REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

ROBERT SIA AND JOHN KENNETH L. OCAMPO,
Respondents.

CTA EB CRIM. No. 045
(CTA Crim. Case No. O-104)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

DEC 12 2018 3:59 p.m.

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DECISION

UY, *J.*:

This Petition for Review[1] filed on November 24, 2017, prays for a reconsideration of the civil aspect of the Decision dated July 19, 2017, and Resolution dated October 20, 2017, both promulgated by the Third Division of this Court (Court in Division) in CTA Crim. Case No. O-104, entitled, *"People of the Philippines, Plaintiff, vs. Robert Sia and John Kenneth L. Ocampo, Accused"*, the dispositive portions of which read:

Decision dated July 19, 2017:

> "**WHEREFORE,** premises considered, this case is **DISMISSED** for failure of the prosecution to prove beyond reasonable doubt the guilt of both accused. Therefore,

[1] Docket, pp. 5 to 14.

accused **ROBERT SIA and JOHN KENNETH L. OCAMPO** are hereby **ACQUITTED** of the crime charged.

SO ORDERED."

Resolution dated October 20, 2017:

"**WHEREFORE,** the Motion for Reconsideration is DENIED.

SO ORDERED."

THE FACTS

Robert Sia and John Kenneth L. Ocampo were charged in CTA Crim Case No. 0-104 entitled, *"People of the Philippines, Plaintiff, vs. Robert Sia and John Kenneth L. Ocampo, Accused*", under the Information[2] dated April 17, 2008, for violation of Section 255, in relation to Sections 253 (d) and 256 of the 1997 National Internal Revenue Code (NIRC), as amended, the accusatory portion of which reads:

> "That on or about December 28, 2001, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, being then the President and Treasurer, respectively of Roxy Industrial Sales Corporation, with business address at 691 Gonzalo Puyat Street, Quiapo, this City, having filed his internal revenue tax of the latter for the year 1998 and after examination and audit of the same, it has been found that there is due collectibles from said Roxy Industrial Sales Corporation the following, to wit:
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> | | |
> |---|---|
> | Income Tax | P 73,401.64 |
> | Compromise Penalty on Income | 8,500.00 |
> | Value Added Tax | 3,452,965.34 |
> | Compromise Penalty on VAT | 25,000.00 |
> | Expanded Withholding Tax | 3,649.27 |
> | Compromise Penalty on EWT | 1,000.00 |
>
> for the said year under BIR Assessment/Demand Notice No. 32-1-98, did then and there willfully and unlawfully fail

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[2] Division Docket (CTA Crim. Case No. O-104, Vol. 1), pp. 1 to 2.

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and refuse and neglect to pay said Deficiency Income Tax, and Compromise Penalty and without formally 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 total amount of P3,564,516.25, Philippine Currency.

Contrary to law."

During arraignment on March 23, 2009, Robert Sia and John Kenneth L. Ocampo, as accused in CTA Crim Case No. 0-104, entered a plea of "Not Guilty" to the crime charged therein, with the assistance of their counsel *de parte*. After the pre-trial conference held on July 13, 2009, the parties presented their respective evidence.

To prove its case, the People of the Philippines (or People) presented six (6) witnesses, namely: Rene Samonte, Edna Ortalla, Teresita Maglunog, Felicidad A. Dela Rosa, Elizabeth Reyes, and Armando C. Macatangay. Thereafter, it filed its Formal Offer of Evidence on January 8, 2013. Upon admission of its documentary evidence on March 12, 2013, the People rested its case.

On March 22, 2013, Sia and Ocampo, filed a "Motion for Leave of Court to File Demurrer to Evidence" in said criminal case while the People filed its "Comment (To Motion for Leave of Court to File Demurrer to Evidence)." On April 30, 2013, the Court issued a Resolution granting the "Motion for Leave of Court to File Demurrer to Evidence."

On May 17, 2013, Sia and Ocampo filed a "Demurrer to the Prosecution's Evidence." On June 21, 2013, the People filed its "Comment (to Accused's Demurrer to the Prosecution Evidence)." On July 8, 2013, the Court issued a Resolution denying the Demurrer to Evidence. Thus, respondents presented three (3) defense witnesses, namely: 1) Robert Sia; 2) John Kenneth L. Ocampo Ocampo; and 3) Atty. Allan Narciso P. Macasaet.

On November 6, 2016, Sia and Ocampo filed their Formal Offer of Evidence. With the admission of its documentary evidence in the Resolutions dated December 21, 2015 and May 6, 2016, the defense rested its case.

As directed by the Court in Division, the defense submitted its Memorandum on July 18, 2016, while the prosecution failed to file its Memorandum. Subsequently, CTA Crim Case No. 0-104 was submitted for decision in the Resolution dated July 22, 2016.

In the assailed Decision[3] dated July 19, 2017, the case was dismissed for failure of the prosecution to prove beyond reasonable doubt the guilt of both accused. Hence, Robert Sia and John Kenneth L. Ocampo were acquitted of the crime charged.

Aggrieved, the People filed a "Motion for Reconsideration on the Civil Aspect of the Decision"[4] on August 8, 2017, to which Sia and Ocampo filed their "Comment/Opposition to Plaintiff's Motion for Reconsideration on the Civil Aspect of the Decision Promulgated on July 19, 2017."[5]

The said *Motion for Reconsideration* was denied by the Court in Division in the assailed Resolution dated October 20, 2017.[6]

Undaunted, petitioner filed a *Motion for Extension of Time to File Petition for Review*[7] before the Court *En Banc* on November 3, 2017. On November 10, 2017, petitioner was granted a final and non-extendible period of fifteen days from November 9, 2017, or until November 24, 2017, within which to file its Petition for Review.[8]

On November 24, 2017, petitioner filed the instant *Petition for Review*,[9] praying that: 1) the civil aspect of the case be reconsidered; 2) the assessment issued by the BIR against Roxy and the respondents be declared valid; and 3) order the respondents and Roxy to pay the delinquent tax deficiencies inclusive of charges and interests.

Without necessarily giving due course to the *Petition for Review*, respondents were ordered by the Court *En Banc* to file their respective comments thereon.[10]

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[3] Division Docket (CTA Crim. Case No. O-104, Vol. 3), pp. 1052 to 1081.
[4] Division Docket (CTA Crim. Case No. O-104, Vol. 3), pp. 1084 to 1089.
[5] Division Docket (CTA Crim. Case No. O-104, Vol. 3), pp. 1092 to 1097.
[6] Division Docket (CTA Crim. Case No. O-104, Vol. 3), pp. 1099 to 1102.
[7] EB Docket, pp. 1 to 3.
[8] EB Docket, p. 4.
[9] EB Docket, pp. 5 to 14.
[10] Resolution dated March 6, 2018, EB Docket, pp. 61 to 62.

Pursuant thereto, respondents filed their "Comment/Opposition (To Plaintiff's Petition for Review)"[11] on April 3, 2018.

On April 12, 2018, the Court *En Banc* resolved to give due course to the instant Petition for Review, and directed the parties to submit their respective Memoranda.[12]

Respondents filed their "Memorandum (For Accused Robert Sia and John Kenneth L. Ocampo)"[13] on May 31, 2018, while petitioner filed its "Memorandum for the Plaintiff"[14] on June 6, 2018.

Thereafter, the instant *Petition for Review* was submitted for decision on July 19, 2018.[15]

On September 24, 2018, the Resolution dated July 19, 2018 was recalled and set aside and the People of the Philippines was required to take appropriate action with regard to correct names and proper designation of the parties.[16]

Petitioner People of the Philippines filed its Compliance[17] on October 8, 2018. In the Resolution dated October 24, 2018, petitioner's Compliance was noted and admitted, and the case was submitted for decision.[18]

THE ISSUE

Petitioner raises the following assignment of error, to wit:

> "THE RIGHT TO COLLECT OF THE BIR IS BASED ON A VALID ASSESSMENT WHICH IS FINAL, EXECUTORY AND DEMANDABLE AND WHICH CAN NO LONGER BE DISTURBED."[19]

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[11] EB Docket, pp. 63 to 68.
[12] EB Docket, pp. 70 to 71.
[13] Should be entitled Memorandum for Respondents, EB Docket, pp. 72 to 81.
[14] Should be entitled Memorandum for Petitioner, EB Docket, pp. 82 to 91.
[15] EB Docket, pp. 93 to 94.
[16] EB Docket, pp. 96 to 98.
[17] EB Docket, pp. 99 to 154.
[18] EB Docket, pp. 156 to 157.
[19] EB Docket, p. 10.

Based on the foregoing assignment of error, the issue for the Court *En Banc's* resolution is:

> "Whether or not, despite the acquittal of Robert Sia and John Kenneth L. Ocampo in CTA Crim Case No. 0-104, they can be held civilly liable for the subject assessments."

Petitioner's arguments:

Petitioner contends that the right of the BIR to collect is based on a valid assessment that is final, executory, and demandable.

Petitioner stresses that the case filed against the respondents, for their failure to pay deficiency taxes for taxable year 1998, was based on a valid assessment. The said assessment has already become final, executory, and demandable, for failure of the respondents to file a protest within the prescribed period. Thus, this is not a case of a disputed assessment.

Even an assessment contrary to law can attain finality if the same is not protested. In this case, despite the service of the Final Assessment Notice (FAN) and the corresponding Formal Letter of Demand with Details of Discrepancies, the subject taxpayer did not file any administrative protest as prescribed under Section 228 of the NIRC of 1997, as amended. Hence, the subject tax assessments have become final, executory, and demandable.

While the respondents denied having received the assessment notices and formal demand letters, petitioner was able to prove that the same were received by Roxy in the regular course of mail. The facts to be proved in order to raise this presumption are set forth in Section 3 (v), Rule 131 of the Rules of Court, such as (1) that the letter was properly addressed with postage prepaid and (2) that it was mailed, was substantially testified on by Mr. Armando Macatangay.

Finally, petitioner argues that the Court in Division should have focused on the assessment, which has become final, executory, and demandable, due to the failure of Roxy to protest the same. Having attained finality, the Court in Division should have taken cognizance thereof and ruled on the right of the BIR to collect and failure of Roxy and the respondents to pay as charged.

Respondents' counter-arguments:

Respondents counter-argue that the Petition for Review is based on the notion that the failure of the respondents to protest the assessment, whether valid or void, rendered it final, executory, and demandable. However, respondents argue, citing the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,*[20] that a void assessment bears no fruit.

Respondents contend that there was no valid assessment in this case. 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 Revenue Regulation No. 12-99.

The sending of a Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), and Formal Letter of Demand (FLD) to a taxpayer to inform him of the assessment made is but part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by the tax authorities.

In this case, however, the letters and notices were sent by the petitioner to the old address of Roxy, despite being duly notified of its transfer and new address, making it impossible for Roxy or its duly authorized officers to have knowledge of such letters or notices.

Moreover, the mere fact that the letters and assessments were allegedly sent only raises a disputable presumption, which may be considered, only if it remains uncontroverted. In this case, respondents categorically denied having received any of the letters or assessments allegedly sent by the petitioner. As proof that the respondents and Roxy never received the said letters and notices send to their old address, they presented the following: 1) testimonies of the respondents; 2) a Certification issued by the fire department that the office of Roxy was razed by fire before the alleged sending of letters and notices; and 3) the letter sent by Roxy to the BIR, informing them of its new address where it may be properly served with notices and other processes. With this credible and competent refutation, it was incumbent upon petitioner to prove by clear and convincing evidence that indeed the notices and letters were actually received by the respondents.

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

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Respondents also point out that the cases cited by the petitioner in support of its Petition for Review are not applicable as the issues in the said cases do not involve the failure on the part of the taxing authorities to serve upon the taxpayer the assessments and letters of demand.

Finally, the right of the government to collect taxes has already prescribed. Since the assessment for taxable year 1998 was declared void for lack of notice and/or lack of proper service, it is as if no assessment was issued within the period of limitation for assessment and collection of taxes.

THE COURT *EN BANC'S* RULING

The instant Petition for Review lacks merit.

Settled is the rule that the extinction of the penal action does not carry with it the extinction of the civil liability, where the acquittal is based on reasonable doubt, as only preponderance of evidence is required in civil cases.[21] Otherwise stated, a taxpayer can still be held civilly liable despite an acquittal, when the prosecution discharges its burden of proving its case, by a preponderance of evidence.

To be clear, preponderance of evidence is defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term greater weight of evidence or greater weight of the credible evidence. It is evidence, which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[22]

Thus, while the quantum of evidence required in civil cases is different from that in criminal cases, it should be emphasized that parties must still rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent.[23]

The absence of a valid LOA renders the subject assessments void.

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[21] *Emilia Lim vs. Mindanao Wines & Liquor Galleria,* G.R. No. 175851, July 4, 2012.
[22] *Emilia Lim vs. Mindanao Wines & Liquor Galleria,* supra.
[23] *Emilia Lim vs. Mindanao Wines & Liquor Galleria,* supra.

In this case, petitioner contends that the subject assessments have become final, executory, and demandable, because the taxpayer failed to file any administrative protests. Thus, petitioner argues that facts prior to the attainment of finality, such as the issuance and service of notices are irrelevant, stating that even an assessment contrary to law can attain finality if the same is not protested.

We are not convinced.

Section 13 of the NIRC of 1997, as amended, provides that a revenue officer must first be given a Letter of Authority (LOA), before conducting an examination or assessment, to wit:

> "**SEC. 13. *Authority of a Revenue Officer.* –** Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director,</u> examine taxpayers within the jurisdiction of the district** in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied.)*

In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[24] the Supreme Court highlighted the importance of an LOA in the examination of the books of accounts and other accounting records of taxpayers, to wit:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

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[24] G.R. No. 222743, April 5, 2017.

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> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
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> (A) **Examination of Return and Determination of Tax Due**. — After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. *(Emphasis and underlining supplied.)*

Based on the afore-quoted provision, it is clear that <u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. *(Emphasis and underlining supplied.)*

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> Contrary to the ruling of the CTA en banc, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**

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> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority is brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void</u>."** *(Emphasis and underscoring supplied)*

Based on the foregoing, the absence of an LOA issued to a Revenue Officer renders the tax assessments issued by the BIR a nullity.

In this case, Revenue Officer (RO) Rene Samonte confirmed that the persons authorized in the LOA[25] dated October 7, 1999 are Revenue Officer Marie Lapuebla and C.S. Juanita Martinez, and his name does not appear therein.[26] Moreover, he testified that he had no personal knowledge if the LOA was personally served to Roxy.[27] In fact, he admitted that he did not know of the person named "Eric Ocampo," who allegedly received the LOA, was connected with Roxy.[28] Finally, he stated that there is nothing is the LOA that would

[25] Exhibit "A," Division Docket (CTA Crim. Case No. O-104, Vol. 1), p. 83-a.
[26] TSN dated October 6, 2010, pp. 8 to 9.
[27] TSN dated October 6, 2010, pp. 9 to 10.
[28] *Id.* at 10 to 11

prove that respondents were served with a copy of the LOA.[29]

Based on the records of the case, it was established that it was *only* through the Letter[30] dated June 29, 2000 that RO Samonte was "authorized" to continue the investigation of Roxy's books and accounting records. Moreover, it should be noted that RO Samonte testified that the said Letter was received by a certain "Eric Ocampo," who he presumed had authority to do so, despite his failure to ask for any identification card.[31] Thereafter, RO Samonte proceeded to conduct an investigation and subsequently recommended the issuance of a PAN against Roxy, invoking the said LOA dated October 7, 1999.

The foregoing facts are clear in that the authority of RO Samonte did not emanate from an LOA, as required by law and jurisprudence. Consequently, RO Samonte cannot be considered as one who is validly authorized to examine Roxy's books of accounts and other accounting records for taxable year 1998.

The issuance of the Letter dated June 29, 2000, referring the investigation to RO Samonte is insufficient to clothe him with authority to conduct the subject investigation, since it is not an LOA. It should be noted that the BIR itself categorically prohibits the issuance of such referral letters in its audit and investigation of internal revenue tax returns for taxable year 1998, to wit:

> "Revenue Memorandum Order No. 67-1999
>
> III. Audit Policies and Guidelines
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> xxx xxx xxx
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> 5. **<u>The practice of issuing</u>** mission orders, correspondence letters, or **<u>any other similar orders for the purpose of audit examination and assessment of internal revenue taxes is hereby strictly prohibited</u>**. However, this excludes orders for purposes of surveillance, data gathering under the Third Party Information Program, or any similar purpose." *(Emphasis and underscoring supplied.)*

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[29] *Id.* at 13 to 14.
[30] Exhibit "A-10," Division Docket (CTA Crim. Case No. O-104, Vol. 1), p. 101.
[31] TSN dated October 6, 2010, pp. 15 to 19.

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On the basis of the foregoing, it is established that a mere referral letter cannot be a valid source of authority for an RO to conduct an investigation or issue a tax assessment. Since RO Samonte was unauthorized, the subject tax assessments in this case, which originated from his investigation of Roxy, are void and of no effect.

Petitioner failed to prove proper service of the PAN and FAN.

Assuming *arguendo,* that the said referral letter is sufficient to clothe RO Samonte with authority to conduct the subject investigation, this Court finds that the subject tax assessments are still void and of no effect due to the failure of the petitioner to comply with due process requirements in the issuance of deficiency tax assessments.

Specifically, Section 228 of the NIRC of 1997, as amended, provides for the procedure for the issuance of deficiency tax assessments. Thus, it is mandated that a taxpayer should be informed, in writing, of the law and the facts upon which the assessment is made, otherwise, such assessment shall be void, to wit:

> "**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:
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> xxx xxx xxx
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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**.
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> 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.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis and underscoring supplied)*

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[32] the Supreme Court ruled that the sending of a PAN to a taxpayer to inform him of the assessment is part of the due process requirement in the issuance of a deficiency tax assessment, to wit:

"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.33[14]

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.

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

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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. 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

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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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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 B hereof).

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.

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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 Stars 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.

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The Court need not belabor to discuss the matter of Metro Stars failure to file its protest, for it is well-settled that a void assessment bears no fruit." *(Emphasis and underscoring supplied)*

The foregoing highlights the significance of due process in the collection of taxes. Hence, before taxpayers can be held liable for deficiency tax assessments, they must first be accorded due process, which demands no less than rigid compliance with the law. In this regard, the absence of proof of valid service of the subject PAN and FAN, unequivocally renders the said assessment void and of no effect.

In this case, there is no showing that the PAN was mailed or received by Roxy or the respondents. Petitioner's witness, Edna Ortalla, testified that they have no proof of mailing or receipt by the taxpayer or the respondents, as a different office was in charge of mailing.[34] While petitioner's counsel stated that they would present another witness to testify on the said matter, none was ever presented.[35]

Anent the Assessment Notices,[36] witness Teresita Maglunog admitted that their Transmittal Slip[37] with attached registry receipt, did

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[34] TSN dated March 16, 2011, pp. 38 to 41.
[35] TSN dated March 16, 2011, p. 41.
[36] Exhibits "L" to "L-2," "M" to "M-2," and "N" to "N-2," Division Docket (CTA Crim. Case No. O-104, Vol. 1), pp. 83-p to 83-x.
[37] Exhibit "S," Division Docket (CTA Crim. Case No. O-104, Vol. 2), p. 483.

not identify the document/s allegedly sent to the taxpayer.[38] She likewise testified that there was no registry return card, and they failed to secure a Certification from the Post Office.[39]

For his part, witness Armando C. Macatangay likewise admitted that he did not know if the subject Assessment Notices were received by Roxy; they did not have the return card for these letters; and they were unable to secure a Certification from the Post Office.[40]

On the contrary, respondents ardently denied receipt of the said documents.

First, they claimed that the notices issued by the BIR were erroneously sent to Roxy's old address at 691 Gonzalo Puyat Street, Quiapo, Manila, despite being informed of Roxy's new address at 713 Gonzalo Puyat Street, Quiapo, Manila.[41] A perusal of the letter dated November 18, 2000,[42] informing the BIR of its new address, shows that it was received by the BIR on January 24, 2001. In addition, respondents even submitted a Certification from the Bureau of Fire Protection[43], stating that their previous store location was razed by fire on October 3, 2000.

Second, respondents claim that the "Eric Ocampo," who allegedly received notices on behalf of Roxy, was not connected with said company.[44] As proof thereof, they presented the Articles of Incorporation[45] of the corporation, pointing out that the signature of the said "Eric Ocampo" is different from that of Jacob Ericson Ocampo.[46] Finally, they presented the SSS Collection List from 1999 to 2003,[47] to attest that they do not have an employee by the name of Eric Ocampo.

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[38] TSN dated July 6, 2011, pp. 11 to 13, and 17 to 18.
[39] TSN dated July 6, 2011, pp. 18 to 21, and 33 to 36.
[40] TSN dated October 3, 2012, pp. 16 to 17.
[41] Exhibits "50" and "52," Division Docket (CTA Crim. Case No. O-104, Vol. 2), pp. 648 to 657, and 784 to 790; Exhibit "55," Division Docket (CTA Crim. Case No. O-104, Vol. 3), pp. 858 to 861.
[42] Exhibit "51," Division Docket (CTA Crim. Case No. O-104, Vol. 2), p. 791.
[43] Exhibit "53," Division Docket (CTA Crim. Case No. O-104, Vol. 2), p. 792.
[44] Exhibits "50" and "52," Division Docket (CTA Crim. Case No. O-104, Vol. 2), pp. 648 to 657, and 784 to 790.
[45] Exhibit "19," Division Docket (CTA Crim. Case No. O-104, Vol. 3), pp. 921 to 937.
[46] Exhibits "50" and "52," Division Docket (CTA Crim. Case No. O-104, Vol. 2), pp. 648 to 657, and 784 to 790.
[47] Exhibits "21" to "40," Division Docket (CTA Crim. Case No. O-104, Vol. 3), pp. 947 to 970.

In view of the categorical denial of the respondents, stating that they did not receive any of the notices sent to their registered address, it became incumbent upon the petitioners to prove the receipt thereof by the taxpayer.

It is well-settled in jurisprudence that when a mail matter is sent by registered mail, there arises a disputable presumption that it was received in the regular course of mail. However, a direct denial of receipt thereof, shifts the burden upon the party who mailed it, to prove that it was in fact received by the addressee, to wit:

> "xxx xxx xxx when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3 (v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**."[48] *(Emphasis supplied.)*

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[49] the Supreme Court ruled:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.

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[48] *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 157064, August 7, 2006.
[49] G.R. No. 202695, February 29, 2016.

> To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, **the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.** The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. **While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices**." *(Emphasis supplied)*

Considering that the petitioner failed to prove that the PAN or FAN was indeed served to the taxpayer, either personally, or through registered mail, the subject deficiency tax assessments must be declared void. Hence, the respondents cannot be held civilly liable for the subject assessments in this case, as a void assessment bears no valid fruit.[50]

WHEREFORE, all the foregoing considered, the instant *Petition for Review* is **DENIED** for lack of merit. The assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[50] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc., supra.*

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice