REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AA COMMERCIAL,
Respondent.

CTA EB NO. 1476
(CTA Case No. 8290)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

JUN 11 2018 11:25 a.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated January 28, 2016 (assailed Decision) and Resolution[2] dated June 7, 2016 (assailed Resolution) of the Court of Tax Appeals Second Division (Second Division) which cancelled petitioner's Assessment No. 38-06-0175 for deficiency Income Tax, Value-added Tax (VAT), and Expanded Withholding Tax issued against respondent for taxable year 2006.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), vested with authority to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the provisions of the

[1] Penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Contango-Manalastas concurring. *Rollo*, pp. 11-36.
[2] *Id.*, pp. 37-45.

National Internal Revenue Code ("Tax Code"). He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Respondent AA Commercial, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with Securities and Exchange Commission ("SEC") Company Registration No. 35875.[4]

Respondent was incorporated with the following primary purpose:

> "To acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic and deal in and with, and otherwise operate, manage, enjoy and dispose of, any and all properties of every kind and description and wherever situated as and to the extent permitted by law, including, but not limited to, buildings, tenements, warehouses, factories, edifices and structures and other improvement, and bonds, debentures, promissory notes, shares of capital stock, or other securities or obligations created, negotiated or issued by any corporation, association, or other entity, foreign or domestic and while the owner, holder, or possessor thereof, to exercise all the rights, powers and privileges of ownership or any other interest therein, including the right to receive, collect and dispose of, any and all rentals, dividends, interests and income, derived therefrom, and the right to vote on any proprietary or other interest, on any shares of the capital stock, and upon any bonds, debentures, or other securities having voting powers, so owned or held."[5]

Respondent is a registered taxpayer at the Bureau of Internal Revenue (BIR'), Revenue Region No. 7, Revenue District Office (RDO) No. 38, Quezon City, with Tax Identification No. (TIN) 000-413-447-000.[6]

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[3] Docket, p. 108, par. 4, Admitted Facts I, JSFI.
[4] *Id.*, p. 107, par. 1, Admitted Facts I, JSFI.
[5] *Id.*, pp. 107-108, par. 2, Admitted Facts I, JSFI.
[6] Par. 3, Admitted Facts I, JSFI, Docket (Vol. I), p. 108.

The Facts[7]

On April 16, 2007, respondent filed its Annual Income Tax Return for CY 2006 (BIR Form 1702) with the BIR.[8]

Respondent filed its original Quarterly VAT Returns for CY 2006 (BIR Form 2550Q) on the following dates:[9]

Taxable Quarter	Date of Filing
1st Quarter, CY 2006	April 25, 2006
2nd Quarter, CY 2006	July 25, 2006
3rd Quarter, CY 2006	October 23, 3006
4th Quarter, CY 2006	January 25, 2007

It filed its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form 1601-E) for the period January to December 2006 on the following dates[10] :

Month	Date of Filing
January 2006	February 10, 2006
February 2006	March 7, 2006
March 2006	April 7, 2006
April 2006	May 9, 2006
May 2006	June 9, 2006
June 2006	July 10, 2006
July 2006	August 7, 2006
August 2006	September 4, 2006
September 2006	October 9, 2006
October 2006	November 7, 2006
November 2006	December 7, 2006
December 2006	January 15, 2007

Respondent availed of the government's tax amnesty program under R.A. No. 9480 (the Tax Amnesty Law) covering all "national internal revenue taxes for taxable year 2005 and prior years, with or without assessments duly issued therefore" that have remained unpaid as of December 31, 2005.[11]

[7] As found by the Second Division and as culled from the records of the case.
[8] *Id.* at Note 3, p. 116, par. 6.
[9] *Id.*, p. 116, par. 7.
[10] *Id.*, par. 8.
[11] *Id.*, p. 117, par. 9.

On November 8, 2007, respondent received a Letter of Authority dated September 6, 2007 from the BIR, RDO No. 38, authorizing Revenue Officer Victoria T. Ondaro and Revenue Supervisor Rubi Ruth G. Magtanob to examine the books of accounts and accounting records of respondent for all internal revenue taxes for the period January 1, 2006 to December 31, 2006.[12]

In compliance with the BIR's Letter of Authority (LOA), respondent submitted the following documents to the BIR, RDO No. 38 on December 4, 2007:

(i.) Annual Registration Fee (BIR Form 0605),
(ii.) Articles of Incorporation and By-Laws,
(iii.) Annual and Quarterly Income Tax Returns for CY 2006,
(iv.) Monthly Remittance Returns and Annual Information Return of Income Taxes Withheld on Compensation for CY 2006,
(v.) Monthly Remittance Returns and Annual Information Return of Creditable Income Taxes Withheld (Expanded) for CY 2006,
(vi.) Quarterly Income Taxes Withheld of Final Income Taxes Withheld for CY 2006,
(vii.) Monthly VAT Declarations and Quarterly VAT Returns for CY 2006,
(viii.) Contract of Lease and Proof of Payments of Documentary Stamp Tax for CY 2006,
(ix.) Summary List of Local Purchases, and
(x.) Summary List of Sales.[13]

On August 26, 2008, the BIR issued a *Subpoena Duces Tecum*[14] requiring the respondent to submit additional books of accounts and accounting records.

On September 30, 2008, respondent paid the amount of ₱10,000 as penalty for failure to obey summons (Section 266, Tax Code), and undertook to submit the documents required under the *Subpoena Duces Tecum.*[15]

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[12] *Id.*, p. 108, par. 5.
[13] Exhibit "X".
[14] Exhibit "Z".
[15] Exhibits "Y" to "Y-3".

In compliance with its letter of undertaking[16], respondent submitted the following accounting records to the BIR, RDO No. 38 on June 22, 2009:

(i.) Columnar Book-Cash Disbursements Book, which includes the records of purchases and the payment vouchers of respondent;
(ii.) Journal Book-Various Adjusting Entries and Cash Receipts Books, which include the records of sales/receipts of respondent; and
(iii.) Clearances from the Legal Division of the BIR.

On June 25, 2009, respondent received a Post Reporting Notice dated June 23, 2009 from the BIR RDO No. 38, which states that based on the report of Revenue Officer Victoria Ondaro, respondent is liable for deficiency income tax in the amount of ₱900,763.23 and VAT in the amount of ₱869,836.99 for CY 2006.[17]

On October 30, 2009, petitioner issued a Preliminary Assessment Notice (PAN)[18] for taxable year 2006. Thereafter, on November 27, 2009, petitioner issued the Final Assessment Notice (FAN) with Formal Letter of Demand (FLD) No. 38-06-0175 and Details of Discrepancies all dated November 27, 2009[19].

On September 16, 2010, respondent received a copy of petitioner's Preliminary Collection Notice dated August 13, 2010, demanding payment of deficiency income tax, VAT, and EWT for CY 2006 in the total amount of ₱33,242,400.54, broken down as follows[20] :

Kind of Tax	**Basic**	**Interest**	**Total**
Income Tax	₱ 1,659,859.74	₱ 897,688.53	₱ 2,557,548.27
VAT	19,354,879.20	11,326,581.36	30,681,460.56
EWT	2,132.23	1,259.48	3,391.71
Total	**₱ 21,016,871.17**	**₱ 12,225,529.37**	**₱ 33,242,400.54**

After receiving the Preliminary Collection Letter dated August 13, 2010, respondent proceeded to the Collection Division of the BIR, Revenue Region No. 7 (the "Collection Division") to review the records of the alleged deficiency tax assessments. Respondent found in the BIR records copies of the following documents:

[16] Exhibit "Y-1".
[17] *Id.* at Note 3, pp. 108-109, par. 6.
[18] Exhibit "4".
[19] Exhibits "5" to "5-c".
[20] *Id.* at Note 3, p. 109, par. 7.

(i) PAN dated October 30, 2009, assessing petitioner deficiency income tax, VAT and EWT for CY 2006 in the total amount of ₱32,562,951.00; and

(ii) FLD dated November 27, 2009 with attached FAN, assessing respondent deficiency income tax, VAT and EWT for CY 2006 in the total amount of ₱33,242,400.54.[21]

Based on the FLD, respondent's deficiency income tax amounted to ₱2,557,548.27, while its deficiency VAT amounted to ₱30,681,460.56, and its deficiency EWT amounted to ₱3,391.71 for CY 2006.[22]

In the Details of Discrepancies attached to the FAN, petitioner stated that due to respondent's continued and unjustifiable refusal to prove with documentary evidence the correctness of its tax return for CY 2006, petitioner resorted to the *Best Evidence Rule* in determining respondent's income tax liability pursuant to Revenue Memorandum Circular (RMC) No. 23-2000. Petitioner applied the 50% rule of approximation as enunciated in the case of *Mariano Zamora vs. Collector of Internal Revenue*[23] and automatically disallowed 50% of petitioner's Direct Costs and Operating Expenses.[24]

Petitioner disallowed the professional fees paid to respondent's external auditors, Constantino Gualdalquiver & Co., on the ground that respondent failed to subject the professional fees to withholding tax as required under RR No. 2-98, as amended.[25]

Likewise, petitioner disallowed the excess of respondent's Prior Year's Minimum Corporate Income Tax (MCIT) over normal income tax (NIT)on the alleged ground that the claim is not supported with appropriate documentary evidence.[26]

[21] *Id.*, par. 8.
[22] *Id.*, pp. 109-110.
[23] G.R. No. L-15290, May 31, 1963.
[24] *Id.* at Note 3, p. 114, par. 18.
[25] *Id.*, par. 19.
[26] *Id.*, p. 115., par. 21.

Moreover, petitioner also disallowed the respondent's Prior Year's Excess Credits in the amount of ₱628,495.00 on the alleged ground that it is not supported by documentary evidence.[27]

Lastly, petitioner disallowed the input tax carried over from previous taxable period in the amount of ₱19,169,372.60 on the alleged ground that it is not supported with valid documentary evidence.[28]

On October 15, 2010, respondent filed a protest against petitioner's FAN/FLD and Preliminary Collection Notice dated August 13, 2010.[29]

Thereafter, on November 5, 2010, respondent received a copy of the BIR's Final Notice Before Seizure (FNBS) dated October 5, 2010 demanding payment of petitioner's alleged deficiency income tax, VAT and EWT assessments for CY 2006 in the total amount of ₱33,242,400.54.[30]

On November 19, 2010, respondent filed with the BIR, Collection Division a letter-reply to the FNBS. In its letter-reply, respondent informed the Collection Division that respondent has a pending protest against deficiency income tax, VAT and EWT assessments for CY 2006.[31]

On December 9, 2010, respondent through its counsel, received a letter from the BIR Collection Division informing the respondent that the docket of the case has been forwarded to the Legal Division of BIR, Revenue Region No. 7 for proper resolution of the legal issues raised in the protest.[32]

In view of petitioner's inaction on respondent's administrative protest, petitioner filed a Petition for Review on May 13, 2011.

As of date of filing of the Petition for Review, petitioner had not yet acted on respondent's administrative protest against the deficiency income tax, VAT and EWT assessments for CY 2006.[33]

[27] *Id.*, par. 22.
[28] *Id.*, par. 23.
[29] *Id.*, par. 1.
[30] *Id.*, par. 2.
[31] *Id.*, par. 3.
[32] *Id.*, par. 4.
[33] *Id.*, p. 116, par. 5.

Within the extended time granted by the Court[34], petitioner filed his Answer[35] on July 7, 2011, and interposed the following defenses:

> "4. The assessment for calendar year 2006 in the total amount of ₱33,242,400.54 was issued in accordance with law and regulations. The factual and legal bases of the subject assessment are contained in the Final Assessment Notices and Formal Letters of Demand with Details of Discrepancies and was served within the three-year prescriptive period provided in Sec. 203 of the Tax Code, as amended.
>
> 5. Verification disclosed that [respondent] continuously and unjustifiably refused to prove with documentary evidence the correctness of [respondent]'s tax returns for calendar year 2006, thus, applying the 50% rule of approximation *(Mariano Zamora vs. Collector of Internal Revenue)*, with the amount of ₱1,691,162.35 expenses disallowed, pursuant to Revenue Memorandum Circular (RMC) No. 23-2000.
>
> 6. Verifications disclosed that [respondent] failed to subject professional fees of ₱21,322.21 to withholding tax as required under Revenue regulation No. 2-98.
>
> 7. Verification disclosed that [respondent] has unaccounted outside services amounting to ₱47,667.30 which were not reported in the financial statements pursuant to Sec. 31 of the Tax Code, as amended.
>
> 8. Verification disclosed that [respondent] claimed unsupported unexpired excess of prior year's MCIT over NTI in the amount of ₱239,473.00.
>
> 9. Verification disclosed that claimed Prior Year's Excess Credits amounting to ₱628,495.00 was unsupported, thus, disallowed pursuant to Sec. 76 of the Tax Code, as amended.

[34] *Id.*, p. 74.
[35] *Id.*, pp. 76-80.

10. Verification disclosed that claimed tax credits in the amount of ₱175,839.00 was unsupported, hence, disallowed pursuant to Sec. 2.583 of RR. No. 2-98.

11. Verification disclosed that the gross receipts of ₱994,639.72 was not subjected to 12% Value-Added Tax pursuant to Sec. 106 and 108 of the Tax Code, as amended.

12. Verification disclosed that the unaccounted services of ₱47,667.00 is subject to VAT pursuant to Sec. 106 and 108 of the Tax Code, as amended.

13. Verification disclosed that [respondent] failed to substantiate input tax amounting to ₱19,169,372.60, carried over from previous period, hence, disallowed pursuant to Sections 110, 113 and 237 of the Tax Code, as amended.

14. Verification disclosed that [respondent] failed to substantiate with valid documentary evidence, input tax of ₱60,429.84, therefore disallowed pursuant to Sections 110, 113 and 237 of the Tax Code, as amended.

15. Verification disclosed that professional fees of ₱21,322.31 were not subjected to Expanded Withholding Tax pursuant to Revenue Regulation No. 2-98.

16. Finally, settled is the rule that the tax assessments by tax examiners are presumed correct and made in good faith (Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671). It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

The case was set for Pre-Trial Conference on August 4, 2011.[36] Accordingly, petitioner's Pre-Trial Brief[37] and respondent's Pre-Trial Brief[38] were filed on August 1, 2011.

Thereafter, the parties filed their Joint Stipulation of Facts and Issues[39] on August 16, 2011 which was approved by the Court in Division in the Pre-Trial Order[40] dated September 12, 2011.

Trial ensued. Respondent presented Mr. Ericson Salvador, its Audit Manager, and Ms. Susan Cabrera, its Accountant and, on May 30, 2012, respondent filed its Formal Offer of Evidence[41].

Petitioner, on the other hand, presented Revenue Officer Victoria Ondaro, Mr. Joseph E. Rodriguez, Mr. Arnold C. Larossa and Mr. Wendell C. Virtucio as his witnesses, and, on October 25, 2013, he filed his Formal Offer of Evidence[42].

The Court in Division denied admission of Exhibits "13", "13-a", "19" and "19-a", described as the Judicial Affidavits of her Administrative Aid II *(sic)*, Mr. Arnold C. Larrosa and the Letter Carrier, Mr. Wendell C. Virtucio, for failure to comply with the Section 3(c) of A.M. No. 12-8-8-SC, otherwise known as the Judicial Affidavit Rule.

Petitioner filed, on January 14, 2014, an Omnibus Motion for Partial Consideration and To Admit the Attached Amended Judicial Affidavit (Resolution of 08 January 2014).[43] In the Resolution[44] dated February 28, 2014, the Court in Division granted petitioner's Omnibus Motion and admitted his Exhibits "13", "13-a", "19" and "19-a".

Respondent presented its Accounting Head, Ms. Mary Grace E. Pascua-Tapia for its rebuttal evidence. Respondent's Supplemental Formal Offer of Evidence[45] was filed on June 2, 2014. Thereafter, respondent's Exhibit "EEE"

[36] *Id.*, p. 81. Notice of Pre-Trial Conference dated July 8, 2011.
[37] *Id.*, pp. 82-86.
[38] *Id.*, pp. 87-105.
[39] *Id.*, pp. 107-121.
[40] *Id.*, pp 137-152.
[41] *Id.*, pp. 214-233.
[42] *Id.*, pp. 479-486.
[43] *Id.*, pp. 590-593.
[44] *Id.*, pp. 630-633.
[45] *Id.*, pp. 643-646.

and the sworn statement of its witness, Ms. Mary Grace E. Pascua-Tapia, were admitted by the Court in Division in the Resolution dated June 23, 2014.[46]

On August 27, 2014, within the extended time granted by the Court,[47] petitioner filed his Memorandum[48].

On the same date, respondent filed an Urgent Omnibus Motion to i. Reopen Case for the Presentation of Additional Evidence; and ii. Defer the Submission of Memoranda[49], which granted by the Court in Division in the Resolution[50] dated September 26, 2014.

Respondent's witness, Ms. Mary Grace E. Pascua-Tapia was recalled during the hearing on October 20, 2014.[51] Respondent submitted its Supplemental Formal Offer of Evidence[52] on November 10, 2014. Its additional exhibits were admitted by the Court in the Resolution dated December 19, 2014.

On February 9, 2015, petitioner filed his Supplemental Memorandum[53] while respondent filed its Memorandum[54] on March 2, 2015. The case was submitted for decision on March 6, 2015.[55]

The Ruling of the Second Division

On October 3, 2016, the Second Division promulgated the assailed Decision granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE,** in view of the foregoing, this instant Petition for Review is **GRANTED.** Accordingly, the deficiency income tax, value-added tax and expanded withholding tax assessments against petitioner for calendar year 2006 amounting to ₱33,242,400.54 is **CANCELLED** and deemed **WITHDRAWN.**

[46] *Id.,* pp. 649-650.
[47] *Id.,* p. 656, Order dated July 30, 2014.
[48] *Id.,* pp. 657-670.
[49] *Id.,* pp. 671-678.
[50] *Id.,* pp. 686-689.
[51] *Id.,* pp. 732-733, Minutes of Hearing dated October, 20, 2014.
[52] *Id.,* pp. 736-741.
[53] *Id.,* pp. 775-779.
[54] *Id.,* pp. 790-832.
[55] *Id.,* p. 833.

SO ORDERED."[56]

In the assailed Decision, the Court in Division ruled that the deficiency tax assessments against petitioner for CY 2006 are null and void for having been issued in violation of the due process requirements under the law and Revenue Regulations (RR) No. 12-99. It was found that respondent did not receive the PAN and the FAN. Thus, the Court in Division held that the right of petitioner to issue any deficiency income tax, VAT and EWT assessments against respondent for CY 2006 has already prescribed.

Aggrieved, petitioner filed a Motion for Reconsideration on February 15, 2016 which the Court in Division denied in the assailed Resolution, thus:

> **"WHEREFORE,** premises considered, [petitioner's] **Motion for Reconsideration (Notice of Decision promulgated on January 28, 2016)** is hereby **DENIED** for lack of merit."[57]

Within the extended period granted by the Court *en banc*[58], on July 13, 2016, petitioner timely filed the present Petition for Review.[59]

On August 10, 2016, the Court *en banc* issued a Resolution[60] ordering counsels for petitioner to submit proof of compliance of the MCLE requirement. Due to petitioner's failure to comply[61], a Show Cause Order was issued in a Resolution dated November 4, 2016[62] which also reiterated the former directive.

On November 11, 2016, petitioner filed his Compliance[63] in an insufficient number of copies. Petitioner was ordered to submit the requisite additional copies of his Compliance as required under A.M. No. 11-9-4-SC via Minute Resolution dated November 25, 2016.[64]

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[56] *Id.* at Note 1, p. 35.
[57] *Id.*, p. 45.
[58] *Id.*, p. 3.
[59] *Id.*, pp. 4-48.
[60] *Id.*, pp. 50-52.
[61] *Id.*, p. 53.
[62] *Id.*, pp. 55-57.
[63] *Id.*, pp. 59-63.
[64] *Id.*, p. 64.

On December 9, 2016, petitioner filed his Compliance[65] which was noted by the Court *en banc* in a Resolution dated January 10, 2017.[66] In that same Resolution, respondent was ordered to file Comment to the Petition.

After being granted an extension of time to file Comment[67], respondent filed its Comment[68] on February 13, 2017.

On March 15, 2017, the Court *en banc* resolved to give due course to the petition and ordered the parties to submit their respective Memoranda.[69]

Respondent filed its Memorandum on May 2, 2017[70] while petitioner failed to submit the same.[71]

On June 16, 2017, the Court issued a Resolution[72] submitting the case for decision.

The Issue

The principal issue in this case is whether or not the deficiency assessments against respondent for CY 2006 are null and void for having been issued in violation of the due process requirements under the law. Corollary to that, whether or not the right of petitioner to assess respondent has already prescribed.[73]

The Ruling of the Court

We deny the petition.

The issues raised in the petition are mere reiterations of the same issues which had already been duly considered, passed upon and extensively discussed by the Second Division in the assailed Decision and assailed Resolution. Nevertheless, for emphasis, we will discuss at length, once again, the demerits of

[65] *Id.*, pp. 71-72.
[66] *Id.*, p. 75-76.
[67] *Id.*, pp. 77-81.
[68] *Id.*, pp. 82-92.
[69] *Id.*, pp. 94-95.
[70] *Id.*, pp. 101-122.
[71] *Id.*, p. 123.
[72] *Id.*, pp. 125-126.
[73] *Id.*, p. 6.

petitioners' arguments which may serve as a guidepost in deciding issues of similar nature in the future.

Non-Receipt of the PAN and FAN/FLD Renders the Assessment Void

Petitioner argues in its Petition that due process requirements under the law and RR 12-99 have been observed and followed as the PAN and the FAN were served on respondent through registered mail delivered by Letter Carrier Mr. Wendell Virtucio, who testified that he delivered the properly addressed notices to 1172 EDSA, Unang Sigaw, Quezon City.

Mr. Virtucio also testified that the security guard on duty, Mr. Leopoldo B. Vargas, Jr., told him that the company AA Commercial, Inc. had moved out of the premises. He was also told that AA Commercial, Inc. had transferred to its main office located in Makati, but that the security guard did not specify the complete address where respondent moved its offices to.

As recounted by the Court in Division, petitioner's witness, Mr. Arnold C. Larrosa, also testified that the PAN and the FAN were served to respondent through registered mail. To prove that the PAN and FAN were duly served and mailed to respondent, petitioner presented (i) certified xerox copies of endorsements of the PAN and FAN from the Assessment Division to the Administrative Division for mailing[74] ; (ii) certified xerox copy of page 5 of Administrative Division's logbook indicating the letters that were mailed but returned to sender with reasons indicated[75] ; and (iii) certified xerox copies of the Certifications from the Philippine Postal Corporation dated October 5, 2010[76].

While it appears that petitioner did indeed send out the required notices via registered mail to respondent, the more important question that Due Process asks is whether or not respondent actually received them.

There is testimony on the record from respondent's witness, Mr. Ericson Salvador, who testified in his Sworn Statement[77] that respondent only learned of the deficiency tax assessments for CY 2006 when it received a copy of the Preliminary Collection Notice on September 16, 2010. This denial of receipt of the notices by respondent calls into play the doctrine established by the Supreme

[74] Exhibits "14" and "15".
[75] Exhibit "16".
[76] Exhibits "17" and "18".
[77] Exhibit "W".

Court in *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[78] where it held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

As recounted above, Mr. Virtucio, the letter carrier, also testified that he was not able to deliver the letter to respondent, thus:

> **"5. And do you recall having delivered mails sometime in October 30, 2009 and November 27, 2009 for the BIR at #11772 Edsa, Unang Sigaw, Quezon City for AA Commercial, Inc.?**
>
> Yes, but the security guard on duty whose name is Leopolda B. Vargas, Jr. told me that the Company AA Commercial, Inc. had moved out of the premises. He also told me that AA Commercial, Inc. had transferred to its main office located at Makati, but he did not specify the complete address where in Makati.
>
> **6. Do you recall what happened when you delivered those mails?**
>
> Yes, after the conversation between me and the security guard, I left the place, and brought back the letter to the Post Office and made a notation that this letter of the BIR be returned to sender."

Petitioner's other witness, Mr. Larrosa, also testified to the fact that petitioner was aware that respondent had moved out of its former premises, thus:

> **"7. How would you know if the same notices were received by the taxpayer?**
>
> I would not know if it was received, however, the postman/courier would bring with him the letters/notices with Registry Return Receipt, if they were returned to sender.

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[78] G.R. No. 157064, August 7, 2006, citing Republic of the Philippines vs. The Court of Appeals and Nielson & Co., Inc., G.R. No. L-38540, April 30, 1987.

8. What happened then to the notices issued to AA Commercial, Inc?

I receive the returned notices, refer them to the Assessment Division and record them in my logbook.

9. Do you also have a copy of the said logbook?

Yes, Ma'am. Also, I have a certified photocopy of the page in said logbook of return to sender letters with corresponding reasons.

10. And what was the reason stated there?

It says here 'moved out'." *(Emphasis ours)*

As found by the Court in Division and as borne out by the evidence, respondent did not receive the PAN and the FAN as the notices that petitioner sent were **returned to sender**. The fact of non-receipt is bolstered by the Certifications from the Philippine Postal Corporation dated October 5, 2010[79] stating that the Registered Letter Nos. 4246 and 4650 addressed to AA Commercial, Inc. # 1172 EDSA, Unang Sigaw, Quezon City and posted at BIR PO on October 30, 2009 and November 27, 2009, respectively, were delivered by Mr. Wendell Virtucio and were returned to sender on November 10, 2009 and December 9, 2009, respectively.

From the foregoing, *We* glean two very important facts: 1) that the notices petitioner sent out were returned to sender; and 2) that petitioner knew that respondent had moved out from the address he was sending the notices to. Despite these, no efforts were made by petitioner for respondent to actually receive the said notices.

It cannot be emphasized enough that the mere ***issuance*** of the PAN and FLD/FAN does not constitute proof of the ***receipt*** of the assessment notices by the taxpayer. This Court has previously elucidated on this in *La Flor Dela Isabel, Inc. v. CIR*[80], thus:

[79] Exhibits "17" and "18".
[80] CTA Case No. 8132, March 22, 2013. (EFV Ponencia, concurred in by J. Acosta and EPU)

> "Contrary to respondent's contention, a stipulation as to her issuance of the PAN dated December 15, 2004 and the FAN dated January 24, 2005, cannot by any stretch of the imagination be synonymous to receipt by petitioner. Even Mr. Webster would revolt if respondent would insist that to issue is equivalent to receive for they are exactly the opposite. **To issue is defined as, 'to send forth, to sent out, or to send out officially' or 'the act of issuing, sending forth' while to receive is 'to take into possession and control, or to accept custody of.'** Respondent is the source of both the PAN and the FAN for delivery or service to the addressee, which in this case is the petitioner. However, no proof was presented that the latter received them. In view thereof, the only assessment issued by respondent which petitioner received was the FDDA. Even assuming for the sake of argument that the PAN and the FAN were received on the dates they were issued, on December 15, 2004 and January 24, 2005, respectively, still their issuance were *(sic)* beyond the 3-year prescriptive period mandated by law." *(Emphasis ours)*

Section 228 of the NIRC of 1997, as amended, lays down the mandatory requirement of informing the taxpayer of the assessment, as follows:

> "SEC. 228. **Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> x x x x x x x x x
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; <u>otherwise, the assessment shall be void</u>.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis ours)*

Implementing the provision above is RR No. 12-99, the pertinent sections of which read as follows:

"SECTION 3. **Due Process Requirement in the Issuance of a Deficiency Tax Assessment.** -

3.1 *Mode of procedures in the issuance of a deficiency tax assessment*

x x x x x x x x x

3.1.2 *Preliminary Assessment Notice (PAN).* - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

x x x x x x x x x

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

Based on the foregoing, it is required that petitioner not only issue the PAN, and the FAN/FLD in writing to respondent, but also that the same be received by the latter. It is elementary that a taxpayer must actually receive any assessment issued by respondent in order for the same to be valid.[81] The Supreme Court has ruled in *Estate of the Late Juliana Diez Vda. De Gabriel v. CIR*[82] that it is a requirement of due process that the taxpayer actually receive the assessment, *viz.:*

> "x x x **[D]ue process requires at the very least that such notice actually be received.** In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation,* we had occasion to say:
>
> > As assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. **To enable the taxpayer to determine his remedies thereon, due process requires that it mush be served on and received by the taxpayer."** *(Emphasis ours)*

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[81] CIR v. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010, 637 SCRA 633; Barcelon Roxas Securities, Inc. v. CIR, G.R. No. 157064, August 7, 2006, 498 SCRA 126; Pundanera v. CIR, CTA Case No. 8333, December 2, 2014; Palaganas v. CIR, CTA Case No. 8394, September 17, 2014; Coolmate Corporation v. CIR, CTA Case No. 8264, May 19,2014.
[82] G.R. No. 155541, January 27, 2004.

Given the state of the facts and the evidence, *We* see no reason to disturb the Court in Division's finding that petitioner's assessments of deficiency income tax, VAT, and EWT against respondent are null and void for lack of due process.

Petitioner's Right to Issue Deficiency Tax Assessments to Respondent for CY 2006 has Prescribed

Petitioner argues that the deficiency tax assessment has not prescribed because the PAN was issued on October 30, 2009, and the FAN was issued on November 27, 2009, and that both were issued within the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended. As the PAN and FAN were duly served on respondent, his right to assess, therefore, has not prescribed.

However, petitioner's argument is based on the premise that the PAN and FAN were duly served on respondent. *We* have discussed the matter at length above and considering that respondent did not receive the deficiency tax assessments **at all**, petitioner's argument has no leg to stand on.

As discussed by the Court in Division, the period within which to assess internal revenue taxes is governed by Section 203 of the NIRC of 1997, as amended, which reads:

> "'Sec. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Sec. 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.'

It is clear from the foregoing that internal revenue taxes must be assessed within three (3) years from the date of actual filing of the tax return or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

In this case, the date of filing of [respondent's] Annual Income Tax Return and Quarterly VAT Returns for taxable year 2006 as well as the end of the three-year prescriptive period are as follows:

Tax Return	**Date of Actual Filing**	**End of 3 Year Prescriptive Period**
VAT 1st Quarter, CY 2006[83]	April 25, 2006[84]	April 25, 2009
VAT 2nd Quarter, CY 2006[85]	July 25, 2006[86]	July 25, 2009
VAT 3rd Quarter, CY 2006[87]	October 23, 2006[88]	October 25, 2009
VAT 4th Quarter, CY 2006[89]	January 25, 2007[90]	January 25, 2010
Annual Income Tax 2006[91]	April 16, 2007[92]	April 16, 2010

On the other hand, for [respondent's] EWT for calendar year 2006, the due date for the filing of the monthly remittance returns, the actual date of filing thereof and the lapse of the three-year prescriptive period are as follows:

Month	**Due Date of Filing of Monthly Remittance Returns**	**Date of Filing of Monthly Remittance Returns**	**End of 3 Year Prescriptive Period**
January	February 10, 2006	February 10, 2006[93]	February 10, 2009

[83] Exhibit "B".
[84] Exhibit "B-1".
[85] Exhibit "D".
[86] Exhibit "D-1".
[87] Exhibit "E".
[88] Exhibit "E-1".
[89] Exhibit "F".
[90] Exhibit "F-1".
[91] Exhibit "A".
[92] Exhibit "A-1".
[93] Exhibit "H-1".

February	March 10, 2006	March 7, 2006[94]	March 10, 2009
March	April 10, 2006	April 7, 2006[95]	April 10, 2009
April	May 10, 2006	May 9, 2006[96]	May 10, 2009
May	June 10, 2006	June 9, 2006[97]	June 10, 2009
June	July 10, 2006	July 10, 2006[98]	July 10, 2009
July	August 10, 2006	August 7, 2006[99]	August 10, 2009
August	September 10, 2006	September 4, 2006[100]	September 10, 2009
September	October 10, 2006	October 9, 2006[101]	October 10, 2009
October	November 10, 2006	November 9, 2006[102]	November 10, 2009
November	December 10, 2006	December 7, 2006[103]	December 10, 2009
December	January 15, 2007	January 15, 2007[104]	January 15, 2010

Considering that [respondent] did not receive the PAN and the FAN/FLD, and the end of the three-year prescriptive period has long ended, [petitioner's] right to issue any deficiency income tax, VAT and EWT assessments against petitioner for taxable year 2006 has already prescribed."

WHEREFORE, finding no cogent reason to disturb the findings and conclusions reached by the Second Division in the assailed Decision dated January 28, 2016 as well as in the assailed Resolution dated June 7, 2016, the same are **AFFIRMED**. Accordingly, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[94] Exhibit "I-1".
[95] Exhibit "J-1".
[96] Exhibit "K-1".
[97] Exhibit "L-1".
[98] Exhibit "M-1".
[99] Exhibit "N-1".
[100] Exhibit "O-1".
[101] Exhibit "P-1".
[102] Exhibit "Q-1".
[103] Exhibit "R-1".
[104] Exhibit "S-1".

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
With Dissenting Opinion
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1476** (CTA Case No. 8290)
	Members :
-versus-	**DEL ROSARIO**, *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
AA COMMERCIAL, *Respondent.*	Promulgated:
	JUN 11 2018 11:25 a.m.

x- x

DISSENTING OPINION

MANAHAN, J.:

I respectfully submit my dissent to the opinion of my esteemed colleagues.

The majority upheld the decision of the Court in Division and consequently canceled the deficiency tax assessments (for income, VAT and expanded withholding tax) for failure of the Commissioner of Internal Revenue (CIR) to discharge the burden of proving receipt by the respondent of the Preliminary Assessment Notice (PAN) and the Final Assessment Notices (FAN) with Formal Letter of Demand (FLD) for calendar year 2006.

It is clear that the primordial defense of the respondent was its non-receipt of the PAN and the FAN/FLD which would constitute a violation of its right to due process making such assessments void and ineffective.

The apparent "failure" of petitioner CIR to prove that said official notices were indeed validly served upon respondent was deemed fatal to his cause.

Upon closer scrutiny of the case records, I humbly disagree.

While I do not wish to deviate from the well-established doctrine that denial of receipt of assessments by the taxpayer shifts the burden to the CIR to prove otherwise[1], I maintain that the prevailing circumstances in each case should be studied closely to arrive at an astute conclusion as this defense, though commonly invoked, requires a careful and judicious review.

The facts of the case show that the subject assessments were sent by registered mail to the address of respondent in Quezon City but were refused receipt by the security guard on duty who informed the letter carrier that the respondent had moved out of the premises. The Post Office then sent the letters back to the BIR with a note "Return to Sender".

A review of the records and the evidence presented does not give any information whether respondent duly notified the Bureau of Internal Revenue (BIR) of its change of address pursuant to the requirements of Section 11 of Revenue Regulations No. (RR) 12-85 which provides as follows:

> RR 12-85
>
> "Section 11 – In case of change of address, the taxpayer must give **written notice thereof to the Revenue District Office 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 legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR National

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[1] CIR vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

> Office, Q.C. 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 for the period involved shall be considered valid and binding for purposes of the period within which to reply." (Emphasis supplied)

Petitioner cannot be faulted for the non-receipt of the subject assessments by respondent because records and evidence do not show that petitioner updated the BIR of its change of address by filing BIR Form No. 1905 (Application for Registration Information Update). There was also no showing that the BIR was "constructively" informed of the change in address, hence, the continued use of the respondent's former address in the official notices.

Let it be said that I recognize and defer to the ruling of the Supreme Court in the case of *CIR vs. BASF Coating + Inks Phils., Inc.*[2] that "constructive notice" is sufficient because in said case, the BIR (by its previous notices) already knew of the "updated" address of the taxpayer but continued to use the former address in its official communications. The Supreme Court then ruled in favor of the taxpayer and upheld its defense of non-receipt of the assessments.

The instant case does not show similarity in circumstances with the *BASF* case. In the absence of a showing that the BIR has long known of the change in address of the taxpayer, I am more inclined to side with the herein petitioner that its use of the former address was due to the fact that it has not yet been duly informed of the change in address of the respondent.

The second point of my dissent pertains to the reasons adopted by the majority in concluding that the subject assessments were issued beyond the three (3) year prescriptive period. By thus upholding the decision of the Court in Division, the majority so holds that since respondent did not receive the PAN and the FAN/FLD at the end of the three-year period, then the assessments for taxable year 2006 have already prescribed and I quote this pertinent portion of the decision:

> "Considering that (respondent) did not receive the PAN and the FAN/FLD, and the end of the three -year prescriptive period has long ended, (petitioner's) right to issue any

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[2] G.R. No. 198677, November 26, 2014.

deficiency income tax, VAT and EWT assessments against petitioner for taxable year 2006 has already prescribed".

I register my disagreement because the prescriptive period of the right to issue an assessment is not dependent on the taxpayer's receipt of the assessment but on its issuance, release and eventual mailing to the taxpayer. The Supreme Court clearly enunciated this in the case of *Barcelon Roxas Securities, Inc. vs. CIR*[3] when it ruled thus:

> "In the case of *Collector of Internal Revenue v. Bautista,* this Court held that **an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary**. At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent." (emphasis supplied)

Due to the peculiar circumstances of the instant case, it should have been determined whether the assessments were indeed issued, released and mailed within the three-year prescriptive period and based its conclusion relative to the issue of prescription on this fact and not on its receipt by the taxpayer.

In fine, I reiterate my disquisition on the issue of non-receipt of assessment notice as embodied in my earlier Dissenting Opinion in the case of *Commissioner of Internal Revenue, et.al. vs. T Shuttle Services,* Inc.[4]

Accordingly, I vote to grant the Petition for Review.

CATHERINE T. MANAHAN
Associate Justice

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[3] G.R. No. 157064, August 7, 2006.
[4] CTA EB No. 1565 dated April 3, 2018.