Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION, Petitioner,	**CTA Case No. 8346**
-versus-	**Members:** CASTAÑEDA, JR., *Chairperson* CASANOVA, *and* COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 05 2016 4:30 p.m.

x---x

DECISION

CASANOVA, *J.*:

This is a Petition for Review filed by petitioner Philippine Aerospace Development Corporation seeking for the cancellation of the deficiency income tax, Value Added Tax (VAT), and expanded withholding tax (EWT) assessments made by respondent Commissioner of Internal Revenue for the year 2004, in the aggregate amount of Thirteen Million Two Hundred Forty-Two Thousand Six Hundred Sixteen Pesos and 24/100 (₱13,242,616.24) (inclusive of Compromise Penalty).[1]

Petitioner is a government owned and controlled corporation (GOCC) created and existing under the laws of the Philippines, specifically, Presidential Decree (PD) No. 286, as amended, with principal address at PADC Hangar 2, General Aviation Area, Domestic Airport Road, Pasay City.[2]

---

[1] Summary of the Case, Pre-Trial Order, Docket, p. 117-123.
[2] Paragraph 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 109.

On the other hand, respondent is the duly appointed head of the Bureau of internal Revenue (BIR) and is empowered to perform the duties of his office, including, among others, the power to decide, cancel, and abate tax liabilities pursuant to Section 204 (B) of the National Internal Revenue Code, Republic Act (RA) 8424, as amended, otherwise known as the Tax Reform Act of 1997 (Tax Code).[3]

On January 9, 2008, the CIR, through Revenue Region No. 8, issued Assessment Notices[4] for income tax, VAT, withholding of creditable VAT, EWT, and compromise penalty for the period January 2004 to December 2004 in the total amount of ₱9,813,403.28 detailed as follows[5]:

Deficiency Income Tax	₱5,975,775.01
Deficiency VAT	₱2,377,298.12
Deficiency Creditable VAT	₱1,023,675.64
Deficiency EWT	₱416,654.51
Compromise penalty	₱20,000.00

On the same date, respondent issued a Formal Assessment Notice (FAN) with attached Details of Discrepancies[6] assessing petitioner in the same amount stated above.

On August 21, 2008, Revenue District Officer (RDO) of Revenue Region No. 8, Revenue District Office No. 51, Ricardo B. Espiritu, issued a Preliminary Collection Letter[7] (PCL) whereby the CIR demanded the payment of ₱9,813,403.28 as the aggregate amount of tax liabilities of petitioner.[8]

On April 21, 2009, petitioner sent a letter[9] to the Regional Director, Revenue Region No. 8, Mr. Alfredo V. Misajon, reiterating its request for re-investigation of the assessment for the year 2004. Pertinent documents were submitted by petitioner pursuant to the letter request.[10]

---

[3] Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 110.
[4] Annexes "A" to "A-4", Petition for Review, Docket, pp. 22-24.
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 110.
[6] Annex "B", Petition for Review, Docket, pp. 25-30.
[7] Annex "C", Docket, Id., p. 31.
[8] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 111.
[9] Annex "D", Petition for Review, Docket, p. 32.
[10] Par. 6, Summary of Admitted Facts, JSFI, Docket, p. 111.

On July 28, 2009, petitioner sent another letter[11] to Mr. Misajon reiterating its request for the re-investigation of the assessment for the year 2004.[12]

On August 16, 2011, the CIR issued a Final Decision on Disputed Assessment (FDDA), with attached Details of Discrepancies[13], acknowledging therein that the request for re-investigation was granted. However, except for the amended value-added tax portion, the rest of the tax deficiencies were affirmed on the ground that petitioner failed to submit supporting documents to substantiate the cancellation of the assessments.[14] Details of which are as follows:

Deficiency Income Tax	₱8,729,154.17
Deficiency VAT	₱2,471,713.24
Deficiency Creditable VAT	₱1,418,986.84
Deficiency EWT	₱602,762.09
Compromise penalty	₱20,000.00
TOTAL	**₱13,242,616.34**

In view of respondent's Decision, petitioner filed the instant Petition for Review[15], through registered mail on September 19, 2011, which was received by the Court on October 5, 2011, praying for the suspension of any impending levy, distraint and/or sale of any property of the petitioner during the pendency of the instant Petition and for the cancellation of all deficiency tax assessments for the year 2004.

Within the extension of time granted by the Court[16], respondent filed an Answer[17] on November 23, 2011, interposing the following Special and Affirmative Defenses:

> "4. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;

[11] Annex "E", Petition for Review, Docket, pp. 33-34.
[12] Par. 7, Summary of Admitted Facts, JSFI, Docket, p. 111.
[13] Annex "F", Docket, pp. 35-42.
[14] Par. 7, Summary of Admitted Facts, JSFI, Docket, p. 111.
[15] Docket, pp. 6-21.
[16] Court Resolution dated November 18, 2011, Docket p. 50.
[17] Docket, pp. 51-54.

5. The assessments in question were made and issued in accordance with law, rules and regulations;

6. Deficiency income tax was assessed on the ground that petitioner has an undeclared sales amounting to P1,976,575.00 arose from the discrepancy in the balance of certain accounts in depository banks between per book and per bank statements; that petitioner has an undeclared income amounting to P5,501,588.40 arose from its income from the completed jobs and delivered parts and supplies, and the concession fees and utilities due from petitioner's concessionaire, Crunch and Munch that were not declared as income in its income tax return; that petitioner has an unaccounted disbursement arose from the comparison made on its income payments per Income Tax Return/Financial Statement as against the withholding tax return wherein it showed that the amounts of professional fees and salaries and wages subjected to corresponding withholding tax per alphalist were greater than the amounts reported in petitioner's financial statements by P55,856.60 and P671,511.34, respectively; that comparison made on petitioner's income payments per income tax return/Financial Statement as against the withholding tax return showed that petitioner failed to withhold the tax due on its purchases and rental expense amounting to P3,735,811.27, hence, disallowed pursuant to Section 34(K) of the NIRC; that verification shows that petitioner had carry forward the net operating loss in the current year amounting to P2,532,683.00 to the subsequent year, thus, it is appropriate that such loss should be taken into consideration in computing the correct income tax liability for the current year in order to recapture the income tax benefit realized in the following year because of such carry over; that minimum corporate income tax (MCIT) amounting to P491,553.02 was not allowed as tax credit against the computed deficiency income tax, considering that the said amount shall be credit over and credited against the normal income tax due for the three (3) immediately succeeding year as provided for under Section 27(E)(1)(2) of the NIRC; and that the amount of P226,174.24 carried forward to succeeding taxable year has been deducted from the prior year's excess credit claimed in 2004 to recapture the tax benefit thereon.

7. Deficiency value-added tax (VAT) was assessed on the ground that analysis of Beginning and Ending Accounts Receivable account and the revenue reported in taxable year 2004 disclosed that gross receipts amounting to P10,616,325.53 were not subjected to 10% Output Tax in violation of Section 108 of the NIRC; and that excess input tax per 2004 4th quarter VAT return of P53,500.62 which was carried over to the succeeding quarters was disallowed.

8. Deficiency withholding creditable VAT was assessed on the ground that verification disclosed that petitioner failed to withhold and remit the total amount of P548,625.81 representing withholding of value-added tax due arising from its purchases of goods and services as provided for under Section 4.114(A)(1) of Revenue Regulations No. 2-98, as amended.

9. Expanded withholding tax was assessed on the ground of petitioner's failure to withhold on its income payments pursuant to Section 2.57.2 of Revenue Regulations No. 2-98, as amended.

10. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)**."

Petitioner's Pre-Trial Brief[18] was filed on February 20, 2012 while Respondent's Pre-Trial Brief[19] was filed on February 22, 2012. Thereafter, the parties' Joint Stipulation of Facts and Issues[20] was filed on July 12, 2012, and the same was approved per Pre-Trial Order[21] promulgated on August 1, 2012, and pre-trial of the case was thereby terminated.

During the trial, petitioner presented, Ms. Josefa R. Cabangangan[22], its Division Manager for Planning and General Accounting and petitioner's Financial Planning Specialist, Mr. Mark Timothy G. Linsag[23] as its witnesses.

[18] Docket, pp. 59-66.
[19] Docket, pp. 67-72.
[20] Docket, pp. 109-115.
[21] Docket, pp. 117-123.
[22] Judicial Affidavit of Josefa R. Cabangangan, Docket, pp. 452-484.
[23] Judicial Affidavit of Mark Timothy G. Linsag, Docket, pp. 485-506.

Petitioner filed its Formal Offer of Documents[24] on May 2, 2014. However, only Exhibits "A" to "F" were admitted by the Court in a Resolution[25] dated July 1, 2014.

Thus, petitioner filed a Motion for Reconsideration (of the 1 July 2014 Resolution)[26] seeking the admission of its denied documentary exhibits, which were finally admitted by the Court in a Resolution dated March 2, 2015, with the exception of Exhibit **"P-3"**, for failure of petitioner to submit its original for comparison.

For his part, counsel for respondent manifested that he has no witness to present.[27] Thereafter, petitioner, within the extension of time granted by the Court[28], filed its Memorandum[29] on April 29, 2015, while respondent failed to file her memorandum per Records Verification dated April 30, 2015. Hence, the case was submitted for decision on May 5, 2015.[30]

The lone issue submitted by the parties for this Court's resolution is whether or not petitioner is liable for the subject deficiency tax assessments for taxable year 2004.[31]

Petitioner maintains that there is no basis for the deficiency tax assessments since respondent has arrived at her findings after reinvestigation without giving due notice of any preliminary assessments and without being given the opportunity to adduce additional evidence.[32]

Petitioner also argues that the deficiency tax assessments were issued without legal and factual bases. The CIR has unduly prejudiced petitioner in issuing the tax deficiency assessments without prior issuance of a Preliminary Assessment Notice (PAN), contrary to existing revenue rules and regulations, settled jurisprudence and the laws of the land.[33]

---

[24] Docket, pp. 363-378
[25] Docket, pp. 381-382.
[26] Docket, pp. 383-389.
[27] Minutes of the Hearing dated March 24, 2014, Docket, p. 349.
[28] Court Order dated April 17, 2015, Docket, p. 549.
[29] Docket, pp. 550-579.
[30] Resolution dated May 5, 2015, Docket, p. 582.
[31] Stipulated Issue, JSFI, Docket, p. 114.
[32] Par. 10.2, Petitioner's Memorandum, Docket, p. 574.
[33] Pars. 10.4 and 11, Petitioner's Memorandum, Docket, p. 575.

The relevant provisions of law regarding the right of taxpayer to procedural due process in the issuance of assessment is decreed in Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations No. 12-99[34], 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.**"
>
> "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, <u>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</u>

[34] Implementing the Provisions of the National Internal Revenue Code of1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

> (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 ours*)

It is clear from the above-quoted provisions that if there exists sufficient basis to assess a taxpayer for any deficiency tax or taxes, respondent shall issue and serve upon the said taxpayer at least by registered mail, a PAN for the assessment, indicating in detail the facts and the law, rules and regulations, or jurisprudence upon which the assessment is based to ensure the legality of the said assessment. If the taxpayer fails to respond or refute the said assessment within fifteen (15) days from receipt of the PAN, the taxpayer shall be considered in default. Thereafter, a Formal Letter of Demand and assessment notice stating the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, shall be sent to the taxpayer by registered mail or by personal delivery.

This due process requirement was discussed by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[35] to wit:

> "Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. **He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations- that taxpayers should be able to present their case and adduce supporting evidence.**" (Emphasis supplied)

Moreover to reiterate the importance of PAN and the FAN, the Supreme Court in the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils)., Inc.*[36], held that procedures provided in Section 228 of the NIRC and Section 3 of RR No. 12-99 are mandatory and noncompliance therewith renders the assessment void.

In the case before this Court, petitioner avers that it did not receive any PAN from respondent prior to the issuance of FAN.[37]

It is an elementary rule that if the taxpayer denies receipt of an assessment from respondent, it is incumbent upon the latter to prove by sufficient and competent evidence that such notice was, indeed served and received by the addressee. The *onus probandi* shifts to respondent to prove by contrary evidence that petitioner received the assessment in the due course of mail. The following excerpts from the ruling of the Supreme Court in the same case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.* is instructive, to wit:

> "On the matter of service of a tax assessment, a further perusal of our ruling in *Barcelon* is instructive, viz:

[35] G.R. No. 185371, December 8, 2010.
[36] G.R. No. 197515, July 2, 2014.
[37] Judicial Affidavit of Mr. Mark Timothy G. Linsag, Docket, pp. 485-506.

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 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). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:

> **'The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed.** Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269).'

xxx. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts.** This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:

'While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayers intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.' (Nava vs. CIR, 13 SCRA 104, January 30, 1965).

xxx xxx xxx

The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the governments right to issue an assessment for the said period has already prescribed. (*Industrial Textile Manufacturing Co. of the Phils., Inc.* vs. CIR, CTA Case 4885, August 22, 1996)." (Emphases supplied.)

Based on the records, respondent waived her right to present any evidence in this case. She, likewise, failed to submit the required memorandum by the Court. Hence, respondent failed to present controverting evidence or rebut petitioner's allegation that no Preliminary Assessment Notice was issued by respondent against petitioner prior to the issuance of the Final Decision on Disputed Assessment.

It must be stressed that the essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[38] In the case at bar, petitioner was not accorded due process since it has not properly been informed of the basis of its tax liabilities.

[38] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006, citing *Batongbakal vs .Zafra*, G.R. No. 141806, January 17, 2005.

The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of respondent to strictly comply with the requirements laid down by law and its own rules effectively denied petitioner of its right to due process. Thus, for her failure to send the PAN stating the facts and the law on which the assessments were made, as required by Section 228 of the NIRC of 1997, the assessments made by the respondent are void.[39]

Indeed, taxes are the lifeblood of the Government and should be collected without unnecessary hindrance. However, such collection should be made in accordance with law as any arbitrariness will negate the very reason for the Government itself.[40]

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the tax deficiency assessments for taxable year 2004 in the total amount of ₱13,242,616.24 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[39] *Supra note 36.*
[40] *Reyes, et al. vs. Almanzor, et al.*, G.R. Nos. 49839-46, April 26, 1991.

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice