REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

KATHERINE M. LIM and EDELYN CORONACION,
Respondents.

CTA EB Crim. No. 019
(CTA Crim. No. O-113)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

OCT 01 2012 2:20 p.m.

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DECISION

UY, *J.*:

In this Petition for Review filed on February 29, 2012, petitioner appeals the civil aspect of CTA Crim. Case No. O-113 entitled *"People of the Philippines, Plaintiff, versus Katherine M. Lim & Edelyn Coronacion, Accused"*, and prays that the respondents herein be ordered to pay:

1. the Bureau of Internal Revenue (hereinafter referred to as the "BIR") the aggregate amount of ₱ 9,864,759.57, inclusive of increments, representing

internal revenue tax liabilities of UE Automotive Manufacturing, Inc. (UEAM) for taxable year 2004/2005; and

2. the 20% interest as prescribed under Section 249 of the National Internal Revenue Code (hereinafter referred to as "NIRC") of 1997, as amended.

THE FACTS

Petitioner, People of the Philippines, is represented by the BIR, the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City.

Respondents, Katherine M. Lim and Edelyn Coronacion, the accused in the appealed case, CTA Crim. Case No. 0-113, are the President and the Chief Accountant, respectively, of UEAM, a domestic corporation engaged in the manufacture of automotive spare parts.

The antecedent facts in CTA Crim. Case No. 0-113, as culled from the records thereof, are as follows:

UEAM, through its Board of Directors, decided to close and cease its operations effective January 31, 2000. Notices of the said closure were sent to the Department of Labor and Employment, Social Security System, Home Development Mutual Fund, and the City Treasurer of the City of Caloocan.

In a letter dated March 2, 2006, UEAM informed the BIR, through Revenue District Officer of Revenue Region No. 6, that it has decided to permanently close and cease operations effective September 2005.

Consequently, a Tax Verification Notice was issued by the BIR authorizing its Revenue Officer, Arnold Apdua, to verify UEAM's supporting documents and pertinent records relative to the latter's closure of business. The verification prompted the issuance of the assessment for alleged value-added tax (VAT) deficiency of UEAM in the aggregate amount of ₱ 9,864,759.57, which in turn, led to the filing of a criminal case on February 19, 2009, against respondents, as the alleged responsible officers of UEAM.

Said respondents were charged before the Second Division of this Court (or the "Court in Division") as the alleged responsible officers of UEAM for violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, under Information filed by Assistant City Prosecutor Magnolia P. Gonzales on February 19, 2009, which reads:

> "The undersigned accuses **KATHERINE M. LIM and EDELYN CORONACION** of a Violation of **Section 255 in relation to Sec. 253(d) and 256 of the 1997 Tax Code**, committed as follows:
>
> That on or about April 16, 2007, in the City of Manila, Philippines, the said accused, being then the authorized responsible officers/President and Chief Accountant, respectively, of **UE AUTOMOTIVE MANUFACTURING, INC.** with business address located at # 1046-1050 G. Masangkay St., Binondo this City, having filed their internal revenue tax for the year 2004/2005, and after an examination and audit of the same, it has been found that there is due and collectible from said **UE AUTOMOTIVE MANUFACTURING, INC.** the amount of **Php 9,864,759.57** as **Value Added Tax** for the said year, did then and there willfully, unlawfully and knowingly fail, refuse and neglect to pay said Value Added Tax and without formally protesting against or appealing the same despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines in the aforesaid amount of **Php 9,864,759.57**, Philippine currency.
>
> Contract *(sic)* to law."

The case was docketed as CTA Crim. Case No. O-113.

Respondents, the accused therein, Katherine Lim and Edelyn Coronacion, pleaded "not guilty" during their arraignment, respectively held on April 13, 2009 and May 18, 2009.

NM

Trial ensued. The prosecution presented the testimonies of the following witnesses:

1. Revenue Officer Arnold A. Apdua, who was the Revenue Officer tasked to investigate UEAM's books and records pursuant to a Tax Verification Notice;

2. Ms. Paz Arcilla, Section Chief of the Billing Section of the Assessment Division of BIR-Manila;

3. Ms. Candida E. Labaya, then the Revenue Reviewer assigned at the Assessment Division of the BIR, Revenue Region No. 6, Manila;

4. Ms. Edna Ortalla, Section Chief of the Review Section of the Assessment Division of the BIR, Revenue Region No. 6, Manila;

5. Ms. Teresita Maglunog, then the Section Chief of the Records Section, Administrative Division, BIR-Manila;

6. Mr. Armando C. Makatangay, Mailing Custodian of the Administrative Division of Revenue Region No. 6, BIR-Manila; and

7. Ms. Agnes Salta, then the Collection Enforcement Officer assigned at the Collection Unit of RDO No. 30, BIR-Manila.

Thereafter, it formally offered in evidence Exhibits "A" to "CC". Except for Exhibits "I-2" and "V" to "V-5" which were denied admission in the Resolution dated January 13, 2010, the following pieces of evidence for the prosecution, were admitted:

Exhibit	Document
"A" to "A-2"	UEAM's Annual Income Tax Return for taxable year 2003
"B"	UEAM's Financial Statements for taxable year 2004
"C" to "C-2"	UEAM's General Information Sheet filed with the Securities and Exchange Commission (SEC)
"D"	UEAM's letter to the BIR dated March 2, 2006
"E" to "E-4"	Tax Verification Notice No. 2003 00009851 dated April 10, 2006
"F" to "F-3"	BIR's Request for Presentation of Records dated April 18, 2006
"G" to "G-4"	BIR's Informal Conference Letter dated June 30, 2006 together with the computation of the proposed VAT assessment of ₱ 7,934,212.08
"H" to "H-7"	Revenue Officer's Audit Report on VAT relative to the audit of UEAM for taxable years 2004-2005
"I"	Proposed VAT Assessment Form of RDO No. 30, BIR-Manila

	containing the amount of ₱ 7,954,212.08
"J"	Memorandum Report dated July 21, 2006 of Revenue Officer Arnold Apdua of RDO No. 30, BIR-Manila with Indorsement of then RDO Rosemarie Ramos-Bagasa to the Regional Director of BIR-Manila
"K"	Assignment Slip of Assessment Division, BIR-Manila
"L" to "L-3"	Pre-Assessment Notice dated February 5, 2007 issued by the BIR against UEAM for deficiency VAT of ₱ 7,946,150.88 for taxable years 2004-2005
"M"	Demand Letter dated March 14, 2007 issued by the Commissioner of Internal Revenue to UEAM for compromise penalty on VAT amounting to ₱ 25,000 covering taxable years 2004/2005
"N" to "N-3"	Demand Letter dated March 14, 2007 issued by the Commissioner of Internal Revenue to UEAM for deficiency VAT liability amounting to ₱ 9,835,759.57 covering taxable years 2004-2005
"O" to "O-5"	Final Assessment Notice No. 30-2004/2005 dated March 14, 2007 issued by the Commissioner of Internal Revenue, through the Regional Director, to UEAM as deficiency VAT liability amounting to ₱ 9,835,759.57 covering taxable years 2004-2005
"P" to "P-3"	Transmittal Slip of Assessment Notice and Demand Letters for UEAM covering the deficiency VAT assessment of ₱ 9,835,759.57 under Final Assessment Notice No. 30-2004/2005 with the Registry Receipt No. 907461 dated March 14, 2007
"Q"	Registry Return Receipt of UEAM relative to mailed matter under Registry Receipt No. 907461 dated March 14, 2007
"R" to "R-3"	Final Notice Before Seizure dated July 24, 2007
"S" to "S-4"	Referral Memorandum dated July 24, 2007
"T" to "T-7"	Warrant of Distraint and/or Levy dated August 13, 2007
"U" to "U-2"	Memorandum Report dated October 19, 2007
"W" to "W-1"	Indorsement dated October 19, 2007
"X"	Judicial Affidavit of Arnold Apdua
"Y"	Judicial Affidavit of Ma. Paz Arcilla
"Z"	Judicial Affidavit of Candida E. Labaya
"AA"	Judicial Affidavit of Edna Ortalla
"BB"	Judicial Affidavit of Teresita Maglunog
"CC"	Judicial Affidavit of Agnes Salta

On the other hand, respondents filed their Demurrer to Evidence on March 18, 2010, with leave of court, praying for the dismissal of the CTA Crim. Case No. 0-113 on the ground of insufficiency of evidence to prove their guilt.

In its Resolution dated July 7, 2010, the Court in Division denied the said Demurrer for lack of merit. Likewise, it denied respondents' Motion for Reconsideration of the said denial in the Resolution dated October 14, 2010.

Consequently, both respondents testified and filed their Formal Offer of Exhibits on July 7, 2011. They presented in evidence Exhibits "1" to "14". Exhibits "1" to "5" were denied admission in the Resolution dated August 16, 2011. The admitted pieces of evidence for the respondents were as follows:

Exhibit	Document
"6" to "6-H"	Decision dated September 29, 2000 rendered by Labor Arbiter Manuel R. Caday of the National Labor Relations Commission (NLRC)
"7" to "7-Z"	Decision dated April 17, 2001 rendered by Labor Arbiter Manuel R. Caday of the NLRC
"8" to "8-TTT"	Notice of Levy/Sale on Execution of Personal Property dated September 4, 2002 issued by NLRC Sheriff Manolito G. Manuel
"9" to "9-F"	NLRC Sheriff's Return dated January 30, 2003
"10" to "10-A"	NLRC Sheriff's Certificate of Sale dated January 27, 2003
"11" to "11-F"	Certificate of Sale dated January 12, 1999
"12"	Letter dated March 2, 2006 sent to the BIR
"13"	Judicial Affidavit dated January 12, 2011 of accused Edelyn Coronacion
"14"	Judicial Affidavit dated June 23, 2011 of accused Katherine M. Lim

On September 19, 2011, petitioner filed its Memorandum for the prosecution, alleging as follows:

> "The criminal liability of the two accused as the prime statutory responsible officers of UEAMI, they being the President and Chief Accountant, is direct, distinct and separate from the corporation, hence, the corporate act of non-payment of its VAT liability for taxable years 2004/2005 despite repeated demands, made the two accused liable under Sections 255 & 253(d) of the 1997 Tax Code. The two accused cannot escape the legal consequences of their being responsible officers of UEAMI. The accused contention that demand letters were not personally addressed to them is inconsequential.
>
> Under Section 253(d), it is not required that the demand for payment of VAT liability be served personally to the two accused, before said accused as the President and Chief Accountant of UEAMI, be criminally liable for UEAMI's violation of Section 255 of the 1997 Tax Code. Service to UEAMI is equivalent to service to its responsible officers, specifically to both accused as President and Chief Accountant thereof. The sending of demand letters of UEAMI and the latter's willful failure to pay its VAT liability for taxable years 2004/2005 despite said demands is sufficient to

establish the criminal liability of the accused as responsible officers of UEAMI, which the prosecution has clearly established during trial.

The fact that the demands for payment for taxes such as the Final Notice Before Seizure, and the Warrant of Distraint and/or Levy (Exhibits 'R' and 'T' respectively) were addressed to UEAMI and not to the two accused for violation of Section 255, considering that two accused, being the President and Chief Accountant of UEAMI, are the prime responsible officers statutorily liable for UEAMI's willful non-payment of its VAT liability for taxable years 2004/2005.

xxx xxx xxx

Plaintiff maintains that UEAMI shall be liable to pay the BIR of its deficiency VAT of P7,946,150.88 for taxable years 2004/2005. The charge against the accused for willful non-payment of the aforesaid tax liabilities of UEAMI despite repeated demand was duly established during proceedings. xxx

The prosecution satisfactorily established the three (3) essential elements of the offense under Section 255 of the NIRC of 1997, namely:

(1) The accused is the responsible person required by law to pay said P7,946,150.88 for and in behalf of UEAMI;

(2) That the deficiency taxes were not paid at the time required by law, that is, when the same have become collectible because UEAMI failed to protest the assessments;

(3) That the non-payment was willful due to continual refusal to pay despite repeated demands.

xxx xxx xxx

All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue; the taxpayer must prove the contrary xxx.

Plaintiff maintains that the deficiency VAT assessment of P7,946,150.88 was based on factual findings of revenue officers of BIR-Manila which was never disputed by the corporate taxpayer UEAMI, hence, said assessment has become final, demandable and executory."

In their Memorandum filed on September 23, 2011, respondents asserted that proper service and issuance of both the PAN and FAN are mandatory. They consistently denied having received the PAN and FAN and therefore, the prosecution allegedly has the burden to prove the fact of sending the PAN and FAN at the correct address and the actual receipt thereof.

Respondents further argued that UEAM could not be held liable for deficiency VAT since its real and personal properties had already been foreclosed prior to 2004-2005. During said period, UEAM no longer had any assets nor were there any commercial transactions which could have been subject to VAT. The prosecution's witness allegedly confirmed that no commercial transaction occurred in the covered periods of 2004-2005 and that its assets were already foreclosed.

Allegedly, it was in 2003 when there was an actual sale, which was the levy and public auction of all remaining personal properties owned by UEAM. The same holds true for the foreclosure of UEAM's real property by Metrobank in 1999, which were held to satisfy UEAM's debt and not made in the "course of trade or business" which may be considered as transactions that are deemed as a sale. Thus, the failure to protest the assessment does not allegedly make respondents criminally liable since there was actually no deficiency VAT due.

Even assuming that respondents were validly served with the PAN/FAN and that there was a valid deficiency VAT assessment for 2004-2005, nevertheless respondents asserted that they did not "willfully" fail to pay the tax because UEAM was financially incapable to do so. There was no malice because no money or assets were left for payment of the supposed deficiency VAT. Furthermore, since respondents supposedly never received any of the assessment notices, no willfulness could be attributed as such and in fact they were not even aware of the legal and factual bases of the tax assessment.

On September 29, 2011, the case was considered submitted for decision after the parties submitted their memoranda.

The Court in Division rendered a Decision on December 12, 2011, pertinent portions of which reads:

> "Considering that the prosecution failed to prove that the PAN was received by the accused, the assessment made by the CIR is void. It is well-settled that a void assessment bears no fruit. Thus, no civil liability arises in this case.
>
> **WHEREFORE,** premises considered, accused Coronacion and Lim are hereby ACQUITTED for failure of the prosecution to establish the guilt of both Accused beyond reasonable doubt and without civil liability.
>
> **SO ORDERED.**"

On December 26, 2011, the prosecution filed a "MOTION FOR PARTIAL RECONSIDERATION (Of the Civil Aspect Of The Case)", praying that a judgment be rendered declaring the subject assessment valid and ordering UEAM to pay the BIR the total amount of ₱ 9,864,759.57, as its corporate VAT liabilities for taxable year 2004/2005 which is due the government.

On January 13, 2012, respondents filed their "COMMENT/OPPOSITION (Re: Motion for Partial Reconsideration dated 26 December 2011)", arguing that: (1) it is well-settled that a void assessment bears no fruit, and that no civil liability arose against respondents considering that the BIR's assessment was void; and (2) contrary to the prosecution's claims, the assessment did not become final, demandable, and executory, considering that they did not receive the assessment notices. Thus, no civil liability could have attached.

In the Resolution dated January 27, 2012, the Court in Division denied petitioner's Motion for failure of the Commissioner of Internal Revenue to prove receipt of the preliminary assessment notice (PAN) by the taxpayer which renders the assessment void. The Court in Division found that: (1) the prosecution's Motion as a mere rehash of the arguments that were presented in its Memorandum, which had been passed upon by the Court in the assailed Decision; and (2) there are no new evidence or matters raised that would warrant a reconsideration of the same Decision.

On February 14, 2012, petitioner filed before the Court *En Banc* a "MOTION FOR EXTENSION OF TIME (To File Petition for Review)".[1] This Motion was granted by this Court in the Resolution dated February 15, 2012,[2] and gave petitioner a final and non-extendible period of fifteen (15) days from February 15, 2012 or until March 1, 2012, within which to file the Petition for Review. The instant Petition for Review was filed on February 29, 2012.[3]

In the Resolution dated March 20, 2012,[4] the Court *En Banc* resolved to require respondents to file a Comment to the said Petition for Review, within ten (10) days from receipt thereof.

Respondents filed, on April 10, 2012, a "MOTION FOR EXTENSION OF TIME TO FILE COMMENT"[5], which was granted by this Court and gave them a final and non-extendible period of ten (10) days from April 9, 2012 or until April 19, 2012, within which to file the said Comment.[6]

On April 19, 2012, respondents filed their "COMMENT (Re: Petition for Review dated 29 February 2012)".[7]

Thereafter, the case was submitted for decision on May 16, 2012.[8]

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[1] Docket, pp. 1 to 3.
[2] Docket, p. 4.
[3] Docket, pp. 5 to 16.
[4] Docket, pp. 60 to 61.
[5] Docket, pp. 62 to 64.
[6] Resolution dated April 12, 2012, Docket, p. 65.
[7] Docket, pp. 66 to 84.

THE ISSUE

The sole issue raised by petitioner for resolution of the Court *En Banc* is as follows:

> "WHETHER OR NOT THE DEFICIENCY VAT ASSESSMENT ISSUED BY THE BIR TO UE AUTOMOTIVE MANUFACTURING, INC. HAS BECOME FINAL, DEMANDABLE AND EXECUTORY."

Petitioner's Arguments

Petitioner argues that, during the presentation of its witness, Ms. Teresita Maglunog, before the Court in Division, said witness positively identified the subject PAN against UEAM for taxable year 2004/2005 which was pre-marked as Exhibit "L". According to petitioner, Ms. Maglunog was the one who personally placed the said PAN in a BIR window mailing envelope showing the business address of UEAM at 1046-1050 Masangkay Street, Binondo, Manila.

Furthermore, petitioner invokes the case of *Commissioner of Internal Revenue vs. Menguito*,[9] wherein the Supreme Court ruled that the absence of a PAN would not affect the validity of a formal/final assessment notice, to wit:

> "A post-reporting notice and pre-assessment notice do not bear the gravity of a formal assessment notice. The post-reporting notice and pre-assessment notice merely hint at the initial findings of the BIR against a taxpayer and invites the latter to an 'informal' conference or clarificatory meeting. Neither notice contains a declaration of the tax liability of the taxpayer or a demand for payment thereof. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice."

Thus, according to petitioner, even assuming that subject PAN was not received by UEAM, such non-receipt would not affect a valid and final assessment notice issued by the BIR against UEAM.

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[8] Resolution dated May 16, 2012, Docket, pp. 86 to 87.
[9] G.R. No. 167560, September 17, 2008.

Respondents' Counter-Arguments

On the other hand, respondents assert that it is well-settled that a void assessment bears no fruit, and that no civil liability arose against them and UEAM, considering that the BIR's assessment was void.

According to respondents, the assessment did not become final, demandable, and executory, considering that respondents did not receive the assessment notices, and that all subsequent actions of the BIR were null and void. Thus, even assuming that there was indeed a supposed failure to file a protest, such matter is immaterial since no civil liability could have arisen from a void assessment.

THE COURT EN BANC'S RULING

The crux of the controversy lies on the significance of the PAN.

In sum, respondents is of the view that since they did not receive the subject PAN, the assessment notice that followed is void, apart from their insistence that they have not receive such assessment notice. On the other hand, petitioner maintains that the subject PAN was sent to UEAM; nevertheless, the non-receipt thereof would not affect a valid and final assessment notice issued by the BIR.

Petitioner failed to establish that respondents or UEAM received the subject PAN.

From what We can gather from the primary argument of petitioner, the latter is asking this Court that We ought to limit our determination of whether the subject PAN was received by respondents on the testimony of petitioner's witness, Ms. Maglunog, vis-à-vis the said PAN itself, that she positively identified the same, and that she was the one who personally placed the PAN in a BIR window mailing envelope showing the business address of UEAM at 1046-1050 Masangkay Street, Binondo, Manila.

We do not agree. Petitioner is in error.

Section 13, Rule 13 of the 1997 Rules of Civil Procedure provides:

> "SEC. 13. *Proof of service.*– xxx. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. **If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office.** xxx." *(Emphasis supplied)*

In relation thereto, Section 7 of the same Rule states:

> "SEC. 7. *Service by mail.*– Service by registered mail shall be made by depositing the copy in the office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail."

Based on the foregoing provisions, to prove service by registered mail, the evidence to be presented are as follows: (1) an affidavit of the person stating the facts showing compliance with the above-quoted Section 7; and (2) the registry receipt issued by the mailing office.

Be that as it may, We shall examine the evidence presented by the prosecution in the Court *a quo* whether it has proved the service of the PAN, by registered mail, to respondents or UEAM, in accordance with the above Rules. Among the affidavits presented by the prosecution, it is the Judicial Affidavit[10] executed by Ms. Maglunog which relates to the mailing of the subject PAN; pertinent portions of which states:

[10] Division Docket (CTA Crim. No. O-113) - Vol. I, pp. 236 to 245.

"Plaintiff, by the undersigned counsel and unto this Honorable Court, hereby submits the Judicial Affidavit of Ms. Teresita Maglunog xxx, as part of her testimony on the Direct Examination scheduled on September 30, 2009, which is being offered to prove the following facts, viz:

1. **To prove that pre-assessment notice for VAT issued by the BIR on February 5, 2007 were duly mailed to the petitioner through registered mail on February 12, 2007 under Entry No. 21 in the BIR Transmittal of Pre-Assessment Notice/s**.

xxx xxx xxx

Q4. Madam Witness, How did you know that you will be testifying now before this Court?

A4. I was informed by the Legal Division of the scheduled hearing on September 30, 2009 requiring me to testify about the mailing of preliminary and final notices of assessment and demand letters for VAT for taxable years 2004/2005 issued by the BIR against UE AUTOMOTIVE MANUFACTURING, INC.

Q5. Madam Witness, what did you do, if there's any, after you were informed of said scheduled hearing at the CTA?

A5. I checked the Assessment Division's transmittal slip of those notices of preliminary and final assessment and demand letters for VAT for taxable years 2004/2005 which we kept for safekeeping at the Records Section of Administrative Division, BIR Manila

Q6. And what did you find out, if there's any?

A6. I found out that the notice of pre-assessment for VAT for taxable years 2004/2005 were mailed on February 12, 2007;

Q7. Madam Witness, I am now showing to you a document which appeared to be a Listing of Pre-Assessment Notices with twenty eight (28) entries, will you please examine this document and then tell us, what is this document?

A7. This is the Listing of Pre-Assessment Notices prepared by the Assessment Division, BIR-Manila and forwarded to the Administrative Division, BIR-Manila for mailing;

Q8. On said document, at entry number 21, there appeared the name 'UE AUTOMOTIVE MANUFACTURING, INC. together with its business address at 460 Q. Paredes Street, Binondo, Manila', will you please tell us the significance of this document to the VAT pre-assessment notice issued by the BIR against UE AUTOMOTIVE MANUFACTURING, INC.for taxable year 2004/2005?

A8. This is the proof that said VAT pre-assessment notice issued by the BIR against UE AUTOMOTIVE MANUFACTURING, INC. for taxable years 2004/2005 was mailed on February 12, 2007.

Q9. Madam Witness, I am now showing to you a document which was previously pre-marked as Exhibit "L" during the preliminary conference markings, will you please examine this document and then tell us, what is this document?

A9. This is the same Pre-Assessment Notice that I have been mentioning earlier which the Assessment Division, BIR-Manila forwarded to the Administrative Division, particularly at the Records Section of Administrative Division, BIR-Manila for mailing.

xxx xxx xxx

Q16. Madam witness, you said that you were the one who personally in-charged in checking these mailing materials consisting of notices of preliminary and/or final assessment and demand letters, will you please tell us your actual participation, if there's any, in the mailing of this pre-assessment notice for VAT for taxable year 2004/2005 against UE AUTOMOTIVE MANUFACTURING, INC.?

A16. I personally checked all those list of pre-assessment notices forwarded by the Assessment Division for mailing in February 2007 which include the VAT pre-assessment notice for taxable year 2004/2005. After I checked one by one all those notice of pre-assessments mentioned in the Assessment Division's List of Pre-Assessment Notices, I was also the one who instructed my subordinate to hand delivered those notices of pre-assessment to the Post Office of Manila for mailing through registered mail.

Q17. Madam witness, I am now showing you again said document, I noticed the Post Office of Manila's rubber stamped with the date "February 12, 2007, will you please explain before this Honorable Court, the significance of said Rubber Stamp in relation to the case at bar?

A17. This is the proof that on February 12, 2007, the Post Office of Manila has received the Pre-Assessment Notice issued by the BIR against UE AUTOMOTIVE MANUFACTURING, INC. for taxable years 2004/2005.

Q18. You said earlier that after you personally checked said pre-assessment notice for mailing, then you instructed your subordinate to make the actual mailing of those documents, who mailed those notices of pre-assessments which include the UE AUTOMOTIVE MANUFACTURING, INC. case for taxable years 2004/2005?

A18. It was Mr. Armando Macatangay who was the one in-charged in the actual mailing of those notices of pre-assessments. He was the one who delivered the Pre-Assessment Notice dated February 5, 2007 issued by the BIR against UE AUTOMOTIVE MANUFACTURING, INC. for taxable years 2004/2005.

xxx xxx xxx."

A cursory reading of the above statements would reveal that the same does not show compliance with the provisions of Section 7, Rule 13 of the 1997 Rules of Civil Procedure. Particularly, said Judicial Affidavit failed to state the fact that the PAN was in a sealed envelope; that the postage was fully prepaid; and that there were instructions to the postmaster to return the mail to the sender after ten (10) days if the mail is undelivered. Thus, the same is not sufficient for purposes of proving that there was service of the subject PAN.

Furthermore, it must be emphasized that there is no indication that petitioner presented and offered the corresponding registry receipt issued by the mailing office for the same PAN. Hence, petitioner failed to establish that respondents or UEAM received the subject PAN, in accordance with the provisions of Section 13 in relation to Section 7, both of Rule 13 of the Rules of Court.

For failure of the BIR to send the subject PAN, the assessment that followed is void.

Petitioner is of the view that even when the subject PAN was not received by respondents or UEAM, such non-receipt would not affect a valid and final assessment notice issued by the BIR.

Petitioner is certainly mistaken.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[11] the Supreme Court said:

> "This now leads to the question: Is the failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process? Specifically, are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?
>
> The answer to these questions require an examination of Section 228 of the Tax Code which reads:
>
>> SEC. 228. Protesting of Assessment. - **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: provided, however, that a preassessment notice shall not be required in the following cases:
>>
>> xxx xxx xxx
>>
>> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>>
>> xxx xxx xxx
>
> Indeed, <u>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</u>. 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.
>
> This is confirmed under the provisions R.R. No. 12-99 of the BIR which pertinently provide:
>
>> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>>
>> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>>
>> xxx xxx xxx

[11] G.R. No. 185371, December 8, 2010.

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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<u>From the provision quoted above, it is clear that the sending of a PAN to 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 down 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</u>.

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The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that <u>a void assessment bears no fruit</u>.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. <u>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</u>. Thus, while 'taxes are the lifeblood of the government,' the power to tax has its limits, in spite of all its plenitude. Hence in *Commissioner of Internal Revenue v. Algue, Inc.,*[12] it was said –

Taxes are the lifeblood of the government and so should be

[12] 241 Phil. 829 (1988).

collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

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It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But 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. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed. (Emphasis supplied)." *(Underscoring supplied)*

In addition, tax laws are civil in nature. Under our Civil Code,[13] acts executed against the mandatory provisions of law are void, except when the law itself authorizes the validity of those acts. 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.[14] To reiterate, a void assessment bears no valid fruit.[15]

Petitioner's reliance on the case of *Commissioner of Internal Revenue vs.*

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[13] Section 5, Civil Code of the Philippines.
[14] *Commissioner of Internal Revenue vs. Reyes, et seq.,* G.R. Nos. 159694 and 163581, January 27, 2006.
[15] Supra.

Menguito cannot be sustained. In the same *Metro Star* case, the High Court clarified as follows:

> "The case of *CIR v. Menguito* cited by the CIR in support of its argument that only the non-service of the FAN is fatal to the validity of an assessment, cannot apply to this case because the issue therein was the non-compliance with the provisions of R.R. No. 12-85 which sought to interpret Section 229 of the old tax law. RA No. 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely *notifying* the taxpayer of the CIR's findings was changed in 1998 to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made. Otherwise, the assessment itself would be invalid. **The regulation then, on the other hand, simply provided that a notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form**." *(Emphasis supplied)*

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice