REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

YUKON GENERAL MANPOWER SERVICES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8743

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

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RESOLUTION

CASANOVA, *J.*:

For resolution is respondent's **Motion for Reconsideration (Re: Decision dated December 01, 2015)**, filed through registered mail on December 17, 2015 and received by this Court on January 6, 2016, with petitioner's **Comment**, filed on January 29, 2016.

Respondent moves for reconsideration of the Court's Decision dated December 1, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Garnishment is hereby **LIFTED**. The assessments for tax deficiencies for taxable year 2006, as well as other compromise penalties, interests and

surcharges in the total amount of ₱7,216,980.40 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED."[1]

In the assailed Decision, the Court found that the subject assessments were void since there was no valid service of the Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) as they were sent to the wrong address.

In her Motion, respondent argues that the subject PAN, FAN and FLD for taxable year 2006 were validly issued and served upon petitioner. She also contends that the subject FAN and FLD were issued well within the prescriptive period to assess.

On the other hand, petitioner claims that the grounds alleged by respondent in support of her Motion for Reconsideration have been passed upon by the Court and found lacking in merits. It argues that since the Court found the subject assessments void, the contention that the FAN and FLD were issued within the prescriptive period is immaterial and inconsequential. Petitioner stresses that since the PAN, FAN and FLD were never received by it, the assessments are void, and the period to assess had prescribed.

We DENY respondent's Motion for Reconsideration for lack of merit.

The issues and arguments raised by respondent are mere rehash of the arguments raised in her Memorandum[2]. These have been sufficiently passed upon and fully discussed in the assailed Decision dated December 1, 2015. At any rate, We emphasize the pertinent portions of the Decision, to wit:

> **"There was no valid service of the PAN and FAN.**
>
> **The assessment notices issued by respondent to petitioner for deficiency income tax and**

[1] Decision, Docket (Vol. II), p. 718.
[2] Docket (Vol. II), pp. 687-695.

VAT for taxable year 2006 never became final and demandable.

Petitioner avers that it was not afforded the benefit of due process as it did not receive any Preliminary Assessment Notice ('PAN'), Formal Assessment Notice ('FAN'), and Formal Letter of Demand ('FLD') before being made to suffer the effect of a Warrant of Garnishment. On the other hand, respondent claims that the PAN, FAN and FLD were sent to petitioner through registered mail at its registered business address on January 7, 2010 and January 22, 2010 respectively.

Petitioner categorically denies receipt of the PAN, FAN and FLD imputing any outstanding tax liabilities for taxable year 2006, through the testimony of its witness, Ms. Sylvia C. Carpio, in her Judicial Affidavit, as follows:

> 'Q27: Did you receive a Preliminary Assessment Notice for the taxable year 2006 from the Bureau of Internal Revenue?
>
> A27: No, we did not.
>
> Q28: Did you receive a Final Assessment Notice for the taxable year 2006 from the Bureau of Internal Revenue?
>
> A28: No, we did not.
>
> Q29: Did you receive a Formal Letter of Demand for the taxable year 2006 from the Bureau of Internal Revenue?
>
> A29: No, we did not.'

The relevant provisions of law regarding the right of taxpayer to procedural due process in the issuance of assessment is decreed in Section 228 of the NIRC of 1997, as amended and Section 3 of Revenue Regulations No. 12-99, 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:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative **shall issue an assessment based on his findings**.'

'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*:

xxx xxx xxx

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, <u>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</u> (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.' (*Emphasis ours*)

The Supreme Court in the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, held that procedures provided in Section 228 of the NIRC and Section 3 of RR No. 12-99 are mandatory, noncompliance therewith renders the assessment void.

The records of this case reveals that the PAN issued on January 6, 2010 was sent to petitioner, through registered mail on January 7, 2010, under Registry Receipt No. 926153 at its registered address at 1104

Federal Tower Condo., Dasmariñas Street, Binondo, Manila. Likewise, the FAN and FLD issued on January 22, 2010 were sent to petitioner to the same registered business address on January 22, 2010 by registered mail under Registry Receipt No. 900993.

Respondent's witness, Mr. Armando C. Macatangay, during his cross-examination testified when and to where he mailed the PAN and the FAN, to wit:

> 'Q: I am going to a next point, Mr. Witness in your Question and Answer No. 4, I would just like to know, Mr. Witness, if you know, what is the address of the petitioner or what is the address you used to mail the letters to the petitioner?
>
> Justice Castañeda:
> You can refer to the records.
>
> Atty. Montenegro:
> Yes please, you can peruse the records, if you remember only.
>
> Witness:
> A: **1104 Federal Tower Condominium, Dasmariñas St., Binondo, Manila**, sir.
>
> Q: Thank you. Now Mr. Witness, in Question No. 6 and in Question No. 7, you mentioned that you were asked to mail the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN), respectively to the petitioner but you did not indicate when you actually mailed the letter, you only mentioned the date that it was sent to you for mailing, do you still remember the actual dates when you mailed these letters to the petitioner? You can use the records.

A: **The Preliminary Assessment mailed on January 7, 2010 and then the Final Assessment or Formal Demand Letter on January 22, 2010.**

Q: Thank you, Mr. Witness and both letters or issuances, the PAN and the FAN, Formal Letter of Demand were sent to the address that you mentioned earlier?

A: Yes, sir.' (*Emphasis ours*)

However, petitioner's witness, Mrs. Sylvia C. Carpio, testified that, while petitioner used to be located at 1104 Federal Tower Cond., Dasmariñas Street, Binondo, Manila, it transferred to Pasig City on 2004, to wit:

'Q43: Ms. Witness, is the office of the Petitioner located in Pasig City?

A43: Yes, sir.

Q44: Ms. Witness, since when has your corporation been located in Pasig City?

A44: Since 2004.

xxx xxx xxx

Q49: You said that the Petitioner has been located in Pasig City since 2004. Prior to 2004 or for the period from 2002 up until 2004, where was the Petitioner located?

A49: Petitioner used to be located at 1104 Federal Tower Condominium, Dasmariñas Street, Binondo, Manila.'

Records also reveal that petitioner submitted an Application for Registration Information Update on March 31, 2009 to indicate its change in registered address to 2F Rose Industries Bldg. #11 Pioneer St., Bario Kapitolyo

Pasig City. The change in the address of petitioner was reflected in its Certificate of Registration dated May 25, 2009 issued by BIR RDO 43A. The transfer from RDO 30 to RDO 43A was on May 14, 2009 was also indicated therein.

Petitioner, therefore, would not have received the PAN issued on January 6, 2010 and sent through registered mail on January 7, 2010, at 1104 Federal Tower Cond., Dasmariñas Street, Binondo, Manila, since its address at that time was already 2F Rose Industries Bldg. #11 Pioneer St., Kapitolyo Pasig City. The same thing with the FAN and FLD, petitioner clearly did not receive them as they were sent to its former address.

Since the PAN, FAN and FLD were sent to the wrong address, there was no valid service of said notices to petitioner. Consequently, the subject assessments are void.

It must be noted that as ruled by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, renders the assessments made by the CIR void.

Likewise, the law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Since petitioner never received the FAN and FLD, it was not, therefore, informed of the assessments made against it by respondent nor was it informed of the legal and factual basis of the same. This also renders the assessments made against petitioner void."[3]

To reiterate, "both Section 228 of the NIRC of 1997 and Section 3.1.4 of RR No. 12-99 clearly require the written details on the nature, factual and legal bases of the subject deficiency tax assessments."[4]

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[3] Docket (Vol. II), pp. 708-713.

[4] *SAMAR-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. 193100, December 10, 2014.

Moreover, the issuance of the Warrant of Garnishment against petitioner violated its right to due process because no valid notice of assessment was sent to it. "An invalid assessment bears no valid fruit. 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. In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made."[5]

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on December 1, 2015.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[5] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.,* G.R. No. 198677, November 26, 2014.