REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

TRAVEL WAREHOUSE, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10098

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUL 12 2024 2:05 pm

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review,[1] filed on June 28, 2019 by petitioner Travel Warehouse, Inc. against respondent Commissioner of Internal Revenue ("CIR"), praying that the Court cancel respondent's assessment against petitioner, as detailed in the Final Assessment Notice ("FAN") October 24, 2018, for the latter's alleged deficiency income tax ("IT") and value-added tax ("VAT") for taxable year ("TY") 2012 ("assailed assessment").[2]

The Parties[3]

Petitioner is a corporation duly registered with the Bureau of Internal Revenue ("BIR") and duly organized and existing under and in virtue of the laws of the Philippines.

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1 *Rollo* Vol. 1, pp. 12-30.
2 *See* Petition for Review, *id.* at 29.
3 *See* Pre-Trial Order, dated January 31, 2021, p. 2, *Rollo* Vol. 2, p. 546.

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Respondent is the duly appointed Commissioner of Interna Revenue, vested under the law with the authority to carry out all functions, duties, and responsibilities of the BIR.

The Facts

Respondent issued Letter Notice No. 43-ARLFTRS-12-00-00838 on July 23, 2014, a Follow-Up Letter on August 11, 2014, and a Letter of Assignment ("LOA") on May 25, 2015, to examine petitioner's books of accounts and other accounting records for TY 2012.[4]

Respondent then issued a Preliminary Assessment Notice ("PAN") on September 17, 2018. He alleges to have mailed the same to petitioner via registered mail on October 3, 2018,[5] while petitioner claims to have received the same on October 9, 2018.[6] Petitioner responded to the PAN by filing a Reply with BIR Revenue Region No. 7.[7]

Respondent then issued the assailed FAN on October 24, 2018, which petitioner allegedly received on November 4, 2018. Petitioner then filed a Protest or Request for Reconsideration to the FAN on December 3, 2018.[8]

With its Protest or Request for Reconsideration left unaddressed, petitioner filed the instant Petition for Review on June 28, 2019. Respondent filed his Answer[9] on October 14, 2019.

After an unsuccessful attempt at mediation,[10] respondent filed his Pre-Trial Brief[11] on October 1, 2020, while petitioner filed its Pre-Trial Brief[12] on October 2, 2020. Pre-Trial then ensued on October 6, 2020,[13] with the parties filing their Joint Stipulation of Facts and Issues[14] on November 5, 2020 and the Court issuing a Pre-Trial Order[15] on January 13, 2021.

Petitioner presented witness Carolina J. Calderon on October 20, 2021,[16] then filed its Formal Offer of Evidence[17] via registered mail on November 4, 2021. The Court admitted most of the offered exhibits but denied

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4 *Id.*
5 *See* Answer, p. 2, *Rollo* Vol. 1, p. 157.
6 *See* Petitioner for Review, *id.* at 16.
7 *Id.*
8 *Id.*
9 *Id.* at 156-167.
10 *See* Mediator's Report, dated February 5, 2020, *id.* at 178.
11 *Id.* at 188-190.
12 *Id.* at 342-352.
13 *See* Minutes of the Hearing, held on October 6, 2020, *id.* at 478.
14 *Rollo* Vol. 2, pp. 527-535.
15 *Id.* at 541-549.
16 *See* Minutes of the Hearing, held on October 20, 2021, *id.* at 715.
17 *Id.* at 718-729.

a few due to petitioner's failure to present the originals for comparison and denied others for petitioner's failure to identify these.[18]

Respondent presented his lone witness, Revenue Officer ("RO") Josephine C. Cortuna on January 25, 2023[19] and filed his Formal Offer of Evidence[20] on February 8, 2023. The Court admitted all offered exhibits.[21]

Petitioner then filed its Memorandum[22] on May 12, 2023, whereas respondent failed to file any Memorandum.[23] This case was thus submitted for decision on August 30, 2023.[24]

Hence, this Decision.

The Issues[25]

1) Whether or not the subject FAN issued by the BIR on October 24, 2018 is valid;
2) Whether or not the authority of the ROs named under the May 25, 2015 LOA had already lapsed, rendering the LOA void;
3) Whether or not the period of limitation for the BIR to assess petitioner for the alleged deficiency IT and VAT had prescribed; and
4) Whether or not petitioner is liable for deficiency IT and VAT for TY 2012.

Arguments of the Parties

In its Memorandum, petitioner raises the following arguments:

1) Respondent's right to assess petitioner for TY 2012 had already prescribed when the former issued the FAN;
2) Respondent violated its right to due process when the former issued the FAN before the expiration of the 15-day period given to petitioner to reply to the PAN, contrary to the requirements of *Section 228 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*") and *Revenue Regulations* ("*RR*") *No. 12-99*;

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[18] *See* Resolution, dated March 24, 2022, *id.* at 738-739.
[19] *See* Minutes of the Hearing, held on January 25, 2023, *id.* at 746.
[20] *Id.* at 752-756.
[21] *See* Resolution, dated March 21, 2023, *id.* at 767-768.
[22] *Id.* at 770-807.
[23] *See* Records Verification, dated August 16, 2023, *id.* at 812.
[24] *See* Minute Resolution, dated August 30, 2023, *id.*
[25] *See* Pre-Trial Order, pp. 2-3, *id.* at 542-543.

3) The original ROs named in the LOA lost the authority to examine petitioner's records for failing to submit a final report within the required 120-day period and having the LOA revalidated, while no new LOA was issued to authorize the ROs who actually issued the PAN and FAN; and
4) The assailed assessment has no basis in law or fact.

In his Answer, respondent contends the following:

1) As he mailed the PAN to petitioner on October 4, 2018, the aforementioned 15-day period expired on October 19, 2018, before the October 24, 2018 issuance of the FAN;
2) Under *Revenue Memorandum Order* ("*RMO*") *No. 44-10*, a failure to complete the authorized examination within the 120-day period and revalidate the LOA no longer voids the assessment;
3) The ROs who issued the PAN and FAN were authorized under a Memorandum of Assignment ("MOA"); and
4) The Formal Letter of Demand, Details of Discrepancies, and FAN issued on October 24, 2018 all clearly state the legal and factual bases for the assessment.

The Ruling of the Court

The Petition for Review must be granted. The assessment against petitioner is woefully invalid.

The Court has jurisdiction over the case at bar

Under *Section 7(a)(2) of Republic Act No. 1125, as amended*, this Court has jurisdiction over the inaction of the CIR in cases involving disputed assessments:

> SEC. 7. Jurisdiction — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> . . . .
>
> (2) *Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments*, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code

> provides a specific period for action, in which case *the in action shall be deemed a denial*;
>
> (Italics supplied.)

Relevant to the above are *Rule 8, Section 3(a) of the Revised Rules of the Court of Tax Appeals, as amended* and *Section 228 of the NIRC*. The latter gives the CIR 180 days within which to act on a taxpayer's protest, while both give the taxpayer 30 days from the expiration of the 180-day period within which to file a judicial appeal before this Court.

Here, petitioner filed a protest to the FAN on December 3, 2018, giving respondent until June 1, 2019 within which to act on said protest. Respondent failed to do so. This failure constituting the CIR's failure to act on a protest of a disputed assessment, petitioner had until July 1, 2019 within which to file its judicial appeal.

The Petition for Review was filed on June 28, 2019. Consequently, this Court properly assumed jurisdiction over the case at bar.

Respondent's right to assess petitioner had prescribed when he issued the PAN

Petitioner argues that respondent assessed petitioner late by issuing the FAN beyond the three-year period prescribed by *Section 203 of the NIRC*. Respondent disagrees, contending that substantial underdeclaration exists in the case at bar, meaning the extended 10-year period granted by *Section 222* of said law is applicable here.

