REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

LAURENCE LEE V. LUANG,
Respondent.

CTA EB CASE NO. 878
(CTA Case No. 7967)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
MAY 14 2013 Apolinario 1:30 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by the Commissioner of Internal Revenue ("CIR"), on March 29, 2012, pursuant to Rule 8 of the Revised Rules of the Court of Tax Appeals,[2]

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[1] *Rollo*, CTA EB Case No. 878 (CTA Case No. 7967), pp. 5-41, with Annexes.

[2] RULE 8

PROCEDURE IN CIVIL CASES

SECTION 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

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SEC. 3. *Who may appeal; period to file petition.* –

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the assailing the Decision promulgated by the Second Division of the Court ("Court in Division") on January 5, 2013,[3] which cancelled the Formal Letter of Demand and Assessment Notice/Demand No. 28-05-2001 both dated October 30, 2008, issued against respondent Laurence Lee V. Luang ("Luang"); and the Resolution dated February 23, 2012,[4] which denied the CIR's Motion for Reconsideration.

The Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated January 5, 2012, as follows:

> Petitioner Laurence Lee V. Luang[5] is a Filipino businessman who owned a refilling station of Unioil Petroleum Philippines, Inc. He may be served with pleadings, notices, orders and other processes of the Court through the law firm of Britanico Sarmiento & Franco, with office address at 7th Floor, Banco de Oro Plaza, 8737 Paseo de Roxas, Makati City.
>
> Respondent is the Commissioner of the Bureau of Internal Revenue (BIR).[6] She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner sent a letter dated June 21, 2005 to the BIR to inform said office that his business operations would cease by the middle of the year 2005 and that taxes were to be incurred only up to June 30, 2005. Said letter was also meant to inform the BIR of the cessation of reportorial

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reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

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SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

[3] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Cielito N. Mindaro-Grulla, concurring; *Rollo*, pp. 20-33; *Annex "A."*

[4] *Rollo*, pp. 34-37; *Annex "B."*

[5] Herein respondent.

[6] Herein petitioner.

requirements that must be complied with by the taxpayer pursuant to the operation of a business entity. Petitioner filed his second (2nd) quarter VAT return on July 26, 2005.

Petitioner received a copy of a Formal Letter of Demand and a FAN on November 5, 2008 for alleged deficiency VAT, deficiency income tax, and compromise penalties for the year 2005. The Formal Letter of Demand in part states:

> "Please be informed that there has been found due from you, deficiency value added tax and income tax per **Letter Notice No. 028-AS-05-00-00022** dated April 30, 2007 for the **CY 2005**, as shown hereunder."

Based on the FAN, the BIR is assessing petitioner of the following alleged deficiency taxes, inclusive of interest and surcharge:

DEMAND NO.	TAX TYPE	AMOUNT	PERIOD
28-05-0011	VAT	₱7,286,048.42	2005
28-05-0011	Income Tax	401,197.62	2005
28-05-0011	Compromise Penalty	50,000.00	2005

Petitioner then filed a Protest to the FAN on December 5, 2008 or thirty (30) days after receipt of the FAN, arguing that the findings therein are devoid of any legal and factual bases, and moving that the same be cancelled and withdrawn.

On February 3, 2009, within sixty (60) days after the filing of the protest, petitioner submitted his supporting documents. Thus, respondent has one hundred eighty (180) days or until July 31, 2009, within which to resolve petitioner's protest.

The 180-day period lapsed on July 31, 2009 without respondent acting on the protest; hence, petitioner has thirty (30) days or until August 28, 2009 to file a Petition for Review.

Petitioner filed the present Petition for Review with this Court on August 28, 2009.

In her Answer filed on October 19, 2009, respondent raised the following arguments:

> "4. The assessments for calendar year 2005 in the amounts of ₱401,197.62 and ₱7,286,048.42 for deficiency income and value added taxes, respectively, were issued in accordance with law and regulations. The factual and legal bases of the assessments are contained in the Final Assessment Notices.
>
> 5. Finally, well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith (*Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671*). It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

During trial, the parties presented and formally offered their respective witnesses and documentary evidence.

The case was submitted for decision on November 29, 2011, taking into consideration petitioner's Memorandum filed on September 30, 2011 and respondent's Memorandum filed on November 22, 2011.[7]

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[7] *Rollo*, pp. 21-23.

The Ruling of the Court in Division

The Court in Division issued a Decision, ruling as follows:

> **WHEREFORE,** the instant Petition for Review is hereby **GRANTED**. Accordingly, Formal Letter of Demand dated October 30, 2008 and Assessment Notice/Demand No. 28-05-2001 dated October 30, 2008 for deficiency VAT, deficiency income tax and compromise penalties are hereby **CANCELLED**.
>
> **SO ORDERED.**[8]

Aggrieved, the CIR filed a Motion for Reconsideration on January 30, 2012, which was denied for lack of merit by the Court in Division in its Resolution promulgated on February 23, 2012.[9]

The Issues

Hence, the present Petition for Review, where the CIR assigns the following issues of:

I. WHETHER THE SECOND DIVISION OF THE HONORABLE COURT ERRED WHEN IT HELD THAT RESPONDENT WAS NOT ACCORDED DUE PROCESS;

II. WHETHER OR NOT RESPONDENT IS LIABLE FOR DEFICIENCY VAT FOR TAXABLE YEAR 2005;

III. WHETHER OR NOT RESPONDENT IS LIABLE FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2005;

IV. WHETHER OR NOT RESPONDENT IS LIABLE FOR COMPROMISE PENALTY IN THE AMOUNT OF ₱50,000.00 FOR TAXABLE YEAR 2005; and

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[8] *Ibid.*, p. 32.
[9] *Supra*, note 4.

V. WHETHER OR NOT THE SUBJECT ASSESSMENTS HAVE FACTUAL AND LEGAL BASES.[10]

The CIR's Arguments

The CIR claims that while the issuance of a Preliminary Assessment Notice ("PAN") is required, it is not indispensable, considering that a taxpayer is not mandated to protest the same, and failure to such, will not result to the finality of the assessment. She also posits that since the absence of a PAN will not invalidate an assessment, it follows then that mere failure to prove the actual or constructive receipt of it, will likewise not invalidate an assessment.

The CIR also asserts that Luang is still liable for deficiency value-added tax and income tax for the taxable year 2005, for his failure to observe the proper procedure in closing or retiring a business. Without filing the mandatory duly accomplished Form No. 1905, Luang remains the operator and proprietor on record of Unioil Petroleum Philippines, Inc., liable for the deficiency taxes. She further avers that a compromise penalty is but proper, as an offer to Luang in lieu of the more rigorous alternative of instituting a criminal action

The CIR finally argues that considering Luang was able to prepare an intelligent protest against the Final Assessment Notice, the latter was accorded the required due process.

Luang's Counter-Arguments

Luang counters that the mandatory requirement is the valid service of PAN, and not merely the existence of it, to which the CIR failed to prove.

Luang, likewise, insists that he was no longer the proprietor of the said petroleum and refilling station during the period covered by the deficiency assessment, thus, he cannot be held liable therefor.

[10] *Rollo*, pp. 9-10.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

In the case of *Commissioner of Internal Revenue v. Unioil Corporation*,[11] this Court sitting *En Banc* aptly penned as follows:

> This Court affirms the ruling of the CTA Third Division in the Assailed Decision and Assailed Resolution that petitioner failed to comply with the notice requirements mandated under Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, thereby denying respondent of its right to due process, hence, effectively voiding the assessments issued.
>
> Section 228 of the 1997 National Internal Revenue Code clearly provides for the right of the taxpayer to procedural due process in the issuance of assessment. It is mandated that a taxpayer should be informed in writing of the law and the facts upon which the assessment against him is based, otherwise such assessment shall be invalid. Section 228 states thus:
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> xxx xxx xxx
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> Such mandate is further reinforced by the provisions of Section 3 of Revenue Regulations No. 12-99 where the due process requirement in the issuance of deficiency tax assessments is defined as follows:
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> xxx xxx xxx
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> **The law and the regulations are clear on the requirements for procedural due process on the issuance of assessment for deficiency taxes. Full and complete compliance with these requirements is mandatory to ensure the validity of the assessment. Consequently, a void assessment bears no valid fruit.**

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[11] CTA EB Case No. 857 (CTA Case No. 8000), November 13, 2012.

The issuance of PAN is an integral part of procedural due process. The PAN lays down the factual and legal basis for the assessment. We reiterate the Assailed Decision's discussion on the indispensable nature of the PAN in the issuance of assessments and give emphasis to the fact that the 1997 NIRC provided that the issuance of PAN in assessments is mandatory in tax assessments except in a few instances, specifically enumerated by law, where it is not required.

The Supreme Court, in the recent case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, ruled that PAN is a vital component of procedural process in the issuance of tax assessments, to wit:

xxx xxx xxx

In the present petition, respondent denies the receipt of the PAN in relation to the deficiency tax assessments issued against it by the petitioner. Petitioner on the other hand alleges that petitioner actually received the PAN considering that it was able to file its protest to the PAN. We agree with respondent.

As respondent categorically denies the receipt of the PAN, it is incumbent upon petitioner to prove the contrary. In the case of *Republic of the Philippines vs. The Court of Appeals, and Nielson & Company, Inc.*, the Supreme Court held that:

xxx xxx xxx

Hence, as **petitioner failed to prove the receipt of the PAN by the respondent, thereby effectively denying the latter of its right to due process**, We affirm the CTA Third Division's ruling cancelling and setting aside the subject assessments for deficiency withholding taxes and deficiency expanded withholding taxes for the taxable year 2005. Accordingly, We find it unnecessary to delve into the other issues raised in the present petition.

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved. (*Boldfacing supplied.*)

With the foregoing ruling, and after a perusal of the parties' submissions, the Court *En Banc* adheres to its stand that a valid service of PAN is mandatory; otherwise, the assessment is considered void for failure to observe due process.

Thus, the Court *En Banc* affirms the findings made by the Court in Division, to quote:

> Respondent's witness, Mr. Alberto E. Pengson, testified that after issuing and sending subject LN to petitioner, he also sent a Post-Reporting Notice (PRN) dated January 23, 2008 through registered mail. Mr. Pengson also testified that since the result of his investigation revealed that petitioner is liable for deficiency income tax and VAT for taxable year 2005, he prepared and submitted a Memorandum Report dated May 15, 2008, with attached Audit Reports on VAT and income tax, recommending the issuance of a PAN against petitioner. Furthermore, Mr. Pengson confirmed that after he prepared and submitted his Memorandum Report, a PAN with Details of Discrepancies was issued against petitioner.
>
> During Mr. Pengson's cross-examinations, conducted by counsel for petitioner on May 11, 2011 and June 29, 2011, **Mr. Pengson, however, confirmed that he has no document or evidence to prove that the PAN was actually received by petitioner**, to wit:
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> xxx xxx xxx

Under Section 3(v) of Rule 131 of the Rules on Evidence, there is a disputable presumption that a letter duly directed and mailed was received in the regular course of the mail. Corollary thereto, Section 10 of Rule 13 of the Revised Rules of Court provides that "(s)ervice by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier."

While there is a disputable presumption that a mailed letter is deemed received by the addressee in the ordinary course of mail, a direct denial of the receipt of mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. Jurisprudence is replete with cases holding that if the taxpayer denied receiving 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* is therefore shifted to respondent to prove by contrary evidence that petitioner received the assessment notice in the due course of mail. In other words, an assessment notice is not considered validly issued if the taxpayer denied receipt thereof.

In the present case, petitioner categorically denied receiving the PAN in his Petition for Review. While respondent's witness, Mr. Pengson, identified a copy of an undated PAN during trial, Mr. Pengson failed to establish during his cross-examination by the counsel for petitioner that said PAN was received by petitioner. **Respondent failed to prove that the PAN was delivered to petitioner by registered mail since no copy of the registry return receipt was presented as evidence. Likewise, respondent failed to prove that the PAN was personally received by petitioner. Since it was not clearly established by respondent that petitioner actually received the PAN, either personally or by registered mail, the Court cannot uphold respondent's position that due process was observed in this case.**

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> Accordingly, **in the absence of proof of actual receipt by petitioner of the undated PAN in violation of Section 228 of the NIRC of 1997 and RR No. 12-99, the Court finds that petitioner was not accorded due process.** Hence, both the undated PAN and the FAN dated October 30, 2008 are void.[12] (*Boldfacing supplied.*)

In sum, the Court *En Banc* finds no compelling reason to warrant a reversal of the assailed Decision and Resolution.

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The Decision dated January 5, 2012, and Resolution dated February 23, 2012, promulgated by the Second Division of the Court are hereby **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO - with separate concurring opinion
Presiding Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[12] *Rollo*, pp. 26-32.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LAURENCE LEE V. HUANG
Respondent.

CTA EB No. 878
(CTA Case No. 7967)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 14 2013 1:30 p.m.

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CONCURRING OPINION

DEL ROSARIO, PJ:

I fully agree with the ponencia that a valid service of Preliminary Assessment Notice (PAN) is mandatory; otherwise, the assessment is considered void for failure to observe due process.

In arguing that respondent was still accorded due process even if he failed to receive the PAN, petitioner cites the case of **Bank of the Philippines Islands vs. Commissioner of Internal Revenue**[1] (*BPI case*) where this Court in Division ruled that "although the issuance of PAN is required, it is not indispensable. In fact, a taxpayer is not obligated to protest a PAN and failure on its/his part to protest a PAN does not result in the finality of assessment."

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[1] CTA Case No. 7397, April 9, 2008

The *BPI case* is inapplicable to the instant case since the *BPI case* involves the Bureau of Internal Revenue's (BIR) non-compliance with the provisions of Revenue Regulations (RR) No. 12-85 which implements Section 229 of the National Internal Revenue Code of 1977 (1977 NIRC). In the instant case, however, the issue is the BIR's failure to comply with the provisions of RR No. 12-99 which implements Section 228 of the 1997 NIRC.

In this regard, it is enlightening to compare the pertinent provisions of Section 229 of the 1977 NIRC and RR No. 12-85 with the related provisions of Section 228 of the 1997 NIRC and RR No. 12-99, to wit:

Section 229 of the 1977 NIRC	Section 228 of the 1997 NIRC
SECTION 229. Protesting of assessment. — **When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings.** Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings. Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulation within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable. If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.	SECTION 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: (a) Xxx xxx xxx; or 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. Xxx xxx xxx.
RR No. 12-85	**Section 3.1.2 of RR No. 12-99**
SECTION 2. Notice of Proposed Assessment. — **When the Commissioner**	SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax

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or his duly authorized representative finds that taxes should be assessed, he shall first notify the taxpayer of his findings in the attached prescribed form as Annex "B" hereof. The notice shall be made in writing and sent to the taxpayer at the address indicated in his return or at his last known address as stated in his notice of change of address. In cases where the taxpayer has agreed in writing to the proposed assessment, or where such proposed assessment has been paid, the required notice may be dispensed with. (Emphasis supplied)	Assessment. — 3.1 Mode of procedures in the issuance of a deficiency tax assessment: 3.1.1 Notice for informal conference – 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. (Emphasis supplied)

Evidently, the major difference is that, unlike in Section 229 of the 1977 NIRC and Section 2 of RR No. 12-85, the BIR is mandated under Section 228 of the 1997 NIRC and Section 3.1.2 of RR No. 12-99 to state in the PAN the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based.

In the case of **Pilipinas Shell Petroleum Corporation vs. Commissioner**[2], the Supreme Court ruled that failure to comply with the procedures laid down in RR No. 12-99, relative to the issuance of assessment, amounts to a violation of the taxpayer's right to due process. Relevant portions of said decision read:

[2] G.R. No. 172598, December 21, 2007.

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> "What is applicable is RR 12-99, which superseded RR 12-85, pursuant to Sec. 244 in relation to Sec. 245 of the NIRC implementing Secs. 6, 7, 204, 228, 247, 248, and 249 on the assessment of national internal revenue taxes, fees, and charges. **The procedures delineated in the said statutory provisos and RR 12-99 were not followed by respondent, depriving PSPC of due process in contesting the formal assessment levied against it. Respondent ignored RR 12-99 and did not issue PSPC a notice for informal conference and a preliminary assessment notice, as required.** PSPC's November 4, 1999 motion for reconsideration of the purported Center findings and cancellation of the subject TCCs and the TDM was not even acted upon.
>
> **PSPC was merely informed that it is liable for the amount of excise taxes it declared in its excise tax returns for 1992 and 1994 to 1997 covered by the subject TCCs via the formal letter of demand and assessment notice. For being formally defective, the November 15, 1999 formal letter of demand and assessment notice is void**. Xxx
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> In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.** Respondent must be more circumspect in the exercise of his functions, xxx." (Emphasis supplied)

Further, in the more recent case of **Commissioner of Internal Revenue vs. Metro Star Superama, Inc.**[3] (*Metro Star case*), the Supreme Court emphasized, in unequivocal language, the importance of issuing a PAN which states the facts and the law on which the assessment is made pursuant to Section 228 of the 1997 NIRC, to wit:

> "This now leads to the question: Is the failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process? Specifically, are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?
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> The answer to these questions require an examination of Section 228 of the Tax Code xxx
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> Xxx xxx xxx

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[3] G.R. No. 185371, December 8, 2010.

> 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**.
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> This is confirmed under the provisions R.R. No. 12-99 of the BIR xxx
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> xxx, **it is clear that the sending of a PAN to 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 CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process**. Thus, **for its 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, the assessment made by the CIR is void**.
>
> The case of CIR v. Menguito cited by the CIR in support of its argument that only the non-service of the FAN is fatal to the validity of an assessment, cannot apply to this case because the issue therein was the non-compliance with the provisions of R.R. No. 12-85 which sought to interpret Section 229 of the old tax law. **RA No. 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely notifying the taxpayer of the CIR's findings was changed in 1998 to informing the taxpayer of not only the law, but also of the facts on which an assessment would be made. Otherwise, the assessment itself would be invalid.** The regulation then, on the other hand, simply provided that a notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form.
>
> The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit. (Emphasis supplied)

Based on the foregoing, the due process requirement in the issuance of a deficiency tax assessment laid down in Section 228 of the 1997 NIRC as implemented by Section 3 of RR No. 12-99, which include the issuance of a PAN that states the facts and the law on which the proposed assessment is based, must be strictly complied with; otherwise, the Final Assessment Notice (FAN) shall be rendered null and void.

To hold that the sending of a PAN is dispensable sans violation of the taxpayer's right to due process and without any effect on the validity of the FAN would be to establish a dangerous precedent. It would render ineffectual and nugatory the provisions of Section 228 of the 1997 NIRC as a FAN can be hastily issued without regard to the specific requirement of the law and its implementing regulations, that is, the prior mandatory issuance of a PAN to inform the taxpayer of the facts and the law on which the assessment is made.

ROMAN G. DEL ROSARIO
Presiding Justice