Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

FAR EAST SEAFOOD, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8909
For: Assessment

Members:
DEL ROSARIO, *P.J., Chairperson*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:
OCT 19 2018 : 3:00 pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review[1] filed by petitioner Far East Seafood, Inc. (FESI), as petitioner, against the respondent Commissioner of Internal Revenue, pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125[3], as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] CTA Docket, Vol. I, pp. 6-56.

[2] Sec. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(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 Code or other laws administered by the Bureau of Internal Revenue; xxx.

[3] Act Creating the Court of Tax Appeals.

[4] Sec. 3. *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 or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[5] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary

Petitioner seeks to cancel and set aside respondent's assessment for deficiency income taxes, expanded withholding tax, withholding tax on compensation, value added tax (VAT), and documentary stamp taxes in the total amount of ₱29,420,114.95, for taxable year 2010, for having been issued without basis in fact and in law.

The antecedents are as follows:

Petitioner FESI is a corporation duly organized and existing under the laws of the Philippines which may be serve with summons and other legal processes at its principal place of business at Davao Fish Port Complex, Brgy. Lizada, Toril Davao City. [6] On the other hand, respondent is the Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office building.[7]

On October 11, 2011, petitioner received a Letter of Authority (LOA) stating that two tax officers have been authorized to examine petitioner's books of accounts for all internal revenue taxes including documentary stamp, for the period 01 January to 31 December 2010.[8]

On September 3, 2012, petitioner received a 15-day Notice for Conference dated August 30, 2012.

On April 15, 2013, respondent CIR issued a Preliminary Assessment Notice.

Thereafter on June 11, 2013, petitioner received a Formal Letter of Demand (FLD) together with the Assessment Notices and Details of Discrepancy.

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of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] CTA Docket, Vol. I, pp. 6-56.

[7] Ibid.

[8] Ibid.

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Petitioner filed its protest on July 11, 2013 to the OIC Regional Director for Revenue Region No. 19. In its protest, petitioner argued that the assessments were results of an invalid letter of authority; the formal letter of demand was issued without a preliminary assessment notice; and that assessed year 2010 was covered by income tax holiday.

However, on September 11, 2014, petitioner received a letter from respondent through the OIC Regional Director for Revenue Region No. 19, denying the protest. Thus, on October 13, 2014, petitioner filed this petition.

Respondent CIR filed an Answer[9] on January 12, 2015 and alleged by way of special and affirmative defenses the following:

> *"THE ASSESSMENT WAS ISSUED PURSUANT TO A VALID LETTER OF AUTHORITY (LOA).*
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> *5. Petitioner contends that it received the Notice of Informal Conference (NIC) on 03 September 2012, nearly a year after the Letter of Authority (LOA) was issued on 10 October 2011. It further contends that revenue officer has 120 days within which to conduct the examination, inspection and render a report thereof.*
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> *6. Petitioner submits that since the revenue officer was unable to submit a final report of investigation within the 120 day period, the LOA should have been surrendered for revalidation. As alleged, the absence of a revalidated LOA was tantamount to pursuing an assessment without a valid LOA. Such fatally affects the right of the government to issue assessment notices for deficiency taxes within the period set by law.*
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> *7. Respondent strongly submits that the failure of the investigating officer to submit a report on the result of its investigation within the 120 day period is merely directory and is intended to enhance the efficiency and at the same time the quality of the audit. It does not affect the right of the government to issue assessment notices for deficiency taxes within the period set by law.*

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[9] CTA Docket, Vol. I, pp.75-85.

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8. The 120 day period is a guideline for the investigating officer and not a grant of immunity from audit to the taxpayer. The period is intended to insure an orderly and efficient conduct of the audit examination by subjecting the officer to administrative sanctions in case of failure to render its report within the period provided but will not in any way affect the validity of the assessment. The LOA retains its validity despite the lapse of the 120 day period.

PRELIMINARY ASSESSMENT (PAN) WAS VALIDLY ISSUED IN ACCORDANCE WITH LAW, RULES AND REGULATIONS.

9. Petitioner contends that the Formal Letter of Demand (FLD) was issued without a prior service of a Preliminary Assessment Notice (PAN). It further argued that under our procedural rules, personal service is generally preferred over substituted service, the latter mode of service being a method of extraordinary in character and only when neither personal nor substituted service is unavailing, is resort to service by mail warranted.

10. In addition, petitioner interposed that while Section 3.1.1 of the Revenue Regulation 18-2013 denotes how substituted service is done upon a party who is an individual, it is silent on how the same is effected upon juridical person. In this regard, Section 11 of the Rule 14 of the Rules of Court provides guidance:

> *"SEC. 11. Service upon domestic private judicial entity. When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel."*

11. To sum up, petitioner submits that since respondent did not serve the PAN to the above-mentioned officers of the company, there was no valid service of PAN, constitute a failure to comply with the requirements laid down by law and is a denial of petitioner's right to due process.

12. Respondent admits the existence of the above quoted provision of the Rules of Court on the guidelines on service to a private judicial entity. However, with all due respect to the Honorable Supreme Court, respondent *strongly posits that the provisions of the Rules of Court finds no application in the case at hand.*

13. No less than the Honorable Supreme Court En Banc made it explicit in the case of Office of the Ombudsman vs. Joel Samaniego:

> *Specialis derogate generali. When two rules apply to a particular case, that which was specially designed for the said case must prevail over the other.*

14. Therefore, since Revenue Regulations (RR)No. 12-99 was issued specially to give force and effect to the provisions of the National Internal Revenue Code on matters of tax assessment it should prevail over the requirements of the Rules of Court.

15. Section 3.1.2 of the said Revenue Regulation (RR) explicitly provides:

> *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. (Emphasis ours)*

16. On 15 April 2013, respondent through Revenue Region No. 19 Asst. Regional Director Mamapok G. Diro issued the PAN and was sent to petitioner via registered mail and was duly received as evidenced by a registry return receipt.

17. With the existence of a registry return receipt, petitioner has the burden of overturning the presumption of regularity that the PAN was delivered and received by the addressee in the regular course of the mail. Based on the above quoted provisions of the RR, the guidelines for the issuance of the PAN have been sufficiently complied with by respondent. Therefore, petitioner cannot interpose that it was its right to due process by mere denial that it did not receive a copy of the PAN.

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> *18. On final note, respondent strongly maintains that petitioner cannot rely on the application of Revenue Regulations No. 18-2013 in the case at hand since it was issued on 28 November 2013, several months after the issuance of the PAN on 15 April 2013.*
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> *xxx xxx xxx.*

On July 2, 2015, a Pre-Trial Order [10] was issued terminating pre-trial and setting the date for the presentation of evidence by the parties. The admitted facts [11] are as follows:

1. Respondent is the Commissioner of Internal Revenue who holds office at the 5th Floor, BIR National Office Building located at Diliman, Quezon City, where it may be served with summons and other legal processes.

2. The existence of a Fifteen (15) Day Notice for Conference dated 30 August 2012.

3. The existence of the Formal Letter of Demand (FLD) and Final Assessment Notice (BIR Form 1708) dated 23 May 2013.

4. The existence of the Protest dated 11 July 2013 to the Formal Letter of Demand.

5. The existence of the Decision dated 25 July 2014 denying petitioner's request for reconsideration.

During trial, petitioner presented the following witnesses: (1) Olive Grace Caina[12] — Managing Head of petitioner; (2) Lhaarni Tapanan[13] — Accountant of petitioner.

Petitioner likewise formally offered its documentary evidence composed of Exhibits "P-1" to "P-31", inclusive of

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[10] CTA Docket, Vol. I, pp.328-336.
[11] Ibid.
[12] CTA Docket, Vol. I, pp.276-304.
[13] CTA Docket, Vol. I, pp.181-272.

sub-markings, on October 22, 2015[14], to which respondent filed a Comment on September 10, 2015[15].

In the Resolution[16] dated January 15, 2016, the Court admitted petitioner's documentary evidence except for Exhibits "P-2", "P-2-1", "P-2-2" and "P-2-3" for failure to submit the originals for comparison. Petitioner filed a Motion for Reconsideration[17] on February 16, 2016 while petitioner filed a Comment on March 14, 2016. A Commissioner's Hearing was set for the comparison of Exhibits "P-2", "P-2-1", "P-2-2" and "P-2-3" with the originals.[18] Thereafter, on June 27, 2016, an "Amended Formal Offer of Exhibits of Petitioner" was filed. Thus, in the Resolution[19] dated August 9, 2016, the Court granted petitioner's Motion for Reconsideration and admitted Exhibits "P-2", "P-2-1", "P-2-2" and "P-2-3".

Petitioner's documentary exhibits are as follows:

Exhibit:	Description:
P-1	Final decision of the respondent on petitioner's protest
P-1-1	Date: 25 July 2014
P-1-2	Page Two
P-1-3	Bracketed signature, name, position: Glen A. Geraldino, OIC-Regional Director
P-1-4	Mail Envelope
P-1-5	Postmark 05 Sept 2014
P-1-6	Postmark 10 Sept 2014
P-2	Letter of Authority SN:eLA2010000007783, LOA-113-2011-00000269
P-2-1	Date: 10 October 2011
P-2-2	Checklist of Requirements, top page
P-2-3	Checklist of Requirements, last page
P-3	15-Day Notice for Conference
P-3-1	Date: 30 August 2012
P-3-2	Bracketed signature, name, position: Imelda D. Cebuano, Revenue District Officer
P-4	Formal Letter of Demand

14 CTA Docket, Vol. I, pp. 359-373.
15 CTA Docket, Vol. I, pp. 502-506.
16 CTA Docket, Vol. I, pp. 512-514.
17 CTA Docket, Vol. I, pp. 515-526.
18 CTA Docket, Vol. II, pp. 546-548.
19 CTA Docket, Vol. II, pp. 576-578.

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P-4-1	Date: 23 May 2013
P-4-2	Bracketed signature, name and position: Atty. Glen A. Geraldino, OIC-Regional Director
P-5	Assessment Notice for Income Tax
P-5-1	Date: 23 May 2013
P-5-2	Total Amount Payable: PHP1,783,418.25
P-5-3	Bracketed signature, name and position: Atty. Glen A. Geraldino, OIC-Regional Director
P-6	Assessment Notice for Expanded Withholding Tax
P-6-1	Date: 23 May 2013
P-6-2	Total Amount Payable: PHP8,342,577.85
P-6-3	Bracketed signature, name and position: Atty. Glen A. Geraldino, OIC-Regional Director
P-7	Assessment Notice for Withholding Tax on Compensation
P-7-1	Date: 23 May 2013
P-7-2	Total Amount Payable: 23 May 2013
P-7-3	Bracketed signature, name and position: Atty. Glen A. Geraldino, OIC-Regional Director
P-8	Assessment Notice for Value-Added Tax
P-8-1	Date: 23 May 2013
P-8-2	Total Amount Payable: PHP16,439,108.43
P-8-3	Bracketed signature, name and position: Atty. Glen A. Geraldino, OIC-Regional Director
P-9	Assessment Notice for Documentary Stamp Tax
P-9-1	Date: 23 May 2013
P-9-2	Total Amount Payable: PHP762,408.39
P-9-3	Bracketed signature, name and position: Atty. Glen A. Geraldino, OIC-Regional Director
P-10	Details of Discrepancy
P-10-1	Date: 23 May 2013
P-10-2	Bracketed signature, name and position: Atty. Glen A. Geraldino, OIC-Regional Director
P-11	Petitioner's Protest
P-11-1	Date: 11 July 2013
P-11-2	Registry Receipt No. 0394
P-12	Monthly VAT Declaration-2550M for January 2010
P-13	Monthly VAT Declaration-2550M for February 2010
P-14	Certified True Copy of the Quarterly VAT

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	Declaration-2550Q for January to March 2010
P-15	Monthly VAT Declaration-2550M for April 2010
P-16	Monthly VAT Declaration-2550M for May 2010
P-17	Quarterly VAT Declaration-2550Q for April to June 2010
P-18	Monthly VAT Declaration-2550M for July 2010
P-19	Monthly VAT Declaration-2550M for August 2010
P-20	Quarterly VAT Declaration-2550Q for July to September 2010
P-21	Monthly VAT Declaration-2550M for October 2010
P-22	Monthly VAT Declaration-2550M for November 2010
P-23	Quarterly VAT Declaration-2550Q for October to December 2010
P-24	Consularized 24-page Memorandum and Articles of Association of Asia Star Services Limited
P-25	Consularized 24-page Memorandum and Articles of Association of China Fishing Agency Limited
P-26-1	Far East Seafood, Inc. Check Voucher No. 8311, for Nocturnal
P-26-2	Nocturnal Official Receipt No. 0275
P-26-3-1	Manning Summary Report for April 1-15, 2013
P-26-3-2	Employee name "Barrientos"
P-26-4	Billing Summary Report for April 1-15, 2013
P-26-5-1	Manning Summary Report for April 16-30, 2013
P-26-5-2	Employee name "Barrientos"
P-26-6	Billing Summary Report for April 16-30, 2013
P-27-1	FESI Check Voucher No. 8369 for Nocturnal Detective and Investigation Agency
P-27-2	Nocturnal OR No. 0276
P-27-3-1	Manning Summary Report for May 1-15, 2013
P-27-3-2	Employee name "Barrientos"
P-27-4	Billing Summary Report for May 1-15, 2013
P-27-5-1	Manning Summary Report for May 16-31, 2013
P-27-5-2	Employee name "Barrientos"
P-27-6	Billing Summary Report for May 16-31,

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P-28	BOI Letter dated 10 March 2008, addressed to Far East Seafood, Inc., and signed by Salvador F. Co, OIC for Supervision and Monitoring Department of the BOI
P-29	Seven-age Certified True Copy of the SEC General Information Sheet for 2010, of Far East Seafood, Inc.
P-30	Judicial Affidavit of Olive Grace Caina
P-30-1	Bracketed signature and name of Olive Grace Caina
P-31	Judicial Affidavit of Lhaarni Tapanan
P-31-1	Bracketed signature and name of Lhaarni Tapanan

On the other hand, respondent presented the following witnesses: (1) Yesa P. Yap[20] — Revenue Officer II at the BIR; (2) Marilou E Cubero[21] — Revenue Officer III at the BIR.

Respondent also filed a Formal Offer of Evidence[22] on October 21, 2016, consisting of Exhibits "R-1" to "R-17", inclusive of sub-markings, to which petitioner filed its Comment/Objections (to the Formal Offer of Evidence of Respondent)[23] on November 11, 2011.

In the Resolution[24] dated January 15, 2016, the Court admitted respondent's documentary evidence except Exhibit "R-14" for failure to submit the marked exhibit. Respondent's motion for reconsideration was granted in a Resolution dated March 21, 2017.[25] Thereafter, on June 16, 2017, a "Supplemental Formal Offer of Evidence"[26] was filed by respondent. Thus, in the Resolution[27] dated October 3, 2017, the Court admitted respondent's Exhibit "R-14".

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[20] CTA Docket, Vol. I, pp. 94-113.
[21] CTA Docket, Vol. I, pp. 122-150.
[22] CTA Docket, Vol. II, pp. 610-620.
[23] CTA Docket, Vol. II, pp. 621-631.
[24] CTA Docket, Vol. II, pp. 639-640.
[25] CTA Docket, Vol. II, pp. 648-649.
[26] CTA Docket, Vol. II, pp. 659-662.
[27] CTA Docket, Vol. II, pp. 672-673.

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Respondent formally offered the following documentary evidence, to wit:

Exhibit:	Description:
R-1	Letter of Authority No. 113-2011-00000269/eLA201000007783 dated 10 October 2011
R-2	Checklist of Requirements
R-3	First Request for Presentation of Books for Accounts and Other Accounting Records dated 25 October 2011
R-4	Second and Final Request for Presentation of Records dated 09 November 2011
R-5	Fifteen (15) Day Notice for Conference dated 30 August 2012
R-6	Memorandum dated 30 August 2012 recommending the issuance of the Preliminary Assessment Notice (PAN)
R-7	Preliminary Assessment Notice (PAN) with attached Details of Discrepancy dated 15 April 2013
R-8	Registry Return Receipt for the service through registered mail of the Preliminary Assessment Notice (PAN)
R-9	Formal Letter of Demand (FLD) dated 23 May 2013
R-10	Final Assessment Notice (BIR Form 1708) dated 23 May 2013 composed of five (5) pages
R-11	Registry Return Receipt for the service through registered mail of the Formal Letter of Demand and the Final Assessment Notice (FAN)
R-12	Memorandum dated 28 January 2013 composed of two (2) pages
R-13	Memorandum dated 25 March 2014 composed of two (2) pages
R-14	Decision dated 25 July 2014 denying petitioner's request for reconsideration composed of two (2) pages
R-15	BIR Investigation Records composed of Two (2) Folders
R-16	Judicial Affidavit of Revenue Officer Yesa P. Yap
R-16-a	Name and signature of Revenue Officer Yesa P. Yap
R-17	Judicial Affidavit of Revenue Officer Marilou E. Cubero

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R-17-a	Name and signature of Revenue Officer Marilou E. Cubero

As per Resolution issued directed by the Court, the parties filed their respective Memoranda. Thereafter, the case was submitted for decision in a Resolution[28] dated December 12, 2017.

As jointly stipulated by the parties[29], the main issue is:

> "Whether petitioner is liable to pay the total amount of Php 29,420,114.49 as deficiency Income Tax, Expanded Withholding, Withholding Tax – Compensation, Value Added Tax, Documentary Stamp Tax as well as Surcharge, Compromise Penalty, and Deficiency and Delinquency interest pursuant to Section 248 and 249 of the NIRC of 1997 for taxable year 2010."

We resolve.

The Court shall first determine the timeliness of the filing of the present Petition for Review and its compliance with Section 228 of the NIRC of 1997, as amended, which is quoted hereunder for ready reference:

> *"SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:*
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> *xxx xxx xxx*
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> *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.*

[28] CTA Docket, Vol. II, p. 704.
[29] CTA Docket, Vol. I, pp. 316- 324.

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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."

In relation thereto, Revenue Regulation 12-99[30] which provides the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, provides as follows:

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:

3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by

[30] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

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the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

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.

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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

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acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. *If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.*

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date

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of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.

3.1.6 Administrative Decision on a Disputed Assessment. — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision.

3.1.7 Constructive Service. — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a

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written report of this matter which shall form part of the docket of this case (see illustration in ANNEX D hereof).

In this case, petitioner received on June 11, 2013, the Formal Letter of Demand (FLD), Final Assessment Notices (FANs) and Details of Discrepancy, all dated May 23, 2013, for the alleged deficiency income tax, expanded withholding tax, withholding tax–compensation, value added tax and documentary stamp tax, for calendar year (CY) 2010 in the total amount of Php29,420,114.95.

On July 11, 2013, or within thirty (30) days from receipt of the FLD and FAN, petitioner filed its protest requesting reconsideration. Thereafter, on September 11, 2014, petitioner received a letter dated July 25, 2014 from respondent denying its protest.

Pursuant to Section 228 of the NIRC of 1997, as amended, 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. Likewise, pursuant to Revenue Regulation 12-99, if the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.

Furthermore, in the case of Lascona Land Co. Inc. v. CIR[31] citing RCBC vs CIR[32], the Supreme Court ruled that "in case the Commissioner failed to act on the disputed assessment within the 180-day period xxx, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision."

[31] G.R. No. 171251, March 5, 2012.
[32] G.R. No. 168498, April 24, 2007.

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Thus, petitioner has the option to file a petition for review with this Court within 30 days after the expiration of the 180 days from July 11, 2013 or await the final decision of the Commissioner on the disputed assessments, and appeal such final decision to this Court within 30 days after receipt of a copy of such decision. Petitioner chose to await respondent's decision. Concomitantly, petitioner has a period of 30 days from September 11, 2014 or until October 11, 2014 within which to file its Petition for Review before this Court. Petitioner filed the present Petition for Review on October 13, 2015 (*the next working day after October 11, 2014, since it falls on Saturday*). Clearly, petitioner timely filed its petition and the Court has acquired jurisdiction over the instant case.

Having discussed the timeliness of the filing of the present Petition for Review, the next question is, whether petitioner is liable for the deficiency assessments?

Among the arguments raised, petitioner insists that it is not liable for the deficiency taxes because it was based on assessments issued without Preliminary Assessment Notice (PAN). Petitioner avers that the PAN was not received by petitioner. Petitioner argues that failure to receive PAN is fatal to the validity of respondent's deficiency assessments.

For his part, respondent maintains that the PAN was validly issued in accordance with law, rules and regulations. Respondent maintains that pursuant to RR 12-99 the PAN was issued by registered mail and that was duly received as evidenced by a registry return receipt. Respondent argues that with the issuance of a registry return receipt, petitioner has the burden of overturning the presumption of regularity that the PAN was delivered and received by the addressee in the regular course of mail. Thus, respondent concluded that petitioner cannot interpose the defense that it was denied its right to due process by mere denial that it did not receive a copy of the PAN.

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Contrary to respondent's argument, 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[33], that it was received in the regular course of mail. However, 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.[34] 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.[35]

Furthermore, it is a settled jurisprudence that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee[36]. The Supreme Court rules as follows;

> *"On the matter of service of a tax assessment, a further perusal of our ruling in Barcelon is instructive, viz:*
>
> > *Jurisprudence is replete with cases holding that* ***if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.*** *The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to*

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[33] Sec. 3. Disputable presumptions. The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx xxx xxx.

(v)That a letter duly directed and mailed was received in the regular course of the mail.

xxx xxx xxx.

[34] Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 157064, August 7, 2006.

[35] Ibid.

[36] Commissioner of Internal Revenue v. Metro Star Superama, Inc.,G.R. No. 185371, December 8, 2010, citing the case of Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 157064, August 7, 2006.

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> *controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351).xxx"*

Thus, before the respondent can be given the benefit of the presumption that a letter duly directed and mailed was received in the regular course of mail, or that "a mail matter sent by registered mail was received in the regular course of mail", respondent must first prove- (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. After proving such facts, only then can respondent benefit from such presumption. It is only a disputable presumption 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.

In the instant case, petitioner has been consistent in denying receipt of the PAN. In the administrative level, petitioner denied receiving the PAN in their protest before the respondent. Likewise, petitioner denied receiving the PAN in its petition before the Court. Thus, it is incumbent upon respondent to prove, not only that the PAN was validly served and duly received by petitioner, but also that the PAN was properly addressed with postage prepaid and that it was mailed. To convince the Court that the issued PAN was mailed, validly served and duly received by petitioner, CIR offered the Registry Return Receipt as Exhibit "R-8"[37] and the testimony of a witness.

While the foregoing documentary evidence may have proven the fact of mailing a letter via registered mail, no evidence was, however, submitted by the CIR proving that (a)it is indeed the PAN issued which was sent via registered mail; (b) the PAN issued was mailed; and (c) that said mail had been actually served and received by petitioner or by its duly authorized agent. Suffice it to say that Exhibit "R-8" alone does not prove that the letter mailed is the issued PAN. In fact, CIR failed to establish that the PAN issued against

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[37] Page 4, Folder No. two (2) of the BIR Records.

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petitioner was mailed, much less, that the person "SG Barrientos" who allegedly received the said PAN on a date unspecified, as the date it was received was left blank, was duly authorized by petitioner to receive the same in its behalf.

It bears noting that CIR's witness, Revenue Officer Marilou E. Cubero, in her testimony[38], has no personal knowledge on whether the subject mail matter under Registry Return Receipt marked as Exhibit "R-8" is indeed the PAN or whether said PAN was mailed or actually delivered to the addressee or the latter's duly authorized representative, since she merely sent said PAN to the Administrative Office who, in turn, will deliver said notice to the Post Office for mailing. Pertinent portions of her testimony are herein quoted below:

> "ATTY. EDLES:
> Q. And there is registry receipt. Can you tell us what date is indicated as the date of receipt of the Preliminary Assessment Notice?
>
> MS. CUBERO:
> A. They did not indicate, Your Honors. xxx.
>
> ATTY. EDLES:
> Q. Thank you. You said earlier that you served these notices, the FLN, FAN and the PAN through registered mail.
>
> MS. CUBERO:
> A. Yes, Your Honors.
>
> ATTY: EDLES:
> Q. Did you personally administer the sending by registered mail?
>
> MS. CUBERO:
> A. The Administrative office, You Honors, because from the Assessment Division, we will be sending our closed envelopes to the Administrative Division, and they made a recording there, in case, because that is an important document for us, Your Honors, so, everything should be mailed through our Administrative Office.
>
> ATTY. EDLES:
> Q. But the actual service of these notices, you don't have personal knowledge?

[38] Transcript of Stenographic Note, October 11, 2016, pp. 16-32.

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MS. CUBERO:
A. It's the post office. I don't have any personal knowledge because it's ... (interrupted)

xxx xxx xxx."[39]

Other than the abovementioned evidence, there is nothing on the records that will prove that the PAN issued against petitioner was properly addressed with postage prepaid and that it was mailed to petitioner. The testimony of respondent's witness Revenue Officer Marilou E. Cubero and the documentary evidence marked as "Exhibit "R-8, does not prove such fact. Respondent did not even overcome the burden to prove that the PAN issued against petitioner was mailed via registered mail in order to be given the benefit of the presumption that "a letter duly directed and mailed was received in the regular course of mail". Clearly in the instant case, respondent is not entitled to such disputable presumption.

In addition, even if we give respondent the benefit of such disputable presumption, respondent still has the burden to prove that the mailed letter was indeed received by the addressee because petitioner denied receiving any PAN. Again, there is no evidence on record to prove that the PAN issued was mailed and received by petitioner or its duly authorized representative as the mailed matter for Exhibit "R-8" does not prove that it was the PAN issued, nor was it received by a person authorized to receive any communication for and in behalf of petitioner. Without proof of his authorization, or at the very least his connection with petitioner, his receipt of Exhibit "R-8" (which is not proven to be the PAN issued) is of no merit.

In this regard, respondent must be circumspect on the procedure and evidences needed in proving the issuance of a PAN and its proper service. If by registered mail, the facts to be proved in order to raise the presumption are (1) that it was received in the regular course of mail and (2) that said PAN was properly addressed with postage prepaid and that it

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[39] Transcript of Stenographic Note, October 11, 2016, pp. 27-28

was mailed. If the receipt of the PAN was denied, respondent must prove that the mailed letter (proved to be containing the PAN) was indeed received by the addressee or its authorized representative.

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. Absent thereof renders nugatory any assessment made by the tax authorities.[40] The use of the word *shall* in subsection 3.1.2 of R.R. No. 12-99 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 CIR 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. Thus, the failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, shall render the assessment made by the CIR as void.[41]

In fine, respondent failed to satisfactorily discharge its burden of proving that he was able to strictly comply with the requirements set forth under Section 228 of the NIRC of 1997 and RR No. 12-99 in serving the PAN. For failure to prove the sending of the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessments made by the respondent are void.

The Court need not belabor to discuss the other matters raised, for it is well-settled that a void assessment bears no fruit. [42]

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of Php1,783,418.25, for expanded withholding tax in the amount of Php8,342,577.85, for withholding tax on compensation in the amount of Php2,092,601.57, for value-added tax in the

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[40] CIR v. Metro Star Superama, Inc., G. R. No. 185371 dated Dec. 8, 2010
[41] Ibid.
[42] Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. No. 159694 & G.R. No. 163581 January 27, 2006, 382 SCRA 48

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amount of Php16,439,108.43, and for documentary stamp tax in the amount of Php762,408.39 all inclusive of interest, surcharges, and penalties for calendar year 2010 are **CANCELLED** and **SET ASIDE.**

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special 1st Division