REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

DEREK ARTHUR P. RAMSAY, Petitioner,

CTA Case No. 8456

Present:

- *versus* -

Bautista, Chairperson
Fabon-Victorino, and
Ringpis-Liban, JJ.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Promulgated:

SEP 17 2015
4:00 p.m.

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DECISION

BAUTISTA, J.:

The Petition for Review filed on April 11, 2012, pursuant to Section 7(a)(1)[1] of Republic Act ("RA") No. 1125,[2] as amended by RA No. 9282[3] and RA No. 9503,[4] seeks for the Court to render judgment setting aside the Preliminary Assessment Notice, Formal Letter of Demand, and Final Letter and to declare the assessment notices void.[5]

THE PARTIES[6]

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[1] Sec. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.
(1) Decisions of 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.

[2] An Act Creating the Court of Tax Appeals, as amended.

[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[4] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] *Records*, pp. 6-116, with Annexes.

[6] *Id.*, Petition for Review, p.9.

Petitioner Dereck Arthur P. Ramsay is a Filipino, of legal age, and with address located at Unit 424 Blanco Center, 119 Leviste St., Salcedo Village, Makati City. He may be served with notices, pleadings, orders, judgments, and other processes through his counsel, Mendoza Navarro-Mendoza & Partners Law Offices at Unit 205 Amberland Plaza, Julia Vargas Avenue & Jade Dive, Ortigas Center, Pasig City.[7]

On the other hand, respondent Commissioner of Internal Revenue ("Commissioner") is the chief of the Bureau of Internal Revenue ("BIR"), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She may be served with summons, notices, and other legal processes at 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.

FACTS OF THE CASE

On August 10, 2011, the Assistant Commissioner of Enforcement Service of the BIR, Mr. James H. Roldan ("ASCOM") issued a Preliminary Assessment Notice ("PAN") informing petitioner of its deficiency income tax in the total amount of Php11,849,428.66 and Value Added Tax ("VAT") in the total amount of Php6,381,069.80 for the taxable years 2006 to 2009, and compromise penalty in the total of Php125,000.00.[8]

On November 10, 2011, petitioner filed his Protest and alleged that he did not receive any Letter of Authority ("LOA"); that he filed his return, but late; and that he paid his income tax due for the taxable years 2006 to 2009 with surcharge and penalties on October 19, 2010.[9]

On January 4, 2014, a Formal Letter of Demand ("FLD")[10] with the attached Details of Discrepancies[11] was issued by ASCOM informing petitioner again of his deficiency income tax and VAT for the taxable years 2006 to 2009, and compromise penalty.[12]

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[7] *Records*, Petition for Review, p. 14.
[8] *Id.*, Annex "A," pp. 30-31.
[9] *Id.*, Annex "B," pp. 35-39.
[10] *Id.*, Annex "C," pp. 41-43.
[11] *Id.*, pp. 44-45.
[12] *Id.*, Annex "C," pp. 43.

On February 20, 2012, a Final Demand Letter[13] was issued by the Chief, National Investigation Division of the BIR, Mr. Sixto C. Dy, Jr., stating that petitioner received a copy of the FLD with the attached Details of Discrepancies on January 17, 2012, and that he was demanding payment for the aforesaid deficiency internal revenue taxes.

On February 21, 2012, petitioner filed a Protest Letter to the FLD stating that no notice of assessment was issued, therefore the issuance of the FLD was illegal.[14]

On February 27, 2012, ASCOM wrote a letter addressed to the counsels of petitioner alleging that the assessment had become final and executory as he failed to file his protest within thirty (30) days from receipt of the FLD on January 27, 2012.[15]

On April 11, 2012, unheeding the demands of respondent, petitioner filed the instant Petition for Review.[16]

On June 18, 2012, respondent filed her Answer,[17] interposing the following Special and Affirmative Defenses:

> "On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her defense that:
>
> **The Honorable Court has no jurisdiction over the present petition.**
>
> 5. With all due respect, it is the position of the respondent that the Honorable Court has no jurisdiction over the present petition since the assessment has become final, executory and demandable.
>
> 6. At the outset, petitioner received the Preliminary Assessment Notice on 20 September 2011 and admittedly filed a protest thereto only on 10 November 2011. Thus, petitioner

[13] *Id.*, Annex "F," pp. 55-57.
[14] *Records*, Annex "D," pp. 46-48.
[15] *Id.*, Annex "G," pp. 56-57.
[16] *Id.*, pp. 6-27.
[17] *Id.*, pp. 130-144.

is already in default when he filed his protest to the Preliminary Assessment Notice.

7. **Section 3.1.2 of the Revenue Regulation 12-99** implementing the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, governing assessment states that:

> '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.**' (Emphasis supplied).

8. Accordingly, a Formal Letter of Demand with Assessment Notices and Details of Discrepancies was issued by respondent on 4 January 2012 and received by petitioner on 17 January 2012. Petitioner has thirty (30) days from receipt thereof to file a protest. However, again petitioner belatedly filed his protest thereto making the assessment final, executory and demandable.

9. Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended provides for the period within which to protest the decision of respondent assessing taxpayer for deficiency taxes. The same is hereby quoted for ready reference:

> Section 228 of the 1997 Tax Code –

> **'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.' (Emphasis supplied).

10. Relative therewith **Section 3.1.5 of the Revenue Regulation 12-99** implementing the provisions of the NIRC of 1997, as amended, governing assessment further states that:

> **'A taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.'**
>
> **'If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.'** (Emphasis supplied).

11. Moreover, **Paragraph 2 of Section 3.1.5 of Revenue Regulation 12-99** provides –

> 'The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void without force and effect. X X X'(Emphasis supplied).

12. More so, in **Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.** the Supreme Court held that Section 228 of the NIRC and Section 3.1.5 of Revenue Regulation 12-99 provides the remedy to dispute a tax assessment within a certain period of time. It states that an assessment may be protested by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment by the taxpayer.

13. In the instant case, petitioner received the Formal Letter of Demand on 17 January 2012 and filed his protest thereto only on 21 February 2012. Besides, the aforementioned protest letter cannot and should not be considered a protest letter as required by the NIRC of 1997, as amended and Revenue Regulation 12-99 since the contents thereof did not conform to the requirements of the revenue regulation. It failed to state the facts, law or jurisprudence as required by the implementing rules. It is nothing but a mere scrap of paper, devoid of any substantiation with facts or law. Consequently, the protest is considered void.

14. Further, since the said letter was filed beyond the thirty (30)-day reglementary period to file protest and the contents thereof did not conform with the requirements of the revenue regulation for it failed to state the facts, law or jurisprudence as required by the implementing rules, hence, it should be considered void and without force and effect.

15. At the same time, the issues presented are a mere rehash of petitioner's previous arguments in the protest to the Preliminary Assessment Notice, all of which have been considered and found without merit by respondent.

16. In light of the foregoing, there is no need to issue a Final Decision on Disputed Assessment since the Formal Letter of Demand with Notices and Details of Discrepancies had already attained finality and is now executory and demandable.

17. Nonetheless, respondent accorded due process to petitioner by issuing a letter dated 27 February 2012 informing him that the said letter should be considered as the final decision of respondent denying his protest on the Preliminary Assessment Notice and Formal Letter of Demand.

18. In the case of Republic of the Philippines vs. Liam Tian Teng Sons & Co., Inc. the Court held that when petitioner failed to file an administrative protest on the formal letter of demand with the corresponding assessment notices, the assessments did not become disputed assessments as subject to the Court's Review under RA No. 9282. Since there is no disputed assessment the Honorable Court did not acquire jurisdiction in the case at bar.

<u>The Assessment on Deficiency Income Tax, Value Added Tax was issued in accordance with law, rules and jurisprudence.</u>

19. The assessment for the taxable years 2006 to 2009 deficiency Income Tax and Value-Added Tax in the aggregate amount of Twenty Million Two Hundred Fifty Thousand Two Hundred Ninety-Eight and 40/100 Pesos (Php20,250,298.40) was issued in accordance with law, rules and jurisprudence.

20. Under Revenue Regulations No. 12-99, a valid assessment is accomplished following the stages of Notice of Informal Conference, Preliminary Assessment Notice and Final Assessment Notice. The procedure prescribed under RR. No. 12-99 have been complied with by respondent as can be deduced from the following narration of facts.

21. Foremost, petitioner received the Letter of Authority No. 211-2010-00000237 dated 8 October 2010 on 9 October 2010, authorizing the revenue examiners named therein to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period 1 January 2006 to 31 December 2009.

22. Request for presentation of records were issued and duly received by petitioner on 8 October 2010 and 8 December 2010, respectively. And in view of the failure of petitioner to comply with the requirements for tax investigation a subpoena *duces tecum* was issued against him.

23. A Notice of Informal Conference was received by petitioner on 3 May 2011 informing petitioner of its findings and giving the latter the opportunity to offer explanation, present objections and submit documentary evidence to refute the said findings.

24. The Preliminary Assessment Notice with Details of Discrepancy dated 10 August 2011 was issued to petitioner and received on 20 September 2011. Subsequently, the Formal Letter of Demand with Notices and Details of Discrepancies

dated 17 January 2012 was issued to the petitioner as well. On 27 February 2012, respondent issued final decision on the disputed assessment.

25. Admittedly, petitioner filed a protest to the Preliminary Assessment Notice as well as to the Formal Letter of Demand with Notices and Details of Discrepancies. Hence, there is no denying that petitioner was informed of the factual and legal bases of the deficiency assessment.

26. The fact that petitioner filed protest means that it was informed of the findings of the Revenue Officer. The protest although erroneous and self-serving was accomplished with meticulous details trying in vain to overthrow the findings of deficiency income tax and VAT assessment.

27. Also without merit is the contention of petitioner that neither he nor his authorized representative received any of the correspondences from respondent. As can be gleaned from the records, the same person by the name of Lalaine Paraoan acknowledged the receipt of each letter and/or issuances of the respondent by affixing her signature therein and specifying the date of receipt. Lalaine Paraoan is said to be the receptionist/secretary of petitioner. Clearly, petitioner cannot deny such fact of receipt.

28. Further, respondent humbly disagrees with petitioner's position that his counsel has the sole authority to receive any letter and/or issuances from respondent. In fact, the Special Power of Attorney issued by petitioner only include[s] the following:

> 1) To execute, authenticate, negotiate, execute and/or sign for or in my behalf any eligible documents required therein by (sic) Bureau of Internal Revenue;
>
> 2) To represent, enter into compromise agreement or any legal appearances in my behalf with (sic) Bureau of Internal Revenue.

29. Nowhere in the Special Power of Attorney states that petitioner's counsel has the sole authority to receive correspondences from respondent. Therefore, the fact of

receipt of each letter and/or issuances from respondent by Lalaine Paraoan is valid and can stand in court. Because how can petitioner reply or file protest if he has not received or been apprised of all the correspondences in relation to the assessment of his deficiency income tax and VAT.

30. In view of the foregoing, petitioner is liable to pay the assessed deficiency taxes. The examiner's assessment should be given full weight and credit, in the absence of proof submitted by petitioner to the contrary. This is in line with the High Court's ruling in several cases wherein the Court said that **tax assessments by tax examiners are prima facie presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments**. The case of *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.,* where the Court cited 51 Am. Jur. Pp. 620-621, states the principle in detail, thus:

> All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the State in the various countries who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.

31. In another case decided by the Supreme Court, the Honorable Court espouses:

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. **Upon the**

> **introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties.** This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC. (Emphasis supplied).

32. Unfortunately, petitioner failed to overcome the presumption of correctness of the respondent's assessment.

Petitioner has the obligation to pay the corresponding taxes for all the income he received during taxable years 2006 to 2009.

33. Petitioner's argument that he is not liable to pay the income tax and VAT for taxable years 2006 to 2009 does not hold water. For the entire income petitioner received from his career as a Professional Actor and a Commercial Model during taxable years 2006 to 2009 he has the obligation to pay the corresponding taxes.

34. Under Section 32(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, all income derived from whatever source form part of the gross income is subject to tax.

35. Moreover, for failure to file Annual Income Tax Returns for taxable years 2006 to 2009, no optional standard deduction was accorded to the taxpayer. It was only on 19 October 2010 or after the service of the Letter of Authority that he filed his Annual Income Tax Returns for taxable years 2006 to 2009. The act of belated filing of the aforementioned returns runs

counter to the provision of Section 6(A) of the NIRC of 1997, as amended, which reads as follows:

xxx ... xxx ... xxx

> 'Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn; Provided, That within three (3) years from the date of such filing, the same may be modified, changed or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.'

36. Having filed the Annual Income Tax Returns after the service of the Letter of Authority, the availment of the optional standard deduction under Section 34(L) of the National Internal Revenue Code (NIRC) of 1997, as amended, was disregarded.

37. Likewise, petitioner is liable to pay VAT pursuant to Section 105 of the NIRC of 1997, as amended, which provides:

38. The phrase '**sale or exchange of services**' is defined by Section 108 of the NIRC, as amended, as '**performance of all kinds of services for others for a fee, remuneration or consideration.**' It includes 'similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.'

39. Hence, it is immaterial whether the primary purpose of the service is to pursue a hobby, without realizing profit, for purposes of determining liability for VAT or services rendered. **As long as the person provides services for a fee, remuneration or consideration, then the service rendered is subject to VAT**.

40. The disallowance of the input taxes corresponding to petitioners purchases was due to his failure to submit supporting documents showing that the purchases were made from VAT-registered persons and that their issuance of the VAT invoice or official receipt was in accordance with Section

113 of the National Internal Revenue Code (NIRC) of 1997, as amended.

41. It is worthy to note that petitioner failed to file his VAT returns for taxable years 2006 and 2007 while his 2008 and 2009 Quarterly VAT returns were filed only 2 March 2011, again, after the service of the Letter of Authority.

42. In view of the foregoing, petitioner is liable to pay the deficiency assessment on VAT.

43. To our mind, petitioner has not pointed out any provision or item in the assessment notice which bears a trace of falsity. His averments were based on conjectures, surmises and speculations. These cannot supply the basis for the charge of impropriety in the assessments made.

44. Considering that the assessment against petitioner is deemed final, executory and demandable it is already considered as an account receivable and asset of the government. Thus, petitioner is liable to pay its deficiency income tax and VAT assessments for taxable years 2006 to 2009.

45. At any rate, it is worthy to stress that the power to tax, an inherent prerogative, has to be availed of to assure the performance of vital state functions. It is the source of the bulk of public funds. To paraphrase a recent decision, a tax being the lifeblood of the government, its prompt and certain availability is of the essence. The state will be deprived of the taxes validly due it and the public will suffer if taxpayers will not be held liable for the proper taxes assessed against them.

46. Well-settled is the principle that taxes are imposed for the support of the government in return for the general advantage and protection which the government affords to taxpayers and their property. Taxes are the lifeblood of the government. It is imperative that the power to impose them to be clothed with the implied authority to devise ways and means to accomplish their collection in the most effective manner. Without this implied power the end of government may falter or fail.

On July 12, 2012, a pre-trial conference was set.[18] Respondent filed her "Respondent's Pre-trial Brief[19]" on July 5, 2012, while petitioner filed his "Pre-trial Brief[20]" on July 6, 2012.

After the termination of the pre-trial, the parties were granted a period of fifteen days to file their Joint Stipulation of Facts and Issues.[21]

On August 17, 2012, the parties filed their Joint Stipulation of Facts and Issues.[22]

On May 21, 2013, petitioner presented Exhibits "A" to "X-1" in his "Formal Offer of Evidence,[23]" while, respondent presented Exhibits "R-1" to "R-30-A" in her "Respondent's Formal Offer of Documentary Evidence.[24]"

In a Resolution dated August 5, 2013[25] and January 17, 2014,[26] the Court admitted petitioner's Exhibits "B-2, D,D-1, E, E-1, H, H-1, H-2, H-3, H-4, H-5, H-6, H-7, H-8, H-9, I, I-1, I-2, I-3, I-4, I-5, I-6, J, J-1, J-2, J-3, J-4, J-6, J-7, J-8, J-9, K, K-1, K-2, K-3, K-4, K-5, K-6, K-7, K-8, K-9, K-10, K-11, L, M, N, O, P, Q, R, S, T, V,V-1, W, W-1." On the other hand, in a Resolution dated July 1, 2014,[27] the Court admitted all of respondent's exhibits.

After the presentation of both parties evidence, the case was submitted for decision after the parties filed their respective memoranda within thirty (30) days from receipt of the notice to file the same.[28]

Petitioner filed his "Memorandum for the Petitioner" on August 26, 2014,[29] while respondent filed her "Memorandum" on September 10, 2014.

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[18] *Records*, p. 148.
[19] *Id.*, pp.159-165.
[20] *Id.*, pp167-175.
[21] *Id.*, Resolution dated August 6, 2012, p. 185.
[22] *Id.*, pp. 186-190.
[23] *Id.*, pp. 394-404.
[24] *Id.*, pp. 826-846.
[25] *Id.*, p. 662.
[26] *Id.*, p. 760.
[27] *Id.*, p. 865.
[28] *Id.*, p. 865.
[29] *Id.*, pp. 877-921.

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the issues for the Court's consideration are:[30]

1. WHETHER PETITIONER RECEIVED HIS COPY OF THE PRELIMINARY ASSESSMENT NOTICE DATED 10 AUGUST 2011, THE FORMAL LETTER OF DEMAND DATED 4 JANUARY 2012, AND/OR THE FINAL DEMAND LETTER DATED 20 FEBRUARY 2012;

2. WHETHER PETITIONER WAS ISSUED A FINAL ASSESSMENT NOTICE;

3. WHETHER PETITIONER'S PROTEST TO THE PRELIMINARY ASSESSMENT NOTICE AND THE FORMAL LETTER OF DEMAND/FINAL ASSESSMENT NOTICE WAS TIMELY FILED;

4. WHETHER THE ASSESSMENT HAS BECOME FINAL AND EXECUTORY;

5. WHETHER THE HONORABLE COURT ACQUIRED JURISDICTION OVER THE PRESENT PETITION;

6. WHETHER RESPONDENT COMPLIED WITH THE DUE PROCESS REQUIREMENT AS PRESCRIBED UNDER THE TAX CODE WITH REGARD TO THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT;

7. WHETHER PETITIONER IS LIABLE FOR THE TOTAL TAX DEFICIENCY AMOUNT OF TWENTY MILLION TWO HUNDRED FIFTY THOUSAND TWO HUNDRED NINETY-EIGHT PESOS AND FORTY CENTAVOS (PHP20,250,298.40) FOR THE YEARS 2006, 2007, 2008, AND 2009, AS WELL AS THE CORRESPONDING PENALTY AND DEFICIENCY AND DELINQUENCY INTEREST, PURSUANT TO SECTIONS 288 AND 249 OF THE TAX CODE.

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[30] *Records*, Joint Stipulation of Facts and Issues, pp. 188-189.

Petitioner's Arguments:

Petitioner alleges that he did not receive a FAN as the FLD dated January 4, 2012 was not accompanied by any FAN. He further avers that neither he nor his authorized representative received any Letters and Notices as the said documents were sent to Unit 424 Blanco Center, 119 Leviste St., Salcedo Village, Makati City, which is not his address stated in his Income Tax Return ("ITR"), and not the address of his authorized representative, Atty. Epifania N. Mendoza, CPA.[31]

He further argues that he already made payment of his income tax deficiency as shown in his Annual ITRs for the years 2006 to 2009 therefore, he cannot be assessed for the same.[32]

Respondent's Counter-Arguments:

Respondent argues that the Court lacks jurisdiction over the Petition for Review as the FLD with assessment notices have become final, executory and demandable when petitioner failed to timely file a protest thereon.

Furthermore, she avers that the address of petitioner in the BIR records is the one located at Unit 408 Cattleya Condominium, Salcedo Street, Legaspi Village, Makati, therefore when she sent the Notices to the said address, it was deemed received by petitioner.

Finally, she avers that there was compliance with the due process requirement prescribed in Section 228 of the NIRC and Revenue Regulations ("RR") No. 12-99 as the PAN on deficiency income tax and VAT, FLD were issued in accordance with law, rules and jurisprudence.

RULING OF THE COURT

From the foregoing issues, it is primordial to resolve the issue of whether petitioner was denied due process when respondent only sent the FLD with attached Details of Discrepancies pursuant to Section 228 of the NIRC as implemented by Section 3 of RR No. 12-99.

[31]*Records*, Petition for Review, pp. 14-19.
[32]*Id.*, pp. 20-27.

Section 228 of the NIRC and Section 3 of RR No. 12-99 provide:

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 pre-assessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

xxx xxx xxx

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:*

xxx xxx xxx

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.

xxx xxx xxx

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 supplied)

Interpreting the foregoing, the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,*[33] is a case in point where the Supreme Court has held that procedures provided in Section 228 of the NIRC and Section 3 of RR No. 12-99 are mandatory; non-compliance therewith renders the assessment void, to wit:

"Indeed, Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. To implement the aforesaid provision, Revenue Regulation No. 12-99 was enacted by the BIR, of which Section 3.1.4 thereof reads:

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. The same shall be sent

[33] G.R. No. 197515, July 2, 2014.

to the taxpayer only by registered mail or by personal delivery. x x x

It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word 'shall' in these legal provisions indicates the mandatory nature of the requirements laid down therein.

xxx xxx xxx. Any short-cuts to the prescribed content of the assessment or the process thereof should not be countenanced, in consonance with the ruling in the case of *Commissioner of Internal Revenue v. Enron Subic Power Corporation*, the Supreme Court has held that it is mandatory to wit:

The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency, informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit working paper allegedly showing in detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.

We disagree. The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. These steps were mere perfunctory discharges of the CIR's duties incorrectly assessing a taxpayer. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged 'factual bases'in the advice, preliminary letter and 'audit working papers' did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice." (Emphasis supplied).

From the foregoing, it is clear that it is a requirement of due process that not only a FLD be sent to a taxpayer but it must include an assessment notice.

An assessment notice has been described by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, Rogelio A. Dio and Virginia S. Dio,*[34] as a "notice to the effect that the amount therein stated is due as tax and a demand for payment thereof."

To determine whether an assessment notice was sent, the FLD dated January 4, 2012 with the attached Details of Discrepancies[35] are herein reproduced:

January 4, 2012

FORMAL LETTER OF DEMAND

Mr. Derek P. Ramsay
Unit 408 Cattleya Condominium
Salcedo St. Legaspi Village, Makati

Sir:

Please be informed that after investigation there has been found due from you deficiency internal revenue taxes for taxable years 2006 to 2009 as shown hereunder:

INCOME TAX

	2006	2007	2008	2009
Gross Taxable Income	4,311,247.34	4,806,197.33	7,833,098.74	17,179,723.00
Less: Personal Exemption	20,000.00	20,000.00	35,000.00	50,000.00

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[34] G.R. No. 128315 June 29, 1999, 309 SCRA 402.
[35] *BIR Records*, CTA Case No. 8456, pp. 333-337.

Total Taxable Inc.	4,291,247.34	4,786,197.33	7,798,098.74	17,129,723.00
Basic Income Tax Due	1,338,199.15	1,496,583.15	2,460,391.60	5,446,511.36
Surcharge	669,099.58	748,291.58	1,230,195.80	2,723,255.68
Interest up to 02/08/12	1,282,088.45	1,134,514.78	1,373,070.74	1,950,232.32
Total Deficiency Income Tax Due	3,289,387.18	3,379,389.51	5,043,802.78	10,076,046.01
Less:Tax Paid/Withheld	1,508,605.73	1,867,150.65	2,154,164.79	3,527,064.16
Total Deficiency Income Tax still due	1,780,781.45	1,512,238.86	2,909,493.35	6,592,935.20

TOTAL INCOME TAX DUE P12,795,448.86

VALUE ADDED TAX

	2006	2007	2008	2009
Taxable Income	*4,311,247.34	4,806,197.33	7,833,098.74	17,179,723.00
VAT Due	**510,164.12**	**576,743.68**	**939,971.85**	**2,061,566.76**
Surcharge	255,082.06	288,371.84	469,985.93	1,030,783.38
Interest 02/08/12	514,005.65	461,829.23	564,690.90	826,179.06
Total VAT Due	**1,279,251.83**	**1,326,944.75**	**1,974,648.68**	**3,918,529.20**
Less: Tax Paid			514,600.12	1,270,092.86
Deficiency VAT	**1,272,987.02**	**1,326,944.75**	**1,460,048.56**	**2,648,436.34**
	*11.833333 vat rate			

TOTAL VALUE ADDED TAX DUE P6,714,681.48

SUMMARY:

TOTAL INCOME TAX DUE P12,795,448.86
TOTAL VALUE ADDED TAX DUE 6,714,681.48

TOTAL DEFICIENCY TAXES DUE P19,510,130.34

COMPROMISE PENALTY

P25,000.00

NO BOOKS OF ACCOUNTS
NON FILING OF RETURNS 100,000.00

TOTAL COMPROMISE PENALTIES P125,000.00

Please note that the interest and the total amount due will have to be adjusted if paid beyond February 8, 2012.

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

The 50% surcharge has been imposed pursuant to the provisions of Section 248(B) of the National Internal Revenue Code of 1997, as amended by R.A. No. 8424, for willful failure to file the 2006, 2007, 2008 and 2009 tax returns within the period prescribed by the law.

The 20% interest per annum has been imposed pursuant to the provision of Section 249(B) of the National Internal Revenue Code.

In view thereof, you are hereby requested to pay your aforesaid deficiency tax liabilities through the duly authorized bank in which you are enrolled within the time shown in the enclosed assessment notice.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

By:

JAMES H. ROLDAN
Assistant Commissioner
Enforcement Service

ANNEX "A"

Mr. Derek Arthur P. Ramsay
Unit 408 Cattleya Condominium
Salcedo St., Legaspi Village, Makati City

DETAILS OF DISCREPANCIES

Non-filing of Income Tax and VAT Returns and non-payment of Income Tax and Valued Added Tax at the times required by law and revenue regulations as punishable under Sec. 255 of the NIRC of 1997.

Income Tax

Under Section 32(A) of the Tax Code all income derived from whatever source form part of the Gross income and are subject to Income Tax.

Value Added Tax

Section 108 of the Tax Code prescribes that all gross receipts from the sale or exchange of services rendered are subject to 12% Value Added Tax (VAT).

The 50% surcharge was imposed for willful neglect to file the 2006 to 2009 tax returns as provided under Sec. 248 (B) of the National Internal Revenue Code of 1977, as amended by Republic Act No. 8424.

The 20% interest per annum has been imposed pursuant to the provision of Sec 249(B) of the tax code.

Compromise Penalties

Corresponding compromise penalties for failure to maintain books of accounts as provided under Sec. 232 of the NIRC, as amended and non-filing of VAT returns as provided under Sec. 255 of the tax code were imposed pursuant to RMO 19-2007 dated August 8, 2007.

JAMES H. ROLDAN
Assistant Commissioner
Enforcement Group

From the foregoing, it is clear that what were stated in the FLD dated January 4, 2012 with the attached Details of Discrepancies were: 1. computations and tabulations of the alleged deficiency taxes due, together with interest, surcharge, penalty, and their respective basis in law for taxable years 2006 to 2009; 2. a request to pay the deficiency internal revenue tax liabilities through the duly authorized agent bank in which he is enrolled within the time shown in the enclosed assessment notice; and 3. a note that the interest and total amount due shall be adjusted if paid beyond February 8, 2012.[36]"

These statements do not amount to an assessment notice as there was no mention of a definite time when payment was due and demandable.[37]

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[38] it has been held that due process is satisfied if the FAN states the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer.

In the present case, since there was no demand to pay within a specified period of time to be found in the FLD and the attached Details of Discrepancies, the issuance of the same did not amount to a FAN.

Therefore, the FLD together with the attached Details of Discrepancies are void for being non-compliant with the mandatory requirements of Section 228 of the NIRC and Section 3 of the RR No. 12-99.

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[36] *BIR Records*, CTA Case No. 8456, pp. 333-337.
[37] *Records*, Exhibit "C," pp. 41-45.
[38] G.R. No. 185371 December 8, 2010, 637 SCRA 633.

Considering the foregoing, the Court need not discuss petitioner's failure to receive any of the Notices, for it is well-settled that a void assessment bears no fruit.[39]

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand dated January 4, 2012, demanding the payment of deficiency income and VAT assessment in the total amount of P18,230,498.46 for the period covering taxable years 2006 to 2009, which is void, is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

WE CONCUR:

ESPERANZA R. FABON-VICTORINO	Ma. Belen **MA. BELEN M. RINGPIS-LIBAN**
Associate Justice	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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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[39] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694 & G.R. No. 163581 January 27, 2006, 382 SCRA 480.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice