REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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GOLDEN HARVEST GLOBAL CORPORATION, *Petitioner,*	**CTA Case No. 7503**
	Members:
-versus-	**ACOSTA,** ***Chairperson,*** **BAUTISTA, and CASANOVA,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 18 2009 ; 3:39pm

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DECISION

ACOSTA, P.J.:

This is a Petition for Review (With Motion for the Suspension of Collection of Tax) filed before the Court of Tax Appeals on July 20, 2006, seeking to: (1) declare the Warrant of Distraint and/or Levy dated June 14, 2006 issued against petitioner invalid; (2) enjoin respondent or any of his duly authorized representatives from enforcing the said Warrant of Distraint and/or Levy; and (3) direct respondent or any of his duly authorized representatives to withdraw and/or cancel any assessment, covering taxable year 2001 and/or such taxable years as may have been contemplated in the said Warrant of Distraint and/or Levy.

The said Warrant of Distraint and/or Levy was for petitioner's alleged deficiency Income Tax, Value-Added Tax and Compromise Penalties for taxable year 2001 in the amounts of P347,231.19, 182,806.85 and 16,000.00, respectively.

The pertinent facts are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with prinicipal place of business at Unit 1901 Sunview Palace Condominium, TM Kalaw St., Ermita, Manila. It is registered with the Bureau of Internal Revenue with Taxpayer Identification Number 005-540-590-000. [1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office, Diliman, Quezon City.

Petitioner previously conducted business at No. 95 Basilio Street, Acacia, Malabon City, within the jurisdiction of Revenue District Office (RDO) No. 026.[2] On January 29, 2004, petitioner transferred to its present principal place of business, Sunview Palace Condominium, T. M. Kalaw St. Ermita, Manila, within the jurisdiction of RDO No. 033.[3]

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[1] *Exhibit "C"*
[2] *Admitted Facts, Respondent's Pre-Trial Brief, Rollo, Page 54*
[3] *Ibid.*

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On December 9, 2003, upon request from petitioner, RDO No. 033 issued a Transfer Confirmation Notice, confirming its change of address, *i.e.*, the transfer of petitioner's tax registration from RDO No. 026 to RDO No. 033.[4] RDO No. 033 issued a new BIR Certificate of Registration indicating petitioner's present address.[5]

Then on October 24, 2005, petitioner received a Final Notice Before Seizure dated October 20, 2005 issued by RDO No. 033 regarding Assessment Notice No. 33-1999 for VAT and Compromise Penalty.[6] The said Notice states:

> "Re: ASSESSMENT NO. 33-1999
> KIND OF TAX: VAT/Compromise Penalty
> AMOUNT: P347,231.19/16,000.00
>
> Sir/Madam/Gentlemen:
>
> On May 30, 2005, this Office (RDO No. 33) sent you a letter requesting to settle the above captioned assessment. To date, however, inspite *[sic]* of the considerable length of time that has elapsed, we have not been honored with a reply from you. xxx"[7]

Since petitioner maintains that it never received such a letter of May 30, 2005, or any other letter for that matter, on November 21, 2005 it filed with respondent, a letter dated November 18, 2005 contesting the issuance of the said Notice for lack of factual and legal basis.[8]

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[4] *Exhibit "B"*
[5] *Exhibit "C"*
[6] *Exhibit "D"*
[7] *Annex "A" to Exhibit "D"*
[8] *Exhibit "D"*

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On January 20, 2006, petitioner filed another letter dated January 18, 2006 (as supplement to the November 18, 2005 letter), reiterating its disagreement over the issuance of the Notice and attaching thereto necessary supporting documents.[9]

Respondent, without acting on the letters filed by petitioner, issued a Warrant of Distraint and/or Levy dated June 14, 2006 for deficiency Income Tax, Value-Added Tax and Compromise Penalties, which petitioner allegedly received on June 20, 2006.[10]

Hence, this Petition for Review filed on July 20, 2006.

On August 31, 2006, respondent filed his Answer raising the following Special and Affirmative Defenses:

> 12. Admission of receipt of Final Notice Before Seizure dated October 20, 2005 by petitioner within the period to assess stipulated in the waiver is having knowledge of the Final Assessment Notice (FAN) issued by the BIR tantamount to receipt thereof by the petitioner.
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> 13. A follow-up letter reiterating the demand for the payment of taxes duly received by the taxpayer is considered notice of assessment in itself (Republic vs. Court of Appeals, 149 SCRA 351). In the instant case, Final Notice Before Seizure is deemed a follow-up letter considered as notice of the assessment.
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> 14. Petitioner was not deprived of due process to contest the assessment as it, in fact, protested the Final Notice Before Seizure which notified petitioner of such assessment by the respondent. Unfortunately, however, petitioner merely

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[9] *Exhibit "E"*
[10] *Exhibit "F"*

delved on the propriety of the Final Notice Before Seizure so issued without refuting the assessment itself. Thus, the assessment is uncontested, valid, final and executory.

15. The subject assessments are valid and correct and the petitioner has the burden of proof to impugn their validity (Behn Meyer & Co., Collector of Internal Revenue, 27 Phil 647). Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671); and assessments duly made by a BIR examiner and approved by his superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 547).

16. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et. al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. *[sic]* Bohol Land Transportation, Co., 107 Phil 967 [1960]).

17. Prescription is misplaced considering that petitioner came to know of the assessment, by its receipt of the Final Notice Before Seizure, within the period to assess as stipulated in the waiver executed by petitioner, hence, the assessment is valid, final and executory.

18. Substantive interest of the government in the assessment and collection of taxes must not be prejudiced by mere trivial technicalities being raised by the petitioner who, in the instant case, is merely raising the issue of the assessment notices being sent to its old address but without delving on the validity of the assessment itself.

19. Injunction will not lie in favor of the petitioner considering the absence of clear and distinct grounds therefor. What is in jeopardy here is the interest of the government in the immediate collection of taxes which is the life-blood of the government. Section 218 of the 1997 Tax Code provides "No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or change *[sic]* imposed by this Code."

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On May 20, 2009, this case has been submitted for decision, with only petitioner's Memorandum filed on December 14, 2006.

The Court will first resolve the issue of validity and enforceability of the instant Warrant of Distraint and/or Levy, since the declaration of its invalidity or unenforceability would render the issues on the correctness and the timeliness of the assessment moot.

Petitioner claims that it had no opportunity to refute the deficiency assessment subject of the Warrant of Distraint and/or Levy (Warrant). It maintains that before any Warrant may be issued, respondent must observe the due process requirements provided under Revenue Regulations (RR) No. 12-99. Petitioner avers that in this case, due to the non-observance of the requirements, there can be no basis for the issuance of the said Warrant; that the same is premature and/or invalid. In this case, according to petitioner there was a denial of due process.

On the other hand, respondent argues that the admission of receipt of the Final Notice Before Seizure by petitioner within the period to assess stipulated in the waiver amounts to petitioner having knowledge of the Final Assessment Notice issued against it.

The Court finds for the petitioner.

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 of informal conference, (2) a preliminary assessment notice, (3) a formal letter of demand and assessment notice sent to the taxpayer. Evidently, respondent failed to comply with these requirements. This failure is fatal to the validity of both the Final Notice Before Seizure and the Warrant of Distraint and/or Levy, since both can be issued only upon the expiration of the time required to pay the tax, which in turn presupposes the existence of a formal letter of demand or assessment notice.

Petitioner cannot be regarded as a delinquent taxpayer when it was not even informed of any tax liabilities due from it. When there is no Formal Assessment Notice (FAN), there should also be no failure on the part of petitioner to pay the tax at the time required, pursuant to Section 207 of the National Internal Revenue Code (NIRC).

The Preliminary Assessment Notices for Value-Added Tax and Income Tax issued in January 6, 2005 and April 21, 2005, respectively;[11] and their respective Details of Discrepancy;[12] as well as the Formal Letters of Demand[13] and the Assessment Notices[14] all show petitioner's address to be "95 Basilio St., Acasia, Malabon City", when in fact, petitioner has an approved change of address to 1901 Sunview Palace Condominium, TM Kalaw St., Ermita, Manila.

It is thus highly probable, as correctly argued by petitioner, that these notices were sent to its previous place of business. This, coupled with petitioner's direct denial of receipt thereof, shifts the burden of proving actual receipt to respondent.

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[11] *Exhibits "G", "G-1", "J", and "J-1"*
[12] *Exhibits "H", "H-1", "K", and "K-1"*
[13] *Exhibits "L", "L-1", "N", and "N-1"*
[14] *Exhibits "O", "O-1", "P", and "P-1"*

Contrary to the allegations of respondent, the Final Notice Before Seizure issued by respondent cannot be treated as the assessment notice to inform petitioner of the factual and legal basis of the internal revenue tax liabilities being assessed against it.

Section 228 of the NIRC does not only call for an investigation and determination of taxpayer's liability; but also requires the Commissioner or his duly authorized representative to send a notice of assessment to the taxpayer, to give the latter the opportunity to file a protest.

Instructive are Sections Section 207(A) and (B), and the above-mentioned Section 228 of the NIRC. Under Section 207, distraint of personal property and levy on real property shall be done only upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same at the time required. And Section 228 of the NIRC provides for the procedure of assessing taxes which results in the taxpayer's delinquency.

Section 228 reads:

> "SEC. 228. **Protesting of Assessment**. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:
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> > (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
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> > (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> > (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was

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> 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
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> (d) When the excise tax due on excisable articles has not been paid; or
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> (e) When an 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.
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> 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.
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> 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

From the language of the law, when the respondent or his duly authorized representative finds that proper taxes should be assessed, a written notice to the taxpayer informing him of the law and the facts upon which the assessment is based is necessary. If there is no valid notice sent, the

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assessment is void. 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.[15]

The essence of Section 228 is due process, that is, the taxpayer shall be accorded the opportunity to present his side and prove his defenses. Reading Section 228 with Sections 207 subparagraphs (A) and (B), no taxpayer should be considered delinquent unless there has been a previous demand to pay taxes which remained unheeded. Stated simply, the taxpayer should be informed of its assessed deficiency taxes. This has been settled in **Commissioner of Internal Revenue vs. PASCOR Realty and Dev't. Corp., et al.**[16], where the Supreme Court held that:

> "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. xxx
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> **To start with, assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.

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[15] *Commissioner of Internal Revenue vs. Azucena T. Reyes, G.R. Nos. 159694 and 163581, January 27, 2006 (480 SCRA 382).*
[16] *G.R. No. 128315, June 29, 1999.*

The issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it. Section 203 of the NIRC provides that internal revenue taxes must be assessed within three years from the last day within which to file the return. Section 222, on the other hand, specifies a period of ten years in case a fraudulent return with intent to evade was submitted or in case of failure to file a return. Also, Section 228 of the same law states that said assessment may be protested only within thirty days from receipt thereof. Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.

It should also be stressed that the said document is a notice duly sent to the taxpayer. Indeed, an assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer." *(Emphasis supplied)*

The above is further bolstered by the process of the assessment of taxes as set forth in Revenue Regulations 12-99[17]:

"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

[17] *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*

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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: xxx

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

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> 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 xxx. 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."

The Commissioner or his duly authorized representative is required to send a notice of assessment against the taxpayer in order to give the latter an opportunity to file a protest. And an assessment is only deemed made when it has been actually received by the taxpayer. Clearly, there is a need to inform the taxpayer of the assessment against it. The receipt of the assessment against it will commence the entire process provided in Section 228 of the NIRC. Without the assessment, the taxpayer cannot be considered in default so as to give basis for the issuance of the Final Notice Before Seizure or the Warrant of Distraint and/or Levy.

As earlier stated, petitioner's denial receipt of the Formal Assessment Notice shifts the burden of proving actual receipt thereof to respondent. In this case, respondent does not even claim that it sent an assessment notice against petitioner but only argues that admission by the latter of receipt of the Final Notice Before Seizure is tantamount to having knowledge of the Formal Assessment Notice issued by the BIR.

The meaning of procedural due process is that a party to a case must be given sufficient opportunity to be heard. Its very essence is to allow all parties the opportunity to present evidence. Petitioner should be given the chance to refute any assessment against it. In this case, since there is no assessment to begin with, petitioner cannot be considered a delinquent taxpayer. Consequently, there is no basis for the issuance of the Final Notice Before Seizure or the Warrant of Distraint and/or Levy.

ACCORDINGLY, the instant Petition for Review is hereby **GRANTED**, the Warrant of Distraint and/or Levy dated June 14, 2006 against petitioner is hereby declared unenforceable. Respondent and any of his duly authorized representatives are hereby enjoined from enforcing the same.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice