Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

DIONISIA D. PACQUIAO,
Petitioner,

-versus-

HON. THELMA S. MILABAO OIC, REGIONAL DIRECTOR BUREAU OF INTERNAL REVENUE REGION NO. 18,
Respondent.

CTA Case No. 9039

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

Promulgated:

MAY 30 2017
3:20 p.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] filed by petitioner Ms. Dionisia D. Pacquiao, praying that the Final Decision on Disputed Assessment dated January 5, 2015 issued by respondent against petitioner be declared void.

Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 18, Revenue District No. 110 under Certificate of Registration No. 2PC0000305534 with Taxpayer Identification Number (TIN) 277-142-824-000 and with registered address at Purok Acharon Labangal General Santos City 9500.[2]

On the other hand, respondent is sued in her official capacity as the OIC, Regional Director of Revenue Region No. 18 of the BIR, the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.

[1] Docket (Vol. I), pp. 15-36.
[2] Exhibit "P-12"; Exhibit "R-8".

On March 2, 2012, respondent, through Atty. Franklin C. Ladores, Revenue District Officer of Revenue District No. 110, wrote a letter[3] addressed to petitioner (Re: Letter Notice No. 110-TRS-10-00-00019) stating that a computerized matching conducted by the BIR on information/data provided by withholding agents/payors and payees/income recipients against petitioner's declarations per Income/VAT/Percentage/Withholding tax returns, disclosed material discrepancies for calendar year 2010. In the said letter, petitioner was given fifteen (15) days to submit an explanation and/or documentary evidence in connection therewith.

Thereafter, respondent, through Atty. Franklin C. Ladores, Head, LNTF/Head, Investigating Office of Revenue District No. 110, wrote a Follow-Up Letter[4] dated June 17, 2013 addressed to petitioner, stating that, to date, petitioner has not taken any positive action to refute respondent's findings regarding Letter Notice No. 110-TRS-10-00-00019. Thus, the said letter shall be considered as a reminder and final notice to petitioner that there has been a previous finding upon which respondent will base its forthcoming review/assessment.

On September 16, 2013, respondent issued two Preliminary Assessment Notices (PAN), denominated as Part I[5] and Part II[6] (Compromise Penalties), with Details of Discrepancies[7] against petitioner.

On October 16, 2013, respondent issued two Formal Letters of Demand (FLD), denominated as Part I[8] and Part II[9] (Compromise Penalties), with Details of Discrepancies[10], assessing petitioner with deficiency income tax and value-added tax and for compromise penalties for taxable year 2010, computed as follows:

Assessment No: **L/D# 0206-10/2013 (IT)**
Income Tax - 2010

Gross Sales/Income Payment per Alphalists of Payors to one and the same Payee	₱2,477,136.98

[3] Exhibit "R-3".
[4] Exhibit "R-4".
[5] Exhibit "R-6".
[6] Exhibit "R-7".
[7] Exhibit "R-6".
[8] Exhibit "P-2"; Exhibit "R-10".
[9] Exhibit "R-11".
[10] Exhibit "P-4"; Exhibit "R-10".

Add: Taxable Income per Income Tax Return		0.00
Total Taxable Income per Investigation		₱2,477,136.98
Income Tax Due Thereon		₱ 757,683.83
Less: Creditable Taxes Withheld		369,737.21
Deficiency Income Tax Due		₱ 387,946.62
Add: 50% Surcharge	₱193,973.31	
20% Interest per annum from 04-16-11 to 11-15-13	200,260.97	₱ 394,234.28
TOTAL AMOUNT DUE		**₱782,180.90**

Assessment No: **L/D# 0207-10/2013 (VT)**
Value-Added Tax - 2010

Gross Sales/Income Payment per Alphalists of Payors to one and the same Payee		₱2,477,136.98
Less: Adjustment per Evaluation		0.00
Net Discrepancy		₱2,477,136.98
Multiply by Value-Added Tax Rate		x 12%
Deficiency Value-Added Tax Due		₱ 297,256.44
Less: Value-Added Tax Paid per Return		0.00
Deficiency Value-Added Tax Due		₱ 297,256.44
Add: 50% Surcharge	₱148,628.22	
20% Interest per annum from 01-26-11 to 11-15-13	166,448.01	₱ 315,076.23
TOTAL AMOUNT DUE		**₱612,332.67**
GRAND TOTAL AMOUNT DUE AND COLLECTIBLE		**₱1,394,513.57**

Assessment No: **L/D# 0206(A)-10/2013 (IT)**
Income Tax - 2010

Nature of Violation	***Violated Provision***	***Amount Due***
Failure to pay income tax at the time/s required by law	RMO No. 19-2007	₱16,000.00
TOTAL AMOUNT DUE		**₱16,000.00**

Assessment No: **L/D# 0207(A)-10/2013 (VT)**
Value-Added Tax - 2010

Failure to pay value-added tax at the time/s required by law	RR No. 16-2005	₱16,000.00
TOTAL AMOUNT DUE		**₱16,000.00**
GRAND TOTAL AMOUNT DUE AND COLLECTIBLE		**₱32,000.00**

The FLD was received by petitioner on November 5, 2013.[11]

[11] See statements found in Exhibit "P-5"; Exhibit "P-8".

On December 4, 2013, petitioner, through counsel, filed a protest[12] dated November 29, 2013 against the FLD.

In reply, respondent wrote a letter[13] dated January 23, 2014 denying petitioner's protest, stating that the income tax and VAT assessments stand as it is and payment thereof is demanded.

On July 3, 2014, petitioner filed a "Written Protest Signifying Objection and Disagreement to Formal Letter of Demand Nos. 0206 & 0207-10/2013 issued to Dionisia D. Pacquiao"[14] dated June 30, 2014, addressed to the Regional Director, BIR, Revenue Region No. 18.

Respondent denied said written protest in a letter[15] dated July 21, 2014 stating again that the income tax and VAT assessments stand as it is and payment thereof is demanded.

On November 18, 2014, petitioner filed a "Request for Reconsideration of Your Letter dated 21 July 2014 Denying the Letter Protest of Dionisia D. Pacquiao"[16] dated November 17, 2014 addressed to Thelma S. Milabao, OIC-Regional Director, Revenue Region No. 18.

On January 6, 2015, petitioner filed an "Addendum to My Request for Reconsideration dated 17 November 2014"[17] dated January 5, 2015 with the respondent, stating that petitioner cannot recall a Notice of Informal Conference and/or PAN was/were issued and served to her.

On February 25, 2015, petitioner filed a "Request to Take Notice of the Addendum dated 05 January 2015"[18], dated February 24 2015, with the respondent.

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[12] Exhibit "P-5", "P-5-a", "P-5-b" and "P-5-c".
[13] Exhibit "P-6" and "P-6-a"; Exhibit "R-17".
[14] Exhibit "P-7" to "P-7-h".
[15] Exhibit "P-8" and "P-8-a"; Exhibit "R-20".
[16] Exhibit "P-9" to "P-9-m".
[17] Exhibit "P-10" to "P-10-d".
[18] Exhibit "P-11".

On March 19, 2015[19], petitioner received a letter[20] from respondent dated March 17, 2015. Attached to the said letter is the Final Decision on Disputed Assessment[21] dated January 5, 2015.

Consequently, petitioner filed the instant Petition for Review before this Court on April 17, 2015 by registered mail and received by the Court on May 8, 2015.

On August 3, 2015, respondent filed his Answer[22] and interposed the following special and affirmative defenses:

"4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.

The assessment has become final, executory and demandable pursuant to the clear provisions of Section 228 of the National Internal Revenue Code

5. Before going into detail as to why petitioner's contentions are not only misguided but blatantly erroneous, respondent emphasizes that the assessment against petitioner for deficiency Income Tax and Value Added Tax has already become final, executory and demandable.

6. Petitioner argued that respondent has committed acts of misrepresentation since she have *(sic)* allegedly filed a timely protest to the Formal Letter of Demand and Final Assessment Notices (FLD/FAN) contrary to respondent's findings of fact.

7. Respondent vehemently opposes such argument.

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[19] Par. 13, Statement of the Case, Petition for Review, Docket (Vol. I), p. 19; Q4/A4, Q25/A25, Exhibit "P-14".
[20] Exhibit "P-1".
[21] Exhibit "P-1-a".
[22] Docket (Vol. I), pp. 122-133.

8. Section 228 of the National Internal Revenue Code (Tax Code) explicitly states:

> **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:
>
> -xxx-
>
> 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 of 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 with thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations.
>
> -xxx-
>
> **otherwise, the decision shall become final, executory and demandable.**

9. In the instant case, the two (2) FLD/FAN dated 16 October 2013, assessing petitioner for deficiency Income Tax, Value Added Tax and Compromise Penalty, were received by petitioner, through her authorized representative, on 5 November 2013.

10. Petitioner, through its representative, Atty. Jayson L. Fernandez of the law firm Romulo Mabanta Buenaventura Sayoc and Del Los Angeles, filed a

protest on behalf of petitioner on 4 December 2014 (First Protest).

11. After considering all of petitioner's arguments, the Bureau of Internal Revenue denied petitioner's protest, reiterated the assessment and demanded payment of her deficiency Income Tax and Value Added Tax through a letter dated 23 January 2014.

12. Pursuant to the Tax Code, petitioner only has thirty (30) days within which to file her Motion for Reconsideration and failure to file said Motion will make the assessment final, executory and demandable.

13. After a lapse of almost six (6) months from the letter denying petitioner's protest to the FLD/FAN - clearly beyond the thirty (30) day period provided by law, petitioner, erroneously opted to file a new protest, this time signed personally by her as the taxpayer (Second Protest); clearly not in accord with the settled law and jurisprudence on the matter.

14. Accordingly, respondent, through a letter dated 21 July 2014, rightly informed petitioner that pursuant to Section 228 of the Tax Code, at the time respondent received the Second Protest on 3 July 2014, or after the lapse of more than eight (8) months, her right to protest the FLD/FAN which she received on 5 November 2015, has already lapsed and as a result, the assessment for deficiency Income Tax and Value Added Tax had become final, executory and demandable.

15. Petitioner, maybe having realized her mistake of filing an erroneous Second Protest instead of a Motion for Reconsideration, filed her Motion for Reconsideration on the denial of her two protests.

16. Obviously, petitioner's Motion for Reconsideration was denied since the assessment for deficiency

Income Tax and Value Added Tax had become final, executory and demandable for the following reasons:

a. If respondent is to consider the First Protest, petitioner has failed to timely file her Motion for Reconsideration on respondent's denial of her protest; and
b. If respondent is to consider the Second Protest, petitioner has filed the same out of time.

17. Thus, it cannot be denied that the assessment for petitioner's deficiency Income Tax and Value Added Tax had become final, executory and demandable pursuant to the clear provisions of Section 228 of the Tax Code.

Assuming arguendo that petitioner did not lose her right to contest the FLD/FAN by sleeping on her rights:

A. The Preliminary Assessment Notice (PAN) was issued and constructively served to petitioner.

18. Petitioner contended that it was admitted by respondent that its first issuance was the FLD/FAN dated 16 October 2013.

19. Respondent would like to emphasize that a lawyer owes candor and good faith to the courts. He shall not do any falsehood, not consent to the doing of any in court; not shall he mislead, or allow the Court to be mislead by any artifice.

20. To be clear, there was never an admission on part of respondent of such alleged fact.

21. The PAN was sent via registered mail to the address of petitioner indicated in her Certificate of

Registration as evidenced by Registry Receipt No. 224.

22. It must be pointed out that pursuant to the Revised Rules of Court, a letter duly directed and mailed was received in the course of mail.

23. While this is a mere disputable presumption, petitioner's bare denial of the receipt of PAN cannot and should not overcome hard evidence such as the registry receipt and certification of postal officials.

24. Notably, petitioner never denied her receipt of the Letter of Notice and Follow Up Letter received by her duly authorized representatives on 9 March 2012 and 20 June 2013, respectively.

B. Respondent correctly assessed petitioner's income tax.

25. Petitioner further argued that respondent erroneously failed to consider deductions available to her pursuant to the Tax Code. She even went on and invited respondent to several provisions of the Tax Code aiming to prove that respondent should have unilaterally deducted the non-existent deductions of petitioner without proof on her part.

26. This is plainly wrong.

27. Elementary is the rule that tax deductions, being in the nature of tax exemptions, are to be construed in strictissimi juris against the taxpayer. The Honorable Supreme Court in the case of Tambunting v. CIR explained:

> The rule that tax deductions, being in the nature of tax exemptions, are to be construed in strictissimi juris against the taxpayer is well settled. **Corollary to**

> **this rule is the principle that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows**. An item of expenditure, therefore, must fall squarely within the language of the law in order to be deductible. A mere averment that the taxpayer has incurred a loss does not automatically warrant a deduction from its gross income.

28. As here, petitioner continuously failed to offer evidence that it indeed incurred expenses which can be deducted from her gross income.

29. Petitioner even went on and claimed that respondent failed to consider that she may be entitled to Optional Standard Deduction (OSD).

30. Again, respondent disagrees.

31. The Tax Code is clear, it is a taxpayer's duty to inform the Bureau of Internal Revenue as to whether he would avail of the Optional Standard Deduction provided under the Tax Code. Section 34 (L) of the Tax Code states:

> SEC. 34. Deductions from Gross Income. – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A)(1), there shall be allowed the following deductions from gross income;

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> (L) Optional Standard Deduction. – In lieu of the deductions allowed under the preceding Subsections, an individual subject to tax under Section 24, other than a nonresident alien, may elect a standard deduction in an amount not exceeding ten percent (10%) of his gross income. Unless the taxpayer signifies in his return his intention to elect the optional standard deduction, he shall be considered as having availed himself of the deductions allowed in the preceding Subsections. Such election when made in the return shall be irrevocable for the taxable year for which the return is made: Provided, That an individual who is entitled to and claimed for the optional standard deduction shall not be required to submit with his tax return such financial statements otherwise required under this Code: Provided, further, That except when the Commissioner otherwise permits, the said individual shall keep such records pertaining to his gross income during the taxable year, as may be required by the rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

32. Thus, petitioner's insistence that respondent was remiss on her duty to deduct her alleged deductions has no leg to stand on.

C. Petitioner's gross receipts exceeded ₱1,919,500.00 for taxable year 2010. Accordingly, she is subject to Value Added Tax (VAT).

33. Petitioner is insisting that she is only subject to Percentage Tax since she was registered as such pursuant to her Certificate of Registration with the Bureau of Internal Revenue; and not as a VAT taxpayer.

34. Respondent disagrees.

35. Percentage Tax is a business tax imposed on persons who sell or lease goods, properties or services in the course of trade or business and are exempt from VAT under Section 109 of the Tax Code whose gross annual sales/receipts do not exceed ₱1,919,500.00.

36. Thus, if a taxpayer's gross sales/receipts exceed the above-mentioned threshold, he shall be liable for VAT, notwithstanding the fact that he is not VAT registered.

37. In fact, as a consequence for a taxpayer's failure to register as a VAT taxpayer, despite that his gross annual sales/receipts exceeded ₱1,919,500.00, he shall not be entitled to claim input VAT.

38. As here, petitioner's gross annual sales/receipts for taxable year 2010 was ₱2,477,136.98. Obviously, petitioner is subject to VAT pursuant to the clear provisions of the Tax Code.

D. Petitioner *(sic)* **correctly subjected petitioner for fifty percent (50%) surcharge.**

39. Petitioner also contested the surcharge imposed on her deficiency Income Tax and Value Added Tax alleging that there was never a willful intent on her part to avoid her tax liabilities.

40. The Honorable Supreme Court in the case of Aznar v. CTA explained that:

> 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 wrongdoing 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 be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith.

41. While the above quoted jurisprudence holds true, it must be pointed out that petitioner has, for several years, consistently failed to file her Income Tax Returns despite the fact that she has generated income from several sources.

42. Clearly, this is an indication of her willfulness to evade taxes due from her and not a mere mistake on her part meriting the imposition of the fifty percent (50%) surcharge provided under Section 248 of the Tax Code.

E. Respondent correctly included ₱32,000.00 as compromise penalty for

petitioner's failure to pay Income Tax and VAT.

43. Finally, petitioner contested the compromise penalties imposed against it for the following reasons:

a. The compromise penalty for her non-payment of Income Tax should have been ₱12,0000.00 only instead of ₱16,000.00; and
b. Since she was allegedly not liable for VAT, then no compromise penalty should be imposed.

44. Again, petitioner is mistaken.

45. Respondent invites petitioner to Revenue Memorandum 19-2007. Under the Revised Rules of Compromise Penalties, a taxpayer's failure to file and/or pay any internal revenue tax at the time or times required by law or regulations, the amount of compromise penalty would be as follows:

If the amount of tax unpaid		
Exceeds	**But Does Not Exceed**	**Compromise is**
-	500	200
500	1,000	400
1,000	2,000	700
2,000	5,000	1,000
5,000	7,500	1,500
7,500	10,000	2,000
10,000	15,000	3,000
15,000	20,000	4,000
20,000	30,000	6,000
30,000	50,000	8,500
50,000	100,000	12,000
100,000	**500,000**	**16,000**
500,000	1,000,000	20,000
1,000,000	5,000,000	25,000
5,000,000	-	50,000

46. Petitioner's deficiency Income Tax for taxable year 2010 is ₱387,946.62. Thus, pursuant to the Revised Schedule of Compromise Penalties, the amount of ₱16,000.00 was correctly imposed.

47. As regards, petitioner's deficiency Value Added Tax, the total amount due from her is ₱297,256.44. Basing again to the Schedule of Compromise Penalties, petitioner was correctly held liable for ₱16,000.00 as compromise penalty.

48. As explained above, petitioner's contention that it is not liable for VAT lacks merit since her annual gross sales/receipts exceeded the threshold provided by law.

49. Hence, respondent correctly imposed the aggregate amount of ₱32,000.00 as compromise penalties for her failure to file and pay Income Tax and Value Added Tax for taxable year 2010."

Thereafter, a Notice of Pre-Trial Conference[23] was issued by the Court on August 5, 2015, setting the case for pre-trial conference on September 17, 2015. Accordingly, Respondent's Pre-Trial Brief[24] was filed on September 7, 2015 while the Pre-Trial Brief (For the Petitioner)[25] was filed on September 14, 2015.

Pre-Trial ensued. However, the parties failed to submit their Joint Stipulation of Facts and Issues. Nevertheless, counsels for both parties entered into admissions and stipulations of facts, simplification and definition of issues.[26] Thereafter, a Pre-Trial Order[27] was issued on January 21, 2016 and the pre-trial was deemed terminated.

During trial, petitioner testified for herself[28] and likewise presented Mr. Rey Eduardo T. Delos Reyes[29], petitioner's bookkeeper, as her witness. Petitioner filed her Formal Offer of Documentary

[23] Docket (Vol. I), pp. 134-135.
[24] Docket (Vol. I), pp. 136-141.
[25] Docket (Vol. I), pp. 168-174.
[26] Minutes of the Hearing dated November 9, 2015, Docket (Vol. II), p. 284.
[27] Docket (Vol. II), pp. 286-291.
[28] Minutes of the Hearing dated March 2, 2016, Docket (Vol. II), p. 491; Exhibit "P-14".
[29] Minutes of the Hearing dated February 3, 2016, Docket (Vol. II), p. 357; Exhibit "P-13".

Exhibits[30] on March 18, 2016 by registered mail and received by the Court on April 4, 2016. In the Resolution[31] dated May 16, 2016, the Court admitted all of petitioner's evidence, except for Exhibit "P-3".

On the other hand, respondent presented Revenue Officers Sittie Skhanesa Jalila A. Ali[32] and Leilah Jane L. Dohinog[33], as his witnesses. Respondent's Formal Offer of Evidence[34] was filed on June 23, 2016. In the Resolution[35] dated August 23, 2016, the Court admitted all of respondent's evidence.

This case was deemed submitted for decision on November 11, 2016, considering the Memorandum (For the Petitioner)[36] filed on October 28, 2016 by registered mail and received by the Court on November 9, 2016 and respondent's Manifestation[37] filed on September 26, 2016 adopting his Answer as his memorandum.[38]

The parties submitted the following issues[39] for this Court's disposition:

1. Whether the PAN was duly served.

2. Whether respondent complied with the administrative due process in the issuance of the deficiency tax assessment.

3. Whether petitioner is liable for the deficiency tax assessment.

The Court shall first address the pivotal issue in this case, *i.e.*, whether the PAN was duly served.

Petitioner insists that there was no PAN issued by respondent and no PAN was duly served to the petitioner. Petitioner avers that the antecedent material facts surrounding the issuance of the deficiency tax assessment against petitioner were explicitly stated in

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[30] Docket (Vol. II), pp. 496-506.
[31] Docket (Vol. II), pp. 587-588.
[32] Minutes of the Hearing dated June 8, 2016, Docket (Vol. II), p. 589; Exhibit "R-22".
[33] Minutes of the Hearing dated June 8, 2016, Docket (Vol. II), p. 589; Exhibit "R-23".
[34] Docket (Vol. II), pp. 592-608.
[35] Docket (VOol. II), pp. 623-624.
[36] Docket (Vol. II), pp. 630-658.
[37] Docket (Vol. II), pp. 625-628.
[38] Docket (Vol. II), p. 660.
[39] C. Issue, II. Statement of Facts and Issues, Pre-Trial Order, Docket (Vol. II), p. 287.

respondent's letter dated July 21, 2014 and in the Final Decision on Disputed Assessment dated January 5, 2015. Petitioner argues that from these letters, it is very patent that respondent's course of action in the issuance of the deficiency tax assessment to petitioner immediately begins with the issuance of Formal Letters of Demand and Assessment Notices all dated October 16, 2013 without sending beforehand to petitioner the requisite Notice of Informal Conference and the PAN as required under Revenue Regulations (RR) No. 12-99.

In her Answer, respondent maintains that the PAN was sent via registered mail to the address of petitioner indicated in her Certificate of Registration as evidenced by Registry Receipt No. 224. Respondent points out that pursuant to the Revised Rules of Court, a letter duly directed and mailed was received in the course of mail. While this is a mere disputable presumption, petitioner's bare denial of the receipt of the PAN cannot and should not overcome hard evidence such as the registry receipt and certification of postal officials.

In response, petitioner contends that, even assuming for the sake of argument that the PAN was issued by respondent on September 16, 2013, the issuance thereof is not sanctioned by RR No. 12-99 because the Notice of Informal Conference must be issued first and sent to petitioner.

Moreover, petitioner notes that the Formal Letters of Demand/Assessment Notices were issued on October 16, 2013. It was issued two days after petitioner allegedly received the PAN on October 18, 2013 as shown in the Certification issued by the Office of the Postmaster of General Santos City Post Office. Hence, respondent apparently did not afford petitioner ample time (15 days in this case) to respond to the PAN in violation of RR No. 12-99.

Petitioner stresses that respondent failed to show proof that the alleged PAN was sent to petitioner. Likewise, respondent failed to show proof that the said PAN was delivered to the stated address of the petitioner and that it was received by petitioner or her authorized representative.

After a careful evaluation of the parties' arguments and evidence presented vis-à-vis the applicable laws, jurisprudence and regulations, the Court resolves to invalidate the assessment.

The mandatory nature of the notice requirements is adequately established in Section 228 of NIRC of 1997, as amended, and Section 3 of RR No. 12-99, to wit:

> "SEC. 228. *Protesting of Assessment.* - **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:** *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. 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)*

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* -

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.2 *Preliminary Assessment Notice (PAN).* - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, **it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** (see illustration in ANNEX A hereof). **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued** by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.4 *Formal Letter of Demand and Assessment Notice.* - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b)

> signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (*Emphasis supplied)*

From the provision quoted above, it is clear that the sending of a PAN to a taxpayer to inform him of the assessment made is but part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by the tax authorities. The use of the word *shall* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the Commissioner of Internal Revenue to strictly comply with the requirements laid down by law and its own rules is a denial of a taxpayer's right to due process.[40]

In this case, petitioner insists that she did not receive the PAN dated September 16, 2013. To contradict petitioner's denial, respondent presented the PAN[41] and the Certification[42] issued by the Philippine Postal Corporation, Postal Area 7 (Eastern Mindanao), Office of the Postmaster, on September 4, 2015, stating that:

> This is to certify that **Registry Letter No. 244** was acted by this office, viz:
>
> Sender: **BUREAU OF INTERNAL REVENUE**
> Revenue Region No. 18
> Koronadal City
>
> Addressee: **MRS. DIONISIA D. PACQUIAO**
> Purok Acharon, Labangal
> 9500 General Santos City
>
> Received by: ANALYN N. ABRERA
> Date Received: October 18, 2013

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[40] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[41] Exhibits "R-6" and "R-7".
[42] Exhibit "R-9".

Respondent also presented Revenue Officer Leilah Jane L. Dohinog, who testified, by way of Judicial Affidavit[43], that on September 24, 2013, they served the PAN through registered mail to petitioner's registered address pursuant to her latest Certificate of Registration[44] as evidence by the Certification issued by the Koronadal Post Office.[45]

However, the Court finds that the above pieces of evidence failed to satisfactorily prove that the PAN was indeed received by petitioner or her authorized representative.

Based on the Certification issued by the Philippine Postal Office, a certain Ms. Analyn N. Abrera received the PAN. However, respondent's evidence did not establish how Ms. Abrera was related to petitioner. In fact, during the cross-examination conducted on RO Dohinog, RO Dohinog is not even sure if Ms. Abrera is a resident of Purok Acharon, Labangal, General Santos City (petitioner's registered address with the BIR), to wit:

"JUSTICE CASTANEDA:
So based on your records, let me clarify again, what was the date when petitioner, Dionisia Pacquiao received the Preliminary Assessment Notice?

MS. DOHINOG:
A. It was received at her registered address on October 18, 2013, your Honor.

JUSTICE CASTANEDA:
Alright, proceed.

ATTY. INTO:
Q. Are you sure that this Preliminary Assessment Notice was served to the address of Dionisia D. Pacquiao at Purok Acharon Labangal, 9500, General Santos City?

MS. DOHINOG:
A. Yes, sir.

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[43] Exhibit "R-23".
[44] Exhibit "P-12"; Exhibit "R-8".
[45] Q13/A13, Judicial Affidavit of Revenue Officer Leilah Jane L. Dohinog, Docket (Vol. I), p. 148.

ATTY. INTO:
Q. And what is your basis in saying that?

MS. DOHINOG:
A. Because it was certified by the Post Master that it was delivered to the address of Dionisia Pacquiao, Purok Acharon Labangal, 9500, General Santos City.

ATTY. INTO:
Q. Did the Certification states that Analyn Abrera was in Purok Acharon Lagangal at the time it was served?

MS. DOHINOG:
A. It was our belief, sir, because the addressee is in Purok Acharon.

ATTY. INTO:
Q. Meaning to say that you are not in any way sure that Analyn Abrera is residing in Purok Acharon Labangal?

MS. DOHINOG:
A. Yes, sir. Because I did not personally saw *(sic)* her.

JUSTICE CASTANEDA:
Counsel, you *(sic)* already able to establish that they do not know whether... the current witness does not know that person resides in that address. So proceed to your next question."[46]

Hence, respondent fell short of proving the identity of Ms. Abrera and her authority to receive the PAN on behalf of petitioner.

Evidently, the PAN was not properly served. Let it be stressed that the law, regulation and jurisprudence require the service of the PAN upon the taxpayer or at least, upon its agent, and not upon any other person. To consider the receipt of the PAN by another person as deemed receipt by the taxpayer itself, despite the lack of prior

[46] TSN, June 8, 2016 hearing, pp. 26-28.

verification of the former's authority or agency, will put taxpayers in a disadvantageous position and at the mercy of revenue officers.[47]

While a mailed letter is deemed received by the addressee in the regular course of mail, nevertheless, said presumption is merely a disputable presumption subject to controversion. In the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[48], the Supreme Court held that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. Unfortunately, respondent failed to satisfactorily prove that the PAN was indeed received by petitioner or her authorized representative.

Even assuming that petitioner received the PAN on October 18, 2013, through Ms. Analyn N. Abrera, still respondent should have given petitioner 15 days therefrom to respond, and only after she fails to do so will she be considered in default and a final assessment notice will be issued pursuant to Section 3.1.2 of RR No. 12-99 quoted earlier.

However, as observed by petitioner, the FLD and the Final Assessment Notices (FAN) were issued on October 16, 2013, or two days before petitioner supposedly received the PAN on October 18, 2013.

In *Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)* [Nippo] *vs. Commissioner of Internal Revenue*[49], the Court *En Banc* held that Nippo's right to due process was violated by the BIR when the FLD/FAN was issued prior to the lapse of the 15-day period given to Nippo to respond to the PAN as mandated under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013.

Similarly, in *Commissioner of Internal Revenue vs. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle Health Science Institute), Inc.*[50](Hermano), Hermano received a copy of the PAN on January 5, 2009. It filed its reply to the PAN on January 20, 2009. Barely a day after it filed its protest to the PAN or

[47] *Manuel B. Palaganas doing business under the name & style Stemiko Commercial vs. Commissioner of Internal Revenue*, CTA Case No. 8394, September 17, 2014.
[48] G.R. No. 157064, August 7, 2006.
[49] CTA EB No. 1273, May 17, 2016.
[50] CTA EB No. 1151, February 17, 2015.

on January 21, 2009, it received the FLD and FAN both dated January 9, 2009. The Court *En Banc* held that Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, specifically Section 3.1.2 thereof, prescribe a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. It is well-settled that the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. Evidently, the BIR did not wait for Hermano to reply to the PAN nor considered the arguments raised in its protest. In wantonly disregarding Hermano's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated its right to due process as enshrined in Section 228 of the NIRC of 1997, as amended, and RR No. 12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer an opportunity to respond thereto.

On cross-examination, respondent's witness, RO Dohinog, admitted that they issued the FLD before the expiration of the period to respond to the PAN, to wit:

> "ATTY. INTO:
> Q. And before the expiration of the period to answer the PAN, you issued the Formal Letter of Demand dated October 16, 2013, am I correct?
>
> MS. DOHINOG:
> A. Yes, sir.
>
> ATTY. INTO:
> Q. Meaning to say, that you did not give time to the petitioner to answer the PAN before issuing a Formal Letter of Demand, am I correct, Ms. Witness?
>
> MS. DOHINOG:
> A. The regulations states that that the taxpayer is given fifteen (15) days to answer the PAN. So from September 16, we mailed it, we count fifteen (15) days and we give still a few days, so we issued the Final Assessment Notice or Final Letter of Demand approximately not less than one month. But we did not wait for the registry return receipt before I going to issue the PAN because the Post Office sometimes will not return it immediately to our Administrative Division.

So we just count that one month and we issued the Formal Letter of Demand."[51]

From the foregoing, it can be inferred that respondent had no intention of giving petitioner the opportunity to be heard on her arguments against the PAN, if any. Clearly, respondent failed to observe due process when she issued the FLD even before petitioner supposedly received the PAN.

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.[52]

In view of the foregoing discussion, the assessment issued by respondent is void and a void assessment bears no valid fruit[53]. Consequently, the Court deems it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and VAT assessments issued against petitioner, including the imposition of compromise penalties, for taxable year 2010 are **CANCELLED** and **WITHDRAWN** for violation of petitioner's right to due process. Consequently, respondent's **Final Decision on Disputed Assessment** dated January 5, 2015 is **REVERSED** and **SET ASIDE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[51] TSN, June 8, 2016 hearing, pp. 21-22.

[52] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

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

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
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.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice