REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

STAR SPORTS CORPORATION,
Respondent.

CTA *EB* No. 2874
(CTA Case No. 10380)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAR 3 1 2025
3:28 p.m.

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D E C I S I O N

MANAHAN, *J.*:

Before the Court is a *Petition for Review* ("***Petition***")[1] filed by the Commissioner of Internal Revenue ("**CIR**") via registered mail on March 4, 2024, with *Comment (RE: Petition for Review dated 01 March 2024)*[2] filed by Star Sports Corporation ("**Star Sports**") on May 24, 2024.

The *Petition* seeks that the Court *En Banc*: 1.) set aside the Court in Division's *Decision* dated November 6, 2023 ("**assailed *Decision***");[3] and 2.) order respondent Star Sports to pay the alleged deficiency taxes in the total amount of P10,865,497.37.

[1] Docket, pp. 7-21.
[2] Docket, pp. 69-81.
[3] Docket, pp. 23-40.

In the assailed *Decision*, the Court of Tax Appeals ("**CTA**") Second Division found that the CIR failed to discharge the burden of proving that Star Sports received the Preliminary Assessment Notice ("**PAN**") and Final Assessment Notice ("**FAN**"). Thus, the Court in Division declared the assessment void for violation of the right to due process, and consequently nullified the warrant of distraint and/or levy ("**WDL**") issued against Star Sports for being based on a void assessment.

THE FACTS

The antecedent facts of the case are as follows.

On August 4, 2015, the Bureau of Internal Revenue ("**BIR**") issued a Letter of Authority ("**LOA**") authorizing the audit of Star Sports for all internal revenue taxes for calendar year 2014. Star Sports allegedly also received a *First Notice* on the same date, with which it complied by sending the information required by the LOA through letters dated August 27, 2015 and February 2, 2016.[4]

On May 10, 2016, Star Sports received the BIR's *Preliminary Findings* via electronic mail. It responded by submitting an *Explanation Letter* on May 27, 2016 and additional documents on June 27, 2016 and July 1, 2016.[5]

On December 13, 2016, the BIR issued *Subpoena Duces Tecum*, with which Star Sports complied through a transmittal letter received by the BIR on January 13, 2017.[6]

The BIR allegedly issued the PAN on December 6, 2017 and the FAN on January 9, 2018. Star Sports denies receipt of said assessment notices.[7] Later, on September 9, 2020, it received an *Advisory on Receipt of Notice of Garnishment* dated September 4, 2020 informing it that Metrobank had put its corporate account on hold pursuant to a notice of garnishment from the BIR. Star Sports secured a copy of the WDL on September 28, 2020.

[4] Docket, p. 24.
[5] *Id.*
[6] *Id.*
[7] *Id.*

On October 21, 2020, Star Sports filed a petition for review with the CTA. The CIR filed his answer via registered mail on March 19, 2021.[8]

After both parties filed their respective pre-trial briefs, the pre-trial conference was held on October 7, 2021. The parties then filed their *Joint Stipulation of Facts and Issues* on October 26, 2021, and the Court issued the *Pre-Trial Order* on January 3, 2022.[9]

During trial, Star Sports presented Russel M. Membrebe as its sole witness. It submitted its Formal Offer of Evidence on May 5, 2022, to which the CIR filed his Comment via registered mail on May 25, 2022. In a *Resolution* dated July 8, 2022, the Court admitted all of its offered exhibits. Meanwhile, the CIR presented Revenue Officers Joan Claudette Aguilar and Fritz Jihann P. Manabilang as his witnesses. The CIR filed his Formal Offer of Evidence on November 4, 2022, to which Star Sports filed its Comment and Opposition on November 11, 2022. Despite initially denying Exhibit "R-5", the Court eventually admitted all of the CIR's offered exhibits.[10]

The parties filed their respective memoranda, after which the case was submitted for decision on July 25, 2023.[11]

On November 6, 2023, the Court in Division promulgated the assailed *Decision*, the dispositive portion of which reads:[12]

> **WHEREFORE**, the Petition for Review, filed on 21 October 2020, is hereby **GRANTED**. The assailed assessment for calendar year 2014 is hereby **CANCELLED** and declared **NULL AND VOID**. The assailed Warrant of Distraint and/or Levy is also hereby declared **NULL AND VOID**.
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> Accordingly, respondents are hereby **ENJOINED AND PROHIBITED** from collecting the amount sought by the void assessment.

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[8] Docket, p. 25.
[9] *Id.*
[10] *Id.*
[11] Docket, p. 26.
[12] Docket, pp. 39-40.

The CIR received the *Notice of Decision* on November 9, 2023.[13]

On November 24, 2023, the CIR timely filed a motion for reconsideration.[14] In a *Resolution* dated January 26, 2024, the Court in Division denied the same for lack of merit.[15] The CIR received the *Notice of Resolution* on February 5, 2024.[16]

On February 8, 2024, the CIR filed a *Motion for Extension of Time to File Petition for Review*, seeking an additional period of fifteen (15) days or until March 6, 2024 within which to file its petition for review with the CTA *En Banc*. The Court granted the same in a *Resolution* dated February 20, 2024.[17]

On March 4, 2024, the CIR filed the present *Petition* through registered mail, which was received by the Court on March 12, 2024.[18]

On May 13, 2024, the Court *En Banc* directed Star Sports to comment on the *Petition* within ten (10) days from notice.[19] Star Sports timely filed its *Comment (Re: Petition for Review dated 01 March 2024)* on May 24, 2024.[20]

On June 10, 2024, the case was referred to the Philippine Mediation Center - Court of Tax Appeals for mediation.[21] However, the parties decided not to have their case mediated.[22] Thus, in a *Resolution* dated September 19, 2024, the case was submitted for decision.[23]

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[13] Docket, p. 22.
[14] Docket, pp. 46-51.
[15] Docket, pp. 42-45.
[16] Docket, p. 41.
[17] Docket, p. 6.
[18] Docket, p. 7.
[19] Docket, p. 68.
[20] Docket, pp. 69-81.
[21] Docket, p. 82.
[22] *No Agreement to Mediate*, Docket, p. 83.
[23] Docket, p. 84.

THE ISSUE

The issue raised at bar is whether the Court in Division erred in declaring the assessment and WDL void.

Petitioner's arguments

Petitioner CIR insists that respondent's claim that it did not receive the PAN and FAN is not supported by any evidence aside from the bare denial of its witness, Russel M. Membrere. Citing portions of her testimony during trial, petitioner points out that she is not even competent to testify on the non-receipt of the PAN and FAN as she has no personal knowledge of the registered address of respondent. Petitioner invokes the presumption of regularity in the service of the PAN and FAN, and asserts that respondent failed to overcome the same.

Respondent's arguments

Respondent Star Sports argues that the presumption of regularity does not apply because the burden of proof rests on the CIR to establish receipt of the PAN and FAN if the taxpayer denies the same. Respondent notes that in this case, petitioner CIR did not even introduce any evidence of such receipt, and simply relied on the supposed insufficiency of respondent's evidence. Respondent likewise cites a portion of the testimony of petitioner's witness, Fritz Jihann P. Manabilang, where she admitted during trial that petitioner does not have any proof to show that the PAN and FAN were issued to respondent.

RULING OF THE COURT *EN BANC*

We deny the *Petition* for lack of merit.

Section 228 of the Tax Code mandates that the taxpayer be informed of the legal and factual bases of the assessment issued against it:

> **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: ...

...

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

Pursuant to said provision, jurisprudence affirms that the service and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a tax assessment that the BIR must strictly comply with in order to uphold the taxpayer's constitutional rights.[24] A defect in due process renders the assessment void and cannot be cured by the fact that the taxpayer is able to protest the assessment.[25]

Under the BIR's own rules and regulations, *i.e.* Revenue Regulations (RR) No. 12-99 as amended by RR No. 18-2013, proper service of the PAN and FAN may be made through the following modes:

> **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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> (i) The notice shall be served through personal service by **delivering personally a copy thereof to the party** at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
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> ...
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> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
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> The notice may be **left at the party's registered address, with his clerk or with a person having charge thereof**.
>
> If the known address is a place where business activities of the party are conducted, the

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[24] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].
[25] *Id.*

> notice may be left with his clerk or with a person having charge thereof.
>
> If the known address is the place of residence, substituted service can be made by **leaving the copy with a person of legal age residing therein**.
>
> If no person is found in the party's registered or known address, the revenue officers concerned shall **bring a barangay official and two (2) disinterested witnesses** to the address so that they may personally observe and attest to such absence. The notice shall then be **given to said barangay official**. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.
>
> Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.
>
> ...
>
> (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.

If the taxpayer denies receipt of the assessment notice, it becomes incumbent upon the CIR to prove that it was properly served in accordance with the above-quoted regulations. It is not the burden of the taxpayer to prove non-receipt of the assessment notice. As aptly held in *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*:[26]

> *The CIR cannot rely on the supposed incompetence and lack of personal knowledge of [the taxpayer's] witness to testify on the alleged non-receipt of the FLD-DDAN,* because the evidence on record clearly showed that the FLD-DDAN was not properly served on [the taxpayer] or its duly authorized representative at its registered business address. As the CTA *En Banc* correctly noted, the presumption that a letter duly directed and mailed was received in the regular course of the mail is merely a disputable presumption which may be controverted. A direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed matter was indeed received by the addressee.[27]

Verily, the CIR must clearly show, by competent evidence, that the assessment notice was "properly served to and received by only the taxpayer or his or her duly authorized representative" as "[t]his exacting standard guarantees the due process mandate that the taxpayer be informed of the basis of the assessment."[28]

As therefore correctly observed in the assailed *Decision*, the reliability of respondent's witness is of no moment because the burden of proof is upon the CIR to establish, by competent evidence, the fact of receipt of the PAN and FAN. We quote with approval the relevant portion of the assailed *Decision*:

> Had the burden of proof been on [Star Sport] to prove its non-receipt of the PAN and FAN, [the CIR's] contention may have held water. It would have been more prudent, on [Star Sport's] part, to

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[26] G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].
[27] *Emphasis supplied, citations omitted.*
[28] *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*, G.R. No. 249540, February 28, 2024 [Per J. Caguioa, Third Division]. *an*

> present witnesses who had personal, first-hand knowledge of its dealings at its Alabang Town Center office.
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> However, the burden of proof is not on [Star Sports]. Indeed, the CIR offered a similar argument in [*Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*], as quoted above, but the Supreme Court shot down said objection because the burden of proof was not on the taxpayer: it was on the CIR. The issue of Ms. Membrebe's reliability as a witness to testify on petitioner's non-receipt is thus of no moment. To stress, the question of receipt or non-receipt is respondent's burden to discharge.

Records of the present case, however, are bereft of evidence to prove service and receipt of the PAN and FAN. In fact, as likewise found by the Court in Division, the CIR failed to present the PAN and FAN themselves. In the instant *Petition* before the Court *En Banc*, the CIR still solely and adamantly relies on the taxpayer's alleged failure to prove non-receipt of the assessment notices which, as already settled, is immaterial to its case.

Without evidence of the receipt of the PAN and FAN, it necessarily follows that the tax assessment is void for non-compliance with the due process requirement under Section 228 of the Tax Code. Well-established is the principle that a tax assessment issued in violation of the taxpayer's due process rights are null and void and of no force and effect, for "between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution."[29]

Considering that the tax assessment is void, there can be no right to collect arising therefrom. Tax collection must be preceded by a valid assessment. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property.[30]

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[29] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, July 09, 2018 [Per J. Leonardo-de Castro, First Division].

[30] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 04, 2021 [Per J. Hernando, Second Division].

As such, the WDL issued by petitioner is likewise void and should be without force and effect.

ACCORDINGLY, the *Petition for Review* filed on March 4, 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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