REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FOUR SEAS TRADING CORPORATION, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9915

Members:

CASTAÑEDA, JR., Chairperson, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JAN 1 1 2021
3:45 p.m.

x - x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on August 30, 2018 prays for the cancellation and withdrawal of the *Formal Assessment Notice* (FAN) issued by respondent against petitioner for its alleged deficiency taxes for calendar year (CY) 2014 in the aggregate amount of ₱34,235,794.91, inclusive of interests, etc.[1]

THE PARTIES

Petitioner Four Seas Trading Corporation is a corporation duly organized and existing under and by virtue of laws of the Philippines;

[1] Summary of the Case, Pre-Trial Order dated March 5, 2019, Docket – Vol. II, p. 579.

and is registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number (TIN) 000-765-784.[2]

Respondent is the duly appointed Commissioner of the BIR, duly appointed and empowered to perform the duties of his office, including, among others, the power to decide, cancel, and abate tax liabilities, pursuant to Section 204(B) of the Tax Code, as amended by Republic Act (RA) No. 8424, otherwise known as the "Tax Reform Act" of 1997, and as further amended by RA No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Act, with office address at the BIR National Office Building, Diliman, Quezon City.[3]

THE FACTS

On February 3, 2016, petitioner received the *Letter of Authority* (LOA) with Serial Number SN eLA201200045177/LOA-030-2016-00000018 dated January 19, 2016,[4] issued by Ms. Araceli L. Francisco, OIC-Regional Director of Revenue Region No. 6-Manila, authorizing Revenue Officer (RO) Mubarak Hadji Omar and Group Supervisor (GS) Ma. Sherly Macaroy, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other taxes (miscellaneous tax), for the period from January 1, 2014 to December 31, 2014. The said LOA was accompanied with a *Checklist of Requirements* and *First Notice for Presentation of Records*.[5]

In response to the said LOA, petitioner submitted to BIR-Revenue District Office (RDO) No. 30 several documents, which were received by RO Omar.[6]

Sometime in July 2018, petitioner received the letter dated June 29, 2018 from the BIR, informing the former that the latter has

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[2] Par. 1, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 10 and 198, respectively; Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 571.

[3] Par. 2, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 10 to 11, and 198, respectively; Par. 2, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 571.

[4] Exhibit "P-4", Docket - Vol. II, p. 874; Par. 3, Facts Admitted, JSFI, Docket – Vol. II, p. 571.

[5] Exhibits "P-5" and "P-6", Docket - Vol. II, pp. 875 to 876; Par. 3, Facts Admitted, JSFI, Docket – Vol. II, p. 571.

[6] Par. 4, Facts Admitted, JSFI, Docket – Vol. II, p. 571; Par. 5, *Petition for Review*, vis-à-vis Par. 5, *Answer*, Docket – Vol. I, pp. 11 and 199; Exhibits "P-7" to "P-11", Docket – Vol. II, pp. 877 to 882.

duly selected it as one of the Tax Account Management Program (TAMP) taxpayers. The said letter was sent to its Binondo address and received by a security guard on duty.[7]

On July 31, 2018, petitioner was given a *Final Notice Before Seizure* on even date, which alleged that petitioner had deficiency taxes for calendar year 2014 in the total amount of ₱34,235,794.91,[8] broken down as follows:

Assessment Notice No.	**Kind of Tax**	**Basic Tax**	**Surcharge /Interest /Compromise**	**Total Amount Due**
30-14-IT-17-564	Income	₱10,845,655.40	₱5,783,771.11	₱16,629,426.51
30-14-MC-17-564 (IT)	MC		50,000.00	50,000.00
30-14-VT-17-565	Value-Added Tax (VAT)	4,285,138.85	2,547,240.80	6,832,379.65
30-14-MC-17-565 (VT)	MC		40,000.00	40,000.00
30-14-WE-17-566	Expanded Withholding Tax (EWT)	17,150.00	10,290.00	27,440.00
30-14-MC-17-566 (WE)	MC		4,000.00	4,000.00
30-14-IAET-17-567	Improperly Accumulated Earnings Tax (IAET)	5,945,532.25	1,486,383.06 3,170,633.44	10,602,548.75
30-14-MC-17-567 (IAET)	MC		50,000.00	50,000.00
TOTAL		₱21,093,476.50	₱1,486,383.06 ₱11,511,935.35 ₱144,000.00	**₱34,235,794.91**

On the following day (August 1, 2018), petitioner requested BIR-RDO No. 30 for a copy of the *Preliminary Assessment Notice* (PAN) dated December 20, 2017, FAN dated January 12, 2018, and *Preliminary Collection Letter* (PCL) dated July 31, 2018.[9]

On August 30, 2018, petitioner filed the instant *Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction.*[10]

[7] Par. 7, *Petition for Review*, vis-à-vis Par. 7, *Answer*, Docket – Vol. I, pp. 12 and 199; Par. 5, Facts Admitted, JSFI, Docket – Vol. II, p. 572; Exhibit "P-23", Docket - Vol. II, pp. 895 to 896.
[8] Par. 10, *Petition for Review*, vis-à-vis Par. 10, *Answer*, Docket – Vol. I, pp. 13 and 199; Par. 6, Facts Admitted, JSFI, Docket – Vol. II, p. 572; Exhibit "P-16", Docket - Vol. II, p. 889; Exhibit "R-26", Docket - Vol. I, p. 269.
[9] Par. 11, *Petition for Review*, vis-à-vis Par. 10, *Answer*, Docket – Vol. I, pp. 13 and 199; Par. 6, Facts Admitted, JSFI, Docket – Vol. II, p. 572.
[10] Docket – Vol. I, pp. 10 to 42.

During the hearing on its *Application for Temporary Restraining Order and/or Writ of Preliminary Injunction* on September 10, 2018, petitioner presented its Financial Consultant, Mr. Danilo D. Ofrecio,[11] as its sole witness.

On September 20, 2018, respondent filed his *Memorandum (Re: Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)*;[12] while on September 25, 2018, petitioner filed its *Motion to Admit Memorandum*,[13] with attached *Memorandum on the Application for Temporary Restraining Order and Writ of Preliminary Injunction (for Petitioner)*.[14]

Petitioner's *Motion to Admit Memorandum* was granted by the Court in its Resolution dated October 4, 2018.[15] However, on October 4, 2018, petitioner filed an *Ex-Parte Motion to Withdraw the Earlier Filed "Motion to Admit Memorandum"*,[16] praying that judgment be rendered allowing petitioner to withdraw its *Motion to Admit Memorandum* and for the same to be expunged from the case records; and for the Court to note the timely filing of the *Memorandum* attached to the said *Motion to Admit Memorandum*.

Respondent filed his *Answer* on October 4, 2018,[17] interposing certain special and affirmative defenses, such as: (1) this Court has no jurisdiction to entertain the instant *Petition for Review*; (2) the FAN and the corresponding *Formal Letter of Demand* (FLD) with *Details of Discrepancies*, all dated January 12, 2018, have become final, executory and unappealable, for failure of petitioner to file a valid protest within thirty (30) days from receipt of the FAN; (3) tax assessments by examiners are presumed correct and made in good faith, and the taxpayer has the duty to prove otherwise; (4) the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that respondent is wrong, but also that the taxpayer is right; and (5) the assessments were issued in the regular course, and within the reglementary period to assess provided by law. Je

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[11] Exhibit "A", Docket – Vol. I, pp. 107 to 114; Minutes of the hearing held on, and Order dated, September 10, 2018, Docket – Vol. I, pp. 135 to 138.
[12] Docket – Vol. I, pp. 142 to 147.
[13] Docket – Vol. I, pp. 149 to 152.
[14] Docket – Vol. I, pp. 158 to 169.
[15] Docket – Vol. I, p. 194.
[16] Docket – Vol. I, pp. 195 to 197.
[17] Docket – Vol. I, pp. 198 to 213.

On October 26, 2018, respondent submitted the *BIR Records* for the instant case.[18]

In the Resolution dated November 16, 2018,[19] the Court, *inter alia*: (1) granted petitioner's *Application for Temporary Restraining Order and/or Writ of Preliminary Injunction* and *Ex-Parte Motion to Withdraw the Earlier Filed "Motion to Admit Memorandum"*; (2) suspended the collection of taxes; and (3) ordered petitioner to deposit a cash bond or to post a surety bond in the amount of ₱21,093,476.50, within ten (10) days from notice.

On November 19, 2018, the Pre-Trial Conference was initially set on December 6, 2018;[20] but was reset to, and held on, January 31, 2019.[21] Prior thereto, *Respondent's Pre-Trial Brief* and the petitioner's *Pre-Trial Brief* were separately filed on November 29, 2018.[22]

On December 13, 2018, petitioner filed its *Compliance (To Resolution Dated 16 November 2018)*,[23] manifesting that it has already posted the required bond as evidenced by the documents issued by the surety bonding company attached therein.

In the Resolution dated December 17, 2018,[24] the Court: (1) disapproved the Security Bond No. JCL (8)13-0408 submitted by petitioner; (2) required petitioner to submit a new surety bond within ten (10) days from notice; and (3) ordered Ms. Genalyn Gemma M. Forca of Milestone Guaranty and Assurance Corp. to explain in writing, within the same period of ten (10) days from notice the following: (a) why the surety company failed to fill-up the entries in the upper portion of the bond, particularly, the amount of premium, which will be the basis of the correct computation of the documentary stamp tax (DST); (b) why there is no attached copy of the official receipt; (c) why there is no DST affixed on the Acknowledgment; and (d) why the bond posted is not a continuing bond.

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[18] Respondent's *Compliance* dated October 22, 2018, Docket – Vol. I, pp. 214 to 215.
[19] Docket – Vol. I, pp. 219 to 224.
[20] *Notice of the Pre-Trial Conference* dated November 19, 1018, Docket – Vol. I, pp. 225 to 226.
[21] *Notice of Resetting* dated December 5, 2018, Docket – Vol. I, p. 296; Minutes of the hearing held on, and Order dated, January 31, 2019, Docket – Vol. II, pp. 563 to 564.
[22] Docket – Vol. I, pp. 229 to 234; and 270 to 276.
[23] Docket – Vol. I, pp. 322 to 325.
[24] Docket – Vol. I, pp. 336 to 338.

Thus, on January 10, 2019, Ms. Forca sent a *letter* seeking the kind indulgence of the Court to reconsider its Resolution dated December 17, 2018, and to allow Milestone Guaranty and Assurance Corp. to submit a new surety bond, in lieu of the disapproved Surety Bond No. JCL (8)13-0408.[25]

Thereafter, petitioner filed an *Ex-Parte Manifestation and Compliance* on January 14, 2019,[26] praying that a judgment be issued noting petitioner's *Compliance* and that of Ms. Forca; and for the Court to approve the new surety bond posted by petitioner, or in the alternative, to give petitioner a period of fifteen (15) days from notice in the event the Court still disapproves the bond of Milestone Guaranty and Assurance Corp.

In the Resolution dated January 15, 2019,[27] the Court: (1) noted the letter of Ms. Forca filed on January 10, 2019; (2) admitted and approved the new surety bond [JCL (8)13-0410] submitted by petitioner; (3) restrained respondent from enforcing any warrant of distraint and garnishment and/or levy against petitioner, and (4) immediately suspended the collection of the alleged tax deficiencies until further orders from the Court.

On February 12, 2019, the parties submitted their *Joint Stipulations of Facts and Issues* (JSFI).[28] The Pre-Trial Order dated March 5, 2019 then was issued,[29] approving and adopting the said JSFI, and thereby deeming the termination of the pre-trial.

The trial of the case then ensued.

During trial, petitioner presented documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Josephine B. Poche,[30] petitioner's Bookkeeper; (2) Mr. Danilo D. Ofrecio,[31] petitioner's Financial Consultant; and (3) Mr.

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[25] Docket – Vol. I, pp. 367 to 368.
[26] Docket – Vol. I, pp. 416 to 419.
[27] Docket – Vol. I, pp. 468 to 469.
[28] Docket – Vol. II, p. 571 to 575.
[29] Docket – Vol. II, pp. 579 to 587.
[30] Exhibit "P-3", Docket – Vol. II, pp. 866 to 873; Minutes of the hearing held on, and Order dated, May 20, 2019, Docket – Vol. II, pp. 822 to 823, and 981.
[31] Exhibit "P-1", Docket – Vol. II, pp. 838 to 845; Minutes of the hearing held on, and Order dated, May 20, 2019, Docket – Vol. II, pp. 822 to 823, and 981; Exhibit "P-24", Docket – Vol. II, pp. 909 to 921.

Glenn M. Abanador,[32] the Court-commissioned Independent Certified Public Accountant (ICPA).[33]

On May 10, 2019, the *Report* of the ICPA was submitted.[34]

Petitioner filed its *Formal Offer of Evidence* on May 27, 2019.[35] Respondent filed his *Comment (To Petitioner's Formal Offer of Evidence)* on May 31, 2019.[36] In the Resolution dated July 16, 2019,[37] the Court admitted petitioner's Exhibits, *except* for Exhibit "P-29-a", for failure of the Supplemental Judicial Affidavit (JA) of the ICPA to comply with Section 4 of A.M. 12-8-8-SC or the Judicial Affidavit Rule, in relation to Section 10(c) of the same rule. Consequently, the exhibits identified in the said Supplemental JA, such as Exhibits "P-30" and "P-30-a", were likewise denied admission for failure to identify.

Respondent also presented his documentary and testimonial evidence. He offered the testimonies of the following individuals, namely: (1) Ms. Ma. Paz Arcilla,[38] Revenue Officer IV-Chief, Billing Section of the Assessment Division, Revenue Region No. 6; (2) Ms. Mariannejoy R. Aves,[39] Revenue Officer-Reviewer of the same Assessment Division; and (3) Mr. Benhur C. Narcoda,[40] Mailing In-Charge of the Administrative Division of the same Revenue Region.

On July 30, 2019, petitioner filed a *Motion for Reconsideration,*[41] praying for the Court to reconsider and set aside the Resolution dated July 16, 2019,[42] and to allow the admission of the attached Lawyer's Attestation in the Supplemental JA of the ICPA.

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[32] *Supplemental Judicial Affidavit (In Question and Answer Form In Lieu of Direct Testimony),* Docket – Vol. II, pp. 963 to 970; Minutes of the hearing held on, and Order dated, May 20, 2019, Docket – Vol. II, pp. 822 to 823, and 981.

[33] *Oath of Commission* dated April 11, 2019, Docket – Vol. II, p. 612; Minutes of the hearing held on, and Order dated, April 11, 2019, Docket – Vol. II, pp. 613 to 614.

[34] Petitioner's *Compliance (To Order dated 11 April 2019),* Docket – Vol. II, pp. 615 to 618; Exhibit "P-30", Docket – Vol. II, pp. 619 to 628.

[35] Docket – Vol. II, pp. 824 to 837.

[36] Docket – Vol. II, pp. 982 to 985.

[37] Docket – Vol. III, pp. 987 to 988.

[38] Exhibit "R-29", Docket – Vol. I, pp. 238 to 242; Minutes of the hearing held on, and Order dated, July 17, 2019, Docket – Vol. III, pp. 989 to 990.

[39] Exhibit "R-28", Docket – Vol. I, pp. 280 to 283; Minutes of the hearing held on, and Order dated, July 17, 2019, Docket – Vol. III, pp. 989 to 990.

[40] Exhibit "R-30", Docket – Vol. I, pp. 342 to 347; Minutes of the hearing held on, and Order dated, July 29, 2019, Docket – Vol. III, pp. 991 to 992.

[41] Docket – Vol. III, pp. 993 to 998.

[42] This *Motion for Reconsideration* erroneously referred to the assailed Resolution as dated *"June 5, 2019".*

Thereafter, petitioner filed a *Motion to Supplement the Motion for Reconsideration*,[43] with attached *Motion for Reconsideration*,[44] on July 31, 2019.

No comment was, however, filed by respondent on petitioner's *Motion for Reconsideration* filed on July 30, 2019, and *Motion to Supplement the Motion for Reconsideration* filed on July 31, 2019.[45]

On August 5, 2019, *Respondent's Formal Offer of Evidence* was filed.[46] Petitioner submitted its *Comment and Opposition to Respondent's Formal Offer of Evidence* on August 13, 2019.[47] In the Resolution dated December 2, 2019,[48] the Court: (1) noted petitioner's *Motion to Supplement the Motion for Reconsideration*; (2) gave petitioner a period of five (5) days from receipt thereof to submit a compliant replacement of the Supplemental JA of the ICPA; (3) ordered petitioner's counsel to pay the fine of ₱1,000.00, pursuant to Section 10(c) of the Judicial Affidavit Rule; and (4) to submit the proof of payment thereof within the same given period. Petitioner submitted its *Compliance* on January 2, 2020.[49]

In the Resolution dated March 12, 2020,[50] the Court, *inter alia*: (1) noted petitioner's *Compliance*; (2) granted petitioner's *Motion for Reconsideration*; (3) admitted petitioner's Exhibits "P-29-a", "P-30" and "P-30-a"; and (4) admitted all Exhibits offered by respondent.

Respondent's Memorandum was filed on July 13, 2020,[51] while the *Memorandum (For Petitioner)* was filed on July 24, 2020.[52]

The instant case was considered submitted for decision on August 25, 2020.[53]

THE ISSUES

[43] Docket – Vol. III, pp. 1004 to 1008.
[44] Docket – Vol. III, pp. 1009 to 1014.
[45] Records Verification dated September 11, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1033.
[46] Docket – Vol. III, pp. 1022 to 1027.
[47] Docket – Vol. III, pp. 1030 to 1032.
[48] Docket – Vol. III, pp. 1035 to 1038.
[49] Docket – Vol. III, pp. 1040 to 1042.
[50] Docket – Vol. III, pp. 1069 to 1071.
[51] Docket – Vol. III, pp. 1072 to 1088.
[52] Docket – Vol. III, pp. 1090 to 1124.
[53] Docket – Vol. III, p. 1178.

The parties submitted the following issues[54] for this Court's resolution, to wit:

"1. Whether the subject assessment notices were issued and properly served to the Petitioner as prescribed by law;

2. Whether the Respondent observed the due process requirement in the issuance and service of the subject deficiency assessments;

3. Whether Respondent's right to assess Petitioner for deficiency taxes for the taxable year 2014 has already prescribed; and

4. Whether the subject assessment have factual and legal basis.

5. Whether or not the Honorable Court of Tax Appeals has jurisdiction over the instant case[.]"

Petitioner's arguments:

Petitioner argues that this Court has jurisdiction over this case; that respondent failed to comply with the requirements for the proper issuance and service of a deficiency tax assessment; that respondent's right to issue the deficiency tax assessment has prescribed; and that the subject assessments lack factual and legal basis.

Respondent's counter-arguments:

Respondent counter-argues that this Court has no jurisdiction over the present case; that the assessment notices were properly served to petitioner following the due process requirement; that the assessment notices and FLD were issued and served to petitioner well within the three (3)-year prescriptive period; and that the assessments have legal and factual bases.

THE RULING *gr*

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[54] Issues, JSFI, Docket – Vol. II, pp. 572 to 573.

This Court finds merit to the present *Petition for Review.*

For an orderly disposition of this case, the issue of jurisdiction shall first be resolved.

This Court has jurisdiction to entertain the present appeal

According to respondent, there being no disputed assessment to speak of, this Court has no jurisdiction to entertain the present *Petition for Review* and must perforce be dismissed.

The Court disagrees.

Section 7(a)(1) of RA No. 1125,[55] as amended by RA No. 9282,[56] provides as follows:

> "SEC. 7. *Jurisdiction.* – The CTA 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**;" *(Emphases added)*

Based on the foregoing provision, the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered

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[55] AN ACT CREATING THE COURT OF TAX APPEALS.

[56] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

by the BIR. The wording of the provision is clear and simple.[57] In other words, the decisions of respondent which are appealable to this Court cover not only those referring to assessment or refund cases, but also include "other matters" arising under the NIRC or other laws administered by the BIR.

Thus, contrary to the stance of respondent, even when there is no disputed assessment to speak of, the Court can take cognizance of an appeal over a decision of respondent, so long as it arose under the NIRC or other laws administered by the BIR.

Considering that the issuance of the *Final Notice Before Seizure* is directly related to the power and duty of the BIR (headed by respondent)[58] to assess and collect all national internal revenue taxes, as stated under Section 2[59] of the NIRC of 1997, and related provisions of the same Code, such Sections 205 and 206, the same falls within the phrase *"other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue"*, in accordance with the above-quoted Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282.

Finding that this Court has jurisdiction, the Court shall proceed to jointly address the first two (2) issues raised by the parties, as they both relate to the due process requirements in the issuance and service of tax assessments.

Respondent violated petitioner's right to due process in the issuance of the subject tax assessments. Thus, the same are void.

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[57] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[58] Section 3 of the NIRC of 1997 reads:

"SEC. 3. *Chief Officials of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall have a chief to be known as Commissioner of Internal Revenue, hereinafter referred to as the Commissioner, and four (4) assistant chiefs to be known as Deputy Commissioners."

[59] "SEC. 2. *Powers and Duties of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and **its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes**, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred by it by this Code or other laws."

Petitioner points out that it was denied of its right to due process; that it was never informed of any findings against it, nor was it required to respond to any notice since it never received a proper request for an informal conference, and a copy of the PAN and FAN; and that it was not given any opportunity to present arguments to controvert the findings of deficiency taxes against it, considering that the only documents actually served to it by hand, was the *Final Notice Before Seizure*.

For his part, respondent contends that he was able to prove that on December 27, 2017, the PAN with *Details of Discrepancies* dated December 20, 2017 was issued and served to petitioner at its registered address at 674 Muelle de Binondo St., Brgy. 287, Zone 27, Binondo, Manila, **through registered mail** under Registry Receipt No. 909572, and was not returned by the Postmaster; that on March 20, 2018, *Assessment Notices* and the corresponding FLD with *Details of Discrepancies* dated January 12, 2018 were issued and served to petitioner at the same Binondo address, **through registered mail** under Registry Receipt No. 902696, and were not likewise returned by the Postmaster; and that records reflect that petitioner did not give written notice of change of address to the Revenue District Officer or district having jurisdiction over his former legal residence and/or place of business, and did not furnish a copy to the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, pursuant to Section 11 of Revenue Regulations (RR) No. 12-85.

We rule in favor of petitioner.

With the admission made by petitioner that it received the BIR's letter dated June 29, 2018,[60] which bear its address at 674 Muelle de Binondo St., Brgy. 287, Zone 27, Binondo, Manila, despite petitioner's supposed transfer to another office, there can be no doubt that petitioner maintained as its business address the same Binondo address, for purposes of the instant case. *gc*

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[60] Par. 7, *Petition for Review*, vis-à-vis Par. 7, *Answer*, Docket – Vol. I, pp. 12 and 199; Par. 5, Facts Admitted, JSFI, Docket – Vol. II, p. 572; Exhibit "P-23", Docket - Vol. II, pp. 895 to 896.

In any event, establishing petitioner's address is one thing; but whether the subject notices were properly served to petitioner in the said address is quite another.

Section 3.1.6 of RR No. 12-99,[61] as amended by RR No. 18-2013,[62] reads, in part, as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.6 ***Modes of Service.*** – **The notice (PAN/FLD/FAN/**FDDA**) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**
>
> xxx xxx xxx
>
> (iii) **<u>Service by mail is done by sending a copy of the notice by registered mail</u> to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered.** A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to**

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[61] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[62] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

> **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.**
>
> xxx xxx xxx." *(Emphases and underscoring ours)*

Based on the foregoing provisions, one of the modes of service of the PAN, FLD, and FAN is by service through registered mail. As for such mode of service, the same must be made by sending the said notices *"with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered."* Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction. Furthermore, it is required that the "[t]*he server shall accomplish the bottom portion of the notice"* and *"shall also make a written report under oath before a Notary Public or any person authorized to administer oath*[s] *under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person...who received the same and such other relevant information."*

In addition, it has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.[63]

Considering that petitioner directly denies due receipt of the subject notices, the burden was shifted to respondent to prove that

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[63] *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.

the same were indeed received by petitioner or by its authorized representative.

To prove that the PAN dated December 20, 2017, the *Assessment Notices* and FLD with *Details of Discrepancies*, all dated January 12, 2018, were served to petitioner, through registered mail, respondent offered the following exhibits,[64] to wit:

Exhibit	Nature	Purpose
"R-15"[65]	Registry Receipt No. 909572 dated December 27, 2017 – *Faithful Reproduction of the Original*	To prove that on December 27, 2017, Preliminary Assessment Notice with Details of Discrepancies dated December 20, 2017 was served to petitioner at its registered address at 674 Muelle de Binondo St., Brgy. 287, Zone 27, Binondo, Manila, though registered mail under Registry Receipt No. 909572.
"R-18"[66]	Registry Receipt No. 902696 dated December 27, 2017[67] – *Faithful Reproduction of the Original*	To prove that on March 20, 2018, Assessment Notice No. 30-14-MC-17-564(IT)/ Assessment Notice No. 30-14-VT-17-565/ Assessment Notice No. 30-14-MC-17-565(VT) Assessment Notice No. 30-14-WE-17-566/ Assessment Notice No. 30-14-WE-17-566(WE)/ Assessment Notice No. 30-14-IAET-17-567/ Assessment Notice No. 30-14-MC-17-567 (IAET)/ Assessment Notice No. 30-14-17-564 and the corresponding Formal Letter of Demand, all dated January 12, 2018, were served to petitioner at its registered address at 674 Muelle de Binondo St., Brgy. 287, Zone 27, Binondo, Manila,

[64] Refer to *Respondent's Formal Offer of Evidence*, Docket – Vol. III, pp. 1022 to 1027.
[65] Docket – Vol. I, p. 352.
[66] Docket – Vol. I, p. 365.
[67] Should be March 20, 2018.

		through registered mail under Registry Receipt No. 902696.

It can, thus, be inferred from the foregoing that the only evidence adduced by respondent in proving the fact of mailing are the copies of the corresponding Registry Receipts issued by the Central Post Office of Manila when the mailed matters containing the subject PAN and FAN/FLD were supposedly posted by the BIR on December 27, 2017 and March 20, 2018, respectively.[68] Unfortunately, these hardly suffice to prove that the said notices were indeed served and received by petitioner or by any of its authorized representative/s, pursuant to the above-mentioned rules. These Registry Receipts merely proved the fact of mailing,[69] and nothing more. The glaring fact remains that nowhere can it be seen from the evidence presented that the said PAN, *Assessment Notices*, and FLD were actually served and received by petitioner or by any of its authorized representative. Particularly, there is no indication in the subject Registry Receipts that the signatures respectively appearing therein refer to petitioner or its authorized representative. On this matter, the recent case of *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[70] (*T Shuttle* case) is on point, to wit:

> "As ruled by the CTA *En Banc,* the **CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives.** It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.
>
> xxx xxx xxx
>
> **The Court sees no reason to set aside the findings of the CTA *En Banc*.** 'It is doctrinal that the

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[68] Q-5&A and Q-9&A, Exhibit "R-30" Docket – Vol. I, pp. 343 to 344.
[69] Refer to *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, supra.
[70] G.R. No. 240729, August 24, 2020.

> Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, has accordingly developed an exclusive expertise on the resolution [of tax problems,] unless there has been an abuse or improvident exercise of authority.' xxx." *(Emphasis added)*

Similar to the foregoing case, respondent's witness, Mr. Narcoda, had also expressly admitted during cross-examination that the BIR has no proof that the said assessment notices were actually received by petitioner, *viz*:

"ATTY. ROBENTA:
Q. **Mr. Witness, are there any records in your office that the subject matter was received by an authorized representative of the petitioner**?

MR. NARCORDA:
A. Pardon?

ATTY. ROBENTA:
Q. **Are there any records in your office that the subject matter was actually received by an authorized representative of the petitioner at Binondo Office?**

MR. NARCORDA:
A. **No, sir**."[71] *(Emphasis supplied)*

Furthermore, it must be pointed out that a closer examination of the same Registry Receipts reveals that these documents do not contain any identifiable details of the transaction. Moreover, there is no showing that the server of the subject PAN, *Assessment Notices*, and FLD accomplished the respective bottom portion thereof;[72] and that written reports under oath were made, setting forth the manner, place and date of service, the name of the person who received the same notices, and such other relevant information. As already stated, these are all required under the earlier quoted Section 3.1.6(iii) of RR No. 12-99,[73] as amended by RR No. 18-2013. Such being the case,

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[71] Transcript of Stenographic Notes at the hearing held on July 29, 2019, p. 6.
[72] Refer to Exhibits "R-14", and "R-17" to "R-17-h", Docket – Vol. I, pp. 243 to 258.
[73] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil

respondent, not only failed to prove that petitioner actually received the said notices, he likewise neglected to show compliance with the requirements under the BIR's own rules and regulations.

Correspondingly, due process was not accorded to petitioner in the issuance of the subject PAN, *Assessment Notices*, and FLD, specifically under Section 228 of the NIRC of 1997, and Section 3.1 of RR No. 12-99, as amended by RR No. 18-2013, to wit:

Section 228, NIRC of 1997:

"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**: xxx

xxx xxx xxx

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

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

xxx xxx xxx." *(Emphases added)*

Section 3.1, RR No. 12-99, as amended:

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

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his

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Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty 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**. **<u>It shall show in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based</u>** (see illustration in ANNEX A hereof).

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

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

xxx xxx xxx

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **<u>The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based,</u>** *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).

3.1.4 *Disputed Assessment.* – **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** xxx." *(Emphases and underscoring added)* gr

Based on the foregoing provisions, part of the due process requirements in the issuance of tax assessments is that the concerned taxpayer be informed in writing of the law and the facts upon which the assessment was made, and that the same taxpayer be given the opportunity to respond and contest the PAN and FLD/FAN.

Since these due process requirements were not fulfilled for failure of respondent to properly serve the PAN dated December 20, 2017, the *Assessment Notices* and FLD with *Details of Discrepancies*, all dated January 12, 2018, the subject tax assessments are null and void, pursuant to the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., etseq.*,[74] to wit:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void**. **While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
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> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity**." *(Emphases and underscoring added)*

In sum, considering that respondent was unable to present substantial evidence that the subject PAN, FAN or *Assessment*

[74] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Notices, and FLD were properly served and received by petitioner or by its authorized representative/s, then there is no valid assessment to speak of in this case. *Apropos*, the failure of respondent to prove receipt of the assessment by petitioner would necessarily lead to the conclusion that no assessment was issued.[75]

Consequently, in view of the violation of petitioner's right to due process provided under Section 228 of the NIRC of 1997, and RR No. 18-13, the subject PAN, FAN or *Assessment Notices*, and FLD, are all considered void. As such, the subject deficiency tax assessments bear no valid fruit,[76] and the *Final Notice Before Seizure* dated July 31, 2018 must not be given any effect. It then becomes unnecessary to address the remaining issues and arguments raised by the parties.

WHEREFORE, the instant *Petition for Review* is **GRANTED**. Accordingly, the *Final Notice Before Seizure* dated July 31, 2018 is **WITHDRAWN** and **SET ASIDE**.

Moreover, the PAN dated December 20, 2017, the FAN or *Assessment Notices*, and the FLD, all dated January 12, 2018, issued against petitioner, for CY 2014, are **CANCELLED** and **SET ASIDE**, for being void.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[75] *Commissioner of Internal Revenue v. Bank of the Philippine Island*, G.R. No. 224327, June 11, 2018.
[76] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

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.

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