REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ALBERTO B. FINEZ, Petitioner,	**CTA CASE NO. 9715**
	Members:
-versus-	DEL ROSARIO, *P.J.*, Chairperson, FABON-VICTORINO, and MANAHAN, ***JJ***.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 15 2020 2:00pm

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RESOLUTION

DEL ROSARIO, P.J.:

Before the Court is respondent's **Motion for Reconsideration** filed on December 4, 2019, with petitioner's **Comment/Opposition (to Respondent's Motion for Reconsideration dated 04 December 2019)** posted on January 20, 2020.

Respondent seeks the reversal of the assailed Decision promulgated on November 8, 2019 granting the Petition for Review. The dispositive portion of the assailed Decision states:

> "**WHEREFORE,** in view of the foregoing disquisitions, the Petition for Review filed by petitioner Alberto B. Finez is hereby **GRANTED**. Formal Letter of Demand No. 34503 with Assessment Notice No. 34503, Formal Letter of Demand No. 20841, all dated June 8, 2015 and Warrant of Distraint and/or Levy dated September 7, 2017 are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"

Respondent asserts that the Court erred in granting the Petition for Review on the basis of his failure to serve petitioner the assessment notices, thereby violating petitioner's right to due process; and, prescription.

Respondent claims that if the Subpoena Duces Tecum was received by petitioner as declared by the Court, then it can be inferred that the final assessment notice (*i.e.*, Formal Letter of Demand [FLD] No. 34503 with Assessment Notice No. 34503 and FLD No. 20841 both dated June 8, 2015) was also received by petitioner because allegedly the recipient appearing in both documents have the same first names and contact details, and even their signatures appear the same. Considering these similarities, the conclusion of the Court as regards the Subpoena Duces Tecum that it was received by petitioner, may also be applied to the final assessment notice. Hence, respondent complied with the requirement of due process.

Respondent proffers that the issue of prescription cannot overpower the paramount importance of the government's power to collect taxes and though there is delay in the service of the assessment notices, the government cannot be estopped by the omissions or delay of its agent especially on the matter of taxation.

Petitioner, on the other hand, points out that the Court's conclusion that he received the Subpoena Duces Tecum was based on his Letter dated August 3, 2012 responding to the subpoena but respondent makes it appear that the basis of such conclusion is the similarity in the details of the persons who received the subpoena and FLDs and Assessment Notice. He insists that there was no valid service of the assessment notices, including the final assessment notice, because the same were not sent to his registered address. He also avers that respondent's power to assess must yield to the fundamental rule on due process.

RULING OF THE COURT

Respondent's **Motion for Reconsideration** is bereft of merit.

Service of the assessment notices

In the assailed Decision, the Court ruled that petitioner actually received the Subpoena Duces Tecum based primarily on his own admission as apparent in his Letter dated August 3, 2012.

Unlike the subpoena and WDL, petitioner denies receipt of the PAN, FLDs, Assessment Notice, PCL and FNBS. As a result, the *onus probandi* is shifted to respondent to prove that despite such denial, petitioner actually received the said notices.

To settle the issue, the Court deems it proper to revisit the pertinent rules on the service of assessment notices. Section 3.1.6 of Revenue Regulation (RR) No. 12-99, as amended by RR No. 18-2013,[1] on modes of service of assessment notice is quoted below:

> "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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> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
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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.
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> If the known address is a place **where business activities of the party are conducted**, the 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.
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> **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.

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

"*Disinterested witnesses*" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(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.

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.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer." *(Boldfacing supplied)*

From the afore-quoted rule, service of assessment notices may be done through personal service, substituted service or mail. The default mode of service of assessment notices, however, shall be through personal service to the taxpayer and when personal service is not practicable, substituted service or service by mail may be resorted.

Personal service of an assessment notice is done by delivering personally a copy thereof to the taxpayer at his registered or known address or wherever he may be found. Substituted service or service by mail may be resorted to when the taxpayer is not present at his registered or known address, as follows:

1. The notice may be left at the **taxpayers's registered address**, with his clerk or with a person having charge thereof;

2. If the **known address** is a place **where business activities of the taxpayer are conducted**, the notice may be left with his clerk or with a person having charge thereof;

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3. 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; and,

4. 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.

On the other hand, **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.

Petitioner's registered address with the BIR is **Ext 1 East Quirino Hi-way Gumaoc East, San Jose Del Monte, Bulacan**.[2] Tabulated below are the details of the notices sent by respondent:

Notice	Address Appearing in the Notice	Mode of Service
Subpoena Duces Tecum	Exit 1 East Quirino Highway, Gumaoc East, City of San Jose Del Monte, Bulacan[3]	By leaving a copy with Merrica Flores[4]
PAN	**Perez, Meycauayan, Bulacan**[5]	By Personal Service - by leaving a copy at Perez, Meycauayan, Bulacan[6]
FLDs	**Perez, Meycauayan, Bulacan**[7]	By Substituted Service- by leaving a copy with Merrila F. Joble[8]

[2] Exhibit "H", Docket, p. 257; Paragraph 2(a), Joint Stipulation of Facts and Issues, Docket, p. 219.
[3] Exhibit "R-2", Docket, p. 303.
[4] Exhibit "R-3", Docket, p. 304.
[5] Exhibit "R-7". Docket, p. 324.
[6] Exhibit "R-8", Docket, p. 326.
[7] Exhibits "R-14" and "R-14-a", Docket, p. 331 and 334.
[8] Exhibit "R-11", Docket, p. 335.

Assessment Notice	**Perez, Meycauayan, Bulacan**[9]	By Substituted Service - by leaving a copy with Merrila F. Joble[10]
PCL	**Perez, Meycauayan, Bulacan**[11]	Registered Mail[12]
FNBS	**Perez, Meycauayan, Bulacan**[13]	Registered Mail[14]
WDL	Ext 1 East Quirino Hi-way Gumaoc East, San Jose Del Monte, Bulacan[15]	Served constructively upon two witnesses[16]

It is at once glaring that unlike the Subpoena Duces Tecum and WDL, the PAN, FLDs, Assessment Notice, PCL and FNBS indicated an address different from petitioner's registered address with the BIR. Respondent neither provided an explanation as to why service of the said notices were directed to **Perez, Meycauayan, Bulacan**, when the BIR is fully aware that petitioner's registered address is **Ext 1 East Quirino Hi-way Gumaoc East, San Jose Del Monte, Bulacan;** neither did respondent provide the reason why personal service to petitioner was not practicable that he resorted to substituted service and service by mail.

The substituted service of the PAN, FLDs and Assessment Notice was not made at petitioner's registered address or known address, contrary to the directive of RR No. 12-99, as amended.

Respondent's claim that he be deemed compliant with the due process requirement, considering that it can be inferred that the FLDs and Assessment Notice were also received by petitioner, because allegedly the recipient appearing in the FLDs, Assessment Notice and Subpoena Duces Tecum have the same first names and contact details, and even their signatures appear the same, is untenable.

For one, the Subpoena Duces Tecum indicated petitioner's correct registered address with the BIR while the FLDs and Assessment Notice indicated Perez, Meycauayan, Bulacan. Besides, petitioner also admitted receipt of the Subpoena Duces Tecum but

[9] Exhibits "R-13" to "R-13-b", Docket, pp. 328-330.
[10] Exhibit "R-11", Docket, p. 335.
[11] Exhibit "R-14", Docket, p. 339.
[12] Exhibit "R-14-A", Docket, p. 339.
[13] Exhibit "R-15", Docket, p. 340.
[14] Exhibit "R-15-A", Docket, p. 340.
[15] Exhibit "R-13", Docket, p. 338.
[16] Exbibits "R-13-B" and "R-13-C", Docket, pp. 338.

directly and consistently denied receipt of the FLDs and Assessment Notice. The identity of Merrica F. Joble was not established. The purported signatures of Merrica Flores and Merrica F. Joble appearing on the notices were also not authenticated. Respondent failed to present either the testimony of the revenue officer who served the notice to Merrica Flores and Merrica F. Joble or Merrica Flores and Merrica F. Joble. Respondent had the opportunity to ask petitioner to authenticate the signatures appearing on the notices when he was presented during trial but respondent failed to do so.[17] Notwithstanding petitioner's admission that his HR Manager Merrica Flores received the Subpoena Duces Tecum, there is no evidence to show that she was the same Mericca F. Joble who received the FLDs and Assessment Notice and that the signatures appearing thereon were her signatures.[18]

Remarkably, even if the Court accepts respondent's theory that Mericca F. Joble, the purported recipient of the FLDs and the Assessment Notice, and Merrica Flores, the recipient of the Subpoena Duces Tecum, are one and the same person and that her receipt of the notice on behalf of petitioner is valid and binding on him, the FLDs and Assessment Notice as well as the WDL remain invalid for his failure to prove actual receipt by petitioner of the PAN.

To reiterate, petitioner denies receipt of the PAN. Respondent is behooved to present competent evidence to prove that despite such denial of receipt by petitioner and defective substituted service, the PAN was actually received by him. Respondent's failure to do just that is fatal to his cause as discussed on pages 24-28 of the assailed Decision.

As afore-discussed, respondent failed to serve the assessment notices in accordance with RR No. 12-99, as amended, and to prove actual receipt of the PAN, the FLDs, and the Assessment Notice. Consequently, there can be no other conclusion but to declare as void, the assailed assessment against petitioner.

Prescription

Respondent is gravely mistaken in thinking that the government's right to collect tax is unaffected by prescription. The National Internal Revenue Code of 1997, as amended, is categorical in limiting the period when respondent can make an assessment and collect thereon.

[17] Transcript of Stenographic Notes of the May 23, 2018 Hearing, p. 12.
[18] *Id.*

Assessment made after the prescriptive period had expired is not binding on the taxpayer.[19]

To be sure, respondent's stance disregards the very purpose of limiting the period when the CIR may assess and collect tax. *Apropos* is the Supreme Court's ruling in *Commissioner of Internal Revenue v. BASF Coating + Inks, Phils., Inc.* [20] emphasizing that the statute of limitations on the collection of taxes primarily benefits the taxpayer, *viz.*:

> It bears stressing that, in a number of cases, this Court has explained that **the statute of limitations on the collection of taxes primarily benefits the taxpayer**. In these cases, the Court exemplified the detrimental effects that the delay in the assessment and collection of taxes inflicts upon the taxpayers. Thus, in *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*, the Supreme Court echoed Justice Montemayor's disquisition in his dissenting opinion in *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*, regarding the potential loss to the taxpayer if the assessment and collection of taxes are not promptly made, thus:
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>> Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court . . . . It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government, and what is more, the tax is in the meantime accumulating interest which the taxpayer eventually has to pay.
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> Likewise, in *Republic of the Philippines v. Ablaza*, this Court elucidated that the prescriptive period for the filing of actions for collection of taxes is justified by the need to protect law-abiding citizens from possible harassment. Also, in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, it was held that **the statute of limitations on the assessment and collection of taxes**

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[19] *Commissioner of Internal Revenue vs. Ayala Securities Corporation and the Honorable Court of Tax Appeals*, G.R. No. L-29485, March 31, 1976.
[20] G.R. No. 198677, November 26, 2014.

> **is principally intended to afford protection to the taxpayer against unreasonable investigations as the indefinite extension of the period for assessment deprives the taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.** Thus, in *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, this Court ruled that **the legal provisions on prescription should be liberally construed to protect taxpayers and that, as a corollary, the exceptions to the rule on prescription should be strictly construed.**
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> xxx xxx xxx
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> **It is true that taxes are the lifeblood of the government. However, in spite of all its plenitude, the power to tax has its limits.** Thus, in *Commissioner of Internal Revenue v. Algue, Inc.*, this Court held:
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>> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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>> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
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>> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate . . . that the law has not been observed. *(Boldfacing supplied)*

All told, respondent has not raised arguments which would justify a modification much more a reversal of the assailed Decision dated November 8, 2019.

WHEREFORE, premises considered, the Motion for Reconsideration filed by the Commissioner of Internal Revenue on December 4, 2019 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

(ON LEAVE)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice