REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FOUR SEASONS TRADING CORPORATION, Petitioner,	**CTA CASE NO. 9915** Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 16 2021 8:30 a.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision promulgated on January 11, 2021)** filed on January 28, 2021, with petitioner's **Comment/Opposition (To the Motion for Reconsideration dated January 25, 2021)**, filed on February 18, 2021.

On January 11, 2021, the Court promulgated a Decision cancelling respondent's deficiency assessments against petitioner for violating the latter's right to due process of law by failing to properly serve to it the said assessment notices, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant *Petition for Review* is **GRANTED**. Accordingly, the *Final Notice Before Seizure* dated July 31, 2018 is **WITHDRAWN** and **SET ASIDE**.
>
> Moreover, the PAN dated December 20, 2017, the FAN or *Assessment Notices*, and the FLD, all dated

January 12, 2018, issued against petitioner, for CY 2014, are **CANCELLED** and **SET ASIDE**, for being void.

SO ORDERED."

In his Motion, respondent mainly insists that the Court erred in holding that it has jurisdiction over the present case and that the assessment notices were not properly served to petitioner. Respondent recalls that on August 1, 2018, petitioner had received the Formal Letter of Demand (FLD) with Details of Discrepancies and the Assessment Notices, however, it did not refute the same by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt thereof. Instead, it immediately filed a Petition for Review on August 30, 2018 with this Court. Thus, citing the case of *Commissioner of Internal Revenue v. V.Y. Domingo, Jewellers, Inc.*,[1] respondent asserts that petitioner clearly violated the doctrine of exhaustion of administrative remedies thereby resulting in the finality of the deficiency assessments which means that there is no disputed assessment to speak.

Furthermore, respondent claims that the assessment notices were properly served to petitioner following the due process requirement. He maintains that the registry receipts were not returned by the postmaster when the FLD with Details of Discrepancies were served through registered mail at petitioner's registered address. As such, the presumption is that petitioner received the mail matter in the ordinary course of mail, pursuant to Section 3(v) of Rule 131 of the Rules of Court.

On the other hand, in its Comment, petitioner primarily asserts that there was an apparent violation of due process of law by respondent when he immediately issued the Final Notice Before Seizure (FNBS.)

This Court finds respondent's Motion for Reconsideration bereft of merit. At the outset, it must be noted that respondent's Motion is merely rehashes of the arguments that were already passed upon and resolved by the Court in the Decision he assails.

Again, the Court has already extensively discussed that the jurisdiction of the Court of Tax Appeals (CTA) is not limited to cases

[1] G.R. No. 221780, March 25, 2019.

which only involve decisions of the Commissioner of Internal Revenue (CIR), but also covers "other matters" arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other related laws administered by the Bureau of Internal Revenue (BIR).[2]

To highlight this, the Supreme Court elaborated as to what comprises the term "other matters arising under this Code," in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals, et al.*,[3] as follows:

> "As the CIR aptly pointed out, the phrase 'other matters arising under this Code,' as stated in the second paragraph of Section 4 of the NIRC, **should be understood as pertaining to those matters <u>directly related</u> to the preceding phrase 'disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto'** and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers." *(Emphasis and underscoring supplied)*

It is clear from the foregoing that the other matters arising under the NIRC of 1997, as amended, are those which are directly related to the disputed assessment or refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto. In the present case, the validity of the FNBS issued by respondent is in question, which incidentally is directly related to his tax assessments being one of the remedies for the collection of delinquent taxes sanctioned under Section 206 of the NIRC of 1997, as amended, and BIR's rules and regulations. Accordingly, the CTA is therefore clothed with jurisdiction to determine its validity under the phrase "other matters arising under the NIRC or other laws administered by the BIR."

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[2] Section 7(a)(1) of Republic Act (RA) No. 1125, as amended.
[3] G.R. No. 207843, July 15, 2015.

As to respondent's argument that it properly served the assessment notices to petitioner observing the due process requirement, the Court has thoroughly scrutinized all documentary and testimonial evidence presented by the parties and found that respondent indeed failed to prove the same.

With emphasis, the importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228 of the NIRC of 1997, as amended, 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. And, the use of the word "shall" in the said Section and in its implementing rules and regulations indicate 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.[4] This is an essential requirement of due process and applies to the Preliminary Assessment Notice (PAN), Final Letter of Demand with the Final Assessment Notices (FLD/FAN), and the Final Decision on Disputed Assessment (FDDA).

To amplify this, the Supreme Court discussed a taxpayer's Constitutional right to due process of law in the case of *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*,[5] to wit:

> "It might not also be amiss to point out that petitioner's **issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. An invalid assessment bears no valid fruit.** 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. **In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be**

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[4] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. Nos. 215534 & 215557, April 18, 2016.

[5] G.R. No. 198677, November 26, 2014.

> **no deprivation of property, because no effective protest can be made.**" *(Emphases supplied)*

Incidentally, in tax assessments, due process requires that the taxpayer must **actually** receive the assessment. Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held 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 and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[6]

To reiterate, if the taxpayer denies having received the assessment notices, it is incumbent upon respondent to prove by competent evidence that the assessment notices were indeed received by the taxpayer. And, correspondingly, the failure of respondent to prove receipt of the assessment by the taxpayer leads to the conclusion that no assessment was issued.

In the present case, respondent merely asserted that the PAN and FLD/FAN were mailed and presumed to have been received by petitioner. Unfortunately, mere assertion is not enough. What is essential to prove is the fact of mailing via the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by petitioner or its duly authorized representative. And if the said documents cannot be located, respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. This 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.[7] *jr*

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[6] *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

[7] Ibid.

In view of the foregoing disquisitions, this Court finds no cogent reason to reverse or modify the conclusion reached in the Decision assailed by respondent.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated on January 11, 2021) is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice