Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

ARTURO E. VILLANUEVA, JR.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8935
For*:* Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

AUG 18 2017 : 2:10pm

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review[1] filed on November 25, 2014 by Arturo E. Villanueva, Jr. as petitioner, against respondent Commissioner of Internal Revenue (CIR), pursuant to Section 7(a)(2)[2] of Republic Act (RA) No. 1125[3], as amended, as well as Section 3(a)(2)[4]

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[1] Docket, pp. 6-16.

[2] Sec. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees of 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial; xxx.

[3] Act Creating the Court of Tax Appeals.

[4] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section

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of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

Petitioner prays that the Letter dated October 14, 2014 that required the payment of deficiency income tax and value-added tax (VAT), and all delinquency increments incident to his tax liabilities for taxable year 2006 in the aggregate amount of ₱30,723,951.10 be nullified, and that an order be issued directing the CIR to cancel the said deficiency tax assessments.

Petitioner is engaged in the business of providing hauling services under the name Producers Connection Logistics, with registered address at No. 324 Younger St., Balut, Tondo, Manila.[6]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including the power to decide disputed assessments and cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

For taxable year 2006, petitioner filed with the Bureau of Internal Revenue his Annual Income Tax Return (ITR) and Quarterly VAT Returns, among other tax returns, on the dates prescribed by law.[7]

On July 11, 2008, petitioner received Letter Notice No. 029-WE-I-00-00041 dated June 20, 2008.[8] Meanwhile, on May 14, 2009, he

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2228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; xxx.

[5] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] Par. 2, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 262.

[7] Par. 3, Stipulated Facts, JSFI, Docket, p. 263.

[8] Par. 4, Stipulated Facts, JSFI, Docket, p. 263.

received a follow-up letter (Tax Reconciliation System).[9] Thereafter on June 15, 2009, petitioner received Letter of Authority No. 2001-00012853 dated June 8, 2009 and the First Request for Presentation of Records.[10]

Petitioner then received the 1st Call-up dated May 23, 2011 from Revenue District Office (RDO) No. 29 for the collection of deficiency income tax and VAT in the amounts of ₱23,349,944.59 and ₱7,374,006.51, respectively.[11]

On June 21, 2011, petitioner received a Final Notice Before Seizure (FNBS) dated June 6, 2011, issued by RDO No. 29 of Revenue Region No. 6-Manila.[12]

On July 13, 2011, petitioner sent a reply-letter to RDO No. 29, seeking clarification with regard to the 1st Call-up and FNBS, and requesting a clarification and re-investigation of his case.[13]

On September 6, 2011, petitioner received a letter dated August 31, 2011 from the Regional Director of Revenue Region No. 6-Manila.[14]

Petitioner received a Collection Notice dated October 29, 2012 from the BIR.[15] Petitioner then requested for the revocation of the Collection Notice on November 14, 2012, but the same was denied in a letter issued by respondent through the Chief of Collection Division of Revenue Region No. 6-Manila.[16]

On December 13, 2013, petitioner sent a letter dated December 11, 2013 to the Regional Director of Revenue Region No. 6-Manila, requesting reconsideration of the denial of the request for revocation of the collection notices issued by respondent.[17] Then, on October 31, 2014, petitioner received a letter dated October 14, 2014, issued by

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[9] Par. 5, Stipulated Facts, JSFI, Docket, p. 263.
[10] Par. 6, Stipulated Facts, JSFI, Docket, p. 263.
[11] Par. 7, Stipulated Facts, JSFI, Docket, p. 263.
[12] Par. 8, Stipulated Facts, JSFI, Docket, p. 263.
[13] Par. 9, Stipulated Facts, JSFI, Docket, p. 263.
[14] Par. 10, Stipulated Facts, JSFI, Docket, p. 263.
[15] Par. 11, Stipulated Facts, JSFI, Docket, p. 263.
[16] Par. 12, Stipulated Facts, JSFI, Docket, p. 263.
[17] Par. 13, Stipulated Facts, JSFI, Docket, p. 263.

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the Regional Director of Revenue Region No. 6-Manila, denying petitioner's request for reconsideration and reinvestigation.[18]

Accordingly, on November 25, 2014, petitioner filed the instant Petition for Review[19] before this Court. Respondent filed his Answer[20] thereto on January 13, 2015.

The case was set for pre-trial conference on April 14, 2015.[21] Petitioner and respondent both filed their respective Pre-Trial Briefs[22] on April 8, 2015.

During the pre-trial conference, it was admitted by both parties that the FAN was issued only sometime in 2011 and that no Waiver of the Statute of Limitation has been issued by petitioner for taxable year 2006. In view thereof, the Court directed the parties to submit their respective Memoranda containing their positions on whether or not the right of respondent to issue the FAN has prescribed, and if so, the propriety of dismissing the case.[23] Accordingly, respondent submitted his position paper on April 22, 2015[24], while petitioner submitted his position paper on April 29, 2015[25].

It is noteworthy that during the hearing on April 14, 2015, respondent's counsel agreed that the prescriptive period to assess is three (3) years.[26] However, in his position paper, respondent claims that the prescriptive period should be ten (10) years as the case involves a substantial under-declaration, amounting to falsity or fraud on petitioner's part.[27]

The Court issued a Resolution[28] on June 9, 2015, holding that the arguments raised by both parties involve evidentiary matters requiring a full-blown trial, and that the Court finds no valid ground to

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[18] Par. 14, Stipulated Facts, JSFI, Docket, pp. 263-264.
[19] Docket, pp. 6-16.
[20] Docket, pp. 39-46.
[21] Notice of Pre-Trial Conference, Docket, p. 47.
[22] Petitioner's Pre-Trial Brief, Docket, pp. 52-59; Respondent's Pre-Trial Brief, Docket, pp. 60-65.
[23] Resolution dated April 14, 2015, Docket, pp. 71-72.
[24] Respondent's Position Paper, Docket, pp. 73-77.
[25] Petitioner's Position Paper, Docket, pp. 78-83.
[26] Resolution dated June 9, 2015, Docket, pp. 139-140.
[27] Respondent's Position Paper, Docket, pp. 73-77.
[28] Resolution dated June 9, 2015, Docket, pp. 137-143.

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dismiss the case, to render a judgment based on the pleadings, or to render a summary judgment at that stage of the proceedings. Hence, trial ensued.

On September 9, 2015, the parties filed their Joint Stipulation of Facts and Issues[29], which was adopted by the Court in the Pre-Trial Order[30] dated October 27, 2015.

During trial, petitioner testified[31] and formally offered his evidence[32] on February 4, 2016.

In a Resolution[33] dated March 16, 2016, the Court admitted Exhibits "P-1", "P-2", "P-2-a", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", and "P-27" as petitioner's evidence. However, the Court denied the admission of Exhibit "P-15" for failure to correspond with the description stated in the formal offer of documentary evidence.

Accordingly, petitioner filed his Amended Formal Offer of Evidence[34] on April 18, 2016, praying that the description of Exhibit "P-15" be changed. The Court granted the same on April 19, 2016.[35]

The documentary evidence offered by petitioner are as follows:

Exhibit:	Description:
P-1	"Tentative" Annual Income Tax Return for Taxable Year 2006
P-2 & P-2-a	"Final Amended" Annual Income Tax Return for Taxable Year 2006 and Audited Financial Statements
P-3	Annual Income Tax Return for Taxable Year 2007
P-4	Annual Income Tax Return for Taxable Year 2008
P-5	Annual Income Tax Return for Taxable Year 2009

[29] Docket, pp. 262-267.
[30] Docket, pp. 281-289.
[31] Minutes of the Hearing dated November 12, 2015, Docket, pp. 290-291.
[32] Formal Offer of Documentary Evidence, Docket, pp. 301-306.
[33] Docket, pp. 458-459.
[34] Docket, pp. 466-467.
[35] Resolution dated April 19, 2016, Docket, pp. 474-475.

P-6	Annual Income Tax Return for Taxable Year 2010
P-7	Annual Income Tax Return for Taxable Year 2011
P-8	Annual Income Tax Return for Taxable Year 2012
P-9	Annual Income Tax Return for Taxable Year 2013
P-10	Annual Income Tax Return for Taxable Year 2014
P-11	First Quarter VAT Return for Taxable Year 2006
P-12	Second Quarter VAT Return for Taxable Year 2006
P-13	Third Quarter VAT Return for Taxable Year 2006
P-14	Fourth Quarter VAT Return for Taxable Year 2006
P-15	Letter Notice No. 029-WE-I-06-00-00041 dated 20 June 2008
P-16	Follow-Up Letter (Tax Reconciliation System)
P-17	Letter of Authority No. 2001-00012853 dated 8 June 2009
P-18	First Request for Presentation of Records
P-19	1st Call-up dated 23 May 2011
P-20	Final Notice Before Seizure dated 06 June 2011
P-21	Undated letter duly received by Revenue District Office No. 29 on July 13, 2011
P-22	Letter dated 31 August 2011
P-23	Collection Notice dated 29 October 2012
P-24	Letter dated 12 November 2012
P-25	Undated letter issued by the Chief-Collection Division of BIR-Manila
P-26	Letter dated 11 December 2013
P-27	Letter dated 14 October 2014

Meanwhile, respondent presented Mr. Winchester M. Aritao[36] and Mr. Armando C. Macatangay[37] as his witnesses. He also formally offered his evidence consisting of Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-11-A", "R-12", "R-12-A", "R-13", and "R-13-A" on May 26, 2016,[38] which the Court all admitted as respondent's evidence.

Respondent formally offered the following exhibits, to wit:

Exhibit:	Description:
R-1	Second Request for Presentation of Records dated June 25, 2009

[36] Minutes of the Hearing dated April 19, 2016, Docket, pp. 468-471.
[37] Minutes of the Hearing dated May 3, 2016, Docket, pp. 476-479.
[38] Docket, pp. 486-491.

R-2	Final Request for Presentation of Records Before the Issuance of Subpoena Duces Tecum dated July 10, 2009
R-3	Post Reporting Notice dated October 07, 2009
R-4	Revised Post Reporting Notice dated December 08, 2009
R-5	Preliminary Assessment Notice with Details of Discrepancies dated December 28, 2015
R-6	Assessment Notice No. 29-06-IT-1217 dated January 24, 2011
R-7	Assessment Notice No. 29-06-VT-1218 dated January 24, 2011
R-8	Formal Letter of Demand dated January 24, 2011
R-9	Registry Receipt No. 921958 dated December 28, 2010
R-10	Registry Receipt No. 903220 dated January 24, 2011
R-11	Judicial Affidavit of Revenue Officer Eden R. Alolod executed on June 01, 2015
11-A	Name and signature of Revenue Officer Eden R. Alolod on the middle right portion of page 5 of her Judicial Affidavit executed on June 01, 2015
R-12	Judicial Affidavit of Revenue Officer Winchester M. Aritao executed on May 28, 2015
12-a	Name and signature of Revenue Officer Winchester M. Aritao on the lower right portion of page 3 of his Judicial Affidavit executed on May 28, 2015
R-13	Judicial Affidavit of Armando C. Macatangay executed on June 01, 2015
13-A	Name and signature of Armando C. Macatangay on the upper right portion of page 3 of his Judicial Affidavit executed on June 01, 2015

As directed by the Court, respondent submitted his Memorandum[39] on September 19, 2016 and petitioner filed his Memorandum[40] on September 20, 2016.

Hence, on September 26, 2016, the case was deemed submitted for decision.[41]

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[39] Respondent's Memorandum, Docket, pp. 507-520.
[40] Petitioner's Memorandum, Docket, pp. 521-533.
[41] Resolution dated September 26, 2016, Docket, p. 535.

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The parties submitted the following issues[42] for this Court's disposition:

> "1. Whether or not the right of the government to collect the deficiency Income Tax and Value-Added Tax assessment has prescribed.
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> 2. Whether or not the subject tax deficiency assessments are null and void for its complete failure to comply with the requirements of due process.
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> 3. Whether or not the notice of assessments were properly served upon the petitioner within the three-year prescriptive period.
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> 4. Whether Assessment Notice No. 29-06-IT-1217, Assessment Notice No. 29-06-VT-1218, and Formal Letter of Demand, all dated 24 January 2011, for deficiency Income Tax and Value-Added Tax amounting to Php23,349,944.59 and Php7,374,006.51, respectively, including increments, have become final and demandable.
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> 5. Whether Petitioner is liable for deficiency Income Tax and Value-Added Tax for taxable year 2006."

The above-enumerated issues can be summarized into one main issue:

> **Whether petitioner is liable for deficiency income tax and value-added tax for taxable year 2006.**

Petitioner insists that he is not liable for the subject deficiency taxes because he never received any notice of assessment as required under Revenue Regulations (RR) No. 12-99. Hence, the requirements of due process were not complied with and respondent should not be

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[42] Issues to be Tried and Resolved, JSFI, Docket, p. 266.

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allowed to enforce the collection of the subject deficiency taxes against petitioner.

Petitioner likewise claims that the deficiency tax assessment is void because he was not informed of the factual and legal bases of the assessment as required under Section 228 of the NIRC of 1997, as amended.

Moreover, petitioner contends that the assessment is barred by the three-year prescriptive period rule, as petitioner was not served with a notice of assessment within such period. He further argues that the exceptions to the three-year period rule do not apply to the case at bar. Consequently, the subject deficiency tax assessments are no longer valid and effective for having been issued after the lapse of the three-year prescriptive period.

Meanwhile, in his Answer[43], respondent asserts that the subject assessment is valid and correct and that petitioner has the burden of proof to impugn its validity. He avers that the assessments were issued in the regular course and within the reglementary period to assess, as the PAN dated December 28, 2010, the Assessment Notice Nos. 29-06-IT-1217 and 29-06-VT-1218, and the FLD, all dated January 24, 2011, were issued and served via registered mail to petitioner at his registered address on December 28, 2010 and January 24, 2011. Respondent insists that despite petitioner's receipt of the FAN and the FLD with Details of Discrepancies, petitioner did not file any administrative protest required under Section 228 of the NIRC of 1997, as amended, and thus, the assessments have become final, executory, and demandable.

Moreover, as earlier mentioned, during the hearing on April 14, 2015, respondent's counsel agreed that the prescriptive period to assess is three (3) years.[44] Nonetheless, in his position paper and memorandum, respondent claims that the prescriptive period should be ten (10) years as the case involves a substantial under-declaration, amounting to falsity or fraud on petitioner's part.[45]

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[43] Docket, pp. 39-46.
[44] Resolution dated June 9, 2015, Docket, pp. 139-140.
[45] Respondent's Position Paper, Docket, pp. 73-77; Respondent's Memorandum, Docket, pp. 507-520.

Section 203 of the NIRC of 1997, as amended, provides that the government can assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return, or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three (3)-year prescriptive period is invalid and ineffective. Section 203 of the NIRC of 1997, as amended, is quoted hereunder for ready reference:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Nevertheless, as can be gleaned from Section 203 of the NIRC of 1997, as amended, there are certain exceptions to the period of limitation of assessment and collection of taxes. Section 222 of the NIRC of 1997, as amended, provides that:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall**

be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided, however,* That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree." *(Emphasis supplied)*

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[46], the Supreme Court held:

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[46] G.R. No. 128315, June 29, 1999.

> "To start with, **an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent *per annum,* or such higher rates as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
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> **The issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it. Section 203 of the NIRC provides that internal revenue taxes must be assessed within three years from the last day within which to file the return.** Section 222, on the other hand, specifies a period of ten years in case a fraudulent return with intent to evade was submitted or in case of failure to file return. Also, Section 228 of the same law states that said assessment may be protested only within thirty days from receipt thereof. Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.
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> **It should also be stressed that the said document is a notice duly sent to the taxpayer. Indeed, an assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer.**" *(Emphasis supplied)*

Based on the foregoing, it can be inferred that Section 228 of the NIRC of 1997, as amended, works for the benefit of both the taxpayer and the government, as it guarantees a taxpayer due process before it may be held liable to pay tax found due, and the government an opportunity to assess and collect internal revenue taxes, interests and

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penalties from delinquent taxpayers or tax-evaders within the prescriptive period.[47]

If there are no valid notices sent to petitioner, the subject assessments are void. Following the pronouncement of the Supreme Court in *Commissioner of Internal Revenue v. Azucena T. Reyes*[48], if there is no valid notice sent, the assessment is void for the reason that "[t]he law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence."

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*[49], the Supreme Court emphasized that if the taxpayer denies having received an assessment from the BIR, it becomes incumbent upon the latter to prove that such notice was indeed received by the taxpayer. The Supreme Court held:

> "Thus, the CIR has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes. Here, GJM filed its Annual Income Tax Return for the taxable year 1999 on April 12, 2000. The three (3)-year prescriptive period, therefore, was only until April 15, 2003. The records reveal that the BIR sent the FAN through registered mail on April 14, 2003, well-within the required period. The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within said period. But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period.[7] GJM, however, denies ever having received any FAN.

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[47] *BASF Coatings + Inks Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7125, February 17, 2010.
[48] G.R. Nos. 159694 and 163581, January 27, 2006.
[49] G.R. No. 202695, February 29, 2016.

> **If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.** Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled 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, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
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> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts** or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis supplied)*

In the instant case, petitioner denies receiving any notice of assessments as required by RR No. 12-99. He asserts that the deficiency tax assessment issued against him is void because he was not informed of the factual and legal bases of the assessment as required by Section 228 of the NIRC of 1997, as amended. Petitioner contends that while respondent's witnesses alleged that the Notice of

Informal Conference, the PAN, and the FAN were served and mailed to him, no other evidence was presented to prove receipt of those notices by petitioner such as the registry return card or Certification from the Postmaster. Furthermore, petitioner claims that the government's right to assess is already barred by the three-year prescriptive period rule, as the exceptions to said rule do not apply to the case at bar. He argues that contrary to respondent's claim, the tax returns filed by him are not false or fraudulent, and adds that fraud must be proven to exist by clear and convincing evidence amounting to more than mere preponderance, and cannot be justified by a mere speculation, because fraud is never lightly to be presumed.

However, records show that contrary to petitioner's claim that respondent never presented any evidence to prove receipt of the PAN and the FAN by petitioner, respondent presented Registry Receipt No. 921958 dated December 28, 2010[50] and Registry Receipt No. 903220 dated January 24, 2011[51] to prove that the PAN and the Assessment Notice Nos. 29-06-IT-1217 and 29-06-VT-1218 dated January 24, 2011 were issued and served to petitioner at his registered business address, through registered mail.

From the foregoing jurisprudence, it can be said that respondent was able to prove receipt of the PAN and the FAN, despite petitioner's denial.

The Court now delves into the issue of whether the three-year or ten-year prescriptive period would apply.

It must be stressed that fraud is a question of fact, and thus, should never lightly be presumed. To be sustained, the same must be supported by clear and convincing proof because it is a serious charge.[52]

In the case of *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc. (now Sime Darby International Tire Co., Inc.) and*

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[50] Exhibit "R-9".
[51] Exhibit "R-10".
[52] *Commissioner of Internal Revenue vs. Asalus Corporation*, CTA EB No. 1191, July 30, 2015, citing *Commissioner of Internal Revenue vs. Mitsubishi Corporation-Manila Branch*, CTA EB No. 640, September 16, 2011.

the Court of Appeals[53], the Supreme Court had the occasion to discuss the concept of falsity and rule that the fact that a taxpayer sold its real property for a price less than its declared fair market value did not by itself justify a finding of false return. The Supreme Court held:

> "Petitioner insists that private respondent committed 'falsity' when it sold the property for a price lesser than its declared fair market value. This fact alone did not constitute a false return which contains wrong information due to mistake, carelessness or ignorance. It is possible that real property may be sold for less than adequate consideration for a *bona fide* business purpose; in such event, the sale remains an 'arm's length' transaction. In the present case, the private respondent was compelled to sell the property even at a price less than its market value, because it would have lost all ownership rights over it upon the expiration of the parity amendment. In other words, private respondent was attempting to minimize its losses. At the same time, it was able to lease the property for 25 years, renewable for another 25. This can be regarded as another consideration on the price.
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> **Furthermore, the fact that private respondent sold its real property for a price less than its declared fair market value did not by itself justify a finding of false return.** Indeed, private respondent declared the sale in its 1974 return submitted to the BIR. Within the five-year prescriptive period, the BIR could have issued the questioned assessment, because the declared fair market value of said property was of public record. This it did not do, however, during all those five years. **Moreover, the BIR failed to prove that respondent's 1974 return had been filed fraudulently. Equally significant was its failure to prove respondent's intent to evade the payment of the correct amount of tax.**
>
> Ineludibly, the BIR failed to show that private respondent's 1974 return was filed fraudulently with intent

[53] G.R. No. 104171, February 24, 1999.

to evade the payment of the correct amount of tax. Moreover, even though a donor's tax, which is defined as 'a tax on the privilege of transmitting one's property or property rights to another or others without adequate and full valuable consideration,' is different from capital gains tax, a tax on the gain from the sale of the taxpayer's property forming part of capital assets, the tax return filed by private respondent to report its income for the year 1974 was sufficient compliance with the legal requirement to file a return. In other words, the fact that the sale transaction may have partly resulted in a donation does not change the fact that private respondent already reported its income for 1974 by filing an income tax return.

Since the BIR failed to demonstrate clearly that private respondent had filed a fraudulent return with the intent to evade tax, or that it had failed to file a return at all, the period for assessments has obviously prescribed. Such instances of negligence or oversight on the part of the BIR cannot prejudice taxpayers, considering that the prescriptive period was precisely intended to give them peace of mind." *(Emphases supplied)*

Furthermore, in the case of *The Commissioner of Internal Revenue vs. Obayashi Philippines Corporation*[54], the Court of Tax Appeals *En Banc*, citing the CTA Division ruling, held:

"False or fraudulent return as an exception to the period of limitation and to collect taxes provided in Section 222 of the National Internal Revenue Code of 1997 [formerly Section 223], must be actual not constructive. It must be intentional, consisting of deception willfully and deliberately done or resorted to. Fraud must be proven by clear and convincing evidence amounting to more than mere preponderance. It cannot be justified by mere speculation. This is because fraud is never lightly to be presumed *(Yutivo Sons Hardware Company v. Court of Tax Appeals and Collector of Internal Revenue, 1 SCRA 160).*

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[54] CTA EB No. 42, June 10, 2005.

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> In order to render a return made by a taxpayer a 'false return' within the meaning of Section 222 of the Tax Code, there must appear a design to mislead or deceive on the part of the taxpayer, or at least culpable negligence. A mistake, not culpable in respect of its value would not constitute a false return *(Commissioner of Internal Revenue vs. Ayala Hotels, Inc., CA-G.R. SP No. 70025, April 19, 2004.)"*

In the instant case, during the hearing on April 14, 2015, respondent's counsel agreed that the prescriptive period to assess is three (3) years.[55] However, in his position paper and memorandum, respondent claims that the prescriptive period should be ten (10) years as the case involves a substantial under-declaration, amounting to falsity or fraud on petitioner's part.[56] Respondent asserts that petitioner's income per return shows the amount of ₱4,187,756.50 but the under-declared sales per Letter Notice No. 029-WE-I-06-00-00041 dated June 29, 2008 amounted to ₱31,671,388.34. Hence, respondent avers that there is an 88.32% under-declaration of income, which is more than thirty percent (30%), as provided under Section 222(a) in relation to Section 248(B) of the NIRC of 1997, as amended.

Section 248(B) of the NIRC of 1997, as amended, provides, among others, that a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions shall constitute *prima facie* evidence of a false or fraudulent return. It states:

> "SEC. 248. *Civil Penalties.* –
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> xxx xxx xxx
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty

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[55] Resolution dated June 9, 2015, Docket, pp. 139-140.
[56] Respondent's Position Paper, Docket, pp. 73-77; Respondent's Memorandum, Docket, pp. 507-520.

> percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: ***Provided*, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further*, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.**" *(Emphasis supplied)*

From the foregoing, it is noteworthy that such substantial under-declaration or failure to report sales or income in an amount exceeding 30% of that declared per return, merely operates as a *prima facie* evidence of fraud, which can still be contradicted by other evidence.

Prima facie evidence is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. *Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.*[57]

In the present case, petitioner was able to establish through evidence that he did not willfully or fraudulently conceal his interest income with intent to evade taxes, as he in fact declared correct income in his Annual ITR. Records show, and as pointed out by petitioner, on the "Tentative" Annual ITR filed on April 7, 2007, he declared total sales in the amount of ₱31,164,900.67. While Item No. 29 of the Tentative Annual ITR was left blank or without any amount,

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[57] *Wa-acon vs. People of the Philippines*, G.R. No. 164575, December 6, 2006.

Item No. 53 contains the amount of ₱31,164,900.67 as Net Sales/Receipts/Revenues/Fees.

In his Final/Amended Annual ITR for taxable year 2006, there was no amount stated in Item Nos. 29 and 53. However, a scrutiny of said ITR would reveal that the Net Income, Taxable Income, and Tax Due declared were in accordance with the financial statements submitted by petitioner's company, showing the amount of ₱31,164,900.67 as Gross Income. Hence, while the Total Sales was without any amount, there can be no under-declaration of sales because the amounts for Net Income, Taxable Income and Tax Due were properly indicated in petitioner's ITR. Clearly, respondent failed to demonstrate that petitioner had filed a fraudulent return with the intent to evade tax.

Since there is no substantial under-declaration and/or fraud to speak of, Section 203 of the NIRC of 1997, as amended, will apply and the prescriptive period of three years will govern.

Records show that petitioner filed his Final/Amended ITR for the year 2006 on June 12, 2007. Counting three years from petitioner's filing of the ITR, the BIR had until June 12, 2010. For VAT, the BIR had the following dates within which to assess petitioner for taxable year 2006: (a) 1st Quarter[58] – April 26, 2009; (b) 2nd Quarter[59] – July 26, 2009; (c) 3rd Quarter[60] – October 26, 2009; and (d) 4th Quarter[61] – January 26, 2010. Nonetheless, in the present case, respondent admitted that the BIR sent to petitioner the PAN on December 28, 2010 and the FAN on January 24, 2011, which are beyond the period for assessment.

Considering the foregoing, the assessments are indeed barred by prescription. Hence, respondent's deficiency assessments for taxable year 2006 are null and void.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments against

[58] Filed on April 26, 2006.
[59] Filed on July 26, 2006.
[60] Filed on October 26, 2006.
[61] Filed on January 26, 2007.

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petitioner, requiring the payment of deficiency income tax and VAT, plus all delinquency increments incident to the tax liabilities of petitioner for taxable year 2006 in the aggregate amount of ₱30,723,951.10 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ARTURO E. VILLANUEVA, JR.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 8935

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

AUG 18 2017 2:10 pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in granting the Petition for Review filed by Arturo E. Villanueva, Jr., thereby cancelling and withdrawing the assessments issued against petitioner for deficiency income tax and value-added tax (VAT) plus all delinquency increments incident to said tax liabilities for the taxable year **2006** in the aggregate amount of P30,723,951.10.

I noted, however, that petitioner received the Preliminary Assessment Notice (PAN) dated December 28, 2010 and the Assessment Notices (FAN) dated January 24, 2011, yet it failed to file a timely protest thereon. The failure to contest the validity and correctness of a final assessment within the period and in the manner prescribed by law is generally fatal.

In *Ferdinand R. Marcos II vs. Court of Appeals,*[1] the Supreme Court clarified the consequence of a taxpayer's failure to timely protest an assessment:

> "**Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax.** Any objection against the assessment should have been pursued following the avenue paved in Section 229 (now 228) of the NIRC on protests on assessments of internal revenue taxes." (Boldfacing supplied)

In *Protector's Services, Inc. vs. Court of Appeals*,[2] the Supreme Court upheld the dismissal by the Court of Tax Appeals (CTA) of the taxpayer's appeal for lack of jurisdiction after noting that the latter failed to file a timely protest against the assessment notices. It further clarified the consequence of a taxpayer's failure to timely protest an assessment:

> "We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for a reinvestigation. **From December 10, 1987 to January 12, 1988, thirty-three days had lapsed. Thereafter petitioner may no longer dispute the correctness of the assessments. Hence, in our view, the CTA correctly dismissed the appeal for lack of jurisdiction**." (Boldfacing supplied)

The foregoing, notwithstanding, an assessment **may neither attain finality nor be the subject of a lawful execution in situations where such assessment was issued without authority, such as when the <u>CIR's right to assess has prescribed</u>,** or when there is a violation of the taxpayer's right to due process. Thus, in *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*,[3] the Supreme Court did not **"belabor to discuss the matter of Metro Star's failure to file its protest"** on the ground that **"a void assessment bears no fruit."**

As elucidated in the *ponencia*, the FAN issued against petitioner, having been issued beyond the three-year prescriptive period for the CIR to assess petitioner for deficiency income tax and VAT, is void *ab initio* and without legal effect. Despite petitioner's

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[1] G.R. No. 120880, June 5, 1997.
[2] G.R. No. 118176, April 12, 2000.
[3] G.R. No. 185371, December 8, 2010.

failure to protest the **void FAN** within thirty (30) days from receipt thereof, **it has not attained finality and it does not give rise to an enforceable tax liability against petitioner**.

All told, I VOTE to GRANT the Petition for Review filed by petitioner Arturo E. Villanueva, Jr.

ROMAN G. DEL ROSARIO
Presiding Justice