REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BLOAT AND OGLE, INC, Petitioner,	C.T.A. CASE NO. 8035
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 30 2012 1:3:00 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review filed on March 8, 2010, petitioner Bloat and Ogle, Inc. prays that the Warrant of Garnishment issued by respondent Commissioner of Internal Revenue be lifted and the alleged tax deficiencies, penalties and surcharges for taxable year 2005 in the aggregate amount of P221,994.28, be cancelled and withdrawn.

Petitioner states that it is a duly organized domestic corporation with office address at 18C Strata Suites 300, P. Guevarra St., San Juan, Metro Manila.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority, among others, to decide disputed assessments, cancel and abate tax liabilities pursuant to the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.

On June 4, 2007, BIR Revenue Region No. 7, Revenue District Office No. 43 issued Tax Verification Notice (TVN) No. 2003-00027622 authorizing Revenue Officer Edwin A. Nazario to verify the supporting documents and/or pertinent records of "all internal revenue taxes" of petitioner covering the taxable year 2005.[1] On even date, Revenue Officer Nazario issued the First Request for Presentation of Records.[2]

On June 22, 2007, petitioner submitted to respondent photocopies of its Articles of Incorporation and By-laws, BIR Certificate of Registration, Annual Registration Fee for 2005, Quarterly Income Tax Returns, Annual Information Returns on

[1] Exhibit "A", docket, p. 135.
[2] Exhibit "B", docket, p. 136.

income taxes withheld and alphabetical lists, Monthly Declarations and Quarterly VAT Returns, Monthly Withholding Tax Return on Compensation and Expanded, and Annual Income Tax Return with Audited Financial Statement.[3]

On July 2, 2008, respondent issued a Third and Final Notice with *subpoena duces tecum*, indicating that the revenue examiners who conducted the investigation reported that petitioner did not present the needed records for examination despite repeated requests.[4]

Subsequently, respondent issued an undated Post Reporting Notice informing petitioner that the investigation of its tax liabilities for the year 2005 was under review and the findings therein were tentative. Petitioner was given the five (5) days from notice to refute the findings.[5] Incorporated in the said Post Reporting Notice was the following computation of petitioner's alleged deficiency taxes, thus:[6]

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[3] Exhibit "C", Transmittal dated June 19, 2007, docket, p. 137.
[4] Exhibit "D", docket, p. 138.
[5] Exhibit "E", docket, p. 139.
[6] Exhibit "E-1", docket, p. 140.

Tax Type	Amount
Income Tax	P 73,037.33
Value-added Tax	56,674.60
Expanded Withholding Tax	375.38
Improperly Accumulated Earnings Tax	2,959.17

In the Preliminary Collection Letter (PCL) dated October 15, 2009[7] and Final Notice Before Seizure (FNBS) dated December 2, 2009[8], respondent claimed that petitioner was liable to pay an amount of P221,994.28, representing deficiency income tax, VAT, expanded withholding tax, improperly accumulated earnings tax, compromise penalty, and interest due under Assessment Demand No. F43-229.[9]

On February 16, 2010, petitioner filed with respondent a letter-protest disputing the cited FNBS.[10] On the same date, petitioner discovered that respondent served a Warrant of Garnishment dated February 11, 2010 against its account with the Bank of the Philippine Islands (BPI).[11]

Hence, this instant Petition for Review.

[7] Exhibit "F", docket, p. 141.
[8] Exhibit "G", docket, p. 142.
[9] Par. 5, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), docket, p. 84.
[10] Exhibit "H", docket, pp. 143-148.
[11] Exhibit "P", BIR Records, p. 282; Par. 6, Facts Admitted, JSFI, docket, p. 84.

In her Answer[12] filed on March 30, 2010, respondent interposes the following Special and Affirmative Defenses:

> "7. The petitioner failed to submit pertinent documents and records requested by the respondent's examiners through administrative requests specified in Annex 'B' of Petition;
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> 8. The Preliminary Assessment Notice and Final Assessment Notice were duly issued and served in accordance with law.
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> 9. The assessment is prima facie correct and made in good faith;
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> 10. The Burden of proof is upon the petitioner to prove that the assessment issued was null and void;
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> 11. The assessment notices were issued and sent to the petitioner in accordance with well-established procedures upheld by the Courts.
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> 12. The stay of enforcement of the Warrant of Distraint and Levy by this Honorable Court may be made only after the filing by the petitioner of a Supersedeas Bond in an amount of not more than double the amount of the deficiency assessment inclusive of the penalties and interests being the subject matter of this petition, pursuant to Sec. 6, Rule 10, RRCTA.
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> 13. The deficiency assessment for Income Tax, VAT, Expanded Withholding Tax and Improperly accumulated Earnings Tax have become final, executory and demandable, and, therefore, outside of the jurisdiction of this Honorable Court to hear and resolve."

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[12] Docket, pp. 53-56.

During the trial on the merits, petitioner presented its Assistant Corporate Secretary Concepcion S. Galan,[13] as its lone witness.

The witness executed a Judicial Affidavit dated September 29, 2010 in lieu of her direct testimony.[14] According to her, the instant case is about the investigation conducted by respondent on petitioner's alleged tax deficiencies for taxable year 2005 by virtue of the TVN dated June 4, 2007 issued against petitioner. The latter also received from respondent the First Request for Presentation of records, with which it complied on June 22, 2007.

For almost a year, nothing was heard from respondent until petitioner's receipt of a Third and Final Notice dated July 2, 2008, requiring it to submit the documents which it had previously submitted.

Sometime in 2009, petitioner received an undated Post Reporting Notice and details of its alleged tax deficiencies for taxable year 2005.

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[13] Minutes of Hearing, docket, p. 110; Transcript of Stenographic Notes dated October 5, 2010.
[14] Docket, pp.102-109.

On January 27, 2010, petitioner received from respondent a PCL dated October 15, 2009 and a FNBS dated December 02, 2009 to which it protested on February 16, 2010. Priorly however, petitioner did not receive any FAN or Final Demand Notice from respondent, more particularly from the Revenue District Office (RDO) No. 43, Pasig City.

On January 24, 2011, petitioner formally offered its documentary evidence marked as Exhibits "A" to "P", inclusive, [15] to which respondent failed to register any objection, despite the opportunity granted.

In a Resolution dated April 5, 2011,[16] the Court admitted Exhibits "A" to "P", inclusive, but denied Exhibits "I", "L", "M", and "M-1", for being mere photocopies of the purported documents.

When the case was called for presentation of evidence for respondent, her counsel manifested that respondent was waiving her right to present evidence in support of her position.[17]

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[15] Docket, pp. 130-134.
[16] Docket, pp. 174-175.
[17] Minutes of Hearing, docket p. 179.

On August 24, 2011, the instant case was submitted for decision taking into consideration petitioner's Memorandum filed on August 4, 2011, *sans* any from respondent.[18]

THE ISSUES

The parties submitted the following issues[19] for the resolution of the Court, viz:

> "1. Whether the Formal Assessment Notice issued against petitioner for the taxable year 2005 is valid.
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> 2. Whether petitioner is liable to pay the amount of **Php221,994.28 representing alleged tax deficiencies for taxable year 2005**.
>
> 3. Whether the right of respondent to assess petitioner for alleged tax deficiencies has already prescribed.
>
> 4. Whether the Court of Tax Appeals has jurisdiction over the present case."

THE COURT'S RULING

The Court will first address the first and third issues pertaining to the validity of the impugned assessment.

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[18] Docket, p. 192.
[19] Docket, pp. 84-85.

Petitioner complains that it was not afforded the benefit of due process as it did not receive any FAN or a Final Demand Notice before a FNBS dated December 2, 2009 was served on January 27, 2010. Therefore, the three-year prescriptive period for respondent to issue an assessment for taxable year 2005 had already lapsed.

To sustain the validity and legality of an assessment, the following procedural requirements must be observed, pursuant to Section 228 of the NIRC of 1997, as amended, 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:** *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities

for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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.

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." *(Emphasis supplied)*

Corollarily, Revenue Regulations (R.R.) No. 12-99 outlines the due process requirement in the issuance of a deficiency tax assessment as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> 3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference', in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.4 ***Formal Letter of Demand and Assessment Notice*. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void*. xxx The same shall be sent to the taxpayer only by registered mail or by personal delivery.** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (*Emphasis supplied*)

Plain from the foregoing provisions that if there exists sufficient basis to assess a taxpayer for any deficiency tax or taxes, respondent shall issue and serve upon the said taxpayer at least by registered mail, a PAN for the assessment, indicating in detail the facts and the law, rules and regulations, or jurisprudence upon which the assessment is based. If the taxpayer fails to respond or refute the said assessment within fifteen (15) days from receipt of the PAN, the taxpayer shall be considered in default. Consequently, a Formal Letter of Demand and assessment notice stating the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, shall be sent to the taxpayer by registered mail or by personal delivery.

The due process requirement in taxation has been revisited by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[20], in which it ruled, thus:

"Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency

[20] G.R. No. 185371, December 8, 2010.

> 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**." (*Emphasis supplied*)

It must be stressed that the essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[21]

In the case at bar, petitioner denies receipt of the required FAN and FLD.[22] Thus, it was not afforded the legally required due process when respondent issued the assailed FNBS[23] dated December 2, 2009, without prior issuance and service of the required FAN and/or FLD.

If the taxpayer denies receipt of an assessment from respondent, it is incumbent upon the latter to prove by sufficient and competent evidence that such notice was indeed served and

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[21] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006, citing *Batongbakal vs. Zafra*, G.R. No. 141806, January 17, 2005.
[22] Exhibit "O", Judicial Affidavit of Ms. Concepcion S. Galan, docket, pp. 164-171.
[23] Exhibit "G", docket p. 142.

received by the addressee. The *onus probandi* shifts to respondent to prove by contrary evidence that petitioner received the assessment in the due course of mail. The High Tribunal explains the rationale in the case of *Commissioner vs. Metro Star Superama Inc.*[24] in this wise:

> "On the matter of service of a tax assessment, a further perusal of our ruling in *Barcelon* is instructive, *viz*:
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>> Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail**. The Supreme Court has consistently held 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 and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (*Republic vs. Court of Appeals*, 149 SCRA 351). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:
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>>> **'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 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 mail. But if one of the said facts fails to appear, the

[24] *Supra*.

> presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing *Enriquez vs. Sunlife Assurance of Canada*, 41 Phil 269).'
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> ...**What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts**. This 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. Thus:
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>> 'While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (*Coll. of Int. Rev. vs. Bautista*, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.' (*Nava vs. CIR*, 13 SCRA 104, January 30, 1965).
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> xxx xxx xxx
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> **The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed**. (*Industrial Textile Manufacturing Co. of the Phils., Inc. vs.*

> *CIR*, CTA Case 4885, August 22, 1996). (Emphases supplied.)
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> The Court agrees with the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN dated January 16, 2002. It could have simply presented the registry receipt or the certification from the postmaster that it mailed the PAN, but failed. Neither did it offer any explanation on why it failed to comply with the requirement of service of the PAN. xxx" (*Emphasis supplied*)

It is significant to state that during respondent's turn to present evidence, respondent waived her right to present any and submitted the case for decision on the basis of the evidence presented by petitioner. In other words, respondent failed to prove her allegations in her Answer that the required PAN and FAN were issued and duly served upon petitioner in accordance with law. This is certainly fatal to respondent's cause as it leads to an inevitable conclusion that indeed no valid assessment was issued to petitioner justifying the subsequent issuance of the questioned FNBS and Warrant of Garnishment.

Given the foregoing lapses committed by respondent, the government's right to issue an assessment against petitioner for taxable year 2005 had already prescribed when petitioner received the PCL dated October 15, 2009 and FNBS on January

27, 2010.[25] Section 203 of the NIRC of 1997, as amended, provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return. The record reveals that petitioner filed its 2005 Annual Income Tax Return[26] on April 11, 2006. Counting from said date, the three-year prescriptive period for respondent to assess petitioner ended on April 15, 2009.

The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the respondent to strictly comply with the requirements laid down by law and its own rules effectively denied petitioner of its right to due process. These flaws rendered the FNBS and the Warrant of Garnishment void pursuant to Section 228 of the NIRC of 1997 and by R.R. No. 12-99.[27]

The Court agrees that taxes are the lifeblood of the Government and so should be collected without unnecessary hindrance. However, such collection should be made in

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[25] Exhibit "O", docket, p. 168.
[26] Exhibit "J", docket, pp. 150-158.
[27] *Golden Harvest Global Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 7503, September 18, 2009.

accordance with law as any arbitrariness will negate the very reason for the Government itself.[28]

Based on the foregoing, the Court deems it unnecessary to discuss the other issues raised in this petition.

WHEREFORE, the Petition for Review filed by petitioner Bloat and Ogle, Inc., is hereby **GRANTED**. Accordingly, the Warrant of Garnishment dated February 11, 2010 issued against petitioner is lifted and declared **NULL** and **VOID**. Respondent and any of her duly authorized representatives are hereby enjoined from enforcing the same. Further, the impugned assessment in the total amount of P221,994.28 is cancelled.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

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[28] *Reyes, et al. vs. Almanzor, et al.*, G.R. Nos. 49839-46, April 26, 1991.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice