REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2836** (CTA Case No. 9719)
	Present:
- versus -	**DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES, JJ.**
DIZON COUNTRY FRESH, INC., Respondent.	Promulgated: MAY 15 2025 4:20pm

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DECISION

FERRER-FLORES, J.:

This **Petition for Review** filed by **Commissioner of Internal Revenue (petitioner/CIR)** on December 11, 2023[1] seeks the reversal of the Decision promulgated on June 27, 2023 (assailed Decision),[2] and the Resolution dated October 26, 2023 (assailed Resolution)[3] in CTA Case No. 9719, whereby the Special First Division of this Court cancelled and withdrew the Formal Letter of Demand (FLD) and Final Assessment Notices (FLD/FAN) dated January 13, 2017, assessing **respondent Dizon Country Fresh, Inc.** for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT),

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1 *Rollo*, pp. 6 to 12.
2 *Id. at* 16 to 31. Penned by Associate Justice Marian Ivy F. Reyes-Fajardo and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.
3 *Id.* at 33 to 35.

improperly accumulated earnings tax (IAET) and compromise penalty for taxable year (TY) 2013.

The dispositive portions of the assailed Decision and the assailed Resolution read as follows:

Assailed Decision:

> **WHEREFORE**, the Petition for Review dated November 20, 2017, filed by Dizon Country Fresh, Inc., is **GRANTED**. Accordingly, the alleged income tax (IT) – IT-ELA36521-13-17-258; value added tax (VAT) - VT-ELA36521-13-17-258; expanded withholding tax (EWT) — WE-ELA36521-13-17-258; improperly accumulated earnings tax (IAET) — IE-ELA36521-13-17-258; and compromise penalty — MC-ELA36521-13-17-258 assessments, for taxable year 2013, in the total amount of P14,893,789.20, embodied in the Formal Letter of Demand and Final Assessment Notices, all dated January 13, 2017, are **CANCELLED** and **WITHDRAWN**.
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> Respondent, his representatives, agents, or other persons acting in his behalf are **ENJOINED** from implementing the collection of the deficiency tax assessments, for taxable year 2013, in the total amount of P14,893,789.20, embodied in the Formal Letter of Demand and Final Assessment Notices, all dated January 13, 2017, against petitioner.
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> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE**, respondent's Motion for Reconsideration (Decision of 27 June 2023), posted on July 26, 2023, is **DENIED**. The Decision dated June 27, 2023, is **AFFIRMED**.
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> **SO ORDERED.**

PARTIES OF THE CASE[4]

Petitioner is the CIR who is the duly appointed head of the Bureau of Internal Revenue (BIR). He is vested under the appropriate laws with authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended,[5] and other tax laws, rules and regulations. He may be served with summons, notices and other processes of this Honorable Court at the Legal Division, BIR Revenue Region No. 8B, South NCR, 2nd Floor, BIR Building, 313 Senator Gil Puyat Avenue, Makati City. M

[4] The Parties, *Petition for Review*, *Rollo*, p. 6.
[5] Republic Act (R.A.) No. 8424, as amended.

Respondent Dizon Country Fresh, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at Lot 65A DBP Avenue, corner Apahap Road, FTI Complex, Taguig City.

FACTUAL ANTECEDENTS

The facts as found by the Court of Tax Appeals (CTA) Special First Division are as follows: [6]

> On December 4, 2015, Regional Director Jonas DP Amora of BIR Revenue Region No. 8 issued an electronic Letter of Authority (SN: eLA201200036521), authorizing Revenue Officer (RO) Melvin Raymund Valenzuela and Group Supervisor (GS) Reynaldo Laureta of Revenue District Office (RDO) No. 44, to examine petitioner's [herein respondent's] books of accounts and other accounting records for all internal revenue taxes for TY 2013.
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> On December 28, 2016, the BIR issued a Preliminary Assessment Notice (PAN) to petitioner [herein respondent], containing the proposed deficiency IT, VAT, EWT, and IAET against it for TY 2013.
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> On January 27, 2017, petitioner [herein respondent] received the Formal Letter of Demand and Assessment Notices dated January 13, 2017 (FLD/FAN), representing the alleged assessments for income tax — IT-ELA36521-13-17-258 — P9,155,661.31; VAT — VT-ELA36521-13-17-258 — P5,027,255.61; EWT — WE-ELA36521-13-17-258 — P59,007.83; IAET — IE-ELA36521-13-17-258 — P631,864.42; and compromise penalty — MC-ELA36521-13-17-258 — P20,000.00, all for TY 2013.
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> On February 24, 2017, petitioner [herein respondent] filed its protest on the FLD/FAN, followed by its submission documents in support thereof on April 25, 2017.

PROCEEDINGS BEFORE THE COURT IN DIVISION

Respondent filed its *Petition for Review* on November 21, 2017, initially raffled to the Third Division of the Court.

On January 19, 2018, petitioner filed his *Answer* to the *Petition for Review.*

[6] *Id.* at 17 to 19. Citations omitted.

The Pre-Trial Conference was held on July 10, 2018 and the parties filed their *Joint Stipulation of Facts and Issues* on July 16, 2018. On the basis thereof, the Court issued a Pre-Trial Order dated August 16, 2018.

Through an Order dated September 20, 2018, this case was transferred from the Third Division to the First Division of the Court.

Trial ensued. The parties presented their respective witnesses and filed their respective *Formal Offer of Evidence*. The Court admitted all of the parties' exhibits except for petitioner's Exhibit "R-8", for failure of his witness to identify the said exhibit.

The *Memorandum (For the Petitioner)* was filed by herein respondent on May 6, 2022. On the other hand, petitioner failed to file his memorandum, despite the opportunity granted.

In the Minute Resolution dated June 28, 2022, the case was submitted for decision.

On June 27, 2023, the Special First Division rendered the assailed Decision, which was received by petitioner on July 11, 2023.

He then filed, on July 26, 2019, a *Motion for Reconsideration*, which was denied by the Court in the assailed Resolution.

Hence, the instant *Petition for Review*.

Respondent Dizon filed its *Opposition/Comment* on February 22, 2024.[7] On May 15, 2024, the case was submitted for decision.[8]

ISSUE

The sole issue raised by petitioner in the instant *Petition for Review* is:[9]

> Whether or not the BIR's deficiency income tax, VAT, EWT and IAET assessments, including the compromise penalty, imposed by petitioner for TY 2013 is valid.

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[7] *Rollo*, pp. 49 to 55.
[8] *Id.* at 58.
[9] Issues, Petition for Review, *Ibid.*, p. 10.

ARGUMENTS

Petitioner argues that the pre-conditions cited by the CTA Special First Division to constitute a valid service of the assessment is not applicable to service by registered mail. He contends that the requirements enumerated in Section 3.1.6. of Revenue Regulations (RR) No. 12-99,[10] as amended by RR No. 18-13, [11] are applicable only if the service is done by ordinary mail. Petitioner posits that, in case of service by registered mail, it is enough that the registry receipt issued by the post office containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket. According to petitioner, the pre-conditions are present in ordinary mail because, as defined by the Philippine Postal Corporation (PHLPost), it includes all unrecorded items which are charged under the basic postage and delivered through the regular delivery channels and further classified into first, second and third class; whereas, registered mail are recorded special security, with the entire process recorded from acceptance at the counter to delivery to the addressee. Hence, petitioner maintains that the sender may attach a registry return to be signed by the recipient as evidence of delivery.

Petitioner also avers that the fact of receipt of the Preliminary Assessment Notice (PAN) was established. Considering that the service was made through registered mail, the receipt of the security guard at the registered address of petitioner is sufficient as it is not expected that the postmen of PHLPost will look or search for the officers of the corporation. Petitioner insists that the delivery of the mail matter indicated in the registered address and/or to the addressee is enough. Contrary to personal service, the BIR has no control anymore once the mail matter was sent to the post office.

On the other hand, respondent counters that the CTA Special First Division has already passed upon the issues raised in its Resolution dated October 26, 2023. Respondent subscribes to the ruling of the CTA Special First Division considering that there is nothing novel about the arguments raised by petitioner. Respondent reiterates the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[12] stating that the proof of mailing is sufficient only to raise a disputable

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[10] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[11] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

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

presumption that respondent corporation received the PAN. Upon denial thereof, however, the burden of proof shifts upon the party favored by the presumption to prove that the mailed matter was actually received by the addressee. For respondent, it is incumbent upon petitioner to prove that the person who received the PAN was an authorized representative of the corporation. Since the records of the case bear that petitioner admits that the security guard was the one who received the PAN but presented no proof that he is an authorized representative of respondent, petitioner failed to overcome the burden of proof required to establish that respondent received the PAN. Finally, respondent asseverates that petitioner's witness does not have personal knowledge of the fact of mailing of the PAN to respondent considering that there is no indication in the return card that what was mailed was the PAN.

RULING OF THE COURT *EN BANC*

We uphold the ruling of the CTA Special First Division.

Timeliness of the Petition for Review

Records show that petitioner received the assailed Resolution on November 8, 2023.[13] Counting 15 days therefrom, petitioner had until November 23, 2023 within which to file his Petition for Review before the Court *En Banc*. On November 22, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review*[14] requesting for an additional period of 15 days within which to file his Petition for Review, which was granted by this Court in a Minute Resolution dated December 5, 2023.[15] On December 11, 2023, petitioner timely filed his *Petition for Review*.[16]

Petitioner failed to establish that he validly served the PAN.

Petitioner's assertion that the preconditions set forth in Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, do not apply to service by registered mail, is unfounded.

According to petitioner, the preconditions set forth therein are only required when the assessment was sent through ordinary mail. Petitioner contends that for registered mail, the registry return is the evidence of

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[13] *Rollo*, p. 32.
[14] *Rollo*, pp. 1 to 3.
[15] *Rollo*, p. 5.
[16] December 8, 2023 was declared a special non-working holiday, pursuant to Republic Act No. 10966. December 11, 2023 is the next working day.

delivery. Petitioner maintains that it is not expected that the postmen will look or search for the officers of the corporation as long as the mail matter is delivered in the registered address and/or to the addressee. As opposed to personal service, wherein the BIR revenue officer delivers the mail directly to the authorized representative of respondent, the BIR has no control over the delivery via registered mail once the mail matter was sent to the post office.

Respondent, on the other hand, highlights the cases decided by the Supreme Court ruling that the fact of mailing only establishes a disputable presumption of such fact. Once the other party directly denies receipt thereof, the burden of proof shall be shifted to the party favored by presumption.

In the assailed Decision, the CTA Special First Division found that the Registry Receipt pertaining to the PAN was not accompanied by an "instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered" and there was no written report under oath made by the server thereof, setting forth the manner, place, and date of service of the PAN, the name of the person who received the same, and such other relevant information relating to such service.

The CTA Special First Division held that the service of the PAN is, thus, not in accordance with Section 3.1.6 (iii) of RR No. 18-13, which provides:

> xxx xxx xxx
>
> 3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
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> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party **with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered**. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
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> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information**. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket. (Emphases ours)

Clearly, the requirement of "instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered" applies to service by registered mail, under the first paragraph of Section 3.1.6 (iii) of RR No. 18-13. The requirement of a written report under oath made by the server of the mail, setting forth the manner, place, and date of service of the PAN, the name of the person who received the same, and such other relevant information relating to such service is likewise required. Only when no available registry or reputable professional courier service in the locality of the addressee shall petitioner resort to service by ordinary mail.

As aptly observed by the CTA Special First Division, the PAN was not validly served.

Petitioner failed to establish that respondent actually received the PAN.

Petitioner claims that it mailed the PAN to respondent; however, since he has no control anymore once the mail matter was sent to the post office and it is not expected that the postmen will look and search for the officers of the corporation, there is a disputable presumption that respondent received the PAN. Moreover, petitioner asserts that the PAN was in fact received by Mr. Richard Sacdo, the security guard at the registered address of petitioner.

Respondent, on the other hand, posits that its denial of the receipt of the PAN shifts the burden upon the party favored of the presumption to prove that the mailed matter was <u>actually</u> received by the addressee. For respondent, it is incumbent upon petitioner to prove that the person who received the PAN was an authorized representative of the corporation.

In the assailed Decision, the CTA Special First Division found that petitioner was only able to show that he successfully mailed the PAN but not respondent's actual receipt.

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.* (*Metro Star*),[17] the Supreme Court held that Section 228 of the NIRC of 1997, as amended, requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN, viz:

> **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

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

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.** (Emphasis supplied)

Section 228 of the NIRC of 1997, as amended, 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 preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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.

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 supplied).

The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.[18] As already categorically enunciated in the case of *Metro Star*, the law imposes a substantive, not merely a formal, requirement that the taxpayer must be informed of the facts and law upon which the assessment was made. Clearly, taxpayers should be able to present their case and adduce supporting evidence, to wit:

> From the provision quoted above, **it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities**. The use of the word "shall" in subsection 3.1.2 describes the **mandatory nature of the service of a PAN**. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, **for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.** (Emphasis ours)

It is likewise indispensable that the taxpayer is sufficiently given the full 15 days from its receipt of the PAN to reply thereto. In the case of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[19] the Supreme Court stated that the 15-day period provided under RR No. 12-99 for a taxpayer to reply to a PAN should be strictly observed by the BIR. The Court highlighted that the 15-day period starts only after the taxpayer received the PAN. Also in the case of *Metro Star*, the Supreme Court agreed with the findings of the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN.

Undoubtedly, it is vital that the PAN is actually received by the taxpayer in order for it to reply before it can be considered in default that will result in the issuance of the FLD.

In the assailed Decision, respondent denied the receipt of the PAN. Considering that the mailing of the PAN only raises a disputable presumption of receipt, respondent's direct denial shifts the burden to petitioner to prove that the PAN was indeed received by respondent.

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[18] *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022.
[19] G.R. No. 222476, May 5, 2021.

As there is no proof that respondent's authorized representative received the PAN, only proof of receipt by the security guard, who was not shown to be respondent's authorized representative, in the registered address of respondent, the counting of the 15-day period has not yet started and the assessment is void for failure of petitioner to inform respondent in writing of the law and the facts on which the assessment is made.

Consequently, the CTA Special First Division did not err in granting respondent's *Petition for Review* and thereby cancelling the assessment of petitioner for TY 2013.

WHEREFORE, in view of the foregoing, the **Petition for Review** filed on December 11, 2023 is **DENIED** for lack of merit. The Decision dated June 27, 2023 and the Resolution dated October 26, 2023 of the CTA Special First Division in CTA Case No. 9719 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Maria Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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