Petitioner is correct.

To review, *Section 203 of the NIRC* grants respondent three years to assess a taxpayer, counted from either (a) the last day prescribed by law for the filing of a return; or (b) the day of the return's filing when the same is filed beyond the period prescribed by law:

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

The above identifies *Section 222 of the NIRC* as providing an exception to this three-year period. Subsection *(a)* of the same provides that when either the return is not filed at all or the taxpayer files a "false or fraudulent return with intent to evade taxes", respondent may assess the taxpayer within an extended period of 10-years from the discovery of the falsity, fraud, or omission:

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

The issue arises from competing interpretations of the phrase "false or fraudulent return with intent to evade tax." Petitioner maintains that willful intent to evade taxes must be established to justify the extended 10-year period, citing *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*[26] ("*Goodrich*") and *Commissioner of Internal Revenue v. Spouses Magaan* ("*Magaan*").[27] Respondent argues that substantial underdeclaration is enough, a position that has basis in cases such as *Commissioner of Internal Revenue v. Asalus Corporation*[28] ("*Asalus*").

The recent case of *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*[29] ("*McDonald's 2023*") is illuminating here. In said case, the Supreme Court reviewed the history of its conflicting rulings on the period granted for assessment, before concluding that only *intentional errors* can justify the 10-year period, necessitating the establishment of willful intent to evade taxes.

While the above agrees with petitioner's position, this Court deems *McDonald's 2023* not directly applicable to the case at bar. The High Court's interpretation of a given law is generally considered part of said law as of the date of the latter's passing, meaning that such interpretations can be "retroactively" applied. However, a *new* doctrine that overrules a prior ruling and adopts a different view cannot be retroactively applied, as affected parties cannot be faulted for following the prior doctrine in good faith.[30] The discussion in *McDonald's 2023* clearly shows that the Supreme Court has

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[26] G.R. No. 104171, February 24, 1999.
[27] G.R. No. 232663, May 3, 2021.
[28] G.R. No. 221590, February 22, 2017.
[29] G.R. No. 247737, August 8, 2023.
[30] *See Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.

adopted and abandoned one or the other interpretation of *Section 222 of the NIRC* over the years. As such, the prevailing jurisprudence during the relevant period, what was considered the current doctrine at the time respondent was supposed to be assessing petitioner, must be applied here.

Petitioner filed its final adjustment return for TY 2012 on May 29, 2014.[31] At this point, *Goodrich*, promulgated in 1999, was the prevailing jurisprudence. Following the three-year period, respondent had until May 29, 2017 within which to assess petitioner. Before this 2017 deadline, however, the Supreme Court promulgated the Decision in *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[32] ("*Samar Electric*") on May 10, 2014, which ruled that substantial underdeclaration was enough to justify the 10-year period. This was abandoned in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[33] ("*Fitness By Design*"), promulgated on November 9, 2016, which held that fraud must be established to allow using the 10-year period. Then, on February 22, 2017, a few months before May 29, 2017, the Supreme Court promulgated *Asalus*, which once again declared substantial underdeclaration sufficient for justifying the extended ten-year period.

However, March 22, 2017 saw the promulgation of *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*[34] ("*Inquirer*"), where the Supreme Court once again pronounced the establishment of willful intent as necessary for using the 10-year period. The High Court has been consistent in this ruling since then, affirming it in *Magaan* and in *Commissioner of Internal Revenue v. Unioil Corporation*,[35] both from 2021.

The interpretation of *Section 222 of the NIRC* applicable here, then, is that of *Goodrich*, *Fitness By Design*, and *Inquirer*: The 10-year period can be invoked only when willful intent is established. As respondent did not attempt to even allege such willful intent, the three-year period under *Section 203 of the NIRC* must be followed. And as respondent did not issue any assessment against petitioner on or before the May 29, 2017 deadline, his right to assess petitioner had already prescribed when he issued the assailed FAN.

The assessment against petitioner for TY 2012 is thus void for having been issued beyond the period prescribed by law.

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31 *See* Petition for Review, *Rollo* Vol. 1, p. 22.
32 G.R. No. 193100, May 10, 2014.
33 G.R. No. 215957, November 9, 2016.
34 G.R. No. 213943, March 22, 2017.
35 G.R. No. 204405, August 4, 2021.

The RO who examined petitioner's records and recommended the deficiency assessment was not authorized to do so, rendering said assessment void

Assuming *arguendo* that the 10-year period is applicable here, another issue raised by petitioner is the authority of the RO who examined its records and recommended the assessment against it. The LOA in this case, to review, specifically authorized RO Rosalina Reyes, *and no other revenue officer*, to examine petitioner's records for TY 2012. Given that it was actually RO Cortuna who participated in the examination, petitioner insists that the resulting assessment is void.

We find for petitioner.

Under *Section 6(a) of the NIRC*, respondent or his duly authorized representative may authorize the examination of a taxpayer and the assessment of the amount due from said taxpayer. Meanwhile, *Sec. 10(c) of the NIRC* allows Revenue Regional Directors to issue LOAs to group supervisors and ROs for the performance of such duties. *Section 13 of the NIRC* governs the authority of a RO to perform said duties:

> "SEC. 13. Authority of a Revenue Officer. – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, *a Revenue Officer assigned to perform assessment functions in any district may,* ***pursuant to a Letter of Authority*** *issued by the Revenue Regional Director*, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to ***recommend the assessment of any deficiency tax due*** in the same manner that the said acts could have been performed by the Revenue Regional Director [himself]."
> (Emphasis supplied.)

The above clearly states that a RO may recommend the assessment of any deficiency tax due. It is also clear, however, that such recommendation may only be done *pursuant to a Letter of Authority.*

What is the result, then, when a RO lacks the authority granted by a valid LOA? The Supreme Court has, in various cases, judged such a lack sufficient ground to declare an assessment void. In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[36] ("*Sony*"), the High Court stated that the lack of authority granted by a LOA renders any examination or assessment conducted by a RO a nullity. Later, in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[37] the Supreme Court affirmed this stance,

[36] G.R. No. 178697, November 17, 2010.
[37] G.R. No. 2222743, April 5, 2017.

adding that the absence of a LOA authorizing a RO to examine and assess a taxpayer is a violation of said taxpayer's right to due process. The issue has been so thoroughly threshed out in the decade since *Sony* that in 2020, the Supreme Court resolved the case of *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,[38] through a short Notice, observing that "[i]t is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer." The message is clear and unwavering: a RO *needs* to be authorized by a LOA before said RO can examine and/or assess a given taxpayer.

For respondent, the above is inapplicable to the case at bar as RO Cortuna was supposedly granted the requisite authority to examine petitioner's records through a MOA.

Respondent is mistaken.

In the landmark case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[39] ("*McDonald's 2021*"), the Supreme Court deemed the issuance of a mere MOA insufficient to validly grant a RO with the authority to examine a taxpayer's records. There, the High Court observed that MOAs issued for the reassignment of ROs are generally not signed by the CIR or a Revenue Regional Director. As only the CIR or his duly authorized representative can authorize ROs to examine a given taxpayer, such MOAs are invalid for the purpose of proper reassignment, and their use for reassignment amounts to "a usurpation of the statutory power of the CIR or his duly authorized representative."[40] Following *Section D(5) of RMO No. 43-90*, the Supreme Court then ruled that the issuance of a new LOA is necessary for reassignment. The above constitutes a due process requirement, as also explained in *McDonald's 2021*. Allowing a RO to examine a taxpayer when the former is armed only with a MOA is thus a violation of said taxpayer's due process rights, voiding any assessment produced.[41]

RO Cortuna, who was not named in the LOA, was assigned to petitioner through a mere MOA signed by Revenue District Officer Emilia C. Combes, who is neither the CIR nor a Regional Revenue Director.[42] Based on her own testimony[43] and various pieces of evidence offered by respondent himself,[44] RO Cortuna examined petitioner's records and recommended the assessment

[38] G.R. No. 249883-84, January 27, 2020.

[39] G.R. No. 242670, May 10, 2021.

[40] *Id.*

[41] It should be noted that *McDonald's 2021* is not a new doctrine that overturned a previous ruling; it can thus be retroactively applied. *See Commissioner of Internal Revenue v. Manila Medical Services, Inc.*, G.R. No. 255473, February 13, 2023, where the High Court used *McDonald's 2021* to declare a PAN issued in 2010 void.

[42] *See* Memorandum of Assignment, dated April 19, 2016, *Rollo* Vol. 2, p. 500.

[43] *See* Judicial Affidavit of Josephine C. Cortuna, *id.* at 489-495.

[44] *See* Memorandum, dated May 16, 2016, *id.* at 501; *see also* Revenue Officer's Audit Report on Income Tax, dated May 27,2016, *id.* at 502; *see also* Revenue Officer's Audit Report on Value-Added Tax, dated May 16, 2016, *id.* at 503.

against it. As she was allowed to examine petitioner's records without the requisite authority to do so, respondent violated petitioner's right to due process. The assessment against it is thus void.

To be clear, the voiding of the assessment is not based on the original RO's failure to complete the audit process within the prescribed 120-day period or to revalidate the LOA. Respondent is correct in noting that *RMO No. 44-10*, which was issued on May 12, 2010, dispensed with such requirements, instead instituting administrative sanctions for ROs who fail to complete the audit within 120 days or revalidate their LOA. The LOA here was issued in 2015, so *RMO No. 44-10* was already in effect, and the original RO's failure to completely audit petitioner within the 120-day period did not immediately invalidate the assessment.

The above is purely academic, however. Given that RO Cortuna examined petitioner's records without the authority to do so, the assessment against petitioner is still void.

The FAN was issued prematurely, in violation of petitioner's rights

Assuming further *arguendo* that (a) respondent issued the FAN before his right to assess petitioner prescribed; and (b) RO Cortuna was properly authorized to assess petitioner, a third argument raised by petitioner concerns the allegedly premature issuance of the FAN. Petitioner claims that it was not given the full 15 days from receipt of the PAN within which to file a protest to the same, as respondent issued the FAN on the 15th day of said period. Respondent claims to have mailed the PAN at an earlier date, meaning the FAN was issued beyond the required 15-day grace period.

We once again agree with petitioner.

Section 228 of the NIRC requires that a taxpayer be informed of the factual and legal basis for the assessment made against it, on pain of the assessment being void. This is implemented by *Revenue Regulations* ("*RR*") *No. 12-99, as amended by RR No. 18-13*. *Section 3.1.1* thereof provides the 15-day period for protesting a PAN:

> 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.
> (Emphasis supplied.)

From the above, a taxpayer that disagrees with a PAN issued against it may protest the same within 15 days from receipt of said notice. The FAN can only be issued either (a) within 15 days from the filing of the protest; or (b) after the expiration of the 15-day period for filing a protest if none is filed.

Note that the above clearly says that the 15 days for filing a protest are counted from a taxpayer's *receipt* of the PAN. It is *not* counted from the date of respondent's *mailing* of the PAN—nothing in *RR No. 12-99, as amended by RR No. 18-13*, allows equating the date of an assessment notice's *mailing* with the date on which a taxpayer *receives* said notice.

While respondent, following *Basilan Estates v. Commissioner of Internal Revenue*[45] ("*Basilan*"), argues that the date of an assessment is the date on which the assessment notice is mailed, the same is an argument about *the date of the assessment*. It is not an argument about *the date of a taxpayer's receipt of a PAN*. The date on which respondent finalizes and issues an assessment is distinct from the date that a taxpayer receives notice of said assessment. Nothing in *Basilan* contradicts this—the Decision's discussion on the mailing of assessment notices concerns the prescriptive period, set at five years at the time, for assessing a taxpayer. Nowhere does it equate the CIR making an assessment with a taxpayer receiving notice thereof. The argument is thus irrelevant to the issue at hand.

Furthermore, respondent cannot treat the date of mailing as the beginning of the 15-day period simply because petitioner allegedly refused to receive the PAN. *Section 3.1.6(iii) of RR No. 12-99, as amended by RR No. 18-13*, states:

> (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.

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[45] G.R. No. L-22492, September 5, 1967.

> The server shall accomplish the bottom portion of the notice. *[They] 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.

(Emphasis supplied.)

Nothing in the above discusses a taxpayer's refusal to receive an assessment notice, much less allows using such refusal to justify departing from the unequivocal requirements of *Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-13*. The quoted subsection even emphasizes the importance of the actual date of a taxpayer's receipt of an assessment notice, by requiring "a written report" that includes "the manner, place and date of service . . . and such other relevant information." This is distinct from the "registry receipt . . . or the original receipt," which constitute sufficient proof of mailing but not sufficient proof of receipt. In short, *RR No. 12-99, as amended by RR No. 18-13*, does not allow considering the date of mailing as the start of the 15-day period, leaving respondent's theory with no legal basis.

More importantly, adopting respondent's theory on the 15-day period would be contrary to the very reason for having such a period. *RR No. 12-99, as amended by RR No. 18-13*, provides the 15-day period as a due process requirement. The core of due process is giving the affected party a fair opportunity to present its case and defend itself.[46] Taxpayers are thus given 15 days to analyze, prepare, and properly present their respective cases.

Counting said period from the date on which respondent mails the PAN, however, can easily deprive a taxpayer of that opportunity. In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[47] ("*Yumex*"), the CIR mailed the relevant PAN on December 17, 2010, before issuing and mailing the FAN on January 10, 2011, 24 days after. However, both the PAN and FAN were served upon and received by Yumex Philippines Corporation on the same day: January 18, 2011. It was thus clearly deprived of its due process right to present its case. If this Court would agree with respondent's argument, however, the above would be perfectly acceptable, as the CIR issued the FAN over 15 days after mailing the PAN.

The deprivation of a taxpayer's right to due process is obviously *not* acceptable to this Court. Neither is complying with a due process requirement in a *pro forma* manner that ignores the purpose for enforcing the rule in the

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[46] *See Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

[47] G.R. No. 222476, May 5, 2021.

first place. While the CIR can claim to have complied with the 15-day period in *Yumex*, having mailed the FAN over 15 days after mailing the PAN, his actions still robbed Yumex Philippines Corporation of a full opportunity to protest the PAN, rendering the 15-day period meaningless.

We shall thus follow the sensible construction of *RR No. 12-99, as amended by RR No. 18-13*, by considering the date of petitioner's receipt of the PAN, not that of respondent's mailing of the same, as the start of the mandatory 15-day period.

In the case at bar, petitioner claims to have received the PAN on October 9, 2018. It does not provide any evidence to prove such claim; all copies of the PAN in this Court's records lack any marking or stamp to prove such date.

However, respondent failed to controvert or disprove such claim. He focuses only on the date he supposedly mailed the PAN, as discussed above. The Affidavit of Service[48] he offered in evidence concerns only the date of the PAN's mailing, not the date of its receipt by petitioner. The registry receipt[49] attached to the copy of the PAN in the BIR Records indicates only the date of mailing but, again, contains no information as to the actual date of petitioner's receipt of the PAN. Finally, neither the Affidavit of Service nor the registry receipt are a written report, prepared under oath by the one who actually served the PAN to petitioner, as required by *Section 1.3.6(iii) of RR No. 12-99, as amended by RR No. 18-13*.

Respondent's evidence and arguments thus do not contradict petitioner's claimed date of receipt of the PAN. It is perfectly possible that respondent mailed the PAN on October 4, 2018 and petitioner received the same on October 9, 2018. The latter date that is controlling here, however. As already discussed, the former date is irrelevant to determining respondent's compliance with the 15-day period.

The Court thus is constrained to accept October 9, 2018 as the start of the 15-day period.

Petitioner had until October 24, 2018 within which to protest the PAN. Respondent, however, issued the Formal Letter of Demand with the assailed FAN on that date, *i.e.*, without waiting for the expiration of the 15-day period. This premature issuance was, again, a violation of petitioner's right to due process and yet another reason to declare the assailed assessment void.

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48 *Rollo* Vol. 2, p. 509.
49 BIR Records, p. 182.

To stress, the 15-day grace period is *mandatory. Commissioner of Internal Revenue v. Metro Star Superama*[50] emphasized that said period is a substantial and mandatory requirement, noncompliance with which renders an assessment void:

> From [Section 228 of the NIRC and Section 3 of RR No. 12-99], it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "shall" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. *The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.*
> (Citations omitted; emphasis supplied.)

The above was affirmed in *Yumex*, where the Supreme Court sensibly deemed the CIR's act of issuing the FAN without waiting for the taxpayer's receipt of the PAN a violation of the latter's right to due process and declared the subject assessment void. Finally, *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*[51] saw the Supreme Court drawing from the two above-cited cases to reiterate the mandatory nature of the 15-day period:

> In several cases, *this Court has enjoined strict observance by the BIR of the prescribed procedure for the issuance of assessment notices in order to uphold the taxpayers' constitutional rights.*
>
> In the oft-cited case of Commissioner of Internal Revenue v. Metro Star Superama, Inc., the Court held that the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules.
>
> The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.
>
> In the very recent case of Commissioner of Internal Revenue v. Yumex Philippines Corp., the Court had occasion to state that the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that "*[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.*"
>
> While Yumex rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. There can be no substantial compliance with the due process requirement when the BIR

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50 G.R. No. 185371, December 8, 2010.
51 G.R. No. 249153, September 12, 2022.

completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.

As the Court also held in Yumex, "[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment." "Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response."

In the same vein, it is beside the point that petitioner was able to submit a "well-prepared protest letter." The fact remains that respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect.
(Citations omitted; emphasis supplied.)

The relevance of the above to this case is clear: As respondent failed to wait for the expiration of the 15-day period provided by *RR No. 12-99, as amended by RR No. 18-13*, he deprived petitioner of its right to due process. The assessment must thus be declared void.

In sum, the Court has found three distinct ways in which respondent violated petitioner's right to due process. The assessment against it is thus undisputably and irredeemably void.

FOR THESE REASONS, the Petition for Review, filed on June 28, 2019, is hereby **GRANTED**. The assessment against petitioner for deficiency income tax and value-added tax for taxable year 2012 is hereby **CANCELLED** and declared **NULL AND VOID**.

Accordingly, respondent is hereby **ENJOINED AND PROHIBITED** from collecting the amount sought by the void assessment.[52]

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[52] This Court has the authority to enjoin and prohibit respondent and the Bureau of Internal Revenue from collecting taxes when such collection would jeopardize the interests of a taxpayer or the government, *e.g.*, when the taxes sought are based on a void assessment made in violation of a taxpayer's rights. *See Rule 10, Section 2 of the Revised Rules of the Court of Tax Appeals, as amended*; *see also Commissioner of Internal Revenue v. QL Developments, Inc.*, G.R. No. 258947, March 29, 2022.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice