REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

KONICA MINOLTA MARKETING SERVICES (PHILIPPINES), INC., Petitioner,	**CTA CASE NO. 10255**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 01 2024 10:12 a.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

The *Petition for Review* filed on February 6, 2020 prays for the cancellation and withdrawal of the assessments issued by respondent against petitioner for its alleged deficiency tax liabilities in the total amount of ₱98,447,592.01.[1]

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with office address at the 28th Floor Tower 2, The Enterprise Center, 6766 Ayala Avenue corner Paseo de Roxas Avenue, Makati City, Philippines.[2]

[1] Summary of the Case, Pre-Trial Order dated December 10, 2021, Docket – Vol. II, p. 715.
[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 706.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue and is the head of the Bureau of Internal Revenue (BIR).[3] It was formerly registered as E. Work Flow Solutions Inc. as evidenced by the SEC Certificate of Incorporation dated November 28, 2017 [4] and BIR Certificate of Registration dated February 22, 2022[5].

THE FACTS

Respondent issued the *Letter of Authority* (LOA) No. eLOA 201200033077 dated October 19, 2016,[6] authorizing Revenue Officer (RO) Melissa Baes and Group Supervisor (GS) Rebecca Pandapatan of Revenue District Office (RDO) No. 047 – East Makati, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1 to December 31, 2015.

Pursuant thereto, respondent issued the *First Notice for Presentation of Records* dated November 15, 2016,[7] which was received by petitioner on December 12, 2016.[8] Petitioner submitted the requested documents through the letters dated November 18, 2016 and November 22, 2016.[9]

Thereafter, the *Second and Final Notice for Presentation of Records* dated January 9, 2017 was issued by respondent.[10] Petitioner received the same on May 15, 2017.[11]

On July 11, 2018, petitioner received the *Notice of Informal Conference* dated July 9, 2018,[12] with attached *Preliminary Summary of Tax Deficiencies* on income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT), and improperly accumulated earnings tax (IAET).

In response, petitioner sent the letter dated August 10, 2018, addressed to Mr. Mahinardo G. Mailig, Revenue District Officer, Ms. Melissa Carla R. Baes, RO, and Ms. Rebecca P. Pandapatan, GS, all from RDO No. 47,[13] confirming receipt of the *Notice of Informal Conference*, and submitting therein its objections against the proposed assessment of respondent.

[3] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 706.
[4] Exhibit "P2", Docket – Vol. I, pp. 98 to 104.
[N.B.: Please see parties' Joint Manifestation on petitioner's exhibits, Docket – Vol. II, p. 748 to 753)
[5] Exhibit "P-3", Docket – Vol. I, pp. 105 to 107.
[6] Exhibit "R-1", BIR Records, p. 3.
[7] Exhibit "R-2", BIR Records, p. 240.
[8] Exhibit "R-2-b", BIR Records, p. 240.
[9] Exhibits "P-9" and "P-10", Docket – Vol. I, pp. 115 to 116
[10] Exhibit "R-3", BIR Records, p. 287.
[11] Exhibit "R-3-b", BIR Records, p. 287.
[12] Exhibit "R-4" (BIR Records, pp. 340 to 342), vis-à-vis par. 3.1, Summary of Admitted Facts, JSFI (Docket – Vol. II, p. 706).
[13] Exhibit "P13", Docket – Vol. I, pp. 124 to 140.

On November 16, 2018, respondent issued the *Preliminary Assessment Notice* (PAN) *Part I and II* with *Details of Discrepancies*,[14] assessing petitioner for deficiency income tax, VAT, EWT, WTC, FWT, and IAET, in the aggregate amount of ₱97,501,658.19, inclusive of surcharge and interest, and compromise penalty of ₱40,000.00. The PAN was received by the petitioner on November 26, 2018.[15]

Petitioner then filed its *Reply to the PAN* on December 11, 2018.[16]

Thereafter, respondent issued the *Formal Assessment Notice* (FAN) *Part I and II with Details of Discrepancies and Assessment Notices*, all dated December 14, 2018.[17] However, petitioner denies receipt of the said FAN.[18]

Respondent then issued an undated *Warrant of Distraint and/or Levy* (WDL), which was served to petitioner on January 7, 2020.[19]

Subsequently, respondent issued the *Warrant of Garnishment* (WG) dated January 23, 2020 against petitioner's account in the Bank of Tokyo-Mitsubishi.[20] Petitioner was notified of such warrant through the letter dated January 24, 2020,[21] signed by Ms. Liza Ortiz, Managing Director & Deputy Country Head of MUFG Bank.

