CTA Form No. 8

20-000097-0053

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10265

MA. ERLINDA T. ONG, Doing Business Under the Name and Style 'Maranatha Sales Distributor, Duly Represented herein by her Attorney-in-fact, Ms. Ria Sablon,
Petitioner,

- versus -

NOTICE OF DECISION

THE COMMISSIONER OF INTERNAL REVENUE (CIR) OF THE BUREAU OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. SYLVIA R. ALMA JOSE
ATTY. BRYAN ANTHONY C. DIEGO
Bureau of Internal Revenue
Room 704, Prosecution Division, BIR National Office Building
BIR Road, Diliman, Quezon City

ATTY. ERIC C. CORTES
Unit 103, AIC Burgundy Empire Tower
Sapphire Road, Ortigas Center
Brgy. San Antonio, Pasig City

GREETINGS:

You are hereby notified by these presents that on **May 3, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 3, 2024.**

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

REPUBLIC OF THE PHILIPPINES
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MA. ERLINDA T. ONG, Doing Business Under the Name and Style 'Maranatha Sales Distributor, Duly Represented herein by her Attorney-in-fact, Ms. Ria Sablon,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE (CIR) OF THE BUREAU OF INTERNAL REVENUE (BIR),
Respondent.

CTA CASE NO. 10265

Members:

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

Promulgated:

MAY 0 3 2024 ; 10:00AM

x- x

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] filed by petitioner Ma. Erlinda T. Ong praying that the Court render judgment reversing the January 2, 2020 Decision of respondent Commissioner of Internal Revenue (CIR), which affirmed petitioner's disputed assessments for deficiency Income Tax, Percentage Tax, and compromise penalty in the total amount of ₱4,388,202.08 for taxable year (TY) 2011.

THE PARTIES

Petitioner owns Maranatha Sales Distributor, a sole proprietorship business duly organized and existing under

[1] Docket, pp. 6–31.

Philippine laws with business address at Sol's Subdivision, Bitano, Legaspi City, Province of Albay.[2]

Respondent CIR is vested by law with the power to enforce and implement the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, related statutes, and implementing rules and regulations. He holds office at the Bureau of Internal Revenue (BIR) National Office, BIR Road, Diliman, Quezon City.[3]

THE FACTS

On February 13, 2014, a Letter of Authority (LOA)[4] with Serial Number eLA201000022553/LOA-067-2014-00000014 was issued by Regional Director (RD) Esmeralda M. Tabule of Revenue Region (RR) No. 10 – Legaspi City authorizing then Revenue Officer (RO) Maria Cristina Solano and Group Supervisor (GS) Domingo Aguinaldo to examine the books of accounts and other accounting records of petitioner and her spouse, Pik Sun Ong for the period from January 1, 2011 to December 31, 2011.

On January 22, 2015, a Preliminary Assessment Notice (PAN)[5] with Details of Discrepancies[6] was issued against petitioner and her spouse.

On March 2, 2015, Formal Letter of Demand and Assessment Notices (FLD/FAN)[7] were issued against petitioner and her spouse, assessing them of the following:

Tax Type	Basic Tax Due	Interest	Total
Income Tax	₱2,674,800.47	₱1,560,300.27	₱4,235,100.74
Value-Added Tax	142,829.87	90,458.92	233,288.79
Percentage Tax	16,200.00	18,310.00	34,510.00
Withholding Tax	59,607.39	38,744.80	98,352.19
Compromise Penalties	52,000.00	-	52,000.00
			₱4,653,251.72

[2] Admitted Facts, *Joint Stipulation of Facts & Issues* (JSFI), par. 1, Docket, p. 466.
[3] Par. 2, *id.*
[4] Exhibit "R-1", BIR Records, p. 21.
[5] Exhibit "R-8", BIR Records, pp. 246–248.
[6] Exhibit "R-8-A", BIR Records, pp. 244–245.
[7] Exhibits "R-9" to "R-9-A", BIR Records, pp. 269–274.

On March 18, 2015, petitioner received the FLD/FAN and filed a protest on March 27, 2015.[8]

On May 27, 2015, the Regional Director of RR No. 10 – Legaspi City issued a letter acknowledging receipt of petitioner's protest.[9]

On April 17, 2018, a Preliminary Collection Letter (PCL)[10] was issued by Arminda D. Millena, Chief of the Collection Division of RR No. 10 – Legaspi City, against petitioner and her spouse.

On May 17, 2018, petitioner filed an Appeal[11] with respondent and the latter's Appellate Division contesting the PCL.

On January 2, 2020, respondent issued the assailed Decision[12] cancelling the assessments for deficiency Value-Added Tax (VAT) and Expanded Withholding Tax (EWT) on the ground of prescription and affirming the deficiency income tax and percentage tax in the respective amounts of ₱4,301,692.08 and ₱34,510.00, including a compromise penalty of ₱52,000.00. Petitioner was ordered to pay the total amount of ₱4,388,202.08, including accrued interest. Petitioner received the assailed Decision on February 12, 2020.[13]

The dispositive portion of the CIR's January 2, 2020 Decision states in part:[14]

> **WHEREFORE**, premises considered the PCL dated April 17, 2018 ... reiterating the demand for payment of the aggregate amount of P4,719,843.06 representing deficiency Income Tax (IT), Value-Added Tax (VAT), Percentage Tax (PT), and Expanded Withholding Tax (EWT) inclusive of compromise penalty for the taxable year 2011 is hereby **MODIFIED**. <u>The deficiency VAT and EWT are hereby **cancelled** on the **ground of prescription** while the deficiency IT and PT ... are hereby **affirmed**</u>. [*Emphasis and underscoring supplied*]

[8] Exhibit "P-14", Docket, pp. 520-527; BIR Records, pp. 276–283.
[9] Exhibit "P-15", Docket; BIR Records, p. 294.
[10] Exhibit "R-11", BIR Records, p. 299.
[11] Exhibit "P-17", Docket, pp. 419–434; BIR Records, pp. 334–350.
[12] BIR Records, pp. 477–486.
[13] Petition for Review, par. 11, Docket, p. 10, *vis-à-vis* par. 2, Answer, Docket, p. 191.
[14] Exhibit "P-18," BIR Records, p. 477; Docket, p. 444.

On March 2, 2020, a Warrant of Distraint and/or Levy (WDL)[15] was issued against petitioner. Subsequently, a Notice of Tax Lien[16] and a Notice of Levy on Real Property[17] were filed with the Registry of Deeds of Legaspi City on March 9, 2020 and March 10, 2020, respectively. Warrants of Garnishment[18] were also issued to various banks on March 9, 2020.

On March 5, 2020, petitioner filed this Petition for Review.[19]

On June 18, 2020, respondent filed his *Motion for Additional Time to File Answer*,[20] which the Court granted. Respondent was ordered to transmit the entire BIR records within ten (10) days from the filing of his Answer.[21]

The Court received respondent's *Motion for Additional Time to File an Answer*[22] and *Urgent Motion for Additional Time to File Answer*[23] on August 27, 2020 and September 9, 2020, respectively, which the Court granted. Accordingly, respondent was given a non-extendible period of 15 days, or until September 16, 2020, to file his Answer.[24]

On September 18, 2020, the Court received respondent's *Answer*[25] filed through registered mail on September 14, 2020.

The Court set the case for a pre-trial conference on November 23, 2020.[26] However, due to lack of quorum, the November 23, 2020 pre-trial conference was cancelled and reset to January 18, 2021.[27]

Petitioner filed her *Pre-Trial Brief*[28] on November 20, 2020, while *Respondent's Pre-Trial Brief*[29] was filed on January 13, 2021.

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[15] Exhibit "R-12", BIR Records, p. 504.
[16] Exhibit "R-13", BIR Records, p. 507.
[17] Exhibit "R-14", BIR Records, p. 539.
[18] Exhibit "R-15", BIR Records, pp. 540–568.
[19] *Supra*, note 1.
[20] Docket, pp. 175–178.
[21] Order dated June 19, 2020, Docket, p. 179.
[22] Docket, pp. 181–183.
[23] *Id.*, pp. 185–188.
[24] Order dated September 11, 2020, Docket, p. 190.
[25] Docket, pp. 191–197.
[26] Notice of Pre-Trial Conference dated September 24, 2020, Docket, pp. 199–200.
[27] Notice of Resetting dated November 9, 2020, Docket, p. 201.
[28] Docket, pp. 202–206.
[29] *Id.*, pp. 207–211.

During the pre-trial conference, the case was referred for mediation upon agreement of both parties.[30]

On February 17, 2021, the Court received the "No Agreement to Mediate"[31] submitted by the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) and noted it on March 1, 2021.[32]

On March 17, 2022, the parties filed their *Joint Stipulation of Facts & Issues* (JSFI).[33] On March 22, 2022, the Court issued the Pre-Trial Order.[34]

Trial proceeded.

On March 23, 2022, petitioner presented the testimony of her lone witness, Ms. Ria A. Sablon (Ms. Sablon), who testified by way of her Judicial Affidavit.[35]

On April 1, 2022, petitioner filed her *Formal Offer of Evidence*,[36] with respondent's *Comment (Re: Formal Offer of Evidence dated 31 March 2022)*[37] filed on April 4, 2022.

On August 31, 2022, the Court admitted all of petitioner's exhibits.[38]

During the presentation of respondent's evidence, the following witnesses testified:[39] (1) OIC-Revenue District Officer Maria Cristina B. Yuson (OIC-RDO Yuson),[40] (2) Revenue Officer (RO) Meryll B. Serina,[41] and (3) Chief Revenue Officer Sheila B. Rebustillo (CRO Rebustillo).[42]

[30] Minutes of the Hearing held on, Order, and Resolution dated January 18, 2021, Docket, pp. 212–216.
[31] Docket, p. 222.
[32] Resolution, Docket, p. 224.
[33] Docket, pp. 466–472.
[34] *Id.*, pp. 174–179.
[35] Exhibit "P-19", Judicial Affidavit of Ria A. Sablon, Docket, pp. 230–241; Minutes of the Hearing held on, and Order dated March 23, 2022, Docket, pp. 480–481.
[36] Docket, pp. 482–487.
[37] *Id.*, pp. 488–491.
[38] Resolution, *id.*, pp. 539–540.
[39] Minutes of the Hearing held on, Order, and Resolution dated October 27, 2022, Docket, pp. 548–550; Order dated January 26, 2023, Docket, pp. 553–554.
[40] Offer of Testimony of OIC-Revenue District Officer Maria Cristina B. Yuson with attached Judicial Affidavit, Docket, pp. 502–513.
[41] Offer of Testimony of Revenue Officer Merryll Bermido Seriña with attached Judicial Affidavit, Docket, pp. 449–458.
[42] Offer of Testimony of Chief Revenue Officer Sheila B. Rebustillo with attached Judicial Affidavit, Docket, pp. 492–501.

On February 1, 2023, respondent filed his *Formal Offer of Evidence.*[43] Petitioner failed to file her comment thereon despite notice.[44]

On March 29, 2023, the Court admitted all of respondent's exhibits and ordered the parties to file their respective memoranda within thirty (30) days from notice.[45]

On May 12, 2023, respondent filed his Memorandum;[46] while petitioner failed to file her Memorandum.[47]

On June 2, 2023, the Court submitted the case for decision.[48]

THE ISSUES

The parties stipulated the following issues for the Court's resolution:[49]

I. Whether or not petitioner's right to due process was violated by respondent;

II. Whether or not the deficiency tax assessments against petitioner for alleged deficiency income tax and deficiency percentage tax were valid;

III. Whether or not the right of the government to collect petitioner's supposed deficiency taxes has already prescribed; and

IV. Whether the Honorable Court of Tax Appeals has jurisdiction over the instant case.

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the case as she timely filed this petition within 30 days from receipt of the assailed Decision of the CIR on February 12, 2020.

hr

[43] Docket, pp. 555–564.
[44] Records Verification dated February 28, 2023, Docket, p. 565.
[45] Resolution, Docket, p. 570–571.
[46] Docket, pp. 572–588.
[47] Records Verification dated May 29, 2023, Docket, p. 589.
[48] Minute Resolution, unpaged.
[49] Issues for Trial, JSFI, Docket, pp. 466–467.

Petitioner asserts that her right to due process was violated when respondent failed to effect service of the PAN to her. The PAN that respondent sent by registered mail was supposedly received by one Norman Llanora, who petitioner claims is unknown to her.

Petitioner further argues that the tax deficiency assessments are void because there are no facts and law on which they were based and are derived without a thorough audit. Also, petitioner posits that the assessments for TY 2011 had already prescribed on April 16, 2015.

Respondent's arguments:

Respondent counters that the Court has no jurisdiction over this case since petitioner's right to appeal to this Court was lost when it failed to appeal within the 30-day period from petitioner's receipt of the PCL on April 20, 2018.

Respondent insists that petitioner's right to due process was not violated because, contrary to petitioner's allegation that it did not receive the PAN, the PAN was sent to petitioner through registered mail on January 30, 2015. Also, petitioner was able to file her separate protest to the FLD/FAN and PCL explaining her claim.

Respondent also avers that petitioner is liable for the assessed deficiency taxes for TY 2011 by echoing the findings on the FLD/FAN. Since presumptions are in favor of the correctness of the assessment, it is petitioner who must satisfactorily overcome said presumption of regularity.

THE COURT'S RULING

The instant Petition for Review is impressed with merit.

The Court has jurisdiction over the instant Petition.

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125,[50] as amended by RA No. 9282,[51] confers jurisdiction to this Court relative to decisions and inactions of respondent, to wit:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the [CIR] in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the [CIR] in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, ...; [*Emphasis supplied*]

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal to this Court, *viz.*:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction of the [CIR]...**may file an **appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.** ... [*Emphasis supplied*]

[50] An Act Creating the Court of Tax Appeals, June 16, 1954.
[51] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

The above provisions are likewise provided under Section 3(a)(1)(2), Rule 4,[52] and Section 3(a), Rule 8[53] of the RRCTA.

Based on the foregoing, this Court has exclusive jurisdiction to review by appeal a decision, ruling, or inaction of respondent. The appeal must be filed by the taxpayer affected, or as worded by RA No. 9282, the party adversely affected, within 30 days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

Respondent argues that this Court has no jurisdiction over the present case because the assessments for deficiency taxes against petitioner are already final, executory, and demandable.

Respondent further argues that the 30-day period to file a Petition for Review should be counted from April 20, 2018, or the date of petitioner's receipt of the PCL,[54] and not from her receipt of the CIR's Decision on February 12, 2020. Considering the present petition was filed only on March 5, 2020, the assessments have already become final, executory, and demandable.

We are not persuaded.

Section 228 of the NIRC of 1997, as amended, governs the procedure for protesting assessment and taking an appeal to the CTA, *viz.*:

> 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:
>
> ... ...

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[52] SEC.3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, ..., or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, ..., or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, ...

[53] SEC. 3. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. ...

[54] Answer, par. 10, Docket, p. 193.

> 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.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period;** otherwise, the decision shall become final, executory and demandable. [*Emphasis supplied*]

Revenue Regulations (RR) No. 12-99,[55] as amended by RR No. 18-2013,[56] implements Section 228, and Section 3.1.4 thereof, provides:

> 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. ...
>
> ...
>
> **If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either**: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

[55] 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.

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

> **If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration**; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) **await the final decision of the Commissioner's duly authorized representative on the disputed assessment**. [*Emphasis supplied*]

From the foregoing, if the protest is not acted upon by the Commissioner's duly authorized representative within 180 days counted from the date of filing of the protest in case of a request for reconsideration, the taxpayer may either:

(i) **appeal to the CTA** within thirty (30) days after the expiration of the one hundred eighty (180)-day period; ***or***

(ii) **await the final decision of the Commissioner's duly authorized representative** on the disputed assessment.

In this case, petitioner timely filed her protest to the FLD/FAN with the Regional Director of RR No. 10, Legaspi City, on March 27, 2015.[57] The Regional Director did not act on the protest within the 180-day period, which expired on September 23, 2015. Neither petitioner filed an appeal to this Court within 30 days from September 23, 2015.

Petitioner claims in her Appeal dated May 15, 2018,[58] that she had been *waiting* for the final decision of RR No. 10, Legaspi City, on her protest, *viz.*:[59]

> The undersigned had timely protested the Formal Assessment Notice (FAN) with ASSESSMENT NO. ...
>
> Our protest was acknowledged by former RD ESMERALDA TABULE, CESO V through her letter dated May 27, 2017 (see ANNEX "C").

[57] *Supra*, note 8; Exhibit "P-14."
[58] *Supra*, note 11; Exhibit "P-17."
[59] *Id.*, p. 421.

> Unfortunately, **after several years of waiting for the Final Decision** of the Revenue Region No. 10, Legaspi City, **I received the Preliminary Collection Letter instead**. Therefore, it is understood that my protest was deemed denied without a benefit of proper evaluation and review of my protest. [*Emphasis supplied*]

Moreover, petitioner's witness, Ms. Sablon, testified that petitioner waited more than three (3) years since she filed her protest to the FLD/FAN, but no Final Decision on Disputed Assessment (FDDA) was rendered.[60]

Under the circumstances, the Court finds that petitioner chose to "await the final decision" of the CIR's duly authorized representative on her protest. Hence, when petitioner received the PCL on April 20, 2018, she treated it as a denial of her protest to the FLD/FAN since no FDDA was issued.[61] She then elevated her protest through a request for reconsideration to the CIR and the Chief of the BIR's Appellate Division on May 17, 2018,[62] within 30 days from receipt of the PCL. In response, the CIR issued the assailed Decision dated January 2, 2020,[63] finding petitioner's request for reconsideration "partially impressed with merit" and stating that it "constitutes the **FINAL DECISION** of [the CIR] on the matter."[64]

Given the foregoing, the Court finds that the assailed Decision dated January 2, 2020, is the CIR's "final decision" on the disputed assessments that is appealable to the CTA.[65] Thus, the filing of the instant Petition for Review on March 5, 2020, within 30 days from petitioner's receipt of the assailed Decision on February 12, 2020,[66] is on time.

Having ruled on the timeliness of the Petition, the Court likewise rules that it has jurisdiction to take cognizance of this case.

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[60] Exhibit "P-19," Q & A Nos. 29-31, Judicial Affidavit, Docket, p. 237.
[61] *Id.*
[62] *Supra*, note 56.
[63] *Supra*, note 12; Exhibit P-18.
[64] Exhibit "P-18," BIR Records, p. 477; Docket, p. 444.
[65] See *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.
[66] Petition for Review, par. 11, Docket, p. 10, *vis-à-vis* Answer, par. 2, Docket, p. 191.

The non-service of the PAN and the improper service of the FLD/FAN violated petitioner's right to due process; thus, the deficiency tax assessments are void.

In her protest to the FLD/FAN[67] and Appeal to the CIR and Chief, Appellate Division,[68] petitioner claims that she did not receive a PAN; that the FAN was sent through JRS Express Courier wherein RR No. 18-2013 requires that notices (PAN/FAN/FLD/FDDA) shall be served to the taxpayer through personal service; that a substituted service or by mail can only be resorted to if personal service is not practicable; and that the assigned Revenue Officer has to explain the reason for the impossibility of personal service.

Respondent counters that a PAN was sent to petitioner through registered mail on January 30, 2015, and that petitioner was given every opportunity to refute the assessments. In fact, she was able to file a protest to the FLD and PCL intelligently and was accorded due process. Respondent argues that even assuming that petitioner did not receive a PAN, she was not deprived of her right to due process because replying to the PAN is optional and not mandatory, citing RMO No. 26-2016.

In the assailed Decision, respondent stated that a PAN was issued on January 22, 2015, and served by registered mail on January 30, 2015, and that the service of the PAN is evidenced by a registry return card signed by one Norman Llanora. As regards the service of the FLD/FAN, respondent opined that whether served through private courier or registered mail, it is clear from Section 3.1.6 of RR No. 18-2013 that both modes of service are valid; thus, there is no merit to petitioner's contention that the service is invalid and that their confirmed receipt of the FLD/FAN further bolsters the valid service of the same.

We find for petitioner.

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[67] *Supra*, note 8; Exhibit "P-14."
[68] *Supra*, note 11; Exhibit "P-17."

Section 228 of the NIRC of 1997, as amended, provides that when the CIR or his duly authorized representative finds that proper taxes should be assessed, 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.

In the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.* (*Metro Star*),[69] the Supreme Court, citing Section 228, underscored that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN and that its issuance and service to the taxpayer is part of the due process requirement.

The modes of services of notices are provided under Section 3.1.6 of RR No. 18-2013, which states:

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

[69] G.R. No. 185371, December 8, 2010.

> 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.** [*Emphasis supplied*]

At the outset, petitioner denied receiving the PAN allegedly sent by the BIR *via* registered mail. A direct denial *shifts* the burden to the party favored by the presumption to prove that the mailed matter was indeed received by the addressee.[70] Further, the presumption that a letter duly directed and mailed was received in the regular course of the mail is merely a disputable presumption that may be controverted.[71] Hence, it is incumbent upon respondent to prove by clear and convincing evidence that petitioner indeed received the PAN.

Here, respondent offered in evidence the PAN dated January 22, 2015.[72] However, respondent did not present and offer as evidence the registry receipt and the certification of the postmaster to prove the fact of mailing and receipt of the mail by petitioner. Neither did respondent present and offer the testimony of the BIR server or personnel who delivered the mail containing the PAN to the post office.

While a perusal of the BIR Records, specifically the registry return card, shows that a certain Norman Llanera allegedly received the PAN,[73] said person was not presented to testify on his functions and to confirm that he received such mail matter on behalf of petitioner.

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[70] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023, citing *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006, citing *Protector's Services, Inc. v. Court of Appeals*, G.R. No. 118176, April 12, 2000; *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020; *Republic of the Philippines v. Court of Appeals*, G.R. No. L-38540, April 30, 1987.
[71] Sec. 3 (v), Rule 131 of the Revised Rules of Court, as amended, provides:
SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: ...
(v) That a letter duly directed and mailed was received in the regular course of the mail.
[72] Exhibit "R-8", BIR Records, pp. 244–248; Formal Offer of Evidence, Docket, p. 557.
[73] BIR Records, p. 264.

During the hearing held on January 26, 2023, respondent's witness, CRO Rebustillo,[74] testified that after the finalization of the PAN, it was submitted to the Administrative Division for mailing, as she was not tasked to serve it, *viz.*:

JUSTICE UY:
Cross, Atty. Cortes?

ATTY. CORTES:
Thank you, your Honors.

... ...

Q: So, Madam Witness, you also said in Question No. 15 of your Judicial Affidavit that upon a Preliminary Assessment Notice with Attached Details of Discrepancies was issued and later served to petitioner, were you the one who prepared the PAN?

A: Yes, Attorney, I was the one who prepared the PAN.

Q: But who served the PAN on petitioner?

