REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ADMORLINA L. FONTEJON,
Petitioner,

CTA Case No. 9314

-*versus*-

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 2 8 2017

1:15 p.m.

x- x

DECISION

MANAHAN, *J.:*

This involves a Petition for Review[1] filed on March 28, 2016 by petitioner Admorlina L. Fontejon on the Final Decision on Disputed Assessment (FDDA) dated February 4, 2016 of respondent Commissioner of Internal Revenue (CIR) demanding the payment of Php3,290,138.59 and Php4,811,527.72 as deficiency Income Tax (IT) and Value-Added Tax (VAT), respectively.[2]

THE PARTIES

Petitioner is of legal age, married and resident of block 4, Lot 18, Silver Creek subdivision, Puli, Carmen, Cagayan de Oro

[1] Docket, CTA Case No. 9314, pp. 10-22.
[2] BIR Records, Exhibit R-12, p. 105.

City.[3] She is engaged in contracting services[4] and the sole proprietor and operator of M&A Trucking Services.[5]

Respondent CIR is the duly appointed authority to administer and enforce all internal revenue laws in the land with principal business address at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[6]

THE FACTS

On August 15, 2012, respondent sent a letter[7] together with Letter Notice (LN) No. 099-RLF-10-00-00026 dated August 8, 2012 to petitioner, which she personally received on August 22, 2012, informing the latter of discrepancy in her declared sales per tax return as compared to the summary list of purchases submitted by her customers for IT and VAT purposes covering the taxable year 2010.[8]

However, petitioner objected to the said findings and indicated her desire to protest such as soon as the assessment notice will be received by her.[9]

On September 5, 2012, respondent, through her Revenue District Officer (RDO), sent a follow-up letter to the petitioner demanding the latter to settle the supposed deficiency IT and VAT for taxable year 2010 as contained in the LN.[10]

On September 12, 2012, petitioner responded to the said letter and explained her objection to the said findings and prayed that the case be reconsidered and closed.[11]

On September 16, 2013, a memorandum was issued by the revenue examiners who conducted the investigation on said deficiency IT and VAT, informing the RDO of their findings and

---

[3] Docket, par. 1 of the Petition for Review as stipulated in the Joint Pre-Trial Brief, p. 132.
[4] *Id.*, Petition for Review, p. 17.
[5] BIR Records, par. 2, Joint Affidavit of Loss, p. 47.
[6] Docket, par. 2 of the Petition for Review as admitted in par. 1 of the Answer, p. 78.
[7] BIR Records, Exhibit R-2, p. 3.
[8] *Id.*, Exhibit R-1, p. 2.
[9] *Id.*, Exhibit R-3, Response to the Findings pursuant to Section 228 of NIRC, p. 7.
[10] *Id.*, Exhibit R-4, p. 44.
[11] *Id.*, Exhibit R-5, pp. 48-51.

recommending the issuance of a preliminary assessment notice (PAN) against the petitioner.[12]

On October 2, 2012, respondent, through her RDO, sent a Notice of Informal Conference to the petitioner, which she received on October 5, 2012, advising the latter to appear on the date indicated therein or such absence will be presumed as a waiver of her right to a preliminary conference.[13]

On April 21, 2015, respondent, through her Regional Director (RD), issued the PAN[14] to the petitioner.

On June 4, 2015, respondent through the RD, issued the Formal Letter of Demand (FLD) with Final Assessment Notice (FAN) No. RR16-099-167-2015 against the petitioner, demanding the latter to pay the supposed deficiency IT and VAT.[15]

On February 4, 2016, respondent through the RD, issued the FDDA[16] demanding immediate payment of the said deficiency IT and VAT. Said FDDA was received by the petitioner on February 26, 2016.[17]

Thus, petitioner filed the instant petition on March 28, 2016. Respondent was ordered to file an Answer on the said petition[18] which was filed on July 5, 2016[19] after being granted a 10-day extension period to file said Answer.

The case was set for pre-trial conference on September 1, 2016 whereby both parties were required to submit their respective pre-trial briefs.[20] Respondent submitted his pre-trial brief on August 30, 2016[21] while petitioner filed hers on September 1, 2016.[22]

---

[12] *Id.*, Exhibit R-8, p. 61.
[13] *Id.*, Exhibit R-6, p. 53.
[14] BIR Records, Exhibit R-10, pp. 68-71.
[15] BIR Records, Exhibit R-11, Formal Letter of Demand and Details of Discrepancies, pp. 72-75.
[16] *Supra.*, Note 2.
[17] Docket, par. 13 of Petition for Review, p. 3.
[18] *Id.*, Summons dated April 5, 2016, p. 61.
[19] *Id.*, Answer, pp. 78-92.
[20] *Id.*, Notice of Pre-trial Conference, pp. 93-94.
[21] *Id.*, Respondent's Pre-Trial Brief, pp. 95-99.
[22] *Id.*, Pre-Trial Brief for the Petitioner, 104-107.

Petitioner and respondent entered into a Joint Pre-Trial Brief on November 16, 2016[23] which was adopted by this Court on November 17, 2016.[24]

After the presentation of petitioner's witness, she was ordered to file her formal offer of evidence (FOE).[25] However, petitioner failed to file said FOE.[26] Hence, this Court declared the petitioner's right to formally offer her evidence as waived and was deemed to have rested her case.[27]

On the other hand, respondent filed his FOE[28] on April 10, 2017 and after presenting his evidence, he rested his case. The FOE was admitted on May 16, 2017 without petitioner's comment despite due notice. Hence, the parties were ordered to file their respective memoranda.[29]

Respondent submitted his Memorandum[30] with a motion[31] to admit such on June 30, 2017 while petitioner did not submit any.[32] Thus, the case was submitted for decision.[33]

ISSUE

The issue to be resolved by this Court is whether respondent's deficiency IT and VAT assessments were void for being issued beyond the prescribed period to assess and in violation of petitioner's right to due process due to the absence of a Letter of Authority (LOA).

Petitioner's Arguments[34]

Petitioner argues that the final assessment for taxable year 2010 which she received on February 26, 2016 had already prescribed on April 15, 2014 under Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended, and

[23] *Id.* at pp. 132-135.
[24] *Id.*, Pre-Trial Order, pp. 136-139.
[25] *Id.*, Order dated November 23, 2016, p. 145.
[26] *Id.*, Records Verification dated February 2, 2017, p. 159.
[27] *Id.*, Resolution dated February 8, 2017, pp. 153-154.
[28] Docket, Respondent's Formal Offer of Evidence, pp.183-190.
[29] Docket, Resolution dated May 16, 2017, pp. 193-194.
[30] *Id.*, pp. 201-214.
[31] *Id.*, Motion to Admit Attached Memorandum, pp. 196-200.
[32] *Id.*, Records Verification dated July 4, 2017, p. 215.
[33] *Id.*, Resolution dated July 6, 2017, p. 216.
[34] *Supra.*, Note 1.

respondent had violated her right to procedural due process by not issuing any Letter Authority.[35] Although respondent claims he issued the PAN, petitioner denies having received the same.[36]

Further, petitioner argues that the bases for the deficiency IT and VAT assessments were erroneous as respondent used the gross amount she received without considering her status as a labor-only contractor who merely facilitates the supply of laborers to a construction project.

Respondent's Counter-Arguments[37]

Respondent, on the other hand, argues that his right to assess petitioner has not yet prescribed since the latter filed a false and fraudulent return and neither was she deprived of her constitutionally protected right to due process. Respondent further argues that petitioner was liable for the said deficiency IT and VAT assessments.

RULING OF THE COURT

The Court will first determine whether it has jurisdiction on the instant case. As shown in the abovementioned facts, respondent finally ruled on the protest filed by the petitioner with the issuance of the FDDA which the latter received on February 26, 2016. Said decision was eventually appealed before this Court on March 28, 2016.

Section 7(a)(1) of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503,[38] provides that:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

---

[35] Docket, par. 15 of Petition for Review, p. 12.
[36] *Id.*, par. 10 and, Arguments and Discussion of Petition for Review, p. 12 and p. 17, respectively;
[37] *Supra.*, Note 28.
[38] Otherwise known as "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".

(1) **Decisions of the Commissioner of Internal Revenue 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 or other laws administered by the Bureau of Internal Revenue;

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[39], there are two options for the taxpayer to elevate its appeal before this Court, *viz*:

> It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, while we reiterate - the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) <u>await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision</u>, **these options are mutually exclusive and resort to one bars the application of the other.** (*Underscoring ours*)

Petitioner opted to elevate respondent's unfavorable FDDA by filing her petition for review on March 28, 2016 before this Court.

Since the due date fell on a Sunday, petitioner had timely filed the instant petition on March 28, 2016 pursuant to the ruling that "where the day, or the last day, for doing any act required or permitted by law falls on a regular holiday or special day, the act may be done on the next succeeding business day."[40] Thus, the Court has jurisdiction on the instant case.

Respondent's right to assess has already prescribed

Section 203 of the NIRC provides the prescriptive period for the assessment and collection of internal revenue taxes, to wit:

> **SEC. 203.** ***Period of Limitation Upon Assessment and Collection.*** - Except as provided in Section 222, internal revenue taxes <u>shall be assessed within three (3) years after the last day prescribed by law for the filing of the return</u>, and no

[39] G.R. No. 171251, March 05, 2012.

[40] Section 28, Chapter 7, Book I of Executive Order No. 292, otherwise known as the "Administrative Code of 1987."

> 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. (*Underscoring ours*)

Sections 51(C) and 114(A) of the NIRC, as amended, provides for the filing and payment of IT and VAT, respectively, portions of which are quoted below:

> **SEC. 51. *Individual Return.*** –
>
> xxx xxx
>
> **(C) *When to File.*** -
>
> (1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.
>
> xxx xxx
>
> **SEC. 114. *Return and Payment of Value-Added Tax.*** -
>
> **(A) In General.** - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis. (*Underscoring ours*)

Thus, for the 2010 IT of petitioner, respondent had until April 15, 2014 to assess any deficiency IT. For VAT, the period to assess for taxable year 2010 is set forth below:

Quarter	Date of Payment	Last day of Assessment
1st	April 25, 2010	April 25, 2013
2nd	July 25, 2010	July 25, 2013
3rd	October 25, 2010	October 25, 2013
4th	January 25, 2011	January 25, 2014

In the instant case, the IT and VAT assessments were issued on June 4, 2015. Based on Section 203 in relation to Sections 51(C) and 114(A) of the NIRC, said assessments had already prescribed.

However, respondent alleges that petitioner filed false and fraudulent returns, hence, the prescriptive period should be the 10-year period under Section 222 of the NIRC and not the abovementioned 3-year prescriptive period.

Respondent's argument is not tenable.

A closer look at the FDDA[41] will reveal that the reason for the alleged discrepancy was anchored on petitioner's failure to provide a breakdown of her gross receipts from her contracting services representing the agency fee, and the salaries of mason, carpenters, and other construction workers. Thus, respondent presumed that the entire contract price earned by petitioner was taxable as income in accordance with Revenue Memorandum Circular (RMC) No. 39-2007 entitled "Clarifying the Income Tax and VAT Treatment of Agency Fees/Gross Receipts of Security Agencies Including the Withholding of Taxes Due thereon."

Paragraph 1, Item II of RMC No. 39-2007 dated January 22, 2007 provides that:

> **II. INCOME TAX TREATMENT OF THE PAYMENTS MADE TO THE SECURITY AGENCY. –**
>
> 1. On the Part of the Security Agency:
>
> The Security Agency must record as part of its gross income the Agency Fee portion of the payment, net of the VAT thereon. Since the security guards' salaries are tacked in as part of the service fees, the Security Agency must always recognize that portion of the fees as a **LIABILITY**. For this purpose, the Contract for Security Services entered into by and between the Security Agency and its Client must provide for a breakdown of the amount of security services into two components: (1) the Agency Fee, and (2) the Security Guards' Salaries. **If the Contract does not provide for a breakdown of the amount payable to the Security Agency, <u>the entire amount representing the Contract Price</u> will be taxed as**

[41] *Supra.*, Note 14.

> **income to the Agency, which must form part of its gross receipts**, whether actually or constructively received... xxx xxx

Although the afore-quoted BIR guidelines govern the Security Agency industry, respondent used them as legal basis for assessing herein petitioner who is a labor contractor.

In *Jose B. Aznar v. Court of Tax Appeals*,[42] the Supreme Court ruled that the fraudulent act or the falsity being alleged against the taxpayers, as envisioned in Section 222 of the NIRC, should not be presumed, to wit:

> From the above exposition of facts, **we cannot but emphatically reiterate the well established doctrine that fraud cannot be presumed but must be proven**. As a corollary thereto, we can also state that fraudulent intent could not be deduced from mistakes however frequent they may be, especially if such mistakes emanate from erroneous entries or erroneous classification of items in accounting methods utilized for determination of tax liabilities. The predecessor of the petitioner undoubtedly filed his income tax returns for "the years 1946 to 1951 and those tax returns were prepared for him by his accountant and employees. It also appears that petitioner in his lifetime and during the investigation of his tax liabilities cooperated readily with the B.I.R. and there is no indication in the record of any act of bad faith committed by him.
>
> The lower court's conclusion regarding the existence of fraudulent intent to evade payment of taxes was based merely on a presumption and not on evidence establishing a willful filing of false and fraudulent returns so as to warrant the imposition of the fraud penalty. **The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right.** Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrong-doing with the sole object of avoiding the tax. It necessarily follows that a mere mistake cannot be considered as fraudulent intent, and if both petitioner and respondent Commissioner of Internal Revenue committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would cm

---

[42] G.R. No. L-20569, August 23, 1974.

> be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith. (*Emphasis supplied*)

Mere presumption by the respondent of the alleged undeclared or underdeclared income of petitioner does not comply with the required evidence for a fraudulent act, *i.e.*, that there must be an actual fraud and not a constructive one in order for Section 222 of the NIRC to apply.

Thus, the issuance of FLD dated June 4, 2015 and FAN, as referred in the FDDA, was already beyond the 3-year prescriptive period provided by law, hence, said assessments were void *ab initio*.

The absence of LOA violates the right of petitioner to due process

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[43] the Supreme Court ruled that the mere issuance of Letter Notice (LN) and the absence of required LOA is fatal to any engagement by the Bureau of Internal Revenue (BIR) with a particular taxpayer, to wit:

> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
>> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>>
>> (A) **Examination of Return 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.

---

[43] G.R. No. 222743, April 5, 2017.

xxx xxx (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

xxx xxx

RMO No. 30-2003 was supplemented by RMO No. 42-2003, which laid down the ***"no-contact-audit approach"*** in the CIR's exercise of its power to authorize any examination of taxpayer and the assessment of the correct amount of tax. The *no-contact-audit approach* includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayers under the RELIEF System pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of an LOA with the aid of a computerized/manual matching of taxpayers': documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.

xxx xxx

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD.

Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

xxx xxx

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination. (*Underscoring supplied*) *om*

Applying afore-quoted jurisprudence to the facts of the case at hand, there was no LOA issued by the respondent to the petitioner but merely an LN. Thus, the subsequent notices of assessment issued by respondent were null and void due to the absence of authority to examine/investigate which violated the petitioner's right to due process.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[44] the Supreme Court amplified the importance of observing the taxpayer's right to due process, to wit:

> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. xxx xxx

As to petitioner's allegation that she did not receive the PAN, the records of the case reveal that indeed petitioner failed to receive the PAN personally.

Although the PAN was sent through registered mail, the Registry Return Receipt[45] adduced by the respondent to contravene petitioner's allegation, showed that the person who received the same was not the petitioner. A certain "Angelina B. Lomogo" was actually the one who signed the portion on the "signature of addressee's agent" of the said registry return receipt.

However, respondent failed to establish during the trial the capacity and authority of said person to receive the alleged PAN on behalf of the petitioner.[46]

In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[47] the Supreme Court ruled that when a taxpayer directly denied the receipt of assessment notice

[44] G.R. No. 185371, December 08, 2010.
[45] Docket, Exhibit R-13, p. 190.
[46] Transcript of Stenographic Notes (TSN), Hearing on March 22, 2017, pp. 8-11.
[47] G.R. No. 157064, August 07, 2006.

through registered mail, the burden to prove the actual receipt shifted to the one alleging such receipt, to wit:

> In *Protector's Services, Inc. v. Court of Appeals,* this Court ruled that when a 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 it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.** (*Emphasis supplied*)

In the instant case, respondent did not present any evidence that will prove actual receipt by petitioner of the said PAN, thus, bolstering petitioner's argument that she did not receive the same.

The absence of LOA and the failure of the respondent to prove petitioner's actual receipt of PAN are legal infirmities to the right of petitioner to due process rendering void the right of respondent to assess.

Anent this last argument, all else becomes moot and academic because of such violation to petitioner's right to due process. All subsequent notices become null and void as it is well-settled that a void assessment bears no fruit.[48]

WHEREFORE, in light of the foregoing, the Petition for Review is hereby **GRANTED**. Consequently, the deficiency IT and VAT assessments affirmed in the assailed FDDA are hereby **CANCELLED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

---

[48] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694 & G.R. No. 163581 January 27, 2006

WE CONCUR:

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

CAESAR A. CASANOVA
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 Justic