REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FORTUNE PLASTIC PROCESSING & CHEMICAL CORPORATION represented by WILLY TSAI, Petitioner,	**CTA CASE NO. 10984**
	Members:
	RINGPIS-LIBAN, *P.J.,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 2 0 2026

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DECISION

The **Petition for Review** filed on September 20, 2022 prays that the assessment issued by respondent against petitioner on its alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), documentary stamp tax (DST), improperly accumulated earnings tax (IAET), and compromise penalty, in the aggregate amount of **₱8,766,191.92,** plus interest and surcharges, for taxable year (TY) 2018, be cancelled, set aside and declared null and void.[1]

THE PARTIES

Petitioner **Fortune Plastic Processing & Chemical Corporation** was incorporated on April 11, 1988, and registered under the laws of the Republic of the Philippines,[2] with office address at 42 Aster St. De Castro Subdivision, Paso de Blas, Valenzuela City.[3] It is a VAT-registered taxpayer with the Bureau of Internal Revenue (BIR), with VAT Registration/Taxpayer Identification No. 000-237-461.[4]

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1 Summary of the Case, Pre-Trial Order dated April 5, 2024, Docket, p. 273.

2 Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), *Id.* at 263.

3 Par. 5, Parties, *Petition for Review*, vis-à-vis par. 4, *Answer*, *Id.* at 8 and 111, respectively.

4 Par. 2, Stipulated Facts, JSFI, *Id.* at 263.

Respondent **Commissioner of Internal Revenue** is the chief of the BIR, the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office Building, Agham Road (now Senator Miriam P. Defensor-Santiago Avenue), Diliman, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On December 17, 2019, petitioner received the Letter of Authority (LOA) with SN: eLA201600061568 / LOA-024-2019-00001023 dated December 13, 2019,[6] authorizing Revenue Officer (RO) Jose Arix Delos Reyes and Group Supervisor (GS) Victor Te of Revenue District No. 024 – Valenzuela, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other taxes for the period January 1, 2018 to December 31, 2018.

Petitioner received a First Request for Presentation of Records on January 8, 2020.[7] Subsequently, petitioner submitted several batches of records to the BIR.[8]

Thereafter, on March 11, 2020, Mr. Willy Tsai received the Subpoena Duces Tecum dated March 2, 2020, requiring him to appear before the Legal Division of Revenue Region 5, Caloocan City, on March 23, 2020.[9]

On August 12, 2020, Mr. Willy Tsai received the letter dated June 23, 2020 signed by Regional Director, Ma. Gracia B. Javier, requiring him to appear on July 15, 2022.[10]

The Notice to Taxpayer dated June 21, 2021 signed by Revenue District Officer Stimson Cureg, was received by petitioner on June 29, 2011,[11] with the information that the investigation of all its internal revenue tax liabilities for TY 2018 pursuant to LOA No. 024-2019-00001023 dated

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[5] Par. 3, Stipulated Facts, JSFI, Docket, p. 263.
[6] Par. 11, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, *Id.* at 12 and 111, respectively; Exhibit "P-4", *Id.* at 50.
[7] Par. 12, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, *Id.* at 12 and 111, respectively; Exhibit "P-5", *Id.* at 52.
[8] Pars. 13 to 16, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, *Id.* at 12 and 111, respectively; Exhibit "P-6" to "P-9", *Id.* at 53 to 56.
[9] Par. 17, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, *Id.* at 12 and 111, respectively; Exhibit "P-10", *Id.* at 57.
[10] Par. 18, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, *Id.* at 13 and 111, respectively; Exhibit "P-11", *Id.* at 58.
[11] Par. 21, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, *Id.* at 13 and 111, respectively; Exhibit "P-14", *Id.* at 66.

December 13, 2019 has been reassigned to RO Jenny Katherine C. Querubin under GS Arceli N. Puno.

Thereafter, on July 23, 2021, another LOA with SN: eLA201700036105 / LOA-024-2021-00000450 dated July 15, 2021 was received by petitioner, stating that RO Querubin and GS Puno will handle the account of the petitioner.[12]

On August 3, 2021, a Notice of Discrepancy was received by petitioner through Mr. Ernesto P. Moreno.[13]

Thereafter, the BIR issued the Preliminary Assessment Notice (PAN), with Details of Discrepancy, on November 5, 2021,[14] and the Formal Letter of Demand (FLD), with Details of Discrepancies, and Assessment Notices, on December 16, 2021.[15]

The BIR then issued Warrant of Distraint and/or Levy (WDL) No. RR5-WDL-07-07-2022-3058(024) on July 26, 2022.[16]

On August 22, 2022, and August 23, 2022, petitioner was informed by Metropolitan Bank and Trust Company (MBTC) and Banco de Oro (BDO), respectively, regarding the Warrants of Garnishment (WGs) they each received dated August 12, 2022, signed by Mr. Roberto R. Taron, Chief of the Collection Division.[17]

PROCEEDINGS BEFORE THIS COURT

As earlier stated, on September 20, 2022, petitioner filed the present *Petition for Review*.[18]

In the Resolution dated October 13, 2022,[19] the Court ordered petitioner to submit an amended Verification and Certification Against Forum Shopping that conforms to the tenor prescribed by Rule 7, Section 4(b) and (c) of the Rules of Court, within 10 days from notice.

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[12] Par. 22, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, Docket, pp. 13 and 111, respectively; Exhibit "P-15", *Id.* at 68.
[13] Par. 23, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, *Id.* at 14 and 111, respectively; Exhibit "P-16", *Id.* at 70 to 78.
[14] Exhibits "R-5" to "R-5-A", *Id.* at 144 to 148.
[15] Exhibits "R-7" to "R-7-D" and "R-7-H" to "R-7-J", *Id.* at 151 to 161.
[16] Exhibit "R-9", *Id.* at 172.
[17] Par. 25, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, *Id.* at 14 and 111, respectively; Exhibits "P-18" and "P-19", *Id.* at 80 to 81.
[18] *Id.* at 6 to 26.
[19] *Id.* at 88.

Accordingly, petitioner filed, through accredited courier, its *Compliance with Manifestation (Resolution dated October 11, 2022)*, received by the Court on February 6, 2023,[20] attaching thereto its *Amended Verification and Certification Against Forum Shopping*,[21] which the Court noted and admitted, respectively, in the Resolution dated March 3, 2023.[22]

On May 18, 2023, the Judicial Records Division of this Court issued a Records Verification Report, stating that as of the said date and as per records of this Court, respondent failed to file his answer, and that respondent received the Court's Summons on March 17, 2023.[23]

Respondent filed his *Manifestation with Entry of Appearance as Counsel* on June 30, 2023,[24] attaching his *Answer (with Motion to Admit/with Leave of Court)*,[25] stating that the lawyer assigned to this case was temporarily assigned, detailed and ordered to report as Team Leader/Head of Task Forces/Projects/Mission Orders/Letters of Authority in the Office of the Regional Investigation Division of Revenue Region 5, and was not able to receive the Summons of this Court. Respondent's counsels further manifested that the case was only assigned to them on June 23, 2023. In this regard, they request that the *Answer (with Motion to Admit/with Leave of Court)* be admitted, and that all papers, documents, orders and other processes for the respondent be forwarded, mailed or sent to their office.

Petitioner filed its *Opposition to Motion to Admit, with Leave of Court, the Answer dated June 30, 2023 with Omnibus Motion (to Expunge Answer dated June 30, 2023 and to Declare Respondent in Default) and Ad Cautelam Reply* on July 20, 2023.[26]

In the Resolution dated August 22, 2023,[27] the Court noted respondent's *Manifestation with Entry of Appearance as Counsel*, denied the admission of respondent's *Answer (with Motion to Admit/with Leave of Court)*, and declared respondent in default pursuant to Section 3, Rule 9 of the Revised Rules on Civil Procedure.

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[20] Docket, pp. 89 to 90.
[21] *Id.* at 91.
[22] *Id.* at 95 to 96.
[23] *Id.* at 99.
[24] *Id.* at 100 to 103.
[25] *Id.* at 110 to 122.
[26] *Id.* at 195 to 203.
[27] *Id.* at 207 to 210.

In response, respondent filed a *Motion to Lift/Set Aside Order of Default and Admit Answer dated June 30, 2023* on September 7, 2023,[28] praying that the Order of Default be set aside and/or lifted, and that the *Answer* be admitted. On September 18, 2023, petitioner filed, its *Opposition/Comment on the Motion dated September 6, 2023 (Motion to Lift/Set Aside Order of Default and Admit Answer dated June 30, 2023) with Motion to Reset Hearing on October 12, 2023.*[29]

In the Resolution dated October 4, 2023,[30] the Court resolved to reverse its previous strict stand regarding the period within which to file an answer, holding that technical rules barring a full hearing on the merits should be relaxed. Hence, the Court granted respondent's *Motion to Lift/Set Aside Order of Default and Admit Answer dated June 30, 2023*, reversed and set aside its previous Resolution dated August 22, 2023, and admitted respondent's *Answer* as part of the records of the case.

On October 20, 2023, respondent transmitted the *BIR Records* for this case, consisting of 1,171 pages, in one folder.[31]

The Pre-Trial Conference was set and held on January 25, 2024.[32] Prior thereto, the *Pre-Trial Brief for the Respondent* was filed on January 16, 2024,[33] while the *Pre-Trial Brief (For the Petitioner)* was filed through accredited courier on January 18, 2024.[34]

On February 26, 2024, the parties submitted, their *Joint Stipulation of Facts and Issues*,[35] which was admitted and approved by the Court in its Resolution dated March 15, 2024,[36] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated April 5, 2024 was then issued.[37]

Trial then ensued, with both parties presenting and offering their respective testimonial and documentary evidence.

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[28] Docket, pp. 211 to 217.
[29] *Id.* at 225 to 229.
[30] *Id.* at 236 to 240.
[31] *Ex-Parte Manifestation & Compliance* dated October 19, 2023, *Id.* at 241.
[32] Resolution dated October 4, 2023, *Id.* at 236 to 240; Notice of Pre-Trial Conference dated October 19, 2023, *Id.* at 221 to 222; Minutes of the hearing held on, and Order dated, January 25, 2024, *Id.* at 260 to 262.
[33] *Id.* at 243 to 249.
[34] *Id.* at 250 to 255.
[35] *Id.* at 263 to 268.
[36] *Id.* at 271.
[37] *Id.* at 273 to 279.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Willy Tsai,[38] its President; and, (2) Mr. Ernesto P. Moreno,[39] its accountant.

On May 30, 2024, petitioner filed its *Formal Offer of Documentary Exhibits*,[40] to which respondent filed his *Comments/Objections (to the Petitioner's Formal Offer of Evidence)* on June 7, 2024.[41] In the Resolution dated August 15, 2024,[42] the Court admitted all of petitioner's offered exhibits.

For his part, respondent offered the testimonies of the following ROs, namely: (1) Jenny Katherine C. Querubin,[43] and, (2) Kelly Joyce B. Aniceto.[44]

On September 4, 2024, respondent filed his *Formal Offer of Respondent's Evidence/Exhibits*,[45] to which petitioner filed its *Comment/Opposition* on September 17, 2024, through accredited courier.[46] In the Resolution dated November 20, 2024,[47] the Court admitted all of respondent's offered exhibits.

On December 31, 2024, the *Memorandum [for] Petitioner Fortune Plastic* was filed,[48] while *Respondent's Memorandum* was submitted on January 10, 2025.[49]

The present case was submitted for decision on January 20, 2025.[50]

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[38] Exhibit "P-21", Docket, pp. 28 to 36; Minutes of the hearing held on, and Order dated, May 21, 2024, *Id.* at 287 to 289.
[39] Exhibit "P-22", *Id.* at 82 to 86; Minutes of the hearing held on, and Order dated, May 21, 2024, *Id.* at 287 to 289.
[40] *Id.* at 290 to 293.
[41] *Id.* at 295 to 298.
[42] *Id.* at 301 to 302.
[43] Exhibit "R-14", *Id.* at 126 to 136; Minutes of the hearing held on, and Order dated, August 20, 2024, *Id.* at 303 to 305.
[44] Exhibit "R-15", *Id.* at 163 to 170; Minutes of the hearing held on, and Order dated, August 20, 2024, *Id.* at 303 to 305.
[45] *Id.* at 307 to 313.
[46] *Id.* at 320 to 325.
[47] *Id.* at 338 to 339.
[48] *Id.* at 342 to 364.
[49] *Id.* at 370 to 388.
[50] Minute Resolution dated January 20, 2025, *Id.* at 390.

THE STIPULATED ISSUES

The parties submit the following issues for this Court's resolution:

1. Whether or not petitioner is liable for deficiency income tax, VAT, EWT, DST, IAET, and compromise penalty plus interest and surcharges for TY 2018 in the aggregate amount of ₱8,766,191.92.

2. Whether or not this Court has jurisdiction over petitioner as its administrative protest and petition for review were filed out of time.[51]

Petitioner's arguments

Petitioner maintains that it is not liable for deficiency taxes for TY 2018, in the aggregate amount of ₱8,766,191.92, on the ground that the subject assessment was not properly served upon it and is therefore void and cannot attain finality. It further asserts that this Court has jurisdiction over the instant *Petition for Review*, the same falling under "other matters arising from the provisions of the NIRC of 1997, as amended."

Petitioner likewise contends that it cannot be held liable to pay ₱11,463,406.82 or ₱20,665,674.15, as deficiency taxes, as the issuance of the WG lacks legal basis, considering that it did not receive any PAN/FAN prior thereto. It argues that no PAN or FAN was issued within the three-year prescriptive period; hence, the right of the government to assess petitioner has already been barred under the statute of limitations.

Respondent's counter-arguments

Respondent counters that this Court has no jurisdiction to entertain the appeal, the same having been filed out of time. He asserts that petitioner failed to file any valid protest within 30 days from receipt of the FAN/FLD; hence, the assessment has become final, executory and demandable. Respondent further argues that the *Petition for Review* should be dismissed for lack of merit, and that the Court has no jurisdiction to entertain the appeal by petitioner for being premature. He maintains that petitioner was afforded due process in the collection of taxes.

[51] Stipulation of Issues, Pre-Trial Order dated April 5, 2024, Docket, p. 274.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

This Court has jurisdiction over the case.

Before proceeding with the other issues of this case, it behooves the Court to first resolve the issue of jurisdiction raised by the parties.

In his *Memorandum*, respondent avers that petitioner failed to file any valid protest within 30 days from receipt of the FAN and FLD as prescribed under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 3.1.5 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013; hence, the FAN issued against petitioner had become final, executory and demandable.

In this regard, respondent claims that the FAN/FLD was constructively served both through registered mail and substituted service since petitioner failed to inform the BIR that it moved out or is no longer located in its registered business address.

On the other hand, petitioner argues that Section 228 of the NIRC of 1997, as amended, and the Revised Rules of the Court of Tax Appeals provide that this Court has exclusive jurisdiction not only for disputed assessment, refunds of internal revenue taxes, fees and other charges but also other matters arising under the NIRC of 1997, as amended.

According to petitioner, the PAN and the FAN were not properly served by respondent to petitioner but to other persons not authorized to receive the same on behalf of petitioner. Hence, the prescription for filing a protest did not commence, as petitioner was not aware that respondent had already issued the deficiency assessment for TY 2018.

Petitioner points out that it was only after it was informed of the WG that it had basis to avail of the intervention of this Court. Petitioner maintains that the instant *Petition for Review* was timely filed, as the filing of the same was made within 30 days from knowledge of the existence of the WG.

The Court agrees with petitioner.

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125,[52] as amended by RA No. 9282,[53] state 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;**
>
> xxx xxx xxx
>
> 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 the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. *(Emphases added)*

The Supreme Court, in *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[54] interpreted the above-quoted provisions in this wise, to wit:

> Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. vs. Court of Appeals*, the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide 'other matters' related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over 'other matters,' it presupposes that the tax assessment has not become final and unappealable.
>
> We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term 'other matters' referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

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 OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

54 G.R No. 169225, November 17, 2010.

xxx xxx xxx

> Plainly, the assailed CTA *En Banc* Decision, was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term 'other matters' can be supported or even deduced. What is rather clearly apparent, however, is that the term 'other matters' is limited only by the qualifying phrase that follows it.
>
> Thus, **on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is <u>not limited</u> to cases which involve decisions of the CIR 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 Bureau of Internal Revenue (BIR).**
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> xxx xxx xxx
>
> Furthermore, **the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over 'other matters' arising under the NIRC or other laws administered by the BIR as <u>separate and independent of each other</u>.** This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an 'other matter' must not by a final and unappealable tax assessment or, alternatively, must be a disputed assessment.
>
> Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. **The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.** *(Emphases and underscoring added)*

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[55] the Supreme Court held as follows, to wit:

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected. *(Emphasis added)*

[55] G.R. 162852, December 16, 2004.

Based on the aforequoted provisions and jurisprudential pronouncements, 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 NIRC of 1997, as amended, or related laws administered by the BIR.[56] In addition, any party adversely affected by the said decisions or ruling, may file an appeal to this Court within 30 days from receipt thereof, under the above quoted Section 11 of RA No. 1125, as amended.

In the present case, petitioner assails the validity of the WG Nos. RR5-WG-08-11-2022-3186B(024) and RR5-WG-08-11-2022-3186O(024), both dated August 12, 2022,[57] issued by respondent to BDO and MBTC. The subject WGs constitute an act of respondent on "other matters" arising under the NIRC, which, may be the subject of an appropriate appeal before this Court.

While respondent claims that the assailed assessment has become final, executory and demandable due to petitioner's failure to file a protest within 30 days from its alleged receipt of the FAN and FLD,[58] it must be pointed out that petitioner denies having ever received any assessment notices at all.[59] Thus, if the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[60] Moreover, if substituted service of the assessment notices was resorted to, respondent must strictly comply with the requirements laid down by law and its own rules.[61] Respondent, however, failed to prove that the assessment notices were properly served on petitioner, as will be discussed below.

Correspondingly, the reckoning of the 30-day reglementary period under Section 11 of RA No. 1125, as amended by RA No. 9282, must be based on petitioner's receipt of the WGs on August 22, 2022.[62] Therefore, the *Petition for Review* was timely filed on September 20, 2022,[63] and this Court can take cognizance of the present case.

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[56] Refer to *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[57] Exhibits "P-18" and "P-19, Docket, pp. 80 to 81.
[58] Exhibit "R-7" to "R-7-D" and "R-7-H" to "R-7-L", Docket, pp. 151 to 162.
[59] Q&A Nos. 9, 11, 14, 15 and 20, Exhibit "P-21", Docket, pp. 30 to 33.
[60] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
[61] Refer to *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.
[62] Par. 25, Material Facts, *Petition for Review*, vis-à-vis par. 5, *Answer*, Docket, pp. 14 and 111, respectively; Exhibits "P-18" and "P-19", Docket, pp. 80 to 81.
[63] Docket, pp. 6 to 26.

The subject tax assessments and warrants are void, for violation of petitioner's right to administrative due process.

Petitioner claims that it was not furnished a PAN and FAN for the subject tax assessment for TY 2018, and that it only received the WGs through BDO and MBTC. Petitioner, thus, argues that it was not afforded the fundamental right to be informed before its account has been subjected to garnishment.

According to petitioner, when the witnesses for respondent testified, they admitted to having resorted to substituted service. Petitioner contends that respondent did not exert effort to find its whereabouts or its authorized representative, even while the latter still held office at its current business address. Petitioner maintains that the allegation of the ROs that petitioner cannot be found anymore at its business address is not true. Petitioner points out that all Orders and Resolutions, as well as pleadings of respondent, pertaining to this case were all received by petitioner at its given address; thus, there is no reason why respondent cannot serve the PAN and FAN on petitioner.

Hence, petitioner avers that the defective service of the notices is a palpable violation of the right to due process, the subject assessment should be considered void. The government failed to serve the PAN and FAN on petitioner within the three-year period, or until April 15, 2022.

Petitioner states that, considering the PAN and FAN were served upon Ms. Irene Abad, a person not authorized by petitioner to receive any papers or commercial documents on its behalf. Petitioner asserts that she should have been presented to testify in this case. Petitioner also alleges that the receiving copy did not provide the exact date of receipt of Ms. Abad; such information was only stated in the Affidavit of Service. Petitioner further alleges that there is no evidence that RO Querubin herself left the assessments to the said Barangay personnel or to some other person. Petitioner avers that the Court cannot presume the validity of the substituted service of assessment and other papers.

Petitioner also asserts that, while respondent claimed that they served the FAN through registered mail, the proof of registry receipt was never presented before this Court. Petitioner states that respondent failed to show that the mail matter was returned to sender to prove that petitioner is not holding office at 42 Aster St. De Castro Subdivision, Paso de Blas, Valenzuela City, or has moved out.

Petitioner further claims that when RO Aniceto testified, she alleged that she served the WG to the Barangay where Mr. Willy Tsai was residing. Petitioner submits that, in the same vein that RO Querubin failed to exhaust efforts to locate petitioner, there was no extensive effort on the part of RO Aniceto to find petitioner and its officers to duly serve the WDL and WGs.

According to petitioner, the mere attempt allegedly made by the ROs to serve the PAN, FAN, and Warrants is not sufficient to satisfy the required due process to implement the collection of deficiency taxes. Had the respondent validly served the PAN, FAN, and Warrants, petitioner would have been given an opportunity to resort to other legal remedies to refute the deficiency assessment. Petitioner contends that it was deprived of its day in court and to avail corresponding remedy under the law and rules. Therefore, petitioner submits that all the proceedings and actions of respondent are void and the assessment has no legal binding effect upon petitioner.

On the other hand, respondent contends that his witness, RO Querubin, testified that when she visited the registered address of petitioner, the said corporation moved out and was no longer located in the registered business address in Valenzuela City, and that before serving the PAN/FAN constructively, RO Querubin exerted diligent efforts to personally serve the notices to the taxpayer.

Respondent also claims that RO Querubin served the FAN/FLD through constructive service, both by registered mail and serving it to a Barangay Official, where petitioner has a registered business address, in order not to deprive the taxpayer of due process and in accordance with the RRs.

Moreover, respondent states that during cross-examination, RO Aniceto confirmed that she personally went to the registered address of petitioner to serve the WDL but was informed that they had moved out.

This Court, however, rules in favor of petitioner.

Section 228 of the NIRC of 1997, as amended, mandates the following, to wit:

> Section 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 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 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.
>
> xxx xxx xxx. *(Emphasis added)*

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[64] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[65] The requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[66] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[67]

In relation thereto, Section 3.1.7 of RR No. 12-99,[68] as amended by RR Nos. 18-2013[69] and 7-2018,[70] provides:

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[64] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[65] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

[66] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[67] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 191 (2006).

[68] 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

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

[70] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

3.1.7[71] ***Modes of Service.*** **– The notice (PAN/FLD/FAN/**FDDA) **to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known* address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) **Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:**

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official <u>and</u> two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'*Disinterested witnesses*' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the

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[71] As renumbered pursuant to Section 2 of RR No. 7-2018.

party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

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

The provisions of Revenue Memorandum Order (RMO) No. 40-2019 dated May 30, 2019[72] also provides as follows:

II. Guidelines and Procedures

1. **The assessment notice shall be served to the taxpayer through <u>personal service</u>** by delivering personally a copy of the assessment notice at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

2. **In case personal service is <u>not possible</u>, the assessment notice shall be served either by substituted service or by mail. However, substituted service can only be resorted to when the party is not present at the registered or known address.**

   2.1 Substituted service shall be done as follows:

   2.1.1 The assessment notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

   2.1.2 If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

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[72] SUBJECT: Prescribing the Procedures for the Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of Revenue Regulations (RR) No. 18-2013.

2.1.3 If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

2.1.4 **<u>If no person is found in the party's registered or known address, the Revenue Officers (ROs) concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The assessment notice shall be given to said barangay official. Such facts shall be contained in the bottom portion of the assessment notice, as well as the names, official positions and signatures of the witnesses.</u>**

2.1.5 Should the party be found at his registered or known address or any other place but refuses to receive the assessment notice, the ROs concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The assessment notice shall be given to said barangay official. Such facts shall be contained in the bottom portion of the assessment notice, as well as the names, official positions and signatures of the witnesses.

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

2.2 **<u>Service by mail shall be done by sending a copy of the assessment notice through</u>** —

2.2.1 **<u>Registered mail with an instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered</u>**; or

2.2.2 Reputable professional courier service; or

2.2.3 Ordinary mail, if no registry or reputable courier is available in the locality of the taxpayer.

xxx xxx xxx

4. **For assessment notices that are served to the taxpayer through personal or substituted service, the following statement shall be indicated at the lower portion of the notice:**

ACKNOWLEDGEMENT OF RECEIPT

(To be accomplished by recipient)

____
Date of Receipt

Printed Name, with Position/Designation/ Relationship if Made on Behalf of the Taxpayer Named in the Assessment Notice	Signature of Person Acknowledging Receipt
Printed Name and Position of Barangay Official	Signature of Barangay Official
Signature Over Printed Name of Witness	Signature Over Printed Name of Witness

(To be accomplished by the server)

Please check: ☐ No person found in the taxpayer's registered or known address
☐ Party refused to receive the assessment notice

I hereby certify that the original copy of this (PAN/FLD/FAN/FDDA) was duly served by me, same having been received by ________________ on the date mentioned above.

____
Signature Over Printed Name of the Revenue Officer Who Served the Assessment Notice

5. Personal or substituted service of assessment notice shall be effected by the RO assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose.

6. **In compliance with Section 3.1.6[73] (iii) of Revenue Regulations No. 18-2013, the server shall prepare the following written reports in triplicate copies, which shall be under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information.**

[73] Already renumbered to Section 3.1.7 pursuant to Section 2 of RR No. 7-2018. However, under RMO No. 40-2019, the said section was still referred to as Section 3.1.6.

6.1 **Report on** Personal/**Substituted Service** (Annex A)

6.2 **Report on Service by Mail**/Courier (Annex B)

xxx xxx xxx

7. **The following documents as proof of service, shall be provided by the server to the Assessment Division or Reviewing Office as attachment to the docket of the case**:

7.1 **Duplicate copy of the assessment notice duly received by the taxpayer/authorized representative or person mentioned under item no. 2.1 hereof, in case of substituted service**;

7.2 **Registry receipt issued by the Philippine Postal Corporation (PhlPost)**, or the official receipt issued by the professional courier company (PCC);

7.3 **Registry return card or proof of delivery if mailed through the PhlPost**, or proof of delivery if mailed thru PCC;

7.4 **In case of unclaimed notices, the unclaimed envelope containing the assessment notice and notice given by the postmaster to the addressee duly certified by the postmaster**, or certification from the PCC stating the detailed circumstances/reason(s); and

7.5 **Any other pertinent document executed with the intervention of the PhlPost**/PCC company.

xxx xxx xxx *(Emphases and underscoring added)*

Based on the foregoing provisions, one of the modes of service of the PAN, FAN, and FLD, is through substituted service. Substituted service can be resorted to only: (1) when the party is not present at the registered or known address; (2) if no person is found at the party's registered or known address; and, (3) when the party is found therein, but refuses to receive the notice.

If the party is not present, the notice may be left at the party's registered or known address, with his/her/its clerk or with a person having charged thereof. If no person is found in the party's registered or known address or should the party be found at the registered or known address but refuses to receive the notice, the ROs concerned shall <u>bring a barangay official and two disinterested witnesses to the address so that they may personally observe and attest to such absence</u> or refusal, as the case may be; and <u>such fact shall be contained in the bottom portion of the notice</u>, as well as the names, official position and signatures of the witnesses. In the latter two cases, the notice shall be given to the said barangay official.

To prove that the PAN was served to petitioner *via* substituted service, respondent presented a copy of the PAN stamped "Received" by Brgy. Staff, Ms. Abad of Brgy. Paso de Blas dated November 22, 2021,[74] an undated and unaccomplished Acknowledgment of Receipt signed by Brgy. Staff, Ms. Abad, Ms. Jenny Espiritu, and Ms. Juliet C. Fabianes,[75] and an Affidavit of Service of Preliminary Assessment Notice (PAN) executed by RO Querubin,[76] stating that she served the PAN on November 22, 2021 by substituted service, thus:

> [x] By leaving a copy of the Preliminary Assessment Notice with Ms. Irene Abad, a Barangay staff, in the presence of two (2) witnesses, for the reason that nobody was present/found in the taxpayer's office or regular place/business when the Preliminary Assessment Notice was received.

To prove that the FAN and FLD were served to petitioner *via* substituted service, respondent presented a copy of the FAN and FLD stamped "Received" by Brgy. Staff, Ms. Abad of Brgy. Paso de Blas dated January 5, 2022,[77] and an Affidavit of Service of Final Assessment Notice & Formal Letter of Demand ([F]AN/FLD) executed by RO Querubin,[78] stating that she served the FAN and FLD on January 5, 2022 by substituted service, thus:

> [x] By leaving a copy of the Final Assessment Notice and Formal Letter of Demand with Ms. Irene Abad, barangay staff, in the presence of two (2) witnesses, for the reason that nobody was present/found in the taxpayer's office or regular place/business when the Final Assessment Notice and Formal Letter of Demand was received.

Notably, it is apparent that the bottom portion of these notices do not contain the facts surrounding the circumstances of the substituted service, nor the names, official positions and signatures of the witnesses, as required under Section 3.1.7(ii) of RR No. 12-99, as amended, and paragraph II(4) of RMO No. 40-2019.

Moreover, only the copy of the PAN included a copy of an Acknowledgment of Receipt,[79] and while it appears to be signed by three people, it is undated and the details have not been filled out, and was not

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[74] Exhibits "R-5" to "R-5-A", Docket pp. 144 to 148.
[75] Exhibit "R-6-B", *Id.* at 150.
[76] Exhibits "R-6" to "R-6-A", *Id.* at 149.
[77] Exhibits "R-7" to "R-7-D" and "R-7-H" to "R-7-J", *Id.* at 151 to 161.
[78] Exhibits "R-6" to "R-6-B" and "R-7-K" to "R-7-L", *Id.* at 149 to 150, and 151 to 162.
[79] Exhibits "R-6-B", *Id.* at 150.

even signed by the RO who served the notice. The same shows that it was served to Ms. Abad, with the "Position of Barangay Official" filled out as "Brgy. Staff".

However, Ms. Abad, who received both the PAN and FAN/FLD is a barangay staff and not barangay official as required by RR No. 12-99, as amended, and RMO No. 40-2019, in relation to Section 387[80] of RA No. 7160 or the Local Government Code of 1991.

But even granting that Ms. Abad may be considered a barangay official, RR No. 12-99, as amended, and RMO No. 40-2019 require that the concerned ROs shall bring a barangay official and two disinterested witnesses to the address so that they may personally observe and attest to such absence, which respondent failed to do.

According to RO Querubin, the substituted service was accomplished by leaving a copy of the assessment notices with Ms. Abad, in her capacity as Barangay Staff,[81] to wit:

> **18 Q: Do you have any proof that [the] Preliminary Assessment Notice No. 10755 dated November 05, 2021, including the corresponding Details of Discrepancy[] issued[,] were received by the petitioner or by any of their authorized representative? Please explain.**
>
> *A: Yes, I have. Based on the BIR Records, particularly the Affidavit of Service of Preliminary Assessment Notice and Acknowledgment Receipt, the PAN including the Details of Discrepancy, <u>were delivered through substituted service on November 22, 2021, by leaving a copy to Ms. Irene Abad, in her capacity as Barangay Staff,</u> since no one is found nor present at the office or registered business address of the taxpayer. The barangay staff placed a stamp received dated November 22, 2021, in the copies of the PAN and details of discrepancy.*
>
> xxx xxx xxx
>
> **23 Q: Do you have any proof that Final Assessment Notices and the Formal Letter of Demand (FAN/FLD) for Income Tax (IT), Value-Added Tax (VT), Expanded Withholding Tax (EWT), Documentary Stamp Tax[] (DST)[,] Improperly Accumulated Earnings Tax (IAET), and Compromise penalty, numbered as 39203/23765 dated December 16, 2021, for the taxable year 2018,**

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[80] SEC. 387. *Chief Officials and Offices.* —
(a) There shall be in each barangay a punong barangay, seven (7) sangguniang barangay members, the sangguniang kabataan chairman, a barangay secretary, and a barangay treasurer.
(b) There shall also be in every barangay a lupong tagapamayapa. The sangguniang barangay may form community brigades and create such other positions or offices as may be deemed necessary to carry out the purposes of the barangay government in accordance with the needs of public service, subject to the budgetary limitations on personal services prescribed under Title Five, Book II of this Code.

[81] Q&A Nos. 18 and 23, Exhibit "R-14", Docket, pp. 130 and 132, respectively.

> **including the corresponding Details of Discrepancy, issued were received by the petitioner or by any of their authorized representative? Please explain.**
>
> *A: Yes, I have. Based on the BIR Records, particularly the Affidavit of Service of Final Assessment Notice and Formal Letter of Demand, the FAN/FLD were delivered thru registered mail to the registered business address of the taxpayer last December 29, 2021 <u>and thru substituted service on January 05, 2022, by leaving a copy to Ms. Irene Abad, in her capacity as Barangay Staff</u>. Furthermore, this fact can also be seen on the lower portion of the Final Assessment Notice and Formal Letter of Demand on where a **"stamped received"** of the Barangay was placed dated January 5, 2022 and the attached Registry Receipt with RP No. RE 517 848 721 ZZ dated December 29, 2021 is placed."* (Underscoring added)

RO Querubin repeated this answer during her re-direct examination and during the clarificatory questions propounded to her on August 20, 2024, thus:

> ATTY. GONZALES:
>
> Ms. Witness, before going to the barangay for serving the PAN and FAN to the barangay, did you exert diligent effort in serving personally the Preliminary Assessment Notice and Final Assessment Notice?
>
> A:
>
> **When I served the Preliminary Assessment Notice, <u>I went to the registered address of the subject tax payer and then went to the barangay to leave a copy</u> after which the Final Demand Letter was issued and then I mailed it again to the registered address of the subject tax payer and <u>served it again to the barangay</u> since no one in the Fortune Plastic was there.**
>
> xxx xxx xxx
>
> JUSTICE SAN PEDRO:
>
> xxx xxx xxx
>
> Q:
>
> **<u>Here's required that you went to the registered address but there was no person found?</u>**
>
> A:
>
> **<u>Yes, your Honors.</u>**
>
> Q:
>
> **<u>And then you went to the barangay?</u>**
>
> A:
>
> **<u>Yes, your Honors.</u>** M

Q:
Because there was no person found?

A:
Yes, your Honors.

Q:
In the Rules, it requires you to bring a barangay official and two (2) disinterested witnesses, were there two (2) disinterested witnesses?

A:
Yes, your Honors, I think I have it in my ... (interrupted)

JUSTICE SAN PEDRO:
In the acknowledgment portion?

A:
Yes, your Honors.

Q:
And who were those two (2) disinterested witnesses that cannot be revenue officers?

A:
Yes, your Honors, it's part also of the barangay officials.

Q:
They are part of the barangay?

A:
Yes, your Honors.

Q:
They are not employees of the BIR?

A:
No, your Honors.

Q:
Okay. And the notice was given to the barangay officials, that's correct?

A:
Yes, your Honors.

Q:
Ms. Irene?

A:
Yes, your Honors.

Q:
Were these facts contained in the bottom portion of the notice, the name, official position and signatures of the three (3)? Meaning, Irene and the two (2) disinterested witnesses?

A:
Just Ms. Irene Abad, your Honors.

Q:
The signatures of the witnesses were not found there?

A:
In the Preliminary Assessment but in the acknowledgement receipt it was signed also.

Q:
Of the three (3), will that indicate their official positions?

A:
Just the other barangays staff, the one witness but the other one doesn't have.[82] *(Emphases and underscoring added)*

Based on the foregoing testimony, it cannot be said that respondent complied with the rule to "*bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence*" in violation of the provisions of RR No. 12-99, as amended, and RMO No. 40-2019.

From all the foregoing, respondent failed to prove compliance with the requirements of substituted service of the PAN and FAN/FLD. Even granting that respondent's claim that petitioner could no longer be found in its registered or known address is true, still it behooves respondent to strictly comply with the rules of service. To stress, if no person is found in the party's registered or known address, the BIR shall resort to substituted service by bringing a barangay official and two disinterested witnesses to the address so that they may personally observe and attest to such absence. Strict compliance with the requirements of substituted service is essential in ensuring the right of the taxpayer to due process.[83]

It must be emphasized that the sending and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the BIR must strictly comply with. Certainly, the importance of this preliminary stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a

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[82] Transcript of Stenographic Notes (TSN) dated August 20, 2024, pp. 17 and 21 to 23.
[83] *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*, supra.

FAN.[84] In the oft-cited case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[85] the Supreme Court stressed the importance of the PAN, in particular, as a substantive, and not just a formal, due process requirement, thus:

> **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 be informed of the facts and the law upon which the assessment is made. 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.**
>
> xxx xxx xxx
>
> **From the provision quoted above, it is clear that the sending of a PAN to a 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. The use of the word '*shall*' in subsection 3.1.2 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 by law and its own rules is a denial of Metro Star's right to due process.** Thus, for its 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, the assessment made by the CIR is void. *(Emphases added)*

Considering that respondent failed to observe the requirements necessary to validly effect the substituted service of the subject PAN and FAN/FLD, the subject deficiency tax assessments are rendered null and void for denial of petitioner's right to due process.

Neither was respondent able to prove the proper service of the FAN/FLD by mail.

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[86] the Supreme Court ruled as follows:

> <u>**If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee**</u>**.** Here, the *onus probandi* has shifted to the BIR to show by

[84] Refer to *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.
[85] G.R. No. 185371, December 8, 2010.
[86] G.R. No. 202695, February 29, 2016.

> contrary evidence that GJM indeed received the assessment in the due course of mail. **It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the <u>direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee</u>.**
>
> To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. **The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, <u>the release, mailing, or sending of the same must still be clearly and satisfactorily proved</u>. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.** *(Emphases and underscoring added)*

Thus, if the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved.

To refute petitioner's claim that it did not receive the FAN/FLD, RO Querubin testified that she accomplished the substituted service of the FAN/FLD by leaving a copy to Ms. Abad, in her capacity as Barangay Staff, but also stated that she delivered it through registered mail. To prove the fact of mailing, respondent merely presented the Registry Receipt No. RE 517 848 721 ZZ dated December 29, 2021, which was attached to the FAN.[87] Respondent, however, failed to present the written report on the service by mail which should be executed under oath before a Notary Public or any of the following documents in compliance with Section 3.1.7(iii) of RR No. 18-2013, in relation to RMO No. 40-2019:

1. Registry return card or proof of delivery if mailed through the PHLPost;
2. In case of unclaimed notices, the unclaimed envelope containing the assessment notice and notice given by the

[87] Exhibit "R-7", Docket, p. 151.

postmaster to the addressee duly certified by the postmaster; and,

3. Any other pertinent document executed with the intervention of the PHLPost.

In fact, during the hearing held on August 20, 2024, RO Querubin confirmed that there was no return card to support her claim that she sent the FAN/FLD through registered mail, *viz*:

> JUSTICE LIBAN:
> What is the question?
>
> ATTY. PAA:
> Yes, your Honors.
>
> Q:
> With regard to the registered mail, Madam Witness, did you attach on your Judicial Affidavit the return card coming from the Phil Post to prove that the same was served through registered mail?
>
> JUSTICE LIBAN:
> Is there a return card?
>
> A:
> No.
>
> JUSTICE LIBAN:
> **There is no return card?**
>
> A:
> **There is no return card, your Honors.**
>
> JUSTICE LIBAN:
> No return card.
>
> ATTY. PAA:
> **And you did not ask for the Phil Post to issue certification to prove that postmasters served the Final Assessment Notice to the tax payer?**
>
> A:
> **I did not, Sir.**[88] *(Emphases added)*

It is clear from RO Querubin's testimony that respondent was also unable to prove compliance with the requirements of service by mail. Absent clear and satisfactory proof, the Court cannot give credence to respondent's allegation that it was able to serve the FAN/FLD through registered mail.

[88] TSN dated August 20, 2024, pp. 19 to 20.

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.[89] Even as We concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[90]

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights and **the failure of the respondent to strictly comply with the requirements laid down by law and the BIR's own rules is a denial of the taxpayer's right to due process.**[91]

Settled is the rule that a void assessment bears no valid fruit. Correspondingly, the government is barred from collecting any tax liabilities based on such void assessment. As such, when an assessment is void, any WDL or WG based upon it is also void and cannot be executed. As explained by the Supreme Court in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, et seq.,* [92] *viz.*:

> In the normal course of tax administration and enforcement, **the BIR must first make an assessment then enforce the collection of the amount so assessed. 'An assessment is not an action or proceeding for the collection of taxes. x x x It is a step preliminary, but essential to warrant distraint, if still feasible, and, also, to establish a cause for judicial action.' The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment.** A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.
>
> In *Commissioner of Internal Revenue v. Reyes (Reyes Case)*, the petitioner issued an assessment notice and a demand letter for alleged deficiency estate tax against the taxpayer estate. The assessment notice and demand letter simply notified the taxpayer estate of petitioner's findings, without stating the factual and legal bases for said assessment. **The Court, absent a valid assessment, refused to accord validity and**

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[89] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[90] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[91] Refer to *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, supra.
[92] G.R. Nos. 197945 and 204119-20, July 9, 2018.

> **effect to petitioner's collection efforts – which involved, among other things, the successive issuances of a collection letter, a final notice before seizure, and a warrant of distraint and/or levy against the taxpayer estate** xxx
>
> xxx xxx xxx
>
> **Absent a previously issued assessment** supporting the 1998 and 2002 Collection Letters, it is clear that petitioner's attempts to collect through said collection letters as well as the **subsequent Warrants of Garnishment and Distraint and/or Levy are void and ineffectual. If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place**. *(Emphases and underscoring added)*

Similarly, in the fairly recent case of *Commissioner of Internal Revenue vs. Stradcom Corporation*,[93] the Supreme Court upheld this Court's cancellation of the WDL and WGs issued against therein taxpayer, there being no final and valid assessment, as follows:

> **Thus, the CIR's attempt to collect the alleged income tax from Stradcom without issuing a valid assessment was in clear violation of the due process requirements mandated under the 1997 NIRC and RR No. 12-99, as amended. A tax collection effort that stems from an invalid assessment holds no legal weight.** Even more so, if no assessment was issued at all, then there is absolutely no foundation for any collection to stand on. **Without a proper assessment, there exists no enforceable tax liability, making any attempt to collect through summary remedies entirely void.** Thus, the CIR cannot claim a right to collect taxes that were never properly assessed in the first place.
>
> **There being no final and valid assessment to begin with, the WDL and WOG issued against Stradcom are void and have been correctly cancelled and set aside by the CTA Division and CTA EB.** *(Emphases added)*

In sum, respondent failed to observe the requirements necessary to validly effect the substituted service of the subject PAN and FAN/FLD, and the service by mail of the subject FAN/FLD. Correspondingly, due process was not accorded to petitioner in the issuance of the subject PAN and FAN/FLD, rendering the deficiency tax assessments, as well as the subsequently issued WDL and WG, void.

WHEREFORE, in light of the foregoing considerations, the present **Petition for Review** is **GRANTED.**

[93] G.R. No. 255520, April 21, 2025.

Accordingly, for being null and void, the assessments issued by respondent against petitioner on its alleged deficiency income tax, VAT, EWT, DST, IAET, and compromise penalty in the aggregate amount of **₱8,766,191.92**, plus interest and surcharges, for the taxable year 2018, are **CANCELLED** and **SET ASIDE**.

Consequently, WDL No. RR5-WDL-07-07-2022-3058(024) and the WGs dated August 12, 2022 issued against petitioner in relation to its alleged deficiency tax assessments for taxable year 2018 are likewise **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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.

MA. BELEN M. RINGPIS-LIBAN
Presiding 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice