REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

RUBEN U. YU,
Petitioner,

CTA Case No. 9595

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 15 2020
4:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a *Petition for Review* filed by petitioner Ruben U. Yu against respondent Commissioner of Internal Revenue (CIR) on April 27, 2017, praying that judgment be rendered declaring the Final Letter of Demand and the Revised Formal Letter of Demand dated August 22, 2016 which assessed petitioner's total deficiency tax after reinvestigation in the amount of ₱43,497,090.45 for taxable period from January 1, 2007 to December 31, 2010 null and void.[1]

[1] I. Statement of the Case, Pre-Trial Order dated February 20, 2018, Docket, Vol. I, p. 339.

THE PARTIES

Petitioner is a Filipino, of legal age, married and with address at 232 Cruzada Street, Legazpi City. He is the proprietor of RYU Construction, an entity engaged in the construction business.[2]

Respondent is the duly appointed CIR, vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of his office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997, as amended (1997 NIRC) and other laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

THE FACTS

On October 24, 2012, petitioner received *Letter of Authority (LOA) No. eLA201100045513* dated October 23, 2012, authorizing revenue officers (ROs) Amadeo Bernal and Ma. Lourdes Mirabete and Group Supervisor (GS) Armenia Ante, to examine his books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2007 to December 31, 2010.[4] Pursuant to said LOA, petitioner submitted documents on January 10, 2013[5] and March 15, 2013.[6]

On September 3, 2015, respondent issued the *Preliminary Assessment Notice* (PAN) finding petitioner liable for deficiency Income Tax (IT) and Value-Added Tax (VAT) in the aggregate amount of ₱45,401,335.90, inclusive of increments, for taxable years 2007 to 2010.[7]

Thereafter, respondent issued the Formal Letter of Demand (*FLD*) on November 4, 2015, assessing petitioner of deficiency IT and VAT in the aggregate amount of ₱46,569,211.69, inclusive of increments, for taxable years 2007 to 2010.[8]

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[2] Pars. 1 and 2, I. The Parties and II. Jurisdictional Allegations, *Petition for Review*, Docket, Vol. I, p. 8.
[3] Admitted, Statement of Facts and Issues, Pre-Trial Order dated February 20, 2018, Docket, p. 340.
[4] Exhibit "P-11", Docket, Vol. I, p. 29.
[5] Exhibit "P-12", Docket, Vol. I, p. 30.
[6] Exhibit "P-13", Docket, Vol. I, p. 312.
[7] Exhibit "R-15", BIR Records, Folder 2, pp 553 to 561.
[8] Exhibit "R-16", BIR Records, Folder 2, pp. 585 to 593.

On December 3, 2015, petitioner filed a *protest* disputing the correctness and the validity of the FLD,[9] which was denied by Regional Director (RD) Alberto S. Olasiman in his letter dated December 11, 2015.[10]

On August 22, 2016, respondent issued a *revised FLD* together with a *letter*, signed by the RD Olasiman, denying petitioner's request to submit payroll schedules for 2008 and 2010; demanding immediate payment of the said deficiency internal revenue tax liabilities; and stating that such is respondent's final decision.[11]

Petitioner filed a *request for reconsideration* with the CIR, through registered mail, on September 20, 2016.[12]

Within thirty (30) days from the lapse of respondent's 180-day period to act on his request for reconsideration, petitioner filed the present *Petition for Review*, through registered mail, on April 17, 2017.[13] The case was initially raffled to this Court's First Division.

On September 14, 2017, respondent filed his *Answer*,[14] interposing the following defenses, to wit:

> "xxx xxx xxx
>
> 3.1. The assessments were made pursuant to proper investigation/examination of the available records and documents.
>
> 3.2 A perusal of the BIR Records shows that respondent sent three requests for presentation of books of accounts and accounting records which were duly received by petitioner. While petitioner submitted documents such as bank certificates on loan balance and interest expense, official receipts and other documents, however, *[sic]* they did not substantially comply with the requested documents.

[9] BIR Records, Folder 2, pp. 682 to 689.
[10] Exhibit "R-18", BIR Records, Folder 2, pp. 692 to 693.
[11] Exhibits "P-2" and "P-3", Docket, Vol. I, pp. 24 to 28.
[12] Exhibits "P-1", "P-1-a", and "P-1-b", Docket, Vol. I, pp. 17 to 23.
[13] Docket, Vol. I, pp. 8 to 16.
[14] Docket, Vol. I, pp. 83 to 97.

3.3 Accordingly a Subpoena Duces Tecum (SDT No. 03-2003-RR10) was issued and received by petitioner. Despite the issuance of the SDT and the extensions twice granted, petitioner still failed to submit documents.

3.4 Petitioner was given ample opportunities to submit his Books of Accounts but continuously failed to comply. Thus, even assuming but without admitting that petitioner's books of accounts were not examined, the same cannot be used as a defense considering that it was petitioner who failed to submit them despite repeated requests.

3.5. It is no less than the National Internal Revenue Code (NIRC of 1997), as amended, that provides the power of the Commissioner of Internal Revenue (CIR) to ascertain the correctness of the returns filed in order to determine the liability for any internal revenue tax, thus:

> '**SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.** – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> (A) To determine any book, paper, record, or other data which may be relevant or material to such inquiry;
>
> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to costs and volume of production receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of

corporations, mutual fund companies, insurance companies, regional operating headquarter of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

xxx xxx xxx'

3.6. Corollary to such power, the CIR has the authority to determine the correct tax. Section 6 of the NIRC of 1997 provides:

'SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -

(A) Examination of Returns and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.

(B) Failure to Submit Required Returns, Statements, Reports and other Documents. – When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that

> any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.
>
> In case a person fails to file a required return or other document at the time prescribed by law, or wilfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.
>
> xxx xxx xxx'

3.7. From the foregoing, the Best Evidence Obtainable Method was properly applied. The investigations were correct to verify the amounts through Third Party Information. The above provisions of law grant the CIR the power to obtain information from any person other than the one whose internal revenue tax liability is subject to audit and investigation.

3.8 The assessment is based on the findings per investigation conducted pursuant to the Letter of Authority dated October 23, 2012. Such Letter of Authority was issued in accordance with the recommendation for its issuance after a preliminary investigation was conducted.

3.9. Further investigation was made relative to the tax assessments when petitioner requested for reinvestigation. This shows that the investigation was not defective but sufficient and adequate to support the assessments shown in the Revised Formal Letter of Demand and Final Assessment Notice.

3.10. The assessments have factual and legal basis. As the Revised Formal Letter of Demand provides:

A. 2007

1. Income Tax

Undeclared Receipts/Income (₱9,419,642.86) — You were unable to provide sufficient proof to overthrow such findings. As stated above, the amended contract was not considered on the grounds previously stated. Hence, the assessment on the 2007 Income Tax stands.

In view of the foregoing, an income tax deficiency in the amount of ₱9,481,950.45, inclusive of legal increments was found due from you.

2. Value-Added Tax

Undeclared Receipts/Income (₱9,419,642.86) — You are a VAT-registered taxpayer, hence, the undeclared receipts/ income is subject to value-added tax, pursuant to Sections 105 and 108 of the same Code.

In view of the foregoing, a value-added tax deficiency in the amount of ₱3,640,369.36, inclusive of legal increments was found due from you.

A. 2008

1. Income Tax

1. **Undeclared Receipts/Income (₱14,399,015.78)** — You were unable to provide sufficient proof to overthrow such findings. As stated above, the amended contract was not considered on the grounds previously stated.

2. **Disallowed Expenses (₱183,226.92)** — During the reinvestigation, you were able to substantiate a portion of the expenses. Hence, the amount for disallowed expenses was reduced by ₱394,562.58. However, there were still portions of the expenses that were not substantiated. Particularly, the Gasoline and Oil e(₱17,275.26) [*sic*], have remained unchanged. The disallowance expenses are computed as follows:

Schedule No. 1: Disallowed Expenses

	per FLD	after reinvestigation
Light and Water	₱ 65,618.52	₱ 246.08
Telecommunication	53,232.20	22,092.75
Supplies	56,309.75	26,678.41
Gasoline and Oil	268,419.35	-
Subtotal	₱ 443,579.82	₱ 49,017.24
Add:		
Gasoline and Oil		₱ 268,419.35
Multiply by	50%	50%

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Disallowed Gasoline and Oil		134,209.68
Disallowed Expenses	**₱ 221,789.91**	**₱ 183,226.92**

3. **Disallowed Materials (₱17,275.26)** — After reinvestigation you were able tom [*sic*] show that the actual purchases was [*sic*] ₱7,020,571.04 and n₱5,353.749.13 [*sic*], resulting to a Cost of Materials Used amounting to ₱6,158,900.10 (Schedule 2). However, despite such an adjustment, there was still an overdeclaration of Materials amounting to ₱17,275.92 when compared to the Cost of Materials per your 2008 Financial Statements.

Schedule No. 2: Cost of Materials Used

	per FLD	**after reinvestigation**
Materials, beginning	₱ 4,711,943.26	₱ 4,711,943.26
Add: Purchases	5,353,749.13	[*sic*] 47,020,571.04
Total Materials Available	₱ 10,065,692.39	₱ 11,732,514.30
Less: Materials, ending	5,573,614.20	5,573,614.20
Materials Used	₱ 4,492,078.19	6,158,900.10
Materials Used per FS	6,176,175.36	6,176,175.36
Overdeclaration	**(1,684,097.17)**	**(₱ 17,275.26)**

4. **Disallowed Labor (₱1,144,649.13)** — You were able to substantiate a portion of the Labor Expense, hence, the findings per reinvestigation reduced the previous findings by ₱11,503.47, from ₱1,156,152.60 to ₱1,144,649.13.

5. **Disallowed Overhead (₱244,934.15)** — You were able to provide proof of a portion of the disallowed overhead. Hence, after the reinvestigation, the disallowance was reduced by ₱135,085.35, from ₱380,019.50 to ₱244,934.15.

6. **Taxable Income (₱16,850.336.99)** — As a result of the reinvestigation, the taxable income was reduced to the amount of ₱16,850.336.99, which is subject to income tax under Sections 24 (A) (1) (a) and 24 (A) (2) of the same Code.

   In view of the foregoing, an income tax deficiency in the amount of ₱15,285,858.84, inclusive of legal increments was found due from you.

<u>2. Increments on Amended Income Tax Return</u>

Increments for Late Payment of Income Tax — After reinvestigation, no surcharge was imposed. However, you are still liable to the interest of 20% per annum, hence adjustment was made. In view of the foregoing, legal increments in the amount of ₱42,248.98, was found due from you. *gr*

3. Value Added Tax

1. **Undeclared Receipts/Income (₱14,399,015.78)** — You are a VAT-registered taxpayer, hence, the Undeclared Receipts/Income is subject to value-added tax, pursuant to Sections 105 and 108 of the same Code.

2. **Sales not Subject to Value-Added Tax (₱61,807.50)** — Investigation revealed that you received rental income for Rapu-Rapu Processing, which is subject to 0% value-added tax, pursuant to Section 108 (B) (1) of the same Code.

3. **Disallowed Input Tax (₱920,776.57)** — During reinvestigation, you were able to provide proof for claiming additional input tax, which reduced the disallowed input tax by ₱114,831.56.
In view of the foregoing, a value added tax deficiency in the amount of ₱7,976,549.45, inclusive of legal increments was found due from you.

4. Increments on Amended Quarterly Value-Added Tax Return
Increments for Late Payment of Income Tax — After reinvestigation, no surcharge was imposed. However, you are still liable to the interest of 20% per annum, hence adjustment was made. In view of the foregoing, legal increments in the amount of ₱116,455.05, was found due from you.

B. 2009
1. Income Tax

1. **Undeclared Receipts/Income (₱999.91)** — You were unable to provide proof to overthrow this findings, hence, the amount was not reduced/adjusted.

2. **Underdeclaration of Light and Water Expense (₱23,318.10)** — In the original investigation as shown in the Formal Letter of Demand, it was found that you had underdeclared your Light and Water Expense. However, after reinvestigation, it was found that such underdeclaration of expense did not exist.

3. **Unsubstantiated Expenses (₱129,335.30)** — As you were able to substantiate a portion of expenses stated below, the same were reduced to the following amounts:

Schedule No. 3: Unsubstantiated Expenses

	Per FLD	after reinvestigation
Telecommunication	₱ 28,650.72	23,687.61
Transportation	3,141.35	521.35
Supplies	19,287.14	5,406.11
Gasoline and Oil	174,330.20	92,565.22
Miscellaneous	49,204.98	7,155.01

Disallowed Expenses	**₱ 274,614.39**	**₱ 129,335.30**

4. **Disallowed Depreciation Expense (₱35,000.00)** — Verification of your records revealed that you had claimed as part of your depreciation expense, the depreciation of a residential building in the amount of ₱35,000.000. However, per investigation, it was revealed that said residential building was your residence. As a result, said depreciation expense was disallowed because the property was not used in the course of trade or business, in violation of Section 34 (F) (1) of the same Code.

5. **Disallowed Materials (₱3,725,855.73)** — During the reinvestigation, you were able to show proof that the actual purchases made was ₱4,574,113.32 and not ₱2,672,470.5 [*sic*], resulting to a Cost of Materials Used amounting to ₱4,036,447.92 (Schedule 4). However, despite such an adjustment, there was still an overdeclaration of Material amounting to ₱3,725,855.73 when compared to the Cost of Materials per your 2009 Financial Statements. Further, it was found that a portion of the materials used were actually donated materials which would not entail cost.

Schedule No. 4: Cost of Materials Used

	Per FLD	**after reinvestigation**
Materials, beginning	₱ 5,573,614.20	₱ 5,573,614.20
Add: Purchases	2,672,470.53	4,574,113.32
Total Materials Available	₱ 8,246,084.73	₱ 10,147,727.52
Less: Materials, ending	*[sic]* 6,111,179.60	6,111,279.60
Materials Used	2,134,805.13	4,036,447.92
Materials Used per FS	7,762,303.65	7,762,303.65
Overdeclaration	**₱(5,627,498.52)**	**₱(3,725,855.73)**

6. **Disallowed Labor (₱388,693.11)** — After reinvestigation, it was found that you were able to substantiate your claim for labor expense, hence such expense was allowed and adjustments were made.

7. **Disallowed Overhead (₱166,582.77)** — The previous finding was reduced by ₱161,354.58 because you were able to substantiate for such cost.

8. **Taxable Income (₱4,909,149.29)** — As a result of the reinvestigation, the taxable income was reduced to the amount of ₱4,909,149.29, which is subject to income tax under Sections 24 (A) (1) and 24 (A) (2) of the same Code.

   In view of the foregoing, an income tax deficiency in the amount of ₱3,643,334.25, inclusive of legal increments was found due from you. *gr*

2. Value Added Tax

1. **Undeclared Receipts/Income (₱999.91)** — You are a VAT-registered taxpayer, hence, the Undeclared Receipts/Income is subject to value-added tax, pursuant to Sections 105 and 108 of the same Code.

2. **Sales Not Subject to Value-Added Tax (₱35,000.00)** — The original investigation showed that you received rental income for Rapu-Rapu Processing, which is subject to 0% value-added tax, pursuant to Section 108 (B) (1) of the same Code. The same findings remain unchanged.

3. **Disallowed Input Tax (₱1,002,820.85)** — During reinvestigation, you were able to provide proof for claiming additional input tax, which reduced the disallowed input tax by ₱120,510.85.

   In view of the foregoing, a value-added tax deficiency in the amount of ₱2,816,449.17, inclusive of legal increments was found due from you.

C. 2010
1. Income Tax

1. **Undeclared Receipts/Income (₱69,332.88)** — You were unable to provide proof to overthrow this findings, hence, the amount was not reduced.

2. **Unsubstantiated Expenses (₱166,719.91)** — As you were able to substantiate a portion of expenses stated below, the same were reduced to the following amounts:

Schedule No. 5: Unsubstantiated Expenses

	per FLD	after reinvestigation
Transportation	₱ 7,250.34	₱ 2,626.98
Light and Water	25,715.32	25,715.32
Telecommunication	54,708.40	27,956.88
Gasoline and Oil	132,876.04	75,857.67
Repairs and Maintenance	30,272.01	26,878.62
Miscellaneous Expenses	18,969.83	7,684.44
Disallowed Expenses	**₱ 269,791.94**	**₱ 166,719.91**

3. **Disallowed Depreciation Expense (₱35,000.00)** — Verification of your records revealed that you had claimed as part of your depreciation expense, the depreciation of a residential building ion *[sic]* the amount of ₱35,000.00. However, per investigation, it was revealed that said residential building was your residence. As a result, said depreciation expense was disallowed because the property was not used in the course of trade or business, in violation of Section 34 (F) (1) of the same Code.

4. **Disallowed Materials (₱16.20)** — After reinvestigation, you were able to show proof that the actual purchases made was ₱3,133,234.11 and not ₱2,412,842.29, resulting to a Cost of Materials Used amounting to ₱16.20 (Schedule 6). However, despite such an adjustment, there was still an overdeclaration of Materials amounting to ₱16.20 when compared to the Cost of Materials per your 2010 Financial Statements.

Schedule No. 6: Cost of Materials Used

	per FLD	after reinvestigation
Material. beginning	₱ 6,111,279.60	₱ 6,111,279.60
Add: Purchase	2,412,842.29	3,133,234.11
Total Materials Available	₱ 8,524,121.89	₱ 9,244,513.71
Less: Materials, ending	5,562,264.27	5,562,264.27
Materials Used	₱ 2,961,857.62	₱ 3,682,249.44
Materials Used per FS	3,682,265.64	3,682,265.64
Overdeclaration	**₱(720,408.02)**	**₱ (16.20)**

5. **Disallowed Labor (₱245,484.38)** — You were unable to provide proof to overthrow this findings, hence, the amount was not reduced/adjusted.

6. **Disallowed Overhead (₱27,801.98)** — Findings per reinvestigation resulted to reduction in the original amount by ₱36,297.33.

7. **Taxable Income (₱1,071,996.07)** — As a result of the reinvestigation revealed that *[sic]* the taxable income was reduced to ₱1,071,996.07, which is subject to income tax under Sections 24 (A) (1) (a) and 24 (A) (2) of the same Code.

   In view of the foregoing, an income tax deficiency in the amount of ₱408,925.09, inclusive of legal increments was found due from you.

<u>2. Value-Added Tax</u>

1. **Undeclared Receipts/Income (₱69,332.88)** — You are a VAT-registered taxpayer, hence, the Undeclared Receipts/Income is subject to value-added tax, pursuant to Sections 105 and 108 of the same Code.

2. **Sales to Government (₱6,174,442.28)** — Per Certificates of Final Taxes Withheld at Source (BIR Form No. 2306) submitted, a large portion of your sales for the year were made to government offices and is already subjected to 7% Standard Input Tax and 5% Withholding Tax. Hence, same were deducted from your gross receipts subject to value-added tax.

3. **Rental Income (₱32,000.00)** — Investigation/verification with your records revealed that you earned rental income in the amount of ₱32,000.00, which is subject to value-added tax pursuant to Sections 105 and 108 of the same Code.

4. **Disallowed Input Tax** — Re-investigation/verification with your record, official receipts and purchase invoices revealed that most of your purchases and/or expenses were directly attributable to your construction business alone. As such no input tax was allowed as a credit against your output tax, pursuant to Section 4.110-4 of Revenue Regulations No. 16-2005.

In view of the foregoing, a value added tax deficiency in the amount of ₱9,100.80, inclusive of legal increments was found due from you."

3.11. Also, the assessment was issued within the period prescribed by law.

3.12. Section 203 of the NIRC of 1997 prescribes the period of limitation of assessment and collection of taxes which is three (3) years after the last day prescribed by law for the filing of the return.

3.13. However, as an exception thereto, when a false or fraudulent return is filed the period to assess is ten (10) years from the discovery of the falsity, fraud or omission, specifically Section 222 of the NIRC of 1997 states:

> **'Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.** –
>
> **In the case of a false or fraudulent return** with intent to evade tax or of failure to file a return, **the tax may be assessed**, or a proceeding in court for the collection of such tax may be filed without assessment**, at any time within then (10) years after the discovery of the falsity, fraud or omission: x x x'** (Emphasis supplied)

3.14. In relation to Section 222 of the NIRC of 1997, Section 248(B) of the same Code provides that the substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions will constitute prima facie evidence of a false or fraudulent return, *viz:* 𝒴𝓃

'(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial under-declaration of sales, receipts or income of for overstament of deductions, as mentioned herein.'

3.15. The Honorable Supreme Court in the case of *Aznar vs. CTA*, had the occasion to define false or fraudulent return and ruled in favor of the Commissioner of Internal Revenue (CIR) for an extension of 10 year to assess the taxpayer, thus:

'That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies **deviation from the truth, whether intentional or not**, the second implies intentional or deceitful entry with intent to evade the taxes due.

The ordinary period of prescription of 5 years (now 3 years) within which to assess tax liabilities under Sec. 331 of the National Internal Revenue Code should be applicable to

> normal circumstances, **but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of 10 years** provided for in Section 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and **should be the one enforced**.
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent CTA that Section 332(a) (now Sec. 222) of the NIRC should apply and that the period of 10 years within which to assess petitioner's tax liability **had not expired** at the time said assessment was made.' (Emphasis ours)

3.16. The Honorable Court, in *Standard Chartered Bank v. Commissioner of Internal Revenue*, pointed out that omissions of substantial sums in the BIR Forms warrant the application of the ten (10) year period prescription, *viz:*

> 'In this case, petitioner's omission in its filing of the corresponding entries in the BIR forms cannot be deemed a 'simple omission' as the transactions involved substantial sums. With such large sums, it is evident to the Court En Banc that the Court in Division was correct in stating that such omissions equal to the failure to file, as contemplated in Section 222(a) of the 1997 NIRC. Thus, while not all omissions warrant the ten (10)-year prescriptive period, this was not one of those situations.'

3.17. In the case at bar, in the investigation conducted by the authorized revenue officers, they found that there were undeclared receipts and overdeclaration of purchases and/or expenses in the amount exceeding 30% of actual receipts/income and actual deductions, respectively. Hence, there was a substantial underdeclaration of taxable receipts/income and a substantial overstatement of deductions which is prima facie evidence that the returns filed were false or fraudulent returns. As a result, the ten (10) year prescription period applies.

xxx xxx xxx

4.1. He who comes to court must come with clean hands.

4.2. Petitioner cannot feign innocence and allege that it did not receive the Preliminary Assessment Notice (PAN) which was issued, sent and mailed by respondent.

4.3. The BIR Records reveals that the Preliminary Assessment Notice dated 3 September 2015 was mailed through registered mail with Registry No. 15-792. The Registry Return Receipt attached to PAN shows the details in which the PAN was mailed and served to petitioner.

4.4. To further support the foregoing, the Philippine Postal Corporation, through Mr. Honorio A. Pecundo, Postmaster VI, issued a Certification dated 10 February 2016 certifying that Registered Letter No. 15-792, that is the Preliminary Assessment Notice, addressed to Ruben Uy Yu of 232 Cruzada, Legaspi City was delivered and received by Ma. Victoria Baltazar Yu, authorized representative, on September 20, 2015.

4.5. In *Protector's Services, Inc. v. Court of Appeals*, the Supreme Court ruled that when mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are (a) that the letter was properly addressed with postage prepaid; and (b) that is was mailed.

4.6. In relation to the present case, respondent respectfully maintains that BIR Revenue Region (RR) No. 10 – Legaspi City, mailed and sent the PAN, addressed to petitioner's registered address, through registered mail as evidenced by Post Office Registry Return Receipt with registered Letter/Parcel No. 15-792, with no indication that same was 'Returned to Sender'.

4.7. To bolster respondent's position, the Certification dated 10 February 2016 from the Post Office confirming the delivery and receipt of the PAN concludes the service of the PAN to petitioner.

4.8. As the Honorable CTA Second Division quoted the case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue:*

> 'xxx. What is essential to prove the fact of mailing is the registry return receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Post and any other pertinent document which is executed with the intervention of the Bureau of Posts. xxx'

4.9. Thus, the presumption of regularity considering that the Registry Return Receipt and the said Certification are public documents issued by the government prevails. It is a presumption under Section 3(m), Rule 131 of the Rules of Court that the official duty has been regularly performed.

4.10. Respondent humbly maintains that petitioner's bare denial without competent proof does not contradict the disputable presumption laid down in the Section 3, Rule 131 of the Rules of Court which provides:

> 'Sec. 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx xxx xxx

> (v) That a letter duly directed and mailed was received in the regular course of the mail.'

4.11. From the foregoing, it is clear that the presumption must be contradicted with evidence. However, petitioner failed to do so. Thus, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails.

4.12. The case *of Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, cited by the assailed Division, is instructive, to wit:

> 'In the present case, petitioner denies receiving the assessment notice, and the respondent was unable to present substantial evidence that such notice was, indeed, mailed or sent by the respondent before the BIR's right to assess had prescribed and that said notice was received by petitioner. The respondent presented the BIR Records Book where the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing were noted.
>
> Furthermore, independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of Post, could have easily been obtained. **Yet respondent failed to present such evidence**.'" (Emphasis ours)

Petitioner filed his Reply through registered mail on September 29, 2017.[15]

Respondent submitted the BIR Records for the instant case on November 16, 2017.[16]

[15] Docket, Vol. I, pp. 108 to 111.
[16] Docket, Vol. I, pp. 123 to 125.

The pre-trial conference was set on November 23, 2017.[17] *Respondent's Pre-Trial Brief* was filed on November 16, 2017;[18] while *Petitioner's Pre-Trial Brief* was filed, through private courier, on November 20, 2017.[19]

The parties submitted their *Joint Stipulation of Facts,* on December 14, 2017,[20] which was approved in the Resolution dated December 20, 2017,[21] thereby terminating the Pre-Trial.

The Pre-Trial Order for this case was issued on February 20, 2018.[22]

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered his own testimony,[23] as well as the testimonies of Ms. Ma. Victoria C. Baltazar,[24] Administrator of RYU Construction, and Mr. Honorio A. Pecundo,[25] former Postmaster VI of Philippine Postal Corporation.

On April 23, 2018, petitioner filed, through private courier, his *Formal Offer of Evidence.*[26] Respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence* on May 2, 2018.[27] In the Resolution dated August 10, 2018,[28] the Court admitted petitioner's exhibits, except for Exhibits "P-15" and "P-16.

In the Order dated September 26, 2018,[29] the instant case was transferred to this Court's Second Division.

Respondent likewise presented documentary and testimonial evidence. On August 28, 2018, respondent presented his employees from Revenue Region No. 10 – Legaspi City, namely: Mr. Amadeo M.

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17 Resolution dated September 26, 2017, Docket, Vol. I, p. 105.
18 Docket, Vol. I, pp. 269 to 272.
19 Docket, Vol. I, pp. 275 to 281.
20 Docket, Vol. I, pp. 330 to 334.
21 Docket, Vol. I, p. 336.
22 Docket, Vol. I, pp. 339 to 347.
23 Exhibit "P-18", Docket, Vol. I, pp. 282 to 288; Minutes of the hearing held on, and Order dated, February 27, 2018, Docket, Vol. I, pp. 362 to 366.
24 Exhibit "P-19", Docket, Vol. I, pp. 308 to 311; Minutes of the hearing held on, and Order dated, March 13, 2018, Docket, Vol. I, pp. 404 to 409.
25 Minutes of the hearing held on, and Order dated, April 3, 2018, Docket, pp. 418 to 424.
26 Docket, Vol. I, pp. 427 to 432.
27 Docket, Vol. I, pp. 435 to 438.
28 Docket, Vol. I, pp. 443 to 444.
29 Docket, Vol. I, p. 449.

Bernal,[30] Chief Revenue Officer II, Ms. D'Joanna M. Diamante,[31] Revenue Officer II – Assessment, and Ms. Adela Pleshette B. Villar,[32] Administrative Assistant I, as his witnesses.

On March 13, 2019, respondent filed his *Formal Offer of Evidence.*[33] Petitioner filed his *Comment on Respondent's Formal Offer of Evidence*, through registered mail, on March 25, 2019.[34] In the Resolution dated April 15, 2019,[35] the Court admitted respondent's Exhibits, and gave the parties a period thirty (30) days from notice to file their respective memorandum.

On May 16, 2019, respondent filed a *Manifestation* stating that he is adopting the arguments raised in the Answer as his Memorandum,[36] while the *Memorandum for the Petitioner* was filed, through registered mail, on June 6, 2019.[37]

The case was considered submitted for decision on June 28, 2019.[38]

THE ISSUES

The parties submitted this sole issue[39] for the Court's resolution, to wit:

> "Whether petitioner is liable to pay deficiency Income Tax and Value-Added Taxes for taxable years 2007 to 2010 amounting to Php43,497,090.45, plus surcharge, 20% deficiency and delinquency interest pursuant to Sections 248 and 249 of the NIRC."

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30 Exhibit "R-24", Docket, Vol. I, pp. 131 to 144; Minutes of the hearing held on, and Order dated, August 28, 2018, Dockets, Vols. I and II, pp. 446 to 453.
31 Exhibit "R-25", Docket, Vol. I, pp. 150 to 156; Minutes of the hearing held on, and Order dated, August 28, 2018, Dockets, Vols. I and II, pp. 446 to 453.
32 Exhibit "R-26", Docket, Vol. I, pp. 162 to 166; Minutes of the hearing held on, and Order dated, March 11, 2019, Docket, Vol. II, pp. 473 to 474.
33 Docket, Vol. II, pp. 475 to 486.
34 Docket, Vol. II, pp. 487 to 489.
35 Docket, Vol. II, pp. 492 to 493.
36 Docket, Vol. II, pp. 494 to 496.
37 Docket, Vol. II, pp. 498 to 506.
38 Resolution dated June 28, 2019, Docket, Vol. II, p. 508.
39 B. Issue, Pre-Trial Order, Docket, Vol. I, p. 340.

THE COURT'S RULING

The Petition for Review shall be granted.

The assessment is void because of violation of petitioner's due process rights.

Central to the resolution of the present controversy is the question of whether or not petitioner was duly served with and actually received the Preliminary Assessment Notice (PAN). Petitioner maintains that he did not receive the PAN and that the signature indicated in the registry return receipt was not his. He presented the Postmaster, Mr. Honorio A. Pecundo, as his witness,[40] and offered Certifications issued by the Postmaster, stating that no letter addressed to petitioner was delivered on September 19, 20 and 21, 2015[41] and September 30, 2015,[42] as appearing in the available record of letter carrier assigned at the said address. Thus, petitioner posits that his right to due process was violated for failure on the part of respondent to furnish him with a copy thereof.

On the other hand, respondent presented proof that he was able to send the PAN for mailing to petitioner. He presented a Certification dated February 10, 2016 from the same postmaster stating that a registered letter No. 15-792 addressed to Ruben Uy Yu was delivered and received by Ma. Victoria Baltazar Yu, authorized representative, on September 20, 2015.[43] To support his argument, respondent invokes the presumption of receipt in the regular course of mail under Section 3(v) of Rule 131 of the Rules of Court. In order to raise this presumption under said rule, the facts to be proved are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. In this case, the BIR Revenue Region No. 10 mailed and sent the PAN to petitioner's address, through registered mail, with no indication that the same was "Returned to Sender". Hence, by its presentation of the registry return receipt and a Certification from the postmaster, respondent asserts that the presumption prevails.

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[40] Minutes of the Hearing dated April 3, 2018, Docket, Vol. I, pp. 418 to 422.
[41] Exhibits "P-14" and "P-14-a", Docket, Vol. I, p. 315.
[42] Exhibits "P-5", "P-6" and "P-6-a", Docket, Vol. I, pp. 33 to 34.
[43] Exhibit "R-11" and "R-11-a", BIR Records, Folder 3, p. 893.

Section 228 of the 1997 NIRC prescribes the procedure to be observed in the issuance of tax deficiency assessments. The said provision, in relevant part, provides:

> "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 preassessment notice shall not be required in the following cases:
>
> 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." *(Emphasis supplied)*

To implement the foregoing provisions, Revenue Regulations (RR) No. 12-99, as amended,[44] specifies the due process requirement to be observed in issuing deficiency tax assessments. The relevant portion of the said issuance reads:

> "**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 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show 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). gz

[44] As amended by RR No. 18-2013 dated November 28, 2013.

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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.3 ***Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*** — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN 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 assessment shall be void (see illustration in ANNEX "B" hereof).

xxx xxx xxx

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:

(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.

In case personal service is not practicable, the notice shall be served by substituted service or by mail. Jr

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

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 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.

'*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."

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,*[45] the Supreme Court categorically held that failure to strictly comply with the notice requirements prescribed under Section 228 of the 1997 NIRC and RR No. 12-99 is tantamount to denial of due process. The Supreme Court further stressed that the absence of PAN will render nugatory any assessment made by the tax authorities. As aptly explained by the Supreme Court:

"Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts ℛ

[45] G.R. No. 185371, December 8, 2010, 637 SCRA 644, 646.

> **and the law upon which the assessment is made.** 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.
>
> xxx xxx xxx
>
> **From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities.** The use of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.**" *(Emphasis supplied and citations omitted)*

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*,[46] the Supreme Court held that it is a requirement of due process that the taxpayer must **actually receive the assessment**, to wit:

> "x x x 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: 9c

[46] G.R. No. 155541, January 27, 2004, 421 SCRA 275.

> 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)*

Thus, it is not simply a question of whether the assessment notices were sent to respondent by petitioner. It is imperative that the taxpayer actually received such tax assessment notices.

Meanwhile, in the case of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[47] the Supreme Court enunciated the applicable rule in cases where the taxpayer denies the receipt of assessment notices and also the requisite proof to show the fact of mailing of assessment notices. The Supreme Court held:

> **"If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that [the taxpayer] indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.**
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the**

[47] G.R. No. 202695, February 29, 2016, 785 SCRA 258-259.

> **Bureau of Posts and any other pertinent document executed with its intervention.** The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis supplied)*

Based from the foregoing, the rule is that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were **actually received** by the taxpayer. It is also clear that to prove the fact of mailing, it is essential for the respondent to present the registry receipt issued by the Bureau of Posts or the registry return card signed by the taxpayer or its authorized representative or at least a certification issued by the Bureau of Posts attesting to the same fact.

Bear in mind, however, that receipt for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters.[48] In this regard, the Supreme Court emphatically held in *Government of the Philippines v. Aballe,*[49] that "it is the registry receipt issued by the mailing office **and** the affidavit of the person mailing, which proves service made through registered mail."

As stated earlier, petitioner categorically denied having received the PAN. Given such denial, it behooves the respondent to prove otherwise. However, this Court finds that respondent failed to overcome his burden.

While the registry return receipt as well as the Certification dated February 10, 2016 issued by the Postmaster were presented by respondent as evidence, the same are not sufficient to prove that petitioner actually received the notice. The Court cannot give credence

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[48] *Republic of the Philippines v. Resins, Incorporated,* G.R. No. 175891, January 12, 2011, 639 SCRA 403 citing *Ting v. Court of Appeals,* 398 Phil. 481, 493 (2000).
[49] G.R. No. 147212, March 24, 2006, 485 SCRA 308.

to both of these documents. To begin with, Postmaster Pecundo was not the person who actually served the letter. The server of the letter neither executed a judicial affidavit nor was he presented before this court. Moreover, during trial, Postmaster Pecundo admitted that upon his inquiry, the server admitted to him that the letter containing the PAN was not actually served to petitioner but was merely left somewhere on the window of petitioner's office. It was also the server who signed the petitioner's name on the registry return receipt. Quoted below are the relevant portions of the testimony of Postmaster Pecundo on this matter, to wit:

DIRECT-EXAMINATION BY ATTY. WILFREDO D. BUSALLA.[50]

xxx xxx xxx

ATTY. BUSALLA
Q Mr. Witness, you are also directed to bring before this Honorable Court the photocopy of the registry return receipt no. 15-792. Do you have it with you now?

MS. PECUNDO
A Yes Sir.

xxx xxx xxx

ATTY. BUSALLA
Q Now Mr. Witness, on this registry return receipt, there appears a name under signature of addressee Ruben Yu. Whose signature is this if you know?

ATTY. MENDOZA
Objection, your Honors, the witness is incompetent to testify.

JUSTICE GRULLA
Witness may answer if he knows.

MR. PECUNDO
A Because the letter was delivered by the letter carrier so my presumption is, that is the signature of the addressee because I did not see personally the addressee signed that.

[50] Transcript of Stenographic Notes (TSN), April 3, 2018 Hearing, p. 14; pp. 17-20 (Emphasis supplied).

xxx xxx xxx

ATTY. BUSALLA
Q Why did you presume that that is the signature of the addressee?

MR. PECUNDO
A It was the, the letter carrier reported to me in the first time, when the BIR requested a Certification, the letter carrier told me that that is the signature of the addressee but it turns out that when the addressee through his representative requested for the Certification and that the *[sic]* denied having signed the signature. **So, the letter carrier told me that it was him the one who sign that, just wrote the name of the addressee.**

JUSTICE GRULLA
Mr. Witness, what is the name of letter carrier, do you remember the name of the letter carrier?

MR. PECUNDO
Yes, your Honors, Jayson Cielo.

JUSTICE GRULLA
Can you repeat your answer, did you say that you were told by Mr. Cielo that the addressee sign the, it's not the addressee who sign, who affix the signature?

MR. PECUNDO
It was only written by the letter carrier, your Honors.

JUSTICE GRULLA
Because, why did he write the name of the, why did the letter carrier affix the signature of the, or write the name of the addressee?

MR. PECUNDO
Because, when I inquired from him based on the request of the BIR, he told [me] that he deliver[ed] the letter on September 30. And when I verified further, when the addressee through his representative is denying that

> **they receive[d] the letter. So I made a verification, further verification from the letter carrier so that was the time that I know that the signature in this return card was not the addressee because the letter carrier admitted that he just signed the name of the addressee here.**

JUSTICE GRULLA

> **And did you ask the letter carrier if he did actually deliver the letter to the addressee?**

MR. PECUNDO

> **I asked him and he explained that, because the addressee is not around during his delivery and he just place[d] the letter somewhere in the window of the addressee and he just sign[ed] it.**

JUSTICE GRULLA

> **So, what you are saying Mr. Witness is that no person actually received the letter delivered by the letter carrier?**

MR. PECUNDO

> **Yes, your Honors, that is the explanation to me by the letter carrier.**

xxx xxx xxx"

Applying the aforequoted doctrinal pronouncements by the Supreme Court to the present case, this Court finds that the evidence duly presented failed to satisfactorily prove that petitioner actually received the PAN.

Given the above findings, there is no need to discuss the other issues raised in this Petition because it is settled that a void assessment bears no fruit.[51]

WHEREFORE, the present Petition for Review is **GRANTED**. Accordingly, the revised FLD dated August 22, 2016 and the FLD and

[51] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 396.

the attached Audit Results / Assessment Notices dated November 4, 2015 are declared **VOID** and are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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 Article VIII, Section 13 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