2018.[25]

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[24] Docket, vol. 2, pp. 586-588.
[25] Docket, vol. 2, p. 629.

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THE ISSUES

The parties raised the following issues for the resolution of the Court:[26]

1. Whether the Petition for Review was filed on time;

2. Whether the Court has jurisdiction over the case;

3. Whether the assessments for deficiency income tax and VAT for taxable year 2005 are void for lack of valid assessment notice;

4. Whether petitioner's assessments are final, executory and demandable; and

5. Whether petitioner is liable to pay the alleged deficiency income tax and VAT for taxable year 2005, plus interest and surcharge.

THE RULING OF THE COURT

The Court shall first determine the timeliness of the filing of the instant Petition for Review. Section 228 of the NIRC, 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:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall

[26] Issues, JSFI, docket, vol. 1, pp. 437-438.

> 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.
>
> 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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Corollary thereto, Section 3.1.5 of Revenue Regulations No. 12-99 provides:

> 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:
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> xxx xxx xxx
>
> 3.1.5 *Disputed Assessment.* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx
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> xxx xxx xxx
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> **If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30)**

> **days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.**
>
> **In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable**: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable. *(Emphasis supplied)*

Thus, in case of the inaction of the CIR on the protest against the assessment, x x the taxpayer has two options, either: (1) to file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days from the receipt of the adverse decision, these options are mutually exclusive and resort to one bars the application of the other. [27]

In this case, petitioner opted to wait for respondent's final decision. Petitioner filed an administrative protest against respondent's Preliminary Collection Letter on July 15, 2009. Petitioner then received the Demand Before

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[27] Lascona Land Co., Inc. vs. Commissioner of Internal Revenue, G.R. No. 171251, March 5, 2012.

Suit[28] on February 27, 2015, stating that the subject assessment is already for collection through criminal action. Counting 30 days from February 27, 2015, petitioner had until March 30, 2015[29] within which to file its appeal before this Court. Evidently, petitioner timely filed its Petition for Review on March 27, 2015.

On the validity of the subject assessment, Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. x x x It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.[30]

Further, Section 3 of Revenue Regulations No. 12-99,[31] pertinently provides, as follows:

> 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:
>
> xxx xxx xxx
>
> 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,**

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[28] Exhibits "P-11" and "P-11-a", docket, vol. 1, pp. 237-238.
[29] March 29, 2015 fell on a Sunday.
[30] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014.
[31] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

> **showing 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 assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* – **The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void*** (see illustration in ANNEX B hereof). The same
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> or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (*Emphasis supplied*)

Plain from the quoted provision that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by the tax authorities. The use of the word *shall* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of x x x [the] right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.[32]

Further, the issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.[33]

In addition, jurisprudence is pregnant with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351).[34]

Thus, both Section 228 of the NIRC of 1997 and Section 3.1.4 of RR No. 12-99 clearly require the written details on the nature, factual and legal bases of the subject deficiency tax assessments.[35]

Applying the foregoing, in compliance with the

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[32] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.
[33] Commissioner of Internal Revenue vs. Dominador Menguito, G.R. No. 167560, September 17, 2008.
[34] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 13, 2010, citing Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 150764, August 07, 2006, 498 SCRA 126, 135-136).
[35] Samar-I Electric Cooperative vs. Commissioner of Internal Revenue, G.R. No. 193100, December 10, 2014.

requirements of due process under Section 228 of the NIRC, as amended, and the pertinent regulation, not only must formal assessment notices be issued and received by the taxpayer, but such taxpayer must also receive a preliminary assessment notice or PAN. Also, denial by the taxpayer of receipt of any of these notices shifts the burden of proving receipt of said notices on respondent.

In the instant case, petitioner consistently denied receipt of the PAN, FAN, and FLD. In its Protest[36] dated July 15, 2009, petitioner argued that it never received the PAN, FAN and FLD obviously because they were sent to the wrong address. Thus, it was incumbent upon respondent to prove, not only that the PAN, FAN, and the FLD were validly issued and mailed, but that they were duly received by petitioner.

A revisit of the record of the case intriguingly shows that respondent issued the PAN[37] on January 5, 2009 addressed to Global Brands Company, Inc., at 199 Lemon Square Bldg. EDSA, Pasig City. Subsequently, the FAN[38] and the FLD[39], similarly dated January 23, 2009 were sent to Global Brands Company, Inc., at 199 Lemon Square Bldg., EDSA Pasig City. Then another set of the January 23, 2009 FAN and FLD was sent to Global Brands Company, Inc. at 2nd Flr. SBBC Bldg. Shaw Blvd., Pasig City.

The lapses committed in the mailing address of petitioner, intentionally or unintentionally, was punctuated by the admission of respondent's own witness RO Bajador who categorically declared that per BIR record, the PAN, FAN, and FLD were not received by petitioner, thus:

ATTY. QUIMPO:

Q In this case, did you verify if the PAN was received by the taxpayer?

MR. BAJADOR:

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[36] Exhibit "P-10", docket, vol. 1, pp. 227-236.
[37] Exhibit "R-3", BIR Records, pp. 34-35.
[38] Exhibits "P-7" and "P-7-a", docket, vol. 1, pp. 223-224.
[39] Exhibit "R-4", BIR Records, pp. 54-57; Exhibit "P-8", docket, vol. 1, p. 225.

A Actually, the records do not show the actual receipt.

ATTY. QUIMPO:

Q You did not verify if the PAN was received by the taxpayer?

MR. BAJADOR:

A Actually, verified from the case docket.

ATTY. QUIMPO:

Q You said that you examined the BIR Records, when you examined the BIR Records, did you verify that the PAN was received?

MR. BAJADOR:

A I browsed the case docket and it shows there that it was sent to the registered address.

ATTY. QUIMPO:

Q Did it show if it was received?

ATTY. ALCARAZ

Your Honors, may I object to the question, the witness testified only as to the issuance and the sending of the PAN and the FAN to the taxpayer at its registered address.

JUSTICE LIBAN

Precisely, that the is the question no. 2, answer and question, it is in connection with...

ATTY. ALCARAZ

I withdraw the objection, Your Honors.

ATTY. QUIMPO:

I would just like to ask for a yes or no answer from the witness. If you were able to verify if the FAN was received by the taxpayer?

MR. BAJADOR:

A No.

ATTY. QUIMPO:

Q So from your verification it was not received by the taxpayer?

MR. BAJADOR

A Yes, Ma'am.

ATTY. QUIMPO:

Q How about the FAN, were you able to verify if the FAN was received by the taxpayer?

MR. BAJADOR

A No.

ATTY. QUIMPO:

Q So from your verification the FAN was not received by the taxpayer?

MR. BAJADOR

A Yes, Ma'am."[40]

Moreover, petitioner's registered principal business address is at 35th Floor, Raffles Corporate Center, Emerald Avenue, Ortigas Business Center, Pasig City,[41] the very same address used by petitioner in its BIR Certificate of Registration[42], Annual Income Tax Return for 2005[43] and Quarterly VAT Returns for 2005[44].

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[40] TSN dated July 31, 2017, pp. 12-14.
[41] Exhibit "P-3", docket, vol. 1, pp. 206-219.
[42] Exhibit "P-9" docket, vol. 1, p. 226.
[43] Exhibit "P-14" docket, vol. 1, pp. 241-248.
[44] Exhibits "P-15", "P-15-a" and "P-15-b", docket, vol. 1, pp. 249-262.

This was the same address indicated in the following letters and notices sent by respondent to, and received by petitioner, to wit:

1. Letter Notice No. 043-A-05-00-00069[45] dated April 30, 2007;
2. Post Reporting Notice[46];
3. Preliminary Collection Letter[47]; and
4. Demand Before Suit.[48]

Undeniably, respondent was well aware that all communications especially tax notices should be sent to petitioner's correct address at 35th Floor, Raffles Corporate Center, Emerald Avenue, Ortigas Business Center, Pasig City. For unknown reasons, the PAN, FAN, and FLD were sent to petitioner using different wrong addresses.

As the PAN, FAN, and FLD were never received by petitioner, there was no valid service of said notices depriving petitioner of the facts and the law upon which the assessment issued against it was based in violation of its right to due process.

Under the present provisions of the Tax Code and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void.[49]

The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process. x x x Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding

[45] Exhibit "R-1", BIR Records, p. 4.
[46] Exhibit "R-2", BIR Records, p. 8.
[47] Exhibit "P-6", docket, vol. 1, p. 222; Exhibit "R-12", BIR Records, p. 58.
[48] Exhibits "P-11" and "P-11-a", docket, vol. 1, pp. 237-238.
[49] Commissioner of Internal Revenue vs. Reyes, G.R. No. 159694, January 27, 2006.

with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[50]

WHEREFORE, the Petition for Review dated March 27, 2015 filed by petitioner Bostik Philippines, Inc. is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice, the Assessment Notices/Demand Letter Nos. 43-195 for VAT and income tax, the Preliminary Collection Notice dated June 2, 2009, and the Demand Before Suit dated November 26, 2014 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

(With Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

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[50] Commissioner of Internal Revenue vs. Fitness By Design, Inc., G.R. No. 215957, November 9, 2016.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

BOSTIK PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 9019

Members:
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

Promulgated:
MAR [illegible]
10:15 a.m.

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SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in granting the Petition for Review filed by Bostik Philippines, Inc. ("Petitioner") for violation of Petitioner's right to due process. However, I dissent with the *ponencia's* reason to do so.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[1], the Supreme Court ruled that the mere issuance of Letter Notice ("LN") and the absence of required Letter of Authority ("LOA") is fatal to any engagement by the Bureau of Internal Revenue (BIR) with a particular taxpayer, to wit:

> "**An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

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1 G.R. No. 222743, April 05, 2017.

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
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> (A) **Examination of Return and Determination of Tax Due.** — After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> xxx xxx xxx (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

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RMO No. 30-2003 was supplemented by RMO No. 42-2003, which laid down the '***no-contact-audit approach***' in the CIR's exercise of its power to authorize any examination of taxpayer and the assessment of the correct amount of tax. The no-contact-audit approach includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayers under the RELIEF System pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. <u>The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer.</u> Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of an LOA with the aid of a computerized/manual matching of taxpayers: documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.

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In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the **necessity of an LOA for the assessment proceeding to be valid**. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,* the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. (Emphasis and underlining ours)

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may

> avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.
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> Contrary to the ruling of the CTA *en banc*, **an LOA cannot be dispensed with** just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination."[2]

Applying afore-quoted jurisprudence to the facts of the case at hand, there was no LOA issued by the Commissioner of Internal Revenue ("Respondent") to Petitioner but merely an LN. Thus, the subsequent notices of assessment issued by Respondent were null and void due to the absence of authority to examine/investigate which violated Petitioner's right to due process.

Moreover, the Preliminary Collection Notice dated June 02, 2009 and Demand Before Suit dated November 26, 2014 become null and void as well as it is well-settled that a void assessment bears no fruit.[3]

From all the foregoing, I vote for the **GRANT** of the Petition for Review filed by Petitioner.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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2 *Emphasis supplied.*

3 Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. No. 159694 & G.R. No. 163581, January 27, 2006.