REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TROREV REALTY CO., as represented by its President, Roberto R. Ignacio,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9251

Members:

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

Promulgated:

JUL 18 2019

1:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a *Petition for Review*[1] filed by petitioner Trorev Realty Co., as represented by its President, Roberto R. Ignacio, against respondent Commissioner of Internal Revenue on February 2, 2016 praying that judgment be rendered declaring the Assessment Notice on the alleged deficiency income tax and value-added tax for calendar year 2011 in the aggregate amount of FIFTEEN MILLION EIGHTY ONE

[1] Docket Vol. I, pp. 10-23.

THOUSAND ONE HUNDRED FIFTY EIGHT PESOS AND NINETY SIX CENTAVOS (₱15,081,158.96) null and void.

THE FACTS

Petitioner Trorev Realty Co. is a partnership duly organized and registered with the Securities and Exchange Commission with principal office address at 423-C Natividad Building, T. Pinpin Street, Binondo, Manila.[2] Petitioner is represented in this case by its general manager, Roberto R. Ignacio.[3]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997, as amended (1997 NIRC).[4]

On December 5, 2012, petitioner, through its accountant, Fe Ramos Caguioa, received a Letter of Authority No. LOA-030-2012-00000294 (eLA201100004891),[5] dated September 5, 2012, together with a Checklist of Requirements[6] requesting the submission of certain documents.

On January 5, 2015, respondent sent via registered mail a Preliminary Assessment Notice (PAN)[7] with Details of Discrepancies[8] to petitioner as evidenced by Registry Receipt No. 913607 but the same was returned to sender unclaimed despite three notices.

On January 23, 2015, respondent issued a Formal Letter of Demand[9] with Details of Discrepancies[10] as well as Assessment Notice

[2] Joint Stipulation of Facts and Issues (JSFI), Docket Vol. I, p. 314.
[3] Exhibit "P-12", Docket Vol. I, p. 250.
[4] JSFI, Docket Vol. I, p. 314.
[5] Exhibit "R-1", Docket Vol. II, p. 493.
[6] Exhibit "R-2", Docket Vol. II, p. 494.
[7] Exhibit "R-15", Docket Vol. II, p. 508.
[8] Exhibit "R-15-1", Docket Vol. II, p. 509.
[9] Exhibit "R-16", Docket Vol. II, pp. 510-511.
[10] Exhibit "R-16-1", Docket Vol. II, p. 512.

No. 30-11-IT-15-0002[11] and Assessment Notice No. 30-11-VT-15-003[12] (FLD/FAN).

In a letter dated September 14, 2015,[13] petitioner manifested that it felt that the assessments made under LOA No. LOA-030-2012-00000294 (eLA201100004891) are too high and that it had never received any assessment notice but was only informed thereof when its accountant visited the BIR. In the same letter, petitioner requested that it be allowed to settle the assessments by way of compromise.

Through a letter dated October 16, 2015,[14] respondent furnished petitioner with a copy of the FLD/FAN all dated January 23, 2015. This letter was purportedly in response to a letter dated October 2, 2015 submitted by petitioner requesting for a copy of itemized assessment, reinvestigation and/or reconsideration of the case, and to be allowed to avail further remedies. In the same letter, respondent informed petitioner that the Formal Letter of Demand and/or Final Assessment Notice became final, executory and demandable for failure of petitioner to file protest and submit documentary evidence to refute the findings therein. Petitioner received the October 16, 2015 letter on October 27, 2015.

In a letter dated November 6, 2015[15] addressed to Ms. Marivic G. Tulio, Chief of the Collection Division, BIR Revenue Region No. 6, petitioner manifested that it only received the FLD/FAN on October 27, 2015. In the same letter, petitioner reiterated its request for reinvestigation and/or reconsideration of the assessments on the ground of lack of due process.

On January 22, 2016, petitioner received a Warrant of Distraint and/or Levy.[16]

On February 2, 2016, petitioner filed the present Petition for Review.

[11] Exhibit "R-17", Docket Vol. II, p. 513.
[12] Exhibit "R-18", Docket Vol. II, p. 514.
[13] Exhibit "R-21", Docket Vol. II, p. 517.
[14] Exhibit "R-23", Docket Vol. II, p. 519.
[15] Exhibit "P-9", Docket Vol. I, pp. 448-449.
[16] Memorandum (for the Petitioner), p. 3., Docket Vol. II, p. 548; Exhibit "R-26", Docket Vol. II, p. 522.

On March 2, 2016, respondent filed his Answer,[17] wherein he interposed the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

6. The instant Petition for Review is without the requisite verification and certification against forum shopping which is mandatory under the Rules of Court and which constitutes a valid cause for the dismissal of the petition.

7. The Honorable Court has no jurisdiction to entertain the instant petition for review. Assessment Notice Nos. 30-11-IT-15-0002 and 30-11-VT-15-0003 for deficiency income tax and value-added tax in the total amount of ₱15,081,158.96 has attained finality after the lapse of thirty (30) days from receipt of the respondent's decision contained in a letter dated October 16, 2015 denying the request for reinvestigation and without the same having [been] elevated timely to the Court of Tax Appeals via petition for review.

8. Section 228 of the Tax Code of 1997 provides, thus:

'SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

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.

xxx xxx xxx

[17] Docket Vol. I, pp. 46-49.

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

9. The instant petition for review was filed only on February 02, 2016, hence, filed out of time.

10. The subject tax assessments have become, final, executory, and demandable. Consequently, the same have become incontestable with the Prosecutor's Office and ordinary courts *(Sections 205 and 228 of the NIRC of 1997; Sections 7 and 11 of Republic Act No. 9282; Republic vs. Lim Tian Teng & Co., 165 SCRA 584; Republic vs. Ledesma, 19 SCRA 455; Republic vs. Magalona, Jr., et. Al., 109 Phil. 723; Commissioner vs. Concepcion, 22 SCRA 1058).*

11. It is a well-established doctrine in taxation that an assessment, whether valid or void, shall become final, and executory, when no administrative protest is filed within thirty (30) days from receipt of the assessments *(Allied Bank Corporation vs. Commissioner of Internal Revenue, CTA EB No. 167, August 23, 2006).* In fact, even an assessment which is contrary to law can attain finality if the same is not protested. *(Singer Finance Corporation vs. Commissioner of Internal Revenue, CTA EB No. 10, March 04, 2005, CTA Case No. 6743 citing Republic vs. Manila Port A Service, GR No. 18208, November 27, 1964).*

12. The assessment is valid and correct and the petitioner has the burden of proof to impugn its validity *(Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil. 647)*, Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise *(Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671)*; and assessments duly made by the BIR examiner and approved by her

> superior officers will not be disturbed *(Gutierrez vs. Villegas, 8 SCRA 547).*
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> 13. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right *(Tan Guan vs. Court of Tax Appeals, et. Al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co. 107 Phil. 967 [1960]).*
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> 14. Taxes are the life blood of the government and should be collected without unnecessary hindrance (Marcos II vs. Court of Appeals, 273 SCRA 47). Public policy dictates that collection of taxes should be accorded paramount importance for the sustenance of government. Thus, for the interest of the government, the subject assessment must be paid by the respondent without unnecessary delay."

The Pre-trial Conference[18] was held on May 12, 2016 but only respondent's counsel appeared. Respondent's counsel manifested that the Petition for Review lacks the required Verification and Certification Against Forum Shopping and that petitioner failed to file a Pre-trial Brief.[19] Accordingly, respondent's counsel moved for the dismissal of the present case with prejudice which this Court granted pursuant to Sections 5 and 6, Rule 18 of the Rules of Court.[20] Respondent's Pre-trial Brief[21] was filed on May 10, 2016.

Undaunted, petitioner filed a Motion for Reconsideration of this Court's Order dated May 12, 2016 ordering the dismissal of the present case with prejudice.[22] Within the extended period granted by this Court,[23] respondent filed his Comment/Opposition (To Petitioner's Motion for Reconsideration dated 3 June 2016).[24] On August 8, 2016, petitioner filed a Reply with Motion to Admit Verification and Certification of Non-Forum Shopping.[25] Respondent opposed Je

[18] Minutes of the Hearing dated May 12, 2016, Docket Vol. I, pp. 91-92.
[19] *Id.*
[20] *Id.*
[21] Docket Vol. I, pp. 54-57.
[22] *Id.*, pp. 98-107.
[23] Order dated July 19, 2016, Docket Vol. I, p. 144.
[24] Docket Vol. I, pp. 146-149.
[25] *Id.*, pp. 161-167.

petitioner's Motion to Admit Verification and Certification of Non-Forum Shopping through its Comment[26] dated August 24, 2016. In a Resolution dated November 4, 2016,[27] this Court granted petitioner's Motion to Admit Verification and Certification of Non-Forum Shopping as well as the Motion for Reconsideration of this Court's Order dated May 12, 2016. Accordingly, the dismissal of the present case pursuant to the Order dated May 12, 2016 was set aside. This Court likewise admitted the Verification and Certification of Non-Forum Shopping.

Petitioner filed its Pre-trial Brief[28] on March 30, 2017. Pre-trial Conference was held on May 11, 2017.[29]

The parties filed their Joint Stipulation of Facts and Issues[30] and Supplemental Joint Stipulation of Facts and Issues[31] on May 30, 2017 and August 2, 2017, respectively. This Court approved both the Joint Stipulation of Facts and Issues and Supplemental Joint Stipulation of Facts and Issues in a Resolution[32] dated August 10, 2017. The Pre-trial Order[33] was issued on August 15, 2017.

During trial,[34] petitioner presented the following witnesses: (1) Mr. Roberto R. Ignacio – petitioner's General Manager; and (2) Ms. Fe Ramos Caguioa – petitioner's Accountant.

Within the extended period granted by this Court,[35] petitioner filed its Formal Offer of Evidence[36] on August 17, 2018.

In a Resolution[37] dated September 10, 2018, this Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-6-1", "P-6-2", "P-6-3", "P-6-4", "P-6-5", "P-7", "P-8", "P-9", "P-10", "P-11", "P-11-1", "P-12" and "P-12-1", subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case.

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[26] *Id.*, pp. 175-176.
[27] *Id.*, pp. 182-191.
[28] *Id.*, pp. 204-208.
[29] Minutes of the Hearing dated May 11, 2017, Docket Vol. I, pp. 270-272.
[30] Docket Vol. I, pp. 314-315.
[31] *Id.*, pp. 334-337.
[32] *Id.*, p. 339.
[33] *Id.*, pp. 348-356.
[34] Order dated September 19, 2017, Docket Vol. I, pp. 365-366.
[35] Resolution dated July 30, 2018, Docket Vol. I, pp. 410-411.
[36] Docket Vol. I, pp. 414-417.
[37] *Id.*, pp. 452-454.

In an Order dated September 27, 2018 issued by the First Division of this Court,[38] the present case was transferred to the Second Division, pursuant to CTA Administrative Circular No. 02-2018, "Reorganizing the Three (3) Divisions of the Court" dated September 18, 2018.

Respondent, on the other hand, presented the following witnesses: (1) Mr. Fernando R. Gonzales – Revenue Officer II, BIR Revenue Region (RR) 6; [39] (2) Mr. Godofredo V. San Diego – Group Supervisor, RDO 34 (BIR Manila);[40] (3) Mr. Ronie Cris R. Giba – Revenue Officer I, RR 6;[41] and (4) Mr. Benhur C. Nacorda – Mailing In-Charge, RR 6.[42]

Respondent filed his Formal Offer of Evidence with Motion to Transfer Markings[43] on February 15, 2019.

In a Resolution dated March 18, 2019,[44] respondent's Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-15-1", "R-16", "R-16-1", "R-17", "R-18", "R-19", "R-20", "R-21", "R-22", "R-23", "R-24", "R-25", "R-26", "R-27", "R-28", "R-28-1", "R-29", "R-29-A", "R-30", "R-30-A", "R-31", "R-31-A", "R-32", "R-32-A", and "R-33" were admitted into evidence, subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case.

On April 25, 2019, respondent filed via registered mail its Memorandum.[45] Petitioner, on the other hand, failed to file its Memorandum as per the Records Verification dated May 7, 2019[46] issued by this Court's Judicial Records Division. Je

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[38] Docket Vol. II, p. 455.
[39] Minutes of the Hearing dated December 5, 2018, Docket Vol. II, pp. 457-458.
[40] *Id.*
[41] *Id.*
[42] Minutes of the Hearing dated February 11, 2019, Docket Vol. II, p. 478.
[43] Docket Vol. II, pp. 484-492.
[44] *Id.*, pp. 532-533.
[45] *Id.*, pp. 534-540.
[46] *Id.*, p. 542.

In a Resolution dated May 20, 2019,[47] the present case was submitted for decision.

On May 28, 2019, however, this Court received Memorandum (for the Petitioner) dated May 24, 2019.[48] In the interest of justice, this Court noted petitioner's Memorandum in a Resolution dated June 6, 2019.[49] This Court thus submitted the present Petition for Review anew for decision in the same Resolution.

THE ISSUES

The parties agreed that the issues to be resolved by this Court are the following:[50]

a. Whether or not petitioner is liable for deficiency income tax and value-added tax for taxable year 2011 in the total amount of ₱15,081,158.96; and

b. Whether or not the petitioner's constitutional and statutory right to due process was violated in the process of collecting the deficiency income tax and value-added tax for the taxable year 2011.

THE COURT'S RULING

After thorough evaluation of the relevant facts gathered from the case records and evidence duly presented vis-à-vis the applicable laws, regulations and jurisprudence on the matter, this Court finds that the present Petition for Review shall be granted.

Central to the resolution of the present controversy is the question of whether petitioner was duly served with and received the assessment notices. Petitioner claims that its constitutional and statutory right to due process was violated when it was not furnished with the required assessment notices under the law. Respondent, on

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[47] *Id.*, p. 545.
[48] *Id.*, pp. 546-557.
[49] *Id.*, pp. 569-570.
[50] JSFI, Docket Vol. I, p. 315; Supplemental JSFI, Docket Vol. I, p. 335.

the other hand, contends that there was no such violation as these assessment notices were all served to petitioner's registered address.

Section 228 of the National Internal Revenue Code of 1997, as amended (1997 NIRC) lays down the procedure to be observed in the issuance of tax deficiency assessment. The said provision, in relevant part, provides:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> 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." *(Emphasis supplied)*

To implement the foregoing provisions, Revenue Regulations (RR) No. 12-99, as amended,[51] specifies the due process requirement to be observed in issuing deficiency tax assessments. The relevant portion of the said issuance reads:

> "**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:
>
> 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

[51] As amended by RR No. 18-2013 dated November 28, 2013.

taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in 'ANNEX A' hereof).

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

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

xxx xxx xxx

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

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3.1.6 ***Modes of Service.*** – The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner of his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known* address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

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

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

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,*[52] the Supreme Court categorically held that failure to strictly comply with the notice requirements prescribed under Section 228 of the 1997 NIRC and RR No. 12-99 is tantamount to denial of due process. The Supreme Court further stressed that the absence of PAN will render nugatory any assessment made by the tax authorities. As aptly explained by the Supreme Court:

> **"Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made.** The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
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> xxx xxx xxx
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> **From the provision quoted above, 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.**" *(Emphasis supplied and citations omitted)*

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[52] G.R. No. 185371, December 8, 2010, 637 SCRA 644, 646.

Meanwhile, in the case of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[53] the Supreme Court enunciated the rule in cases where the taxpayer denies the receipt of assessment notices and also the requisite proof to show the fact of mailing of assessment notices. The Supreme Court held:

> **"If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that [the taxpayer] indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.**
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> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.** The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis supplied)*

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[53] G.R. No. 202695, February 29, 2016, 785 SCRA 258-259.

Based from the foregoing, the rule is that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer. It is also clear that to prove the fact of mailing, it is essential for the respondent to present the registry receipt issued by the Bureau of Posts or the Registry return card signed by the taxpayer or its authorized representative or at least a certification issued by the Bureau of Posts attesting to the same fact.

In the present case, petitioner categorically denies having received the PAN and submits that it only received the FLD/FAN on October 27, 2015. Correspondingly, the respondent has the burden to prove otherwise.

To prove the fact of mailing of the FLD/FAN, respondent presented its letter to the Postmaster, Central Post Office dated January 23, 2015 with attached Registry Receipt No. 911687 purportedly showing that the FLD/FAN was mailed on even date.[54] As regards the PAN, respondent expressly admitted that the same was issued and served to petitioner by registered mail under Registry Receipt No. 913607 on January 5, 2015 but was "returned to sender" for failure of petitioner to claim the same despite three notices.[55] Respondent also presented as evidence the envelope with Registry Receipt No. 913607 which allegedly contained the PAN.[56] With this admission, it is quite obvious that such PAN cannot be deemed to have been received by petitioner in the due course of mail. On the other hand, there is also no indication whatsoever that respondent validly resorted to other recognized modes of service of the PAN under Section 3.1.6 of RR No. 12-99 as amended, considering the attempt to validly serve the PAN by registered mail proved to be unsuccessful. Thus, for failure of respondent to inform the taxpayer of the facts and the law on which the assessment was made through the valid service of PAN as strictly required by Section 228 of the 1997 NIRC, this Court holds that the subject assessment is void and of no legal effect.

[54] Exhibit "R-28", Docket Vol. II, pp. 525-528.
[55] Respondent's Memorandum, Docket Vol. II, pp. 535-536.
[56] Exhibit "R-33", Docket Vol. II, p. 529.

Given the above finding, there is no need to discuss the other issues raised in this Petition because it is settled that a void assessment bears no fruit.[57]

WHEREFORE, the present Petition for Review is **GRANTED.** Accordingly, the assessment covering deficiency income tax and value added tax in the total amount of ₱15,081,158.96, inclusive of interest, and the Warrant of Distraint and/or Levy issued against petitioner for taxable year 2011 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

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

NO PART
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[57] *Commissioner of Internal Revenue v. Azucena T. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 396.

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