Petitioner filed a *Reply to Warrant of Distraint & Levy* on January 27, 2020.[22]

On February 6, 2020, petitioner filed the present *Petition for Review [With Extremely Urgent Omnibus Motion 1. To Suspend Collection of Tax; 2. To Lift Warrant of Distraint and/or Levy; & 3. To Lift Warrant of Garnishment.*[23]

At the hearing held for the *Extremely Urgent Omnibus Motion 1. To Suspend Collection of Tax; 2. To Lift Warrant of Distraint and/or Levy; & 3. To Lift Warrant of Garnishment* on February 27, 2020, petitioner presented the testimony of Ms.

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[14] Exhibit "P14" (Docket -- Vol. I, pp. 141 to 146), and Exhibit "R-6" (BIR Records, pp. 504 to 509), vis-à-vis par. 3.2, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 706.
[15] Exhibit "R-6-b", BIR Records, p. 508.
[16] Exhibit "P-15", Docket – Vol. I, pp. 147 to 167.
[17] Exhibits "R-7", "R-7-a", "R-7-b", "R-7-c", "R-7-d", "R-7-e", "R-7-f", and "R-7-g", BIR Records, pp. 736 to 747.
[18] Par. 30, Discussion, Petition for Review, Docket – Vol. I, p. 14.
[19] Exhibit "P-16" (Docket – Vol. I, p. 168), vis-à-vis par. 3.3, Summary of Admitted Facts, JSFI (Docket – Vol. II, p. 707).
[20] Exhibit "P-17" (Docket – Vol. I, p. 169), vis-à-vis par. 3.4, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 707.
[21] Exhibit "P-18", Docket – Vol. I, p. 170.
[22] Exhibit "P-19", Docket – I, pp. 171 to 177.
[23] Docket – Vol. I, pp. 6 to 22.

Marites V. Corona,[24] its Head Accountant. In the same hearing, petitioner also presented and orally offered Exhibits "P-1" to "P-19", and there being no objection from respondent's counsel, the said exhibits were admitted by the Court.[25]

Petitioner's *Memorandum* was filed on March 3, 2020,[26] while *Respondent's Memorandum (To the Petitioner's Extremely Urgent Omnibus Motion to Suspend Collection of Taxes, to Lift Warrant of Distraint and/or Levy, and to Lift Warrant of Garnishment)* was posted on March 3, 2020.[27]

In the Resolution dated July 2, 2020,[28] the Court denied for lack of merit the petitioner's *Extremely Urgent Omnibus Motion 1. To Suspend Collection of Tax; 2. To Lift Warrant of Distraint and/or Levy; & 3. To Lift Warrant of Garnishment.*

On June 29, 2020, respondent posted his *Answer (With Special and Affirmative Defenses)*,[29] raising the following arguments, to wit: (1) that the allegations made by petitioner pertaining to the date of receipts of the LOA, *First Notice for Presentation of Records* dated November 15, 2016, and *Second and Final Notice for Presentation of Records* dated January 9, 2017, are different from the date of receipts reflected on respondent's records; (2) that the assessments made against the petitioner for taxable year 2015 were made and issued in accordance with laws, rules and regulations; (3) that no error or irregularity can be ascribed on its assessment of petitioner's deficiency tax liability for having observed due process in the service of the FAN; (4) that the Court has no jurisdiction over the present case for failure of petitioner to file protest against the FAN, hence, the assessment became final, executory and demandable; (5) that the deficiency tax assessments made against the petitioner for taxable year 2015 were issued within the prescriptive period of three (3) years as provided in Section 203 of the NIRC, as amended; (6) that since the assessment against petitioner became final, executory and demandable, the same became delinquent account where summary remedies under Sections 205(a) and 207 of the Tax Code, as amended, can be availed of; and (7) that assessments are *prima facie* presumed correct and made in good faith and that the taxpayer has the duty of proving otherwise.

The Pre-Trial Conference was initially set on September 2, 2020.[30]

On July 9, 2020, the *BIR Records* for this case were transmitted to the Court.[31]

[24] Exhibit "P-65", Docket – Vol. I, pp. 86 to 95.
[25] Minutes of the hearing held on, and Order dated, February 27, 2020, Docket – Vol. I, pp. 178 to 179.
[26] Docket – Vol. I, pp. 184 to 199.
[27] Docket – Vol. I, pp. 233 to 239.
[28] Docket – Vol. I, pp. 244 to 251.
[29] Docket – Vol. I, pp. 252 to 264.
[30] Notice of Pre-Trial Conference dated July 10, 2020, Docket – Vol. I, pp. 354 to 355.
[31] *Compliance* dated July 9, 2020, Docket – Vol. I, p. 356.

Subsequently, on August 18, 2020, petitioner filed, *via* electronic mail, a *Motion for Reconsideration [To the Resolution dated 02 July 2020]*,[32] praying for the Court to reconsider its Resolution dated 02 July 2020, and grant its *Extremely Urgent Omnibus Motion 1. To Suspend Collection of Tax; 2. To Lift Warrant of Distraint and/or Levy; & 3. To Lift Warrant of Garnishment.*

Respondent's *Pre-Trial Brief* was filed on August 27, 2020,[33] while petitioner's *Pre-Trial Brief* was submitted on August 28, 2020.[34]

Considering petitioner's filing of the *Motion for Reconsideration [To the Resolution dated 02 July 2020]*, the Court cancelled the pre-trial conference previously set on September 2, 2020, and directed respondent to file its comment to the *Motion.*[35] In compliance thereto, respondent posted its *Comment/Opposition (To Petitioner's Motion for Reconsideration)* on October 2, 2020.[36]

In the Resolution dated November 10, 2020,[37] the Court denied petitioner's *Motion for Reconsideration [To the Resolution dated 02 July 2020]*, for lack of merit. In the same Resolution, the Pre-Trial Conference was set anew on January 25, 2021. However, the same was reset to March 10, 2021.[38]

Meanwhile, petitioner filed an *Amended Pre-Trial Brief* on March 5, 2021.[39]

During the hearing held on March 10, 2021,[40] the Pre-Trial Conference was cancelled and the parties were ordered to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA). However, the parties eventually decided not to have their case mediated by the PMC-CTA.[41]

Thus, in the Resolution dated June 22, 2021,[42] the Court scheduled the Pre-Trial Conference on August 9, 2021. However, it was further moved to,[43] and proceeded on, October 27, 2021.[44]

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[32] Docket – Vol. I, pp. 359 to 367.
[33] Docket – Vol. I, pp. 369 to 379.
[34] Docket – Vol. I, pp. 516 to 527.
[35] Resolution dated September 1, 2020, Docket – Vol. I, p. 530.
[36] Docket – Vol. II, pp. 536 to 542.
[37] Docket – Vol. II, pp. 546 to 551.
[38] Notice of Resetting dated January 20, 2021, Docket – Vol. II, p. 556.
[39] Docket – Vol. II, pp. 578 to 594.
[40] Minutes of the hearing held on, and Order dated, March 10, 2021, Docket – Vol. II, pp. 648 to 649.
[41] No Agreement to Mediate dated June 14, 2021, Docket- Vol. II, p. 673.
[42] Docket – Vol. II, p. 675.
[43] Notice of Resetting dated September 29, 2021 and October 13, 2021, Docket – Vol. II, p. 676 and 678, respectively.
[44] Order dated October 27, 2021, Docket – Vol. II, p. 696.

On November 16, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[45] which was approved and adopted by the Court in its Pre-Trial Order dated December 10, 2021,[46] thereby deeming the termination of the pre-trial.

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner again offered the testimony of its Head Accountant, Ms. Marites V. Corona.[47]

On April 25, 2022, the Court received the *Formal Offer of Evidence for Petitioner Konica Minolta Marketing Services (Philippines), Inc.*[48] On May 16, 2022, respondent filed his *Comment and Opposition (To Petitioner's Formal Offer of Evidence dated April 25, 2022).*[49] In the Resolution dated July 20, 2022,[50] the Court admitted petitioner's offered exhibits.

The case was transferred from the Second Division to the Third Division pursuant to CTA Administrative Circular No. 01-2022 dated June 21, 2022, which reorganized the Second and Third Division of this Court.[51]

During the presentation of respondent's evidence, respondent presented Revenue Officer (RO) Melissa Carla R. Baes as his witness.[52]

On November 23, 2022, respondent filed his *Formal Offer of Evidence*,[53] to which petitioner filed its *Comment/Opposition to Respondent's Formal Offer of Evidence* on December 2, 2022.[54] In the Resolution dated February 2, 2023,[55] the Court admitted all of respondent's exhibits.

The *Memorandum for Petitioner Konica Minolta Marketing Services (Philippines), Inc.* was submitted on March 10, 2023,[56] while respondent's *Memorandum* was posted on March 17, 2023.[57]

[45] Docket – Vol. II, pp. 706 to 713.
[46] Docket – Vol. II, pp. 715 to 722.
[47] Exhibits "P-65" and "P-66", Docket Vol. I, pp. 86 to 95, and 415 to 423, respectively; Exhibits "P-67" and "P-68", Docket – Vol. II, pp. 596 to 606, and 759 to 767, respectively; Minutes of the hearing held on, and Order dated, April 6, 2022, Docket – Vol. II, pp. 891 to 892.
[48] Docket – Vol. II, pp. 897 to 912.
[49] Docket – Vol. II, pp. 1008 to 1011.
[50] Docket – Vol. II, pp. 1017 to 1018.
[51] Order dated June 29, 2022, Docket – Vol. II, p. 1014.
[52] Exhibit "R-9", Docket – Vol. I, pp. 306 to 318; Minutes of the hearing held on, and Order dated, November 8, 2022, Docket – Vol. II, pp. 1023 to 1025.
[53] Docket – Vol. II, pp. 1036 to 1045.
[54] Docket – Vol. II, pp. 1050 to 1053.
[55] Docket – Vol. II, pp. 1060 to 1061.
[56] Docket – Vol. II, pp. 1066 to 1098.
[57] Docket – Vol. II, pp. 1103 to 1112.

In the Resolution dated April 11, 2023, the present case was deemed submitted for decision.[58]

THE STIPULATED ISSUES

The issues stipulated by the parties for this Court's resolution are the following:

> "1. Whether or not the deficiency tax assessments, Warrant of Distraint and/or Levy, and Warrant of Garnishment issued by Respondent against Petitioner for taxable year 2015 are void and/or invalid due to Respondent's failure to duly serve Petitioner with Formal Assessment Notice or Final Letter of Demand in violation of Petitioner's constitutional right to due process.
>
> 2. Whether or not Respondent's right to assess Petitioner for deficiency taxes for taxable year 2015 has already prescribed.
>
> 3. Whether or not Petitioner is liable for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), final withholding tax (FWT), improperly accumulated earnings tax (IAET), and compromise penalties for taxable year 2015 in the aggregate amount of Php98,447,592.01, inclusive of interest and increments.
>
> 4. Whether or not the issuance of the subject Warrant of Distraint and/or Levy and Warrant of Garnishment by Respondent against Petitioner for taxable year 2015 is void and/or invalid.
>
> 5. Whether this Honorable Court has jurisdiction over this case."[59]

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the case; that the assessments, the FAN dated 14 December 2018 and *Assessment Notices* for deficiency income tax, VAT, WTC, FWT, IAET, and compromise penalty/miscellaneous charges, undated WDL and WG should be declared null and void due to respondent's failure to duly serve petitioner with a copy of the FAN/FLD in violation of petitioner's constitutional right to due process; that respondent's right to assess petitioner for the alleged deficiency income tax,

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[58] Minute Resolution dated April 11, 2023, Docket – Vol. II, p. 1115.
[59] Stipulation of Issues, JSFI, Docket – Vol. II, p. 707.

VAT, WTC, and EWT, for taxable year 2015, has already prescribed; that the FAN dated 14 December 2018 was issued in violation of petitioner's right to due process, since it merely reiterated the findings previously stated in the PAN without providing any reason for rejecting the arguments raised by petitioner in its PAN Protest; that the FAN dated 14 December 2018 failed to indicate the definite amount of tax liability; that the WG should be declared void and/or invalid and accordingly, cancelled and set aside due to respondent's failure to serve petitioner with a copy of the WG; and that the deficiency EWT of ₱3,311,034.66 mentioned in the WDL and WG is not based on any *Assessment Notice* and should be declared null and void and accordingly, stricken off the WDL and WG.

Respondent's counter-arguments:

Respondent contends that the instant petition was filed out of time as the assessment against petitioner have already become final, executory and demandable which may no longer be disputed; that petitioner failed to file a protest against the assessment, by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the FAN provided in Section 228 of the 1997 Tax Code, as amended; that the assessment has not prescribed, since the FAN was issued on December 14, 2018 which is within the period of three (3) or ten (10) years, whichever is applicable, from the filing of the annual return for taxable year 2015 or April 2016; and that the assessment became delinquent so that summary remedies to enforce the collection thereof can be enforced pursuant to Sections 205(a) and 207 of the Tax Code, as amended.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

This Court has jurisdiction over the present case.

Respondent is of the view that this Court has no jurisdiction to entertain the present *Petition for Review* since the subject assessment has already become final, executory and demandable.

The Court disagrees.

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125[60], as amended by RA No. 9282[61], state as follows:

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

"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)*

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal*. – **Any party adversely affected by a decision, ruling** or inaction of the Commissioner of Internal Revenue ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein." *(Emphases added)*

The Supreme Court, in *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[62] interpreted the above-quoted provisions in this wise, to wit:

"Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. vs. Court of Appeals*,[63] the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide 'other matters' related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over 'other matters,' it presupposes that the tax assessment has not become final and unappealable.

We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term 'other

[61] 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.

[62] G.R No. 169225, November 17, 2010.

[63] 386 Phil. 661 (2000).

matters' referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

xxx xxx xxx

Plainly, the assailed CTA *En Banc* Decision, was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term 'other matters' can be supported or even deduced. What is rather clearly apparent, however, is that the term 'other matters' is limited only by the qualifying phrase that follows it.

Thus, **on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is <u>not limited</u> to cases which involve decisions of the CIR 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 by the Bureau of Internal Revenue (BIR).**

xxx xxx xxx

Furthermore, **the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over 'other matters' arising under the NIRC or other laws administered by the BIR as <u>separate and independent of each other</u>.** This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an 'other matter' must not by a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. **The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.**" *(Emphases and underscoring added)*

Based on the afore-quoted provisions and jurisprudential pronouncements, 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 by the BIR.[64] In addition, any party adversely affected by the said decisions or ruling, may file an appeal to this Court within thirty (30) days from receipt thereof.

In the present case, apart from the subject tax assessments, petitioner assails the validity of the undated WDL and the WG dated January 23, 2020 issued by respondent. It should be noted that the WDL constitute an act of respondent on "other matters" arising under the NIRC, which, pursuant to *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*,[65] may be the subject of an appropriate appeal before this Court.[66]

Correspondingly, the reckoning of the 30-day reglementary period under Section 11 of RA No. 1125, as amended by RA No. 9282, is based on petitioner's receipt of the WDL on January 7, 2020.[67] Therefore, the *Petition for Review* was timely filed on February 6, 2020,[68] and this Court can take cognizance of this case.

While respondent claims that the assailed assessment has attained finality due to petitioner's failure to file an administrative protest to the FAN, it should be pointed out that petitioner denies having ever received any FAN. Thus, 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.[69] However, respondent offered no proof of such service, as will be discussed below.

Such being the case, the failure of respondent to prove receipt of the assessment by petitioner would necessarily lead to the conclusion that no assessment was issued.[70] Thus, the subject tax assessments could not have attained finality so as to deprive this Court of jurisdiction to entertain the present appeal.

Respondent failed to prove that petitioner received the FAN and Assessments Notices

Section 228 of the NIRC of 1997 mandates the following, *viz*:

"SEC. 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds**

[64] *Commissioner of Internal Revenue vs. Hamrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[65] G.R No. 255473, February 13, 2023.
[66] Refer to *Commissioner of Internal Revenue s. Avon Products Manufacturing, Inc., et seq.*, G.R Nos. 201398-99 and 201418-19, October 3, 2018.
[67] Exhibit "P-16", Docket – Vol. I, p. 168.
[68] Docket – Vol. I, pp. 6 to 22.
[69] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
[70] *Commissioner of Internal Revenue vs. Bank of the Philippine Island*, G.R. No. 224327, June 11, 2018.

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)*

Based on the said 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 said assessment.

The above law is implemented under Section 3.1.3 of Revenue Regulations (RR) No. 12-99,[71] as amended by RR No. 18-2013,[72] which requires that a FAN should be issued to a taxpayer:

"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

3.1.3 *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

[71] 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

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

jurisprudence on which the assessment is based; otherwise, the assessment shall be void."

According to respondent, the FAN was sent to petitioner through registered mail which is a valid mode of service.

Relative thereto, Section 3.1.6 of the same RR reads, in part, as follows:

> 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:**
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> xxx xxx xxx
>
> (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.**
>
> xxx xxx xxx."
>
> *(Emphases supplied)*

As a corollary, in *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[73] the Supreme Court ruled as follows:

> "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 GJM 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, <u>in fact</u>, received by the addressee.**
>
> **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 <u>which would have been signed by the taxpayer or its authorized representative</u>.** 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, <u>the release, mailing, or sending of the same must still be clearly and satisfactorily proved</u>.** Mere notations made without the taxpayer's intervention, notice of control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis and underscoring added)*

Based on the foregoing, it is clear that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof shifts the burden to the sender to prove that the said letter was *actually* received by the addressee.

In addition, to prove the fact of mailing, respondent must 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. In the absence of the said documents, a Certification issued by the said Bureau

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[73] G.R. No. 202695, February 29, 2016.

of Posts, and any other pertinent document executed with its intervention, must be presented to establish the fact of mailing.

In this case, petitioner directly denies receipt of the FAN, hence, the burden of proving the *actual* receipt of the same lies with respondent.

To prove that the FAN with the assessment notices were served to petitioner, through registered mail, respondent offered the following exhibits,[74] to wit:

Exhibit No.	Description	Purpose
"R-7"[75]	FAN with *Details of Discrepancies* dated December 14, 2018	To prove the legal and factual basis of tax assessment for all internal revenue taxes covering taxable year 2015 of Petitioner
"R-7-a"[76]	Name and signature of then Regional Director of Revenue Region No. 8 Makati, Glen A. Geraldino	To prove due execution of the FAN with *Details of Discrepancies* dated December 14, 2018 and the authenticity of the signature of Regional Director Glen A. Geraldino
"R-7-b"[77]	*Assessment Notice* dated December 14, 2018 covering deficiency Income Tax of ₱46,120,289.59	To prove the demand of payment of deficiency Income Tax of Petitioner for taxable year 2015.
"R-7-c"[78]	*Assessment Notice* dated December 14, 2018 covering VAT of ₱45,455,993.84	To prove the demand of payment of deficiency VAT of petitioner for taxable year 2015.
"R-7-d"[79]	*Assessment Notice* dated December 14, 2018 covering WTC of ₱198,963.76	To prove the demand of payment of deficiency WTC of Petitioner for taxable year 2015.
"R-7-e"[80]	*Assessment Notice* dated December 14, 2018 covering deficiency FWT of ₱3,311,034.66	To prove the demand of payment of deficiency FWT of Petitioner for taxable year 2015.
"R-7-f"[81]	*Assessment Notice* dated December 14, 2018 covering deficiency IAET of ₱3,321,310.16	To prove the demand of payment of deficiency IAET of Petitioner for taxable year 2015.
"R-7-g"[82]	*Assessment Notice* dated December 14, 2018 covering deficiency Compromise Penalty of ₱40,000.00	To prove the demand of payment of deficiency Compromise Penalty of Petitioner for taxable year 2015.
"R-8"[83]	Print-out Copy of Integrated Tax System (ITS) of the BIR	To prove the propriety and basis of serving notices to the registered address of Petitioner as reflected in the ITS of the BIR.
"R-8-a"[84]	Registered address of Petitioner per	To prove the registered address of

[74] Respondent's *Formal Offer of Evidence*, Docket – Vol. II, pp. 1041 to 1043.
[75] BIR Records, pp. 736 to 741.
[76] BIR Records, p. 740.
[77] BIR Records, p. 747.
[78] BIR Records, p. 746.
[79] BIR Records, p. 745.
[80] BIR Records, p. 744.
[81] BIR Records, p. 743.
[82] BIR Records, p. 742.
[83] BIR Records, p. 832.
[84] *Ibid.*

	ITS of the BIR	Petitioner as reflected in the ITS of the BIR.

Relative to the foregoing documents, RO Melissa Carla R. Baes testified in her Judicial Affidavit,[85] as follows:

> "47. Q: For the record, at what address did the FAN was mailed?
>
> A: The FAN was mailed to Petitioner's registered address located at 28th Floor, Tower 2, The Enterprise Center, 6766 Ayala Avenue Cor. Paseo de Roxas, San Lorenzo, Makati City.
>
> 48. Q: What is the proof of mailing the FAN to the Petitioner?
>
> A: The Registry Receipt of the FAN is attached to the record of the docket of the case.
>
> 49. Q: For the record, what is the registered address of the E Work Flow Solutions?
>
> A: As per the Integrated Tax System (ITS) of the BIR, E Work Flow Solutions, Inc.'s registered address is at 28th Floor, Tower 2, The Enterprise Center, 6766 Ayala Avenue Cor. Paseo de Roxas, San Lorenzo, Makati City. The said address is also the present registered address of Petitioner.
>
> 50. Q: You mentioned of the Integrated Tax System of the BIR, if shown to you a copy thereof will you be able to identify the same?
>
> A: Yes. This is the print-out I got from the Integrated Tax System (ITS) of the BIR, marked as Exhibit 'R-8'. It stated that Petitioner and E Work Flow Solutions, Inc. have the same registered address at 28th Floor, Tower 2, The Enterprise Center, 6766 Ayala Avenue Cor. Paseo de Roxas, San Lorenzo, Makati City sub marked as Exhibit 'R-8-a'."

Unfortunately, respondent's documentary and testimonial evidence hardly suffice to prove that said notices were indeed served and received by petitioner or any of its authorized representative. It is well to point out that respondent's witness made mention of registry receipt as proof of the fact of mailing the FAN but the same was never adduced as evidence by respondent. Moreover, it was not found in the records of the case.

In *Allied Banking Corporation vs. Eduardo De Guzman, Sr.*,[86] which was later cited in *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*,[87] the Supreme Court considered the original registry receipts, properly identified and authenticated, as the best evidence to prove the fact of receipt:

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[85] Exhibit "R-9", Docket, p. 315.
[86] G.R. No. 225199, July 9, 2018.
[87] G.R. No. 225809, March 17, 2021.

"Similarly in Mangahas v. CA, the Court has given importance to **the presentation of the original registry receipt to prove the fact mailing, even ruling that the same have constituted the best evidence thereof.** In the instant case, the Court finds that De Guzman sufficiently established the presence of the foregoing requisites necessary to give rise to the presumption that the mail matter he sent by registered mail was received in the regular course of mail. *First*, it is undisputed that his letter of revocation was properly addressed to PNB. *Second*, **in order to prove the fact of mailing,** De Guzman presented original copy of the September 4, 1991 letter of revocation, **its corresponding registry receipt, as well as a Certification from the Postmaster of Muntinlupa City that the letter was posted in the post office for mailing. Undeniably, said registry receipt constitutes the piece of evidence required by the pronouncements above. The presumption, therefore, arises that the De Guzman's letter of revocation was received by PNB in the regular course of mail.** *(Emphasis added)*

The foregoing pronouncement is also in consonance with the guidelines on service by mail as laid down in the above-quoted Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-13, which identified registry receipts as sufficient proof of mailing.

Furthermore, the registry return card which would bear petitioner's signature or that of his authorized representative was likewise not offered as evidence. This was confirmed by respondent's witness, Ms. Carla Baes, on clarificatory questions posed by the Court:[88]

"JUSTICE LIBAN

I have just one question regarding the Formal Assessment Notice or FAN, this is in question no. 48, you said it was mailed. Was there a return card, there is a registry receipt but is there a return card, because I did not find any in the records.

ATTY. JAVIER

Your Honors, if I may, I think the return card is in the BIR records.

JUSTICE LIBAN

I am asking because there is a registry receipt, now I want to know if there is a return card because the registry receipt is different from a return card. Registry receipt is a proof that it was mailed, registry return card is proof that it was received, the mailing matter was received. Actually, this is in your favor, the question is in your favor.

MS. BAES

[88] Transcript of Stenographic Notes (TSN) dated November 8, 2022, pp. 5 to 6.

A Your Honor, the one that I saw in the docket during the time that I executed the judicial affidavit was a registry receipt.

JUSTICE LIBAN

So, there is no return card?

MS. BAES

I cannot find any in the BIR record."

Thus, the glaring fact remains that nowhere can it be seen from respondent's evidence that there was actual service and receipt of the subject FAN since the registry receipt or the return card were not presented. Neither did respondent offer any other form of evidence (*i.e.*, at the very least, certification from the Bureau of Posts or other pertinent document executed with its intervention) to prove that the FAN was served to, or received by, petitioner. On this score alone, there is clear indication of respondent's violation of petitioner's right to due process.

In view of respondent's failure to prove that the FAN was properly and duly served upon or received by petitioner, the assessments made against petitioner for deficiency income tax, VAT, EWT, WTC, FWT, and IAET, for taxable year 2015, are void, for failure to accord petitioner due process in the issuance thereof. Accordingly, there being no final and valid assessment to begin with, petitioner cannot be considered a delinquent taxpayer.

The FAN and Assessment Notices issued to petitioner are void.

To reiterate, Section 228 of the NIRC of 117, as amended, requires that a taxpayer be informed of the assessment against it. If this requirement is not met, the assessment is void.

Any given taxpayer with an assessment issued against it must be afforded the opportunity to present its case and protest said assessment. Otherwise, the tax assessments are null and void, pursuant to the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,*[89] to wit:

"**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void</u>. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be**

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

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.

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)*

As discussed, there was improper service of the subject FAN to petitioner, and thus, the same is not binding on the latter. Consequently, in view of the violation of petitioner's right to due process pursuant to the above-quoted Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-13, the FAN with *Details of Discrepancies* and *Assessment Notices*, all dated December 14, 2018, are considered void. The subject deficiency tax assessments issued against petitioner bear no valid fruit.[90] Consequently, respondent's undated WDL and WG dated January 23, 2020 cannot be validly enforced against petitioner.

In fine, it is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[91]

Finding the subject tax assessments invalid, it becomes unnecessary to address the other issues and matters raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. For being void, the FAN with *Details of Discrepancies* and *Assessment Notices*, all dated December 14, 2018, assessing petitioner for deficiency income tax, VAT, EWT, WTC, FWT, IAET, and compromise penalty, for taxable year 2015, in the aggregate amount of ₱98,447,592.01, inclusive of surcharge and legal interest, as well as the undated

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[90] Refer to *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

[91] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, citing *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. no. 185371, December 8, 2010.

WDL and WG dated January 23, 2020, directed against petitioner, are **CANCELLED and SET ASIDE**.

Accordingly, respondent is **ENJOINED and PROHIBITED** from collecting the amount sought by the void assessment.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice