REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FABTECH KITCHENS UNLIMITED, INC., Petitioner,	**CTA CASE NO. 9589** Members:
- versus -	**DEL ROSARIO**, P.J., Chairperson, and, **MANAHAN**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 23 2021 8:10 am

x - x

DECISION

DEL ROSARIO, P.J.:

Before the Court is the present Petition for Review[1] filed by Fabtech Kitchens Unlimited, Inc. on May 10, 2017 praying for the Court to render judgment *(i)* declaring the Formal Letter of Demand dated July 21, 2016 and its accompanying Assessment Notices under Demand No. 038-B061-3.31.13 (50%) as null and void for having been issued in gross violation of the requisites of a valid tax assessment under Section 228 of the National Internal Revenue Code of 1997, as amended; *(ii)* directing the Commissioner of Internal Revenue to cancel and/or withdraw the Formal Letter of Demand dated July 21, 2016 and the Warrant of Distraint and/or Levy for the collection of the disputed tax under Assessment/Demand No. 038-B061-3.31.13;[2] *(iii)* directing the suspension of collection of the disputed tax pending resolution of this case; and, *(iv)* ordering respondent to pay the cost of suit.[3]

---

[1] Docket, Vol. 1, pp. 12-251.
[2] Erroneously referred to as "Assessment/Demand No. 038-B061-FY-03.30.13" in the prayer of the Petition for Review (PFR).
[3] Docket, Vol. 1, pp. 39-40.

THE PARTIES

Petitioner, Fabtech Kitchens Unlimited, Inc., is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. Its principal office is at Phase 1, Block 3, Lots 2 and 3, Santiago Street, Paseo de Magallanes Commercial Center, Magallanes Village, Makati City.[4]

Respondent, Commissioner of Internal Revenue (CIR),[5] is the duly appointed head of the Bureau of Internal Revenue (BIR). As the CIR, he is vested by law with the authority to carry out the functions and duties of his office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC).

THE FACTS

On June 30, 2014, respondent issued Letter Notice (LN) No. 038-RLFTRS-12-00-00454[6] against petitioner stating that a computerized matching conducted by the BIR disclosed discrepancies for taxable year 2012 and invited petitioner to BIR Revenue District Office (RDO) No. 38 - Assessment to present any documentary evidence in connection thereto on July 24, 2014.

On June 1, 2015, petitioner, through Ma. Teresa K. Go,[7] received Letter of Authority (LOA) No. LOA-038-2015-0000056 (SN:eLA201200007614), dated May 27, 2015,[8] issued by Regional Director Alfredo V. Misajon, authorizing Revenue Officer (RO) Paula Marie` Bea and Group Supervisor (GS) Samira Pagdilao to examine its books of accounts and other accounting records for all internal revenue taxes, including Documentary Stamp Tax (DST) and other taxes (miscellaneous), for the period from April 1, 2012 to March 31, 2013.

On June 28, 2016, respondent issued a Preliminary Assessment Notice with Details of Discrepancies (PAN).[9]

---

[4] Paragraph 2, PFR, Docket, Vol. 1, p. 12.
[5] The incumbent CIR is Hon. Caesar R. Dulay.
[6] Exhibit "P-100" (but marked as "P-101"), Docket, Vol. IV, p. 1498; Exhibit "R-3", Docket, Vol. III, p. 1367.
[7] Questions 17 to 21 of Exhibit "P-92", Docket, Vol. 1, pp. 324-325; Paragraph 9.2, Amended Memorandum (for Petitioner), Docket, Vol. IV, p. 1667.
[8] Exhibit "P-54", Docket, Vol. III, p. 1103; Exhibit "R-2", Docket Vol. III, p. 1364.
[9] Exhibits "R-7" and "R-7-A", Docket, Vol. III, pp. 1380-1387.

On July 21, 2016, respondent issued a Formal Letter of Demand with Details of Discrepancies (FLD)[10] and three (3) Assessment Notices with Demand No. 038-B061-3.31.13 (50%) for Income Tax,[11] Value-Added Tax (VAT)[12] and Improperly Accumulated Earnings Tax (IAET),[13] assessing petitioner deficiency taxes in the total amount of ₱78,237,950.10, broken down as follows:

Type of Tax	Amount
Income Tax	₱ 59,264,169.95
VAT	18,692,311.11
IAET	281,469.04
Total	**₱ 78,237,950.10**

On November 24, 2016, respondent issued a Preliminary Collection Letter (PCL).[14] The issuance of a Final Notice Before Seizure (FNBS)[15] followed on December 5, 2016.

On February 27, 2017, a Warrant of Distraint and/or Levy (WDL)[16] of even date was received by petitioner.

On March 3, 2017, petitioner filed an administrative protest[17] which was denied in a Letter dated March 28, 2017.[18]

On May 10, 2017, petitioner filed the present Petition for Review, which was initially raffled to the Court of Tax Appeals (CTA) - Third Division and subsequently transferred to the CTA - First Division pursuant to CTA Administrative Circular No. 02-2018, reorganizing the three (3) Divisions of the Court.[19]

Summonses were served on respondent on May 23, 2017 and to the Office of the Solicitor General on May 25, 2017.[20]

---

[10] Exhibits "P-4", "P-4-a", and "P-5" to "P-5-b", Docket Vol. 1, pp. 490-494; Exhibits "R-14" and "R-15", Docket, Vol. III, pp.1398-1403.
[11] Exhibit "P-2"; Docket, Vol. 1, p. 488; Exhibit "R-13", Docket, Vol. III, p. 1395.
[12] Exhibit "P-3"; Docket, Vol. 1, p. 489; Exhibit "R-13-A", Docket, Vol. III, p.1396.
[13] Exhibit "R-13-B", Docket, Vol. III, p. 1397.
[14] Exhibits "R-20" and "R-21", Docket, Vol. III, pp. 1408-1409.
[15] Exhibits "R-22" and "R-23", Docket, Vol. III, pp. 1410-1411.
[16] Exhibit "P-56", Docket, Vol. III, p. 1105; Exhibit "R-25", Docket, Vol. III, p. 1413.
[17] Exhibit "P-57", Docket, Vol. III, pp. 1106-1158.
[18] Exhibit "P-58", Docket, Vol. III, p. 1159.
[19] Order dated September 27, 2018; Docket, Vol. 2, p. 839.
[20] Docket, Vol. 1, p. 252.

On June 14, 2017, Warrants of Garnishment were issued to petitioner's bank accounts.[21]

On July 7, 2017, within the extended period,[22] respondent filed his Answer[23] raising as special and affirmative defense that the Court has no jurisdiction over the case as the subject assessment has long become final, executory and demandable for petitioner's failure to timely file a valid protest despite service of two (2) copies of the FLD on July 21, 2016 to its registered address at No. 1229 Quezon Avenue, Sta. Cruz, 1104, Quezon City and its other address at WS 1 (Basement 1) SM City Taytay, Dolores, 1920, Taytay, Rizal.

On September 13, 2017 and September 14, 2017, the parties filed their respective Pre-Trial Briefs.[24]

The Pre-Trial Conference proceeded as scheduled[25] on September 19, 2017, where the parties were given until October 4, 2017 to file their Joint Stipulation of Facts and Issues (JSFI).[26]

On March 13, 2018, within the extended period,[27] the parties filed their JSFI.[28]

On March 20, 2018, the Pre-Trial Order[29] was issued, terminating the Pre-Trial.

During trial, petitioner presented four (4) witnesses, namely: 1) Norberto J. Corneja,[30] its duly authorized tax agent; 2) Jacqueline Sy Go,[31] its President; 3) Ma. Teresa K. Go,[32] its Head of Accounting Department; and 4) Arbil S.R. Bucatcat,[33] its Admin Officer.

---

[21] Exhibits "R-26" to R-26-D", Docket, Vol. III, pp. 1414-1418; Exhibit "P-59", Docket, Vol. III, p. 1160.
[22] Resolution dated June 14, 2017, Docket, Vol. 1, p. 261.
[23] Docket, Vol. 1, pp. 263-272.
[24] Pre-Trial Brief for the Petitioner, Docket, Vol. 1, pp. 282-287; Respondent's Pre-Trial Brief, Docket, Vol. 2, pp. 700-704.
[25] Notice of Pre-trial Conference, Docket, Vol. 1, pp. 273-274.
[26] Order, Docket, Vol. 2, pp. 708-709.
[27] Order dated January 23, 2018, Docket, Vol. 2, p. 774.
[28] Docket, Vol. 2, pp. 784-796.
[29] Docket, Vol. 2, pp. 802-821.
[30] Exhibit "P-90", Docket, Vol. 1, pp. 288-320; Order dated March 20, 2018, Docket, Vol. 2, p. 823.
[31] Exhibit "P-91", Docket, Vol. 1, pp. 429-687; Order dated April 24, 2018, Docket, Vol. 2, p. 826.
[32] Exhibit "P-92", Docket, Vol. 1, pp. 321-428; Order dated August 28, 2018, Docket, Vol. 2, p. 837.
[33] Exhibit "P-99", Docket, Vol. 2, pp. 688-699; Exhibit "P-100", Docket, Vol. 2, pp. 863-877; Order dated February 19, 2019, Docket, Vol. III, pp. 881-882.

On March 5, 2019, petitioner filed its Formal Offer of Exhibits[34] which was acted in the Resolution dated July 2, 2019,[35] admitting in evidence its exhibits except Exhibits "P-10", "P-27-B", "P-36", "P-43" (inclusive of sub-markings), and "P-43-A" (inclusive of sub-markings) for failure to present their originals for comparison; and "P-10-A" for failure to identify the same.

Petitioner moved for the reconsideration of the Resolution dated July 2, 2019,[36] which was denied for lack of merit in the Resolution dated November 22, 2019.[37]

Respondent presented three (3) witnesses, namely: 1) Revenue Officer Paula Marie C. Bea,[38] 2) Revenue Officer Ingrid Princess V. Martinez,[39] and 3) Revenue Officer Solita C. Mauricio.[40]

In the September 12, 2019 Hearing, petitioner moved to offer its rebuttal evidence and was granted until September 17, 2019 to formally offer the same.[41]

On September 16, 2019, petitioner filed its Formal Offer of Additional Documentary Exhibits.[42]

On February 7, 2020, within the extended period,[43] respondent filed his Formal Offer of Evidence.[44]

In the Resolution dated June 30, 2020,[45] respondent's exhibits were admitted in evidence except, Exhibits "R-9", "R-11" and "R-17" for failure to present the originals for comparison while petitioner's additional documentary exhibits were all admitted in evidence. The parties were also given thirty (30) days from notice of the Resolution to file their respective memoranda.

---

[34] Docket, Vol. III, pp. 886-1321.
[35] Docket, Vol. III, pp. 1443-1446.
[36] Motion for Partial Reconsideration with Manifestation, Docket, Vol. III, pp. 1447-1458.
[37] Docket, Vol. IV, pp. 1524-1527.
[38] Exhibit "R-28", Docket, Vol. III, pp. 1337-1347; Order dated August 20, 2019, Docket, Vol. IV, p. 1467.
[39] Exhibit "R-27", Docket, Vol. III, pp. 1350-1356; Order dated July 2, 2019, Docket, Vol. III, p. 1437.
[40] Exhibit "R-29", Docket, Vol. III, pp. 1359-1363; Order dated September 12, 2019, Docket, Vol. IV, pp. 1473-1474.
[41] Order dated September 12, 2019, Docket, Vol. IV, p. 1476.
[42] Docket, Vol. IV, pp. 1485 - 1512.
[43] Resolution dated November 28, 2019, Docket, Vol. IV, pp. 1530-1531.
[44] Docket, Vol. IV, pp. 1552 - 1564.
[45] Docket, Vol. IV, pp. 1602 - 1604.

On August 24, 2020, the Memorandum (for Petitioner)[46] was filed. On August 27, 2020, petitioner, however, filed a Motion for Leave to Admit Amended Memorandum with enclosed Amended Memorandum (for Petitioner),[47] which was granted by the Court in the Order dated September 10, 2020.[48] Respondent, on the other hand, failed to file his memorandum despite notice.[49]

On September 17, 2020,[50] the case was submitted for decision.

THE ISSUES

The parties stipulated the following issue for resolution of the Court:

> "Whether or not petitioner is liable for the assessed deficiency taxes under the Formal Letter of Demand No. 038-B061-3.31.13 (50%) dated 21 July 2016."[51]

THE PARTIES' ARGUMENTS

Petitioner argues that the FLD and its accompanying Assessment Notices are void for the following reasons:

(i) The BIR failed to serve petitioner with a copy thereof. The BIR is fully aware that petitioner no longer holds office in Quezon City. Thus, it is bound by its actual knowledge of petitioner's business address in Makati City;

(ii) The FLD was issued without the requisite PAN;

(iii) The FLD was issued without prior proof of receipt of the PAN; and,

---

[46] Docket, Vol. IV, pp. 1606 - 1645.
[47] Docket, Vol. IV, pp. 1647 - 1691.
[48] Docket, Vol. IV, p. 1692.
[49] Records Verification dated September 11, 2020; Docket, Vol. IV, p. 1693.
[50] Resolution dated September 17, 2020, Docket, Vol. IV, p. 1695.
[51] Paragraph II (B)(1), Pre-Trial Order (PTO), Docket, Vol. 2, p. 803.

(iv) Petitioner was not duly informed of the legal and factual bases of how the tax assessment was arrived at.

Petitioner also notes that the BIR did not consider its fiscal period and ignored its method of accounting in obtaining data from the computer matching through the LN.

Petitioner submits that the tax deficiency assessment was merely based on conjectures and presumptions. Further, the deficiency tax assessments against petitioner for VAT and Withholding Tax are barred by prescription.

Petitioner also points out that the deficiency tax assessments against it include taxable period that is outside of the authorized period of tax examination but exclude taxable period that is within the authorized period of examination. Hence, it is void.

Furthermore, petitioner asserts that it did not file a false or fraudulent return as to justify the imposition of the 50% surcharge.

As previously mentioned, respondent contends that the Court has no jurisdiction over the case as the subject assessment has long become final, executory and demandable for petitioner's failure to timely file a valid protest despite service of two (2) copies of the FLD on July 21, 2016 to its registered address at No. 1229 Quezon Avenue, Sta. Cruz, 1104, Quezon City and its other address at WS 1 (Basement 1) SM City Taytay, Dolores, 1920, Taytay, Rizal.

THE COURT'S RULING

Timeliness of the Petition for Review

The Court shall first determine the timeliness of the filing of the present Petition for Review.

Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals, pertinently states in part:

> "SEC. 3. *Who may appeal; period to file petition.* –

orn

(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, xxx may appeal to the Court by petition for review filed within **thirty days** after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. Xxx

Petitioner received the Letter dated March 28, 2017, denying its administrative protest filed on March 3, 2017, on April 10, 2017.[52] Pursuant to the afore-quoted Rule, it had until May 10, 2017 within which to file its Petition for Review.

With the filing of the present Petition for Review on May 10, 2017, the Court finds that it was filed within the period prescribed under Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals.

Failure to comply with the due process requirements

Section 228 of the NIRC of 1997, as amended, provides the procedure in issuing and protesting an assessment, to wit:

"**SEC. 228.** *Protesting of Assessment.* —

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 be required to respond to said notice. If the taxpayer fails to respond, **the Commissioner or his duly authorized representative shall <u>issue an assessment</u> based on his findings.**" *(Boldfacing and underscoring supplied)*

RR No. 12-99, as amended by RR No. 18-2013, implements the afore-quoted provision and sets forth the due process requirement in the issuance of tax assessments, *viz.*:

"SEC. 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:

[52] Exhibit "P-58", Docket, Vol. III, p. 1159.

3.1.1 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

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

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

xxx xxx xxx

3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall 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/FLD/FAN/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 not practicable, 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.

If no person is found in the party's registered or known address, 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. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall 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. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"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.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."

Based on the foregoing, if there exists sufficient basis to assess the taxpayer, the CIR or his authorized representative is mandated to issue a PAN. Thereafter, a formal letter of demand and an assessment notice shall be issued by the CIR or his duly authorized representative. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein. Thus, it is essential for respondent to establish and prove that the requisite assessment notices were duly served to the taxpayer within the prescriptive period.

Here, petitioner denies receipt of the PAN, FLD and Assessment Notices but admits the receipt of the LOA, which it claims was served at its new business address in Magallanes Village, Makati City, despite bearing the same address as the PAN, FLD and Assessment Notices. It explains that while the LOA was personally served at its new business address in Makati City, the PAN, FLD and Assessment Notices were served at its old business address at No. 1229 Quezon Avenue, Sta. Cruz, Quezon City. Its other purported address at WS 1 (Basement 2) SM City Taytay, Dolores, Taytay 1920 Rizal has long been vacated as early as 2009.[53] Consequently, it insists that its non-receipt of the assessment notices violated its right to due process in the issuance of assessments which nullifies the same.

Petitioner discloses that in 2013 and 2015, respectively, it amended its Articles of Incorporation to change its principal office address, from No. 1229 Quezon Avenue, Sta. Cruz, Quezon City to No. 2 President Sergio Osmeña Highway, Magallanes Village, Makati City[54] and to Phase 1, Block 3, Lots 2 & 3, Santiago Street, Paseo de Magallanes Commercial Center, Magallanes Village, Makati City[55], its current principal office address.

Petitioner further claims that RDO 38 refused to act on its application to change its registered address with the BIR as of the time

---

[53] Paragraph 30, PFR, Docket, Vol. 1, p. 25.

[54] Amendment approved on January 11, 2013, Exhibit "P-11", Docket, Vol. III, p. 963; Exhibit "P-12-a", Docket Vol. III, p. 963.

[55] Amendment approved on March 3, 2015, Exhibit "P-20", Docket, Vol. III., p. 971; Exhibit "P-21-a", Docket, Vol. III, p. 972.

of the issuance of the subject assessments, allegedly due to a pending tax liability for taxable years 2008 and 2009.[56]

Respondent, on the other hand, asserts that it observed due process in the service of the assessment notices when the PAN, FLD and Assessment Notices were served at petitioner's registered address through registered mail.

The Court finds no merit on respondent's assertion.

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[57] it was enunciated that if the taxpayer denies receiving an assessment from the BIR, it becomes incumbent upon the BIR to prove by competent evidence that such notice was indeed received by the addressee, *viz.*:

> "**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.**[8] Flere, 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.
>
> xxx xxx xxx
>
> The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued. xxx" *(Boldfacing supplied)*

In *Protector's Services, Inc. vs. Court of Appeals and Commissioner of Internal Revenue*,[58] it was further ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion,

---

[56] Paragraph 29, PFR, Docket, Vol.1, pp. 24-25; Paragraph 13, Amended Memorandum (for Petitioner), Docket, Vol. IV, p. 1672.
[57] G.R. No. 202695, February 29, 2016.
[58] G.R. No. 118176, April 12, 2000.

and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

To prove service of the assessment notices, respondent offered the testimony of its witness, RO Bea, the BIR Records,[59] BIR Integrated Tax System (ITS) Print-outs,[60] the PAN, the FLD, and registry receipts.[61]

These pieces of evidence, however, merely establish the fact of mailing of the assessment notices to petitioner's addresses at No. 1229 Quezon Avenue, Sta. Cruz, Quezon City and WS 1 (Basement 2) SM City Taytay, Dolores, 1920, Taytay, Rizal. These do not prove actual receipt of the subject assessment notices by petitioner.

Even if the presumption that a mail matter was received in the regular course of mail is applied to the present case, such presumption is disputable. And, with petitioner's direct denial of such receipt, respondent is obliged to present evidence that indeed the assessment notices were actually received by petitioner.

Notably, the return cards of the notices sent to petitioner through registered mail, which could prove receipt of the notices, were not presented and offered in evidence by respondent.

Respondent should have been alerted by the fact that, as early as the start of petitioner's audit investigation, its ROs were already aware that petitioner could no longer be located at its registered address at No. 1229 Quezon Avenue, Sta. Cruz, Quezon City. Despite such discovery, the assessment notices were still sent to said address, as testified to by respondent's witness, RO Bea, *viz.*:

> "(7) Q. Having mentioned that you were the Revenue Officer who conducted the audit examination, could you state how you conducted said examination?
>
> A. Initially, we furnished petitioner with Letter Notice (LN) No. 038-RLFTRS-12-00-00454 dated June 30, 2014 along with the Details of Withholding Agents/Payors and Payees/Income Recipients Records consisting of three pages. The LN was sent through registered mail on July 25, 2014 as the taxpayer **could not be located at the registered**

[59] Exhibit "R-1".
[60] Exhibits "R-6 and R-6-B", Docket, Vol. IV, pp. 1541-1543.
[61] Exhibits "R-8" to "R-8-C", and "R-16" to "R-16-C", Docket, Vol. III, pp. 1381,1387,1399 and 1404.

address. Thereafter, due to diligent efforts exerted, we were able to locate the whereabouts of Petitioner where we furnished Petitioner with the Letter of Authority bearing SN: eLA201200007614/LOA-038-2015-00000569 dated May 27, 2015 with an attached Checklist. Upon presentation of documents, we conducted an audit of the books of accounts and other records based on the documents thus presented by Fabtech Kitchen's Unlimited, Inc.

xxx xxx xxx

(28) Q. You mentioned the PAN was served by RO Trias through registered mail, why was it served through mail?

A. Based on record, a 'Certification' was secured by RO Trias from Barangay Sta. Cruz stating that **Petitioner is no longer operating/nor located at 1229 Quezon Ave., Barangay Sta. Cruz, Quezon City**.[62]

xxx xxx xxx

(36) Q. Were the Final Assessment Notices, Formal Letter of Demand and Details of Discrepancy served to Petitioner?

A. Based on record, copies of the Final Assessment Notices, Formal Letter of Demand and Details of Discrepancy were served through registered mail by the Billing Section of the Assessment Division on July 21, 2016 while another copy was served through registered mail by the Revenue Officer Ariel D. Trias who was then assigned at Revenue District Office No. 38, North Quezon City." [63]

Anent petitioner's change of address, RR No. 12-85[64] provides:

"SECTION 11. Change of Address. — In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply."

---

[62] See Exhibit "R-12", Docket, Vol. III, p. 1394.
[63] Exhibit "R-28", Docket, Vol. III, pp. 1338, 1342, and 1343; See also the Transcript of Stenographic Notes (TSN) of the August 20, 2019 Hearing, pp. 13-15.
[64] Subject: Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue, dated November 27, 1985.

From the foregoing Regulation, a taxpayer intending to change its address must give a written notice to the RDO that has jurisdiction over the former place of business; otherwise, any communication previously sent to the said former place of business shall be considered valid and binding for purposes of the period within which to reply.

Petitioner is not unaware of its obligation to secure the change of its business address with RDO 38, Quezon City. In fact, it asserts that it did not neglect to change its registered address. Even so, its request was refused by RDO 38 owing to its tax liability for 2008 and 2009, which are the subject of its availment of tax compromise.[65]

The requirement of formal written notice of change of address of a taxpayer, however, is not absolute. In *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils. Inc.*,[66] the Supreme Court ruled that despite the absence of a formal written notice of the change of address of the taxpayer therein, the BIR's awareness of its new address was sufficient so as not to suspend the running of the three (3)-year period to assess the taxpayer, *viz.*:

> "In addition, Section 11 of BIR Revenue Regulation No. 12-85 states:
>
> > **Sec. 11.** *Change of Address.* - In case of change of address, the taxpayer must give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as [appearing] in [his] tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.
>
> It is true that, under Section 223 of the Tax Reform Act of 1997, the running of the Statute of Limitations provided under the provisions of Sections 203 and 222 of the same Act shall be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected. In addition, Section 11 of Revenue Regulation No. 12-85 states that, in case of change of address, the taxpayer is required to give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or

---

[65] Paragraph 13, Amended Memorandum, Docket, Vol. IV, p. 22; Questions 11 – 13, Exhibit "P-90", Docket, Vol. 1, p. 291.
[66] G.R. No. 198677, November 26, 2014.

place of business. **However, this Court agrees with both the CTA Special First Division and the CTA *En Banc* in their ruling that the abovementioned provisions on the suspension of the three-year period to assess apply only if the BIR Commissioner is not aware of the whereabouts of the taxpayer.**

In the present case, petitioner, by all indications, is well aware that respondent had moved to its new address in Calamba, Laguna, as shown by the following documents which form part of respondent's records with the BIR:

xxx xxx xxx

The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna.

The CTA also found that BIR officers, at various times prior to the issuance of the subject FAN, conducted examination and investigation of respondent's tax liabilities for 1999 at the latter's new address in Laguna as evidenced by the following, in addition to the abovementioned records:

xxx xxx xxx

Moreover, the CTA found that, based on records, the RDO sent respondent a letter dated April 24, 2002 informing the latter of the results of their investigation and inviting it to an informal conference. Subsequently, the RDO also sent respondent another letter dated May 30, 2002, acknowledging receipt of the latter's reply to his April 24, 2002 letter. These two letters were sent to respondent's new address in Laguna. Had the RDO not been informed or was not aware of respondent's new address, he could not have sent the said letters to the said address.

Furthermore, petitioner should have been alerted by the fact that prior to mailing the FAN, petitioner sent to respondent's old address a Preliminary Assessment Notice but it was "returned to sender." This was testified to by petitioner's Revenue Officer II at its Revenue District Office 39 in Quezon City. Yet, despite this occurrence, petitioner still insisted in mailing the FAN to respondent's old address.

Hence, despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address as shown by documents replete in its records. As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed. xxx" *(Additional boldfacing supplied)*

Similar to *BASF Coating + Inks Phils. Inc.*, as aforementioned, the BIR also became aware of petitioner's new business address despite petitioner's failure to change its registered address with RDO

No. 38, Quezon City on account of the latter's refusal to approve its application.

Respondent's awareness of the current address and changes in the address of petitioner, is further shown by the following documents bearing petitioner's business addresses in Makati City, *viz.*:

1. Letter dated April 4, 2013 addressed to Director Jonas DP Amora, Regional Director, Revenue Region No. 7;[67]

2. Secretary Certificate dated December 5, 2013 duly received by the BIR Law Division regarding petitioner's Retirement Plan;[68]

3. Letter dated December 23, 2013 stamped received by the BIR Law Division regarding petitioner's Retirement Plan;[69]

4. BIR Ruling No. ERP-01-2010 dated March 23, 2014 approving petitioner's Retirement Plan;[70]

5. Letter dated September 30, 2014 signed by Rosana P. San Vicente, Chief, Accounts Receivable Monitoring Division;[71]

6. Provisional BIR Importer Clearance Certificate issued on September 29, 2014 to petitioner and signed by Rosana P. San Vicente, Chief, Accounts Receivable Monitoring Division;[72]

7. Letter dated January 14, 2015 addressed to RDO, RDO-38 North Quezon City;[73]

8. Certifications dated March 23, 2015 and March 26, 2015 issued by the BIR to petitioner;[74]

9. Letter dated April 24, 2015 addressed to Hon. Kim S. Jacinto Henares, Commissioner of Internal Revenue;[75]

10. Undated letter sent to petitioner, signed by Socrates O. Regala, OIC-Revenue District Officer, RDO No. 27, Caloocan City;[76] and,

---

[67] Exhibit "P-25-A", Docket, Vol. III, p. 978.
[68] Exhibit "P-37", Docket, Vol. III, p. 1025.
[69] Exhibit "P-36", Docket, Vol. III, p. 1024.
[70] Exhibit "P-38", Docket, Vol. III, p. 1028.
[71] Exhibit "P-33", Docket, Vol. III, p. 1019.
[72] Exhibit "P-34", Docket, Vol. III, p. 1020.
[73] Exhibit "P-42", Docket, Vol. III, p. 1032.
[74] Exhibits "P-39" and "P-40", Docket, Vol. III, pp. 1029-1030.
[75] Exhibits "P-35" and "P-35-a", Vol. III, p. 558-1023.
[76] Exhibits "P-41" and "P-41-a", Docket, Vol. III, p. 1031.

11. Print-out of emails dated January 25, 2016,[77] January 26, 2016,[78] and February 1, 2016[79] between RO Bea and petitioner's representatives.

It must be emphasized that these documents that petitioner presented and offered in evidence were not denied or controverted by respondent.[80]

Considering that respondent has prior knowledge of petitioner's current address, the service through registered mail of the assessment notices at petitioner's old address in Quezon City is not a valid service thereof.

It is well-settled that an assessment issued in violation of the taxpayer's right to due process is a void assessment. Since respondent failed to prove actual receipt by petitioner of the PAN, FLD and Assessment Notices, in accordance with RR No. 12-99, as amended, the assailed WDL including the PCL, FNBS and Warrants of Garnishment are void for having emanated from a void assessment, issued in violation of petitioner's right to due process.

To be sure, the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. The eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[81] relative to the utmost importance of observing due process in issuing deficiency tax assessments is edifying, *viz.*:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void**. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and **always with regard to the basic tenets of due process**.
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses

[77] Exhibit "P-63", Docket, Vol. III, p. 1168.
[78] Exhibit "P-61", Docket, Vol. III, p. 1166.
[79] Exhibit "P-62", Docket, Vol. III, p. 1167.
[80] Resolution dated May 3, 2019, Docket, Vol. III, p. 1430
[81] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

xxx xxx xxx

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is 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 v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that the taxpayer was **deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice** as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself**. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of

> taxation, which is the promotion of the common good, may be achieved.
>
> xxx xxx xxx
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate ... that the law has not been observed.**

> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. xxx" *(Citations omitted; boldfacing supplied)*

It is incumbent upon respondent to prove by preponderant evidence that the assessment notices were actually received by petitioner. Stated differently, it is not simply a question of whether the assessment notices were sent to petitioner by respondent, but it is imperative that **petitioner actually received said tax assessment notices**.

In view of respondent's failure to prove that the assessment notices were actually received by petitioner, there is no valid assessment which could be the legitimate subject of collection under the WDL. Consequently, the WDL subject of the present Petition for Review, must perforce be cancelled and set aside.

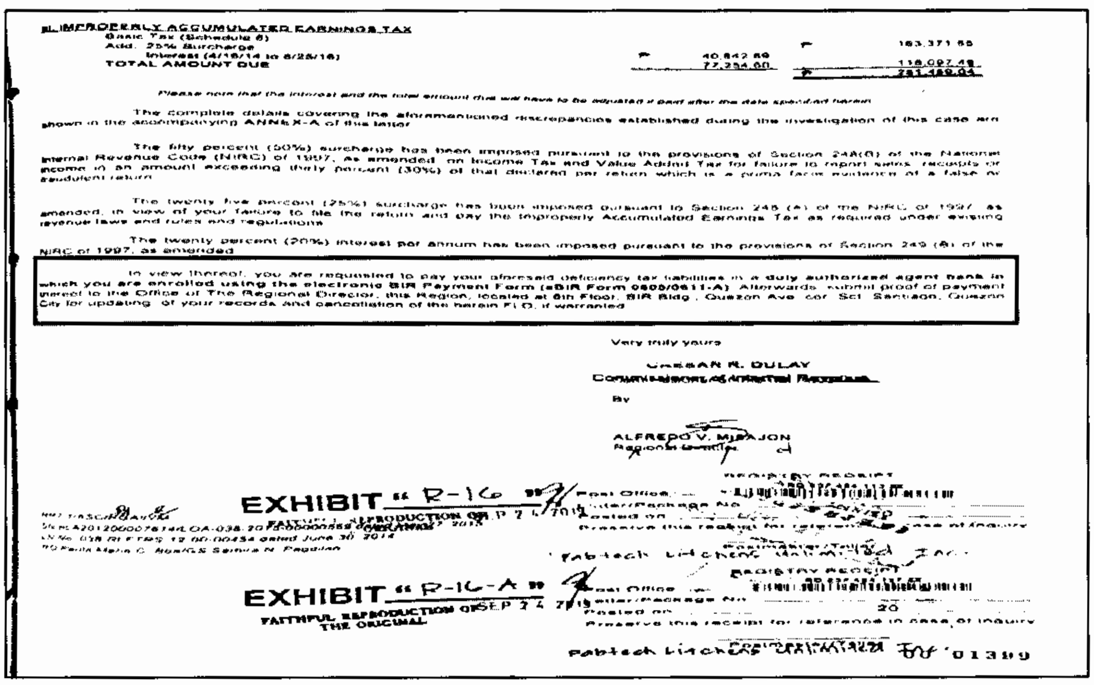
Failure to demand payment of the tax due within a specific period

There is more. Perusal of the FLD and Assessment Notices shows that they failed to demand payment of the tax due within a specific period.

Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, pertinently states:

> "*3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand **and** Final Assessment Notice (FLD/FAN) shall 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)." *(Boldfacing and underscoring supplied)*

Clearly, a formal letter of demand **AND** an assessment notice are indispensable in the assessment of a taxpayer. **The use of the word "shall" in Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, indicates the mandatory nature of the requirement.**[82] The FLD specifically states that petitioner is requested to pay its aforesaid deficiency tax liabilities in a duly authorized agent bank in which it is enrolled using the electronic BIR Payment Form:


II. IMPROPERLY ACCUMULATED EARNINGS TAX
Basic Tax (Schedule 6) ₱ 163,371.55
Add: 25% Surcharge ₱ 40,842.89
Interest (4/15/14 to 8/25/16) 77,254.60 118,097.49
TOTAL AMOUNT DUE ₱ 281,469.04

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX-A of this letter.

The twenty five percent (25%) surcharge has been imposed pursuant to Section 248 (A) of the NIRC of 1997, as amended, in view of your failure to file the return and pay the Improperly Accumulated Earnings Tax as required under existing revenue laws and rules and regulations.

The twenty percent (20%) interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC of 1997, as amended.

In view thereof, you are requested to pay your aforesaid deficiency tax liabilities in a duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0605/0611-A). Afterwards, submit proof of payment thereof to the Office of The Regional Director, this Region, located at 6th Floor, BIR Bldg., Quezon Ave. cor. Sct. Santiago, Quezon City for updating of your records and cancellation of the herein FLD, if warranted.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

By

ALFREDO V. MISAJON
Regional Director

EXHIBIT "R-16"
EXHIBIT "R-16-A"
FAITHFUL REPRODUCTION OF THE ORIGINAL

___

82 *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.

The last paragraph of the Details of Discrepancies attached to the FLD states:

> "Your failure to file a valid protest or pay the tax within the time **prescribed in notice of assessment**, the assessment shall become final and therefore subject to twenty-five (25%) surcharge and interest on the unpaid amount until fully paid pursuant to RR No. 12-99, as amended by RR No. 18-2013, in relation to Section 228, Section 248 (A)(3) and Section 249 (C)(3) of the NIRC of the 1997, as amended."[83]

The spaces for the due date in the attached Assessment Notices were, however, conspicuously left blank:

Notice of Assessment for Income Tax

BIR FORM NO.
REVISED FEBRUARY, 1994

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

EXHIBIT "R-13"
FAITHFUL REPRODUCTION OF THE ORIGINAL SEP 2 4 2019

1708 ASSESSMENT NOTICE

Demand No
038-B061-
3.31.13(50%)

TAXPAYER IDENTIFICATION NUMBER: 242-781-484-000 JUL 2 0 2016

PERIOD COVERED: Mar. 31, 2013

NAME OF TAXPAYER: FABTECH KITCHENS UNLIMITED, INC.

ADDRESS: No. 1229 Quezxon Avenue, Sta. Cruz, 1104 Quezon City

OTHER ADDRESS: WS 1 (Basement 2) SM City Taytay, Dolores, Taytay, 1920 Rizal

12 THE RETURN FILED 1 AFTER PRE-AUDIT 2 AFTER AUDIT AFTER PRE-AUDIT
b NO RETURN FILED

DETAILS OF ASSESSMENT

CHECK KIND OF TAX: x A INCOME; B WITHHOLDING; C VAT; D PERCENTAGE; E ESTATE; F CAPITAL GAINS; G DOC. STAMPS; H FRINGE BENEFIT; I Registration Fee; OTHERS Compromise

PARTICULARS	AMOUNT
1. TAX DUE	P 27,915,114.25
2. ADD SURCHARGE (50%)	13,957,557.12
ADD INTEREST AUG 2 2 2016	17,391,498.58
COMPROMISE PENALTY	
3. TOTAL AMOUNT PAYABLE	P 59,264,169.95

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE _____ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, RR # 7, QUEZON CITY

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL & LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT

CAESAR R. DULAY
COMMISSIONER OF INTERNAL REVENUE
Commissioner of [illegible]

RECOMMENDING APPROVAL: ANALYN S. CHU, OIC-Chief, Assessment Division

APPROVED: ALFREDO V. MISAJON, Regional Director

BIR Form 37-94

Please see attached Formal Letter of Demand for the factual and legal bases of assessment

You may file your protest in writing (with legal and factual bases) to the Regional Director, 6th Floor, BIR Building, Quezon Avenue cor. Sct. Santiago, Quezon City

Please attach photocopy of this notices to you protest letter.

SEP 3 0 [illegible]

[83] Exhibit "P-4", BIR Records, p. 631; Exhibit "R-15", Docket, Vol. III, p. 1403.

Notice of Assessment for VAT

EXHIBIT "R-13-A"

FAITHFUL REPRODUCTION OF THE ORIGINAL SEP 24 2019

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

FEBRUARY, 1994

1708 **ASSESSMENT NOTICE**

Demand No.
038-B061-
3.31.13(50%)

TAXPAYER IDENTIFICATION NUMBER: 242-781-484-000 JUL 21 2016

PERIOD COVERED: Mar. 31, 2013

NAME OF TAXPAYER: FABTECH KITCHENS UNLIMITED, INC.

ADDRESS: No. 1229 Quezxon Avenue, Sta. Cruz, 1104 Quezon City

OTHER ADDRESS: WS 1 (Basement 2) SM City Taytay, Dolores, Taytay, 1920 Rizal

12 THE RETURN FILED — AFTER PRE-AUDIT — 2 AFTER AUDIT — AFTER PRE-AUDIT
b NO RETURN FILED

DETAILS OF ASSESSMENT

CHECK KIND OF TAX		PARTICULARS	AMOUNT
A INCOME	F CAPITAL GAINS	1 TAX DUE	P 8,624,312.42
B WITHHOLDING	G DOC STAMPS	2 ADD SURCHARGE (50%)	4,312,156.21
X C VAT	H FRINGE BENEFIT	ADD INTEREST AUG 22 2016	5,755,842.48
D PERCENTAGE	I Registration Fee	COMPROMISE PENALTY	
E ESTATE	OTHERS Compromise	3. TOTAL AMOUNT PAYABLE	P 18,692,311.11

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ________ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, RR # 7, QUEZON CITY.

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL & LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.

CAESAR R. DULAY
COMMISSIONER OF INTERNAL REVENUE

RECOMMENDING APPROVAL:	APPROVED
ANALYN S. CHU OIC-Chief, Assessment Division	ALFREDO V. MISAJON Regional Director

(Per RMO 37-94)

Please see attached Formal Letter of Demand for the factual and legal bases of assessment.

You may file your protest in writing (with legal and factual bases) to the Regional Director, 6th Floor, BIR Building, Quezon Avenue cor. Sct. Santiago, Quezon City
Please attach photocopy of this notices to you protest letter.

SEP 2016

Notice of Assessment for IAET

EXHIBIT "R-13-B"
FAITHFUL REPRODUCTION SEP 2 4 2019
THE ORIGINAL

FEBRUARY 1994

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

1708

ASSESSMENT NOTICE

Demand No.
038-B061-
3.31.13(50%)

TAXPAYER IDENTIFICATION NUMBER: 242-781-484-000

JUL 2 1 2016

PERIOD COVERED: Mar. 31, 2013

NAME OF TAXPAYER: FABTECH KITCHENS UNLIMITED, INC.

ADDRESS: No. 1229 Quezxon Avenue, Sta. Cruz, 1104 Quezon City

OTHER ADDRESS: WS 1 (Basement 2) SM City Taytay, Dolores, Taytay, 1920 Rizal

[12] THE RETURN FILED [1] AFTER PRE-AUDIT [2] AFTER AUDIT [ ] AFTER PRE-AUDIT
[b] NO RETURN FILED

DETAILS OF ASSESSMENT

CHECK KIND OF TAX		PARTICULARS	AMOUNT
[X] A INCOME IAET	[ ] F CAPITAL GAINS	1 TAX DUE	P 163,371.55
[ ] B WITHHOLDING	[ ] G DOC STAMPS	2 ADD: SURCHARGE (25%)	40,842.89
[ ] C VAT	[ ] H FRINGE BENEFIT	ADD: INTEREST AUG 2 2016	77,254.60
[ ] D PERCENTAGE	[ ] I Registration Fee	COMPROMISE PENALTY	
[ ] E ESTATE	[ ] OTHERS Compromise	3 TOTAL AMOUNT PAYABLE	P ~~281,469.04~~

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ______ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, RR # 7, QUEZON CITY.

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL & LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.

CAESAR R. DULAY
Commissioner of Internal Revenue

RECOMMENDING APPROVAL:

ANALYN S. CHU
OIC-Chief, Assessment Division

APPROVED:

ALFREDO V. MISAJON
Regional Director

(RMO 37-94)

Posted in Form-40
Collectible Accounts
2018

*Please see attached Formal Letter of Demand for the factual and legal bases of assessment

*You may file your protest in writing (with legal and factual bases) to the Regional Director, 6th Floor, BIR Building, Quezon Avenue cor. Sct. Santiago, Quezon City
*Please attach photocopy of this notices to you protest letter.

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,[84] the Supreme Court **invalidated** an assessment after noting its failure to state the due date for the payment of the tax liabilities:

> "**The disputed Final Assessment Notice is not a valid assessment**.
>
> xxx xxx xxx
>
> Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.
>
> Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay**.
>
> 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 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." *(Boldfacing and underscoring supplied)*

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment *sans* a categorical demand for payment within a specific date or period is, in legal contemplation, void.

---

[84] G.R. No. 215957, November 9, 2016.

The Court notes that the following is indicated on the upper right hand corner of the FLD – "Due Date: August 22, 2016." Such date cannot be unmistakably construed as the due date for payment for the assessed Income Tax, VAT and IAET as it appears to refer to the due date when the FLD and Assessment Notices should be released to the taxpayer. A close scrutiny of the FLD reveals that the interest was computed until August 25, 2016. It is certainly incongruous for the BIR to compute the interest until August 25, 2016 if the due date for payment is fixed on August 22, 2016.

To reiterate, a final assessment notice must not only indicate the legal and factual bases of the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period.[85] It bears to stress that respondent must indicate with absolute clarity the categorical demand for payment within a specific date in the Assessment Notices, lest it be declared fatally infirm.

Absent a valid demand, as in this case, the FLD and Assessment Notices are void. Being void assessments, they bear no fruit[86] and must be slain at sight.

In light of the foregoing disquisitions, the Court need not belabor the other issues raised by petitioner.

Payment of insufficient legal fees

Under Section 4 (b), Rule 141 of the Rules of Court, the legal fees for an action or proceeding filed before the CTA are based on the amount of the disputed tax assessment, inclusive of interest, penalty and surcharges, among others.

As aforementioned, the subject tax assessment amounts to **₱78,237,950.10**, inclusive of interest, penalty and surcharges. Thus, based on the Rules, the legal fees should be **₱625,363.65**, broken down as follows:

Type of Fund	Description	Amount Due
Judiciary Development Fund	Filing Fee – JDF	₱ 92,800.00
SAJ	Filing Fee – SAJ	523,889.75

---

[85] *Id.*

[86] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Legal Research Fee	LRF	6,168.90
Victim Compensation Fund	VCF	5.00
Summons Fee (SAJ)	Summons Fee - SAJ	144.00
Summons Fee (JDF)	Summons Fee - JDF	56.00
Sheriff's Trust Fund	Sheriff's Trust Fund	1,000.00
Temporary Restraining Order (SAJ)		1,000.00
TRO/WPI Service Fee [Section 10(d) Rule 141] (SAJ)		240.00
TRO/WPI Service Fee [Section 10(d) Rule 141] (JDF)		60.00
	TOTAL	**₱ 625,363.65**

Petitioner was, however, erroneously assessed legal fees totaling **₱623,374.52** resulting to a deficiency of **₱1,989.13**.

Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, in *La Salette College, et al. vs. Victor C. Pilotin*,[87] the Supreme Court also recognized that its strict application is qualified by the following: first, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; second, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.

Considering that the payment of deficient legal fees resulted from the erroneous computation thereof without petitioner's fault, it is but fair that petitioner be granted an opportunity to comply with the payment of correct legal fees.

WHEREFORE, premises considered, the Petition for Review filed by Fabtech Kitchens Unlimited, Inc. on May 10, 2017 is hereby **GRANTED**. Accordingly, the Letter dated March 28, 2017, is hereby **SET ASIDE**. The Warrant of Distraint and/or Levy and the Formal Letter of Demand dated July 21, 2016, with Details of Discrepancies and the following Assessment Notices, covering taxable year 2012, assessing petitioner for deficiency Income Tax, Value-Added Tax and Improperly Accumulated Earnings Tax, in the total amount of **₱78,237,950.10**, *viz.*:

[87] G.R. No. 149227, December 11, 2003.

Tax	Assessment Notice Nos.	Amount
Income Tax	038-B061-3.31.13(50%)	₱ 59,264,169.95
Value-Added Tax	038-B061-3.31.13(50%)	₱ 18,692,311.11
Improperly Accumulated Earnings Tax	038-B061-3.31.13(50%)	₱ 281,469.04
	Total:	**₱ 78,237,950.10**

are hereby **CANCELLED** and **WITHDRAWN** for being void *ab initio*.

Respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner Fabtech Kitchens Unlimited, Inc., arising from the Formal Letter of Demand dated July 21, 2016 and Assessment Notices with Demand No. 038-B061-3.31.13 (50%), all dated July 21, 2016.

Petitioner Fabtech Kitchens Unlimited, Inc. is **DIRECTED** to pay the deficiency legal fees amounting to **₱1,989.13** within **ten (10) days** from receipt hereof.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice