REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

***EN BANC***

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| COMMISSIONER OF INTERNAL REVENUE, Petitioner, | CTA EB No. 1799 (CTA Case No. 8829) |
| | Present: |
| -versus- | DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.* |
| DAEWOO ENGINEERING & CONSTRUCTION COMPANY LIMITED, Respondent. | Promulgated: AUG 29 2019 10:19 a.m. |

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## DECISION

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

Under consideration is the Petition for Review[1] dated March 19, 2018, filed by the Commissioner of Internal Revenue, praying for the reversal of the Decision[2] and Resolution[3] respectively dated November 17, 2017 and February 7, 2018, both rendered by the Court in Division in CTA Case No. 8829, which nullified petitioner's deficiency value-added tax (VAT) assessment, as well as the pertinent Warrants of Garnishment issued against respondent for taxable year (TY) 2007.

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[1] *Rollo,* pp. 5-14.
[2] Ibid. at pp. 17-38.
[3] Id. at pp. 40-44.

First, the facts.

Petitioner is the Commissioner of Internal Revenue (CIR) with authority, among others, to assess and collect all national internal revenue taxes and to decide, approve and grant tax protests. He holds office at 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On the other hand, respondent Daewoo Engineering & Construction Company Limited is a foreign corporation organized and existing under the laws of Korea, licensed by the Philippine Securities and Exchange Commission (SEC).[4] It is engaged in the construction of the Agno River Flood Control Project, among others, with office address at Unit 2506 Prestige Tower, Ortigas Center, Pasig City.

On September 25, 2009, respondent received a Letter Notice (LN) No. 047-TRS-07-00-00019 dated September 3, 2009, stating that per BIR computerized-matching system, there were discrepancies between the information/data provided by withholding agents/payors and payees/income recipients, against respondent's declarations in its tax returns for TY 2007.[5]

On October 19, 2009, respondent received petitioner's Follow-Up Letter dated October 15, 2009, demanding that it settle the deficiency VAT for TY 2007 as indicated in the LN.[6]

On June 1, 2010, respondent received a Letter of Authority (LOA) dated May 11, 2010, authorizing Revenue Officers (ROs) Mario H. Eleda and Amelita A. Escober to examine its books of account and other accounting record covering TY 2007.[7]

On October 8, 2010, petitioner issued a Preliminary Assessment Notice (PAN) with Details of Discrepancy,

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[4] Amended SEC License No. AFO96-070 dated March 15, 2001. See BIR Record, p. 162.
[5] Exhibit R-1.
[6] Exhibit R-2.
[7] Exhibit R-3.

holding respondent liable for deficiency VAT, with increments amounting to ₱20,449,941.42 for TY 2007.[8]

On February 21, 2011, petitioner issued a Final Assessment Notice (FAN) with Details of Discrepancy, finding respondent liable for deficiency VAT, together with interest for TY 2007 in the aggregate amount of ₱21,531,938.39.[9]

On April 24, 2013, petitioner issued a Preliminary Collection Letter (PCL) against respondent, demanding settlement of the deficiency VAT assessment for TY 2007 as found in the FAN.[10]

On May 17, 2013, petitioner issued a Final Notice Before Seizure (FNBS) against respondent, demanding payment of the deficiency VAT assessment for TY 2007 as computed in the FAN, lest collection shall be enforced through administrative remedies.[11]

Subsequently, petitioner issued an undated Warrant of Distraint and/or Levy (WDL),[12] and several undated Warrants of Garnishment (WOGs) on various bank accounts of respondent to secure payment of its alleged tax obligation.[13]

In a Letter dated March 24, 2014, the Assistant Vice-President of the Legal Service Group of Banco de Oro (BDO) informed respondent that BDO was holding the latter's bank account at SM Megamall branch until further instructions from the BIR in relation to the received WOGs.[14]

In the Letter dated May 5, 2014, respondent requested the Chief, Collection Division of BIR Revenue Region No. 7 to provide it with certified true copies of the PAN and FAN issued against it, as well as the WOGs addressed to BDO.[15]

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[8] Exhibit R-4.
[9] Exhibit R-5.
[10] BIR Record, p. 117. The PCL dated April 24, 2013 was received by respondent on May 30, 2013.
[11] Exhibit P-5.
[12] Exhibit R-13.
[13] Exhibits P-6-1 to P-6-8.
[14] Exhibit P-7.
[15] BIR Record, pp. 161-162.

However, only the WOGs were provided by the BIR on even date.[16]

On June 4, 2014, respondent filed a Petition for Review[17] before the Court in Division, claiming that petitioner transgressed its right to due process on assessment for his failure to validly serve the PAN and FAN/FLD in question.

On October 20, 2014, respondent filed a Supplemental Petition for Review,[18] raising prescription under Section 203 of the NIRC, as amended, as additional ground for the relief prayed for.

On November 17, 2017, the Court in Division rendered the impugned Decision,[19] disposing the case in the following fashion:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**.
>
> Accordingly, the PAN and the FAN dated October 8, 2010 and April 15, 2011, respectively and Warrants of Garnishment issued incident thereto are cancelled and declared **NULL and VOID**.

The Court in Division ruled that no valid service of the PAN and FAN, let alone receipt by respondent, as they were sent to respondent's previous registered address at 29th floor, Enterprise Center, Tower I, 6766, Ayala Avenue, Makati City despite knowledge of its new address at 15th Floor, the Taipan Place, Ortigas Center, Pasig City, rendering the subject assessment against it void. In addition, the Court in Division held that presumption of receipt of the said PAN and the FAN in the ordinary course of mail could not be invoked as the PAN and FAN had the wrong address. With the invalid assessment, the WOGs issued in connection thereto should as well be cancelled and set aside.

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[16] Answer to Question No. 21, Sworn Statement of Janice B. Reyes, docket (CTA Case No. 8829), p. 445.
[17] Embodied in respondent's petition for review filed before the Court in Division is its Urgent Motion to Suspend Collection of Tax which was granted in open court. See Minutes of Hearing dated October 9, 2014, docket (CTA Case No. 8829), p. 192.
[18] Docket (CTA Case No. 8829), pp. 199-203.
[19] See Note 2.

Undeterred, petitioner moved,[20] but failed[21] to obtain a favorable reconsideration of the impugned Decision, hence, the present appeal.

Petitioner maintains that respondent's relocation of its business address from 29th Floor, Enterprise Center, Tower I, 6766 Ayala Avenue Makati City to its new business address at 15th Floor, the Taipan Place, Ortigas Center, Pasig City was of no legal consequence. To be a valid notice of such transfer of business address, the taxpayer should notify in writing the pertinent revenue district offices (RDO) having jurisdiction over the previous and present place of business, as well as the BIR Revenue Computer Center, which respondent failed to do. Hence, respondent's old address at Makati City should be deemed its principal place of business to which tax notices and/or correspondences could be legally served.

He further states that respondent's new principal office at Pasig City reflected in the BIR Integrated Tax System (ITS) was not its valid address at the time the subject PAN and FAN were served. The alleged new address was respondent's principal office at the time the assessment in question became immutable.

Petitioner as well contends that respondent's presentation of its Application for Registration Information Update (BIR Form No. 1905), indicating its Pasig City address did not result in a valid transfer of its principal office since it was not approved by the BIR. Respondent did not also offer as proof of such transfer its updated Certificate of Registration reflecting such new address. Consequently, the service of the PAN and the FAN dated October 8, 2010 and April 15, 2011, respectively, via registered mail to respondent's old address at Makati City should be deemed valid and binding upon it, for which reason it must pay the 2007 deficiency VAT, with increments as stated in the FAN.

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[20] Petitioner's Motion for Reconsideration dated December 5, 2017, ibid. at pp. 858-866.

[21] Resolution dated February 7, 2018, id. at pp. 887-891.

In refutation,[22] respondent counters that its alleged failure to notify in writing the BIR offices concerned mandated under Section 11, RR No. 12-85 was not fatal to its cause. Contrary to petitioner's contention, he was duly notified of, and had previous information about its new address in Pasig City as early as 2009, hence, the subject PAN and FAN should have been sent to its new address in Pasig City. For such failure of notice, respondent was effectively deprived of a fair chance to impugn the questioned assessment, rendering the same null and without any force and effect.[23]

Having denied receipt of the PAN and FAN, it was incumbent upon petitioner to show by credible proof that the foregoing notices were indeed received by it. In the absence of sufficient showing that petitioner mailed the said notices to its new address in Pasig City and not in Makati City, petitioner failed to discharge such burden. Without such actual receipt of the PAN and the FAN, the collection of alleged tax liability could not be enforced against it, retorts respondent.

Respondent as well posits that petitioner should not be allowed to feign ignorance of its transfer of address as he was duly informed of its Pasig City office through its submission of an Application for Registration Information Update (BIR Form No. 1905), reflecting its new principal office, with attached inventory list of unused official receipt, transfer commitment form, and verification (application for registration information update).

## THE RULING OF THE COURT

The instant Petition for Review has no leg to stand on, hence, should be denied.

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[22] Respondent's Comment (Re: Petition for Review dated March 19, 2019), *rollo,* pp. 58-69.

[23] Respondent relies on the case of *Commissioner of Internal Revenue vs. Yukon General Manpower Services Corp.,* CTA EB No. 1444, July 24, 2017 to support its stance.

Section 228 of the NIRC, as amended, as implemented by Revenue Regulation (RR) No. 12-99 spells out the requirements that must be strictly observed by the BIR during the various segments of the assessment process. Both provide *inter alia* that the taxpayer shall be informed of the facts and law upon which the PAN and the FAN was predicated, lest the assessment shall be declared void, thus:

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

Section 228 of the NIRC, as amended, explicitly requires the CIR to inform the taxpayer in writing of the law and of the facts upon which the assessment is made; otherwise, the assessment shall be void. Under Section 3.1.2 of Revenue Regulations No. 12-99, the Preliminary Assessment Notice must show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based.[24] The word "shall" in Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory.[25] Thus, such cannot be presumed. Otherwise, the express provisions of Article 228

[24] See *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 3, 2018.

[25] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

of the NIRC and RR No. 12-99 would be rendered nugatory.[26]

Petitioner contends that the PAN and FAN sent through mail to respondent's old address should be deemed valid as it failed to notify in writing the RDOs having jurisdiction over its old and new business locations, as well as the BIR computer center as required in Section 11 of RR No. 12-85.

The contention is illusory.

In *Commissioner of Internal Revenue vs. Bank of the Philippine Islands, as liquidator of Paramount Acceptance Corporation* (*BPI* case),[27] the Supreme Court invalidated the assessment issued by the BIR against a taxpayer for sending the assessment notice to its old address, despite previous knowledge of its new principal place of business, to wit:

> xxx. Assuming arguendo that there was a deficiency tax for which PAC was liable, *petitioners failed to make a valid assessment on it since the notice of assessment was sent to the PAC's old (and therefore improper) office address.* PAC already indicated its new address in its 1986 tax return filed with the BIR's Makati office. This notwithstanding, petitioner CIR sent the notice of assessment to PAC's old business address instead of its new address, which was also BPI's (PAC's liquidator) office address.
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> Since there was a failure to effect a timely valid assessment, the period for filing a criminal case for PAC's tax liabilities had prescribed by the time petitioner instituted the criminal cases against its former officers. Thus, Poblador and Albert were correctly acquitted by the trial court. (emphasis supplied)

Note that in the *BPI* case, the assessment was nullified though it was not shown that the taxpayer therein notified in writing the BIR offices[28] enumerated in Section 11 of RR No. 12-85 of its change of address. The quintessence of the said case-law is that service by the BIR of assessment notices to a taxpayer's old address despite having earlier knowledge

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[26] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation,* G.R. No. 166387, January 19, 2009.
[27] G.R. No. 135446, September 3, 2003.
[28] Respondent's former and subsequent RDO, as well as the BIR Computer Center.

about its new address is no valid notice for purposes of tax assessment. Succinctly stated, when the BIR acquires information of a taxpayer's new address, notices should be sent to that address alone, lest the assessment shall be invalid and without force and effect.

Evidence show that respondent's *previous* address was at 29th Floor, Enterprise Center, Tower I, 6766 Ayala Avenue Makati City. On December 2, 2009, respondent filed with the BIR an Application for Registration Information Update (BIR Form No. 1905) with notation that its principal office would be transferred to 15th Floor, the Taipan Place F. Ortigas Jr. Road, Ortigas Center, Pasig City.[29] Even prior to the filing of such Application for Registration Information Update, petitioner's Follow-Up Letter dated October 15, 2009[30] already indicated respondent's new business address in Pasig City. All these are *indicia* that as early as 2009, petitioner already had knowledge of respondent's new address in Pasig City. But for reasons only known to him, petitioner mailed the PAN with Details of Discrepancy dated October 8, 2010 to respondent's *old* address in Makati City.

Besides, the PAN[31] mailed to respondent's old address in Makati City was "returned to sender" per the document issued by the Philippine Postal Corporation.[32] This notwithstanding, petitioner still mailed the FAN with Details of Discrepancy dated February 11, 2011 to respondent's old address in Makati City.

Contrary to petitioner's claim, respondent's business address in Pasig City reflected in the BIR-ITS did *not* become its new principal office after the assessment allegedly became executory. As observed by the Court in Division, Pasig City was already respondent's registered address at the precise moment the assessment was mailed to respondent's address in Makati City.

Jurisprudence tells us that valid assessment is one which sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing

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[29] Exhibit P-19.
[30] Exhibit R-2.
[31] Exhibit R-4.
[32] Ibid., Stapled at the back of the PAN.

the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.[33] Precisely, due process requires that it must be served on and received by the taxpayer.[34] Any deficiency to the mandated content of the assessment or its process will not be tolerated.[35]

Given that the subject PAN and FAN respectively dated October 8, 2010 and February 11, 2011 were mailed by petitioner to respondent using the latter's old address in Makati City[36] despite prior information about its new address in Pasig City[37] as early as 2009, such serious flaw effectively precluded respondent from being informed of the factual and legal grounds of such notices, as well as foreclosed its right to intimate protestations thereto, rendering the subject assessment void and without legal effect, justifying its cancellation and withdrawal.

In a final attempt to rationalize his assessment and collection efforts, petitioner harps on the alleged non-approval of respondent's Application for Registration (BIR Form No. 1905) and inability to present an Updated Certificate of Registration reflecting its new address.

In relation to petitioner's theory, let us consider Section 267 of the NIRC, as amended, which essentially states that documents mandated to be filed under the Tax Code shall be made under the penalties of perjury. Hence, they are presumed to be correct in the absence of any proof to the contrary, *viz.*:

> SEC. 267. Declaration under Penalties of Perjury. - Any declaration, return and other statement required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction,

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[33] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,* G.R. No. 197945, July 9, 2018.

[34] *Commissioner of Internal Revenue vs. Menguito,* G.R. No. 167560, September 17, 2008.

[35] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corp.,* G.R. No. 215534, April 18, 2016.

[36] 29th Floor, Enterprise Center, Tower I, 6766 Ayala Avenue, Makati City.

[37] 15th Floor, the Taipan Place F. Ortigas Jr. Road, Ortigas Center, Pasig City.

be subject to the penalties prescribed for perjury under the Revised Penal Code.

In *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue,*[38] the Supreme Court ruled that since the Certificates of Final Tax Withheld were executed under the penalties of perjury, the figures appearing therein are *prima facie* true and correct and may be taken at face value, thus:

> Moreover, these Certificates of Final Tax Withheld, complete in relevant details, were declared under the penalty of perjury. As such, they may be taken at face value.
>
> Section 267 of the National Internal Revenue Code, as amended, provides:
>
>> Section 267. *Declaration under Penalties of Perjury.* — Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.
>
> Considering that these Certificates were presented, the burden of proof shifts to the Commissioner, who needs to establish that they were incomplete, false, or issued irregularly.
>
> However, the Commissioner did no such thing.
>
> Thus, these Certificates are sufficient evidence to establish the withholding of the taxes.

To stress, the striking similarity between the *PAL* case and the case at bench is that the Certificates of Final Taxes Withheld therein, as well as the Application for Registration Information Update (BIR Form No. 1905) executed by respondent were *both* attested to, and signed under the pain

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[38] G.R. Nos. 206079-80, January 17, 2018.

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of perjury. As such, the above tenet laid down in *the PAL* case applies *pari passu* to the given controversy.

As discussed above, respondent's Application for Registration Information Update (BIR Form No. 1905)[39] submitted to petitioner was duly executed and completed under the penalties of perjury, for which reason it is *prima facie* proof that the BIR was duly notified of its transfer of business address from Makati City office to the 15th Floor, the Taipan Place F. Ortigas Jr. Road, Ortigas Center, Pasig City as early as 2009. Thus, the burden of demonstrating otherwise lies upon petitioner. Without any countervailing proof to show that such document contained false information, or is irregular, the veracity of data or information appearing therein must be upheld.

On a final note, the essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.[40]

**WHEREFORE**, the Petition for Review dated March 19, 2018 filed by the Commissioner of Internal Revenue is **DENIED**. The impugned Decision and Resolution respectively dated November 17, 2017 and February 7, 2018, both rendered by the Court in Division are **AFFIRMED**.

**SO ORDERED**.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[39] Exhibit P-19.
[40] *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

## 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.

ROMAN G. DEL ROSARIO
Presiding Justice