Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB CASE NO. 1076** (CTA Case No. 8135)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS RINGPIS-LIBAN, JJ.
ALPHA RIGGING & MOVING SYSTEMS, INC., Respondent.	Promulgated: JAN 08 2015 2:00 p.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 3(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

---

[1] RULE 4
JURISDICTION OF THE COURT

xxx.

Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

RULE 8
PROCEDURE IN CIVIL CASES

Sec. 3. *Who may appeal; period to file petition.*--
(a) xxx.

dated July 12, 2013, rendered by the Special Third Division of this Court in CTA Case No. 8135, and its Resolution[3] dated October 9, 2013.

Petitioner Commissioner of Internal Revenue (CIR) assailed both the aforesaid Decision, the dispositive portions of which, respectively, read as follows:

Decision dated July 12, 2013:

> "***WHEREFORE***, *premises considered, the Petition for Review is hereby* ***GRANTED.***
>
> *Accordingly, the Formal Letter of Demand and Assessment Notices No. 59/2000, all dated May 31, 2005, assessing petitioner for deficiency income tax, value added tax, documentary stamp tax, and compromise penalties for taxable year 2000, in the total amount of P34,715,373.06, inclusive of interest, 25% surcharge, and compromise penalties, as well as the Formal Letter of Demand and Assessment Notice No. 59/2001, dated September 30, 2005, assessing petitioner for deficiency income tax, expanded withholding tax, and fringe benefits tax for the year 2001, in the total amount of P13,769,750.60, inclusive of interest, 25% surcharge, and compromise penalties are hereby* ***CANCELLED*** *and* ***WITHDRAWN***.
>
> *Consequently, the Warrant of Distraint and/or Levy No. 159-10-018 dated June 15, 2010 is hereby declared* ***NULL*** *and* ***VOID***. *Respondent is now precluded from collecting the amount of P48,488,123.06, representing petitioner's tax liability for the taxable years 2000 and 2001.*
>
> ***SO ORDERED."***

(b) A party adversely affected by a decision or resolution of a Division of the Court on a Motion for Reconsideration or New Trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

(c) xxx.

[2] En banc Docket, pp. 49-82.

[3] En banc Docket, pp. 83.-85.

Resolution dated October 9, 2013:

"***WHEREFORE***, *premises considered, the instant Motion for Reconsideration is hereby* ***DENIED*** *for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court in Division in its Decision are as follows:

"Petitioner[4] *is a domestic corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) with registered address at Maharlika Highway, San Roque, Santo Tomas, Batangas. It provides services primarily in the fields of industrial transfer, rigging, hauling, machinery moving, engineering, civil works and crating, machinery and equipment moving, installation, repair and maintenance, sales and leasing of machinery, equipment and tools.*

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) with office address at BIR National Office Building, Diliman, Quezon City. She is vested with the authority under the National Internal Revenue Code (NIRC) of 1997 to exercise functions of said office, including, inter alia, the power to decide disputed assessments.

Petitioner filed its Annual Income Tax Returns for taxable years 2000 and 2001 with the Bureau of Internal Revenue (BIR) on April 18, 2001 and April 15, 2002, respectively.

On October 2, 2002, Letter of Authority (LOA) No. 1999 00052679 was issued against petitioner for the examination of its books of accounts and other accounting records for all internal revenue taxes for taxable year January 1, 2000 to December 31, 2000.

On January 24, 2003, petitioner, through its representative, Mr. Emiliano S. Gianzon, Jr., executed a "Waiver of the Defense of Prescription under the Statute of

[4] Respondent Alpha Rigging & Moving Systems Inc. was the petitioner (herein referred as the taxpayer) while petitioner CIR was respondent before the Court in Division.

Limitations of the National Internal Revenue Code" covering tax liabilities for year 2000 (2000 Waiver).

On August 15, 2003, respondent issued LOA No. 2000 00059409 8 against petitioner for the examination of its books of accounts and other accounting records for all internal revenue taxes for taxable year January 1, 2001 to December 31, 2001.

On February 10, 2004, petitioner, through its representative, Mr. Gianzon, Jr., executed a "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code" covering tax liabilities for year 2001 (2001 Waiver).

On March 29, 2005, a Preliminary Ten (10)-Day Assessment Notice (2000 Ten-Day PAN) was issued against petitioner by Revenue District Officer Juan P. Leron of Revenue District Office (RDO) No. 59, assessing petitioner for deficiency income tax, value-added tax (VAT), documentary stamp tax (DST), and compromise penalties for taxable year 2000. On the same date, Revenue District Officer Juan P. Leron also issued another PAN (2001 Ten-Day PAN) against petitioner, assessing petitioner for deficiency taxes in the amount of P12,373,897.39 for taxable year 2001.

On May 9, 2005, Acting Regional Director Merlinda L. Ordoyo of Revenue Region (RR) No. 9 issued a Preliminary Assessment Notice (2000 PAN), assessing petitioner for deficiency income tax, VAT, DST, and compromise penalties for taxable year 2000.

On May 31, 2005, a Formal Letter of Demand (2000 FLD) and Assessment Notices (FAN) No. 59/2000 were issued by Acting Regional Director Ordoyo against petitioner, assessing petitioner for deficiency income tax, VAT, DST, and compromise penalties for taxable year 2000, in the total amount of P34,715,373.06, inclusive of interest, 25% surcharge, and compromise penalties, broken down as follows:

Nature of Tax	***Basic***	***Surcharge***	***Interest***	***Compromise Penalty***	***Total***
Income Tax	*P10,526,698.87*	*P00.0*	*P8,690,842.59*	*P25,000.00*	*P19,242,541.46*
VAT	*7,248,446.51*	*1,812,111.63*	*6,306,148.46*	*25,000.00*	*15,391,706.60*
DST	*12,500.00*	*3,125.00*	*12,500.00*	*3,000.00*	*31,125.00*
Compromise Penalties					
Failure to file quarterly income tax	*25,000.00*				*25,000.00*

return					
Failure to keep/preserve records (books of accounts)	*25,000.00*				*25,000.00*
TOTAL					*P34,715,373.06*

On June 3, 2005, petitioner wrote a letter to Revenue District Officer Leron stating its objections to the deficiency tax assessments as contained in the 2000 PAN.

On August 11, 2005, Acting Regional Director Ordoyo issued a Preliminary Assessment Notice (2001 PAN) with Details of Discrepancies, assessing petitioner for deficiency income tax, expanded withholding tax (EWT), and fringe benefits tax (FBT) for taxable year 2001.

On October 11, 2005, petitioner received the Formal Letter of Demand (2001 FLD) and FAN No. 59/2001, all dated September 30, 2005, assessing petitioner for deficiency income tax, EWT, and FBT for taxable year 2001, in the total amount of P13,769,750.60, inclusive of interest, 25% surcharge, and compromise penalties, broken down as follows:

Nature of Tax	***Basic***	***Surcharge***	***Interest***	***Compromise Penalty***	***Total***
Income Tax	*P3,669,877.35*	*P00.0*	*P2,541,390.06*	*P25,000.00*	*P6,236,267.41*
EWT	*615,151.33*	*153,787.83*	*456,319.23*	*20,000.00*	*1,245,258.39*
FBT	*3,144,504.87*	*786,126.22*	*2,332,593.71*	*25,000.00*	*6,288,224.80*
TOTAL					*P13,769,750.60*

On October 25, 2005, petitioner filed its protest letter dated October 17, 2005, protesting the 2001 FLD and FAN No. 59/2001.

On November 15, 2005, OIC-Revenue District Officer Oden S. Lucman of RDO No. 59 issued a Final Notice against petitioner urging petitioner to pay its deficiency tax assessment per 2000 FLD within ten (10) days from receipt of said Final Notice; otherwise, the RDO shall enforce the collection of said deficiency tax assessment through the summary remedies of distraint and levy.

In response to the Final Notice dated November 15, 2005, petitioner wrote a letter dated November 26, 2005 addressed to the Revenue District Officer of RDO No. 59. Said letter was filed by petitioner with RDO No. 59 on November 30, 2005.

On December 19, 2005, respondent granted petitioner's request for reinvestigation covering taxable year 2001 and issued the corresponding Tax Verification Notice (TVN) No. 2002 00191609.

On November 23, 2006, OIC-Revenue District Officer Rodolfo B. Tamani of RDO No. 59 issued a Final Notice Before Seizure, requesting petitioner to settle its deficiency tax assessment per 2000 FLD and FAN No. 59/2000; otherwise, said RDO will proceed with the collection of the same through summary remedies of distraint and levy or garnishment, without notice.

On March 6, 2008, petitioner availed of the Tax Amnesty Program under Republic Act (RA) No. 9480 by paying the amnesty tax amounting to P100,000.00, and filing a Notice of Availment of Tax Amnesty, Tax Amnesty Return (BIR Form No. 2116), Tax Amnesty Payment Form (BIR Form No. 0617), Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005.

In a letter dated February 22, 2010, Revenue District Officer Rebe D. Detablan of RDO No. 59 informed petitioner that it is not entitled to enjoy the benefits and privileges granted under the Tax Amnesty Program, pursuant to Revenue Memorandum Circular (RMC) No. 19-2008 dated February 22, 2008. In said letter, petitioner was requested to pay the deficiency tax due for the year 2000; otherwise, said RDO will be constrained to collect said deficiency tax through distraint and/or levy or garnishment.

On June 15, 2010, Warrant of Distraint and/or Levy (WDL) No. 059-10-018 was issued against petitioner, pertaining to petitioner's deficiency tax liabilities for taxable years 2000 and 2001, to wit:

Assessment Notice No.	***Date issued***	***Kind of Tax***	***Year***	***Amount***
59-2000	*05-31-05*	*Income*	*2000*	*P19,242,541.46*
59-2000	*05-31-05*	*VAT*	*2000*	*15,391,706.60*
59-2000	*05-31-05*	*Doc. Stamps*	*2000*	*34,125.00*
59-2000	*05-31-05*	*Compromise*	*2000*	*50,000.00*
59-2001	*09-30-05*	*Income*	*2001*	*6,236,267.41*
59-2001	*09-30-05*	*EWT*	*2001*	*1,245,258.39*
59-2001	*09-30-05*	*Fringe Benefits Tax*	*2001*	*6,288,224.8*
TOTAL				*P48,488,123.06*

Since petitioner's authorized personnel refused to receive WDL No. 059-10-018, the officers of respondent left the copy of the WDL in the premises, with a notation *that it was constructively served on June 23, 2010, and witnessed by Mary Grace I. Endaya and Zenaida B. Datingaling.*

On July 23, 2010, petitioner filed the instant Petition for Review seeking the cancellation and/or withdrawal of WDL No. 059-10-018 as well as the corresponding deficiency tax assessments covering taxable years 2000 and 2001, in the total amount of P48,488,123.06.

On September 6, 2010, respondent filed her Answer to the Petition for Review and raised the following Special and Affirmative Defenses:

> *"6. The taxes were assessed within the period allowed by law.xxx.*
>
> *7. Section 222 (a) of the Tax Code of 1997 clearly states the period to assess can be validly extended beyond the three (3)-year period provided for in Section 203 of the same law in case of failure to file a return, to wit:*
>
> *'(a) In the case of a false or fraudulent return with intent to evade taxes or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided: That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.'*
>
> *xxx xxx xxx*
>
> *9. In this instance, respondent issued her preliminary assessment notice (PAN) after investigation revealed that there was no proof of payment of income, value-added, and documentary stamp taxes made by petitioner for taxable year 2000. As per BIR records, respondent issued her PAN for deficiency tax liabilities for taxable year 2000 against petitioner on May 9, 2005 or well within the ten (10)-year period allowed by law to assess. Attached hereto are copies of the PAN dated May 9, 2005 as Annex '1' as well as the Registry Receipt of the said PAN which indicates that it was received by respondent on May 19, 2005 as Annex '2'. Both annexes are made an integral part hereof.*
>
> *10. On the other hand, respondent issued her PAN for taxable year 2001 after investigation revealed that petitioner failed to file and pay withholding and fringe benefit taxes for the said year as well as having*

unsupported claims of interest expenses. As per BIR records, respondent issued her PAN for deficiency tax liabilities for taxable year 2000 against petitioner on August 11, 2005 or well within the ten (10)-year period allowed by law to assess in case of failure to file returns. Attached hereto are copies of the August 11, 2005 PAN as Annex '3' as well as the Registry Receipt of the said PAN which indicates that it was received by respondent on September 5, 2005 as Annex '4'. Both annexes are made an integral part hereof.

11. Alternatively, respondent submits that Section 222 (b) of the Tax Code of 1997 applies in this case. This provision clearly states the period to assess can be validly extended beyond the three (3)-year period provided for in Section 203 of the same law with the execution of a waiver, to wit:

'(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.'

12. Based on BIR records, petitioner executed two (2) waivers, both of which were executed prior to the lapse of prescriptive period provided for under the law.

13. The waiver covering taxable period 2000 was executed on January 24, 2003 and was signed by Emiliano S. Gianzon, Jr., the duly authorized representative of petitioner under a board resolution certified by petitioner's corporate secretary. By virtue of this waiver, the period to assess the internal tax liabilities for the year 2000 was extended until December 31, 2005. This waiver was executed within the three (3)-year period provided for in the law for the Bureau of Internal Revenue to issue an assessment. Attached hereto as Annex '5' is a copy of the Secretary's Certificate indicating petitioner's Board of Directors' authorization for the execution of the waiver, and is made an integral part hereof.

14. Moreover, the waiver covering taxable period 2001 was executed on February 10, 2004 signed by Emiliano S. Gianzon, Jr., the duly authorized representative of petitioner under a board resolution certified by petitioner's corporate secretary. By virtue of this waiver, the period to assess the internal tax liabilities for the year 2001 was extended until December 31, 2005. This waiver was executed within the three (3)-year period provided for in the law for the Bureau of Internal Revenue to issue an assessment. Attached hereto as Annex '6' is a *copy of the Secretary's Certificate indicating petitioner's Board of Directors' authorization for the execution of the waiver, and is made an integral part hereof.*

15. Alternatively, respondent submits that the assessments from which the warrant of distraint and levy was issued had long become final and executory. In the case of Allied Banking Corporation vs. Commissioner of Internal Revenue, the Honorable Court En Banc states:

An administrative protest is an integral part of the remedies given to the taxpayer in challenging the legality of an assessment. It is absolutely necessary for the taxpayer to file and (sic) administrative protest for the court to acquire jurisdiction. Precisely, one of the grounds that a taxpayer can raise in protesting an assessment is the defense of prescription, which if found to be meritorious, provides legal justification for the BIR to revoke an assailed assessment. Clearly, even an assessment which is contrary to law can attain finality if the same is not protested. Not being jurisdictional, prescription is a mere defense that must be invoked at the proper time; otherwise, it shall be considered waived.

xxx xxx xxx.

18. In this case, petitioner did not properly protest the assessments made by respondent. As per BIR records, petitioner did not comply with the requirements of submitting all relevant documents within the sixty (60)-day period from receipt of protest by respondent. Consequently, the assessments had long become final and executory after the lapse of the sixty (60)-day period for petitioner to submit all relevant documents.

19. As per BIR records, petitioner filed its protest to respondent's Formal Letter of Demand for taxable year 2001 on October 17, 2005. Counting the sixty (60)-day period, petitioner had until December 16, 2005 to submit to respondent all relevant documents in support of its protest. However, the records are bereft of any such documents. Consequently, the assessments covered by the Formal Letter of Demand for taxable year 2001 had become final and executory.

20. On the other hand, petitioner's protest against the assessments dated June 3, 2005 was not properly substantiated. The BIR records do not show that petitioner submitted all relevant documents to support its protest within the provided sixty (60)-day period. Consequently when respondent issued its Final Notice covering assessments made for the taxable year 2000 on November 15, 2005, the assessments had long become final and executory.

xxx xxx xxx.

22. Alternatively, respondent submits that the waivers remained valid invoking the doctrine of laches. xxx.

23. In this instance, laches have set in. Petitioner failed to assert the defense of prescription to refute the assessment notices covering taxable years 2000 and 2001 when respondent issued the same in 2005. Instead, petitioner chose to protest the assessment based on other grounds. Petitioner's acts unequivocally show that it did not believe respondent's assessment has prescribed.

24. Instead of asserting prescription in response to respondent's Formal Letter of Demand and Final Notice Before Seizure, petitioner in its protest questioned the computation in the assessment without substantiating the same.

25. Another opportunity to assert the defense of prescription presented itself to petitioner when respondent granted petitioner's protest. However, instead of raising prescription as a defense, petitioner requested for reinvestigation of the assessment. This is evidenced by Tax Verification Notice dated December 19, 2005 issued by respondent granting petitioner's request for reinvestigation. Attached hereto as Annex '7' is a copy of the said Tax Verification Notice and is made an integral part hereof.

xxx xxx xxx.

28. Throughout this period, petitioner remained silent and did not raise the matter of prescription with respect to the assailed assessments in any action or protest before the Bureau of Internal Revenue. On the other hand, petitioner through various letters repeatedly requested respondent to reinvestigate the findings of the assessment. Petitioner should not be permitted to claim that the actions have prescribed after leading respondent to re-evaluate its protests on multiple occasions and after failing to validly substantiate the protest with all relevant supporting documents.

xxx xxx xxx

30. Furthermore, the benefits and immunities provided in Section 6 of Republic Act No. 9480 are contingent on the proper availment of tax amnesty earlier outlined in Section (5) of the same law, to wit: xxx.

31. As per BIR records, petitioner failed to comply with the abovementioned requirements of the law. Specifically, petitioner failed to pay the proper prescribed *amount of tax amnesty payment. In petitioner's accomplished Tax Amnesty Payment Form (BIR Form No. 0617) accomplished by Allan P. Almeda, petitioner's Senior CEO Representative dated March 6, 2008, it indicated payment of P100,000. This notwithstanding that petitioner ought to have paid 5% of its declared net-worth of P6,446,409.84 or the amount of P322,320.49 indicated in the accompanying Statement of Assets, Liabilities & Net-worth (SALN) with its payment form. Attached hereto are copies of petitioner's Tax Amnesty Payment Form, Revenue Official Receipt, Notice of Availment of Tax Amnesty, and SALN as Annexes '8', '9', '10', '11', and are made integral parts hereof.*

32. The law is clear as to the amount to be paid by way of tax amnesty payment. In this instance, petitioner's payment of P100,000 did not comply with the requirements of the law. Petitioner should have paid 5% of its declared net-worth as this is the higher amount as opposed to the minimum tax amnesty amount which in this case is P100,000. Consequently, petitioner cannot claim the benefits and immunities provided in Republic Act No. 9480.

33. Assuming arguendo that petitioner validly availed Tax Amnesty on March 6, 2008, this act has legal implications. In availing the benefits of tax amnesty afforded by Republic Act No. 9480, petitioner has recognized the validity of the assessment against it.

xxx xxx xxx.

To reiterate, petitioner received a letter of authority relative to the examination of all its internal revenue taxes from January 1, 1995 to December 31, 1995. On January 23, 1997, it executed waivers extending the period to assess up to December 31, 2000. On January 27, 2000, an undated letter of demand with fourteen (14) assessment notices attached were issued by the respondent. On December 6, 2000, petitioner received another formal demand letter with recomputed assessments. On the same day, petitioner paid the deficiency taxes assessed except for the onshore tax and documentary stamp tax on special savings account.

In disputing the assessments for these onshore and documentary stamp taxes, petitioner now assails the validity of the waivers which covered all the other assessed taxes it already paid.

We hold that petitioner is estopped from questioning the validity of the waivers. Its act in paying the assessed taxes covered by the same waivers is conclusive that the assessments were valid. Petitioner cannot now deny their validity. This court cannot *countenance petitioner's act of adopting inconsistent postures regarding the waivers.'*

xxx xxx xxx

35. The doctrine enunciated in the aforementioned case is applicable in this case. In this instance, the amnesty paid for by petitioner covered the assessment from which its petition arose.

36. Again, assuming arguendo, that petitioner validly availed tax amnesty, respondent's assessments on deficiency withholding taxes remained. As provided for in Section 8 (1) of Republic Act No. 9480:

'SEC. 8. Exceptions. — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

1. Withholding agents with respects to their withholding tax liabilities:'

37. Moreover, after claiming certain benefits as a result of its availment of the said amnesty, petitioner should not be permitted to question the assessments that remained as a result thereof. A party shall not, after its opportunity to enjoy the benefits of an agreement, be allowed later to dispute the same, when the terms thereof ultimately would prove to operate against its hopeful expectations. This is a settled rule in this jurisdiction.

38. Respondent calls the Honorable Court's attention to the pronouncements in the case of 'Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue':

'Besides, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. Also, petitioner's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.'

39. In any case, since what is sought to be collected from petitioner are penalties for failure to withhold and remit taxes, the period of limitation provided in Section 203 of the Tax Code of 1997 finds no application.

40. Finally, 'it is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and *operate it. It is the lifeblood of the government and so should be collected without unnecessary hindrance.'*

41. All told, petitioner's petition for review filed before the Honorable Court should be denied for lack of merit." (Citations omitted)

On September 7, 2010, this Court issued a Notice of Pre-Trial Conference notifying the parties that the case is set for Pre-Trial Conference on September 24, 2010 and ordering the parties to file their Pre-Trial Briefs.

On September 17, 2010, respondent filed her Pre-Trial Brief. On the other hand, petitioner filed its Pre-Trial Brief on September 22, 2010.

During the pre-trial on September 24, 2010, the parties were given a period of fifteen (15) days from said date within which to file their Joint Stipulation of Facts and Issues.

The parties filed their Joint Stipulation of Facts and Issues on October 8, 2010. On November 4, 2010, this Court issued the Pre-Trial Order, setting forth, among others, the parties' stipulated facts, stipulated issues, the evidence to be presented by both parties and the hearing dates, and terminating the pre-trial stage.

During trial, petitioner presented its testimonial and documentary evidence. On June 13, 2011, petitioner filed an Omnibus Motion A. For Leave of Court for Early Resolution of the Issue of Prescription and Confirmation of Petitioner's Rights and Immunities under the Tax Amnesty Act of 2007; B. To Allow Petitioner to File its Formal Offer of Evidence Relative to the Issue on Prescription; C. Postponement of Petitioner's Presentation of Evidence on the Validity of the Assessments on the Merits until the Issue on Prescription is Resolved. On July 4, 2011, respondent filed her Comment (petitioner's Omnibus Motion Re: Resolution dated 17 June 2011).

In the Resolution dated August 31, 2011, this Court partially granted petitioner's Omnibus Motion. Petitioner was given fifteen (15) days from notice to file its Formal Offer of Evidence pertinent to the issues on prescription and proper availment of the tax amnesty under RA No. 9480. On the other hand, respondent was granted the same period from receipt of petitioner's Formal Offer of Evidence to file her comment thereto. Petitioner's motion for the early resolution of the issues on prescription and proper availment of the tax amnesty under RA No. 9480 *and the cancellation and withdrawal of the assailed assessments was held in abeyance.*

On September 16, 2011, petitioner filed its Formal Offer of Exhibits. Respondent filed her Comment thereto on October 3, 2011. In the Resolutions dated October 27, 2011 and March 13, 2012, petitioner's Exhibits were admitted as evidence.

On the other hand, after presenting her testimonial and documentary evidence, respondent filed her Formal Offer of Documentary Evidence on September 19, 2011. In the Resolution dated November 27, 2012, respondent's Exhibits were admitted as evidence.

The case was submitted for decision on February 14, 2013, taking into consideration the Memorandum for Petitioner filed on February 8, 2013 and respondent's Memorandum filed on December 13, 2012."[5]

On July 12, 2013, this Court's Division granted the petition of Alpha Rigging & Moving Systems Inc.'[6] (herein referred as the taxpayer). This Court's Division cancelled the formal letter of demand and assessment notices for calendar year 2000 and 2001, and declared null and void the Warrant of distraint and/or levy No. 059-10-018. The formal letter of demand, assessment notices for 2000 and 2001, and warrant of distraint and levy were invalidated due to the failure of the CIR to prove that the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) were sent and received by taxpayer, a violation of due process. Thereafter, CIR's Motion for Reconsideration was denied for lack of merit, hence, the present petition.

Petitioner CIR raised the following issues:

"THE JURISDICTION OF THE HONORABLE COURT OVER COLLECTION PROCEDURES OF FINAL AND EXECUTORY ASSESSMENTS IS LIMITED TO THE TIMELINESS AND VALIDITY OF THE COLLECTION PROCEDURE ITSELF BUT NOT TO INQUIRE INTO THE VALIDITY OF THE UNDISPUTED

---

[5] Supra. Note 2.
[6] Ibid.

ASSESSMENTS. TO SANCTION WOULD BE TO ALLOW INDIRECTLY WHAT THE LAW FORBIDS TO BE DONE DIRECTLY.

ASSUMING THE HONORABLE COURT MAY ALLOW A COLLATERAL ATTACK ON THE YEAR 2000 ASSESSMENT DESPITE THE CLEAR PROHIBITION BY LAW AND JURISPRUDENCE, IT WAS CLEAR ERROR TO SHIFT THE BURDEN OF PROOF ON THE SERVICE OF THE ASSESSMENT TO PETITIONER. EVEN RESPONDENT'S EVIDENCE SHOWS THAT IT WAS AWARE OF THE ASSESSMENT ALL ALONG. THUS, THE DENIAL OF THE RECEIPT WAS CLEARLY AN AFTERTHOUGHT BY RESONDENT OVER FOUR (4) YEARS LATER AND ONLY UPON SERVICE OF THE WDL. A BARE DENIAL, UNSUPPORTED BY ITS OWN EVIDENCE CANNOT OPERATE TO OVERCOME A DISPUTABLE ASSESSMENT.

ASSUMING THE HONORABLE COURT MAY ALLOW A COLLATERAL ATTACK ON THE YEAR 2001 ASSESSMENT DESPITE THE CLEAR PROHIBITION BY LAW AND JURISPRUDENCE, IT WAS CLEAR ERROR TO INVALIDATE THE SAID ASSESMENT ON A NON-ISSUE. THE PARTIES NEVER CONSIDERED THIS SUPPOSED FAILURE TO ISSUE A YEAR 2001 PRELIMINARY ASSESSMENT AS AN ISSUE IN ALL THEIR PLEADINGS. AS A MATTER OF FACT, RESPONDENT EVEN ADMITTED THAT IT WAS INDEED ISSUED. THUS, NOT BEING AN ISSUE TO THE PARTIES, AND EVEN MORE, THE ISSUANCE OF THE YEAR 2001 PRELIMINARY ASSESSEMNT BEING ADMITTED BY RESPONDENT, NO EVIDENCE ON THE MATTER IS NECESSARY OR RELEVANT.

CIR argues that this Court's Division went too far when it examined the validity of an undisputable assessment. CIR claims that action to challenge collection procedures on final and executory assessments should be limited to collection procedure and that the validity of assessment is a separate and distinct issue that can no longer be questioned. CIR further claims that the testimonial evidence of petitioner, documentary evidence by both parties and the admission by silence by the taxpayer bolster the disputable presumption that the mail was indeed received in the ordinary course of mail. CIR maintains that mere denial, unsupported by evidence could never overcome any disputable presumption. Furthermore, CIR claims that this Court's Division erred in invalidating the 2001 assessment for failure to serve the PAN when it is not an issue and that respondent even admitted it was informed of the PAN.

We resolve.

There is no issue on jurisdiction. However, the jurisdiction of the Court of Tax Appelas (CTA) over "other matters arising under the National Internal Revenue Code (NIRC) or other laws or part of law administered by the Bureau of Internal Revenue"[7] is not limited to the timeliness and validity of the collection procedure itself. This Court's Division aptly cited the *Philippine Journalist Case*[8] as follows:

> *"In the case of Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, the Supreme Court emphasized that the Court of Tax Appeals (CTA) has jurisdiction to decide on other cases arising under the NIRC or related laws administered by the BIR, to wit:*
>
> *'The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of*

[7] Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended.

Sec. 7. *Jurisdiction.* -The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue**; (Emphasis Supplied)

x x x x x x

[8] Philippine Journalist, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004

> *Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.' "*

In the *Philippine Journalist Case*, the warrant of distraint and levy was declared invalid and the Court does not limit on the timelines and validity of the collection procedure itself. On the contrary, the validity of the assessment was determined. Consequently, the Supreme Court concluded that a warrant of distraint and levy would be a nullity if issued from an invalid assessment, to wit:

> *"The waiver document is incomplete and defective and thus the three-year prescriptive period was not tolled or extended and continued to run until April 17, 1998. Consequently, the Assessment/Demand No. 33-1-000757-94 issued on December 9, 1998 was invalid because it was issued beyond the three (3) year period. In the same manner, Warrant of Distraint and/or Levy No. 33-06-046 which petitioner received on March 28, 2000 is also null and void for having been issued pursuant to an invalid assessment."*[9]

Clearly, a void assessment bears no fruit and a warrant of distraint and/or levy issued pursuant a void assessment is likewise null and void. Similarly, pursuant to the jurisdiction over cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue, it gives this Court the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule whether the assessment has prescribed or if the notice requirement in the issuance of a deficiency tax assessment pursuant to Section 228[10] of the NIRC, as amended, was complied with.

---

[9] Ibid.

[10] SEC. 228. Protesting of Assessment. – x x x
x x x x

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void.

In the *Metro Star Superama Case*[11] the Supreme Court ruled that failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 is tantamount to a denial of due process, regardless of the failure to file a protest in the assessment, for it is well-settled that a void assessment bears no fruit, to wit:

> *"This now leads to the question: Is the failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process? Specifically, are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?*
>
> *The answer to these questions requires an examination of Section 228 of the Tax Code which reads:*
>
> *xxx xxx xxx.*
>
> *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*

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 (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable. (Emphasis supplied).

[11] Commissioner of Internal Revenue vs. Metro Star Superama Inc., G.R. No. 185371, December 8, 2010.

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.[1]

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. —

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 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.*

3.1.3 Exceptions to Prior Notice of the Assessment. — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

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

(iii) 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

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, ***c***

machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

*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.

xxx.

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.

xxx

> ***The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit."***

Based on the foregoing, the Court is not precluded from determining compliance with the requirements of due process laid down by the law and by the BIR itself in the issuance of deficiency tax assessment to determine the validity of the warrant of distraint and levy.

Evidently, the preliminary assessment notice and final assessment notice must be sent to the taxpayer informing the facts and the law on which the assessment was based. The sending of PAN and FAN 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 the case at bar, the Court in Division found that petitioner's witness testified that FLD and FAN 59/2000[12] and 2001 PAN[13] were mailed and received by respondent, however, CIR failed to mark, offer, identify and admit as evidence any registry receipt and return card to prove the fact of mailing and receipt. Likewise we note in CIR's Answer to the petition before this Court in Division on alleged registry receipt and return card to prove the fact of mailing and receipt by the taxpayer, however, no evidence was marked, offered, identified and admitted during trial. This is clear error on the part of CIR, the omission to mark, offer, identify and admit during trial the registry receipt and return card or any other evidence to prove the fact of mailing and receipt by the taxpayer of the PAN and FAN cost the government the 2000/2001 assessment[14].

[12] TSN , April 23, 2012, pp. 11 to 14
[13] TSN , July 2, 2012, pp. 43 to 44
[14]

Assessment Notice No.	***Date issued***	***Kind of Tax***	***Year***	***Amount***
59-2000	*05-31-05*	*Income*	*2000*	*P19,242,541.46*
59-2000	*05-31-05*	*VAT*	*2000*	*15,391,706.60*

As to CIR's claim that this Court in Division erred in invalidating the 2001 assessment for failure to serve the PAN when it is not an issue and that respondent even admitted it was informed of the PAN, we find no merit.

A perusal of the respondent taxpayer's pre-trial brief[15] reveals that among the issues raised is that CIR did not afford the taxpayer its right to due process". In addition, the Court in Division, a court of competent jurisdiction is vested with the authority to resolve even unassigned issues and it can do so when such a step is indispensable or necessary to a just resolution of issues raised in a particular pleading or when the unassigned issues are inextricably linked or germane to those that have been pleaded.[16] This Court finds that the Court in Division did not err when it resolved an issue not specifically raised when the consideration of which is necessary in arriving at a just and complete resolution of the case. To reiterate, the sending of PAN to a taxpayer is part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made. CIR failed to mark, offer, identify and admit as evidence any registry receipt and return card to prove the fact of mailing and receipt. In sum, we find petitioner's arguments unmeritorious.

We quote with approval the ruling of the Court in Division, as follows:

"III. Validity of WDL No. 059-10-018

59-2000	*05-31-05*	*Doc. Stamps*	*2000*	*34,125.00*
59-2000	*05-31-05*	*Compromise*	*2000*	*50,000.00*
59-2001	*09-30-05*	*Income*	*2001*	*6,236,267.41*
59-2001	*09-30-05*	*EWT*	*2001*	*1,245,258.39*
59-2001	*09-30-05*	*Fringe Benefits Tax*	*2001*	*6,288,224.8*
TOTAL				*P48,488,123.06*

[15] Division Docket, pp. 113-125.
[16] CRISANTO RAFAELITO G. GUALBERTO V vs. COURT OF APPEALS; Hon. HELEN B. RICAFORT, Presiding Judge, Regional Trial Court Parañaque City, Branch 260; and JOYCELYN D. PABLO-GUALBERTO, G.R. No. 156254, June 28, 2005.

Petitioner argues that the 2000 FLD and FAN No. 59/2000 are not valid for respondent's failure to properly serve the same upon petitioner and for being issued beyond the prescriptive period prescribed by law. Petitioner also asserts that it was deprived of its right to file a Reply because it did not receive the 2001 Ten-Day PAN.

Petitioner avers that Section 228 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99 set forth the due process requirements in issuing and serving assessment notices to taxpayer; that the requirements must be strictly complied with in order to protect the rights of the concerned taxpayer; that based on RR No. 12-99, the due process requirements are as follows: (1) a notice of informal conference; (2) a preliminary assessment notice sent to taxpayer at least by registered mail; and (3) a formal letter of demand and assessment notice sent to the taxpayer only by registered mail or by personal delivery; that the absence of one requirement shall render the entire process null and void.

Pursuant to RR No. 12-99, service of the assessment notice to the taxpayer may be by registered mail or by personal delivery. It is settled in our jurisprudence that if the assessment is served by registered mail, and the original was not returned to the BIR, the presumption is that the taxpayer received said assessment in the regular course of mail pursuant to Section 3 (v) , Rule 131 of the Rules of Court.

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. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie.

This Court shall now determine if the evidence presented by respondent gave rise to the presumption that the 2000 FLD and FAN No. 59/2000 and the 2001 Ten-Day PAN were received by petitioner in the regular course of mail.

2000 FLD and FAN No. 59/2000

To prove the foregoing necessary facts, respondent's witness, Ms. Virginia T. Cueto testified that the FAN was sent through registered mail as evidenced by the registry receipt and that said registry receipt was received by a certain AF Panganiban.

A perusal of FAN No. 59/2000 reveals that it was properly addressed to petitioner. However, while respondent's witness made mention of a registry receipt, supposedly to establish the fact of mailing and receipt of the FAN by petitioner, respondent's witness failed to properly identify any registry receipt during trial. Moreover, no registry receipt was marked, offered and admitted as evidence for respondent.

Section 34 of Rule 132 of the Rules of Court explicitly provides:

> *"The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. "*

In the case of Rafael Arsenio S. Dizon vs. Court of Tax Appeals, et al., the Supreme Court emphasized that no evidentiary value can be given to pieces of evidence that were not formally offered before the CTA. Relevant portions of said decision read:

> *"Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. xxx"*

The testimonial evidence presented by respondent was not sufficient to give rise to the presumption that the 2000 FLD and FAN No. 59/2000 were received by petitioner in the regular course of mail.

Moreover, even assuming that the evidence presented by respondent has given rise to the presumption that the 2000 FLD and FAN No. 59/2000 were received by petitioner in the regular course of mail, said presumption is merely a disputable presumption. In the case of Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue7s, the Supreme

Court already ruled that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. Pertinent portions of the Supreme Court's decision are quoted hereunder:

> *"(W)hen 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 the 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, there is still merely a disputable presumption subject to controversion, and a direct denial thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee."*

In this case, considering that petitioner denies receiving the 2000 FLD and FAN No. 59/2000, the burden rests on respondent to prove that the 2000 FLD and FAN No. 59/2000 were indeed served and received by petitioner. Sadly, respondent failed to present sufficient evidence to prove that the 2000 FLD and FAN No. 59/2000 were properly served and received by petitioner.

In the case of Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue, the Supreme Court enunciated that it is a requirement of due process that the taxpayer must actually receive the assessment. Relevant portion of said Supreme Court's decision states:

> *"(D)ue process requires at the very least that such notice actually be received. In Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, we had occasion to say:*
>
> *An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer." (Emphasis supplied)*

Indeed, due process requires that the FAN must be served on, and received by the taxpayer. This will give the taxpayer the opportunity to file a protest against the FAN. If a taxpayer did not receive the assessment, the assessment could not become final and executory.

Here, respondent failed to prove that the 2000 FLD and FAN No. 59/2000 were indeed served and received by petitioner. As such, there is no assessment to begin with, and petitioner cannot be considered a delinquent taxpayer. Consequently, there is no basis for the issuance of WDL No. 059-10-018. Stated differently, WDL No. 059-10-018 issued by respondent to petitioner, in so far as it seeks to collect from petitioner deficiency taxes for year 2000, is void.

In view of the foregoing, the resolution of the issue on prescription of respondent's right to assess petitioner for deficiency taxes for the year 2000 is no longer necessary.

2001 FLD and FAN No. 59/2001

Petitioner contends that it was deprived of its right to file a Reply because it did not receive the 2001 Ten-Day PAN. On the other hand, during trial, respondent's witness testified that petitioner was served with the 2001 Ten-Day PAN through registered mail and that said 2001 Ten-Day PAN was received by petitioner as evidenced by a return card sent to the office of respondent's witness. Respondent's counsel clarified during trial that the 2001 Ten-Day PAN is actually the Notice of Informal Conference contemplated under RR No. 12-99.

With regard to the 2001 PAN, respondent's witness testified on cross-examination that the 2001 PAN was sent to petitioner by registered mail as evidenced by a return card.

Again, to raise the disputable presumption that petitioner received the 2001 Ten-Day PAN and the 2001 PAN in the regular course of mail, respondent must prove that they were properly addressed to petitioner with postage prepaid, and that they were mailed.

However, while respondent's witness testified that the 2001 Ten-Day PAN and the 2001 PAN were sent through registered mail to petitioner as supposedly evidenced by return cards, said return cards were not *properly identified and marked during trial. More so, they were not offered or admitted as evidence for respondent.*

As discussed earlier, this Court cannot give evidentiary value to pieces of evidence that were not formally offered. In this case, the testimony of respondent's witness alone could not give rise to the presumption that the 2001 Ten-Day PAN (Notice of Informal Conference) and the 2001 PAN were served and received by petitioner in the regular course of mail. Since respondent failed to adduce sufficient proof that petitioner received the 2001 Ten-Day PAN (Notice of Informal Conference) and the 2001 PAN in the ordinary course of mail, it cannot be presumed that petitioner received them.

xxx xxx xxx.

The due process requirements in the issuance of a deficiency tax assessment are laid down in Section 3 of RR No. 12-99, which provides the need for (1) a notice for informal conference, (2) a preliminary assessment notice, and (3) a formal letter of demand and assessment notice sent to the taxpayer. Evidently, respondent failed to prove that it complied with the first two requirements, and such failure violated petitioner's right to due process. Said failure on the part of respondent makes the 2001 FLD and FAN No. 59/2001 as well as the WDL No. 059-10-018 invalid."

To end, void assessment bears no fruit. Failure to comply with the notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 will result to a denial of due process, regardless of the failure to file a protest in the assessment.[17]

WHEREFORE premises considered, the petition is **DENIED**. The Decision of the Special Third Division of this Court in CTA Case No. 8135, promulgated on July 12, 2013 and its Resolution, promulgated on October 9, 2013, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

[17] Commissioner of Internal Revenue vs. Metro Star Superama Inc., G.R. No. 185371, December 8, 2010.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen R. Li
MA. BELEN RINGPIS-LIBAN
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice