REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

*Third Division*

**RESOURCE ONE CORPORATION,**
*Petitioner,*

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 9423**

Members:

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

Promulgated:

JAN 29 2021
3:06 p.m.

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# DECISION

**RINGPIS-LIBAN, *J.*:**

The Petition for Review prays that the deficiency assessment issued by Respondent against Petitioner for the taxable year 2006 in the total amount of ₱56,273,764.89 be cancelled and set aside.[1]

## THE PARTIES

Petitioner Resource One Corporation is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) with Company Registration no. A200107340.[2] Petitioner is also duly registered with the Bureau of Internal Revenue (BIR), as shown in its BIR Certificate of Registration No. 8RC0000019771 and was assigned with Taxpayer's Identification No. 220-916-861-000 VAT.[3] Pursuant to its Amended Articles of Incorporation, Petitioner was established primarily to engage in the business of trading goods such as industrial and engineering products on wholesale and retail basis.[4]

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[1] Docket – Vol. 1, p. 489, Summary of the Case, Pre-Trial Order dated March 2, 2017.
[2] *Id.* at p. 445, Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, par. 4.
[3] *Id.*, par. 5.
[4] *Id.*, par. 6.

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, charges, and the enforcement of all forfeitures, penalties and fines connected therewith.[5] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

## THE FACTS

Pursuant to the Letter of Authority (LOA) No. LOA200100067056 dated September 7, 2007, Revenue Officer (RO) Manual I. Baltazar and Group Supervisor (GS) Rory Jorge Soriano were authorized to conduct audit of Petitioner's books of accounts and other accounting records covering the taxable year (TY) 2006.[7]

On January 8, 2010, Petitioner received a copy of the Preliminary Assessment Notice (PAN) dated December 28, 2009, assessing it for alleged deficiency taxes, penalties and interests for TY 2006, in the total amount of ₱55,586,224.26, as follows: (a) income tax in the amount of ₱31,382,326.52; (b) value-added tax (VAT) in the amount of ₱23,475,902.01; (c) expanded withholding tax (EWT) in the amount of ₱250,674.83; (d) fringe benefit tax (FBT) in the amount of ₱392,136.34; (e) documentary stamp tax (DST) in the amount of ₱84,184.56; and (f) compromise penalty in the amount of ₱1,000.00.[8] Consequently, Petitioner, through its representative, Ms. Ria Sablon, filed on January 22, 2010 a Motion/Petition for Cancellation of the Preliminary Assessment Notice dated December 28, 2008.[9]

Subsequently, Respondent issued the Formal Letter of Demand (FLD) and Assessment Notices, all dated January 15, 2020, and the same were received by Petitioner on January 25, 2010, assessing Petitioner for alleged deficiency taxes, penalties and interests for taxable year 2006, as follows: (a) income tax in the amount of ₱31,771,134.10; (b) VAT in the amount of ₱23,766,725.30; (c) EWT in the amount of ₱253,769.58; (d) FBT in the amount of ₱380,145.78; (e) DST in the amount of ₱76,490.13; and (f) compromise penalty in the amount of ₱25,500.00;[10] or in the aggregate amount of ₱56,273,764.89.

On February 18, 2010, Petitioner filed its written protest dated February 15, 2010, questioning the validity of the aforesaid FLD.[11] Thereafter, on March

[5] *Id.* at p. 444, JSFI, Summary of Admitted Facts, par. 1.

[6] *Id.*, par. 2.

[7] *Id.* at Note 2, par. 7.

[8] *Id.*, par. 8.

[9] *Id.* at p. 446, JSFI, Summary of Admitted Facts, par. 9.

[10] *Id.*, par. 10.

[11] *Id.*, par. 11.

30, 2010, Petitioner received the final decision dated March 23, 2010, rendered by the Office of the Legal Division and conformed to by the Regional Director of Revenue Region No. 7, denying its protest.[12] Petitioner then filed, on April 28, 2010, a request for reconsideration before Respondent.[13]

On July 12, 2016, Petitioner received the Decision dated June 30, 2016 signed by then Commissioner Kim S. Jacinto-Henares, affirming the said final decision dated March 23, 2010.[14]

On August 11, 2016, Petitioner filed the instant Petition for Review.[15]

Respondent filed his Answer on October 12, 2016,[16] interposing the following special and affirmative defenses, to wit:

a) the assessments have not prescribed since the taxpayer requested or induced the BIR, through its correspondences, to delay the issuance of the assessments;

b) Petitioner was not denied due process since it had twenty-one (21) days to file its reply against the PAN counted from the time the PAN was mailed until the FAN was received;

c) Petitioner was able to file its reply to the PAN and was able to file a "Motion/Petition for Cancellation of Preliminary Assessment Notice" and a "Legal Notice for Speedy Resolution of the Motion/Petition for Cancellation of the Preliminary Assessment Notice" against the FAN, thereby sufficiently raising its defenses;

d) the assessments were issued in accordance with applicable laws and regulations and the FAN/FLD contained the factual and legal bases thereof, specifically:

   1. Deficiency Income Tax

      i. discrepancies per investigation and declared in the FS were considered unaccounted for,
      ii. failure to subject its income payments to withholding tax,

[12] *Id.*, par. 12.

[13] *Id.*, par. 13.

[14] *Id.* at p. 447, JSFI, Summary of Admitted Facts, par. 14.

[15] *Id.* at Note 1, pp. 10 to 49.

[16] *Id.*, pp. 162 to 170; cf: pp. 156 to 158, *Motion for Extension of Time to File Answer*; p. 161, Resolution dated September 19, 2016.

iii. underdeclaration of reported taxable sales as sales per investigation was not properly recorded in the financial statements,

iv. representation & entertainment expenses per financial statements exceeded the statutory limit, and amount of claimed creditable withholding tax per ITR were not supported with the required documents;

2. Deficiency VAT

   i. some accounts were not reported fully on financial statements, and the difference was considered as undeclared income,

   ii. underdeclaration of reported taxable sales due to improper recording in the financial statements per investigation,

   iii. failure to submit pertinent documents to support the zero-rated sales claimed per VAT returns,

   iv. input tax credits on importation were not supported with the requirement documents;

3. Deficiency EWT - discrepancies on income payments per financial statements;

4. Deficiency FBT - failure to file the appropriate return and to withhold and remit the tax due on fringe benefits;

5. Deficiency DST - the increase in Advances from Stockholders and Interest bearing Loans were not subjected to DST;

6. Compromise Penalty - imposed for non-filing of Inventory List;

Pertinent Revenue Regulations (RR) and sections of the NIRC violated were likewise included in the assessments; and

e) tax assessments by examiners are presumed correct and made in good faith and in the absence of proof of any irregularities in the performance of official duties, as assessment will not be disturbed.

Respondent submitted the BIR Records for the instant case on October 17, 2016.[17] On November 2, 2016, Petitioner filed its Reply (To Answer dated 12 October 2016).[18]

The Pre-Trial Conference was set and held on January 31, 2017.[19] Prior thereto, the Respondent's Pre-Trial Brief was filed on January 16, 2017,[20] whereas Petitioner's Pre-Trial Brief was submitted on January 26, 2017.[21]

On February 15, 2017, the parties filed their Joint Stipulation of Facts and Issues.[22] Thereafter, the Court issued the Pre-Trial Order dated March 2, 2017,[23] thereby deeming the termination of the pre-trial.

Trial then ensued.

During trial, Petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Kerwin Benedict C. Tan,[24] Petitioner's Chairman; and (2) Ms. Madonna Mia S. Dayego,[25] the Court-commissioned Independent Certified Public Accountant (ICPA).[26]

The Report of the ICPA was submitted on June 1, 2017.[27]

On February 8, 2018, Petitioner filed its Formal Offer of Evidence.[28] Respondent, however, failed to file his comment thereon.[29] In the Resolution dated July 30, 2018,[30] the Court admitted Petitioner's Exhibits.

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[17] *Id.*, pp. 173 to 175, Compliance dated October 17, 2016.

[18] *Id.*, pp. 177 to 204.

[19] *Id.*, pp. 171 to 172, Notice of Pre-Trial Conference dated October 14, 2016; pp. 441 to 443, Minutes of the hearing held on, and Order dated, January 31, 2017.

[20] *Id.*, pp. 206 to 212.

[21] *Id.*, pp. 275 to 285.

[22] *Id.*, pp. 444 to 454.

[23] *Id.*, pp. 489 to 498.

[24] *Id.*, pp. 293 to 307, Exhibit "P-29"; Docket – Vol. 2, p. 517, Minutes of the hearing held on June 6, 2017.

[25] Docket – Vol. 2, pp. 535 to 550, Exhibit "P-201"; pp. 552 to 554, Minutes of the hearing held on, and Order dated, July 31, 2017.

[26] *Id.*, p. 511, Oath of Commission dated May 2, 2017; pp. 510 and 512, Minutes of the hearing held on, and Order dated, May 2, 2017, respectively.

[27] *Id.*, pp. 513 to 515, Submission (with Attached ICPA Report) dated June 1, 2017.

[28] *Id.*, pp. 597 to 613.

[29] *Id.*, p. 706, Records Verification Report dated February 20, 2018 issued by the Judicial Records Division of this Court.

[30] *Id.*, pp. 708 to 710.

Respondent likewise presented his documentary and testimonial evidence. He presented the testimonies of Mr. Manuel I. Baltazar,[31] and Ms. Kristine R. Ami,[32] both Revenue Officers of the BIR.

Respondent filed his Formal Offer of Evidence on November 21, 2018.[33] Subsequently, Petitioner filed its Comment (With Motion to Present Rebuttal Evidence) on December 3, 2018.[34] In the Resolution dated February 19, 2019,[35] the Court admitted Respondent's Exhibits, *except* for Exhibit "R-4", for failure to identify the same. In the same Resolution, the Court set this case for the presentation of Petitioner's rebuttal evidence on May 21, 2019.

At the hearing for the presentation of rebuttal evidence, Petitioner's counsel called to the witness stand Mr. Tan;[36] and Respondent's counsel manifested that he will not present sur-rebuttal evidence.[37]

On June 10, 2019, Petitioner filed its Supplemental Formal Offer of Rebuttal Evidence.[38] Respondent, however, failed to file his comment thereon.[39] In the Resolution dated October 2, 2019,[40] the Court admitted Petitioner's Exhibits, offered in the said Supplemental Formal Offer.

Petitioner filed its Memorandum on January 14, 2020.[41] Respondent, however, failed to file his memorandum.[42]

The instant case was deemed submitted for decision on July 30, 2020.[43]

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[31] *Id.* at Note 1, pp. 216 to 221, Exhibit "R-22"; *id.* at Note 25, pp. 718 to 720, Minutes of the hearing held on, and Order dated, November 6, 2018.

[32] *Id.* at Note 1, pp. 233 to 238, Exhibit "R-23"; *id.* at Note 25, pp. 718 to 720, Minutes of the hearing held on, and Order dated, November 6, 2018.

[33] *Id.* at Note 25, pp. 721 to 726; cf: pp. 559 to 563, Urgent Motion to Defer Submission of Formal Offer of Evidence (with Motion to Set Commissioner's Hearing); p. 565, Resolution dated September 7, 2017; pp. 570 to 573, Motion to Defer Submission of Formal Offer of Evidence; p. 575, Resolution dated October 10, 2017; pp. 581 to 587, Urgent Motion to Defer Submission of Formal Offer of Evidence (with Motion for Additional Hearing Date); and pp. 593 to 596, Resolution dated January 18, 2018.

[34] *Id.*, pp. 727 to 730.

[35] *Id.*, pp. 740 to 741.

[36] *Id.*, pp. 750 to 760, Exhibit "P-30"; pp. 775 to 777, Minutes of the hearing held on, and Order dated, May 21, 2019.

[37] *Id.*, pp. 775 to 777, Minutes of the hearing held on, and Order dated, May 21, 2019.

[38] *Id.*, pp. 781 to 786.

[39] *Id.*, p. 792, Records Verification Report dated July 4, 2019 issued by the Judicial Records Division of this Court.

[40] *Id.*, pp. 794 to 795.

[41] *Id.*, pp. 810 to 860.

[42] *Id.*, pp. 803 and 863, Records Verification Reports dated November 26, 2019 and July 7, 2020 issued by the Judicial Records Division of this Court, respectively.

[43] *Id.*, p. 865, Resolution dated July 30, 2020.

## THE ISSUES

The issues submitted by the parties to be resolved by this Court are as follows:[44]

A. Whether or not the period to assess Petitioner's VAT and EWT liabilities for the TY 2006 have already prescribed.

B. Whether or not the period to collect Petitioner's alleged deficiency tax liabilities for TY 2006 has already prescribed.

C. Whether or not the FLD and the PAN failed to state that such were issued pursuant to a valid and existing LOA.

D. Whether or not the assessment issued against Petitioner is void for violating Petitioner's right to due process.

E. Whether or not the assessment is void for failure to state the facts and the law on which the assessment is made.

F. Whether or not Petitioner is not liable for the alleged deficiency income tax, value added tax, expanded withholding tax, fringe benefits tax, documentary stamp tax and compromise penalties.

G. Assuming that the assessment is valid, whether or not deficiency interest should be imposed on the deficiency value-added tax, withholding tax on compensation, expanded withholding tax and compromise penalty.

H. Whether or not the Petitioner is liable for deficiency Income Tax in the amount of ₱31,771,134.10, deficiency VAT in the amount of ₱23,766,725.30, deficiency EWT in the amount of ₱253,769.58, deficiency FBT in the amount of ₱380,145.79, deficiency DST in the amount of ₱76,490.13 and Compromise Penalty in the amount of ₱25,500.00 for TY 2006.

I. Whether or not the assessment is already final, executory and demandable.

## THE ARGUMENTS OF THE PARTIES

Petitioner argues that the period to assess its VAT and EWT liabilities for TY 2006 has already prescribed and so has the right of Respondent to collect the

[44] *Id.* at Note 1, pp. 447 to 448, JFSI, Summary Statement of Issues.

alleged deficiency taxes; that the FLD and PAN failed to state that such were issued pursuant to a valid and existing LOA, violating its right to due process; that the absence of any reference to the LOA or Revalidation Notice in the PAN and FAN prevented it from verifying the identity of the person who actually conducted the audit, and from verifying the validity of the LOA; that the assessment is void for failure of Respondent to comply with the due process requirements in the issuance of the subject assessments; that Respondent failed to give it an opportunity to be heard; that there was no proper service of the originals of the PAN and FLD; that the assessments are void for failure to state the facts and the law on which the assessments were based; that it is not liable for the alleged deficiency income tax, VAT, EWT, FBT, DST, and compromise penalties; that assuming that the assessment is valid, no deficiency interest should be imposed on the deficiency VAT, EWT, FBT, DST, and compromise penalty; that it is not liable for deficiency income tax in the amount of ₱31,771,134.10, deficiency VAT in the amount of ₱23,766,725.30, deficiency EWT in the amount of ₱253,769.58, deficiency FBT in the amount of ₱380,145.79, deficiency DST in the amount of ₱76,490.13 and compromise penalty in the amount of ₱25,500.00 for taxable year 2006; and that the assessment is not yet final, executory and demandable.

On the other hand, Respondent contends that Petitioner's contention that it was denied due process and opportunity to file protest lacks factual and legal basis; that the assessments contain factual and legal bases as provided in the details of discrepancies; that well-settled is the rule that tax assessments by examiners are presumed correct and made in good faith; and that it is the taxpayer and not the BIR who has the duty of proving otherwise.

## THE RULING OF THE COURT

The instant Petition for Review is meritorious.

For an orderly disposition of the instant case, this Court shall primarily address the following issue, to wit:

> "D. Whether or not the assessment issued against Petitioner is void for violating Petitioner's right to due process."

***The subject tax assessments are void for failure of Respondent to properly send the notices of assessment to Petitioner.***

Petitioner points out that there was no proper service of the originals of the PAN and FLD/FAN since the said notices were received by it, not through

Respondent, but through its former landlord, a fact which remains uncontroverted by Respondent.

*We* agree with Petitioner.

In *Commissioner of Internal Revenue vs. Bank of the Philippine Islands, as liquidator of Paramount Acceptance Corporation,*[45] the Supreme Court held:

> "xxx. Assuming *arguendo* that there was a deficiency tax for which PAC was liable, **petitioners failed to make a valid assessment on it <u>since the notice of assessment was sent to the PAC's old (and therefore improper) office address</u>.** PAC already indicated its new address in its 1986 tax return filed with the BIR's Makati office. This notwithstanding, petitioner CIR sent the notice of assessment to PAC's old business address instead of its new address, which was also BPI's (PAC's liquidator) office address." *(Emphasis and underscoring added)*

The foregoing ruling makes clear that the sending of a notice of assessment to the taxpayer's old (and therefore improper) office address, despite the BIR's prior knowledge of its new principal place of business, is tantamount to a failure in service of the assessment, thereby making the assessment invalid.

In this case, records show that Petitioner's old address was at Rm. 402 Rudgen Building #17 Shaw Blvd., San Antonio, Pasig City.[46] On April 23, 2009, BIR Certificate of Registration No. 1RC000036052 was issued to Petitioner indicating Petitioner's registered address as Unit 1-5 Lot 10 East Science Ave. cor. Trade Ave. Phase IV LTI Binan Laguna 4024.[47] Thus, as early as 2009, Respondent already had knowledge of Petitioner's new address in Laguna. However, despite such knowledge, the BIR still indicated Petitioner's old address in the subject PAN, and the FLD dated January 15, 2010.[48]

Section 11 of RR No. 12-85, which states:

> SECTION 11. *Change of Address.* - **In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of**

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[45] G.R. No. 135446, September 23, 2003.

[46] *Id.* at Note 25, pp. 788 to 789, Exhibits "P-32" and "P-33".

[47] *Id.*, pp. 624 and 790, Exhibits "P-3" and "P-35".

[48] *Id.*, pp. 626 to 629, and 639 to 642, Exhibits "P-6" and "P-8"; Exhibits "R-12" to "R-20"; BIR Records – Folder No. 4, pp. 658 to 668, Exhibits "R-10" and "R-11"; BIR Records – Folder No. 4, pp. 646 to 649; Testimony of respondent's witness, Revenue Officer Kristine R. Ami (Refer to Transcript of Stenographic Notes at the hearing held on November 6, 2018, at pp. 19 to 20, and 24).

> **business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business,** the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, **and <u>in case of failure to do so,</u> any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.** *(Emphasis supplied)*

As stated above, if the taxpayer fails to inform the BIR of its change of address, any communication previously sent to its **<u>former</u>** legal residence or place of business **shall be considered valid and binding** for purposes of the period within which to reply. Conversely, **if the taxpayer does his duty and duly informs the BIR of its change of address**, then any communication sent to its old address **<u>becomes invalid and tolls the period within which the taxpayer is given to reply</u>**.

Furthermore, Respondent failed to establish that the landlord who received the notices in the former premises and old address of Petitioner was, in fact, an authorized representative of Petitioner. In *Commissioner of Internal Revenue vs. SVI Technologies, Inc.,*[49] this Court noted that Section 3.1.4 of RR 12-99 requires that the FAN/FLD must be received by the taxpayer or its authorized representative and that the alleged receipt by a security guard of the FAN/FLD does not satisfy the due process requirement under RR 12-99 and Section 228 of the NIRC.

During the period the assessments were sent, RR 12-99 delineated the due process requirements to be observed in issuing deficiency tax assessments, thus:

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

[49] CTA EB Case No. 1304, May 24, 2016.

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 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 (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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> x x x x x x x x x
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> 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 (see illustration in ANNEX 8 hereof).
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> **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.

From the foregoing, it is apparent that the notices were required to be sent only by registered mail or personal delivery. The applicable rules at the time the notices were sent allowed for constructive service[50] wherein if the notice was sent by registered mail and no response was received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same was to be considered **actually or constructively** received by the taxpayer. **However, this presumes that the notice was sent to the correct address.** In

[50] Section 3.1.7 - Constructive Service. If the notice to the taxpayer -herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case.

*Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[51] where the FAN was sent to the wrong address, the Supreme Court reminds us that "one of the requirements of a valid assessment notice is that the letter or notice must be properly addressed. It is not enough that the notice is sent by registered mail as provided under the said Revenue Regulation."

Given the discussion above, Petitioner never actually or constructively received the PAN and the FAN/FLD. The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor.[52] Due process requires that it must be served on and received by the taxpayer.[53]

The fact that Petitioner was able to file a letter in response to the PAN, a Motion/Petition for Cancellation of Preliminary Assessment Notice (which it filed against the FAN), and a Legal Notice for Speedy Resolution of the Motion/Petition for Cancellation of the Preliminary Assessment Notice does not negate the fact that the PAN, FLD/FAN were improperly served. Not only was it sent to the wrong address despite Respondent being previously informed of the new address, but also, it was received by Petitioner's former landlord, an individual who was unauthorized to receive such important correspondences addressed to the company. By responding to the notices that had only come into its hands by mere chance, it is clear that Petitioner merely wanted to preserve its rights and remedies to abort an unjust collection of taxes made in utter disregard of due process. This act must not be taken against it.

On this ground alone, the assessments are void for lack of due process.

Nonetheless, even granting that the said PAN and FLD were sent or mailed to Petitioner's new address in Laguna, this Court further finds another reason to nullify the subject tax assessments.

***Respondent violated Petitioner's right to due process when he issued the FLD/FAN prior to the lapse of the 15-day to respond to the PAN.***

Section 228 of the NIRC of 1997 reads:

[51] G.R. No. 198677, Nov. 26, 2014.
[52] *Commissioner of Internal Revenue v. Yukon General Manpower Services Corp.*, CTA EB No. 1444, July 24, 2017
[53] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> xxx xxx xxx
>
> **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." *(Emphasis added)*

Based on the foregoing provision, it is clear that the law mandates that the taxpayer respond to the PAN or pre-assessment notice, "[w]*ithin a period to be prescribed by implementing rules and regulations*," and that in case such taxpayer fails to respond, respondent or his duly authorized representative shall issue an assessment based on his findings.

Implementing the said provision is Section 3.1.2 of RR No. 12-99, quoted earlier in this Decision.

Thus, if it was determined that there exists sufficient basis to assess the taxpayer for deficiency taxes, Respondent or his duly authorized representative shall issue to the said taxpayer a PAN, to which the same taxpayer is required to respond. **Upon <u>receipt</u> of the PAN, the taxpayer is granted fifteen (15) days, within which to file a reply.** If such taxpayer fails to do so within the prescribed period, he/she/it shall be considered in default and only then shall respondent or his duly authorized representative issue an FLD/FAN, calling for the payment of the assessed deficiency tax liability, surcharges and penalties. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

As a corollary, in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.* ("*Avon* case"),[54] the Supreme Court said:

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

> "**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void</u>. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**" *(Emphases and underscoring added)*

Based on the foregoing doctrinal pronouncements, respondent or the BIR is mandated to perform its assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process. In case Respondent or the BIR fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect.

In the instant case, Petitioner received a photocopy of the PAN dated December 28, 2009 on January 8, 2010.[55] Applying the above-quoted Section 228 of the NIRC of 1997 in relation to Section 3.1.2 of RR No. 12-99, Respondent must give Petitioner a period of fifteen (15) days from date of receipt of the PAN, or until January 23, 2010, to protest or respond to the PAN. It is only after the lapse of the said period that Respondent may issue the FLD/FAN, calling for the payment of the assessed deficiency tax liabilities.

By prematurely issuing the FLD/FAN on January 15, 2010,[56] without awaiting the lapse of the fifteen (15)-day period, Respondent wantonly disregarded the mandatory due process requirement laid down under the above-stated law and rules.

Consequently, the subject tax assessments are indeed null and void. As such, the said deficiency tax assessments bear no valid fruit,[57] and must not be

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[55] Testimony of petitioner's witness, Mr. Kerwin Benedict Tan (Refer to 33Q/A, 34Q/A, and 37Q/A, Exhibit "P-30", Docket – Vol. 2, at pp. 756 to 757).

[56] Refer to Exhibit "P-8", Docket – Vol. 2, at p. 639; Exhibit "R-19", BIR Records – Folder No. 4, at p. 661.

[57] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

given any effect. Such being the case, it becomes unnecessary to address the remaining issues raised by the parties.

It must be emphasized that while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. Even as We concede to 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.[58]

**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** Accordingly, the FLD and Assessment Notices, all dated January 15, 2020, assessing Petitioner for deficiency income tax, VAT, EWT, FBT, DST, and compromise penalty, for taxable year 2006, in the aggregate amount of ₱56,273,764.89, are **CANCELLED** and **SET ASIDE**. Further, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** from taking any further action against Petitioner arising from the assessments subject of this case.

Furthermore, the final decision dated March 23, 2010 of the Regional Director of Revenue Region No. 7, denying Petitioner's protest, and the Decision dated June 30, 2016 issued by then Commissioner Kim S. Jacinto-Henares, affirming the said final decision, are **REVERSED** and **SET ASIDE**.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**WE CONCUR:**

**ERLINDA P. UY**
*Associate Justice*

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

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[58] *Commissioner of Internal Revenue vs. BASF Coating + Inks, Phils., Inc.* G.R. No. 198677, November 26, 2014 citing *Commissioner of Internal Revenue vs. Algue, Inc.*, G.R. No. L-28896, February 17, 1988.

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ERLINDA P. UY**
*Associate Justice*

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
*Presiding Justice*