REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

****

ECOTECHNOVATIONS, INC., Petitioner,	**CTA Case No. 9701**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAR 0 3 2021 10:36 a.m.

x - x

DECISION

UY, *J.*:

Before this Court is a *Petition for Review with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction*[1] filed on October 18, 2017 by petitioner, Ecotechnovation, Inc., against respondent, Commissioner of Internal Revenue, praying for the cancellation of the *Formal Letter of Demand* (FLD) and *Final Assessment Notice* (FAN), both dated June 16, 2017, assessing petitioner for deficiency income tax, value-added tax (VAT), surcharge and interest in the total amount of ₱10,515,521.49 for taxable year (TY) 2012.

THE FACTS

As culled from the records of the case and evidence admitted in Court, the facts are as follows:

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission on September 16, 2011 with

---

[1] Docket – Vol. 1, pp. 10 to 39.

Registration No. CS201116475, and principal office at No. 6-C Santol St., Brgy. Doña Imelda, Quezon City.[2]

Respondent is the duly appointed commissioner of the Bureau of Internal Revenue (BIR), through his authorized representative, who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, and penalties imposed in relation thereto or other matters arising under National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR.[3]

On August 10, 2012, petitioner bought parcels of land from SP Properties, Inc. (or SPPI), with a total area of five thousand three hundred four (5,304) square meters more or less, which is identified as Lot 1, Block 7 and Lot 2, Block 7 of the consolidation subdivision plan, Pcs-04-015427 situated at Barangay Bancal, Municipality of Carmona, Province of Cavite.[4]

The Revenue District Office (RDO) No. 39 then issued Lett*er Notice* (LN) No. 039-RLFTRS-12-00-00348 dated June 25, 2014 and Electronic Letter of Authority (eLA) No. 201100094952 / *Letter of Authority* (LOA) No. 039-2014-00001186 dated November 19, 2014[5], authorizing the examination of petitioner's books of accounts and other accounting records for income tax and value-added tax covering the period from January 1, 2012 to December 31, 2012.[6]

On May 19, 2017, petitioner received a *Preliminary Assessment Notice* (PAN)[7], signed by OIC-Regional Director (RD) Marina C. De Guzman, stating that after conducting a computerized matching on information or data provided by the third party sources, petitioner is found to be liable for deficiency income tax and VAT amounting to ₱7,417,171.73 and ₱3,022,669.68, respectively.

Thereafter, petitioner, through its counsel filed a *Reply Letter*[8] to the PAN on June 6, 2017, praying for reconsideration of the

---

[2] The Parties, *Petition for Review*, Docket – Vol. 1, p. 11.
[3] JSFI, Stipulated Facts, Docket-Vol. 1, par. 1, p. 810.
[4] JSFI, Stipulated Facts, Docket-Vol. 1, par. 3, p. 810.
[5] JSFI, Stipulated Facts, Docket-Vol. 1, par. 2, p. 810.
[6] Exhibit "R-2", Docket – Vol. 2, p. 1173; BIR Records, p.1.
[7] Exhibit "P-22", Docket – Vol. 2, pp. 1061 to 1064; Exhibit "R-10", Docket – Vol. 2, pp. 1130 to 1133.
[8] Exhibit "P-23", Docket-Vol. 2, pp. 1065 to 1068; Exhibit "R-14", Docket – Vol. 2, pp. 1050 to 1053.

assessment and the removal of petitioner's name from the list of taxpayers with deficiencies.

On June 16, 2020, respondent through OIC-RD De Guzman, issued the FLD[9] with FAN[10] and *Details of Discrepancies*[11], assessing petitioner for deficiency income tax and VAT including surcharge and interest for TY 2012 in the aggregate amount of ₱10,515,521.49, broken down as follows:

Tax Type	Total
Income Tax	₱ 7,471,228.93
Value-Added Tax	3,044,292.56
	₱ 10,515,521.49

On July 21, 2017, petitioner received a *Letter*[12] dated July 14, 2017 issued by OIC-RD De Guzman acknowledging petitioner's protest *Reply Letter* to the PAN and informing petitioner that the FLD had been issued.

Thereafter, on August 22, 2017, petitioner, through its counsel, filed a *Protest: Request for Reinvestigation*[13], stating that it did not receive the FLD or any FAN; that it is filing its protest to the alleged FLD, banking that the same findings were made as those mentioned in the PAN dated May 16, 2017; and requesting for the reinvestigation of its alleged deficiency taxes and for the cancellation of the FLD.

On September 21, 2014, petitioner received a *Letter*[14] dated September 8, 2017, issued by OIC-RD De Guzman declaring that the assessment became final, executory and demandable for the alleged failure of the petitioner to file a valid protest.

Aggrieved by respondent's decision, petitioner filed the instant *Petition for Review with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction* [15] before this Court on October 18, 2017.

---

[9] Exhibit "R-12", Docket – Vol. 2, pp. 1138 to 1139.
[10] Exhibits "R-12-B" and "R-12-C", Docket – Vol. 2, pp. 1142 to 1143.
[11] Exhibit "R-12-A", Docket – Vol. 2, pp. 1140 to 1141.
[12] Exhibit "P-24", Docket-Vol. 2, p. 1069; Exhibit "R-15", Docket – Vol. 2, p. 1154.
[13] Exhibit "P-25", Docket-Vol. 2, pp. 1070 to 1074: Exhibit "R-16", Docket – Vol. 2, pp. 1155 to 1159.
[14] Exhibit "P-26", Docket-Vol. 2, p. 1075; Exhibit "R-17", Docket – Vol. 2, p. 1160.
[15] Docket – Vol. 1, pp. 10 to 39.

On October 24, 2017, this Court issued *Summons* requiring respondent to file his Answer[16]. On the same day, petitioner's *Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction* was set for hearing on October 26, 2017.[17]

During the hearing on October 26, 2017, the Court considered petitioner's motion for issuance of temporary restraining order and writ of preliminary injunction as a motion for suspension of collection of taxes under Section 1 of Rule 10 of the Revised Rules of the Court of Tax Appeals. However, petitioner's counsel manifested that he has no witnesses to present and thus, the hearing was reset to January 16, 2018.[18]

On November 10, 2017, respondent filed an *Omnibus Motion for Extension of Time to File Answer and Opposition to the Motion for Suspension of Collection*[19], praying for an extension of thirty (30) days to file his Answer and Opposition to the Motion for Suspension of Collection. In the Resolution[20] dated November 17, 2017, the Court granted respondent's *Omnibus Motion for Extension of Time to File Answer and Opposition to the Motion for Suspension of Collection,* giving respondent an additional period of thirty (30) days from November 10, 2017 or until December 10, 2017 to file his Answer and Opposition to the Motion for Suspension of Collection of Tax.

On December 8, 2017, respondent filed another *Omnibus Motion for Extension of Time to File Answer and Opposition to the Motion for Suspension of Collection*[21], praying for another extension of thirty (30) to file his Answer and Opposition to the Motion for Suspension of Collection. In the Resolution[22] dated December 18, 2017, the Court granted respondent's *Omnibus Motion for Extension of Time to File Answer and Opposition to the Motion for Suspension of Collection,* giving respondent a final and non-extendible period of thirty (30) days from December 10, 2017 or until January 9, 2018 to file his Answer and Opposition to the Motion for Suspension of Collection of Tax.

---

[16] Docket – Vol. 1, p. 103.
[17] Docket – Vol. 1, p. 105.
[18] Minutes of Hearing and Order, Docket – Vol. 1, pp. 107 to 110.
[19] Docket – Vol. 1, pp. 112 to 115.
[20] Docket – Vol. 1, p. 230.
[21] Docket – Vol. 1, pp. 367 to 370.
[22] Docket – Vol. 1, p. 372.

Respondent filed his *Answer* on January 9, 2018[23], interposing special and affirmative defenses, which include, among others, the following, to wit: that despite petitioner's purchase of property in August 2012, no property, plant and equipment is shown in its Annual income Tax Return for TY 2012; that petitioner sold the said purchased property during TY 2012 and is therefore subject to income tax and VAT; that the lack of revalidation of LOA does not preclude the audit of the taxpayer nor invalidate the LOA; that deficiency tax assessment could be made since petitioner failed to file the VAT returns and/or failed to report income in its ITR; and that the requisites for the issuance of a writ of preliminary injunction are not present.

During the hearing of petitioner' Motion on January 16, 2018, petitioner presented the following witnesses : (1) James Jeffrey T. Chua who testified that he is the incumbent Vice-president of petitioner, and he stated the reasons why petitioner failed to maintain significant business and that there are intentions and pending negotiations happening for the corporation; and (2) Benigno S. Floralde, Jr., who testified that he is the Accounting/Finance Manager of petitioner, and he said that petitioner has no significant business transactions since its conception on 2012 and that an unwarranted collection by the BIR would result to petitioner's cessation of business. Upon termination of the testimonies of petitioner's witnesses, the Court set the Pre-Trial Conference on February 8, 2018.[24]

However, the Pre-Trial Conference was reset several times, upon motions of respondent on January 31, 2018[25]; March 20, 2018[26]; and May 16, 2018.[27] Meanwhile, petitioner filed its *Pre-Trial Brief* on February 2, 2018. [28]

---

[23] Docket – Vol. 1, pp. 373 to 381.
[24] *Order* dated January 16, 2018, Docket – Vol. 1, pp. 389 to 390.
[25] *Motion to Reset Pre-Trial Conference* filed on January 31, 2018 was granted in the Order dated February 2, 2018 and Pre-Trial Conference was reset to March 22, 2018; Docket – Vol. 1, pp. 396 to 398; and Docket – Vol. 1, p. 607, respectively.
[26] *Motion to Reset Pre-Trial Conference* filed on March 20, 2018 was granted in the Order dated March 21, 2018 and Pre-Trial Conference was reset to May 24, 2018; Docket – Vol. 1, pp. 642 to 644 and [26] Docket – Vol. 1, p. 645 respectively.
[27] *Motion to Reset Pre-Trial Conference* filed on May 16, 2018 was granted in the Order dated May 23, 2018 and Pre-Trial Conference was reset to June 21, 2018; Docket – Vol. 1, pp. 696 to 698 and Docket – Vol. 1, p. 709, respectively.
[28] Docket – Vol. 1, pp. 401 to 411.

On March 22, 2018, petitioner filed its *Formal Offer of Evidence*[29] in relation to its *Motion for Suspension of Collection of Taxes*. Respondent, however, failed to file its comment thereto, as per *Records Verification Report*[30] dated April 18, 2018 issued by the Judicial Records Division of this Court.

In the Resolution[31] dated May 22, 2018, the Court granted petitioner's *Motion for Suspension of Collection of Tax* and ordered petitioner to deposit a cash bond in the amount of ₱10,515,521.49 or post a GSIS bond or a bond from other reputable surety company duly accredited by the Supreme Court, in the amount equivalent to one and a half (1 ½) of the amount being collected or ₱15,773,282.24.

On June 7, 2018, petitioner filed a *Motion (For Reduction of Bond and for Extension of Time to Furnish Bond)*[32] praying for the reduction of the amount of bond and for petitioner to be given an additional time of thirty (30) days from June 8, 2018 or until July 8, 2018 to furnish the bond.

On June 18, 2018, respondent filed his *Pre-Trial Brief*.[33]

In the Resolution[34] dated June 20, 2018, the Court (1) partially granted petitioner's *Motion (For Reduction of Bond and for Extension of Time to Furnish Bond)*; (2) set the case (petitioner's *Motion for Reduction of Bond*) for Preliminary Hearing; (3) and gave petitioner an additional period of thirty (30) days from June 8, 2018 or until July 8, 2018 within which to furnish bond.

During the hearing held on June 28, 2018, the parties agreed that in lieu of hearing of petitioner's *Motion for Reduction of Bond*, they shall be filing their respective Memorandum within fifteen (15) days. The Court likewise set the Pre-Trial Conference to August 2, 2018 and gave respondent's counsel not later than July 27, 2018 to forward the BIR Records of this case.[35]

---

[29] Docket – Vol. 1, pp. 647 to 654.
[30] Docket – Vol. 1, p. 655.
[31] Docket – Vol. 1, pp. 701 to 706.
[32] Docket – Vol. 1, pp. 710 to 714.
[33] Docket – Vol. 1, pp. 757 to 761.
[34] Docket – Vol. 1, p. 764.
[35] Minutes of the Hearing held on June 28, 2018, Docket – Vol. 1, pp. 765 to 766.

On July 9, 2018, petitioner filed a *Motion [For the Second Extension of Time to Furnish Bond]*[36] praying that the Court grant petitioner's (1) Motion to reduce the amount of bond required to be furnished; and (2) Second Motion to extend time to furnish the required bond.

On July 13, 2018, petitioner filed its *Memorandum.*[37]

In the Resolution[38] dated July 24, 2018, the Court noted respondent's Pre-Trial Brief filed on June 18, 2018; granted petitioner's *Motion [For the Second Extension of Time to Furnish Bond];* and gave petitioner a fresh period of twenty (20) days from receipt of the Court's resolution on petitioner's *Motion (For the Reduction of Bond)* filed on June 7, 2018, within which to furnish bond.

On July 27, 2018, respondent filed a *Motion for Extension of Time to Elevate BIR Records*[39], and the same was granted by the Court in the Order dated August 1, 2018.

After the *Pre-Trial Conference* held on August 2, 2018[40], the parties filed their *Joint Stipulation of Facts and Issues*[41] on August 23, 2018. The same was approved by the Court in the Resolution[42] dated September 3, 2018 and Pre-Trial was terminated. Thereafter, the Court issued a *Pre-Trial Order* on October 8, 2018[43].

In the Resolution[44] dated October 8, 2018, the Court granted petitioner's *Motion (For the Reduction of Bond)*, treated as a Motion to Dispense with or Reduce the Bond; and dispensed with the posting of a cash or surety bond required under Section 11 of RA No. 1125, as amended.

Thereafter, trial on the merits ensued.

---

[36] Docket – Vol. 1, pp. 769 to 772.
[37] Docket – Vol. 1, pp. 774 to 780.
[38] Docket – Vol. 1, p. 784.
[39] Docket – Vol. 1, pp. 786 to 789.
[40] Minutes of the Hearing held on August 2, 2018, Docket – Vol. 1, pp. 797 to 799.
[41] Docket – Vol. 1, pp. 810 to 818.
[42] Docket – Vol. 1, p. 820.
[43] Docket - Vol. 2, pp. 837 to 845.
[44] Docket – Vol. 2, pp. 847 to 853.

Petitioner presented an additional witness: James Michael T. Chua[45] and waived the presentation of Wendell D. Zaragosa, the supposed last witness for the petitioner.

On December 3, 2018, petitioner filed *via* registered mail its *Formal Offer of Evidence*[46], and received by the Court on December 6, 2018. On January 8, 2019, a *Records Verification Report*[47] was issued by the Judicial Records Division stating that respondent failed to file his comment on petitioner's *Formal Offer of Evidence.*

In the *Resolution*[48], dated February 27, 2019 the Court admitted some of petitioner's evidence but denied several exhibits for the following reasons: (1) failure to submit the duly marked exhibits; (2) failure to present the originals for comparison; (3) for not being found in the records of the case; and (4) for failure to identify the exhibit.

On March 26, 2019, petitioner filed a *Motion for Reconsideration (To the CTA Resolution dated 28 February 2019[49])*[50], praying that the denied exhibits be allowed admission by the Court. On May 10, 2019, a *Records Verification Report*[51] was issued by the Judicial Records Division, stating that respondent failed to file his comment on petitioner's *Motion for Reconsideration (To the CTA Resolution dated 28 February 2019).*

In the Resolution[52] dated June 17, 2019, the Court partially granted petitioner's *Motion for Reconsideration (To the CTA Resolution dated 28 February 2019)* admitting some of petitioner's exhibits but denied the others: for failure to submit the duly marked exhibits; for not being found in the records of the case; and for failure to identify the exhibit.

During the presentation of respondent's evidence, respondent presented two (2) witnesses, namely: (1) Revenue Officer (RO) Margie R. De Castro[53]; and (2) RO Rex D. Escala[54].

---

[45] *Judicial Affidavit of James Michael T. Chua (Corporate Secretary of Ecotechnovations, Inc.),* Exhibit "P-41", Docket – Vol. 1, pp. 583 to 599.
[46] Docket – Vol. 2, pp. 880 to 890.
[47] Docket – Vol. 2, p. 897.
[48] Docket – Vol. 2, pp. 920 to 922.
[49] Should be February 27, 2018.
[50] Docket – Vol. 2, pp. 933 to 952.
[51] Docket – Vol. 2, p. 1092.
[52] Docket – Vol. 2, pp. 1096 to 1101.
[53] *Judicial Affidavit of Margie R. De Castro*, Exhibit "R-18", Docket – Vol. 2, pp. 1164 to 1170.
[54] *Judicial Affidavit*, Exhibit "R-19", Docket – Vol. 2, pp. 1122 to 1126.

NM

Thereafter, respondent filed his *Formal Offer Documentary of Evidence*[55] on November 11, 2019. On January 9, 2020, the Court issued a Resolution[56] admitting some of respondent's evidence but denying the other exhibits for failure to present the originals for comparison.

In the Resolution dated March 12, 2020,[57] this case was submitted for Decision, taking into consideration petitioner's *Memorandum*[58] filed on February 21, 2020, without respondent's Memorandum as per *Records Verification Report*[59] dated March 5, 2020.

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the issues for this Court's resolution are as follows:

"II.

ISSUES

1. Whether or not the petitioner is liable to pay the deficiency income tax in the amount of ₱7,471,228.93 and deficiency Value-Added Tax in the amount of ₱3,044,292.56 for the taxable year 2012;

2. Whether or not the assessment became final and executory for failure of the petitioner to file a protest; and

3. Whether or not the authority of the BIR to assess the petitioner for all internal revenue taxes for the taxable year 2012 has already prescribed."[60]

---

[55] Docket – Vol. 2, pp. 1231 to 1238.
[56] Docket – Vol. 2, pp. 1250 to 1252.

[57] Docket – Vol. 2, p. 1288.
[58] Docket – Vol. 2, pp. 1253 to 1287.
[59] Docket – Vol. 2, p. 1289.
[60] Issues, *JSFI*, Docket – Vol. 1, p. 811.

Petitioner's arguments:

Petitioner contends that the sole amount of money subject of the instant controversy is the of ₱10,608,000.00 worth of transaction arising from the sale of a parcel of land between SPPI (seller) and the petitioner (buyer). The said amount was referred to in the computation of the PAN and FAN and the same was derived from the Summary List of Sales submitted by SPPI to the BIR. On the basis thereof, respondent allegedly made an assessment against the petitioner for not paying the income taxes and VAT.

According to petitioner, such amount was erroneously considered by respondent as income of petitioner since it is the buyer and not the seller of the subject properties. Thus, any gain or profit from the sale transaction should not be considered as income of petitioner.

As regards to respondent's attempts to make it liable to pay income tax and VAT on the ground that it failed to file a valid protest, petitioner claims that the pieces of evidence presented and admitted in court proves otherwise because it has filed a valid protest on time and in good faith.

Further, petitioner claims that there was improper service of the FLD and that the assessment was made without a valid authority. Despite all these, petitioner allegedly acted in good faith and with diligence by filing the necessary protests as soon as the assessment has come to their attention. Therefore, petitioner should allegedly not be held liable to pay an erroneous assessment for being violative of its right to due process.

Finally, petitioner maintains that the three (3) year period to assess petitioner for taxable year 2012 has already prescribed because it did not file a false or fraudulent return. The contents of BIR Form No. 1702 filed on April 13, 2013 and May 23, 2013 are true and correct. It cannot be said that it did not declare the amount of P10,608,000.00 from the sale of the parcels of land between the petitioner and SPPI because in said transaction, petitioner is the buyer. There was allegedly no deviation from the truth, nor intentional or deceitful entry with intent to evade payment of IT and VAT due it.

Respondent's counter-arguments:

Respondent counter-argues that petitioner gained an income from the sale of property purchased in TY 2012. Allegedly, no *Property Plant and Equipment* or *Investment Property* was reflected in its 2012 AITR despite the purchase of the subject property.

It is respondent's position that petitioner purchased and sold the same property in TY 2012; and that income was gained from the sale of the subject property. Thus, income tax and VAT are due from the said sale transaction.

In addition, respondent submits that petitioner failed to file the VAT Returns and failed to report the subject income in its 2012 AITR.

As regards the authority of the ROs, respondent avers that the lack of revalidation of the LOA does not preclude the audit of the taxpayer nor invalidate the LOA.

Respondent finally contends that the requisites for the issuance of a *Writ of Preliminary Injunction* are not present in this case.

THE COURT'S RULING

Before resolving the *first issue* on whether or not the petitioner is liable to pay deficiency income tax and deficiency Value-Added Tax for taxable year 2012, the Court deems it appropriate to first resolve the *second issue* on whether or not the subject assessment has become final and executory for petitioner's alleged failure to file a protest to the FLD/FAN.

Petitioner argues that it did not receive the subject FLD/FAN because respondent failed to properly serve the said assessment notices.

Thus, in resolving the issue of petitioner's failure to protest the FLD/FAN, it is foremost crucial to determine whether the FLD/FAN was validly served by respondent and actually received by petitioner.

Section 228 of the NIRC of 1997, as amended, lays down the procedure in the issuance of tax deficiency assessment, viz:

> "**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 <u>not</u> 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."** (*Emphasis supplied.*)

To implement the foregoing provisions, Revenue Regulation (RR) No. 12-99, as amended by RR No. 18-2013, was issued which specify the due process requirement to be observed in the issuance and service of deficiency tax assessments notices, *to wit*:

> "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:
>
> xxx xxx xxx
>
> 3.1.3 ***Formal Letter of Demand and Final Assessment Notice.*** — **The Formal Letter of Demand and Final Assessment Notice <u>shall</u> be issued by the Commissioner or his duly authorized representative.** The FLD/FAN 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 assessment shall be void (see illustration in ANNEX "B" hereof)
>
> xxx xxx xxx
>
> "3.1.6 *Modes of Service.* — The notice (PAN/<u>**FLD/FAN**</u>/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is <u>not practicable</u>, the notice shall be served by substituted service or by mail.

(ii) **Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:**

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

<u>If no person is found in the party's registered or known address</u>, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. <u>Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses</u>.

<u>Should the party be found at his registered or known address or any other place but refuse to receive the notice</u>, the revenue officers concerned <u>shall</u> bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. <u>Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.</u>

> *'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.*
>
> (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.
>
> xxx xxx xxx." *(Emphasis Ours)*

Based on the foregoing, BIR notices may be served through certain modes: (1) primarily, through personal service by delivering personally a copy of the notice; and in case personal service is not practicable, the notice shall be served either (2) by substituted service, or (3) by mail.

Substituted service of the subject FLD/FAN was not validly effected by respondent.

In the instant case, respondent resorted to substituted service of the subject FLD/FAN.

As may be gleaned from the afore-quoted Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, substituted service may be availed of **<u>only</u>** when it is shown that personal service is not practicable.

It is further provided that when the party is not present at the registered or known address by leaving the assessment notices at the party's registered address, with the "**<u>party's clerk</u>**" or with a "**<u>person having charged</u>**" thereof. In case no person is found in the address or if the party refuses to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence; and that **<u>such fact</u>** shall be contained in the bottom portion of the notice, as well as the <u>names</u>, <u>official position</u> and <u>signatures</u> of the witnesses.

In the instant case, to prove that the FLD/FAN was served to petitioner by substituted service, respondent presented the following:

1. *Affidavit of Service* dated June 20, 2017, executed by RO Rex D. Escala and GS Alfonso C. Aguja, stating that the FLD/FAN was served by substituted service to William S. Aplacador (Exhibit R-13); [61]

2. Photocopy of the identification card of William S. Aplacador Exhibit "R-13-A"; [62]

3. Photocopy of the identification card of Salvador M. Calupad Junior Exhibit "R-13-B"[63]

4. Photocopy of the identification card of Ian Adriatico Exhibit "R-13-C".[64]

However, the Court cannot consider respondent's evidence marked as Exhibits "R-13-A", "R-13-B" and "13-C" as these documents were denied admission by the Court for failure to present the originals for comparison. Thus, no evidentiary value can be given to said exhibits by the Court.

Furthermore, the Court finds that respondent failed to comply with the procedures for properly effecting substituted service of the FLD/FAN.

First, it must be noted that substituted service may be availed of only when it is shown that personal service is not practicable. However, no proof was presented by respondent to establish that personal service of the subject FLD/FAN was not practicable in this case.

Second, there is no showing that the subject FLD/FAN was served to petitioner's clerk or a "person having charge" of petitioner's office as required under Section 3.1.6 of RR No. 12-99, as amended. A perusal of the *Affidavit of Service,* merely states that the FLD/FAN was served by substituted service to a certain William S. Aplacador. There is however no showing that Aplacador is petitioner's "clerk" or a "person having charged". In fact, during the cross-examination of

---

[61] Exhibit "R-13", Docket – Vol. 2, p. 1146; BIR Records, p. 103.
[62] Exhibit "R-13-A", Docket – Vol. 2, p. 1147; BIR Records, p. 95.
[63] Exhibit "R-13-B", Docket – Vol. 2, p. 1148; BIR Records (no page number).
[64] Exhibit "R-13-C", Docket – Vol. 2, p. 1149; BIR Records, p. 95.

MO

respondent's witness, it was revealed that William S. Aplacador is petitioner's security guard. Pertinent portions of said testimony are quoted as follows:

> **"Atty. Perez:** So is **Mr. William S. Aplacador** the president of the company?
>
> **Witness Escala:** No sir.
>
> **Atty. Perez:** Would you know what is his position in the company?
>
> **Witness Escala:** He is the one who is available on that premise when the time I have served the notice and witness.
>
> **Atty. Perez:** What is his position Mr. Witness, would you know?
>
> **Witness Escala:** **<u>Security Guard</u>"**[65] *(Emphasis and underscoring supplied.)*

Evidently, respondent failed to comply with the condition that the assessment notice should be left with petitioner's "clerk" or "person having charge" of the office.

<u>Third</u>, a closer examination of the FLD/FAN shows that it merely contains the notation: <u>"Constructively served on 06-16-07"</u>[66], without indicating the required details including the relevant facts surrounding the substituted service. Thus, the Court cannot ascertain whether respondent's resort to substituted service was proper and in accordance with the conditions set forth in the rules.

<u>Finally</u>, the Court notes that only the names and signature of the alleged barangay officers are shown in the FLD/FAN. Their official positions are **<u>not indicated</u>** as required under the rules.

---

[65] Transcript of Stenographic Notes (TSN) during the hearing held on October 24, 2019, pp. 13 to 14.

[66] Exhibits "R-12-B" and "R-12-C", Docket – Vol. 2, pp. 1142 to 1143.

It is evident from the foregoing that respondent failed to observe the requirements necessary to validly effect substituted service of the subject FLD.

Respondent failed to prove that petitioner actually received the FLD/FAN.

Furthermore, respondent failed to satisfactorily prove that the FAN/FLD was actually received by petitioner.

In tax assessment, due process requires that the taxpayer must actually receive the assessment. The case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*,[67] where the Supreme Court adopted the CTA's decision, is instructive, viz.:

> "**Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.** The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). . .
>
> xxx xxx xxx
>
> What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative..." (*Emphasis supplied.*)

---

[67] G.R. No. 157064, August 7, 2006.

Based on the foregoing jurisprudential pronouncement, if the taxpayer denies having received the assessment notices, it is incumbent upon respondent to prove by competent evidence that the assessment notices were indeed received by the taxpayer.

In view of the denial of petitioner or the claim that it did not receive the FLD/FAN, it became incumbent upon respondent to prove the receipt thereof by petitioner.

In the instant case, respondent failed to establish that the FLD/FAN was actually received by petitioner. It bears reiterating that the *Affidavit of Service* merely states that the FAN was served by substituted service to Aplacador, without indicating whether Aplacador is the "clerk" or a "person having charged" of petitioner's office. Further, there is no showing that Aplacador was authorized to receive the FLD/FAN on behalf of petitioner. Notably, the *Reply Letter*[68] to PAN which was received by respondent on June 6, 2017, clearly indicated that a certain Lorence Parina had been authorized by petitioner to file or receive documents.

Hence, the service to Aplacador cannot be considered as valid service to petitioner.

Taking all the foregoing into consideration, the Court finds that no competent evidence was presented by respondent to prove the actual receipt of petitioner of the FLD/FAN. It must be emphasized that strict compliance with due process requirement is necessary for a valid tax assessment. Having failed to prove compliance thereof, respondent denied petitioner of its right to due process. 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 the taxpayer's right to due process.[69]

Accordingly, the deficiency tax assessments against petitioner are null and void for having been issued in violation of the due process requirements under Section 228 of the NIRC of 1997 and RR No. 12-99, as amended by RR No. 18-2013.

---

[68] Exhibit "P-23", Docket-Vol. 2, pp. 1065 to 1068; Exhibit "R-14", Docket – Vol. 2, pp. 1050 to 1053.

[69] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010, citing *Tupas vs. Court of Appeals*, G.R. No. 89571, February 6, 1991.

MO

Apropos, it is well-settled that a void assessment bears no valid fruit.[70]

With the foregoing ruling, it becomes unnecessary to address the remaining issues raised by the parties in this case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices bearing Demand No. 39-2017-B055-12, both dated June 16, 2017 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

---

[70] *Commissioner of Internal Revenue vs. Azucena T. Reyes; Azucena T. Reyes vs. Commissioner of Internal Revenue,* G.R. Nos. 159694 & 163581, January 27, 2006.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice