REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

VY DOMINGO JEWELLERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9367

Members:

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

Promulgated:
OCT 01 2019
4:02 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The present Petition for Review prays for the cancellation and withdrawal of the Preliminary Collection Letter dated March 26, 2012, Warrant of Garnishment dated April 25, 2016, and Warrant of Distraint and/or Levy dated May 04, 2016, which seek to collect from VY Domingo Jewellers, Inc. the total amount of Three Million Two Hundred Ninety Seven Thousand Eight Hundred Eighty Four Pesos And Sixteen Centavos (Php3,297,884.16), representing its deficiency income tax and value-added tax ("VAT") for taxable year 2007.

The Facts

Petitioner VY Domingo Jewellers, Inc. is a domestic corporation duly organized and existing under Philippine laws,[1] with office address at 35 Emerald

[1] Docket (vol. II), Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, Par. 1, p. 537.

St., Millionaires Village, Novaliches, Quezon City. It is primarily engaged in the manufacturing and selling of emblematic jewelry.[2]

Respondent Commissioner of Internal Revenue ("CIR") is the one duly appointed and authorized by law to collect all revenue taxes, issue and abate tax assessments, and examine books of accounts and returns filed with the Bureau of Internal Revenue ("BIR"). He holds office at BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed with the BIR its Annual Income Tax Return for taxable year 2007 on April 23, 2008.[3]

On January 06, 2011, Regional Director Alfredo V. Misajon issued to petitioner a Preliminary Assessment Notice[4] ("PAN") dated January 05, 2011 for deficiency income tax amounting to Php1,935,412.23, and deficiency VAT amounting to Php1,329,962.06, both inclusive of increments, and was served at N. Reyes cor. R. Papa St., Sampaloc, Manila,[5] under registry receipt no. 900022[6] of the Manila Central Post Office.

Then, on January 24, 2011, Regional Director Alfredo V. Misajon issued Assessment Notice No. 32-07-IT-1316[7] for deficiency income tax in the amount of Php1,954,572.95, and Assessment Notice No. 32-07-VT-1317[8] for deficiency VAT in the amount of Php1,343,311.21, both dated January 24, 2011, and likewise inclusive of increments, together with the corresponding Formal Letter of Demand ("FLD") and Details of Discrepancies[9] for taxable year 2007; they were again served at N. Reyes cor. R. Papa St., Sampaloc, Manila,[10] under registry receipt no. 903211[11] of the Manila Central Post Office.

On June 10, 2011, Revenue District Office ("RDO") No. 32, Revenue Region No. 6, BIR – Manila issued a 1st Notice[12] dated January 04, 2011, informing petitioner that the afore-stated assessments issued by the BIR were due for collection.[13]

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2 *Id.* (vol. II), JSFI, Summary of Admitted Facts, Par. 2, p. 537.
3 *Id.* (vol. II), JSFI, Summary of Admitted Facts, Par. 4, p. 537.
4 Exhibit "P-7"; Exhibit "R-14".
5 Docket (vol. II), JSFI, Summary of Admitted Facts, Par. 5, p. 538.
6 Exhibit "R-18".
7 Exhibit "P-2"; Exhibit "R-15".
8 Exhibit "P-3"; Exhibit "R-16".
9 Exhibit "R-17"
10 Docket (vol. II), JSFI, Summary of Admitted Facts, Par. 6, p. 538.
11 Exhibit "R-19".
12 Exhibit "P-10".
13 Docket (vol. II), JSFI, Summary of Admitted Facts, Par. 7, p. 538.

On July 28, 2011, RDO No. 32, Revenue Region No. 6, BIR – Manila issued a Final Notice Before Seizure to petitioner.[14] Subsequently, a Preliminary Collection Letter[15] dated March 26, 2012 was issued by RDO No. 32 BIR – Manila seeking to collect from petitioner the total amount of Php3,297,884.16, inclusive of increments, representing its income tax and VAT deficiencies for taxable year 2007.

Thereafter, on May 04, 2016, the Collection Division of Revenue Region No. 6, BIR – Manila issued a Warrant of Distraint and/or Levy[16] ("WDL") of even date to petitioner.[17]

Notably, the WDL dated May 04, 2016 was issued only after the Warrant of Garnishment was already served to the Bank of the Philippine Islands ("BPI").[18] More so, on various dates, the Collection Division of Revenue Region No. 6, BIR – Manila issued and served to different banks Warrants of Garnishment against the bank deposits of petitioner.[19]

Then, on April 27, 2016, petitioner's deposit accounts with BPI, Security Bank and Metrobank were garnished.[20]

On May 27, 2016, petitioner filed with this Court a Petition for Review[21] with application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction.

In the Order dated June 28, 2016, this Court deemed petitioner's application for TRO/Writ of Preliminary Injunction as a Motion for Suspension of Collection of Taxes. Thus, petitioner was then ordered to present its evidence relative to the said Motion.

To support its Motion for Suspension of Collection of Taxes, petitioner offered the testimonies of its employees, *viz*: (i) Ms. Anna Maria Sereno,[22] Corporate Secretary; (ii) Mr. Jose S. Guevarra,[23] Credit and Collection Manager;

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[14] *Id.* (vol. II), JSFI, Summary of Admitted Facts, Par. 8, p. 538.
[15] Exhibit "P-9".
[16] Exhibit "P-6"
[17] Docket (vol. II), JSFI, Summary of Admitted Facts, Par. 10, p. 538.
[18] *Id.* (vol. II), JSFI, Summary of Admitted Facts, Par. 11, p. 538.
[19] *Id.* (vol. II), JSFI, Summary of Admitted Facts, Par. 12, p. 538.
[20] *Id.* (vol. II), JSFI, Summary of Admitted Facts, Par. 13, p. 538.
[21] *Id.* (vol. I), pp. 10-35.
[22] *Id.* (vol. I), Judicial Affidavit of Ms. Anna Maria Sereno dated June 23, 2016, pp. 221-235.
[23] *Id.* (vol. I), Judicial Affidavit of Mr. Jose S. Guevarra dated July 07, 2016, pp. 237-245.

and (iii) Ms. Gemma L. Mina,[24] Accounting Assistant, who all testified on direct by way of judicial affidavits.

Meanwhile, after asking for and being given an extension of time by this Court,[25] respondent filed his Answer[26] on July 14, 2016, interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

31. The Honorable Court has no jurisdiction to entertain the instant petition for review. Assessment Notice Nos. 32-07-IT-1316, 37-07-VT-1317 and Formal Letter of Demand, all dated January 24, 2011, have become final, executory and unappealable for failure of Petitioner to file a valid protest within thirty (30) days from receipt of the Assessment Notices.

32. Records reflect that the Preliminary Assessment Notice and Assessment Notices including the Formal Letter of Demand were sent to the Petitioner *via* registered mail at its registered address at N. Reyes cor. R. Papa Sts., Sampaloc, Manila. Records further show that no valid protest was filed by the Petitioner questioning the validity of the tax assessments within the reglementary period from receipt of the said assessments.

33. In the case of **Protector's Services, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 118176, April 12, 2000**, the Supreme Court held that:

'The 1985 assessment which petitioner denied as having been received was negated when the respondent introduced documentary evidence showing that it was mailed by registered mail. It was further buttressed by the testimony of witness Mr. Arnold C. Larroza, Chief Administrative Branch Mailing Section, Rev. Region No. 4B-1, Quezon City that the 1983, 1984 and 1985 assessments were placed in one envelope when it was mailed by registered mail. Presumably, it was received in the regular course of the mail. The facts to be proved to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was

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[24] *Id.* (vol. I), Judicial Affidavit of Ms. Gemma L. Mina dated July 21, 2016, pp. 248-262.
[25] *Id.* (vol. I), Resolution dated July 12, 2016, p. 135.
[26] *Id.* (vol. I), pp. 136-146.

mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails. Such being the case, this Court cannot be made to believe that the 1985 assessment which incidentally has a substantially greater amount involved was not received by the petitioner.'

34. Assuming without admitting that the Preliminary Assessment Notices including the Formal Letter of Demand were not received by the Petitioner, still, the Assessment Notices including the Formal Letter of Demand became final, executory and unappealable for failure of Petitioner to exhaust all administrative remedies by filing a protest or motion for reinvestigation within thirty (30) days from receipt of the certified true copy of the Assessment Notices and Formal Letter of Demand on **May 04, 2016**.

35. It must be stressed that Section 228 of NIRC of 1997, as amended, provides that assessments should be protested within the period prescribed by law in order that the same shall not become final, executory and demandable. The pertinent provision of Section 228 is hereby quoted, to wit:

> '**Section 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 x x x.
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> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
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> Within the 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.
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> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be**

> **prescribed by implementing rules and regulations.** Within sixty (60) days from the filing of protest, all relevant supporting documents shall be submitted, otherwise, the assessment shall become final.
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> 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 decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.' (Emphasis supplied)

36. Moreover, Section 3.1.5 of Revenue Regulations No. 12-99 explicitly provides that 'if the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.'

37. From the above-quoted Section of the National Internal Revenue Code of 1997, as amended, and Revenue Regulations No. 12-99, if no valid protest is filed by the taxpayer within thirty (30) days from receipt of the assessment Notices and Formal Letter of Demand, the said Assessment Notices and Formal Letter of Demand shall become final, executory and demandable.

38. In the present case, it is quite clear and evident that the Petition for Review filed by herein Petitioner was anchored on its receipt of the Warrant of Distraint and/or Levy issued by the Bureau of Internal Revenue. **Records show that Petitioner received a certified true copy of the Assessment Notices and Formal Letter of Demand, all dated January 24, 2011, on May 04, 2016. However, instead of questioning the contents of the Assessment Notices by filing the appropriate protest or motion for reinvestigation within thirty (30) days from May 04, 2016, it immediately filed the instant Petition for Review on May 27, 2016 on the basis of the Warrant of Distraint and/or Levy.**

39. Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by Section 7 of Republic Act (RA) No. 9282 provides:

'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 matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; x x x'

40. Further, Section 3(a)(1) of Rule 4 and Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

'RULE 4
JURISDICTION OF THE COURT

x x x

SEC. 3. Cases within the jurisdiction of the Court in Divisions.—

The Court in Division shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(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.'

'RULE 8
PROCEDURE IN CIVIL CASES

x x x

SEC. 3. Who may appeal; period to file petition.—

(a) A party adversely affected by a **decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.' (Emphasis supplied)

41. 'Clearly, it is neither the assessment nor the formal demand letter itself that is appealable to this Court. It is the decision of the Commissioner of Internal Revenue on the **disputed assessment** that can be appealed to this Court.' (Emphasis supplied)

42. 'The word **'decisions'** in the above quoted provision of RA 9282 has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the **assessment**.' (Emphases supplied)

43. In the case of **Rizal Commercial Banking Corporation vs. Commissioner of Internal revenue, G.R. No. 168498, April 24, 2007**, the Supreme Court made the following pronouncement:

'The Court of Tax Appeals, being a court of special jurisdiction can take cognizance only on matters that are clearly within its jurisdiction.'

44. Thus, there being no disputed assessment to speak of the Honorable Court has no jurisdiction to entertain the present Petition for Review. For failure of Petitioner to exhaust all administrative remedies, Assessment Notice Nos. 32-07-IT-1316, 37-07-VT-1317

and Formal Letter of Demand, all dated January 24, 2011, are already final, executory and unappealable.

45. 'The thrust of the rule on exhaustion of administrative remedies is that the court must allow the administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. It is presumed that an administrative agency, if afforded an opportunity to pass upon a matter, will decide the same correctly, or correct any previous error committed in its forum. Furthermore, reasons of law, comity and convenience prevent the courts from entertaining cases proper for determination by administrative agencies. Hence, premature resort to the courts necessarily becomes fatal to the cause of action of the petitioner.'

46. In **Zialcita vs. Toll Regulatory Board, 390 SCRA 663 (2002)**, the Honorable Court held that the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review in case of grave abuse of discretion, is indispensable. Thus:

> We take cognizance of the wealth of jurisprudence on the doctrine of primary administrative jurisdiction and exhaustion of administrative remedies. In the era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly dispute on technical matters or intricate questions of facts, subject to judicial review in case of grave abuse of discretion, is indispensable. Between the power lodge in an administrative body and court, the unmistakable trend is to refer it to the former. In Industrial Enterprises, Inc. vs. Court of Appeals, we ruled: '..., if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of court.'

47. Anent the claim of prescription of collection, the Petitioner's repeated acts of paying its deficiency taxes by installment clearly

demonstrates positive acts on the part of the Petitioner that justify the suspension of the prescriptive period for collection.

48. In the case of **Commissioner of Internal Revenue vs. Consolidated Mining Co., G.R. No. 11527, 29 November 1968**, the Supreme Court declared that 'the statutory period of limitation for collection may be interrupted if by the taxpayers' repeated requests or positive acts, the government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was no unreasonable or that no harassment or injustice is meant by the government.'

49. Likewise, in the case of **Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., et. al., 104 Phil 819,** it was held that 'after inducing the Commissioner, as in fact he did, it is most unfair for the taxpayer to elude his tax liability to the prejudice of the government by invoking the technical ground of prescription. These repeated positive requests or positive acts on the part of the taxpayer justify the suspension of the prescriptive period for collection.'

50. The subject 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);

51. 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]);

52. All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue; the taxpayer must prove the contrary (Commissioner of Internal Revenue vs. Antonio Tuason, Inc. 173 SCRA 397; Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671);

53. The assessments were issued in the regular course and within the reglementary period to assess provided by law." *(Citations omitted)*

Thereafter, on July 22, 2016, a Notice of Pre-Trial Conference[27] was issued by this Court setting the case for pre-trial conference on October 25, 2016. Accordingly, Respondent's Pre-Trial Brief[28] was filed on October 19, 2016 while petitioner's Pre-Trial Brief[29] was filed October 20, 2016.

On July 29, 2016, petitioner filed its Formal Offer of Evidence with Motion[30], offering Exhibits "P-1" to "P-35", inclusive of sub-markings, in support of its Motion for Suspension of Collection of Taxes. In the Resolution[31] dated October 11, 2016, this Court admitted all of petitioner's exhibits thereby deeming the Motion for Suspension of Collection of Taxes submitted for resolution.

In the Resolution[32] dated December 21, 2016, petitioner's Motion for Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction was granted by this Court. Subject, however, to the posting of cash bond equal to the value of the deficiency assessments for income tax and VAT in the amount of Php2,096,085.99, or by posting a surety bond equivalent to one and a half (1.5) of the aforementioned assessments in the amount of Php3,144,128.99.

In compliance, petitioner posted a surety bond in the required amount of Php3,144,128.99 from Commonwealth Insurance Company,[33] which was noted and deemed compliant by this Court in the Resolution[34] dated January 30, 2017.

On November 09, 2016, the parties filed their Joint Stipulation of Facts and Issues[35], which was approved by this Court in the Pre-Trial Order[36] issued on January 16, 2017. As such, pre-trial was considered terminated and the initial presentation of evidence for petitioner was set on February 13, 2017.

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27 *Id.* (vol. I), pp. 189-190.
28 *Id.* (vol. I), pp. 353-358.
29 *Id.* (vol. I), pp. 379-388.
30 *Id.* (vol. I), pp. 196-207.
31 *Id.* (vol. I), pp. 351-352.
32 *Id.* (vol. II), pp. 564-571.
33 *Id.* (vol. II), Compliance filed on January 19, 2017, pp. 590-592.
34 *Id.* (vol. II), pp. 653-657.
35 *Id.* (vol. II), pp. 537-544.
36 *Id.* (vol. II), pp. 573-589.

During trial, petitioner presented as witnesses the following employees, *viz*.: Ms. Ana Maria Sereno,[37] its Corporate Secretary; Ms. Ann Bacolod,[38] its Senior Export Marketing Manager; and, Mr. Jose Guevarra,[39] its Credit and Collection Manager, who all testified on direct by way of judicial affidavits.

After completing their respective testimonies, petitioner filed its Formal Offer of Evidence[40] on August 07, 2017. Consequently, in the Resolution[41] dated September 07, 2017, this Court admitted all petitioner's documentary exhibits. Thereafter, petitioner was deemed to have rested its case.

When called to present his case, respondent offered the following revenue officers ("RO") as witnesses, *viz*.: RO Eleuteria B. Sagun[42], Group Supervisor, Revenue Region No. 6, BIR – Manila, and Mr. Benhur C. Narcoda,[43] Mailing In-Charge of the Administrative Division, Revenue Region No. 6, BIR – Manila, who both testified on direct by way of judicial affidavits.

Thereafter, Respondent's Formal Offer of Evidence[44] was filed on May 11, 2018, offering Exhibits "R-13", "R-14", "R-15", "R-16", "R-17", "R-18", "R-19", "R-20", "R-20-a", "R-21", and "R-21-a", which were all admitted by this Court in the Resolution[45] dated July 31, 2018. Furthermore, the parties were also given a period of thirty (30) days within which to submit their respective memoranda.

Accordingly, Respondent's Memorandum[46] was filed on September 20, 2018, while Memorandum for the Petitioner[47] was filed on September 27, 2018. Henceforth, in the Resolution[48] dated October 11, 2018, the present case was deemed submitted for decision.

The Issues

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37 Exhibits "P-11" and "P-11-a"; Docket (vol. I), Judicial Affidavit of Ana Maria Sereno dated June 23, 2016, pp. 221-235.
38 Exhibits "P-37" and "p-37-a"; Docket (vol. II), Judicial Affidavit of Ann Bacolod dated November 04, 2016, pp. 687-703.
39 Exhibits "P-38" and "P-38-a"; Docket (vol. II), Judicial Affidavit of Jose S. Guevarra dated November 04, 2016, pp. 720-734.
40 Docket (vol. II), pp. 675-685.
41 *Id.* (vol. II), pp. 756-757.
42 Exhibits "R-20" and "R-20-a"; Docket (vol. II), Judicial Affidavit of Group Supervisor Eleuteria B. Sagun dated October 20, 2016, pp. 405-409.
43 Exhibits "R-21" and "R-21-a"; Docket (vol. II), Judicial Affidavit of Benhur C. Narcoda dated April 20, 2018, pp. 790-794.
44 Docket (vol. II), pp. 809-813.
45 *Id.* (vol. II), pp. 835-836.
46 *Id.* (vol. II), pp. 847-857.
47 *Id.* (vol. II), pp. 858-917
48 *Id.* (vol. II), p. 921.

The following issues[49] were submitted by the parties for this Court's resolution, *viz*:

1. Whether or not respondent's assessment for taxable year 2007 is valid;

2. Whether or not the period of collection has already prescribed;

3. Whether or not petitioner is liable to pay its alleged deficiency taxes of Three Million Two Hundred Ninety-Seven Thousand Eight Hundred Eighty-Four and Sixteen Centavos (Php3,297,884.16); and

4. Whether or not this Court has jurisdiction to entertain the instant Petition for Review.

Petitioner's Arguments

Petitioner primarily argues that respondent violated its right to substantive and procedural due process when no assessment notices were received by petitioner. Accordingly, both the PAN[50] and FLD[51] were sent to petitioner's old office address at N. Reyes cor. R. Papa St., Sampaloc, Manila, instead of its new address at 35 Emerald St. Millionaires Village, Novaliches, Quezon City. Moreover, petitioner continues that this Court has jurisdiction to take cognizance of the present case, pursuant to Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA"). By receiving, through its representative, the subject WDL on May 04, 2016, it has thirty (30) days therefrom, or until June 03, 2016, within which to file the instant Petition for Review. Thus, records of the case would reveal that the same was timely filed on May 27, 2016.

Lastly, assuming *ex gratia argumenti*, that the assessments made by respondent were valid, the period for collection of petitioner's alleged tax deficiencies has, nonetheless, already prescribed. Accordingly, counting the five-year period within which to collect taxes from the date of the issuance of FLD on January 24, 2011, respondent has only until January 24, 2016, within which to collect its alleged tax deficiencies. Consequently, the Warrants of Garnishment

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49 *Id.* (vol. II), JSFI, Issues to be Resolved, p. 539.
50 Exhibit "P-7"; Exhibit "R-14".
51 Exhibit "P-8"; Exhibit "R-17".

and Distraint and/or Levy[52] respectively issued on April 25, 2016 and May 04, 2016, should therefore be considered void and of no effect.

Respondent's Counter-arguments

On the other hand, respondent mainly argues that this Court has no jurisdiction to entertain the instant Petition on the ground that the subject Assessment Notice Nos. 32-07-IT-1316[53] and 32-07-VT-1317[54] and the FLD with Details of Discrepancies[55], all dated January 24, 2011, have already become final and executory for petitioner's failure to file a valid protest within thirty (30) days from receipt thereof.

More so, respondent insists that petitioner's repeated acts of paying its deficiency taxes by installment clearly demonstrate positive acts on its part that would justify the suspension of the prescriptive period for collection of taxes.

Discussion/Ruling

This Court finds the merit in the present Petition for Review.

The Court has jurisdiction over the present case.

The Court shall determine first the timeliness of the filing of the instant Petition for Review.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[56] The jurisdiction of the CTA regarding internal revenue tax assessments is provided under Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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52 Exhibit "P-6".
53 Exhibit "P-2"; Exhibit "R-15".
54 Exhibit "P-3"; Exhibit "R-16".
55 Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.), G.R. No. 169778, March 12, 2014.
56 Exhibit "P-8"; Exhibit "R-17".

> (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 or other laws administered by the Bureau of Internal Revenue"

Similarly, Section 3(a)(1) of Rule 4 of the RRCTA states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (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;"

The term "other matters" has been ruled to include, but not limited to, review of the BIR's authority and decision to compromise,[57] prescription of the BIR Commissioner's right to collect taxes,[58] determination of the validity of a warrant of distraint and levy issued by the BIR Commissioner, and the validity of a waiver of the statute of limitations.[59]

Moreover, in the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[60] the Supreme Court ruled that:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue

[57] Philippine National Oil Company v. The Hon. Court of Appeals, et al. and Philippine National Bank v. The Hon. Court of Appeals, et al., G.R. Nos. 109976 and 112800, April 26, 2005.

[58] Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.

[59] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.

[60] G.R. No. 162852, December 16, 2004.

> on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected."

In this case, the Court finds the above-mentioned ruling to be applicable. The Court therefore has jurisdiction to determine the validity of the Warrant of Distraint and/or Levy. Such determination also includes the determination of the validity of the assessments for which the Warrant of Distraint and/or Levy was based. Since the Warrant of Distraint and/or Levy was received on May 04, 2016,[61] petitioner had thirty (30) days from said date or until June 03, 2016 within which to file the Petition for Review with this Court. Thus, the instant Petition for Review was timely filed on May 27, 2016 and the Court has jurisdiction over the present petition.

Respondent failed to prove that the PAN and FLD were properly served to and received by petitioner.

Verily, it is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. As such, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the taxpayer's right to procedural due process in the issuance of a deficiency assessment, to wit:

> "**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: x x x
>
> x x x
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice.

[61] Docket, Petition for Review, Material Dates, Timeliness of the Petition and Other Requirements, Par. 21, p. 14.

If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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."

Apropos, Section 3 of Revenue Regulations (RR) No. 12-99[62], as amended, provides for the implementing rules of Section 228 which reiterates the requirement that a taxpayer must be properly informed in writing of the law and the facts on which his tax liability was based, thus:

"***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 Notice of Informal Conference. – x x x.

3.1.2 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a

[62] 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.

> Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> 3.1.3 Exceptions to Prior Notice of the Assessment. – x x x.
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

From the foregoing, it is clear that the CIR or his duly authorized representative is mandated to issue a PAN and the FAN/FLD in cases where there are findings of tax deficiencies, and failure to do so constitutes denial of a taxpayer's right to due process. As explained by the Supreme Court in the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[63], "[i]n 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 to due process of law and the equal protection of the laws 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. Thus, while 'taxes are the

[63] G.R. No. 185371, December 08, 2010.

lifeblood of the government', the power to tax has its limits, in spite of all its plenitude."

Relative thereto, the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. To raise the presumption that that assessment notices are received in the regular course of mail, the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[64] is instructive on the matter, to wit:

> "In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. **The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed.** While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee."[65]

In the present case, respondent claims to have served both the PAN and FLD *via* registered mail. In fact, perusal of the records would easily reveal that both the PAN and FLD were indeed mailed by respondent as evidenced by Registry Receipt No. 900022[66] dated January 06, 2011 and Registry Receipt No. 903211[67] dated January 24, 2011.

However, petitioner asserts that it did not receive the said PAN and FLD. Petitioner claims that the said assessment notices were erroneously sent to its old office address at N. Reyes cor. R. Papa St., Sampaloc, Manila, notwithstanding respondent's knowledge of petitioner's new address at 35 Emerald St. Millionaires Village, Novaliches, Quezon City.

Conspicuously, respondent, on the other hand, is silent on this matter. He merely argues that subject assessment notices (Nos. 32-07-IT-1316 and 32-07-VT-1317) and the corresponding FLD have become final, executory and unappealable for failure of petitioner to file a valid protest within thirty (30) days from receipt thereof.

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64 G. R. No. 157064, August 07, 2006.
65 *Emphasis supplied.*
66 Exhibit "R-18".
67 Exhibit "R-19".

This Court finds credence in petitioner's allegations.

Notably, even prior to the issuance of the subject PAN and FLD on January 06, 2011 and January 24, 2011, respectively, respondent already knew and acknowledged the new address of petitioner in Novaliches, Quezon City, as clearly reflected in the 1st Notice[68] dated January 04, 2011, issued by then Assistant Revenue District Officer Atty. Venus T. Gaticales, thus:

"**1st NOTICE**

V.Y. DOMINGO JEWELLERS, INC. January 4, 2011
35 Emerald St., Millionaire's Village
Novaliches, Quezon City

Attention: Fiolette Y. Domingo
President/CEO

Sir/Madam/Gentleman:

The docket relative to your tax liability/ties was referred to this Office for collection and which consists of the following:

x x x."[69]

More so, the BIR Records also show that the new address of petitioner was, likewise, reflected on the registry return receipt attached on the Post Reporting Notice[70] dated August 23, 2010, issued by Revenue District Officer Atty. Claire B. Corpus.

Evidently, the foregoing documents undoubtedly show that petitioner's address at 35 Emerald St. Millionaires Village, Novaliches, Quezon City is made known to the BIR. Thus, respondent has only himself to blame for his failure to verify his own records the correct address of petitioner before issuing any official communications or notices to the latter.

Furthermore, it is also worth noting that while respondent presented Registry Receipt Nos. 900022[71] and 903211[72] dated January 06, 2011 and January

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68 Exhibit "P-10".
69 *Underscoring supplied.*
70 BIR Records (vol. I), p. 52.
71 Exhibit "R-18".
72 Exhibit "R-19".

24, 2011, respectively, to prove that he mailed the subject PAN and FLD to petitioner, records of the case is bereft of any indication that petitioner actually received the PAN and the FLD even if the same were sent in its old address in Sampaloc, Manila.

In the case of *Republic of the Philippines v. Resins, Incorporated*[73], the Supreme Court had the occasion to rule that:

> "x x x **Receipts for registered letters** and return receipts **do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters**. Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. **It cannot be stressed enough that *'it is the registry receipt issued by the mailing office <u>and</u> the affidavit of the person mailing,'* which proves service made through registered mail.** Absent one or the other, or worse both, there is no proof of service."[74]

Taking bearing in the above-quoted case, respondent failed to authenticate and present the corresponding registry return receipts or any certification from the post master, showing that the said assessment notices were indeed received by petitioner's authorized agent in its office address in Sampaloc, Manila. Such failure therefore shows that there was no proper service made through registered mail.

Accordingly, respondent failed to discharge the burden of proving that the subject PAN and FLD were properly served, actually or constructively, to petitioner or its duly authorized agent regardless of whether it be in Novaliches, Quezon City or Sampaloc, Manila. This therefore leads to conclusion that no valid assessment was issued, as petitioner was deprived of the due process in the issuance thereof.

Time and again, this Court holds that *a void assessment bears no valid fruit.* In the absence of a valid assessment, there is no legal basis for respondent to collect from petitioner its alleged deficiency income tax and VAT in the aggregate amount of Php3,297,884.16, inclusive of interest, for taxable year 2007.

In view of the foregoing findings, this Court need not belabor of the other issues raised herein.

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[73] G.R. No. 175891, January 12, 2010.
[74] *Emphasis supplied.*

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Details of Discrepancies dated January 24, 2011, assessing petitioner for deficiency income tax and VAT in the total amount of Php3,297,884.16, for calendar year 2007, as well as the Warrant of Garnishment dated April 25, 2016 and Warrant of Distraint and/or Levy dated May 04, 2016, issued by respondent to enforce the collection of the said deficiency tax liabilities are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
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