A: Based on the BIR records, it was served but my task as the reviewer ends with the preparation of the PAN. **I am not the one who served.**

Q: You said based on the records. In other words, you do not have personal knowledge or personal participation in the service of the PAN?

A: I am the one who prepared the PAN but **the service of the PAN is no longer my task.**

... ...

Q: So, again in the other Question propounded to you in your Judicial Affidavit, it was asked of you after the PAN was issued and served to petitioner. In Question No. 18 again just for emphasis you did not have personal knowledge of the service of the PAN of petitioner.

A: Yes, Attorney, because **it is no longer my task to serve the PAN.**

Q: I think I have no more questions, your Honors.

JUSTICE UY:
Re-direct?

[74] A10, Judicial Affidavit of Chief Revenue Officer Sheilla B. Rebustillo, Docket, p. 407.

ATTY. DIEGO:
Just one (1) question, your Honors.

Q: Madam Witness, during cross examination, you mentioned that it is not your responsibility to serve the PAN after you issued it, correct?

A: Correct, Attorney.

Q: Then whose responsibility is it to serve the PAN to the task payer?

A: **After the finalization of the Preliminary Assessment Notice, we submit it to the Administrative Division for the mailing of the PAN.**

Q: So when you said mailing, is it correct to assume that the PAN was served to the tax payer through registered mail?

A: Yes, Attorney.[75] [*Emphasis supplied*]

Notably, respondent did not offer the testimony of the person from the Administrative Division who allegedly served the PAN. Likewise, OIC-RDO Yuson, the revenue officer assigned to conduct the audit investigation of petitioner for TY 2011,[76] testified that she only recommended the issuance of the PAN but did not serve the same to petitioner:

Q: And in your Judicial Affidavit, you said that you recommended the issuance of a Preliminary Assessment Notice or PAN?

A: Yes.

Q: So, you recommended it but are you sure that there a PAN that was issued in response to your recommendation?

A: I believe so but **it is the Assessment Division who issued the PAN**.

Q: So, it was not you?

A: Yes.

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[75] Transcript of Stenographic Notes (TSN) dated January 26, 2023, pp. 7–13.
[76] A10, Judicial Affidavit of OIC-Revenue District Officer Maria Cristina B. Yuson, pp. 507–508.

Q: It was only a recommendation on your part?

A: Yes.

Q: But it was not you who issued the PAN?

A: Yes. As per our procedure, **it is the Assessment Division who issued the PAN.**

Q: Yes, but of course, you only presumed that there was a PAN issued?

A: Yes.

Q: Would you have knowledge if that PAN was duly served unto petitioner?

ATTY. DIEGO:
Objection, your Honors, the witness is incompetent to answer.

JUSTICE UY:
If she knows, let her answer.

A: I suppose, Sir.

ATTY. CORTES:
So, it's supposition only?

A: Yes.

Q: No personal knowledge?

A: Of course, Sir.[77] [*Emphasis supplied*]

Respondent failed to prove that the PAN was duly served and received by petitioner despite having the burden of proof amidst petitioner's allegation of non-receipt of the PAN. While there are instances when the non-issuance of a PAN prior to a FAN is allowed, this case is not among those instances enumerated under Section 228 of the NIRC of 1997, as amended.

In the recent case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*,[78] the Supreme Court, citing *Metro Star*, held that:

[77] TSN dated October 27, 2022, pp. 8-10.
[78] G.R. No. 223767, April 24, 2023.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc. (Metro Star)*, the Court also had the occasion to resolve the issue of whether the failure to strictly comply with notice requirements prescribed under Sec. 228 of the 1997 NIRC and RR No. 12-99 is tantamount to a denial of due process. The Court held that **the failure of the CIR to send the PAN stating the facts and the law on which the assessment was made as required by Sec. 228 of R.A. No. 8424, renders its assessment void**. The Court explained:

> 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 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. [*Emphasis supplied*]

Hence, respondent's failure to serve the PAN to petitioner amounts to the denial of petitioner's right to due process and renders the FLD/FAN null and void.

As to the service of the FLD/FAN, Section 3.1.6 of RR No. 18-2013 expressly provides that the service shall be made by personal delivery, and it is only when personal service is not practicable that the notice shall be served by substituted service or by mail.

In this case, the FLD/FAN was served by mail. Respondent did not present competent evidence proving that personal service was not practicable. He did not explain nor discuss in his Answer or Memorandum why the BIR had to resort to service by mail. In the assailed Decision, respondent stated that "whether the FLD/FAN was served through private courier or registered mail, it is clear from Section 3.1.6 (iii) of RR No. 18-2013, as quoted above, that both modes of service are valid."[79]

The Court finds respondent's reasoning unjustified. The word "shall" in subsection 3.1.6 describes the mandatory nature of the service of the notices. Following the ruling in *Metro Star* that the persuasiveness of the right to due process reaches both substantial and procedural rights and that the failure of

[79] BIR Records, p. 480.

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the CIR to strictly comply with the requirements laid down by law and <u>its own rules</u> is a denial of the taxpayer's right to due process,[80] We hold that the improper service of the FLD/FAN, in this case, renders void the deficiency assessments.

Clearly, respondent not only failed to serve the PAN but also improperly served the FLD/FAN to petitioner, and the filing of petitioner's Protest to the FLD/FAN does not denigrate the fact that she was deprived of the statutory and procedural due process to contest the assessments.[81]

The case of *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*[82] is particularly instructive:

> Notably, **this defect in complying with the requirements of due process was <u>not</u> cured by the fact that the taxpayer was able to file a protest to the FAN**. This Court has repeatedly enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices in order to uphold the taxpayers' constitutional rights. [*Emphasis supplied*]

While the lifeblood doctrine enables respondent "to avail of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible,"[83] such power is tempered by the law when it "provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation."[84]

The government's right to <u>collect</u> the deficiency income tax and percentage tax has already been barred by prescription.

Even if the PAN and FLD/FAN were duly served and received by petitioner, the instant case would still be dismissed because the government's right to collect deficiency income tax and percentage tax has already prescribed.

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[80] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.
[81] *Commissioner of Internal Revenue v. Next Mobile, Inc.*, G.R. No. 232055 (Notice), April 27, 2022; *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007, cited in *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021.
[82] G.R. No. 244202, July 10, 2023.
[83] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 227049, September 16, 2020, citing *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. Nos. 197945 & 204119-20, July 9, 2018.
[84] *Id.*

Section 203[85] provides that internal revenue taxes shall be *assessed* within three (3) years after the last day prescribed by law for the filing of the return or from the day the return was filed and *collected* within three (3) years from the time the FAN/FLD was released, mailed or sent to the taxpayer.[86]

Section 222[87] provides, by exception, that in case of a false or fraudulent return or non-filing of a return, the assessment may be made within ten (10) years from discovering the falsity, fraud, or omission, and the period for collecting taxes is five (5) years.[88]

Here, respondent cancelled the deficiency VAT and EWT on the ground of prescription and submits that the income tax assessment has not yet prescribed under Section 203 of the NIRC of 1997, as amended, and that the ten-year prescriptive period under Section 222 applies to the percentage tax assessment for petitioner's failure to file the returns.

Records reveal that petitioner filed an income tax return for TY 2011 on April 16, 2012.[89] Counting three years therefrom, the last day to assess petitioner was April 16, 2015.[90] The FLD/FAN was issued on March 2, 2015 and received by petitioner on March 18, 2015; hence, We are in accord with respondent that the income tax assessment has not yet prescribed.

As regards the percentage tax assessment, We find that the applicable prescriptive period to assess petitioner is three (3) years and not ten (10) years, given the following:

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[85] SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
[86] *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, March 29, 2022, citing *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[87] SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*
(a) 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 ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
[88] *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022.
[89] BIR Records, pp. 12-16.
[90] Sec. 203 of the NIRC of 1997, as amended, *supra*.

1. the FLD/FAN did not allege that petitioner failed to file her percentage tax returns for TY 2011;[91]

2. the FLD/FAN imposed the 25% surcharge "pursuant to the provisions of Section 248 (A) of the [NIRC of 1997, as amended], given [petitioner's] failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or [f]ailure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment," and not the 50% surcharge for failure to file a return under Section 248 (B)[92] of the Tax Code;[93]

3. although not offered as evidence, petitioner's monthly percentage tax returns from January to December 2011[94] were attached to her Petition for Review;

4. respondent did not adduce evidence to prove petitioner's failure to file percentage tax returns.[95] The PAN[96] and FLD/FAN[97] were not offered to establish petitioner's alleged non-filing of percentage tax returns.

[91] Exhibit "R-9-A", BIR Records, p. 269.
[92] SEC. 248. *Civil Penalties.* - ...
(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 or for overstatement of deductions, as mentioned herein.
[93] Exhibit "R-9", BIR Records, p. 273.
[94] Annexes "I-1 to I-23", Docket, pp. 149-171.
[95] Formal Offer of Evidence, Docket, pp. 555-563.
[96] Formal Offer of Evidence, Docket, p. 557. Respondent offered Exhibits "R-8 and R-8-A" (Preliminary Assessment Notice dated January 22, 2015 with attached Details of Discrepancies, found on pp. 246-248 & pp. 244-245, respectively, of the BIR Records) "to prove that petitioner is liable for deficiency Income Tax for the period 01 January 2011 to 31 December 2011."
[97] Formal Offer of Evidence, Docket, pp. 557-558. Exhibits "R-9, R-9-A and R-9-B" (Formal Letter of Demand dated March 2, 2015 with attached Details of Discrepancies and Audit Results/Assessment Notices found on pp. 271-274 & pp. 269-270, respectively, of the BIR Records) were offered "to prove that a Formal Letter of Demand was sent to petitioner informing it of its deficiency tax liabilities for the period 01 January 2011 to 31 December 2011 together with the detailed computation and demanding payment thereof within the time shown in the enclosed assessment notice; to prove that petitioner was duly furnished with a copy of the Audit Results/Assessment Notice for deficiency taxes for the period 01 January 2011 to 31 December 2011 with indicated due date of payment; to prove that petitioner was given the opportunity to present in writing its side of the case; to prove that petitioner is liable for deficiency Income Tax for the period 01 January 2011 to 31 December 2011; to prove that respondent complied with the requirement of the Tax Code and pertinent Rules and Regulations."

Assuming the percentage tax assessment was issued within the three (3)-year ordinary prescriptive period similar to the income tax assessment, respondent had another three (3) years from mailing/releasing/sending the FLD/FAN on March 2, 2015, or until March 2, 2018, to initiate and enforce collection of the assessed deficiency income tax and percentage tax. Verily, prescription had already set in when respondent issued the PCL on April 17, 2018.[98]

CONCLUSION

In all, after evaluating the facts and circumstances in this case, which show respondent's non-conformity to the statutory requirements in the issuance of an assessment, the Court concludes that there is no need to belabor further, for it is settled that a void assessment bears no fruit.[99]

WHEREFORE, the *Petition for Review* is **GRANTED**. Accordingly, the Formal Letter of Demand dated March 2, 2015, the Warrant of Distraint and/or Levy dated March 2, 2020, and the Warrants of Garnishment dated March 9, 2020, assessing petitioner of deficiency income tax, percentage tax, and compromise penalty for taxable year 2011, inclusive of interests and surcharges, are **CANCELLED** and **SET ASIDE**.

Further, respondent is **ENJOINED** from proceeding with the collection of taxes in this case.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[98] Exhibit "R-11", BIR Records, p. 299.
[99] *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.

(*with Separate Concurring Opinion*)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

MA. ERLINDA T. ONG, Doing Business Under the Name and Style MARANATHA SALES DISTRIBUTOR, Duly Represented herein by her Attorney-in-Fact, Ms. Ria A. Sablon,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE (CIR) of the BUREAU OF INTERNAL REVENUE (BIR),
Respondent.

CTA CASE NO. **10265**

Members:

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

Promulgated:
MAY 0 3 2024; 10:00AM

x - x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lanee S. Cui-David, granting the Petition for Review on the sole ground that respondent failed to prove that the Preliminary Assessment Notice (**PAN**) was validly served on petitioner through registered mail, thus, a violation of due process.

In the recent case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[1], the Supreme Court emphasized the importance of receipt of the notices to render the assessment valid:

[1] G.R. No. 223767, 24 April 2023; Citations omitted and italics in the original text.

...

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.* (*Metro Star*), the Court also had the occasion to resolve the issue of whether the failure to strictly comply with notice requirements prescribed under Sec. 228 of the 1997 NIRC and RR No. 12-99 is tantamount to a denial of due process. The Court held that the failure of the CIR to send the PAN stating the facts and the law on which the assessment was made as required by Sec. 228 of R.A. No. 8424, renders its assessment void. The Court explained:

> 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 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.

Guided by the rulings in *Menguito* and *Metro Star*, the Court holds that insofar as the proper service of the formal letter of demand and assessment notice is part of the due process requirement in the issuance of a deficiency tax assessment under Sec. 3 of RR No. 12-99, the absence of such service renders nugatory any assessment made by the tax authorities.

In line with *Metro Star*, the Court similarly rules that the word "shall" in subsection 3.1.4 of RR No. 12-99 likewise describes the mandatory nature of the service of the formal letter of demand and assessment notice. In view of the ruling therein that the persuasiveness of the right to due process reaches both substantial and procedural rights, and that the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process, the Court declares that the CIR's failure to prove that the FLD-DDAN was properly served on SEGI by registered mail renders void the deficiency assessment issued by the CIR.

It bears emphasis that despite the inevitability and indispensability of taxation, it is required in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure; otherwise, the taxpayer has a right to complain and the courts will then come to its succor. For all the awesome power of the tax collector, it may still be stopped in its tracks if the taxpayer can demonstrate that the law has not been observed.

...

With the foregoing, I vote to **GRANT** the Petition for Review on the sole ground that respondent failed to prove that the PAN was validly served to petitioner.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice