REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

JTKC LAND, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9508

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

Promulgated:
OCT 18 2023
11:00 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition"),[1] filed by petitioner **JTKC LAND, INC.** on 19 December 2016, against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), pursuant to ***Section 7 (1) of Republic Act No. 1125, as amended by Section (7) (a) (1) of Republic Act No. 9282*** ("***RA 1125***"), seeks the review of the Final Decision on Disputed Assessment, dated 18 November 2016 ("FDDA");[2] and prays that judgment be rendered finding petitioner not liable for deficiency value added tax ("VAT") and creditable withholding tax on sale of property ("CWT") in the total amount of Php22,503,010.77, inclusive of surcharge, interest and/or compromise penalty, and that a Writ of Injunction be issued permanently enjoining the collection of the alleged deficiency taxes.[3]

The Parties

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at G/F Amorsolo Mansion, 130 Amorsolo St., San Lorenzo Village, Makati City.[4] It is a registered taxpayer with the Bureau of Internal Revenue ("BIR") with

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1 Records, Vol. 1, pp. 10-95.
2 See Nature of the Petition and Basis of this Court's Jurisdiction, Petition, *id.*, p. 6.
3 See Summary of the Case, Amended Pre-Trial Order, *id.*, p. 364.
4 See The Parties, Petition, *id.*, p. 12.

Certificate of Registration Number OCN: 9RC0000906073E and Tax Identification Number ("TIN") 226-745-214-000.[5]

Respondent CIR is the duly appointed Commissioner of the BIR, the government agency tasked to, among others, issue tax assessments, collect national internal revenue taxes, and enforce the provisions of the ***National Internal Revenue Code of 1997, as amended*** ("***NIRC***"), other tax laws, and rules and regulations.[6]

The Facts

Respondent issued a Letter of Authority ("LOA") No. 046-2013-00000275, dated 18 October 2013, against petitioner for a tax investigation covering the taxable period from 1 January 2012 to 31 December 2012.[7] In the said LOA, revenue officer ("RO") Jezzebele Bercasio and group supervisor ("GS") Marinelia German were authorized to audit and examine petitioner's books of accounts and other accounting records for the said taxable period to determine all types of deficiency internal revenue taxes, including documentary stamp tax ("DST"). This was received by petitioner on 22 October 2013.[8]

Following the examination conducted by RO Bercasio and GS German, they recommended the issuance of a Preliminary Assessment Notice ("PAN") against petitioner. In the Memorandum the ROs prepared, they noted that the BIR's system showed petitioner's registered business address at "Winstone Compound, Felix Avenue, Sto. Domingo, Cainta, Rizal". Despite this, the ROs admitted that they continued sending all notices which are due to petitioner at JTKC Centre, 2155 Pasong Tamo, Makati City.[9]

Thereafter, on 29 December 2015, a PAN was issued against petitioner and sent by registered mail on 29 December 2015 to petitioner's alleged address at "Winstone Cmpd. Felix Ave., Sto. Domingo, Cainta, Rizal."[10] Petitioner denies receipt of such PAN,[11] highlighting the actual envelope containing the copy of said PAN sent by registered mail to the aforementioned address, which was returned to sender (*i.e.*, respondent) as petitioner had already "Moved Out" of said address.[12]

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[5] Exh. "P-1", *id.*, p. 172.
[6] See Facts, Amended Pre-Trial Order, *id.*, p. 365.
[7] *Ibid;* Exh. "R-1", BIR Records, p. 1.
[8] *Ibid.*
[9] Exh. "R-8", BIR Records, pp. 335b-336.
[10] *Id.*, pp. 372-389.
[11] See Petitioner's Memorandum, Records, Vol. 5., pp. 2131-2132.
[12] Exh. "P-23", BIR Records, p. 389a.

On 15 January 2016, a Formal Letter of Demand ("FLD") with corresponding Final Assessment Notices ("FAN") was issued against petitioner, finding it liable for deficiency income tax, VAT, expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), CWT, and compromise penalty. The FLD/FAN was served upon petitioner personally, and petitioner's employee-accountant, Irene J. Buban, received the same on 15 January 2016.[13]

On 25 January 2016, petitioner, through Ms. Buban, requested a reinvestigation of the assessment contained in the FLD/FAN.[14] Petitioner reiterated this request for reinvestigation through a Letter, dated 11 February 2016.[15] However, in a Letter, dated 17 March 2016, respondent denied petitioner's request for reinvestigation and noted that the assessment had already become final and executory due to petitioner's failure to timely file a valid Protest to the FLD/FAN.[16] This Letter was sent by registered mail to petitioner's alleged business address at "Winstone Cmpd. Felix Ave., Sto. Domingo, Cainta, Rizal." Accordingly, this Letter was similarly returned to its sender.[17]

On 22 April 2016, petitioner, through Ms. Buban, sent another Letter, dated 19 April 2016, addressing the assessments contained in the FLD/FAN.[18] Nevertheless, on 28 April 2016, respondent issued a Preliminary Collection Letter ("PCL") against petitioner by registered mail. The PCL was addressed to "Winstone Compound, Felix Ave., Sto. Domingo, Cainta, Rizal."[19]

On 10 May 2016, respondent issued a Final Notice Before Seizure ("FNBS") against petitioner by registered mail. The FNBS was similarly addressed to "Winstone Compound, Felix Ave., Sto. Domingo, Cainta, Rizal."[20] In response to the FNBS, petitioner, through its counsel, Atty. Jose A. Bernas, sent a Letter, dated 31 May 2016. In said Letter, petitioner alleged that there is no basis for the issuance of an FNBS since respondent failed to issue a PAN against petitioner thereby failing to accord the latter due process in assessment proceedings.[21]

On 23 June 2016, petitioner, again, through its counsel, sent a Letter reiterating its Protest to the FLD/FAN.[22] Thus, in a Memorandum, dated 27 June 2016, respondent resolved, after admitting that it failed to properly serve

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[13] Exh. "R-10" and "R-10-a", *id.*, pp. 391-402.
[14] *Id.*, p. 418.
[15] *Id.*, p. 419.
[16] *Id.*, p. 421.
[17] *Id.*, p. 424.
[18] *Id.*, pp. 429-446.
[19] *Id.*, p. 428.
[20] *Id.*, pp. 447-448.
[21] *Id.*, pp. 460-461.
[22] *Id.*, pp. 470-472.

a PAN to petitioner, that it is proper to allow petitioner's request for reinvestigation.[23]

After petitioner paid the deficiency EWT and WTC assessments,[24] respondent issued the FDDA on 18 November 2016 which found petitioner liable for deficiency VAT and CWT.[25] The FDDA was personally served by respondent on 18 November 2016 and was received by petitioner's employee, Rose Lozano.

Accordingly, petitioner filed the instant Petition on 19 December 2016.[26]

On 24 February 2017, another PCL was served upon petitioner by registered mail.[27]

Respondent filed his Answer on 27 March 2017.[28]

On 20 July 2017, petitioner submitted the Judicial Affidavit of Irene J. Buban.[29] Petitioner then filed its Pre-Trial Brief on 21 July 2017.[30] Respondent, on the other hand, filed his Pre-Trial Brief on 25 July 2017[31] and elevated the BIR Records to this Court on even date.[32]

On 25 July 2017, petitioner moved for the admission of the Judicial Affidavit of Rexie Delos Santos attaching therein the Judicial Affidavit of said person.[33] Such Motion was granted by this Court.

The Pre-Trial Conference ensued on 25 July 2017.[34] Then, on 15 August 2017, the parties submitted their Joint Stipulation of Facts and Issues.[35] A Pre-Trial Order was subsequently issued by this Court on 6 September 2017.[36] After petitioner moved for the correction and amendment of the Pre-Trial Order,[37] this Court granted such Motion[38] and issued an Amended Pre-Trial Order.[39]

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[23] *Id.*, pp. 474-475.
[24] BIR Records.
[25] *Id.*, pp. 535-587.
[26] Records, Vol. 1, pp. 10-95.
[27] BIR Records, p. 593.
[28] Records, Vol. 1, pp. 114-119.
[29] *Id.*, pp. 153-208.
[30] *Id.*, pp. 209-219.
[31] *Id.*, pp. 220-227.
[32] *Id.*, p. 228.
[33] *Id.*, pp. 229-273.
[34] *Id.*, pp. 274-277.
[35] *Id.*, pp. 289-305.
[36] *Id.*, pp. 309-318.
[37] *Id.*, pp. 320-325.
[38] See Resolution, dated 12 January 2018, *id.*, pp. 359-361.
[39] *Id.*, pp. 362-374.

On 18 January 2018, petitioner moved to admit the Supplemental Judicial Affidavit of Irene J. Buban.[40] Such Motion was allowed by this Court during the 23 January 2018 Hearing. Also, on 23 January 2018, petitioner presented Ms. Buban and Ms. Delos Santos on the witness stand.[41]

On 23 April 2018, petitioner filed a Motion to Present Additional Witnesses, namely: Mr. Romualdo Macasaet, an Independent Certified Public Accountant ("ICPA") (*i.e.*, Mr. Michael D. Roxas),[42], and a Legal Expert on Philippine taxation laws (*i.e.*, Atty. Edwin R. Abella),[43] in light of information that it obtained from the BIR Records (that was belatedly elevated by respondent before this Court, and as such, the same was not taken into account by petitioner in its Pre-Trial Brief) which needed to be addressed by petitioner.[44] This Motion was granted by this Court in a Resolution, dated 13 July 2018.[45]

On 1 October 2018, petitioner filed a Motion for Commissioning of ICPA, attaching thereto the Judicial Affidavit of Michael D. Roxas in relation to his qualification as an ICPA.[46]

Petitioner submitted the Judicial Affidavit of Romualdo Macasaet on 6 December 2018[47] and the Judicial Affidavit of Edwin R. Abella on 7 December 2018.[48]

During the Hearing, held on 11 December 2018, Mr. Roxas was commissioned by this Court to act as the ICPA for the instant case. Mr. Macasaet and Atty. Abella were also presented by petitioner.[49] Mr. Roxas submitted the ICPA Report on 25 January 2019,[50] while his Judicial Affidavit in relation thereto was submitted by petitioner on 11 February 2019.[51]

During the Hearing, held on 4 June 2019, petitioner placed Mr. Roxas on the witness stand.[52] Also, during the Hearing, the case was referred for mediation, but said mediation failed on 24 September 2019.[53]

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[40] *Id.*, pp. 375-395.
[41] *Id.*, pp. 401-403.
[42] *Id.*, pp. 492-495.
[43] *Ibid.*
[44] *Id.*, pp. 448-470.
[45] *Id.*, pp. 474-476.
[46] Records, Vol. 2, pp. 502-525.
[47] Exh. "P-49", *id.*, pp. 530-769.
[48] Exh. "P-50", *id.*, pp. 770-798.
[49] *Id.*, pp. 797-800.
[50] Exh. "P-109", Records, Vols. 2-3, pp. 801-1202.
[51] Exh. "P-111", Records, Vol. 3, pp. 1204-1231.
[52] *Id.*, pp. 1235-1237.
[53] Records, Vol. 5, pp. 2010-2011.

On 22 July 2019, petitioner filed its Formal Offer of Evidence through registered mail.[54]

On 27 September 2019, respondent submitted the Judicial Affidavit of RO Jezebelle S. Bercasio.[55]

In a Resolution, dated 21 February 2020,[56] this Court admitted all of petitioner's Exhibits except Exhibit Nos. "P-8-C", "P-36", "P-68", "P-99", "P-100".

Afterwards, respondent presented RO Bercasio on 30 March 2022[57] and filed his Formal Offer of Evidence on 22 April 2022.[58]

Petitioner also once again submitted a Judicial Affidavit of Michael D. Roxas on 18 July 2022.[59]

In a Resolution, dated 2 August 2022, this Court admitted all of respondent's Exhibits.[60]

During the Hearing, dated 2 August 2022, petitioner once more placed Mr. Roxas on the witness stand.[61]

On 16 September 2022, petitioner filed through registered mail its Memorandum.[62] Meanwhile, respondent failed to file a Memorandum.[63] Thus, in a Resolution, dated 25 October 2022, the instant case was submitted for Decision.[64]

On 2 December 2022, petitioner filed an Omnibus Motion praying that this Court admit its Supplement to Memorandum explaining respondent's reliance to ***Revenue Memorandum Circular No. 20-2010 ("RMC 20-2010")*** as misplaced, or if that is not plausible, to re-open the case for the submission of additional evidence on respondent's unauthorized reliance on ***RMC 20-2010.***[65]

Hence, this Decision.

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[54] Records, Vols. 3-4, pp. 1263-1998.
[55] *Id.*, pp. 2017-2025.
[56] *Id.*, pp. 2044-2049.
[57] *Id.*, pp. 2073-2075.
[58] *Id.*, pp. 2093-2098.
[59] *Id.*, pp. 2103-2114.
[60] *Id.*, pp. 2116-2118.
[61] *Id.*, pp. 2119-2120.
[62] *Id.*, pp. 2127-2270.
[63] See Resolution, dated 25 October 2022, *id.*, pp. 2273-2275.
[64] *Ibid.*
[65] Records.

The Issue[66]

Based on the Amended Pre-Trial Order, the following issues are for resolution by this Court:

> WHETHER THE COURT HAS JURISDICTION OVER THE CASE;
>
> WHETHER PETITIONER IS LIABLE FOR DEFICIENCY VAT AND CWT IN THE TOTAL AMOUNT OF PHP22,503,010.77, INCLUSIVE OF INTEREST, SURCHARGE AND COMPROMISE PENALTY; AND
>
> WHETHER THE DEFICIENCY VAT AND CWT ASSESSMENTS AGAINST PETITIONER ARE VOID BECAUSE NO PAN WAS SERVED UPON OR RECEIVED BY PETITIONER, EITHER THROUGH PERSONAL OR SUBSTITUTED SERVICE.

Arguments of the Parties

Petitioner's Arguments[67]

Petitioner avers the following in its Memorandum:

a) The Court of Tax Appeals ("CTA") has jurisdiction over this case.

b) Exh. "P-23", or the sealed envelope wherein the PAN is enclosed with marking "return to sender" covered by Registry Receipt No. 10324, shows that petitioner was not served with a PAN. Clearly, the deficiency tax assessments against petitioner is null and void for having been issued in violation of the due process requirements under the law.

c) The FLD/FAN violates petitioner's right to due process because these were not preceded by the service of a PAN. Thus, the FLD/FAN are void.

[66] See Issues , Amended Pre-Trial Order, Records, Vol. 1, pp. 366-367.
[67] Records, Vol. 5, pp. 2184-2239.

d) Respondent's contention that the FLD/FAN have become final, executory, and demandable because petitioner allegedly failed to file a valid Protest is in serious error. The period of filing a Protest did not commence to run against petitioner because no PAN was served.

e) The alleged PAN, which has not been authenticated, was not served upon petitioner, does not state the facts and law on which the BIR's findings are based. Thus, the PAN is invalid for failure to comply with the due process.

f) Without conceding that the assessment has no factual and legal basis, the actions of respondent himself shows that the assessment against petitioner is at best seriously doubtful.

g) On their faces, the Details of Discrepancies and documentary evidence offered by respondent do not show the factual and legal basis of the deficiency tax assessment against petitioner. In fact, respondent's own evidence establish that it has no factual and legal basis in assessing petitioner. Thus, the assessment notices and assessment itself are void.

h) The Amended Assessment Notice, FDDA, Details of Discrepancies, all dated 18 November 2016, which were issued without prior PAN, do not state the facts and laws on which the assessment is based. All of these documents show that respondent has no factual and legal basis in assessing petitioner with interest for alleged late payment of VAT and CWT.

i) The alleged deficiency VAT assessment against petitioner, whether under the January 2016 Assessment Notice or November 2016 Amended Assessment Notice, has no legal basis. Thus, it is void, bears no fruit, and can never have legal effect or attain finality.

j) The alleged deficiency VAT assessment against petitioner, whether under the January 2016 Assessment Notice or November 2016 Amended Assessment Notice, has no factual basis. Thus, it is void, bears no fruit, and can never have legal effect or attain finality.

k) Assuming the VAT to be due, even if the entire sale price is not yet collected, petitioner has excess reported input tax, against which the output tax is creditable.

l) An assessment for deficiency VAT despite payment of VAT by petitioner upon actual receipt of payments from buyers is tantamount to double taxation which is oppressive and unreasonable.

m) The alleged deficiency CWT assessment against petitioner, whether under the January 2016 Assessment Notice or November 2016 Amended Assessment Notice, has no legal basis. Thus, it is void, bears no fruit, and can never have legal effect or attain finality.

n) The alleged deficiency CWT assessment against petitioner, whether under the January 2016 Assessment Notice or November 2016 Amended Assessment Notice, has no factual basis. Thus, it is void, bears no fruit, and can never have legal effect or attain finality.

Respondent's Counter-Arguments[68]

Respondent counter-argues that a PAN was served on 29 December 2015 at petitioner's registered business address at Winstone Compound, Felix Avenue, Sto. Domingo, Cainta, Rizal through registered mail, with Registry Receipt No. 10324 as proof. This constituted valid service since petitioner did not notify the BIR of any change of its registered business address. Further, respondent insists that the instant assessment has already become final and executory since petitioner failed to timely file a valid Protest. Thus, the collection efforts conducted by the BIR are justified. Moreover, since the instant assessment is already final and executory, the CTA does not have jurisdiction to try the present case.

The Ruling of the Court

First and foremost, the Omnibus Motion filed by petitioner on 2 December 2022 is hereby **GRANTED.** The Supplement to Memorandum filed by petitioner is hereby **MADE PART OF THE RECORDS.**

With respect to the **Petition, the same is impressed with merit.**

The Court has jurisdiction over the present Petition.

Jurisdiction by this Court over the instant case is conferred by ***Section 7 (1) of RA 1125***, to wit:

> "***SEC. 7. Jurisdiction.*** - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;"
> (Emphasis and underscoring, Ours.)

[68] See Answer, *id.*, pp. 114-118.

As clearly provided above, this Court has exclusive appellate jurisdiction over decisions by the CIR involving disputed assessments. In the present case, petitioner is appealing the FDDA issued by respondent. As such, it is a decision by the CIR over a deficiency tax assessment. Thus, this Court has undoubted jurisdiction over the instant case.

Now, the question that should be determined is whether petitioner timely filed its judicial appeal. Under ***Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals,*** "[a] party adversely affected by a decision... of the Commissioner of Internal Revenue... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision."

In the case at bar, petitioner unquestionably received the FDDA on 18 November 2016.[69] Following this, petitioner had thirty (30) days upon learning of the receipt of the FDDA, or until 18 December 2016 within which to file a judicial appeal before this Court. However, the said date fell on a Sunday. Hence, the deadline to file an appeal before the CTA is moved to the next working date which is a Monday, 19 December 2016. As petitioner filed the instant Petition on 19 December 2016, this Court properly assumed jurisdiction over the present case.

A PAN must be actually received by a taxpayer.

Petitioner posits that it did not receive a PAN for the instant assessment. On the other hand, respondent insists that it sent a PAN to petitioner's registered business address at Winstone Compound, Felix Avenue, Sto. Domingo, Cainta, Rizal through registered mail, with Registry Receipt No. 10324 as proof.

It is undeniable that a PAN is a mandatory requirement of due process in tax assessment proceedings. It offers an opportunity for a taxpayer to contest a pre-assessment before the BIR issues a final assessment. Thus, a PAN must be actually received by a taxpayer. Further, the taxpayer must be given a right to respond (*i.e.*, a reasonable period to respond) to a PAN before a final assessment is issued against him or her.

In ***Commissioner of Internal Revenue v. Yumex Philippines Corporation***,[70] the Supreme Court reiterated the importance of a PAN as part and parcel of due process in tax assessment proceedings, *viz.*:

[69] BIR Records, pp. 535-587.
[70] G.R. No. 222476, 5 May 2021.

"Proceeding to the issue of violation of respondent's due process, Sec. 228 of the NIRC mandates petitioner to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void. Said provision reads:

> 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: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> x x x x
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

To implement the procedural and substantive rules on assessment of national internal revenue taxes, the BIR issued RR No. 12-99, Sec. 3 of which provides:

> 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:
>
> 3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for

> appropriate review and issuance of a deficiency tax assessment, if warranted.
>
> 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 x x x. 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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> x x x x
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void x x x. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

Clearly from the aforequoted provisions, the taxpayer has fifteen (15) days from date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.

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Per the evidence on record, the BIR issued a PAN dated December 16, 2010, which it posted by registered mail the next day, December 17, 2010. It then issued and mailed the FLD/FAN on January 10, 2011. Although posted on different dates, the PAN and FLD/FAN were both received by the Post Office of Dasmariñas, Cavite, on January 17, 2011, and served upon and received by respondent on January 18, 2011. Under the circumstances, respondent was not given any notice of the preliminary assessment at all and was deprived of the opportunity to respond to the same before being given the final assessment.

In Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon case), the Court enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices with due regard for the taxpayers' constitutional rights. It is mandatory that the BIR not only inform the taxpayer through the PAN, FLD, and FAN of the facts, law and regulations, and jurisprudence on which the assessment against it is based, but it must also accord the taxpayer the opportunity to be heard through the entire process, i.e., from tax investigation until tax assessment. Pertinent portions of the Avon Case are reproduced below:

> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on best evidence obtainable, among others. However, these powers must "be exercised reasonably and [under] the prescribed procedure." The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights.
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> x x x x
>
> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, 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. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
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> 'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.

On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

The Court, in Commissioner of Internal Revenue v. Metro Star Superama, Inc., 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.

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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.</u> 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.

x x x x

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. Hence in Commissioner of Internal Revenue v. Algue, Inc., it was said —

> Taxes are the lifeblood of the government and so should be 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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> x x x x
>
> 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 . . . that the law has not been observed.

That respondent was able to file a protest to the FLD/FAN is of no moment. In Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue, the BIR ignored RR No. 12-99 and did not issue to the taxpayer, Pilipinas Shell Petroleum Corporation (PSPC), a notice for informal conference and a PAN as required; and as a result, deprived PSPC of due process in contesting the formal assessment levied against it. The Court pronounced therein that '[w]hile PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.' The Court once more reminded the BIR to be more circumspect in the exercise of its functions as the power of taxation is also sometimes called the power to destroy and, therefore, should be exercised with caution to minimize injury to the proprietary rights of the taxpayer."
(Citations omitted; emphasis and underscoring supplied.)

Applying the foregoing to the case at bar, petitioner's right to due process was clearly violated when it did not receive a PAN for the instant assessment.

As duly shown by the BIR Records, respondent opted to send a copy of the PAN at petitioner's alleged registered business address at Winstone Compound, Felix Avenue, Sto. Domingo, Cainta, Rizal through registered mail. Thereafter, the sealed envelope wherein the PAN is enclosed, which is addressed to petitioner's alleged registered business address at Winstone Compound, Felix Avenue, Sto. Domingo, Cainta, Rizal, and which is covered by Registry Receipt No. 10324, was "returned to sender" for reason that the addressee has "Moved Out". This clearly shows that petitioner was not actually served with a PAN.

Upon receipt of such notification from the Post Office that the PAN was not actually received by petitioner, respondent should have taken effort to actually serve petitioner a copy of the PAN before proceeding with the issuance of the FLD/FAN. By immediately proceeding with the issuance of the FLD/FAN, respondent clearly violated petitioner's right to due process as the latter was not given a chance to refute a pre-assessment while the audit investigation was ongoing and before a final assessment was issued against it.

Worse, respondent already knew that petitioner had another business address from which the BIR and its officers were able to solicit responses from the notices, queries, and correspondences they sent to petitioner.

In a Memorandum prepared by RO Bercasio and GS German, they noted that while petitioner's registered business address at the BIR system is at Winstone Compound, Felix Avenue, Sto. Domingo, Cainta, Rizal, they were able to communicate with petitioner through its authorized representatives at JTKC Centre, 2155 Pasong Tamo, Makati City, which is why they also sent notices and correspondences issued prior to the PAN to said address.[71]

Having knowledge of another business address by petitioner from which its officers were actually able to actually keep in touch with petitioner should have triggered the BIR to send a copy of the PAN to said address especially since previous notices and correspondences were actually sent to such address. Not having done this shows that the BIR actively sought to deny petitioner its right to actually receive a copy of the PAN.

Accordingly, the deficiency tax assessments against petitioner are null and void for having been issued in violation of the due process requirements under the law.

Once receipt of the PAN is denied by the taxpayer, it becomes incumbent upon respondent to prove by preponderance of evidence that the PAN was actually received by the taxpayer.

Once receipt of the assessment notices is denied and controverted by the taxpayer, the burden of proof is shifted to the CIR to prove through a preponderance of evidence that the taxpayer, or his or her authorized representative, indeed received the subject assessment notices. This was categorically declared by the Supreme Court in ***Commissioner of Internal Revenue v. T Shuttle Services, Inc.***,[72] to wit:

> "Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires the assessment to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Section 228 pertinently provides:
>
>> 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 pre-assessment notice shall not be required in the following cases:
>>
>> x x x x
>>
>> 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.

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[71] Exh. "R-8", BIR Records, pp. 335b-336.

[72] Resolution, G.R. No. 240729, 24 August 2020.

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.

x x x x

To highlight the due process requirement in Section 228 of the NIRC, Section 3 of Revenue Regulations (RR) 12-99 dated September 6, 1999 provides:

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:

3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the tax payer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

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 x x x. 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.
>
> x x x x
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void x x x. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
>
> x x x x
>
> As can be gleaned from the above provisions, **service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that 'a letter duly directed and mailed was received in the regular course of the mail.' However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.**
>
> **In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.**"
>
> (Citations omitted, emphasis and underscoring supplied.)

In the present case, petitioner has unequivocally denied receipt of the PAN. Accordingly, the burden to prove that the PAN was received by petitioner is shifted to respondent.

As duly examined by this Court, respondent failed to provide convincing proof that the PAN was received by the petitioner. The Registry Receipt No. 10324, which pertains to the envelope containing the PAN that was allegedly constructively mailed at petitioner's purported business address, shows that the same was "returned to sender" (*i.e.*, respondent) because petitioner had already "Moved Out" of said address.[73]

Consequently, there is no evidence that the PAN was actually received by petitioner or its authorized representative. RO Bercasio's testimony during the Hearing, dated 30 March 2022,[74] that she served a copy of the PAN also at petitioner's Makati address cannot be given credence since, other than RO Bercasio's self-serving statements, no evidence was presented to corroborate such claim.

Failure to prove that the PAN was indeed received by the respondent renders the instant assessment null and void. Without proof of receipt, the PAN is deemed not received by respondent. Hence, respondent's right to be informed of the assessments issued against it has been violated.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in light of the foregoing considerations, the instant Petition is **GRANTED**. The FLD/FAN, FDDA, PCL and FNBS issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency VAT and CWT assessments issued against petitioner for the taxable period from 1 January 2012 to 31 December 2012, in the aggregate amount of Php22,503,010.77, inclusive of surcharge, interest and/or compromise penalty are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[73] Exh. "P-23", BIR Records, p. 389a.
[74] TSN, Hearing, dated 30 March 2022, pp. 19-21.

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
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice