REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AA COMMERCIAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8290

Members:

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

Promulgated:

JUN 07 2016 11:20 am [signature]

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RESOLUTION

CASANOVA, J.:

For resolution is respondent's **Motion for Reconsideration (Notice of Decision promulgated on January 28, 2016)**, filed on February 15, 2016, with petitioner's **Comment (Re: Motion for Reconsideration dated February 12, 2016)**, filed on March 28, 2016.

Respondent moves for the reconsideration of the Court's Decision dated January 28, 2016[1] (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, this instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax, value-added tax and expanded withholding tax assessments against petitioner for

[1] Docket (Vol. II), pp. 846-871.

calendar year 2006 amounting to ₱33,242,400.54 is **CANCELLED** and deemed **WITHDRAWN.**

SO ORDERED."[2]

In the assailed Decision, the Court ruled that the deficiency tax assessments against petitioner for calendar year (CY) 2006 are null and void for having been issued in violation of the due process requirements under the law and Revenue Regulations (RR) No. 12-99. It was found that petitioner did not receive the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN). Thus, the Court held that the right of respondent to issue any deficiency income tax, VAT and EWT assessments against petitioner for CY 2006 has already prescribed.

In her Motion, respondent argues that the Court erred in ruling that the deficiency tax assessments against petitioner for CY 2006 are null and void for failure of respondent to prove that petitioner received the PAN and the FAN. She contends that the deficiency tax assessments against petitioner for CY 2006 are valid as the due process requirements under the law and RR No. 12-99 have been strictly observed and followed. Respondent further alleges that the requirements of proper mailing of the PAN and the FAN were duly complied with. She contends that the PAN and the FAN were properly delivered to petitioner as it failed to dispute the presumption that the letter carrier, Mr. Wendell C. Virtucio, regularly performed his official duty.

Moreover, respondent avers that the Court erred in ruling that the right of respondent to issue any deficiency income tax, VAT and EWT assessments against petitioner for CY 2006 has already prescribed. She argues that the assessments became final and executory when petitioner failed to protest the same within the reglementary period of thirty (30) days from receipt of the FAN and FLD as provided under Section 228 of the National Internal Revenue Code of 1997, as amended.

On the other hand, petitioner maintains that respondent failed to discharge the burden of proving the PAN and FAN were actually received by petitioner. According to petitioner, respondent's own evidence, particularly the Certifications issued by the Philippine Postal

[2] Docket (Vol. II), p. 870.

Corporation on October 5, 2010 (Exhibits 17 and 18) and the testimony of Mr. Arnold Larrosa prove that petitioner did not receive the PAN and FAN as these notices were returned to sender, and respondent knew the fact that petitioner did not receive the PAN and FAN. Petitioner further argues that failure to prove receipt by the taxpayer of the assessment notice does not only strip the assessment of any force and effect, but also renders respondent's right to assess susceptible to prescription.

The Motion for Reconsideration lacks merit.

The issue on due process has been sufficiently passed upon and fully discussed in the assailed Decision. At any rate, We emphasize the pertinent portions of the Decision, to wit:

> **"The deficiency tax assessments against petitioner for CY 2006 are null and void.**
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> xxx xxx xxx
>
> At the outset, it must be emphasized that the requirement of informing the taxpayer of the assessment is mandatory as provided in 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:
> >
> > 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.
>
> 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 ours*)

To implement the provisions of Section 228 of the NIRC of 1997, as amended, RR No. 12-99 was issued. Sections 3.1.2 and 3.1.4 of RR No. 12-99 reads:

> '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, 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.

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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.

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In the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,* the Supreme Court held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

To prove that PAN and FAN were duly served and mailed to petitioner, respondent presented (i) certified xerox copies of endorsements of the PAN and FAN from the Assessment Division to the Administrative Division for mailing; (ii) certified xerox copy of page 5 of Administrative Division's logbook indicating the letters that were mailed but returned to sender with reasons indicated; and (iii) certified xerox copies of the Certifications from the Philippine Postal Corporation dated October 5, 2010.

Respondent also presented the letter carrier Mr. Wendell C. Virtucio, who testified that he was not able to deliver the letter to petitioner, as he was informed that petitioner had moved out of the premises, to wit:

'5. And do you recall having delivered mails sometime in October 30, 2009 and November 27, 2009 for the BIR at #11772 Edsa, Unang Sigaw, Quezon City for AA Commercial, Inc.?

Yes, but the security guard on duty whose name is Leopoldo B. Vargas, Jr. told me that the Company AA Commercial, Inc.

had moved out of the premises. He also told me that AA Commercial, Inc. had transferred to its main office located at Makati, but he did not specify the complete address where in Makati.

6. Do you recall what happened when you delivered those mails?

Yes, after the conversation between me and the security guard, I left the place, and brought back the letter to the Post Office and made a notation that this letter of the BIR be returned to sender.'

It is clear from the foregoing that petitioner did not receive the PAN and the FAN as they were returned to sender. The fact of non-receipt is bolstered by the Certifications from the Philippine Postal Corporation dated October 5, 2010 stating that the Registered Letter Nos. 4246 and 4650 addressed to AA Commercial, Inc. #1172 EDSA, Unang Sigaw, Quezon City and posted at BIR PO on October 30, 2009 and November 27, 2009, respectively, were delivered by Mr. Wendell Virtucio and were returned to sender on November 10, 2009 and December 9, 2009, respectively.

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Considering the foregoing, respondent failed to discharge the burden of proving that the PAN dated October 30, 2009 and the FAN/FLD dated November 27, 2009 were actually received by petitioner. Thus, the deficiency tax assessments against petitioner for CY 2006 are null and void for having been issued in violation of the due process requirements under the law and Revenue Regulations No. 12-99.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen 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 lifeblood of the government,' the power to tax has its limits, in spite of all its plenitude.

The right of respondent to issue any deficiency income tax, VAT and EWT assessments against petitioner for calendar year 2006 has already prescribed.

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Considering that petitioner did not receive the PAN and the FAN/FLD, and the end of the three-year prescriptive period has long ended, respondent's right to issue any deficiency income tax, VAT and EWT assessments against petitioner for taxable year 2006 has already prescribed."[3]

To reiterate, "Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void."[4]

Consequently, "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]

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[3] Docket (Vol. II), pp. 860-871.

[4] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. 197515, July 2, 2014.

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

In this case, as found in the assailed Decision, petitioner did not receive the PAN and the FAN/FLD. Thus, the assessments made by respondent against petitioner are void, as petitioner was not informed in writing of the law and the facts on which the said assessments were made.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on January 28, 2016.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Notice of Decision promulgated on January 28, 2016)** 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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice