REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TRAVEL WAREHOUSE, INC., *Petitioner,*	**CTA Case No. 9103**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 0 7 2017 8:40 a.m.

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D E C I S I O N

MANAHAN, *J.*:

This case involves a Petition for Review[1] pursuant to Section 7[2] in relation to Section 11[3] of Republic Act No. (RA) 1125[4], and Section 3(a)(1), Rule 4[5] of the Revised Rules of the Court of Tax Appeals. The petition is filed by Travel Warehouse, Inc. seeking to lift, invalidate and annul the Warrant of Garnishment and Final Assessment Notice issued by the

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[1] Docket, CTA Case No. 9103, Vol. 1, pp. 10-24.

[2] 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.

[3] Sec. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... may file an appeal with the CTA within thirty (30) days after receipt of such decision or ruling or after the expiration of the period fixed by law for action...

[4] An Act Creating the Court of Tax Appeals.

[5] Rule 4 Jurisdiction of the Court

Sec. 3. Cases within the jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(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;

Bureau of Internal Revenue (BIR) for deficiency taxes involving taxable year 2010.

FACTS

Petitioner Travel Warehouse, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at Unit 1007 OMM-Citra Bldg., San Miguel Ave., Ortigas Center, San Antonio, Pasig City.[6] It is registered with BIR Revenue District No. 43A, with Tax Identification Number 005-694-401-000.[7]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the law with authority to carry out all functions, duties and responsibilities of the BIR.[8]

Petitioner received Letter Notice No. 43A-RLF-10-00-00222[9] dated November 14, 2011 informing it of the discrepancies shown by computerized matching conducted by the BIR between petitioner's records and its customers' records.[10]

A Letter of Authority (LOA)[11] dated January 23, 2013 was issued against petitioner authorizing the examination of the books of accounts and other accounting records for all internal revenue taxes for the year 2010.[12] Pursuant to the LOA, the BIR requested the submission and presentation of various financial documents to the authorized examiner through a letter dated January 28, 2013[13]; First Notice for Presentation of Documents dated February 8, 2013[14]; and, Second and Final Notice[15] dated February 18, 2013.[16]

Petitioner submitted its VAT and Income Tax Returns for the year 2010 through its Transmittal[17] dated March 5, 2013.[18]

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[6] Docket, Vol. 2, Joint Stipulation, p. 473.
[7] Docket, Vol. 1, Exhibit "P-3", p. 290.
[8] *Id.*
[9] Docket, Vol. 1, Exhibit "P-14", p. 305; BIR Records, Exhibit "R-2", p. 9.
[10] Docket, Vol. 1, Petition for Review (PFR), p. 12.
[11] Docket, Vol. 1, Exhibit "P-15", p. 310; BIR Records, Exhibit "R-3", p. 3.
[12] Docket, Vol. 1, PFR, p. 12.
[13] Docket, Vol. 1, Exhibit "P-16", pp. 311-312.
[14] Docket, Vol. 1, Exhibit "P-17", p. 313; BIR Records, Exhibit "R-4", p. 4.
[15] BIR Records, Exhibit "R-5", p. 5.
[16] Docket, Vol. 1, PFR, p. 12.
[17] Docket, Vol. 1, Exhibit "P-18", p. 314.
[18] Docket, Vol. 1, PFR, pp. 12-13.

Petitioner, through its letter dated March 8, 2013,[19] requested for an additional period within which to present its documentary evidence.[20]

On March 19, 2013, petitioner submitted a letter[21] to the BIR, explaining the basis of the service fees as supported by contracts with its customers.[22]

Respondent issued a Notice For Informal Conference[23] dated May 27, 2013. Subsequently, a Preliminary Assessment Notice (PAN)[24] dated December 27, 2013, and Formal Letter of Demand (FLD/FAN)[25] with Assessment Notices[26] dated January 14, 2014, were issued. The FLD/FAN contained the following assessments:

I. DEFICIENCY INCOME TAX			
Taxable revenue per Income Tax Return (ITR)			P 154,148.10
Add: Adjustments per investigation			
Additional taxable sales		P29,891,244.77	
Rent not subjected to withholding tax		48,800.00	
Salaries & wages not subjected to withholding tax		303,175.00	
Unaccounted input tax		44,322.43	
Unaccounted disbursement		841,125.98	
Unsupported expenses		1,338,850.98	32,467,519.16
Taxable income per investigation			P32,621,667.26
Income tax due thereon			P 9,786,500.18
Add: Disallowed tax credits/ payments			
Prior year's excess credits		P 1,383.78	
Payments		165,100.00	
Total		P 166,483.78	
Less: Excess tax credits carried over to next period	P120,239.40		
Unsupported tax payments for the first three quarters	165,100.00	285,339.40	118,855.62
Deficiency Income Tax			P 9,905,355.80
Add: 20% Interest p.a. (4/16/2011 to 2/14/14)			5,617,557.95
TOTAL AMOUNT DUE			P15,522,913.75

[19] Docket, Vol. 1, Exhibit "P-30", p. 330.
[20] Docket, Vol. 1, PFR, p. 13.
[21] Docket, Vol. 1, Exhibit "P-31", p. 331.
[22] Docket, Vol. 1, PFR, p. 13.
[23] BIR Records, Exhibit "R-6", p. 247.
[24] Docket, Vol. 1, Exhibit "P-11", pp. 298-301; BIR Records, Exhibits "R-12" and "R-13", pp. 287-284.
[25] Docket, Vol. 1, Exhibit "P-10", pp. 381-383; BIR Records, Exhibit "R-18", pp. 294-292.
[26] Docket, Vol. 1, Exhibits "P-6", "P-7", "P-8", and "P-9", pp. 294-297; BIR Records, Exhibits "R-14", "R-15", "R-16", and "R-17, pp. 298-295.

II. DEFICIENCY VALUE ADDED TAX

Taxable revenue/receipts per VAT returns		P 4,507,753.43
Add: Adjustments per investigation		
Undeclared receipts	P14,761,545.10	
Unaccounted input tax	44,322.43	
Unaccounted disbursement	841,125.98	15,646,993.51
Taxable sales/receipts per investigation		P20,154,746.94
Output tax due thereon		P 2,418,569.63
Less: Allowed tax credits/ payments		
Presumptive input tax	P 516,221.59	
Payment per ITS	59,913.16	
Total	576,134.75	
Less: Excess input tax carried over to succeeding period	4,177.57	571,957.18
Deficiency value added tax		P 1,846,612.45
Add: 20% Interest p.a. (01/26/2011 to 2/14/14)		1,128,204.32
TOTAL AMOUNT DUE		P 2,974,816.77

III. DEFICIENCY EXPANDED WTIHHOLDING TAX

	Amount	EWT rate	Amount due
Rent	P 48,800.00	5%	P 2,440.00
Deficiency expanded withholding tax			P 2,440.00
Add: 20% Interest p.a. (01/18/2011 to 2/14/14)			1,501.44
TOTAL AMOUNT DUE			P 3941.44

On August 15, 2014, a Preliminary Collection Letter (PCL)[27] was issued for the total amount of Php18,516,671.96, inclusive of interest. On September 1, 2014, petitioner submitted a Letter[28] to the BIR, explaining that the customers' records declared wrong purchase amount under the name of petitioner, and that the income of travel agencies should be based on service fee only.[29] On the same date, petitioner received the Final Notice Before Seizure[30] for the collection of Php18,516,671.96.[31]

Petitioner submitted another Letter[32] to the BIR, dated September 22, 2014, stating that the issuance of the FLD/FAN together with the PAN deprived it of due process for denying it

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[27] Docket, Vol. 1, Exhibit "P-33", p. 345.
[28] Docket, Vol. 1, Exhibit "P-34", p. 346.
[29] Docket, Vol. 1, PFR, p. 13.
[30] Docket, Vol. 1, Exhibit "P-35", p. 347.
[31] Docket, Vol. 1, PFR, p. 13.
[32] Docket, Vol. 1, Exhibit "P-37", pp. 350-351.

of its right to respond to the PAN, and reiterating its explanation on the findings of the BIR.[33]

On June 23, 2015, petitioner's accounts with Banco De Oro (BDO) were garnished through a Warrant of Garnishment[34] issued by the BIR and served to the Legal Services Group of BDO.[35]

On July 23, 2015, petitioner filed the instant Petition for Review [With Application for Temporary Restraining Order and/or Preliminary Injunction][36] seeking to lift, invalidate and annul the Warrant of Garnishment and FLD/FAN issued against it. On July 29, 2015, petitioner filed its Supplemental Petition for Review.[37]

Meanwhile, petitioner's Application for Temporary Restraining Order and/or Preliminary Injunction was set for hearing on August 3, 2015.[38] Said motion to suspend the collection of tax was granted subject to the posting of an appropriate surety bond in the amount of Php27,775,007.94,[39] however, petitioner failed to comply with the posting of such bond.[40]

Respondent, within the extension granted,[41] filed his Answer[42] on August 20, 2015. The case proceeded to pre-trial with the parties filing their Joint Stipulation (JSFI)[43] on December 1, 2015 which the Court approved and adopted on January 18, 2016.[44]

The case proceeded to trial with petitioner presenting four witnesses: (1) Ms. Violeta D. Santos,[45] Finance Manager; (2) Mr. Glenn C. Garcia,[46] Documentation Office; (3) Ms. Wilhelmina E.

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[33] Docket, Vol. 1, PFR, p. 14.
[34] Docket, Vol. 1, Exhibit "P-4", p. 291.
[35] Docket, Vol. 1, PFR, p. 14.
[36] Docket, Vol. 1, pp. 10-24.
[37] Docket, Vol. 1, pp. 98-104.
[38] Docket, Vol. 1, pp. 109-110.
[39] Docket, Vol. 1, pp. 180-182.
[40] Docket, Vol. 2, Resolution dated October 6, 2015, pp. 389-390; in relation to the Manifestation filed by petitioner on October 22, 2015, pp. 396-400.
[41] Docket, Vol. 1, Order dated August 11, 2015, p. 183.
[42] Docket, Vol. 1, pp. 184-192.
[43] Docket, Vol. 2, pp. 473-479.
[44] Docket, Vol. 2, Pre-Trial Order, pp. 514-519.
[45] Docket, Vol. 1, Exhibit "P-38" Judicial Affidavit of Violeta D. Santos, pp. 271-282.
[46] Docket, Vol. 1, Exhibit "P-40" Judicial Affidavit of Glenn C. Garcia, pp. 352-357. *om*

David,[47] HR Manager; and (4) Mr. Cesario B. Ancheta, Jr.,[48] messenger from Pasig City Central Post Office. Petitioner then filed its Formal Offer of Evidence[49] (FOE) on March 28, 2016 and resolved by the Court on May 13, 2016,[50] thereby admitting and denying admission to several exhibits. Petitioner's motion for reconsideration[51] of said denial of admission was likewise denied.[52]

Respondent presented two witnesses: (1) Ms. Rosalina T. Reyes,[53] Revenue Officer; and (2) Ms. Jovelyn R. Reodique,[54] Revenue Officer. Respondent filed his FOE[55] on November 21, 2016, which were all admitted in the Court's Resolution[56] dated February 21, 2017.

The Court ordered the submission of memoranda which petitioner and respondent complied with on March 24, 2017 and April 6, 2017, respectively. Considering the foregoing, the instant case was deemed submitted for decision on April 10, 2017.

ISSUES[57]

The parties submit the following issues for resolution:

1. Whether or not the Final Assessment Notices all dated 14 January 2014 are null and void for violation of Section 228 of the NIRC, and RR 12-99, as amended by RR 018-13;

2. Whether or not the right of the Respondent to properly assess the Petitioner for the taxes covered by the Final Assessment Notices all dated 14 January 2014 has already prescribed;

3. Whether or not the Warrant of Garnishment issued by the Respondent is void;

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[47] Docket, Vol. 1, Exhibit "P-39" Judicial Affidavit of Wilhelmina E. David, pp. 372-376.
[48] Docket, Vol. 2, Exhibit "P-41" Judicial Affidavit of Cesario B. Ancheta, Jr., pp. 407-411.
[49] Docket, Vol. 2, pp. 538-550.
[50] Docket, Vol. 2, Resolution dated May 13, 2016, pp. 679-680.
[51] Docket, Vol. 2, pp. 702-706.
[52] Docket, Vol. 2, Resolution dated August 4, 2016, pp. 733-736.
[53] Docket, Vol. 2, Judicial Affidavit, pp. 683-688.
[54] Docket, Vol. 2, Judicial Affidavit, pp. 441-445.
[55] Docket, Vol. 2, pp. 749-754.
[56] Docket, Vol. 2, pp. 810-811.
[57] Docket, Vol. 2, JSFI, p. 474.

4. Whether or not the Petitioner is liable for deficiency Income Tax in the amount of Php15,522,913.75, deficiency Value Added Tax in the amount of Php2,974,816.77, deficiency Expanded Withholding Tax in the amount of Php3,941.44 and Compromise Penalty in the amount of Php15,000.00 for taxable year 2010 inclusive of interest; and

5. Whether or not the Assessments have already become final, executory and demandable.

Petitioner's Arguments[58]

Petitioner argues that the assessments are void for having been improperly issued and in violation of petitioner's right to due process. Petitioner alleges that it received both the PAN and FAN on January 7, 2014; that the FLD/FAN was mailed and received by petitioner even before the FLD/FAN's supposed date of issuance on January 14, 2014.

Considering the void issuance of the FLD/FAN, petitioner argues that respondent's right to assess deficiency taxes for taxable year 2010 has already prescribed and therefore, the warrant of garnishment is also void.

In addition, petitioner argues that it has no deficiency tax on its taxable sales for the year 2010. It argues that a travel agency that collects ticket fares for an airline does not include the ticket fare in its gross income or receipts, accordingly, the gross revenue declared by petitioner accurately reflects its gross receipts for the year 2010.

Respondent's Counter-Arguments[59]

Respondent argues that the assessments were issued in accordance with applicable laws and regulations and that the factual and legal bases of said assessments were contained in the FLD/FAN. Respondent also states that it complied with due process since it issued the required notices to the petitioner.[60]

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[58] Docket, Vol. 1, PFR, pp. 14-20; Vol. 1, Supplemental PFR, pp. 99-100; Vol. 2, Memorandum, pp. 820-827.
[59] Docket, Vol. 1, Answer, pp. 184-190; Vol. 2, Memorandum, pp. 838-849.
[60] Docket, Vol. 2, Memorandum, p. 840.

Respondent further argues that the assessments have become final, executory and demandable since petitioner failed to file its administrative protest on the FLD/FAN within thirty (30) days from date of receipt thereof. As such, considering the finality of the FLD/FAN, the Court has no jurisdiction over the petition.

Respondent also reiterates that tax assessments by examiners are presumed correct and made in good faith.

RULING OF THE COURT

The petition has merit.

The Court has jurisdiction over the petition for review.

Jurisdiction is conferred by law and is the capacity of a court to "entertain, hear, and determine controversies."[61] The Court of Tax Appeals, as a court of special jurisdiction, can only take cognizance of matters clearly within its jurisdiction.[62]

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides for the Court's jurisdiction, as follows:

> Sec. 7. Jurisdiction. – The CTA shall exercise:
>
> (a) <u>Exclusive appellate jurisdiction to review by appeal</u>, as herein provided:
>
> > (1) <u>Decisions of the Commissioner of Internal Revenue in cases involving</u> disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, <u>or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue</u>; (*Underscoring supplied*)

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[61] Guy. V. Court of Appeals, G.R. Nos. 165849, 170186, 171066 and 176650, December 10, 2007.

[62] Commissioner of Internal Revenue v. Silicon Philippines, Inc., G.R. No. 169778, March 12, 2014.

This provision is further implemented by Section 3(a)(1), Rule 4 of the Revised Rules of the CTA (RRCTA), as follows:

> Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
>
> The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (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; (*Underscoring supplied*)

It is settled that for the CTA to acquire jurisdiction over a "disputed assessment", the assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision from which a petition for review may be taken to the CTA.[63]

On the other hand, the term "other matters" has been ruled to include, but not limited to: review of the BIR's authority and decision to compromise;[64] prescription of the CIR's right to collect taxes;[65] determination of the validity of a warrant of distraint and levy issued by the CIR and the validity of a waiver of the statute of limitations.[66]

In the instant case, petitioner's accounts with Banco De Oro (BDO) were garnished through a Warrant of Garnishment served on BDO's Legal Services Group. Under the provision quoted above and jurisprudence, the Court has jurisdiction under "other matters" to determine if the warrant of garnishment is valid.

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[63] Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, G.R. No. 148380, December 9, 2005.
[64] Consolidated cases of Philippine National Oil Company v. Court of Appeals, et al., and Philippine National Bank v. Court of Appeals, et al., G.R. Nos. 109976 and 112800, April 26, 2005.
[65] Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.
[66] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.

The Warrant of Garnishment was served on June 23, 2015 and counting thirty (30) days therefrom, petitioner had until July 23, 2015 within which to appeal to the CTA. Thus, considering that this Petition for Review was filed on July 23, 2015, the same was timely filed and the Court has jurisdiction.

The assessments are void for failure to comply with due process; and have not become final, executory, and demandable.

Petitioner alleges that the PAN dated December 27, 2013 and FLD/FAN dated January 14, 2014 were both received on January 7, 2014. Petitioner's witnesses testified as to the receipt of the PAN and FLD/FAN:

Ms. Violeta D. Santos, petitioner's Finance Manager, stated:

> Q12: When did TWI receive the said FAN?
>
> A: TWI received the FAN, together with the Preliminary Assessment Notice ("PAN") dated 27 December 2013 on 7 January 2014.
>
> Q13: You mentioned that TWI received the FAN together with the PAN, can you tell how were these documents received?
>
> A: The FAN and the PAN were mailed together in an envelope stamped with number "68" and was received on 7 January 2014.[67]

Mr. Glenn C. Garcia, petitioner's Documentation Officer, stated:

> Q5: You mentioned that you receive documents transmitted to TWI. What document, if any, did you receive for TWI last 7 January 2014?

[67] Docket, Vol. 1, Exhibit "P-38" Judicial Affidavit of Violeta D. Santos, p. 273. om

A: On 7 January 2014, I received an envelope with its usual markings from the Central Post Office ("CPO") of Pasig City.

Q6: What happened next, if any?

A: The messenger then asked that the receiving copy of the contents of the envelope be signed.

Q7: What did you do, if any, as regards the said mail man's request?

A: I asked our acting Finance Manager, Ms. Wilhelmina E. David, to sign the receiving copy and she did.

xxx xxx xxx

Q13: What is the content of the envelope you mentioned earlier?

A: The contents of the documents (*sic*) are as follows:

a) Four (4) Assessment Notices all dated 14 January 2014
b) Formal Letter of Demand marked as issued on 14 January 2014 with Details of Discrepancies
c) Preliminary Assessment Notice dated 27 December 2013 with Details of Discrepancies.[68]

Ms. Wilhelmina E. David, petitioner's HR Manager and former acting Finance Manager, stated:

Q6: You mentioned that you received that (*sic*) tax assessments against TWI last 7 January 2014. What happened on this instance?

A: Our Documentation Officer, Glenn C. Garcia, approached me with respect to receiving certain documents from a messenger.

Q7: What happened when Mr. Garcia approached you?

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[68] Docket, Vol. 1, Exhibit "P-40" Judicial Affidavit of Glenn C. Garcia, pp.353-355.

A: He told me that the documents delivered should be signed as received on each page as requested by the mailman.

Q8: What did you do when he told you this?

A: I signed the receiving copies of the documents delivered.

Q9: What are these documents?

A: I signed the following:

a) Four (4) Assessment Notices all dated 14 January 2014
b) Formal Letter of Demand marked as issued on 14 January 2914 with Details of Discrepancies
c) Preliminary Assessment Notice dated 27 December 2013 with Details of Discrepancies.[69]

On the other hand, respondent's witness, RO Jovelyn R. Reodique, testified as follows:

18.Q: Was the Petitioner provided with a copy of the Preliminary Assessment Notice and Details of Discrepancies?

A: Yes thru registered mail.

19.Q: What happened next, if any?

A: A Final Assessment Notice with Formal Letter of Demand and Details of Discrepancies were issued due to the failure of the Petitioner to respond to the Preliminary Assessment Notice pursuant to Revenue Regulations 12-99, as amended.[70]

The testimony from respondent's witness confirms petitioner's allegations and witnesses' testimonies that the PAN was sent through registered mail. As to the FAN, respondent's witness merely testified that it was issued, but not how it was served and whether it was received.

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[69] Docket, Exhibit "P-39" Judicial Affidavit of Wilhelmina E. David, pp. 373-374.
[70] Docket, Vol. 2, Judicial Affidavit, p. 413.

Petitioner's allegation that the PAN and FLD/FAN were received together was uncontroverted by respondent's witness. Thus, that the FLD/FAN was received together with the PAN on January 7, 2014 renders the FLD/FAN void for violation of due process.

The due process requirements in the issuance of a deficiency tax assessment are specifically enumerated. Section 228 of the 1997 National Internal Revenue Code, as amended (NIRC), provides:

> Sec. 228. *Protesting of Assessment.* – When the Commissioner of his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: ...
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> xxx xxx xxx
>
> The taxpayer 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 the 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.
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> xxx xxx xxx

Corollary thereto, Section 3 of Revenue Regulations No. (RR) 12-99,[71] as amended by RR 18-2013,[72] provides:

> Sec. 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:

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[71] 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.

[72] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

> 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 xxx.
>
> 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 finding 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.
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> 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 payments 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.
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> xxx xxx xxx (Underscoring supplied)

Under the law and the rules, the CIR or his duly authorized representative is required to issue a PAN against the taxpayer whenever there is a finding of any deficiency tax due. The taxpayer shall be required to respond to the PAN within fifteen (15) days from receipt thereof. The taxpayer's failure to respond within the period prescribed results to the taxpayer being considered in default, and shall lead to the issuance of the FLD/FAN. 𝒸𝓂

The mandatory nature of the issuance of the PAN and compliance with the due process requirements has been settled in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[73] where the Supreme Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must first be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement...
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> xxx xxx xxx
>
> ...it is clear that the sending of a PAN to [the] taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment", the absence of which renders nugatory any assessment made by the tax authorities. <u>The use of the word "shall" in subsection 3.1.2 [now, 3.1.1] describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process</u>...(Underscoring supplied)

In several cases[74], this Court has ruled that the issuance of the FLD/FAN prior to the lapse of the fifteen (15)-day period given to the taxpayer to respond to the PAN is a violation of the taxpayer's right to due process.

In this case, petitioner received the PAN through registered mail on January 7, 2014; thus, it had fifteen days therefrom or until January 22, 2014 to file its response/protest.

However, as testified to by the petitioner's witnesses and undisputed by respondent's witnesses, petitioner simultaneously received the PAN dated December 27, 2013 and the FAN dated January 14, 2014 on January 7, 2014. Clearly,

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[73] G.R. No. 185371, December 8, 2010, recently cited in Dionisia D. Pacquiao v. Hon. Thelma S. Milabao OIC, Regional Director Bureau of Internal Revenue Region No. 18, CTA Case No. 9039, May 30, 2017; Commissioner of Internal Revenue v. Merial Philippines, Inc., CTA EB No. 1398, May 9, 2017.

[74] Oriental Assurance Corp. v. Commissioner of Internal Revenue, CTA Case No. 8817, February 23, 2017; Nippo Metal Tech Phils., Inc. v. Commissioner of Internal Revenue, CTA EB No. 1273, May 27, 2016; Commissioner of Internal Revenue v. Yumex Philippines Corporation, CTA EB No. 1139, January 19, 2016 Resolution.

the FLD/FAN was issued and received prior to the lapse of the 15-day period given petitioner to respond to the PAN. This is a denial of petitioner's right to due process, as such, the FLD/FAN are void.

The irregularity in the dates of issuance and receipt of the FAN fails to escape the intrusive eye of this Court, emphasizing more clearly the importance of the observance of the mandatory 15-day period granted to the taxpayer to reply to the PAN before a FAN can be issued. Time is quite essential in this entire procedure of administrative protest because any escalation in the levels of the protest, *i.e.* FLD/FAN, leaves the taxpayer with fewer options, such as going to the Court of Tax Appeals on appeal or entering into a compromise settlement, among others, which all entail financial costs to the taxpayer. Hence, the mandatory period granted to assail the PAN is integral to the right of due process granted by law to the taxpayer.

Based on the foregoing, this Court will no longer delve on the remaining issues.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices dated January 14, 2014 and Warrant of Garnishment dated June 23, 2015 issued against Travel Warehouse Inc. are declared **NULL** and **VOID**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.

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

CERTIFICATION

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