REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

EHS LENS PHILIPPINES, INC. (formerly HOYA LENS MANUFACTURING PHILIPPINES, INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9924

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

Promulgated:
FEB 23 2021
1:00 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

The *Petition for Review* filed prays that:

1. The assessment for deficiency taxes indicated in the *Preliminary Collection Letter* (PCL) dated July 2, 2018, and in the *Final Notice Before Seizure* (FNBS) dated July 13, 2018, allegedly pursuant to Assessment Notice No. RR9A-54B-eLA-FY2014-IT/VT/WE/MC/-025 issued on September 6, 2017 be declared void;

2. The right of the government to assess deficiency taxes for the period April 1, 2013 to March 31, 2014 be declared to have prescribed; and

3. Respondent be prohibited from collecting the total assessed amount of ₱29,269,721.84 from petitioner.[1]

[1] Statement of the Case, Pre-Trial Order dated October 15, 2019, Docket – Vol. 1, p. 269.

THE PARTIES

Petitioner EHS Lens Philippines, Inc. (formerly Hoya Lens Manufacturing Philippines, Inc.) is a corporation organized and existing under the laws of the Republic of the Philippines.[2]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

THE FACTS OF THE CASE

On July 15, 2014, petitioner electronically filed its Annual Income Tax Return (AITR) and electronically paid the taxes due for the fiscal year (FY) ended March 2014.[4] The AITR was manually submitted to Revenue District Office (RDO) No. 54-B on July 18, 2014.[5]

Petitioner thereafter received, on June 30, 2015, from RDO No. 54-B the *Letter of Authority* (LOA) No. LOA-54B-2015-00000054 dated June 25, 2015,[6] covering the period April 1, 2013 to March 31, 2014. The address of petitioner indicated in the said LOA is at Gateway Business Park, General Trias, Cavite. In response to the same LOA, petitioner submitted to the BIR certain documents on July 29, 2015.[7]

In the letter dated October 8, 2015 (which was received by the BIR on December 14, 2015),[8] petitioner informed RDO No. 54-B that it will transfer its operations and principal address at Tanauan City, Batangas. The letter, which manifested that it attached BIR Form No. 1905 and other documentary requirements relative to the change of address, was received by BIR RDO No. 54-B on December 14, 2015.

On September 6, 2017, Assessment Notice No. RR9A-54B-eLA-FY2014-IT/VT/WE/MS-025 was issued by RDO No. 54-B.[9]

Subsequently, BIR RDO No. 54-B, through Revenue District Officer Benjamin B. Virtucio, issued the Indorsement dated November 22, 2017,[10]

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[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 200.
[3] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 200.
[4] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 200.
[5] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 200.
[6] Par. 11, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 14 and 64, respectively; Exhibit "P-4" Docket – Vol. 1, p. 497.
[7] Exhibit "P-6" Docket – Vol. 1, p. 500.
[8] Exhibits "P-8" and "P-8-a", Docket – Vol. 2, p. 515.
[9] Par. 5, Summary of Admitted Facts, JSFI, p. 201.
[10] Exhibit "P-9", Docket – Vol. 2, p. 516.

approving the request for the transfer of registration to RDO No. 59 – Lipa City and confirmed therein that petitioner "has no open case/s."

Thereafter, a Certificate of Registration was issued by BIR RDO No. 59 in favor of petitioner,[11] indicating its new registered address and the following statements: "REGISTRATION DATE – DECEMBER 04, 2017 TRANSFERRED IN FROM RDO 54-A".

On July 12, 2018, petitioner received, *via* its new address at Batangas, the PCL evenly dated, issued by the Collection Division of Revenue Region No. 9A – CaBaMiRo,[12] requesting for the payment of deficiency taxes in the total amount of ₱29,269,721.84, in connection with Assessment Notice No. RR9A-54B-eLA-FY2014-IT/VT/WE/MC-025 issued on September 6, 2017.

In its letter dated July 13, 2018,[13] petitioner replied to the said PCL, and argued: (1) that there was no basis for the computed deficiency taxes; (2) there was no *Preliminary Assessment Notice* (PAN) and *Formal Assessment Notice* (FAN) issued; (3) the assessment has already prescribed; and (4) no revised LOA was issued for the change of examiner.

On August 9, 2018, petitioner received the FNBS dated July 13, 2018, informing petitioner of its last opportunity to pay the tax liabilities.[14] Under the FNBS, the Collection Division of the BIR demanded from petitioner the payment of tax liabilities,[15] as follows:

Taxable Year	Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
FY03/2014	IT	₱8,084,285.29	-	₱4,921,447.10	-	₱13,005,732.39
FY03/2014	VT	15,950.40	-	10,418.01	-	26,368.41
FY03/2014	WE	9,721,649.62	-	6,402,971.42	-	16,124,621.04
FY03/2014	MC	-	-	-	₱113,000.00	113,000.00
TOTAL		₱17,821,885.31	-	₱11,334,836.53	₱113,000.00	₱29,269,721.84

Moreover, in the FNBS, respondent further declared that:

> "In this connection, we would like to inform you that we are again giving you the last opportunity to make the necessary settlement of the abovementioned tax liabilities within ten (10) days from receipt of this notice. Should we fail to hear from you within this period, this Office, much to our regret, will be constrained to serve and execute the Warrant of Distraint and/or

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[11] Exhibit "P-10", Docket – Vol. 2, p. 517.
[12] Exhibit "P-11", Docket – Vol. 2, p. 518.
[13] Exhibit "P-12", Docket – Vol. 2, pp. 519 to 520.
[14] Exhibit "P-13", Docket – Vol. 2, p. 521.
[15] Par. 4, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 13 and 64, respectively.

Levy and Garnishment already prepared to enforce the collection of your account." [16]

Petitioner then sent its letter reply to the FNBS dated August 9, 2018,[17] reiterating the arguments raised in its reply to the PCL. Thereafter, on August 13, 2018, petitioner sent another letter reply to the FNBS,[18] putting in writing the significant events in relation to its change of principal address, verbally agreed at the meeting with Revenue Officer Roxanne C. Babiera held on August 9, 2018.

Petitioner filed the present *Petition for Review* on September 10, 2018.[19]

On November 12, 2018, respondent filed his *Answer*,[20] raising the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Petitioner is liable to pay deficiency taxes in the amount of Php 29,269,721.84 for the taxable year 2013 to 2014.

5. Respondent repleads and adopts the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

THE ASSESSMENTS WAS CONDUCTED WITHOUT VIOLATION OF DUE PROCESS.

6. Petitioner argues that it was deprived of due process in the assessment because they were not served with any Preliminary Assessment Notice or Final Assessment Notice.

7. Respondent argues the contrary. Petitioner's argument hinges greatly on its belief that it was not served or issued the said assessment notices despite having informed respondent of its change of address. This belief is, however, mistaken as petitioner failed to properly inform the Revenue Officers of its change of address. The succeeding arguments would elaborate further on the matter.

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[16] Par. 5, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 13 and 64, respectively.
[17] Exhibit "P-14", Docket – Vol. 2, pp. 522 to 523.
[18] Exhibit "P-15", Docket – Vol. 2, pp. 524 to 525.
[19] Docket – Vol. 1, pp. 12 to 24; *N.B.*: September 8, 2018 is a Saturday.
[20] Docket – Vol. 1, pp. 64 to 70.

8. Firstly, petitioner alleges that it properly informed the BIR RDO 54-B of its change of address. In support of its allegation it attached in its Petition for Review a letter dated 8 October 2015, an indorsement dated 22 November 2017, and a Certificate of Registration with effective date 4 December 2017.

9. Respondent, however, contends that the abovementioned documents failed to show that during the audit investigation the petitioner had changed its address and had duly informed the Revenue Officers of such transfer.

10. As regards the letter dated 8 October 2015, a quick perusal of the same would reveal that the letter merely informs the reader of petitioner's intention to change its address. It did not contain any definite date on which the transfer of address would take effect. Therefore, despite the conveyance of its intention to change its address, during the time the letter was sent until the end of the audit investigation, it would remain that petitioner's address remained the old one. This is further proven by the fact that the address of its Cavite Plant as indicated in the bottom section of the letter is still the same with its previous address.

11. Furthermore, the letter was addressed to Revenue District Officer Carlos Salazar. Thus, only RDO Salazar was informed of the intention of petitioner to transfer its office address. Nowhere in the letter does it indicate that the Revenue Officers in charge of the ongoing audit investigation was informed of such intention to transfer. It would seem that petitioner merely assumed that the Revenue Officers were already informed when it sent the letter to RDO Salazar. Such, however, is an erroneous assumption because, during that time, the Revenue Officers believed that the old address of petitioner remained true. In fact, there appears no indication in the BIR Records of the case that the Revenue Officers were informed of the intention to transfer address.

12. With regard to the indorsement dated 22 November 2017, careful reading of the same indicates therein that the indorsement merely approved the request for transfer of address of the petitioner. The indorsement did not effectively declare that the petitioner's address had already changed. We can only deduce from the same that the petitioner requested for a change of address and that the request was approved. Nowhere did it indicate that the address had changed. Hence, until that day, the address of the petitioner still remained as the old address.

13. Furthermore, the indorsement was dated 22 November 2017. Worthy to note is that the audit investigation

was terminated on 16 November 2016. Therefore, the said indorsement seems irrelevant to petitioner's allegations.

14. As to the Certificate of Registration, the said document only proves that prior to 4 December 2017 the official address of petitioner remained to be its old address. It was only after said date that the petitioner had a new address. Thus, during the audit investigation, it was still proper for the BIR to regard petitioner's old address as its official address.

15. In summary, during the audit investigation the official registered address of petitioner was still its old address despite the allegations of petitioner. Hence, it was only proper for the BIR to send its assessment notices to the said address. The failure of petitioner to receive the said notices on the said address is mainly due to the fault of petitioner.

16. Secondly, in its Petition for Review, petitioner made an allegation that it 'duly informed respondent of the change of its office address on 14 December 2015, while audit was still ongoing'. This allegation is however unsupported by evidence.

17. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. Hence, when the complainant relies on mere conjectures and suppositions, and fails to substantiate his allegations, the administrative complaint must be dismissed for lack of merit.

18. Applying the foregoing, petitioner merely alleged that it duly informed the respondent without providing any evidence as to how it informed the latter nor any proof that the latter was indeed informed. Since there is no proof to support such claim of petitioner, it would therefore be proper to assume that petitioner did not duly inform respondent of its change of address.

19. Lastly, petitioner alleges having not received any PAN or FAN informing it of the legal and factual bases of the assessment thereby making it impossible for it to provide arguments to counter the assessment.

20. However, form the foregoing discussion, respondent reiterates that the failure of petitioner to receive the said PAN, FLD and FAN was due to petitioner's failure to properly inform respondent of its change of address. Why must respondent be faulted for the errors of petitioner?

THE RIGHT TO ASSESS PETITIONER HAS NOT YET PRESCRIBED

21. Petitioner contends that respondent's right to assess had already prescribed because the Final Assessment Notice was issued more than one and a half month after the end of the three-year period to assess granted under Section 203 of the National Internal Revenue Code.

22. Respondent argues that its right to assess petitioner has not yet prescribed.

23. Petitioner relies on Section 203 of the National Internal Revenue Code which provides, to wit:

> **SEC. 203. Period of Limitation Upon Assessment and Collection.** –
>
> Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

24. However, Section 223 of the National Internal Revenue Code states:

> "SEC. 223. Suspension of Running of Statute of Limitations. – The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning the distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for reinvestigation which is granted by the commissioner; **when the taxpayer cannot be located in the address given by him in the return**

> **filed upon which a tax is being assessed or collected**: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines." (Emphasis supplied)

25. As discussed in the foregoing argument, the petitioner in the instant case could not have been located for the service of the assessment notice due to the fault of petitioner to properly inform the Revenue Officers of its change of address.

26. Applying then Section 223 of the NIRC, the period to assess and collect was suspended due to the difficulty in locating the taxpayer. Since the period to assess and collect was suspended, then the issuance of the final Assessment Notices after one and a half month after the expiration of the three-year period could not be said to have been issued out of time. In other words, the period to assess was suspended during the time the petitioner could not be located or served the assessment. It was only after the new and correct address was known that the period to assess resumed. Therefore, when the FAN was issued and served the period to assess could not have been said to have prescribed.

THE ASSESSMENT AGAINST PETITIONER IS VALID AND LAWFUL.

27. 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 the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands

28. All presumptions are in favor of the correctness of tax assessment. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

29. In view of the foregoing, petitioner is liable to pay its assessed deficiency Income Tax, Value-Added Tax and Expanded

Withholding Tax as the said assessment was issued in accordance with law and jurisprudence."

The Pre-Trial Conference was set and held on March 26, 2019.[21] Both *Respondent's Pre-Trial Brief* and petitioner's *Pre-Trial Brief* were separately filed on March 22, 2019.[22]

At the said Pre-Trial Conference, the parties were referred to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), considering that their counsels are willing to refer this case for mediation. However, at the Philippine Mediation Center Unit, the parties decided not to mediate.[23] Thus, in the Resolution dated May 9, 2019,[24] a Pre-Trial Conference was set anew, and was held, on August 8, 2019.[25]

Respondent submitted the *BIR Records* of the case on August 22, 2019.[26]

On September 5, 2019, the parties filed their *Joint Stipulation of Facts and Issues*.[27] Subsequently, the Pre-Trial Order dated October 15, 2019 was issued by the Court,[28] deeming the termination of the Pre-Trial.

In the meantime, petitioner filed an *Urgent Motion to Suspend the Assessment and Collection of the Tax (With Urgent Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)* on September 23, 2019.[29] Respondent then filed an *Opposition with Motion to Dismiss* on October 18, 2019.[30] Thereafter, on October 29, 2019, petitioner filed its *Reply to Opposition and Opposition to Motion to Dismiss*.[31]

In support of its *Urgent Motion* and the main case, petitioner presented its witnesses, namely: (1) Ms. Elena P. Vergara, its current Corporate Management Division General Manager;[32] and (2) Ms. Wanda Mae M. Sarmiento,[33] its former accounting staff, during the hearing held on November 5, 2019.[34] Petitioner filed its *Formal Offer of Exhibits (for Petitioner's Urgent Motion to Suspend*

[21] *Notice of Pre-Trial Conference* dated November 13, 2018, Docket – Vol. 1, pp. 72 to 73; Minutes of the hearing held on, and Order dated, March 26, 2019, Docket – Vol. 1, pp. 159, and 161 to 162, respectively.
[22] Docket – Vol. 1, pp. 80 to 83, and 150 to 155, respectively.
[23] *No Agreement to Mediate* dated May 6, 2019, Docket – Vol. 1, p. 163.
[24] Docket – Vol. 1, pp. 165 to 166.
[25] Minutes of the hearing held on, and Order dated, August 8, 2019, Docket – Vol. 1, pp. 172, and 175 to 177, respectively.
[26] *Compliance* dated August 22, 2019, Docket – Vol. 1, pp. 182 to 183.
[27] Docket – Vol. 1, pp. 200 to 205.
[28] Docket – Vol. 1, pp. 269 to 275.
[29] Docket – Vol. 1, pp. 231 to 239.
[30] Docket – Vol. 1, pp. 277 to 286.
[31] Docket – Vol. 1, pp. 396 to 402.
[32] Exhibit "P-23", Docket – Vol. 1, pp. 293 to 306.
[33] Exhibit "P-24", Docket – Vol. 1, pp. 208 to 213.
[34] Minutes of the hearing held on, and Order dated, November 5, 2019, Docket – Vol. 1, pp. 476 to 478.

the Assessment and Collection of Tax, with Urgent Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction) on November 15, 2019.[35] Respondent then filed his *Comment (Re: Formal Offer of Exhibits dated 15 November 2019)* on November 22, 2019.[36]

Trial for the main case then continued.

Petitioner presented its documentary and testimonial evidence. In addition to the testimonies of Ms. Vergara and Ms. Sarmiento, petitioner offered the testimonies of the following individuals, namely: (1) Mr. Marvin T. Sambilad,[37] its current Tax and Legal Compliance Supervisor of the Accounting Department; and (2) Atty. Lai-Lynn Angelica B. Barcenas,[38] partner of Barcenas Barcenas and Partners Law Offices, which was hired by petitioner on retainer basis as external counsel.

Petitioner filed its *Formal Offer of Exhibits* on December 12, 2019.[39] Respondent then filed his *Comment (Re: Formal Offer of Exhibits dated 11 December 2019)* on January 6, 2020.[40]

In the Resolution dated January 30, 2020,[41] the Court resolved to admit all of petitioner's exhibits formally offered relative to its *Urgent Motion to Suspend the Assessment and Collection of the Tax*. However, in the Resolution dated March 3, 2020,[42] the Court denied the said *Urgent Motion to Suspend the Assessment and Collection of the Tax*.

Thereafter, in the Resolution dated July 1, 2020,[43] the Court likewise admitted all of petitioner exhibits relative to the evidence offered for the main case.

During the hearing held on December 3, 2019, respondent's counsel manifested that he will no longer present evidence for the respondent in this case.[44]

[35] Docket – Vol. 1, pp. 479 to 485.
[36] Docket – Vol. 2, pp. 619 to 621.
[37] Exhibit "P-25", Docket – Vol. 1, pp. 136 to 141; Minutes of the hearing held on, and Order dated, December 3, 2019, Docket – Vol. 2, pp. 626 to 628.
[38] Exhibit "P-26", Docket – Vol. 1, pp. 146 to 149; Minutes of the hearing held on, and Order dated, December 3, 2019, Docket – Vol. 2, pp. 626 to 628.
[39] Docket – Vol. 2, pp. 629 to 635.
[40] Docket – Vol. 2, pp. 639 to 640.
[41] Docket – Vol. 2, pp. 644 to 645.
[42] Docket – Vol. 2, pp. 647 to 651.
[43] Docket – Vol. 2, pp. 653 to 654.
[44] Minutes of the hearing held on, and Order dated, December 3, 2019, Docket – Vol. 2, pp. 626 to 628, respectively.

Respondent posted his *Memorandum* on August 25, 2020,[45] while petitioner filed its *Memorandum* on August 28, 2020.[46]

The present case was deemed submitted for decision on September 16, 2020.[47]

THE ISSUES RAISED BY THE PARTIES

The issues stipulated by the parties for this Court's resolution are the following:

> "1. Whether or not petitioner is liable to pay deficiency income tax and value-added tax in the aggregate amount of Php29,269,721.84, inclusive of legal increments for taxable year 2014.
>
> a. Whether or not petitioner was served a PAN or FAN for deficiency taxes in the taxable year 2014; and,
>
> b. Whether or not the assessment of deficiency under Assessment Notice No. RR9A-54B-eLA-FY2014-IT/VY/WE/MS-025, issued on September 6, 2017, has already prescribed." [48]

Petitioner's arguments:

Petitioner argues that it was deprived of its right to due process; and that the government's right to assess has already prescribed.

Respondent's counter-arguments:

Respondent contends that the instant *Petition for Review* has no cause of action and this Court has no jurisdiction over the case.

THE RULING OF THE COURT

The instant *Petition for Review* is meritorious.

[45] Docket – Vol. 2, pp. 670 to 676.
[46] Docket – Vol. 2, pp. 656 to 666.
[47] Resolution dated September 16, 2019, Docket –Vol. 2, p. 683.
[48] Issues, JSFI, Docket – Vol. 1, p. 201.

The Court has jurisdiction over the instant case.

According to respondent, the Court has no jurisdiction over the instant case since petitioner failed to file a protest to the PAN and the FAN. Thus, respondent is of the view that there is no decision to appeal before this Court.

We do not agree.

Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases.[49] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[50]

As a corollary, it bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[51] In this connection, Section 7(a)(1) of RA No. 1125,[52] as amended by RA No. 9282,[53] provides as follows:

> "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 matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;" *(Emphases added)*

Based on the foregoing provision, the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the BIR. The wording of the provision is clear

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[49] *Anama vs. Citibank, N.A. (formerly First National City Bank)*, G.R. No. 192048, December 13, 2017.
[50] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.
[51] *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.
[52] AN ACT CREATING THE COURT OF TAX APPEALS.
[53] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

and simple.[54] In other words, the decisions of respondent which are appealable to this Court is not limited only to cases involving disputed assessments (which entails the filing of a protest to the FAN) or refund claims, but also includes "other matters" arising under the said laws.

In this case, what is being appealed to this Court is the FNBS dated July 13, 2018, informing petitioner of its last opportunity to pay its supposed tax liabilities.[55] Thus, what is basically being assailed herein is the power and duty of the BIR, to which respondent is the chief,[56] to collect national internal revenue taxes, which are recognized under Sections 2[57] and 205[58] of the NIRC of 1997. Thus, the said FNBS is a matter which arose under the said law. Correspondingly, this Court has jurisdiction to entertain the present *Petition for Review.*

Petitioner was deprived of its right to due process.

Petitioner contends that it was never issued a PAN or a FAN, detailing the laws and facts on which the assessment was based; and thus, it was deprived of its right to timely protest the assessment.

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[54] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[55] Exhibit "P-13", Docket – Vol. 2, p. 521; Refer to Pars. 6 and 7, *Petition for Review*, Docket – Vol. 1, p. 18.

[56] Section 3 of the NIRC of 1997 reads:

"SEC. 3. *Chief Officials of the Bureau of Internal Revenue.* – **The Bureau of Internal Revenue shall have a chief to be known as Commissioner of Internal Revenue**, hereinafter referred to as the Commissioner, and four (4) assistant chiefs to be known as Deputy Commissioners." *(Emphasis added)*

[57] Section 2 of the NIRC of 1997 states:

"SEC. 2. *Powers and Duties of the Bureau of Internal Revenue.* – **The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and <u>its powers and duties shall comprehend the</u>** assessment and **<u>collection of all national internal revenue taxes</u>**, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws." *(Emphasis and underscoring added)*

[58] Section 205 of the NIRC of 1997 reads:

"SEC. 205. *Remedies for the Collection of Delinquent Taxes.* – The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be:

(a) By distrain of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and

(b) By civil or criminal action.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however*, That the remedies of distrain and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

xxx xxx xxx."

On the other hand, respondent blames petitioner by positing, in effect, that its failure to receive the PAN and FAN was due to its failure to properly or sufficiently inform the BIR of its office transfer; and that petitioner should have waited for the BIR to acknowledge that petitioner's address has changed.

We rule in favor of petitioner.

The established fact is that prior to the issuance of Assessment Notice No. RR9A-54B-eLA-FY2014-IT/VT/WE/MS-025 dated September 6, 2017,[59] the BIR RDO No. 54-B has long been informed by petitioner that it will transfer its operations and principal address at Tanauan City, Batangas, via the letter dated October 8, 2015 (which was received by the BIR on December 14, 2015).[60]

As a corollary, there is no law which requires a taxpayer to wait for the BIR to issue an acknowledgement that said taxpayer's address has been changed in its records in order to give effect to the transfer to a new office. Relative thereto, Section 236(D) of the NIRC of 1997 reads:

> "SEC. 236. *Registration Requirements.* –
>
> xxx xxx xxx
>
> (D) *Transfer of Registration.* – **In case a registered person decides to transfer his place of business or his head office or branches, it shall be his duty to update his registration status by filing an application for registration information update in the form prescribed.**" *(Emphasis added)*

Thus, all that the law requires is that to effect the transfer of office or branches, the concerned taxpayer is simply required to file the prescribed form with the BIR. In this case, in the said letter dated October 8, 2015,[61] petitioner, *inter alia*, manifested that it has attached BIR Form No. 1905 (*i.e.*, the *Application for Registration Information Update/Correction/Cancellation*) and other documentary requirements relative to the change of its address; and such fact was *never disputed* at the administrative level, nor before this Court.

Such being the case, this Court sees no valid reason for respondent or the BIR to have used the former business address of petitioner in issuing the subject PAN and FAN against the latter, since respondent or the BIR has been informed earlier of the office transfer.

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[59] Par. 5, Summary of Admitted Facts, JSFI, p. 201.
[60] Exhibits "P-8" and "P-8-a", Docket – Vol. 2, p. 515.
[61] *Id.*

In any event, even granting that there is no issue as regards petitioner's address, the subject tax assessments must still fail. Specifically, establishing petitioner's address is one thing; whether the subject notices were properly served to petitioner is still another matter.

In *Nava vs. Commissioner of Internal Revenue*,[62] the Supreme Court stressed the importance of proving the release, mailing or sending of the assessment notice, to wit:

> "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." *(Emphasis and underscoring added)*

Relative thereto, Section 228 of the NIRC of 1997, and Section 3.1 of RR No. 12-99,[63] as amended by RR No. 18-2013,[64] respectively state, in part, as follows, to wit:

> Section 228, NIRC of 1997:
>
> "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**: xxx
>
> 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**

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[62] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[63] SUBJECT: 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

[64] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

Commissioner or his duly authorized representative shall issue an assessment based on his findings.

xxx xxx xxx." *(Emphases and underscoring added)*

Section 3.1, RR No. 12-99, as amended:

"SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN 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 assessment shall be void* (see illustration in ANNEX 'B' hereof).

3.1.4 *Disputed Assessment.* – **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** xxx." *(Emphases and underscoring added)*

Based on the foregoing provisions, part of the due process requirements in the issuance of tax assessments is that the concerned taxpayer be informed in writing of the law and the facts upon which the assessment was made, and that the same taxpayer be given the opportunity to respond and contest the PAN and FLD/FAN or Assessment Notice. Being part of the due process requirements, these things must be accomplished before collection of the pertinent tax.

In this case, respondent failed to show that the subject PAN and FLD/FAN or Assessment Notice were released, mailed, sent or served to petitioner prior to the issuance of the PCL dated July 2, 2018 and FNBS dated July 13, 2018.

Considering that these due process requirements were not shown to have been fulfilled by respondent or the BIR, the subject PAN, FAN/FLD, and particularly, the Assessment Notice No. RR9A-54B-eLA-FY2014-IT/VT/WE/MS-025 dated September 6, 2017,[65] are all null and void, pursuant to the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,*[66] to wit:

"**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial**

[65] Par. 5, Summary of Admitted Facts, JSFI, p. 201.
[66] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

of due process and taints the administrative proceedings with invalidity." *(Emphases and underscoring added)*

For being void, the subject deficiency tax assessments bear no valid fruit,[67] and thus, the PCL dated July 2, 2018 and FNBS dated July 13, 2018 must not be given any effect, since they spring from the said tax assessments. In the same vein, the subsequent receipts by petitioner of the PAN dated April 18, 2017 on August 23, 2019,[68] and the FLD dated September 6, 2017 on September 9, 2019,[69] which are glaringly already during the pendency of the instant case before this Court, do not cure the nullity thereof. This is so because the denial of petitioner's right to due process has already tainted the administrative proceedings with invalidity, including the issuance of the subject tax assessments.

With the foregoing disquisitions, it becomes unnecessary to address the remaining issues and arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, for being void, the subject assessments issued against petitioner for FY ended March 31, 2014 for deficiency taxes, including increments thereto, in the aggregate amount of ₱29,269,721.84, are **CANCELLED** and **SET ASIDE**.

Moreover, the PCL dated July 2, 2018 and FNBS dated July 13, 2018 covering the said assessed deficiency tax liabilities against petitioner are also **CANCELLED** and **SET ASIDE**. Consequently, Respondent is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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[67] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.
[68] Exhibits "P-19", "P-19-a", and "P-19-b", Docket – Vol. 2, pp. 530 to 535.
[69] Exhibit "P-21", Docket – Vol. 2, pp. 537 to 545.

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's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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