REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ASIAN NAVIGATION AND TRACKING SYSTEMS, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7999

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAR 17 2016

8:35 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

This is a Petition for Review filed by Asian Navigation and Tracking Systems, Inc. seeking the reversal and setting aside of the decision of the Commissioner of Internal Revenue, assessing it for alleged deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) amounting to ₱10,449,903.13, inclusive of surcharges, for taxable year 2005.

FACTS

Petitioner Asian Navigation and Tracking Systems, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with address at Mezzanine Floor, Salesiana Building, Don Bosco Compound, Chino Roces Avenue, Makati City.[1]

[1] Par. 2.01, The Parties, Petition for Review, docket, p. 4.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who is responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 30, 2006, petitioner filed its Annual Examination[2] Return of Income Taxes Withheld for taxable year 2005. On April 17, 2006, petitioner filed its Certificate of Creditable Tax Withheld at Source for the four quarters of taxable year 2005 and its Annual Income Tax Return (ITR) for taxable year 2005. Subsequently, petitioner filed an Amended Income Tax Return for taxable year 2005 on April 27, 2006.[3]

On March 21, 2007, petitioner, through Ms. Maricel Nora (or "Che Nora"), its Human Resources and Administration Officer, received Letter of Authority[4] (LOA) No. 00043874 dated November 2, 2006 from BIR-Revenue District Office (RDO) No. 43, authorizing Revenue Officers Edilberto Nacnac and Eduardo Felix to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period covering January 1, 2005 to December 31, 2005.[5]

The LOA was sent at Unit 1903 The Centerpoint Bldg., Doña J. Vargas Avenue, Ortigas Center, Pasig City, although as of February 19, 2007, respondent was already aware that petitioner was actually holding office at the 3rd Floor, LPL Tower, 215 Gil Puyat Avenue, Makati City.[6]

The BIR issued a *Subpoena Duces Tecum*[7] on June 12, 2008 addressed to petitioner at Unit 1903 The Centerpoint Bldg., Doña J. Vargas Avenue, Ortigas Center, Pasig City, requiring petitioner to submit books of accounts and other accounting records. The same was received by petitioner's receptionist, Ms. Imelda B. Caguioa on June 20, 2008.[8] However as of June 24, 2008, respondent was already aware

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[2] Should be Annual "Information" Return; BIR Records, p. 153.
[3] Pars. 1 to 4, Joint Stipulation of Facts (JSF), Compliance, docket, p. 302.
[4] Exhibits "SSS", "R-1" and "R-6", BIR Records, p. 137.
[5] Par. 7, JSF, Compliance, docket, p. 303.
[6] Par. 5, JSF, Compliance, docket, pp. 302-303, Exhibit "SSS", BIR Records, p. 124.
[7] Exhibit "SSS", BIR Records, p. 135.
[8] Par. 8.c, JSF, Compliance, docket, p. 303.

that petitioner's address is at the Mezzanine Floor, Salesiana Building, corner Pasong Tamo and Arnaiz Streets., Makati City; which was also contained in the Memorandum issued by Revenue Officer Edilberto R. Nacnac dated June 24, 2008.[9]

On December 4, 2008, petitioner received a Post Reporting Notice dated November 24, 2008 from BIR-RDO No. 43, addressed to petitioner at 3/F LPL Building 215 Sen. Gil Puyat Ave, Makati City. The same was received by Ms. Imelda B. Caguioa, stating that based on the report of Revenue Officer Zenaida T. Paz, petitioner is liable to pay deficiency income tax in the amount of ₱3,789,539.86, VAT in the amount of ₱4,656,670.00, and EWT in the amount of ₱237,212.49 or in the total amount of ₱8,683,422.35 for taxable year 2005.[10]

Subsequently, respondent issued a Preliminary Assessment Notice[11] (PAN) with Details of Discrepancies dated December 22, 2008 for taxable year 2005 to petitioner addressed at Unit 1903 The Centerpoint Building, Doña Julia Vargas Ave., Ortigas Center, Pasig City.[12]

However, petitioner has already moved out of the foregoing address as indicated in the supposed letter envelope for the PAN which contains the notation "RTS moved out".[13]

Thereafter, respondent issued Assessment Notices with Formal Letter of Demand dated January 14, 2009,[14] sent to the same address, assessing petitioner the amount of ₱10,449,903.13, representing alleged deficiency income tax, VAT, and EWT, detailed as follows:[15]

I. DEFICIENCY INCOME TAX				
	Taxable income (loss) per ITR			
Add:	Adjustments per investigation			
	Disallowed Expense-50% rule			225,021.11
	Disallowed Operating and other expenses			127,262.53
	Unaccounted income payments			443,313.26
	Unaccounted salaries & other benefits			5,816,676.16
	Income payments not subject to withholding tax			2,810,012.49

[9] Par. 12, JSF, Compliance, docket, p. 304; BIR Records, p. 136.
[10] Par. 13, JSF, Compliance, docket, p. 304; Exhibits "SSS" and "R-15", BIR Records, pp. 157-167.
[11] Exhibits "SSS" and "R-18", BIR Records, pp. 208-212.
[12] Par. 14, JSF, Compliance, docket, p. 304.
[13] Par. 15, JSF, Compliance, docket, p. 304.
[14] Exhibits "SSS" and "R-19", BIR Records, pp. 201-206 or pp. 214-221.
[15] Exhibit "SSS", BIR Records, p. 202 or p. 220.

Taxable Income per Investigation				9,422,285.55
Income Tax due thereon				3,062,242.81
Add:	Disallowed tax credits/ payments:			
	Prior years excess credits		571,519.18	
	Creditable withholding tax		362,073.32	
	Total		933,592.50	
Less:	Unsupported creditable withholding tax	283,633.61		
	Prior years excess credits	770,199.86	1,053,833.47	120,240.97
Deficiency Income Tax				3,182,483.78
Add: 20% Interest rate p.a. (4.18.06 to 02.13.09)				1,731,635.38
TOTAL AMOUNT DUE				**4,914,119.16**
II. DEFICIENCY VALUE ADDED TAX				
Taxable sales per VAT returns				40,109,234.50
Add:	Adjustments per investigation			
	Unaccounted office rental		443,313.26	
	Unaccounted salaries and other benefits		5,816,676.17	6,259,989.43
Taxable sales per investigation				46,369,223.93
Tax rate				10%
Output Tax Due				4,636,922.39
Less:	Allowable tax credit/payments:			
	Input tax per returns		2,932,145.65	
	Payments		1,255,983.33	
	Total		4,188,128.98	
Less:	Unsupported Input Tax		2,932,145.65	1,255,983.33
Deficiency VAT				3,380,939.06
Add: 20% Interest rate p.a. (1.26.06 to 02.13.09)				2,063,762.26
TOTAL AMOUNT DUE				**5,444,701.32**
III. DEFICIENCY EXPANDED WITHHOLDING TAX				
		Amount	**Tax Rate**	**Deficiency**
Payment to contractors/sub-contractors		2,810,012.49	2%	56,200.25
Deficiency Expanded Withholding Tax				56,200.25
Add: 20% Interest rate p.a. (01.17.06 to 02.13.09)				34,582.40
TOTAL AMOUNT DUE				**90,782.65**

Again, the Assessment Notices were returned to respondent unserved for the reason of "RTS unknown address" as stated in the letter envelope.[16]

[16] Par. 17, JSF, Compliance, docket, p. 305.

Respondent then issued a Preliminary Collection Letter (PCL) dated June 3, 2009[17], a Final Notice Before Seizure dated June 18, 2009[18], and Final Notice Before Seizure dated August 17, 2009[19], all addressed to petitioner's former address at Unit 1903 The Centerpoint Building, Dona J. Vargas Ave., Ortigas Center, Pasig City. The PCL was returned unserved due to "RTS unknown address" as indicated in the letter envelope.[20]

On September 28, 2009, petitioner filed a letter[21] dated September 25, 2009 with respondent, protesting the Final Notice Before Seizure dated August 17, 2009, received by petitioner on September 24, 2009. Petitioner also requested the reinvestigation of the subject assessment.

On October 23, 2009, petitioner received respondent's Decision dated October 21, 2009, effectively denying petitioner's request for reinvestigation and directing petitioner to pay the deficiency taxes as stated in the Final Notice Before Seizure dated August 17, 2009.[22]

As a result, petitioner filed the instant Petition for Review[23] on November 20, 2009, seeking the nullification of respondent's decision on the deficiency assessment dated October 21, 2009, for being issued in violation of due process of law.

Within the extended time granted by the Court[24], respondent filed her Answer[25] on January 6, 2010, interposing the following Special and Affirmative Defenses:

> "8. The petitioner failed to submit pertinent documents and records requested by the respondent's examiners through administrative requests and ultimately through the issuance of *Subpoena duces tecum/ad testificandum* issued against it.

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[17] Exhibit "SSS", BIR Records, p. 224.
[18] Exhibit "SSS", BIR Records, p. 229.
[19] Exhibit "SSS", BIR Records, p. 233.
[20] Par. 17 to 20, JSF, Compliance, docket, p. 305.
[21] Exhibit "SSS", BIR Records, pp. 234-237.
[22] Exhibit "SSS", BIR Records, p. 239.
[23] Docket, pp. 1-33.
[24] Order dated December 11, 2009, docket, p. 87.
[25] Docket, pp. 88-92.

9. Due to the failure/refusal of the petitioner to submit/supply the pertinent documents and records in the course of the examination, the respondent was constrained to resort to the Best Evidence Obtainable pursuant to Revenue Memorandum Circular No. 23-2000, implementing Sec. 6(B) of the National Internal Revenue Code, as amended;

10. The Petitioner failed to inform the Respondent's Bureau of its change of postal address/principal place of operations prior to or so near the actual time of transfer in violation of Sec. 236(D) of the National Internal Revenue Code;

11. The receipt of the copies of the Letter of Authority and the Subpoena duces tecum by the office staff of the petitioner, duly admitted to be authorized by the Petitioner, is sufficient to establish due notice to the latter;

12. Verification would also reveal that it was only after the filing of the criminal offense for the disobedience to lawful Subpoena filed with the City Prosecutor in violation of Secs. 5 and 14, penalized under Sec. 266 in relation to Secs. 253 and 256 of the Tax Reform Act of 1997 that the petitioner had an afterthought of producing some of the required documents and records which could have been done during the early portion of the examination.

13. As a result of the assessment of the taxable year 2005 of the petitioner based on the Best Evidence Obtainable, the pertinent Assessment Notices were issued on January 14, 2009 within the assessment period ending December, 2005;

14. The Preliminary Assessment Notice and Final Assessment Notice were duly issued and served in accordance with law.

15. The assessment is prima facie correct and made in good faith;

16. The Burden of proof is upon the petitioner to prove that the assessment issued was null and void;

17. The assessment notices were issued and sent to the petitioner in accordance with well-established procedures upheld by the Courts."

Petitioner filed a Reply[26] to respondent's Answer on January 22, 2010.

The case was set for a Pre-Trial Conference[27] on March 19, 2010. The Pre-Trial Brief for the Respondent[28] was filed on February 11, 2010; while petitioner's Pre-Trial Brief[29] was filed through registered mail on March 16, 2010 and received by the Court on March 24, 2010.

On March 23 2010, petitioner filed a Motion (1) For Leave To File Amended Petition and (2) To Admit Attached Amended Petition[30] and its Amended Petition for Review[31], alleging the prescription of the assessment issued by respondent. In the Resolution[32] dated May 24, 2010, the Court granted petitioner's Motion and admitted its Amended Petition for Review. However, respondent failed to file her Answer to petitioner's Amended Petition for Review[33] and the case was set for a Pre-Trial Conference[34] on July 16, 2010.

Petitioner submitted its Pre-Trial Brief[35] on July 13, 2010. On the other hand, counsel for respondent manifested that with regard to petitioner's Amended Petition for Review, he is adopting his previous Answer and Pre-Trial Brief.[36] Thereafter, petitioner was ordered to submit the parties' Joint Stipulation of Facts and Issues and both parties agreed to submit their respective Amended Pre-Trial Briefs, if necessary, simultaneously with their Joint Stipulation of Facts and Issues.[37]

The parties filed their Compliance[38] on August 23, 2010 containing their Joint Stipulation of Facts and Issues, which the Court noted in a Resolution[39] dated September 3, 2010. In the same Resolution, petitioner was granted a period of fifteen (15) days or until September 11, 2010 to file its Motion

[26] Docket, pp. 95-106.
[27] Order dated February 24, 2010, docket, p. 124.
[28] Docket, pp. 112-113.
[29] Docket, pp. 149-164.
[30] Docket, pp. 212-215.
[31] Docket, pp. 217-251.
[32] Docket, pp. 258-259.
[33] Records Verification dated June 11, 2010, docket, p. 260.
[34] Notice of Pre-Trial Conference, docket, p. 265.
[35] Docket, pp. 266-282.
[36] Minutes of the hearing held on July 16, 2010, docket, p. 286.
[37] Resolution dated July 27, 2010, docket, p. 288.
[38] Docket, pp. 300-307.
[39] Docket, p. 310.

for Summary Judgment, while respondent was granted a period of fifteen (15) days from receipt of the motion to file a comment.

Within the period granted by the Court,[40] petitioner filed its Motion for Partial Summary Judgment[41] on September 28, 2010. On the other hand, respondent failed to file her comment or opposition to the same.[42]

In the Resolution[43] dated December 23, 2010, the Court denied petitioner's Motion for Partial Summary Judgment for lack of merit and set the case for Pre-Trial on January 21, 2011.

Petitioner then filed a Motion for Reconsideration (Of the Resolution dated 23 December 2010)[44] and respondent was granted[45] by the Court a period of ten (10) days or until January 31, 2011 to file her comment. However, respondent still failed to file her comment to petitioner's motion.[46] On April 25, 2011, petitioner's Motion for Reconsideration (Of the Resolution dated 23 December 2010) was denied by the Court for lack of merit.[47]

The Court approved the parties' Joint Stipulation of Facts and Issues through the issuance of the Pre-Trial Order[48] on May 26, 2011, thereby terminating the pre-trial of the case.

During trial, petitioner presented Ms. Imelda B. Caguioa – petitioner's receptionist[49], Mr. Enrique E. Macapinlac – petitioner's General Manager[50], Ms. Juanita Joy Ricafort – petitioner's Finance Manager[51], and Mr. Al Wilfredo Perez – petitioner's External Accountant[52] as its witnesses.

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[40] Resolution dated October 19, 2010, docket, p. 442.
[41] Docket, pp. 319-335.
[42] Records Verification dated November 10, 2010, docket, p. 443.
[43] Docket, pp. 445-449.
[44] Docket, pp. 450-456.
[45] Resolution dated January 26, 2011, docket, p. 460.
[46] Records Verification dated February 15, 2011, docket, p. 461.
[47] Resolution, docket, pp. 460-462.
[48] Docket, pp. 470-483.
[49] Exhibit "QQQ", docket, pp. 684-685.
[50] Exhibit "RRR", docket, pp. 686-692.
[51] Exhibit "TTT", docket, pp. 700-715.
[52] Exhibit "WWW", docket, pp. 720-725.

Petitioner filed its Formal Offer of Evidence[53] on September 12, 2012, submitting Exhibits "I" and "I-1", "QQQ" and "QQQ-1", "RRR" and "RRR-1", "SSS", "TTT" and "TTT-1", "VVV", "WWW" with sub-markings, "XXX" and "XXX-1", and "YYYY" to "AAAAA", inclusive and with sub-markings, as its documentary evidence.

In a Resolution[54] dated December 14, 2012, the Court resolved to admit all of petitioner's exhibits except Exhibits "I" and "SSS", which were denied for petitioner's failure to submit the duly marked documents. Consequently, petitioner filed a Partial Motion for Reconsideration [Of the Resolution Promulgated on 14 December 2012 *With* Motion to Mark Exhibits][55] on January 4, 2013. The Court granted the marking of the said exhibits in a Resolution[56] dated February 18, 2013.

In view of the marking of petitioner's Exhibits "I" and "SSS", petitioner filed its Supplemental Offer of Exhibits[57] on March 14, 2013, offering in evidence the said exhibits. Exhibits "I" and "SSS" were finally admitted by the Court in a Resolution[58] dated May 30, 2013.

Respondent presented Revenue Officers Edilberto R. Nacnac[59], Zenaida T. Paz[60], and Maricel C. Bayan[61] as her witnesses. The Formal Offer of Respondent's Evidence[62] was filed on August 22, 2014, offering Exhibits "R-1" to "R-20-A", inclusive of sub-markings, as respondent's documentary evidence. The Court admitted all of respondent's exhibits except Exhibit "R-5", which was denied by the Court for respondent's failure to submit the original document for comparison.[63]

Subsequently, petitioner presented its rebuttal witness, Mr. Al Wilfredo Perez[64], and orally offered Exhibits "B^5', "B^5-1"

[53] Docket, pp. 674-680.
[54] Docket, pp. 790-791.
[55] Docket, pp. 794-798.
[56] Docket, pp. 804-805.
[57] Docket, pp. 812-818.
[58] Docket, pp. 825-826.
[59] Docket, pp. 984-990.
[60] Docket, pp. 993-999.
[61] Docket, pp. 977-983.
[62] Docket, pp. 968-976.
[63] Resolution dated October 21, 2014, docket, pp. 1019-1020.
[64] Exhibit "B^5", docket, pp. 1048-1054.

to "B5-6", and "B7", which were all admitted by the Court there being no objections interposed by respondent.[65]

The Court then granted the parties a period of thirty days (30) days or until April 1, 2015 within which to file their memoranda.

Petitioner's Memorandum[66] was filed through registered mail on April 21, 2015 and received by the Court on May 4, 2015; while respondent failed to file her Memorandum as per Records Verification[67] issued by the Court's Judicial Records Division. Hence, the case was declared submitted for decision on May 8, 2015.[68]

ISSUES

The parties submitted the following issues[69] for this Court's resolution:

> "1. Whether or not petitioner's right to due process was violated when:
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> a. The Letter Authority (LOA) dated 2 November 2006 (Annex 'F', Amended Petition) was served not to the petitioner's responsible officer, i.e. Ms. Joy Ricafort;
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> b. The Subpoena *Duces Tecum* dated 12 June 2008 (Annex 'G', Amended Petition) addressed to Ms. Joy Ricafort was served not on her but to Ms. Imelda Caguioa, in violation of BIR Revenue Memo Order 35-90;
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> c. The same Subpoena Duces Tecum was served not at the address already known to the BIR at the time of the supposed service thereof, i.e., Salesiana Bldg., Don Bosco, Pasong Tamo, Makati City (See Annex 'Q',

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[65] Minutes of the hearing held on March 2, 2015, docket, p. 1072.
[66] Docket, pp. 1088-1121.
[67] Records Verification dated May 6, 2015, docket, p. 1124.
[68] Resolution, docket, p. 1125.
[69] Joint Stipulation of Issues, Compliance, docket, pp. 300-302.

Amended Petition) but to petitioner's old address at Unit 1903, The Centerpoint Building, Dona J. Vargas Ave., Ortigas Center, Pasig City;

d. The alleged Assessment Notices and Formal Demand were also sent to petitioner's old address despite actual knowledge by the respondent of its present address (See Annex 'Q', Amended Petition).

2. Whether or not the LOA dated 2 November 2006 (Annex 'F', Amended Petition), was already void and *functus oficio* when it was supposedly served on 21 March 2007, more than thirty (30) days from the date thereof;

3. Whether or not the respondent's right to demand payment of the subject taxes has prescribed considering that more than three (3) years have elapsed from the time that the returns for the subject taxes were filed or should have been filed to the time petitioner was actually informed of the issuance of the alleged Assessment Notices and Formal Demand on 24 September 2009 through the Final Notice Before Seizure dated 17 August 2009;

4. Without waiving prescription, whether or not respondent has legal basis to apply the 'Best Evidence Obtainable' rule (Section 6(b), NIRC) in the assessment of petitioner's alleged income tax, value added tax and expanded withholding tax deficiencies; and

5. Without waiving prescription, whether or not the petitioner is liable for the alleged deficiency income, value added and expanded withholding taxes assessed by respondent."

The foregoing issues can be summarized as follows:

Whether or not the assessments issued by respondent to petitioner representing alleged deficiency income tax, VAT, and

EWT for taxable year 2005 are null and void for violation of due process of law.

DISCUSSION/RULING

Petitioner alleges that it was deprived of due process provided under Revenue Regulations (RR) No. 12-99 for issuance of deficiency tax assessment, as well as Revenue Memorandum Order No. 35-90 on the proper service of subpoena.[70]

Petitioner states that it designated Ms. Juanita Joy Ricafort, its Finance Manager, to be the responsible officer for purposes of receiving communications from the BIR. However, the Letter of Authority dated November 2, 2006 and the *subpoena duces tecum* were served, not on her, but on Ms. Maricel Nora and Ms. Imelda Caguioa, respectively.[71]

According to petitioner, and as stated in the parties' Joint Stipulation of Facts, as early as June 24, 2008, respondent was already aware that petitioner's address was at Mezzanine Floor, Salesiana Building, corner Pasong Tamo and Arnaiz Sts., Makati City and not at Unit 1903 The Centerpoint Bldg., Dona J. Vargas Ave., Ortigas Center, Pasig City. However, despite such actual knowledge, respondent still sent the alleged PAN and Assessment Notices to petitioner's former address.[72]

Petitioner further avers that aside from respondent's failure to issue and serve the PAN, respondent also failed to properly serve the Final Assessment Notice (FAN) on petitioner; thus depriving it the opportunity to dispute the assessments. Considering that the Letter of Authority, the subpoena, and the assessment notices were not duly served on petitioner, petitioner was deprived of due process. Such being the case, all proceedings conducted by respondent are null and void.[73]

The relevant provisions of law regarding the right of a taxpayer to procedural due process in the issuance of

[70] Petitioner's Memorandum, docket, p. 1103.
[71] Petitioner's Memorandum, docket, p. 1103.
[72] Petitioner's Memorandum, docket, pp. 1103-1106.
[73] Petitioner's Memorandum, docket, p. 1109.

assessment is decreed in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3 of RR No. 12-99[74], *to wit*:

> "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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> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative **shall issue an assessment based on his findings**." *(Emphasis supplied)*
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> "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:
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> xxx xxx xxx
>
> 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

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

> 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.
>
> xxx xxx 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 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." *(Emphasis supplied)*

The above-quoted Section 228 clearly mandates that taxpayers must be informed of the facts and the law upon which the assessment is made; otherwise, the assessment shall be void. Similarly, Section 3 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, clearly requires the sending of the PAN and Formal Letter of Demand and Assessment Notice (FLD/FAN) by respondent and the receipt thereof by the taxpayer as part of due process in the issuance of assessments.

In the case of Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue[75], the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment notice, *to wit*:

[75] G.R. No. 155541, January 27, 2004.

> "Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer actually receive said notice within the five-year period. It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, **due 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:
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> > 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)*

However, respondent argues that petitioner failed to inform the BIR of its change of postal address or principal place of operations prior to or near the actual time of transfer in violation of Section 236(D) of the NIRC of 1997, as amended.[76]

Assuming that petitioner was not able to update its registered business address, the fact still remains that respondent was already aware of petitioner's change of address as revealed in their Joint Stipulation of Facts and Issues.

As a rule, once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated.[77] Once validly entered into, stipulations will not be set aside unless for good cause.[78]

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[76] Par. 10, respondent's Answer, docket, p. 90.

[77] *Constantino, et al. vs. Heirs of Pedro Constantino, Jr.*, G. R. No. 181508, October 2, 2013, citing *Bayas, et al. vs. The Sandiganbayan, et al.*, G.R. Nos. 143689-91, November 12, 2002.

[78] *Bayas, et al. vs. The Sandiganbayan, et al.*, G.R. Nos. 143689-91, November 12, 2002, citing *National Council of Knights and Ladies of Security vs. Scheiber*, 169 NW 272, October 25, 1918.

In the present case, the following stipulations made by the parties must be pointed out:

"5. **As of 19 February 2007, respondent is already aware that the petitioner is no longer holding office at 'Unit 1903 Centerpoint Bldg., Julia Vargas Avenue, Ortigas Center, Pasig City', and is already holding office at the '3rd Floor, LPL Tower, 215 Gil Puyat Avenue, Makati'** xxx;

xxx xxx xxx

12. **As of 24 June 2008, respondent is already actually aware that petitioner's address is at the 'Mezzanine Floor, Salesiana Building, corner Pasong Tamo and Arnaiz Sts., Makati City' which information is contained in the Memorandum issued by Revenue Officer Edilberto R. Nacnac dated 24 June 2008** xxx;

13. The respondent's Post Reporting Notice dated 24 November 2008, and its attached reports, were addressed to '3/F, LPL Building 215 Sen. Gil Puyat Ave., Makati City' xxx;

14. **The alleged Preliminary Assessment Notice (PAN) dated 22 December 2008, and its attachments, was addressed to 'Unit 1903, The Centerpoint Building, Dona Julia Vargas Ave., Ortigas Center, Pasig City'** xxx;

15. That the petitioner has already moved out of the foregoing address is also indicated in the supposed letter envelope for the foregoing PAN which contains the notation 'RTS moved out' xxx;

16. **The Formal Letter of Demand dated 14 January 2009 was addressed to 'Unit 1903, The Centerpoint Building, Dona Julia Vargas Ave., Ortigas Center, Pasig City'** xxx;

17. **The Assessment Notices dated 14 January 2009 xxx addressed to 'Unit 1903, The Centerpoint Building, Dona Julia Vargas Ave., Ortigas Center, Pasig City,' were returned to the respondent unserved for the reason 'RTS unknown address' as stated in the letter envelope therefore** xxx;

18. The Preliminary Collection letter dated 3 June 2009 was addressed to 'Unit 1903, The Centerpoint Building, J Vargas Ave., Ortigas Center, Pasig City' xxx which was returned unserved due to 'RTS Unknown Address' as

> indicated in the letter envelope containing the said document xxx;
>
> 19. The Final Notice Before Seizure dated 18 June 2009 was again addressed to 'Unit 1903, The Centerpoint Building, J Vargas Ave., Ortigas Center, Pasig City' xxx;
>
> 20. The Final Notice Before Seizure dated 17 August 2009 was again addressed to 'Unit 1903, The Centerpoint Building, Dona Julia Vargas Ave., Ortigas Center, Pasig City' xxx;" *(Emphasis supplied)*

The parties jointly stipulated that respondent sent the PAN and the FAN with FLD to the wrong address. Petitioner, therefore, would not have received the PAN issued and sent through registered mail at Unit 1903 Centerpoint Bldg., Julia Vargas Avenue, Ortigas Center, Pasig City, since its address at that time was already at Mezzanine Floor, Salesiana Building, corner Pasong Tamo and Arnaiz Streets., Makati City. The same thing happened with the FAN with FLD; petitioner did not receive them as they were sent to its former address.

Stipulation or agreement of facts entered into by the parties at the pre-trial constitute judicial admissions by them, which do not require proof and cannot be contradicted unless previously shown to have been made through palpable mistake.[79] Therefore, the above stipulations are binding on the parties.

Since the PAN and the FAN with FLD were sent to the wrong address, there was no valid service of said notices to petitioner. Consequently, the subject assessments are void.

As ruled in the case of *Commissioner of Internal Revenue (CIR) vs. Metro Star Superama, Inc.*[80], failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of the NIRC of 1997, as amended, renders the assessments made by the CIR void.

Likewise, the law requires that the legal and factual bases of the assessment be stated in the formal letter of

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[79] *Lim vs. Jabalde*, G.R. No. L-36786, April 17, 1989.
[80] G.R. No. 185371, December 8, 2010.

demand and assessment notice.[81] Since petitioner never received the FAN and the FLD, it was not, therefore, informed of the assessments made against it by respondent nor was it informed of the legal and factual bases of the same. This again renders the assessments made against petitioner void.

In the case of CIR vs. BASF Coating + Inks Phils. Inc.[82], the High Court affirmed the cancellation and setting aside of an assessment against a taxpayer wherein the CIR still insisted in mailing the FAN to the taxpayer's old address even if she became aware of the taxpayer's new address as shown by documents replete in the records. The pertinent portion of the decision reads:

> "Furthermore, petitioner should have been alerted by the fact that prior to mailing the FAN, petitioner sent to respondent's old address a Preliminary Assessment Notice but it was 'returned to sender.' This was testified to by petitioner's Revenue Officer II at its Revenue District Office 39 in Quezon City. Yet, despite this occurrence, **petitioner still insisted in mailing the FAN to respondent's old address.**
>
> **Hence, despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address as shown by documents replete in its records. As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed.**
>
> xxx xxx xxxx
>
> As to the second assigned error, petitioner's reliance on the provisions of Section 3.1.7 of BIR Revenue Regulation No. 12-99 as well as on the case of *Nava v. Commissioner of Internal Revenue* is misplaced, because in the said case, **one of the requirements of a valid assessment notice is that the letter or notice must be properly addressed. It is not enough that the notice is sent by registered mail as provided under the said Revenue Regulation. In the instant case, the FAN was sent to the wrong address. Thus, the CTA is correct in holding that the FAN never attained finality because respondent never received it, either actually or constructively.**" *(Emphasis supplied)*

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[81] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[82] G.R. No. 198677, November 26, 2014.

In this case, the assessment notices issued by respondent to petitioner for deficiency income tax, VAT, and EWT never became final and demandable as petitioner failed to receive said notices.

In sum, no valid assessment was made by respondent against petitioner for taxable year 2005 and a void assessment bears no valid fruit[83]. Consequently, the Preliminary Collection Letter and Final Notices Before Seizure issued by respondent in relation to the FAN with FLD shall likewise be cancelled.

As regards the other issues raised, the Court deems it no longer necessary to resolve the same.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice dated December 22, 2008 and the Final Assessment Notices with Formal Letter of Demand dated January 14, 2009, assessing petitioner for deficiency income tax, VAT and EWT for taxable year 2005 in the total amount of ₱10,449,903.13, are **CANCELLED** for being void. Consequently, the Preliminary Collection Letter dated June 3, 2009, Final Notice Before Seizure dated June 18, 2009, and Final Notice Before Seizure dated August 17, 2009 are likewise **CANCELLED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[83] *Commissioner of Internal Revenue vs. Azucena T. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006.

ATTESTATION

I attest 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.

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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