REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1490
(CTA Case No. 7999)

-versus-

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

ASIAN NAVIGATION AND TRACKING SYSTEMS, INC.,
Respondent.

Promulgated:

JAN 11 2018 3:56 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner[1] Commissioner of Internal Revenue (CIR) under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking nullification of the

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[1] Respondent in CTA Case No.7999.

Decision[2] dated March 17, 2016 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the Preliminary Assessment Notice dated December 22, 2008 and the Final Assessment Notices with Formal Letter of Demand dated January 14, 2009, assessing petitioner for deficiency income tax, VAT and EWT for taxable year 2005 in the total amount of P10,449,903.13, are **CANCELLED** for being void. Consequently, the Preliminary Collection Letter dated June 3, 2009, Final Notice Before Seizure dated June 18, 2009, and Final Notice Before Seizure dated August 17, 2009 are likewise **CANCELLED**.
>
> **SO ORDERED.**"

and the Resolution[3] dated July 7, 2016 of the same Second Division of the Court (Court in Division) denying petitioner's Motion for Reconsideration, the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, respondent's *Motion for Reconsideration (on the Decision of the Honorable Court dated 17 March 2016)* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts as stated in the assailed Decision are as follows:

> "Petitioner[4] Asian Navigation and Tracking Systems, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with address at Mezzanine Floor, Salesiana Building, Don Bosco Compound, Chino Roces Avenue, Makati City.
>
> On the other hand, respondent[5] is the duly appointed Commissioner of Internal Revenue (CIR), who is responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures,

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[2] Rollo CTA EB Case No. 1490, pp. 20-39.
[3] Rollo pp. 41-44.
[4] Respondent in this case.
[5] Petitioner in this case.

penalties and fines connected with such taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 30, 2006, petitioner filed its Annual Examination Return of Income Taxes Withheld for taxable year 2005. On April 17, 2008, petitioner filed its Certificate of Creditable Tax Withheld at Source for the four quarters of taxable year 2005 and its Annual Income Tax Return (ITR) for taxable year 2005. Subsequently, petitioner filed an Amended Income Tax Return for taxable year 2005 on April 27, 2006.

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

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

The BIR issued a *Subpoena Duces Tecum* on June 12, 2008 addressed to petitioner at Unit 1903 The Centerpoint Bldg. Doña J. Vargas Avenue, Ortigas Center, Pasig City, requiring petitioner to submit books of accounts and other accounting records. The same was received by petitioner's receptionist, Ms. Imelda B. Caguioa on June 20, 2008. However, as of June 24, 2008, respondent was already aware that petitioner's address is at Mezzanine Floor, Salesiana Building, corner Pasong Tamo and Arnaiz Streets, Makati City, which was also contained in the Memorandum issued by Revenue Officer Edilberto R. Nacnac dated June 24, 2008.

On December 4, 2008, petitioner received a Post Reporting Notice dated November 24, 2008 from BIR-RDO No.43, addressed to petitioner at 3/F LPL Building 215 Sen. Gil Puyat Ave, Makati City. The same was received by Ms. Imelda B. Caguioa, stating that based on the report of Revenue Officer Zenaida T. Paz, petitioner is liable to pay deficiency income tax in the amount of ₱3,789,539.86, VAT in the amount of

₱4,656,670.00, and EWT in the amount of ₱237,212.49 or in the total amount of ₱8,683,422.35 for taxable year 2005.

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

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

Thereafter, respondent issued Assessment Notices with Formal Letter of Demand dated January 14, 2009, sent to the same address, assessing petitioner the amount of ₱10, 449,903.13, representing alleged deficiency income tax, VAT, and EWT, xxx.

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

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

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

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

On November 20, 2009, Asian Navigation and Tracking Systems, Inc. (ANTS Inc.) filed a Petition for Review before the Court in Division.[6]

In the Answer[7], the CIR interposed the following as Special and Affirmative Defenses: that the petitioner failed to submit pertinent documents and records requested by the respondent's examiners through administrative requests and ultimately through the issuance of *Subpoena duces tecum/ad testificandum* issued against it; that due to the failure /refusal of the petitioner to submit/supply the pertinent documents and records in the course of the examination, the respondent was constrained to resort to the Best Evidence Obtainable pursuant to Revenue Memorandum Circular No. 23-2000, implementing Sec. 6(B) of the National Internal Revenue Code, (NIRC) as amended; that the petitioner failed to inform the respondent's Bureau of its change of postal address/principal place of operations prior to or so near the actual time of transfer in violation of Section 236(D) of the National Internal Revenue Code; that the receipt of the copies of the Letter of Authority and the Subpoena duces tecum by the office staff of the petitioner, duly admitted to be authorized by the Petitioner, is sufficient to establish due notice to the latter; that verification would also reveal that it was only after the filing of the criminal offense for the disobedience to lawful Subpoena filed with the City Prosecutor in violation of Secs. 5 and 14, penalized under Sec. 266 in relation to Secs. 253 and 256 of the Tax Reform Act of 1997 that the petitioner had an afterthought of producing some of the required documents and records which could have been done during the early portion of the examination; that as a result of the assessment of the taxable year 2005 of the petitioner based on the Best Evidence Obtainable, the pertinent Assessment Notices were issued on January 14, 2009 within the assessment period ending December, 2005; that the Preliminary Assessment Notice and Final Assessment Notice were duly issued and served in accordance with law; the assessment is prima facie correct and made in good faith; that the burden of proof is upon the petitioner to prove that the assessment issued was null and void; and that the assessment notices were issued and sent to the petitioner in accordance with well-established procedures upheld by the Courts.

On January 22, 2010, ANTS Inc. filed its Reply[8] to the CIR's Answer.

Thereafter, the case was set for Pre-Trial Conference on March 19, 2010. The CIR filed his Pre-Trial Brief[9] on February 11, 2010, while ANTS Inc. filed its Pre-Trial Brief[10] on March 16, 2010.

On March 23, 2010, ANTS Inc. filed a Motion for Leave to File Amended Petition and To Admit Attached Amended Petition, and its

[6] CTA Case No.7999, Docket, pp. 1-33, with Annexes.
[7] Ibid. pp. 88-92.
[8] Ibid. pp. 95-107, with annexes.
[9] Ibid pp. 112-113.
[10] Ibid. pp. 129-145.

Amended Petition for Review.[11] On May 24, 2010, the Court in Division issued a Resolution[12] granting ANTS Inc.'s motion and admitted the Amended Petition for Review.

According to the Records Verification Report of the Judicial Records Division of this Court,[13] the CIR failed to file his Answer to the Amended Petition for Review. Accordingly, the case was set for Pre-Trial Conference on July 16, 2010.[14]

On July 13, 2010, ANTS Inc. submitted its Pre-Trial Brief.[15] During the hearing on July 16, 2010, the counsel for the CIR manifested that with regard to the petitioner's Amended Petition for Review, he is adopting his previously filed Answer and Pre-Trial Brief.[16]

On August 23, 2010, the parties filed their Joint Stipulations of Facts and Issues.[17] The parties agreed that the issues to be resolved by the Court in Division are as follows:

> 1) Whether or not petitioner's right to due process was violated when:
> a. The Letter of Authority (LOA) dated 2 November 2006 *xxx* was served not to the petitioner's responsible officer, i.e. Ms. Joy Ricafort;
> b. The Subpoena *Duces Tecum* dated 12 June 2008 *xxx* addressed to Ms. Joy Ricafort was served not on her but tio (sic) Ms. Imelda Caguion, in violation of BIR Revenue Memo [O]rder 35-90;
> c. The same Subpoena Duces Tecum was served not at the address already known to the BIR at the time of the supposed service thereof, i.e. Salesiana Bldg. Don Bosco, Pasong Tamo, Makati City, xxx but to petitioner's old address at Unit 1903, The Centerpoint Building, Dona J. Vargas Ave., Ortigas Center, Pasig City;
> d. The alleged Assessment Notices and Formal Demand were also sent to petitioner's old address despite actual knowledge by the respondent of its said present address *xxx*.
>
> 2) Whether or not the LOA dated 2 November 2006 *xxx*, was already void and *functus oficio* when it was supposedly served on 21 March 2007, more than thirty (30) days from the date thereof;

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[11] Ibid. pp. 171-210.
[12] Ibid. pp. 258-259.
[13] Ibid. p. 256.
[14] Ibid. p. 265.
[15] Ibid. pp. 266-275, with Annexes.
[16] Minutes of the nearing dated July 16, 2010.
[17] Docket, pp. 300-307.

3) Whether or not the respondent's right to demand payment of the subject taxes has prescribed considering that more than three (30 years have elapsed from the time the returns for the subject taxes were filed or should have been filed to the time petitioner was actually informed of the issuance of the alleged Assessment Notices and Formal Demand on 24 September 2009 through the Final Notice Before Seizure dated 17 August 2009;

4) Without waiving prescription, whether or not the respondent has legal basis to apply the Best Evidence Obtainable" rule (Section 6 (b), NIRC) in the assessment withholding tax deficiencies; and

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

On September 28, 2010, ANTS Inc. filed a Motion for Partial Summary Judgment.[18] The Court in Division in its Resolution[19] dated December 23, 2010 denied for lack of merit the Motion for Partial Summary Judgment. Subsequently, ANTS Inc. filed a "Motion for Reconsideration (of the Resolution dated December 23, 2010)."[20] On April 25, 2011, the Court in Division issued a Resolution[21] denying for lack of merit ANTS Inc.'s Motion for Reconsideration.

On May 26, 2011, the Court issued a Pre-Trial Order[22] approving the parties' Joint Stipulations of Facts and Issues.

Trial thereafter ensued wherein both parties presented their respective evidence. Thereafter, petitioner filed its Memorandum[23] on April 21, 2015 while respondent failed to file his memorandum.[24] The case was then submitted for decision in the Resolution dated May 8, 2015.[25]

On March 17, 2016, and July 7, 2016, the Court in Division rendered the questioned Decision and Resolution respectively.

Aggrieved, the CIR filed on August 11, 2016, within the allowable period, the instant Petition for Review[26] before the Court *En banc*.

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[18] Docket, pp. 319-337, with Annexes.
[19] Ibid, pp. 445-449.
[20] Ibid. pp. 450-457.
[21] Ibid. pp. 465-467.
[22] Ibid. pp. 470-483.
[23] Ibid, pp. 1088-1122.
[24] Records Verification report dated May 6, 2015.
[25] Ibid. p. 1125.
[26] Rollo CTA EB Case No.1490, pp.5-18, with Annexes.

In the Resolution[27] dated August 25, 2016, ANTS Inc. was directed by the Court *En Banc* to file its comment in this case.

On September 5, 2016, ANTS Inc. filed its "Comment/Opposition [To Petitioner's Petition for Review dated 10 August 2016]."[28]

In the Resolution dated September 22, 2016,[29] the Court gave due course to the Petition for Review. Thereafter, the parties were ordered to file their respective memoranda.

On November 8, 2016, ANTS Inc. filed its Memorandum.[30] According to the Records Verification Report, the CIR failed to file his Memorandum.[31] Hence, this case was submitted for decision in the Resolution[32] dated February 15, 2017.

THE ISSUES

The issues raised by the CIR in his Petition for Review are as follows:

1. Whether the Court has jurisdiction over the subject matter; and
2. Whether respondent's right to due process was violated.

The issues can be summarized into one issue, that is, whether the Court in Division erred when it cancelled the Preliminary Assessment Notice (PAN) dated December 22, 2008, Final Assessment Notices (FAN) with Formal Letter of Demand dated January 14, 2009, Preliminary Collection Letter dated June 3, 2009, Final Notice Before Seizure dated June 18, 2009, and Final Notice Before Seizure dated August 17, 2009, for being null and void.

THE ARGUMENTS

The CIR contends that the Court lacks jurisdiction to hear the subject matter of this case since respondent failed to timely protest the assessment notice, hence, there is no disputed assessment to speak of; the Letter of Authority, the letters requesting for the presentation of records, subpoena *duces tecum*, the PAN and assessment notices were all sent at respondent's registered business address; the CIR observed all the prescribed procedures in the conduct of the audit and the service of the assessment notices and collection letters to ensure that due process is observed; it is the respondent which violated the law when it transferred its place of business without informing the

[27] Ibid pp. 52-53.
[28] Ibid. pp-54-67.
[29] Ibid pp. 69-70.
[30] Ibid. pp-72-95.
[31] Ibid. p. 101.
[32] Ibid. 103-104.

CIR; and that the Petition for Review was filed out of time since the remedy of ANTS Inc. is to file a judicial action before the Court in Division within a period of thirty (30) days from September 24, 2009.

On the other hand, ANTS Inc. argues that the Court in Division acted judiciously when it ruled that no valid assessment was made by the CIR for taxable year 2005; ANTS Inc. was deprived of due process because the Letter of Authority, Subpoena *duces tecum*, Assessment notices, FAN and other notices were not duly served, hence all the proceedings conducted by the CIR are null and void; the Court in Division has jurisdiction over the subject matter of this case and it correctly took cognizance of the petition filed by ANTS Inc.

THE RULINGS OF THE COURT EN BANC

Timeliness of the Petition

On March 18, 2016, the CIR received the Decision of the Court in Division. On April 4, 2016, the CIR filed a "Motion for Reconsideration (of the Decision of the Honorable Court dated 17 March 2016)." On July 7, 2016, the Court in Division issued the assailed Resolution denying the CIR's motion. Said Resolution was received by the CIR on July 13, 2016.

From receipt of the said Resolution on July 13, 2016, the CIR has until July 28, 2016 within which to file the Petition for Review. On July 27, 2016, the CIR filed before this Court a "Motion for Extension of Time to File Petition for Review,"[33] praying for an extension of fifteen (15) days or until August 12, 2016 within which to file the Petition for Review. On August 1, 2016, the Court *En Banc* issued a Minute Resolution[34] granting the CIR's motion.

On August 11, 2016, the CIR filed the instant Petition for Review. Hence, this Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

After a careful evaluation of the facts, issues and arguments raised by the parties, the Court *En banc* finds that the arguments presented by the CIR are mere reiterations of the arguments or matters which have already been considered, discussed and passed upon by the Court in Division in the assailed Decision and Resolution.

The Court has jurisdiction over the case

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[33] Rollo, CTA EB Case No. 1490, pp. 1-3.
[34] Ibid. p. 4

The validity of the assessment itself is the issue in this case. Thus, the Court has jurisdiction to take cognizance of this case pursuant to Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals, which provides:

> *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees and 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.
>
> xxx xxx xxx

Whether the assessments issued should be cancelled

Section 228 of the NIRC, as amended, in relation to Section 3 of Revenue Regulations No. 12-99, provides the due process requirements in an assessment. Section 228 reads:

> ***Protesting of Assessment*** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall notify first the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by 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.

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*,[35] the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment.

"Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer receive said notice xxx Although there is no specific requirement that the taxpayer should receive the notice within said period, due process requires at the very least that such notice actually be received. " In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.

xxx.

It appearing that the person liable for the payment of the tax did not receive the

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

assessment, the assessment could not become final and executory."

The CIR contends that ANTS Inc. failed to inform the BIR of its change of postal address in violation of Section 236(D) of the NIRC of 1997, as amended.[36] Hence, they sent the assessment notices to the office address of ANTS Inc. appearing in their record.

In this case, there is nothing in the records which shows that ANTS Inc. executed a BIR form in compliance Section 236 (D) of the NIRC. However, there are pieces of evidence which will prove that the BIR was aware that ANTS Inc. has changed its office address. In the Memorandum dated March 5, 2007, Revenue Officer Edilberto R. Nacnac states that the Letter of Authority was not served since ANTS Inc. cannot be located, but due to extended efforts, he was able to locate the new address of ANTS Inc. and that is at 3rd Floor of LPL Tower, 215 General Gil Puyat St., Makati.

The said Memorandum[37] reads as follows:

"MEMORANDUM FOR: March 5, 2007
The Revenue District Officer
Revenue District No. 43
Pasig City

Subject: ASIAN NAVIGATION AND TRUCKING SERVICES, INC.
2005 All Internal Revenue Taxes
L.A. No. 000043874 dated Nov. 2, 2006

Sir:

This has reference to the above-captioned that was assigned to the undersigned revenue officer and remains unserved for the reason that the taxpayer has not been located.

Verification from the building administrator where the taxpayer's legal address is indicated in the BIR registration as well as in their SEC records showed that they had been their tenants only from October 1998 to October 6, 2001. But from the files of the City Government of Pasig disclosed that taxpayer has renewing (sic) their registration up to the last quarter of 2006. There is no forwarding address both from the building administration as well as from the later can be obtained to trace were (sic) taxpayer has transferred.

However, due to extended efforts, the current where-about (sic) of the taxpayer has been traced at the 3rd Floor of LPL Tower,

[36] ***Section 236 (D)-1. Transfer of Registration.*** - In case a registered person transfers his registered address to a new location, it shall be his duty to inform the BIR district office where he is registered by filing the prescribed BIR Form specifying therein the complete address where he intends to transfer.

[37] BIR Records, Exhibit "SSS", p. 123.

215 General Gil Puyat St., Makati which is under the investigative jurisdiction of RDO 50, South Makati

In view thereof, it is respectfully recommended that this letter of Authority, together will all the attachments, be forwarded to RDO 50, South Makati, for continuance of the investigation.

(Sgd.) EDILBERTO R. NACNAC
Revenue Officer

Noted by:

(Sgd.) EDUARDO B. FELIX
Group Supervisor"

Moreover, it is evident in the Memorandum dated June 24, 2008 signed by Revenue Officer Edilberto R. Nacnac, also found in the BIR Records of the case[38] that the BIR already knew that ANTS Inc. has changed its address.

The said Memorandum reads as follows:

"Memorandum for: June 24, 2008
The Revenue District Officer
(Thru channels)

Transmitted herewith is the copy of the duly received Subpoena Duces Tecum issued against **Ms. JUANITA JOY RICAFORT** of **ASIAN NAVIGATION AND TRACKING SYSTEMS, INC.** with business address at 3 & 4 Metrowalk Commercial Complex Meralco Avenue, Pasig City.

Please be informed that the said taxpayer's office can now be found at the **Mezzanine Floor, Salesiana Building, corner Pasong Tamo and Arnaiz Sts., Makati City.**

Respectfully submitted by:

(Sgd.) **EDILBERTO R. NACNAC**
Revenue Officer

Noted by:

(Sgd.) **ROLAND R. ZAMORA**
Group Supervisor

Ist Indorsement

Respectfully forwarded to the Chief, Legal Division, Revenue Region No. 7, Quezon City, the above report of the revenue officer concerned, for appropriate action.

(Sgd.) **FLORANTE R. ANINAG**
Revenue District Officer"

[38] Ibid. p. 135.

Considering that the memoranda were prepared and signed by Revenue Officer Edilberto R. Nacnac, an employee of the BIR, it is understandable that the BIR has knowledge of ANTS Inc.'s change of address.

In the Joint Stipulations of Facts and Issues dated August 23, 2010, the parties admitted that as of June 24, 2008, the BIR is already aware that ANTS Inc.'s address is at Mezzanine Floor, Salesiana Building, corner Pasong Tamo and Arnaiz Sts. Makati City.

The following provisions in the Joint Stipulations of Facts and Issues reveal as follows:

> "5. As of 19 February 2007, respondent is already aware that the petitioner is no longer holding office at 'Unit 1903 Centerpoint Bldg., Julia Vargas Avenue, Ortigas Center, Pasig City', and is already holding office at the 3rd Floor, LPL Tower, 215 Gil Puyat Avenue, Makati' xxx;
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> xxx xxx xxx
>
> 12. As of 24 June 2008, respondent is already actually aware that petitioner's address is at the 'Mezzanine Floor, Salesiana Building, corner Pasong Tamo and Arnaiz Sts. Makati City' which information is contained in the Memorandum issued by Revenue Officer Edilberto R. Nacnac dated 24 June 2008 xxx;
>
> 13. The respondent's Post Reporting Notice dated 24 November 2008, and its attached reports were addressed to '3/F, LPL Building 215 Sen. Gil Puyat Ave., Makati City' xxx;
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> 14. The alleged Preliminary Assessment Notice (PAN) dated 22 December 2008, and its attachments, was addressed to 'Unit 1903, The Centerpoint Building, Dona Julia Vargas Ave., Otigas Center, Pasig City' xxx;
>
> 15. That the petitioner has already moved out of the foregoing address is also indicated in the supposed letter envelope for the foregoing PAN which contains the notation "RTS moved out' xxx;
>
> 16. The Formal Letter of Demand dated 14 January 2009 was addressed to 'Unit 1903, The Centerpoint Building, Dona Julia Vargas Ave., Ortigas Center, Pasig City' xxx;

> 17. The Assessment Notices dated 14 January 2009 xxx addressed to Unit 1903, the Centerpoint Building, Dona Julia Vargas Ave., Ortigas Center, Pasig City,' were returned to the respondent unserved for the reason "RTS unknown address' as stated in the letter envelope therefore xxx;
>
> 18. The Preliminary Collection letter dated 3 June 2009 was addressed to Unit 1903, The Centerpoint Building, J. Vargas Ave., Ortigas Center, Pasig City' xxx which was returned unserved due to "RTS Unknown Address' as indicated in the letter envelope containing the said document xxx;
>
> 19. The Final Notice Before Seizure dated 18 June 2009 was again addressed to 'Unit 1903, The Centerpoint Building, J. Vargas Ave., Ortigas Center, Pasig City' xxx;
>
> 20. The Final Notice Before Seizure dated 17 August 2009 was again addressed to 'Unit 1903, The Centerpoint Building, Dona Julia Vargas Ave., Ortigas Center, Pasig City' xxx;

In the Pre-Trial Order[39] dated May 26, 2011, the Court approved the parties' Joint Stipulations of Facts and Issues.

Admissions and stipulations made during the Preliminary Conference or Pre-trial Conference which are reduced into writing and signed by the parties and their counsels are judicial admissions pursuant to Section 4, Rule 129 of the Rules of Court.[40] Thus, the CIR is bound by his admission in the Joint Stipulations of Facts and Issues.

As correctly ruled by the Court in Division in its Decision:[41]

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

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[39] Docket, CTA Case. No. 7999, pp. 470-483.

[40] *Judicial Admissions.*- An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[41] Decision, pp. 17-20.

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

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

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

Likewise, the law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Since petitioner never received the FAN and the FLD, it was not, therefore, informed of the assessments made against it by respondent nor it was informed of the legal and factual bases of the same. This again renders the assessments made against petitioner void.

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

> "Furthermore, petitioner should have been alerted by the fact that prior to mailing the FAN, petitioner sent to respondent's old address a Preliminary Assessment Notice but it was 'returned to sender.' This was testified to by petitioner's Revenue Officer II at its Revenue District Office 39 in Quezon City. Yet, despite this occurrence, **petitioner still insisted in mailing the FAN to respondent's old address.**
>
> **Hence, despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address as shown by documents replete in tis records. As a consequence, the running of the three-**

year period to assess respondent was not suspended and has already prescribed.

xxx xxx xxx

As to the second assigned error, petitioner's reliance on the provision s of Section 3.1.7 of BIR Revenue Regulation No. 12-99 as well as on the case of *Nava v. Commissioner of Internal Revenue* is misplaced, because in the said case, **one of the requirements of a valid assessment notice is that the letter or notice must be properly addressed. It is not enough that the notice is sent by registered mail as provided under the said Revenue Regulation. In the instant case, the FAN was sent to the wrong address. Thus, the CTA is correct in holding that the FAN never attained finality because respondent never received it, either actually or constructively.**" *(Emphasis supplied)*

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

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

The instant Petition for Review was not correctly prepared by the CIR's counsel

The Court notes that the instant Petition was not properly prepared by the petitioner. The CIR was identified therein as "RESPONDENT" and the petition was referred therein as a mere "Motion" and it was stated in the prayer of the Petition that the assailed Decision and Resolution were promulgated by the Third Division, instead of the Second Division of this Court. The Court will not consider these as "mere typographical errors." The counsels should be mindful of the pleadings they file before the Court. It is the counsel's duty to ensure that the pleadings and evidence to be presented are correctly and intelligently prepared before filing and presenting the same in Court.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated March 17, 2016 and the assailed Resolution dated July 7, 2016 are **AFFIRMED**.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice