21-000203-0056

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10533

VIVIAN B. MAWIS,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. VISMARCK S. UY
Bureau of Internal Revenue
Legal Division, Revenue Region 8A-Makati City
36th Floor, Export Bank Plaza Building
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Makati City

PADERNAL & PARAS LAW OFFICES
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H.V. Dela Costa Street, Salcedo Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **May 13, 2025**, a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 15, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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VIVIAN B. MAWIS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10533

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 13 2025 3:30PM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration"[1] (**MR**) filed on 06 January 2025, with petitioner Vivian B. Mawis' (**petitioner**'s) "Opposition (re: [MR] dated 06 January 2025)"[2] (**Opposition**) filed on 21 January 2025.

The MR contests the Decision promulgated on 19 December 2024[3] (**assailed Decision**) which cancelled and set aside the deficiency assessments contained in the Formal Assessment Notice[4] (**FAN**) Part I and Part II issued against petitioner, owing to respondent's non-observance of the due process requirements. Consequently, the said Decision also lifted the Warrant of Garnishment (**WOG**) No. RR8A-WG-

[1] Division Docket, pp. 730-738.
[2] Id., pp. 746-753.
[3] Id., pp. 697-729.
[4] Exhibit "R-6", id., pp. 269-274.

2020-09-0148 dated 10 November 2020[5] that sought the collection of the alleged deficiency taxes.

In the MR, respondent raises the following points: (1) the Court has no jurisdiction over the instant case; (2) due to petitioner's failure to inform respondent of her change of address, the latter could not be faulted for serving the assessment notices in the previous registered address of G/F Makati Creekside Mall, Amorsolo cor. Herrera Streets, Legaspi Village, Makati City (**Creekside address**); and (3) Revenue Memorandum Order (**RMO**) No. 40-2019[6] allows the service of notices to either the registered address or the known address.

On the first ground, respondent insists that petitioner duly admitted the receipt of the FAN when a photocopy of the same was found under the office door of petitioner's gasoline station business, Active Petron Service Station (**Active Petron**), located at F. Reyes Street, Balibago Sta. Rosa City, Laguna (**Laguna address**) on 02 July 2019. Following Section 228[7] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and counting thirty (30) days therefrom, petitioner had until 01 August 2019 to file her protest. However, as her Protest Letter[8] did not bear any receiving stamp from the Bureau of Internal Revenue (**BIR**), there is no proof that the same was timely filed. Thus, the subject assessments became final, executory and non-appealable.

On the second ground, citing Our disquisition, respondent claims that petitioner evidently failed to notify her change of address in accordance with Revenue Regulations (**RR**) No. 12-85.[9] Following Section 11[10] of the said issuance, any communication previously sent to the said former legal residence or place of business shall be considered valid and binding for purposes of the period within which to reply. Hence, the assessment notices sent to petitioner's Creekside address is valid and binding against her. She could no longer raise an alleged violation of her due process when the same is attributable to her own fault.

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[5] Exhibit "R-11", id., p. 235.
[6] Prescribing the Procedures for the Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of Revenue Regulations (RR) No. 18-2013.
[7] **SEC. 228.** *Protesting of Assessment.*
[8] Exhibit "P-16", Division Docket, pp. 578-579.
[9] Procedure covering administrative protests on assessments of the Bureau of Internal Revenue.
[10] Sec. 11. Change of Address. — …

Lastly, as the relevant RMO uses the disjunctive word "or", respondent claims that he or she is not barred from serving the assessment notices in either the taxpayer's registered address or known address. Further, as personal service was no longer feasible for the registered address, the same RMO also allows for the service by registered mail to the taxpayer's registered Creekside address. Hence, from the foregoing circumstances, respondent prays for the reversal of the assailed Decision and reinstate the collection process against petitioner.

On the contrary, petitioner contends that this Court has jurisdiction over the case. Citing the cases of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[11] and *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*[12], she asserts that once a taxpayer denies the receipt of an assessment notice, it becomes incumbent upon the BIR or respondent that the same was actually received. Further, the Judicial Affidavit of petitioner's witness explained that what was received was merely a photocopy of the FAN which does not bear any details of how it was served, who served it, who received it and when it was received.

Petitioner also contends that the assigned revenue officer (**RO**) failed to present any evidence to prove that petitioner actually received the FAN. Despite mailing the same, there is no proof of service thereon. Thus, contrary to respondent's insistence that petitioner was duly apprised of the assessment notices through the discovery of the FAN's photocopy under Active Petron's door, the same does not constitute a valid service that may be considered as the reckoning point for the filing of an administrative protest.

Moreover, petitioner counters that respondent was already in bad faith when the latter served the Preliminary Assessment Notice (**PAN**) and the FAN at her Creekside address despite knowledge of her Laguna address. Based on the records, respondent had already served the Letter of Authority (**LOA**), First Notice and Second and Final Notice at petitioner's Laguna address. Hence, respondent erred in reverting the service of the assessment notices to petitioner's old address.

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[11] G.R. No. 185371, 08 December 2010.
[12] G.R. No. 249540, 28 February 2024.

Reiterating the case of *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[13] (**BASF Coating**), petitioner argues that the Supreme Court struck down an assessment due to the CIR's insistence of mailing the FAN to the taxpayer's old address even though he or she became aware of the former's new address (as evidenced by the several documents presented before the Court). Similarly in this case, as respondent was aware of the Laguna address, his or her insistence of mailing the assessment notices to the previous address resulted in the violation of petitioner's right to due process.

We resolve.

After an examination of the parties' arguments, We do not find any novel matter that could convince us to depart from the rulings made in Our assailed Decision.

For the issue of jurisdiction, although it may appear that petitioner's Protest Letter does not indicate BIR's receipt thereof, We still cannot disregard the fact that the assessment notices, especially the PAN and the FAN, were not duly served at petitioner's Laguna address. Moreover, when petitioner denied the receipt of the said notices, respondent failed to present any proof of service to establish petitioner's actual receipt thereof. Hence, there can be no period or exact date from when to properly count the filing of an administrative protest.

Further, the determination on the timeliness of petitioner's action before Us was reckoned from the date when she received an advice on the subject assessments, *i.e.*, the bank's email notification (of 05 March 2021) that her Bank of the Philippine Islands (**BPI**) account was tagged as garnished (and the unofficial WOG photocopy that petitioner acquired through her personnel's inquiry). As already stated in the assailed Decision, petitioner's Petition for Review was deemed timely filed and successfully assumed jurisdiction over the case.

Second, We could not side with respondent when he or she insisted that the assessment notices may still be served at petitioner's previous registered address (despite knowledge of her new business

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[13] G.R. No. 198677, 26 November 2014.

address). We do not share respondent's view that petitioner should be faulted for failing to notify the BIR of her new address.

As ruled in the assailed Decision, We stress –

...

***Notwithstanding* the foregoing disquisitions, the Court may not still sustain respondent's assessments of petitioner. While, ideally, petitioner should have apprised respondent of her change of address, preponderant evidence shows that respondent was nevertheless aware of an <u>alternative</u> known address for petitioner.**

Section 3.1.6, RR No. 18-2013, amending RR No. 12-1999, prescribes the modes of service of notice of assessment as follows:

> ...
>
> 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 [or her] 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 [or her] registered **or known address or wherever he [or she] may be found.** **<u>A *known address* shall mean a place other than the registered address where business activities of the party are conducted</u>** or his [or her] place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> ...

The foregoing, reiterated in [RMO] No. 40-2019, is clear that any assessment notice must first be served personally to the taxpayer at his or her registered address or known address or wherever he [or she] may be found.

In the instant case, it is evident from the unequivocal admission of respondent's witness that he or she had long been aware of petitioner's alternative address, *i.e.*, "F. Reyes Street, Balibago Sta Rosa, Laguna" (or the Laguna address) as early as 2016, at the time when the LOA was duly served[.]

...

Moreover, the First Notice dated 02 November 2016 signed by RO Almosara and GS Obsequio (both duly authorized to conduct the examination) and the Second and Final Notice dated 15 November

2016 and signed by RDO Florante R. Aninag (**Aninag**), were all sent by respondent to petitioner's Laguna address. Notably, petitioner's Transmittal dated 24 November 2016, Letter dated 24 November 2016, Transmittal dated 05 December 2016, Transmittal dated 04 January 2017, Letter dated 16 January 2017, Receiving copy of BIR Form No. 1604-E dated 16 January 2017, Transmittal dated 25 January 2017, Transmittal dated 31 January 2017, and Transmittal dated 03 February 2017, which were duly received by respondent and prior to the issuance of the PAN and FAN, also bear petitioner's Laguna address.

Evidently, respondent was fully aware of petitioner's Laguna address well before issuing the PAN and FAN. However, notwithstanding respondent's knowledge thereof, respondent chose to mail the same only to petitioner's registered address (Creekside), in violation of the BIR's own rules and regulations.

In the case of *BASF Coating*, the Supreme Court underscored that actual knowledge of the new address should take precedence over the registered address (despite the absence of a formal written notice of the taxpayer's change of address) in sending assessment notices in order to comply with the unequivocal mandate of the 1987 Constitution of first informing the taxpayer of the government's claim before there can be a deprivation of property, to wit:

> ...
>
> The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna.
>
> The CTA also found that BIR officers, at various times prior to the issuance of the subject FAN, conducted examination and investigation of respondent's tax liabilities for 1999 at the latter's new address in Laguna as evidenced by the following, in addition to the abovementioned records:
>
> ...
>
> Moreover, the CTA found that, based on records, the RDO sent respondent a letter dated April 24, 2002 informing the latter of the results of their investigation and inviting it to an informal conference. Subsequently, the RDO also sent respondent another letter dated May 30, 2002, acknowledging receipt of the latter's reply to his April 24, 2002 letter. **These two letters were sent to respondent's new address in Laguna. Had the RDO not been informed or was not aware of respondent's new address, he could not have sent the said letters to the said address.**

> 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.
>
> ...
>
> ... 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. **<u>In the instant case, respondent has not properly been informed of the basis of its tax liabilities</u>**. Without complying with the unequivocal mandate of **first informing the taxpayer of the government's claim, there can be no deprivation of property**, because no effective protest can be made.

...

Undoubtedly, respondent violated petitioner's right to due process by mailing the PAN and FAN to petitioner's old and abandoned business address at Creekside, despite an actual knowledge of her alternative known address. It bears noting that it is respondent's duty to ensure that assessment notices are properly served to and received by the taxpayer or his or her duly authorized representative. Any deviation from this duty constitutes a breach of the taxpayer's right to due process, rendering the assessment void and without legal effect.[14]

...

WHEREFORE, with the foregoing premises considered, the Motion for Reconsideration filed by respondent Commissioner of Internal Revenue on 06 January 2025 is hereby **DENIED** for lack of merit.

[14] Citations omitted, emphasis and italics in the original text.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice